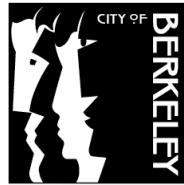


# AGENDA



## BERKELEY CITY COUNCIL MEETING

Tuesday, January 19, 2021

6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

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

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/84342904842>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.*

*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free) and enter Meeting ID: 843 4290 4842. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*To submit an e-mail comment during the meeting to be read aloud during public comment, email [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.*

*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.*

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

## Preliminary Matters

### Roll Call:

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

1. Adjourn in memory of Tom Guarino, PG&E Governmental Affairs Representative
2. Adjourn in memory of Harry Brill, Labor Activist
3. Adjourn in memory of Ted Edlin, City Commissioner

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

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

## Consent Calendar

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

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

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

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

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

## Consent Calendar

- 1. Amendment: FY 2021 Annual Appropriations Ordinance** *(Item contains revised material.)*  
**From: City Manager**  
**Recommendation:** Adopt a new first reading of Ordinance No. 7,748-N.S. amending the FY 2021 Annual Appropriations Ordinance No. 7,724–N.S. for fiscal year 2021 based upon recommended re-appropriation of committed FY 2020 funding and other adjustments authorized since July 1, 2020, in the amount of \$197,890,469 (gross) and \$193,471,132 (net).  
**Financial Implications:** See report  
Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000
- 2. Minutes for Approval**  
**From: City Manager**  
**Recommendation:** Approve the minutes for the council meetings of December 1, 2020 (closed and regular), December 3, 2020 (closed), December 8, 2020 (4pm-special and 6pm-special) and December 15, 2020 (closed, special and regular).  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 3. Temporarily Suspending Certain Provisions of the Commissioners' Manual that Apply to Meetings of Subcommittees**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution temporarily suspending the provisions of the Commissioners' Manual and Resolution No. 69,063-N.S. that ad hoc subcommittees of City boards and commissions follow State open meeting procedures, thereby enabling ad hoc subcommittees to meet and conduct work while allowing City staff to continue emergency response efforts related to the COVID-19 pandemic.  
**Financial Implications:** No direct fiscal impact  
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 4. Annual Commission Attendance and Meeting Frequency Report** *(Continued from November 10, 2020. Item contains supplemental material.)*  
**From: City Manager**  
**Recommendation:** Review and accept the annual Commission Attendance and Meeting Frequency Report.  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 5. Authorized Agent Update for FEMA Public Assistance for COVID-19**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the Deputy City Managers and AG Witt, LLC to engage with the Federal Emergency Management Agency and the Governor's Office of Emergency Services regarding grants applied for by the City of Berkeley for the FEMA-4482-DR-CA California COVID-19 Pandemic.  
**Financial Implications:** See report  
Contact: Dave White, City Manager's Office, (510) 981-7000

## Consent Calendar

**6. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on January 19, 2021**

**From: City Manager**

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

**Financial Implications:** Various Funds - \$4,235,362

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

**7. Rescinding Housing Trust Fund Guidelines and Adopting New Guidelines**

**From: City Manager**

**Recommendation:** Adopt a Resolution rescinding the City's current Housing Trust Fund Guidelines (Resolution No. 64,394-N.S.) and adopting new Housing Trust Fund Guidelines that preserve essential components while updating the process to award funds and certain requirements.

**Financial Implications:** See report

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

**8. Authorization to Execute a Revised Programmatic Agreement with the California State Historic Preservation Officer**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a revised Programmatic Agreement (PA) with the California State Historic Preservation Officer (SHPO) to clarify which rehabilitation activities would not require SHPO's review.

**Financial Implications:** See report

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

**9. Predevelopment and Acquisition Loan for 2527 San Pablo Avenue**

**From: City Manager**

**Recommendation:** Adopt a Resolution: 1. Authorizing the execution of a \$5,500,000 loan to Satellite Affordable Housing Associates (SAHA) for costs related to acquisition and predevelopment of the proposed affordable housing development at 2527 San Pablo Avenue (2527 San Pablo), utilizing existing reserved funds previously allocated by Council. 2. Authorizing the City Manager to execute all original or amended documents or agreements to effectuate this action.

**Financial Implications:** See report

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



## Consent Calendar

- 10. Revenue Contract: Community Services Block Grant for Calendar Year 2021**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to accept the Community Services Block Grant (CSBG) Contract Number 21F-4001 for the amount of \$275,106 to provide services for low-income people for the period January 1, 2021 to December 31, 2021, with the option to extend the contract period through May 31, 2022.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 11. 2021 Health Plan Changes**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions:  
1. Approving rates for the Kaiser Health Maintenance Organization (HMO) health plans as follows: (a) 15.58% increase for Kaiser S1 Group #60 (Active Group); (b) 15% increase for the HSA-Qualified Deductible HMO Plan (Active Group) (c) 1.89% increase for Pre-Medicare Eligible Retirees (Retiree Group); and (d) -4.00% decrease for Post-65 Senior Advantage (Retiree Group)  
2. Approving rates for the Sutter Health Plus health plans as follows: (a) 1.87% increase for the Active HMO ML 26 group; and (b) 1.19% increase for the Pre-Medicare retiree group.  
The health plan premium rates will be effective for the period of January 1, 2021 through December 31, 2021.  
**Financial Implications:** See report.  
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
- 12. 2021 Fee Assessment – State of California Self-Insurance Fund (Workers’ Compensation Program)**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing payment to the State of California Department of Industrial Relations for Fiscal Year 2021 for administering the Workers’ Compensation Program, in an amount not to exceed \$235,979.91.  
**Financial Implications:** See report  
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
- 13. Memorandum of Understanding: Berkeley Fire Fighters Association/I.A.F.F. Local 1227 Berkeley Chief Fire Officers Association**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving a new one (1) year Memorandum of Understanding (hereafter referred to as “MOU”) with the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 Berkeley Chief Fire Officers Association (hereafter referred to as the “Association”) with a term of June 30, 2020 through June 30, 2021 and authorizing the City Manager to make non-substantive edits to the format and language of the Memorandum of Understanding in alignment with the tentative agreement, and conforming to legal requirements.  
**Financial Implications:** See report  
Contact: LaTanya Bellow, Human Resources, (510) 981-6800

## Consent Calendar

### 14. **Contract Amendments: Plan Check Services**

**From: City Manager**

**Recommendation:** Adopt two Resolutions authorizing the City Manager to execute contract amendments for an additional amount of \$500,000 each, to new total amounts not to exceed \$1,500,000 for each contract, and extending the terms of the contracts for a one-year period to June 30, 2022 with:

1. West Coast Code Consulting, Contract No. 119641-2
2. Telesis Engineers, Contract No. 119639-1

**Financial Implications:** See report

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

### 15. **Filling Vacancies Among the Elected Representatives of the Poor**

**From: Human Welfare and Community Action Commission**

**Recommendation:** Adopt a Resolution confirming the appointments of Ms. Denah Bookstein (District 1); and Mr. Carlos Hill (District 1) as elected representatives of the poor on the Human Welfare and Community Action Commission (HWCAC), having been voted onto the Commission at the HWCAC December 9, 2020 meeting, and that their terms expire December 9, 2022.

**Financial Implications:** None

Contact: Mary-Claire Katz, Commission Secretary, (510) 981-5400

### 16. **Amendments to the Berkeley Lobbyist Registration Act**

**From: Open Government Commission**

**Recommendation:** Adopt an ordinance amending the Berkeley Lobbyist Registration Act (BMC Chapter 2.09) to incorporate the recommendations of the Open Government Commission (OGC).

**Financial Implications:** None

Contact: Sam Harvey, Commission Secretary, (510) 981-6950

## Consent Calendar

### 17. Renaming of Four City Paths for Founders of the Berkeley Path Wanderers Association

#### From: Public Works Commission

**Recommendation:** Adopt a Resolution pursuant to Berkeley's Policy for Naming and Renaming Public Facilities, the Public Works Commission (PWC) recommends the naming and renaming of four Berkeley Paths, as identified on the map at Attachment 1 to the report, in honor of the four women founders of the Berkeley Path Wanderers:

1. Rename a path off of Keith Avenue near Shasta Road, currently named Eleanor Path, to "Eleanor Hall Gibson Path," after founder Eleanor Hall Gibson, who passed away in 2016;
2. Name the following paths, subject to a 2/3 vote of the City Council as provided at Section 2(B) of the Policy, as follows: - The extension connector of Walnut Street through the UC complex between Hearst and Berkeley Way to be named "Ruth Armstrong Path" in honor of Ruth Armstrong (Moskovitz); - The path parallel to the top of Solano Avenue running along Los Angeles Avenue up the tunnel slope towards the Marin Circle, to be named "Jacque Ensign Way" in honor of Jacque Ensign; and - Path 71 to be named "Patricia DeVito Path" in honor of Pat DeVito. In addition to the renaming of these four paths, the Public Works commission supports the inclusion of interpretive signage describing the contributions of each of the honored individuals.

**Financial Implications:** See report

Contact: Joe Enke, Commission Secretary, (510) 981-6300

## Council Consent Items

### 18. Revisions to Enabling Legislation for Reimagining Public Safety Task Force

#### From: Mayor Arreguin (Author)

**Recommendation:** Adopt a Resolution:

1. Rescinding Resolution No. 69,673-N.S.; and
2. Establishing a Reimagining Public Safety Task Force, comprised of: (a) one representative appointed by each member of the City Council and Mayor pursuant to the Fair Representation Ordinance, B.M.C. Sections 2.04.030-2.04.130, (b) one representative appointed by the Mental Health Commission, Youth Commission, and Police Review Commission (to be replaced by a representative of the Police Accountability Board once it is established), and (c) one representative appointed by the Associated Students of the University of California (ASUC) External Affairs Vice President, one representative appointed by the Berkeley Community Safety Coalition (BCSC) Steering Committee, and three additional members to be appointed "At-Large" by the Task Force, with appointments subject to confirmation by the City Council.

The Task Force will be facilitated by a professional consultant, the National Institute for Criminal Justice Reform (NICJR), with administrative support by the City Manager's office, and will serve as the hub of community engagement for the Reimagining Public Safety effort initiated and guided by the NICJR team. The Task Force will also include the participation of City Staff from the City Manager's Office,

## Council Consent Items

Human Resources, Health, Housing and Community Services, Berkeley Fire Department, Berkeley Police Department, and Public Works Department. For visual, see Attachment 3.

With the exception of “At-Large” appointments, appointments to the Task Force should be made by January 31, 2021, and reflect a diverse range of experiences, knowledge, expertise and representation. To maintain the Council’s July 14, 2020, commitment to centering the voices of those most impacted in our process of reimagining community safety appointments should be made with the goal of achieving a balance of the following criteria:

- a. Active Members of Berkeley Community (Required of All)\*
- b. Representation from Impacted Communities
  - Formerly incarcerated individuals
  - Victims/family members of violent crime
  - Immigrant community
  - Communities impacted by high crime, over-policing and police violence
  - Individuals experiencing homelessness
  - Historically marginalized populations
- c. Faith-Based Community Leaders
- d. Expertise/Leadership in Violence Prevention, Youth Services, Crisis Intervention, and Restorative or Transformative Justice
- e. Health/ Public Health Expertise
- f. City of Berkeley labor/union representation
- g. Law Enforcement Operation Knowledge
- h. City Budget Operations/Knowledge
- i. Committed to the Goals and Success of The Taskforce (Required of All)

As outlined in the July 14, 2020, City Council Omnibus Action, City Council provided direction for the development of a new paradigm of public safety that should include, but is not limited to:

- 1) Building on the work of the City Council, the City Manager, Berkeley Police Department (BPD), the Police Review Commission and other City commissions and other working groups addressing community health and safety.
- 2) Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.
- 3) Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of Reduce, Improve and Reinvest as proposed by the National Institute for Criminal Justice Reform considering, among other things:
  - A. The social determinants of health and changes required to deliver a holistic approach to community-centered safety.
  - B. The appropriate response to community calls for help including size, scope of operation and power and duties of a well-trained police force.
  - C. Limiting militarized weaponry and equipment.
  - D. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.

## Council Consent Items

E. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.

F. Reducing the Berkeley Police Department budget to reflect its revised mandates, with a goal of a 50% reduction, based on the results of requested analysis and achieved through programs such as the Specialized Care Unit.

Direct the City Manager to ensure that the working group of City Staff as outlined in the October 28th Off-Agenda Memo is coordinating with the Task Force.

The Task Force will provide input to and make recommendations to NICJR and City Staff on a set of recommended programs, structures and initiatives incorporated into a final report and implementation plan developed by NICJR to guide future decision making in upcoming budget processes for FY 2022-23 and, as a second phase produced, in the FY 2024-2025 budget processes.

**Financial Implications:** See report

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

- 19. Urging the National Parks Service to Establish a National Parks Unit in the San Francisco Bay Area to Honor the Black Panther Party for Self Defense**  
**From: Councilmember Taplin (Author), Councilmember Bartlett (Co-Sponsor), Mayor Arreguin (Co-Sponsor)**

**Recommendation:** Adopt a resolution calling on the National Parks Service to conduct a Reconnaissance Survey to assess the suitability of lands in the San Francisco Bay Area to honor the Black Panther Party in Berkeley, Oakland, Richmond, and the surrounding Bay Area; send letter to the National Parks Service, and President[-elect] Joseph R. Biden, Jr with resolution.

**Financial Implications:** None

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

- 20. Relief for Child Care Providers**  
**From: Councilmember Hahn (Author), Councilmember Harrison (Co-Sponsor), Councilmember Wengraf (Co-Sponsor), Mayor Arreguin (Co-Sponsor)**  
**Recommendation:** Adopt a resolution making child care providers, including all forms of early childhood education, eligible for grants and other assistance under the Berkeley Relief Fund.

**Financial Implications:** See report

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

- 21. Resolution Reaffirming the City of Berkeley's Commitment to Roe v. Wade**  
**From: Councilmember Wengraf (Author), Councilmember Droste (Co-Sponsor), Councilmember Hahn (Co-Sponsor), Councilmember Taplin (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution reaffirming the City of Berkeley's commitment to Roe v. Wade and honoring the 48th anniversary of its passage.  
**Financial Implications:** None  
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

## Council Consent Items

### 22. Support for AB 15 and AB16

**From: Councilmember Robinson (Author), Mayor Arreguin (Author), Councilmember Harrison (Co-Sponsor), Councilmember Taplin (Co-Sponsor)**

**Recommendation:** Send a letter of support for AB 15, the Tenant Stabilization Act of 2021, and AB 16, the Tenant, Small Landlord, and Affordable Housing Provider Stabilization Act of 2021, to Assemblymembers Buffy Wicks and David Chiu and Senator Nancy Skinner, and urge the legislature not to preempt cities like Berkeley from taking robust steps to protect tenants.

**Financial Implications:** See report

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

## Action Calendar

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

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

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

## Action Calendar

### 23. Introduce an Ordinance terminating the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2025 (Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)

**From: Councilmember Davila (Author)**

**Recommendation:** Adopt a resolution with the following actions:

1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles.
2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference

## Action Calendar

between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any “just transition” elements related to the above action, including the impact upon and opportunities for auto mechanics.

*(On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to send the item as amended by the committee with the following recommendation: Adopt a resolution with the following actions: 1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles. 2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any “just transition” elements related to the above action, including the impact upon and opportunities for auto mechanics.)*

**Financial Implications:** See report

Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

## Action Calendar

24. **Support calling upon food companies within Berkeley to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities** (*Continued from December 15, 2020. Item contains revised material.*)  
**From: Councilmember Davila (Author), Councilmember Harrison (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution calling upon supermarkets, restaurant companies, and other food corporations with locations in Berkeley, CA to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities.  
**Financial Implications:** See report  
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
25. **Declare Racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley** (*Reviewed by the Health, Life Enrichment, Equity and Community Committee*)  
**From: Councilmember Davila (Author), Councilmember Bartlett (Co-Sponsor)**  
**Recommendation:** Declare Racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley, and commit to eliminate all socioeconomic barriers to health equity. In addition:
1. Declare the resolution an emergency measure for the immediate preservation of public peace, property, health, or safety, especially during the COVID-19 pandemic and it shall take effect and be in force immediately upon its adoption.
  2. Budget Referral to convene a series of town hall sessions for all community members, City workers, and small business owners to discuss the concerns of people of color and marginalized community members, and develop strategies and programs (especially Mental Health Programs for the unhoused stay housed) for greater inclusivity, understanding, empathy, compassion, and unity. The purpose of these meetings should be to strengthen anti-racist capacity building and commitments within the city. This can be done by discussing the current quantitative and qualitative reality of racial justice and injustice, racism and non-racism in all areas of city life toward developing measures to ensure the achievement racial equity in Berkeley. These town halls, strategies and programs could include: the definition and lived experience of racism in systemic and institutional forms the effects and trauma caused by them, and provide resources to combat implicit bias on all levels. Community partners to consider to facilitate such workshops include Beyond Diversity: Courageous Conversations About Race and Showing Up for Racial Justice (SURJ).
  3. City Council will establish a working group to promote racial equity as well as the development of programs to address racial equity in this City.
  4. Direct the City Manager or his/her designee to record COVID-19 data by race/ethnicity and to explore greater health disparities that have emerged as a result of this crisis.
  5. Direct the City Manager or his/her designee to hold several fundraisers at town hall sessions for black-owned small businesses, research of state and federal RFPs for the purpose of grants acquisitions for program development in the City of Berkeley that have been affected by Covid-19 and/or recent protests.



## Action Calendar

6. Direct the City Manager or his/her designee to prepare a Health in All Policies Ordinance (see attached City of Richmond Ordinance) for Council review and adoption, critically evaluating the public health impact of all legislative and budgetary proposals, especially upon people of color and marginalized community members.
7. Direct the City Manager or his/her designee to adopt a mandatory requirement of 16 hours of ongoing annual online and in-person training on implicit bias, cultural sensitivity, and cultural humility for City Employees, commissioners, and community members; and
8. Direct the City Manager or his/her designee in partnership with the Berkeley Public Health Division and the Mental Health Division to develop a Strategic Plan for Health Equity, with the inclusion of a diverse group of staff with expertise in this subject matter and begin immediate implementation of recommendations.
9. Direct the City Manager or his/her designee to have an antiracism dashboard that delineates and tracks progress towards specific antiracist goals. This would involve:
  - 1) tracking and measuring specific data that shows the extent to which racism has become a public health crisis; which would in turn enable
  - 2) the City and the Community to dramatically reduce instances of racism, if not totally eliminate some of them; and
  - 3) demonstrate to constituents that the other recommendations have made, and must continue to make, a tangible difference. The dashboard shall include: analyzing hospital infant mortality by race; tracking food insecurity among Berkeley residents, and correlation to racial demographics; analyzing the effects of biological weathering and resultant mental health challenges on immune strength for black individuals, and studying mental health resource availability and outreach targeting at-risk black communities; analyzing the administration of medications and health therapies by race, in an attempt to understand Berkeley health providers position vis a vis the systemic under-prescription and under-treatment of Black patients pain; tracking violent incidents targeting queer Black residents, and studying the availability of mental health resources and culturally competent healthcare for queer Black patients; identifying the largest sources of corporate environmental or carcinogenic pollution in Berkeley, and the racial demographics of people with prolonged exposure to those regions (i.e. workers and residents within range of toxic substances); identifying the locations of city waste storage/processing and the racial demographics of those most closely exposed; examining property taxes by neighborhood, and correlation to school resources and student racial demographics; examining the availability of stable and affordable Internet access, as necessary for all possible student activities offered and required by Berkeley public schools;
10. Collaborate with the Berkeley Unified School District and the Vision 2020 to see how this is correlated to household racial demographics; analyzing students' realistic access to extracurricular activities such as arts and athletics; race-based differential access means that some students have less access to educational opportunities that help with physical and mental health; identifying the levels of lead and other toxins in public school buildings, and correlation to resource allocation and racial demographics among schools.
11. Submit copies of this resolution to State Assemblymember Buffy Wicks, State Senator Nancy Skinner, Congresswoman Barbara Lee, Alameda County Supervisor Keith Carson, as well as various organizations such as the Berkeley NAACP, the

## Action Calendar

African American Holistic Resource Center Steering Committee, and Healthy Black Families.

*(On November 23, 2020, the Health, Life Enrichment, Equity & Community Committee made a qualified positive recommendation for the City Council to take the following action:*

*1. Make the following statement:*

*Declare Racism as a public health crisis and a threat and safety issue for the City of Berkeley, and commit the City of Berkeley to eliminating all racial and socioeconomic barriers to health equity.*

*2. Recommend that City Councilmembers consider working together or independently to convene a public session or sessions in their districts on racism as a public health crisis and threat and safety issue, to further public knowledge and input on these important matters and help create a movement to address racial disparities in Berkeley.*

*3. Refer to the Mayor and City Manager to discuss how to incorporate programs and policies to address racial equity in the work of the City of Berkeley.*

*4. Refer to the City Manager and Office of Economic Development to consider how the City of Berkeley can support women and minority owned businesses through the COVID crisis and recovery period.*

*5. Refer to the City Manager to adapt the Richmond Health in All Policies Ordinance and return to Council a version for the City Council to consider adopting, or any other recommendation related to the proposed Ordinance.*

*6. Refer to the City Manager to consider requiring and providing antiracism, implicit bias, cultural sensitivity and cultural humility training for all City of Berkeley employees, and the City Council, and to consider ways to make such training accessible to the public via online or other training opportunities.*

*7. Refer to the City Manager to include an Anti-Racism dashboard on the City of Berkeley's new website, to consolidate information about racial disparities across all City of Berkeley services and initiatives.*

*8. Recommit to continuing the City of Berkeley's work with Berkeley Unified School District through the 2020 Vision process, and recommend adding a focus on extracurricular activities and access to enrichment and support outside of the classroom.)*

**Financial Implications:** \$50,000

Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

**26. Guaranteeing COVID-19 Hazard Pay for Grocery Store Workers  
From: Councilmember Taplin (Author), Councilmember Bartlett (Co-Sponsor),  
Mayor Arreguin (Co-Sponsor)**

**Recommendation:** Refer the City Manager and City Attorney to draft an emergency ordinance to guarantee hazard pay of an additional five dollars an hour for grocery store workers, effective upon adoption and until the City returns to the Yellow-Tier 4 rate of positivity for COVID-19.

**Financial Implications:** None

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

## Action Calendar

27. **Extending Time for Temporary Parklets and Sidewalk Seating Post-COVID-19**  
**From: Councilmember Hahn (Author), Councilmember Harrison (Co-Sponsor), Councilmember Bartlett (Co-Sponsor)**  
**Recommendation:** Adopt an ordinance revising BMC Chapter 16.18 Right-of-Way Encroachments and Encroachment Permits and BMC Section 14.48.150 Sidewalk Seating, Benches, and Planters to extend the period of time that Parklets and Sidewalk Seating established under the COVID-19 declared City emergency can remain in place to 365 days after the termination of the declared City emergency rather than the current 90 days.  
**Financial Implications:** See report  
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

## Information Reports

28. **Condominium Conversion Program – Annual Report**  
**From: City Manager**  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
29. **Referral Response: Housing and Homeless Uses for City-Owned, Former Redevelopment Agency Property at 1631 Fifth Street**  
**From: City Manager**  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

## Public Comment – Items Not Listed on the Agenda

## Adjournment

**NOTICE CONCERNING YOUR LEGAL RIGHTS:** *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply:*

1) *No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred.*

2) *In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

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

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*I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 7, 2021.*

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

Mark Numainville, City Clerk

## Communications

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

### **Item #18: Revisions to Enabling Legislation for Reimagining Public Safety Task Force**

1. Steve Martinot

#### **North Berkeley BART**

2. 69 form letters (I am a resident)
3. Andrea Altschuler
4. Mary Lai
5. Janice Schroeder
6. Patricia Maud Engel
7. Vicki Sommer
8. Joel Resnikoff
9. Toni Casal
10. Miranda Ewell
11. Jeannette MacMillan
12. Jodi Ravel
13. Kathleen Jo
14. Claudia Valas
15. Jack Kurzweil

16. Libby Lee-Egan
17. Eileen Hughes
18. Reynaldo Santa Cruz
19. Whitney Moss
20. Lee Bishop
21. Julieta Pisani McCarthy
22. Cece Littlepage (2)
23. Linda Gallaher-Brown
24. Caroline & Stephen Shiboski
25. Sheila Himmel
26. Alan Finkelstein
27. Peggy Scott
28. Meryl Siegal
29. Laura Garcia Moreno
30. Joel Resnikoff
31. Eleni Sotos
32. Marianne Schulman
33. Kenneth Gross
34. Andrea Altschuler
35. Becca Schonberg
36. Leslie Valas
37. Michael Katz
38. Jacqueline Wilson and Family
39. Aime Baldwin (2)
40. Barbara Fisher
41. Claudia Valas
42. Teresa Clarke
43. Sue Martin
44. Mary Behm-Steinberg
45. Mariko Nobori
46. Cathryn Hrudicka
47. Judy Peck
48. Irene Rice
49. Deborah Gouailhardou
50. Larry Orman
51. Leah Levy
52. Daniel Borgstrom
53. Danny and Adrienne Snyder
54. Rebecca Burke and Jay Koslofsky
55. Raymond Barglow
56. Eileen Hughes
57. Virginia Browning
58. Todd Jailer
59. Gary Dahl
60. David Brandon

**Pickleball**

- 61. Jeanne Schuman
- 62. Brian MacDougall
- 63. Laurie Mac Dougall
- 64. Susanne Mitchell

**African-American Holistic Resource Center**

- 65. Sivan Orr
- 66. Eric Friedman
- 67. Barbara Ann White

**Keep Playgrounds Open**

- 68. Tia Pelz
- 69. Pat Reilly
- 70. Megha Charalambides
- 71. Sarah Burt
- 72. Hillary Kilimnik
- 73. Katya Stoakes
- 74. Rainbow Rubin
- 75. Elif Lostuvali
- 76. Dan Bristol
- 77. Elena Montoya

**Vision 2025**

- 78. Nilang
- 79. Jill Eckart

**Covid-19 Related**

- 80. Jennifer Pearson
- 81. Nathan Francis
- 82. Tyler Walsh
- 83. Nova Blazej
- 84. Michai Freeman
- 85. Moni Law (2)
- 86. M. Mendonca
- 87. Elena Montoya
- 88. Clark Socie
- 89. Linda Cranmer
- 90. Vivian Warkentin
- 91. David Lerman (3)
- 92. Lisa Hernandez, City of Berkeley Health Officer

**5G & Wired**

- 93. Greg Jan
- 94. Lloyd Morgan
- 95. Protect Berkeley
- 96. Max Ventura

**Solar Speed Limit Sign**

- 97. Victoria Hritonenko
- 98. Maya Trilling
- 99. Joe Lurie
- 100. Bruce Perens
- 101. Donna Rosenthal
- 102. Fred Bamber
- 103. Lola Vollen

**Homelessness**

- 104. Russbumper (4)
- 105. Willow Katz
- 106. Teal Major

**Needle Disposal**

- 107. Zoe Keeler
- 108. Ziad Shafi

**Bayer Corporation**

- 109. Max Ventura
- 110. Councilmember Harrison

**Cannabis**

- 111. JJ
- 112. Getting It Right From the Start

**PG&E**

- 113. Michael Nystrom

**Golden Gate Field Horses**

- 114. Scott Chaney, on behalf of the California Horse Racing Board
- 115. Heather

**ADU's**

- 116. Gradiva Couzin, Chair, Disaster and Fire Safety Commission

**Ceremonial Matters – Cheryl Davila**

- 117. Andrea Mullarkey
- 118. Cheryl Davila
- 119. Elisa Mikiten

**Downtown Streets Team's Safety Protocol**

- 120. Carol Denney
- 121. Julia Lang

### **Environmental Concerns**

- 122. Russbumper
- 123. Vivian Warkentin
- 124. Thomas Lord
- 125. Meryl Siegal

### **Rent Control**

- 126. Krista Glickman

### **Posting Policy Commission Minutes**

- 127. Kelly Hammargren

### **Berkeley's City Budget**

- 128. David Lerman

### **Neighborhood Rat Infestation**

- 129. Sheila Goldmacher

### **Slavery**

- 130. Russbumper

### **Adeline Corridor**

- 131. Lynn Cooper

### **Residential Parking Permits**

- 132. Jeff Stein

### **Happy New Year and Thanks**

- 133. Bob Flasher

### **URL's Only**

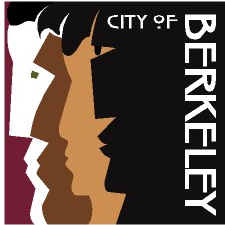
- 134. Barbara Gilbert
- 135. Russbumper (5)
- 136. Vivian Warkentin (11)

### **Supplemental Communications and Reports**

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

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





Office of the City Manager

## REVISED AGENDA MATERIAL

**Meeting Date:** January 19, 2021

**Item Description:** Amendment: FY 2021 Annual Appropriations Ordinance

**Submitted by:** Teresa Berkeley-Simmons, Budget Manager

On December 15, 2020, the Council adopted a first reading of an Ordinance amending FY 2021 Annual Appropriations Ordinance No. 7,724 - N.S. for fiscal year 2021. After the meeting, staff discovered a numerical error in the numbers that were read into the record and adopted by Council.

Staff is recommending a revised first reading of the recommendation as follows:

### RECOMMENDATION

Adopt first reading of an Ordinance amending the FY 2021 Annual Appropriations Ordinance No. 7,724–N.S. for fiscal year 2021 based upon recommended re-appropriation of committed FY 2020 funding and other adjustments authorized since July 1, 2020, in the amount of \$198,706,198 \$197,890,469 (gross) and \$194,286,864 \$193,471,132 (net).

A revised version of the Ordinance and Exhibit A are attached.

ORDINANCE NO. -N.S.

AMENDING THE ANNUAL APPROPRIATIONS ORDINANCE NO. 7,724–N.S. FOR FISCAL YEAR 2021

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

Section 1. That the Annual Appropriations Ordinance based on the budget for FY 2021 submitted by the City Manager and passed by the City Council be amended as follows and as summarized in Exhibit A:

|                                                |                    |
|------------------------------------------------|--------------------|
| A. General Fund (Funds 001-099)                | 240,570,403        |
| B. Special Funds ( Funds 100-199)              | 142,526,802        |
| C. Grant Funds (Funds 300-399)                 | 49,357,775         |
| D. Capital Projects Funds (Funds 500-550)      | 70,515,607         |
| E. Debt Service Fund (Funds 551-599)           | 9,777,705          |
| F. Enterprise Funds (Funds 600-669)            | 149,166,470        |
| G. Internal Service Funds (Funds 146, 670-699) | 54,657,166         |
| H. Successor Agency (Funds 760-769)            | 57,120             |
| I. Agency Funds (Funds 771-799)                | 8,357,381          |
| J. Other Funds (Funds 800-899)                 | 6,222,560          |
| <u>K. Total</u>                                |                    |
| Total General Fund                             | 240,570,403        |
| Add: Total Other Than General Fund             | 490,638,586        |
| <b>Gross Revenue Appropriated</b>              | <b>731,208,988</b> |
| Less: Dual Appropriations                      | -43,004,902        |
| Less: Revolving/Internal Service Funds         | -54,657,166        |
| <b>Net Revenue Appropriated</b>                | <b>633,546,920</b> |

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

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

- m. To the Equipment Maintenance Fund from General Fund; Health (General) Fund; Mental Health Services Act Fund; Health (Short/Doyle) Fund; Vector Control Fund; Paramedic Tax Fund; Library - Discretionary Fund; Playground Camp Fund; State Transportation Tax Fund; Rental Housing Safety Program Fund; Rent Stabilization Board Fund; Parks Tax Fund; Street Light Assessment District Fund; FEMA Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Off Street Parking Fund; Parking Meter Fund; Equipment Maintenance Fund; Building Maintenance Fund; and Central Services Fund.
- n. To the Building Maintenance Fund from the General Fund; Health (General) Fund; Health (Short/Doyle) Fund; Measure B Local Street & Road Fund; Parks Tax Fund; Street Light Assessment District Fund; Zero Waste Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Off Street Parking Fund; Parking Meter Fund; Equipment Maintenance Fund; Building Maintenance Fund; and Mental Health State Aid Realignment Fund.
- o. To the Central Services Fund from the General Fund; First Source Fund; Health (Short/Doyle) Fund; Library-Discretionary Fund; Playground Camp Fund; Rent Stabilization Board Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation; Building Purchases & Management Fund; Building Maintenance Fund; Central Services Fund; and Mental Health State Aid Realignment Fund.
- p. To Information Technology Cost Allocation Plan Fund from General Fund; Target Case Management/Linkages Fund; Health (Short/Doyle); Library Fund; Playground Camp Fund; State Transportation Tax Fund; CDBG Fund; Rental Housing Safety Program; Rent Stabilization Board Fund; Parks Tax Fund; Street Light Assessment District Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation; Clean Storm Water Fund; Permit Service Center Fund; Off Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Equipment Maintenance Fund; Building Maintenance Fund; Information Technology Cost Allocation Plan Fund; Health State Aid Realignment Trust Fund; and Mental Health State Aid Realignment Fund.
- q. To the Workers' Compensation Self-Insurance Fund from General Fund; Special Tax for Severely Disabled Measure E Fund; First Source Fund; HUD Fund; ESGP Fund; Health (General) Fund; Target Case Management/Linkages Fund; Mental Health Service Act Fund; Health (Short/Doyle) Fund; EPSDT Expansion Proposal Fund; Senior Nutrition (Title III) Fund; C.F.P. Title X Fund; Fund Raising Activities Fund; Berkeley Unified School District Grant; Vector Control Fund; Paramedic Tax Fund; Alameda County Grants Fund; Senior Supportive Social Services Fund; Family Care Support Program Fund; Domestic Violence Prevention – Vital Statistics Fund; Affordable Housing Mitigation; Inclusionary Housing Program; Library – Discretionary Fund; Playground Camp Fund; Community Action Program Fund; State Proposition 172 Public Safety Fund; State Transportation Tax Fund; CDBG Fund; Rental Housing Safety Program; Measure B Local State & Road

Fund; Measure B Bike & Pedestrian Fund; Measure B – Paratransit Fund; Measure F Alameda County Vehicle Registration Fee Streets & Roads Fund; Measure BB – Paratransit Fund; Fair Election Fund; Measure U1 Fund; One-Time Grant: No Cap Expense Fund; Rent Stabilization Board Fund; Parks Tax Fund; Measure GG – Fire Prep Tax Fund; Street Lighting Assessment District Fund; Employee Training Fund; Private Percent – Art Fund; Measure T1 – Infrastructure & Facilities Fund; FUND\$ Replacement Fund; Capital Improvement Fund; FEMA Fund; CFD #1 District Fire Protect Bond Fund; Special Tax Bonds CFD#1 ML-ROOS Fund; Shelter+Care HUD Fund; Shelter+Care County Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Private Sewer Lateral Fund; Permit Service Center Fund; Off-Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Building Purchases & Management Fund; Equipment Replacement Fund; Equipment Maintenance Fund; Building Maintenance Fund; Central Services Fund; Workers’ Compensation Fund; Public Liability Fund; Information Technology Cost Allocation Plan Fund; Health State Aid Realignment Trust Fund; Tobacco Control Trust Fund; Mental Health State Aid Realignment Fund; Alameda Abandoned Vehicle Abatement Authority; and Bio-Terrorism Grant Fund.

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

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

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

**Attachment for Annual Appropriations Ordinance - Fiscal Year 2020****REVOLVING FUNDS/INTERNAL SERVICE FUNDS**

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

**Revolving/Internal Service Funds**

|                                           |               |
|-------------------------------------------|---------------|
| Employee Training Fund                    | 1,368,416     |
| Equipment Replacement Fund                | 12,174,125    |
| Equipment Maintenance Fund                | 8,657,942     |
| Building Maintenance Fund                 | 4,438,018     |
| Central Services Fund                     | 388,490       |
| Workers' Compensation Fund                | 6,586,355     |
| Public Liability Fund                     | 3,476,706     |
| Information Technology Fund               | 17,567,113    |
| Subtotal Revolving/Internal Service Funds | \$ 54,657,166 |

**DUAL APPROPRIATIONS - WORKING BUDGET**

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

## Transfers to the General Fund

|                                       |              |
|---------------------------------------|--------------|
| <u>Indirect Cost Reimbursement</u>    |              |
| CDBG Fund                             | 143,373      |
| Street Light Assessment District Fund | 115,865      |
| Zero Waste Fund                       | 2,326,015    |
| Marina Enterprise Fund                | 415,427      |
| Sanitary Sewer Fund                   | 1,071,882    |
| Clean Storm Water Fund                | 252,015      |
| Permit Service Center Fund            | 1,874,805    |
| Unified Program (CUPA) Fund           | 87,242       |
| Subtotal Transfers to General Fund:   | \$ 6,286,624 |

|                                                                                                  |                      |
|--------------------------------------------------------------------------------------------------|----------------------|
| Transfer to Safety Members Pension Fund from General Fund                                        | 551,804              |
| Transfer to Measure U1 Fund from General Fund                                                    | 3,575,390            |
| Transfer to Paramedic Tax Fund from General Fund                                                 | 703,103              |
| Transfer to Health State Aid Realignment from General Fund                                       | 1,953,018            |
| Transfer to Fair Election Fund from General Fund                                                 | 501,833              |
| Transfer to Capital Improvement Fund (CIP) from General Fund                                     | 3,255,167            |
| Transfer to Phone System Replacement - VOIP from General Fund                                    | 160,000              |
| Transfer to Equipment Replacement Fund from General Fund                                         |                      |
| Transfer to Public Liability Fund from General Fund                                              | 1,695,888            |
| Transfer to Catastrophic Loss Fund from General Fund                                             | 2,295,334            |
| Transfer to IT Cost Allocation Fund from General Fund                                            | 431,802              |
| Transfer to Police Employee Retiree Health Assistance Plan from General Fund                     | 400,136              |
| Transfer to Sick Leave Entitlement Fund from General Fund                                        | 201,501              |
| Transfer to General Fund from General Fund Stabilization Reserves Fund                           | 6,900,000            |
| Transfer to General Fund from General Fund Catastrophic Reserves Fund                            | 4,500,000            |
| Transfer to Measure T1 Fund from Measure BB - Local Streets & Roads Fund                         | 600,000              |
| Transfer to Measure T1 Fund from Parks Tax Fund                                                  | 600,000              |
| Transfer to General Fund from UC Settlement Fund                                                 | 907,554              |
| Transfer to Clean Storm Water Fund from UC Settlement Fund                                       | 302,519              |
| Transfer to General Fund from Health State Aid Realignment Fund                                  | 2,643,280            |
| Transfer from CIP Fund to PERS Savings Fund                                                      | 151,632              |
| Transfer to Berkeley Repertory Theater Debt Service Fund from CIP Fund                           | 499,802              |
| Transfer from CIP Fund to 2010 COP (Animal Shelter) Fund                                         | 402,613              |
| Transfer to Private Sewer Lateral Fund from Sewer Fund                                           | 90,501               |
| Transfer to Catastrophic Loss Fund from Permit Service Center Fund                               | 50,555               |
| Transfer to Catastrophic Loss Fund from Unified Program (CUPA) Fund                              | 5,082                |
| Transfer to General Fund from Parking Meter Fund                                                 | 1,742,288            |
| Transfer to General Fund from IT Cost Allocation Fund                                            | 1,037,439            |
| Transfer from Special Tax Bonds CFD#1 ML-ROOS to CFD#1 District Fire Protect Bond<br>(Measure Q) | 452,759              |
| Transfer to First Source Fund from Parks Tax Fund                                                | 14,093               |
| Transfer to First Source Fund from Capital Improvement Fund                                      | 26,943               |
| Transfer to First Source Fund from Marina Fund                                                   | 1,875                |
| Transfer to Public Art Fund from Parks Tax Fund                                                  | 21,140               |
| Transfer to Public Art Fund from Capital Improvement Fund                                        | 40,414               |
| Transfer to Public Art Fund from Marina Fund                                                     | 2,813                |
| Subtotal Transfers to Other Funds:                                                               | <u>36,718,278</u>    |
| Sub-Total Dual Appropriations                                                                    | <u>\$ 43,004,902</u> |
| <b>Grand Total Dual Appropriations</b>                                                           | <b>\$ 97,662,068</b> |



## SUMMARY OF APPROPRIATIONS BY FUND

| ERMA<br>Fund # Fund                         | FY 2021<br>Adopted | 1st AAO                 |                        |                      |                 | FY 2021<br>Revised #1 |
|---------------------------------------------|--------------------|-------------------------|------------------------|----------------------|-----------------|-----------------------|
|                                             |                    | Encumbered<br>Rollovers | Unencum.<br>Carryovers | Other<br>Adjustments | Total<br>Amend. |                       |
| 11 General Fund Discretionary               | 194,718,710        | 7,191,365               | 4,702,740              | 17,489,694           | 29,383,799      | 224,102,509           |
| 16 Measure U1 - Housing                     | 5,067,894          |                         |                        |                      | -               | 5,067,894             |
| 98 General Fund - Stabilization Reserves    | 6,900,000          |                         |                        |                      | -               | 6,900,000             |
| 99 General Fund - Catastrophic Reserves     | 4,500,000          |                         |                        |                      | -               | 4,500,000             |
| 101 Library - Tax                           | 21,567,259         | 2,643,014               |                        |                      | 2,643,014       | 24,210,273            |
| 103 Library - Grants                        | 64,089             |                         |                        |                      | -               | 64,089                |
| 104 Library - Friends & Gift                | 150,000            | 1,926                   |                        |                      | 1,926           | 151,926               |
| 105 Library - Foundation                    | 100,000            | 46                      |                        | 500,000              | 500,046         | 600,046               |
| 106 Asset Forfeiture                        | 201,000            |                         |                        |                      | -               | 201,000               |
| 107 Special Tax Measure E                   | 1,361,402          |                         |                        |                      | -               | 1,361,402             |
| 108 First Source Fund                       | 48,083             |                         |                        |                      | -               | 48,083                |
| 110 Sec 108 Loan Gty Asst.                  | 553,408            |                         |                        |                      | -               | 553,408               |
| 111 Fund Raising Activities                 | 53,557             |                         |                        | 28,000               | 28,000          | 81,557                |
| 113 Sports Field (Vendor Oper)              | 189,807            | 30,813                  |                        |                      | 30,813          | 220,620               |
| 114 Gilman Fields Reserve                   | -                  | 2,694                   | 56,506                 |                      | 59,200          | 59,200                |
| 115 Animal Shelter                          | 52,480             | 5,192                   |                        |                      | 5,192           | 57,672                |
| 116 Paramedic Tax                           | 4,223,699          |                         |                        |                      | -               | 4,223,699             |
| 117 CA Energy Commission                    | -                  | 44,249                  |                        |                      | 44,249          | 44,249                |
| 119 Domestic Violence Prev - Vit Stat       | 26,462             |                         |                        |                      | -               | 26,462                |
| 120 Affordable Housing Mitigation           | 49,690             | 2,657,746               |                        | 100,166              | 2,757,912       | 2,807,602             |
| 121 Affordable Child Care                   | 13,275             |                         |                        |                      | -               | 13,275                |
| 122 Inclusionary Housing Program            | 148,044            |                         |                        | 21,119               | 21,119          | 169,163               |
| 123 Condo Conversion                        | 37,520             | 997,980                 |                        |                      | 997,980         | 1,035,500             |
| 124 Parking In Lieu Fee                     | -                  | 82,010                  |                        |                      | 82,010          | 82,010                |
| 125 Playground Camp                         | 1,982,688          | 11,673,845              | 775,208                | 18,373,385           | 30,822,438      | 32,805,126            |
| 126 State-Prop 172 Pub.Safety               | 929,177            | 781                     |                        |                      | 781             | 929,958               |
| 127 State Transportation Tax                | 6,041,284          | 1,758,208               | 2,253,660              |                      | 4,011,868       | 10,053,152            |
| 128 CDBG                                    | 2,580,144          | 21,781                  |                        | 1,610,805            | 1,632,586       | 4,212,730             |
| 129 Rental Housing Safety Program           | 1,893,929          | 11,582                  |                        |                      | 11,582          | 1,905,511             |
| 130 Measure B - Local St & Road             | 4,112,067          | 631,683                 | 279,790                | 45,000               | 956,473         | 5,068,540             |
| 131 Measure B - Bike and Pedestrian         | 578,279            | 115,378                 |                        |                      | 115,378         | 693,657               |
| 132 Measure B - Paratransit                 | 490,125            | 21,927                  |                        |                      | 21,927          | 512,052               |
| 133 Measure F Alameda County VRF St & Rd    | 799,084            | 17,281                  | 79,800                 | 14,018               | 111,099         | 910,183               |
| 134 Measure BB - Local St & Road            | 4,651,014          | 1,041,539               | 2,077,622              | 670,415              | 3,789,576       | 8,440,590             |
| 135 Measure BB - Bike & Pedestrian          | 493,297            | 213,986                 | 395,139                | 177,475              | 786,600         | 1,279,897             |
| 136 Measure BB - Paratransit                | 387,847            | 40,864                  |                        | 29,500               | 70,364          | 458,211               |
| 137 One Time Funding                        | -                  | 19,080                  |                        |                      | 19,080          | 19,080                |
| 138 Parks Tax                               | 14,311,368         | 2,019,588               | 1,604,463              | 1,142,456            | 4,766,507       | 19,077,875            |
| 139 Streets & Open Space IMPR               | -                  | 656,301                 |                        |                      | 656,301         | 656,301               |
| 140 Measure GG - Fire Prep Tax              | 4,828,024          | 85,635                  |                        | 90,500               | 176,135         | 5,004,159             |
| 141 1st Response Advanced Life Support      | -                  | 2,000                   |                        |                      | 2,000           | 2,000                 |
| 142 Streetlight Assesment District          | 2,684,633          | 298,342                 |                        |                      | 298,342         | 2,982,975             |
| 143 Berkeley Bus Ec Dev                     | 156,387            | 11,550                  |                        |                      | 11,550          | 167,937               |
| 145 Bayer (Miles Lab)                       | 8,500              | 20,000                  | 138,014                |                      | 158,014         | 166,514               |
| 146 Employee Training                       | 774,643            | 127,554                 |                        |                      | 127,554         | 902,197               |
| 147 UC Settlement                           | 1,231,292          | 10,532                  |                        | 126,592              | 137,124         | 1,368,416             |
| 148 Private Percent - Art Fund              | 22,380             |                         | 744,823                | 123,274              | 868,097         | 890,477               |
| 149 Private Party Sidewalks                 | 100,000            |                         | 50,000                 |                      | 50,000          | 150,000               |
| 150 Public Art Fund                         | 64,367             | 26,464                  | 70,709                 |                      | 97,173          | 161,540               |
| 152 Vital & Health Statistics Trust Fund    | 29,893             | 560                     |                        | 45,000               | 45,560          | 75,453                |
| 156 Hlth State Aid Realign Trust            | 4,010,244          |                         |                        |                      | -               | 4,010,244             |
| 157 Tobacco Cont.Trust                      | 334,284            | 15,476                  | 62,400                 |                      | 77,876          | 412,160               |
| 158 Mental Health State Aid Realign         | 2,921,175          | 502,597                 |                        | 198,400              | 700,997         | 3,622,172             |
| 159 Citizens Option Public Safety Trust     | 258,921            | 83,040                  |                        |                      | 83,040          | 341,961               |
| 161 Alameda Cty Abandoned Vehicle Abatement | 99,852             | 1,229                   |                        |                      | 1,229           | 101,081               |
| 165 Fair Elections                          | 501,833            |                         |                        |                      | -               | 501,833               |
| 305 Capital Grants - Federal                | -                  |                         |                        | 976,925              | 976,925         | 976,925               |
| 306 Capital Grants - State                  | -                  | 122,997                 | 60,000                 | 3,486,846            | 3,669,843       | 3,669,843             |
| 307 Shelter Plus Care                       | -                  | 650,830                 |                        |                      | 650,830         | 650,830               |
| 309 OTS DUI Enforcement Education Prg.      | 129,500            |                         |                        |                      | -               | 129,500               |
| 310 HUD/Home                                | 651,399            | 14,057                  |                        | 1,800,972            | 1,815,029       | 2,466,428             |
| 311 ESGP                                    | 568,086            |                         |                        | 808,117              | 808,117         | 1,376,203             |
| 312 Health (General)                        | 2,257,061          | 6,090                   |                        | 10,151               | 16,241          | 2,273,302             |
| 313 Target Case Management Linkages         | 869,706            | 69,621                  |                        | 13,232               | 82,853          | 952,559               |
| 314 Alameda County Tay Tip                  | 35,812             | 8                       |                        |                      | 8               | 35,820                |
| 315 Mental Health Service Act               | 9,018,458          | 970,782                 |                        | 3,289,763            | 4,260,545       | 13,279,003            |
| 316 Health (Short/Doyle)                    | 3,823,059          | 281,959                 |                        |                      | 281,959         | 4,105,018             |
| 317 EPSDT Expansion Proposal                | 386,235            |                         |                        |                      | -               | 386,235               |
| 318 Alcoholic Bev Ctr OTS/UC                | 52,804             |                         |                        |                      | -               | 52,804                |
| 319 Youth Lunch                             | 101,900            | 192,574                 | 90,522                 |                      | 283,096         | 384,996               |
| 320 Sr. Nutrition Title III                 | 104,516            |                         |                        |                      | -               | 104,516               |
| 321 CFP Title X                             | 142,813            | 196                     |                        | 128,187              | 128,383         | 271,196               |
| 324 BUSD Grant                              | 310,992            |                         |                        |                      | -               | 310,992               |
| 325 Vector Control                          | 328,281            | 10,074                  |                        |                      | 10,074          | 338,355               |
| 326 Alameda County Grants                   | 650,225            |                         |                        | 3,354                | 3,354           | 653,579               |
| 327 Senior Supportive Social Services       | 55,720             |                         |                        |                      | -               | 55,720                |

## SUMMARY OF APPROPRIATIONS BY FUND

| ERMA<br>Fund # Fund                           | FY 2021<br>Adopted | 1st AAO                 |                        |                      | Total<br>Amend. | FY 2021<br>Revised #1 |
|-----------------------------------------------|--------------------|-------------------------|------------------------|----------------------|-----------------|-----------------------|
|                                               |                    | Encumbered<br>Rollovers | Unencum.<br>Carryovers | Other<br>Adjustments |                 |                       |
| 328 Family Care Support Program               | 68,254             |                         |                        |                      | -               | 68,254                |
| 329 CA Integrated Waste Management            | 5,244              | 2,760                   |                        | 45,000               | 47,760          | 53,004                |
| 333 CALHOME                                   | 363,100            |                         |                        |                      | -               | 363,100               |
| 334 Community Action                          | 295,338            | 25,890                  | 737,100                | 616,908              | 1,379,898       | 1,675,236             |
| 336 One-Time Grant: No Cap Exp                | 1,554,161          | 575,971                 |                        |                      | 575,971         | 2,130,132             |
| 338 Bay Area Air Quality Management           | 60,000             |                         |                        |                      | -               | 60,000                |
| 339 MTC                                       | 125,000            | 1,106,408               | 34,609                 |                      | 1,141,017       | 1,266,017             |
| 340 FEMA                                      | 1,238,435          | 127,238                 |                        | 557,350              | 684,588         | 1,923,023             |
| 341 Alameda Cty Waste Mgt.                    | 285,000            |                         |                        |                      | -               | 285,000               |
| 343 State Dept Conserv/Recylg                 | 28,000             |                         |                        |                      | -               | 28,000                |
| 344 CALTRANS Grant                            | -                  | 249,729                 | 1,248,678              | 98,617               | 1,597,024       | 1,597,024             |
| 345 Measure WW - Park Bnd Grant               | -                  | 521,414                 | 31,404                 |                      | 552,818         | 552,818               |
| 346 CALTRANS Safe Routes 2 Schools            | -                  | 9,757                   |                        |                      | 9,757           | 9,757                 |
| 347 Shelter+Care HUD                          | 5,478,439          | 5,320                   |                        |                      | 5,320           | 5,483,759             |
| 348 Shelter+Care County                       | 568,219            |                         |                        |                      | -               | 568,219               |
| 349 JAG Grant                                 | 52,500             |                         |                        |                      | -               | 52,500                |
| 350 Bioterrorism Grant                        | 364,386            | 3,201                   |                        | 400,523              | 403,724         | 768,110               |
| 501 Capital Improvement Fund                  | 8,214,694          | 5,728,736               | 3,416,094              | 707,950              | 9,852,780       | 18,067,474            |
| 502 Phone System Replacement                  | 160,000            | 3,508                   |                        |                      | 3,508           | 163,508               |
| 503 FUND\$ Replacement                        | 6,481,658          | 1,677,524               |                        | 50,000               | 1,727,524       | 8,209,182             |
| 504 PEG-Public, Education & Government        | 100,000            |                         |                        |                      | -               | 100,000               |
| 506 Measure M Streets & Watershed IMP         | -                  | 49,247                  | 405,097                | 302,627              | 756,971         | 756,971               |
| 511 Measure T1 - Infra & Facil.               | 2,265,231          | 14,221,513              | 6,820,356              | 1,638,511            | 22,680,380      | 24,945,611            |
| 512 Measure O - Housing                       | -                  | 13,820,423              |                        | 4,452,438            | 18,272,861      | 18,272,861            |
| 552 09 Measure FF Debt Service                | 1,621,745          |                         |                        |                      | -               | 1,621,745             |
| 553 2015 GORBS                                | 2,604,905          |                         |                        |                      | -               | 2,604,905             |
| 554 2012 Lease Revenue Bonds BJPFA            | 502,298            |                         |                        |                      | -               | 502,298               |
| 555 2015 GORBS - 2002 G.O. Refunding Bonds    | 481,211            |                         |                        |                      | -               | 481,211               |
| 556 2015 GORBS (2007, Series A)               | 181,150            |                         |                        |                      | -               | 181,150               |
| 557 2015 GORBS (2008 Measure I)               | 610,791            |                         |                        |                      | -               | 610,791               |
| 558 2010 COP (Animal Shelter)                 | 403,685            |                         |                        |                      | -               | 403,685               |
| 559 Measure M GO Street & Water Imps          | 1,641,863          |                         |                        |                      | -               | 1,641,863             |
| 560 Infrastructure & Facilities Measure T1    | 1,730,057          |                         |                        |                      | -               | 1,730,057             |
| 601 Zero Waste                                | 50,012,836         | 3,604,293               | 48,600                 | 632,223              | 4,285,116       | 54,297,952            |
| 606 Marina - Coastal Conservancy              | -                  | 27,992                  | 16,356                 |                      | 44,348          | 44,348                |
| 607 Marina - Dept. of Boating & Waterways     | -                  | 29,600                  | 32,980                 |                      | 62,580          | 62,580                |
| 608 Marina Operation                          | 6,988,739          | 307,786                 | 38,352                 | 190,464              | 536,602         | 7,525,341             |
| 611 Sewer                                     | 23,850,686         | 11,595,615              | 1,704,389              | 90,000               | 13,390,004      | 37,240,690            |
| 612 Private Sewer Lateral FD                  | 200,568            |                         |                        |                      | -               | 200,568               |
| 616 Clean Storm Water                         | 5,290,391          | 775,459                 |                        |                      | 775,459         | 6,065,850             |
| 621 Permit Service Center                     | 20,855,324         | 1,428,222               |                        |                      | 1,428,222       | 22,283,546            |
| 622 Unified Program (CUPA)                    | 896,131            | 5,504                   |                        |                      | 5,504           | 901,635               |
| 627 Off Street Parking                        | 6,484,575          | 486,732                 |                        |                      | 486,732         | 6,971,307             |
| 631 Parking Meter                             | 9,640,151          | 406,135                 | 162,683                | 117,717              | 686,535         | 10,326,686            |
| 636 Building Purchases and Management         | 3,210,140          | 35,829                  |                        |                      | 35,829          | 3,245,969             |
| 671 Equipment Replacement                     | 5,415,733          | 4,262,506               |                        | 2,495,886            | 6,758,392       | 12,174,125            |
| 672 Equipment Maintenance                     | 7,926,789          | 456,707                 | 90,004                 | 184,442              | 731,153         | 8,657,942             |
| 673 Building Maintenance Fund                 | 4,304,795          | 133,223                 |                        |                      | 133,223         | 4,438,018             |
| 674 Central Services                          | 384,569            | 3,921                   |                        |                      | 3,921           | 388,490               |
| 676 Workers Compensation                      | 6,422,651          | 163,704                 |                        |                      | 163,704         | 6,586,355             |
| 678 Public Liability                          | 1,922,551          | 365,991                 | 469,147                | 719,017              | 1,554,155       | 3,476,706             |
| 680 Information Technology                    | 14,357,042         | 831,634                 | 2,378,437              |                      | 3,210,071       | 17,567,113            |
| 762 Successor Agency - Savo DSF               | 57,120             |                         |                        |                      | -               | 57,120                |
| 774 Sustainable Energy Fin District           | 28,719             |                         |                        |                      | -               | 28,719                |
| 776 Thousand Oaks Underground                 | 98,177             |                         |                        |                      | -               | 98,177                |
| 777 Measure H - School Tax                    | 500,000            | 2                       |                        |                      | 2               | 500,002               |
| 778 Measure Q - CFD#1 Dis. Fire Protect Bond  | 452,792            | 152,124                 |                        | 1,425,000            | 1,577,124       | 2,029,916             |
| 779 Spl Tax Bds. CFD#1 ML-ROOS                | 1,226,320          |                         |                        | 1,425,000            | 1,425,000       | 2,651,320             |
| 781 Berkeley Tourism BID                      | 422,500            |                         |                        | 85,825               | 85,825          | 508,325               |
| 782 Elmwood Business Improvement District     | 30,000             | 1                       |                        | 37,537               | 37,538          | 67,538                |
| 783 Solano Ave BID                            | 25,000             |                         |                        | 9,881                | 9,881           | 34,881                |
| 784 Telegraph Avenue Bus. Imp. District       | 515,637            |                         |                        | 239,714              | 239,714         | 755,351               |
| 785 North Shattuck BID                        | 182,647            |                         |                        | 2,468                | 2,468           | 185,115               |
| 786 Downtown Berkeley Prop & Improv. District | 1,244,686          |                         |                        | 253,352              | 253,352         | 1,498,038             |
| 801 Rent Board                                | 6,096,209          | 126,351                 |                        |                      | 126,351         | 6,222,560             |
| GROSS EXPENDITURE:                            | 533,318,519        | 98,732,991              | 31,075,682             | 68,081,796           | 197,890,469     | 731,208,988           |
| Dual Appropriations                           | (43,650,640)       | -                       | -                      | 645,738              | 645,738         | (43,004,902)          |
| Revolving & Internal Service Funds            | (41,965,422)       | (6,228,219)             | (2,937,588)            | (3,525,937)          | (5,065,075)     | (54,657,166)          |
| NET EXPENDITURE:                              | 447,702,457        | 92,504,772              | 28,138,094             | 65,201,597           | 193,471,132     | 633,546,920           |

ORDINANCE NO. 7,748-N.S.

AMENDING THE ANNUAL APPROPRIATIONS ORDINANCE NO. 7,724-N.S. FOR FISCAL YEAR 2021

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

Section 1. That the Annual Appropriations Ordinance based on the budget for FY 2021 submitted by the City Manager and passed by the City Council be amended as follows and as summarized in Exhibit A:

- A. General Fund (Funds 001-099) 227,336,186
- B. Special Funds ( Funds 100-199) 142,328,402
- C. Grant Funds (Funds 300-399) 49,357,775
- D. Capital Projects Funds (Funds 500-550) 70,515,607
- E. Debt Service Fund (Funds 551-599) 9,777,705
- F. Enterprise Funds (Funds 600-669) 148,976,006
- G. Internal Service Funds (Funds 146, 670-699) 54,657,166
- H. Successor Agency (Funds 760-769) 57,120
- I. Agency Funds (Funds 771-799) 8,357,381
- J. Other Funds (Funds 800-899) 6,222,560

K. Total

- Total General Fund 227,336,186
- Add: Total Other Than General Fund 490,249,722
- Gross Revenue Appropriated 717,585,907
- Less: Dual Appropriations -43,004,902
- Less: Revolving/Internal Service Funds -54,657,166
- Net Revenue Appropriated 619,923,839

- A. General Fund (Funds 001-099) 227,336,186
- B. Special Funds ( Funds 100-199) 142,328,402
- C. Grant Funds (Funds 300-399) 49,357,775

|                                                |             |
|------------------------------------------------|-------------|
| D. Capital Projects Funds (Funds 500-550)      | 70,515,607  |
| E. Debt Service Fund (Funds 551-599)           | 9,777,705   |
| F. Enterprise Funds (Funds 600-669)            | 148,976,006 |
| G. Internal Service Funds (Funds 146, 670-699) | 54,657,166  |
| H. Successor Agency (Funds 760-769)            | 57,120      |
| I. Agency Funds (Funds 771-799)                | 8,357,381   |
| J. Other Funds (Funds 800-899)                 | 6,222,560   |
| K. Total                                       |             |
| Total General Fund                             | 227,336,186 |
| Add: Total Other Than General Fund             | 490,249,722 |
| Gross Revenue Appropriated                     | 717,585,907 |
| Less: Dual Appropriations                      | -43,004,902 |
| Less: Revolving/Internal Service Funds         | -54,657,166 |
| Net Revenue Appropriated                       | 619,923,839 |

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

- a. From the General Fund to the General Fund - Stability Reserve Fund; Catastrophic Reserve Fund; Paramedic Tax Fund; Health State Aid Realignment; Fair Election Fund; Capital Improvement Fund; Phone System Replacement; Equipment Replacement Fund; Public Liability Fund; Catastrophic Loss Fund; Police Employee Retiree Health Assistance Plan; Safety Members Pension Fund; and Sick Leave Entitlement Fund.
- b. To the General Fund from the General Fund - Stability Reserves Fund; Catastrophic Reserves Fund; Community Development Block Grant Fund; Street Lighting Assessment District Fund; Zero Waste Fund; Marina Operations and Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Parking Meter Fund; Unified Program (CUPA); IT Cost Allocation Fund; and Health State Aid Realignment Fund.
- c. To the First Source Fund from the Parks Tax Fund; Capital Improvement Fund; and the Marina Fund.
- d. From UC Settlement Fund to General Fund and Clean Storm Water Fund.
- e. From Capital Improvement Fund to PERS Savings Fund; Berkeley Repertory Theater Fund; and 2010 COP (Animal Shelter) Fund.

- f. To the Public Art Fund from the Parks Tax Fund; Capital Improvement Fund; and the Marina Fund.
- g. To CFD#1 District Fire Protection Bond (Measure Q) from Special Tax Bonds CFD#1 ML-ROOS.
- h. To Private Sewer Lateral Fund from Sanitary Sewer Operation Fund.
- i. To Catastrophic Loss Fund from Permit Service Center Fund.
- j. To Catastrophic Loss Fund from Unified Program (CUPA) Fund.
- k. To the Building Purchases and Management Fund from General Fund; Health (General) Fund; Rental Housing Safety Program Fund; Measure B Local Streets & Road Fund; Employee Training Fund; Zero Waste Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Off Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Building Purchases & Management Fund; Building Maintenance Fund; Central Services Fund; and Health State Aide Realignment Trust Fund.
- l. To Equipment Replacement Fund from General Fund; Mental Health Services Act Fund; Health (Short/Doyle) Fund; Vector Control Fund; Paramedic Tax Fund; Playground Camp Fund; State Transportation Tax Fund; Rental Housing Safety Program Fund; Parks Tax Fund; Street Light Assessment District Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Parking Meter Fund; Equipment Maintenance Fund; Building Maintenance Fund; and Central Services Fund.
- m. To the Equipment Maintenance Fund from General Fund; Health (General) Fund; Mental Health Services Act Fund; Health (Short/Doyle) Fund; Vector Control Fund; Paramedic Tax Fund; Library - Discretionary Fund; Playground Camp Fund; State Transportation Tax Fund; Rental Housing Safety Program Fund; Rent Stabilization Board Fund; Parks Tax Fund; Street Light Assessment District Fund; FEMA Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Off Street Parking Fund; Parking Meter Fund; Equipment Maintenance Fund; Building Maintenance Fund; and Central Services Fund.
- n. To the Building Maintenance Fund from the General Fund; Health (General) Fund; Health (Short/Doyle) Fund; Measure B Local Street & Road Fund; Parks Tax Fund; Street Light Assessment District Fund; Zero Waste Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Off Street Parking Fund; Parking Meter Fund; Equipment Maintenance Fund; Building Maintenance Fund; and Mental Health State Aid Realignment Fund.

o. To the Central Services Fund from the General Fund; First Source Fund; Health (Short/Doyle) Fund; Library-Discretionary Fund; Playground Camp Fund; Rent Stabilization Board Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation; Building Purchases & Management Fund; Building Maintenance Fund; Central Services Fund; and Mental Health State Aid Realignment Fund.

p. To Information Technology Cost Allocation Plan Fund from General Fund; Target Case Management/Linkages Fund; Health (Short/Doyle); Library Fund; Playground Camp Fund; State Transportation Tax Fund; CDBG Fund; Rental Housing Safety Program; Rent Stabilization Board Fund; Parks Tax Fund; Street Light Assessment District Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation; Clean Storm Water Fund; Permit Service Center Fund; Off Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Equipment Maintenance Fund; Building Maintenance Fund; Information Technology Cost Allocation Plan Fund; Health State Aid Realignment Trust Fund; and Mental Health State Aid Realignment Fund.

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

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

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

Measure T1 - Infrastructure & Facilities Fund; FUND\$ Replacement Fund; Capital Improvement Fund; FEMA Fund; CFD #1 District Fire Protect Bond Fund; Special Tax Bonds CFD#1 ML-ROOS Fund; Shelter+Care HUD Fund; Shelter+Care County Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Private Sewer Lateral Fund; Permit Service Center Fund; Off-Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Building Purchases & Management Fund; Equipment Replacement Fund; Equipment Maintenance Fund; Building Maintenance Fund; Central Services Fund; Workers' Compensation Fund; Public Liability Fund; Information Technology Cost Allocation Plan Fund; Health State Aid Realignment Trust Fund; Tobacco Control Trust Fund; Mental Health State Aid Realignment Fund; Alameda Abandoned Vehicle Abatement Authority; and Bio-Terrorism Grant Fund.

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



At a regular meeting of the Council of the City of Berkeley held on December 15, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.

**Attachment for Annual Appropriations Ordinance - Fiscal Year 2020****REVOLVING FUNDS/INTERNAL SERVICE FUNDS**

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

**Revolving/Internal Service Funds**

|                                           |               |
|-------------------------------------------|---------------|
| Employee Training Fund                    | 1,368,416     |
| Equipment Replacement Fund                | 12,174,125    |
| Equipment Maintenance Fund                | 8,657,942     |
| Building Maintenance Fund                 | 4,438,018     |
| Central Services Fund                     | 388,490       |
| Workers' Compensation Fund                | 6,586,355     |
| Public Liability Fund                     | 3,476,706     |
| Information Technology Fund               | 17,567,113    |
| Subtotal Revolving/Internal Service Funds | \$ 54,657,166 |

**DUAL APPROPRIATIONS - WORKING BUDGET**

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

## Transfers to the General Fund

|                                       |              |
|---------------------------------------|--------------|
| <u>Indirect Cost Reimbursement</u>    |              |
| CDBG Fund                             | 143,373      |
| Street Light Assessment District Fund | 115,865      |
| Zero Waste Fund                       | 2,326,015    |
| Marina Enterprise Fund                | 415,427      |
| Sanitary Sewer Fund                   | 1,071,882    |
| Clean Storm Water Fund                | 252,015      |
| Permit Service Center Fund            | 1,874,805    |
| Unified Program (CUPA) Fund           | 87,242       |
| Subtotal Transfers to General Fund:   | \$ 6,286,624 |

|                                                                                                  |                      |
|--------------------------------------------------------------------------------------------------|----------------------|
| Transfer to Safety Members Pension Fund from General Fund                                        | 551,804              |
| Transfer to Measure U1 Fund from General Fund                                                    | 3,575,390            |
| Transfer to Paramedic Tax Fund from General Fund                                                 | 703,103              |
| Transfer to Health State Aid Realignment from General Fund                                       | 1,953,018            |
| Transfer to Fair Election Fund from General Fund                                                 | 501,833              |
| Transfer to Capital Improvement Fund (CIP) from General Fund                                     | 3,255,167            |
| Transfer to Phone System Replacement - VOIP from General Fund                                    | 160,000              |
| Transfer to Equipment Replacement Fund from General Fund                                         |                      |
| Transfer to Public Liability Fund from General Fund                                              | 1,695,888            |
| Transfer to Catastrophic Loss Fund from General Fund                                             | 2,295,334            |
| Transfer to IT Cost Allocation Fund from General Fund                                            | 431,802              |
| Transfer to Police Employee Retiree Health Assistance Plan from General Fund                     | 400,136              |
| Transfer to Sick Leave Entitlement Fund from General Fund                                        | 201,501              |
| Transfer to General Fund from General Fund Stabilization Reserves Fund                           | 6,900,000            |
| Transfer to General Fund from General Fund Catastrophic Reserves Fund                            | 4,500,000            |
| Transfer to Measure T1 Fund from Measure BB - Local Streets & Roads Fund                         | 600,000              |
| Transfer to Measure T1 Fund from Parks Tax Fund                                                  | 600,000              |
| Transfer to General Fund from UC Settlement Fund                                                 | 907,554              |
| Transfer to Clean Storm Water Fund from UC Settlement Fund                                       | 302,519              |
| Transfer to General Fund from Health State Aid Realignment Fund                                  | 2,643,280            |
| Transfer from CIP Fund to PERS Savings Fund                                                      | 151,632              |
| Transfer to Berkeley Repertory Theater Debt Service Fund from CIP Fund                           | 499,802              |
| Transfer from CIP Fund to 2010 COP (Animal Shelter) Fund                                         | 402,613              |
| Transfer to Private Sewer Lateral Fund from Sewer Fund                                           | 90,501               |
| Transfer to Catastrophic Loss Fund from Permit Service Center Fund                               | 50,555               |
| Transfer to Catastrophic Loss Fund from Unified Program (CUPA) Fund                              | 5,082                |
| Transfer to General Fund from Parking Meter Fund                                                 | 1,742,288            |
| Transfer to General Fund from IT Cost Allocation Fund                                            | 1,037,439            |
| Transfer from Special Tax Bonds CFD#1 ML-ROOS to CFD#1 District Fire Protect Bond<br>(Measure Q) | 452,759              |
| Transfer to First Source Fund from Parks Tax Fund                                                | 14,093               |
| Transfer to First Source Fund from Capital Improvement Fund                                      | 26,943               |
| Transfer to First Source Fund from Marina Fund                                                   | 1,875                |
| Transfer to Public Art Fund from Parks Tax Fund                                                  | 21,140               |
| Transfer to Public Art Fund from Capital Improvement Fund                                        | 40,414               |
| Transfer to Public Art Fund from Marina Fund                                                     | 2,813                |
| Subtotal Transfers to Other Funds:                                                               | <u>36,718,278</u>    |
| Sub-Total Dual Appropriations                                                                    | <u>\$ 43,004,902</u> |
| <b>Grand Total Dual Appropriations</b>                                                           | <b>\$ 97,662,068</b> |





Office of the City Manager

CONSENT CALENDAR  
January 19, 2021

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

RECOMMENDATION

Approve the minutes for the council meetings of December 1, 2020 (closed and regular), December 3, 2020 (closed), December 8, 2020 (4pm-special and 6pm-special) and December 15, 2020 (closed, special and regular).

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

1. December 1, 2020 – Closed City Council Meeting
2. December 1, 2020 – Regular City Council Meeting
3. December 3, 2020 – Closed City Council Meeting
4. December 8, 2020 (4pm) – Special City Council Meeting
5. December 8, 2020 (6pm) – Special City Council Meeting
6. December 15, 2020 – Closed City Council Meeting
7. December 15, 2020 – Special City Council Meeting
8. December 15, 2020 – Regular City Council Meeting

# BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

TUESDAY, DECEMBER 1, 2020

4:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – CHERYL DAVILA  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

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

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

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

*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/82542038081>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.*

*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free); enter Meeting ID: 825 4203 8081. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*To submit an e-mail comment during the meeting to be read aloud during public comment, email [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.*

*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.*

## Preliminary Matters

**Roll Call:** 4:03 p.m. All present.

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

## CLOSED SESSION:

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

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

- a. *Chen v. City of Berkeley – case # RG19019359 Alameda Superior Court; Claim No. 0223BC2019*

**Action:** M/S/C (Arreguin/Harrison) to authorize the settlement in the amount of \$37,000.

**Vote:** All Ayes.

- b. *Herman v. City of Berkeley – Claim No. 0349BC2019-0001*

**Action:** M/S/C (Arreguin/Robinson) to authorize the settlement in the amount of \$75,000.

**Vote:** All Ayes.

### 2. CONFERENCE REGARDING POTENTIAL THREAT TO PUBLIC SERVICES OR FACILITIES PURSUANT TO GOVERNMENT CODE SECTION 54957(a)

- a. *Consultation with: Information Technology Department*

**Action:** No action taken.

## OPEN SESSION:

The City Council met in closed session and authorized the City Attorney to settle *Chen v. City of Berkeley* (Alameda Superior Court Case No. RG19019359) for \$37,000, and *Herman v. City of Berkeley* (Claim No. 0349BC2019-001) for \$75,000.

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 5:30 p.m.

I hereby certify that the foregoing is a true and correct record of the closed session meeting held on December 1, 2020.

---

Mark Numainville  
City Clerk

**MINUTES**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, December 1, 2020**  
**6:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – CHERYL DAVILA  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

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

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

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

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



## Preliminary Matters

**Roll Call:** 6:06 p.m.

**Present:** Kesarwani, Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

**Absent:** None

## Report from Closed Session

The City Council met in closed session and authorized the City Attorney to settle Chen v. City of Berkeley (Alameda Superior Court Case No.RG19019359) for \$37,000, and Herman v. City of Berkeley (Claim No. 0349BC2019-001) for \$75,000.

## Ceremonial Matters:

1. Recognition of Pam Grossman, Berkeley Volunteer
2. Recognition of Carl C. Anthony and Dr. M. Paloma Pavel, Community Leaders and Activists
3. Recognition of Barbara Brust of Consider the Homeless!
4. Adjourn in memory of Dr. Stephen Rader, Berkeley Resident
5. Adjourn in Memory of Dennis Imoto, Berkeley Resident
6. Adjourn in Memory of Sincere Pierce and A.J. Crooms, victims of police shootings
7. Adjourn in Memory of J.C. Hendricks, Berkeley Resident
8. Adjourn in Memory of Diego Maradona, Soccer Legend
9. Adjourn in Memory of victims of the massacre in Mai Kadra, Ethiopia
10. Recognition of outgoing Councilmember Cheryl Davila

Recess 8:39pm – 8:49 p.m.

## City Manager Comments:

The City Manager provided an update on the Reimagining Public Safety Process and the BerkDOT program.

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

## Consent Calendar

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

**Action:** M/S/C (Arreguin/Hahn) to add an item to the agenda related to CARES Act funding from Mayor Arreguin and Councilmember Bartlett pursuant to Government Code Section 54954.2(b)(2).

**Vote:** All Ayes.

## Consent Calendar

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

**Vote:** All Ayes.

**Urgent Item: Accept \$232,500 from East Bay Community Foundation and Allocate \$200,000 to County CARES Act Matching Grant Program and \$50,000 to Outdoor Dining Support Grant Program**

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

**Recommendation:** Adopt a Resolution accepting a \$232,500 payment from the East Bay Community Foundation of funds raised by the Berkeley Relief Fund, and:

1) Allocate \$200,000 to finance grant payments for eligible Berkeley businesses through the Alameda County CARES Grant Program and authorize the City Manager, subject to the review and approval of the City Attorney, to enter into a Memorandum of Understanding or any other agreement necessary for the city to allocate \$200,000 from the Berkeley Relief Fund in order to participate in the grant matching program proposed by Alameda County as part of the Alameda County CARES Grant Program.

2) Allocate \$50,000 (\$32,500 from East Bay Community Foundation and \$17,500 from the prior phase of Berkeley Relief Fund) to provide grants to enable businesses to transition to outdoor commerce.

**Financial Implications:** See report

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

**Action:** Vice-Mayor Hahn and Councilmember Robinson added as co-sponsors.

Adopted Resolution No. 69,619–N.S.

1. **Lease for 5385 Cazadero Hwy, Cazadero, CA 95421 – Cazadero Performing Arts Camp (CPAC)**

**From:** City Manager

**Recommendation:** Adopt second reading of Ordinance No. 7,737-N.S. authorizing the City Manager to execute a lease agreement and necessary amendments with Cazadero Performing Arts Camp, at 5385 Cazadero Hwy, Cazadero, CA 95421 for a term of twenty-five (25) years, with an option to renew for ten (10) years.

**First Reading Vote:** All Ayes.

**Financial Implications:** See report

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

**Action:** Adopted second reading of Ordinance No. 7,737–N.S.

## Consent Calendar

- 2. Closure of the crossing at Camelia Street/Union Pacific (UP) Railroad Corridor; Amending Berkeley Municipal Code Chapter 14.24**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,738-N.S. amending Berkeley Municipal Code Chapter 14.24, to close the existing Union Pacific (UP) railroad crossing at Camelia Street to all traffic.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted second reading of Ordinance No. 7,738–N.S.
- 3. Mental Health Services Act (MHSA) Fiscal Years 2020/2021 – 2022/2023 Three Year Program and Expenditure Plan**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the Mental Health Services Act (MHSA) Fiscal Years 2020/2021 – 2022/2023 Three Year Program and Expenditure Plan (MHSA Three Year Plan), which provides information on current and proposed uses of funds for mental health programming, and forwarding the MHSA Three Year Plan to appropriate state officials.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400  
**Action:** Adopted Resolution No. 69,620–N.S.
- 4. Contract: Resource Development Associates for Specialized Care Unit**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with Resource Development Associates (RDA) to facilitate the design of a Specialized Care Unit (SCU) for a total contract limit of \$185,000 for the period beginning January 1, 2021 and ending June 30, 2022. The contract will serve the City of Berkeley by analyzing the current mental health crisis system, engaging community members in visioning an improved system, researching best practice models and gathering local data, and developing a program to re-assign non-criminal police service calls to a Specialized Care Unit (SCU) that will respond without law enforcement.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400  
**Action:** Moved to Action Calendar. M/S/C (Arreguin/Harrison) to adopt Resolution No. 69,621–N.S.  
**Vote:** All Ayes.

## Consent Calendar

- 5. Contract Amendment: Fred Finch Youth Center for Turning Point Transitional Housing for Transition Age Youth**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend an existing contract with Fred Finch Youth Center (“Fred Finch”) for their Turning Point Transitional Housing Program (“Turning Point”), adding \$200,000 total for fiscal years 2021 and 2022, at a rate of \$100,000 per year, to enable Fred Finch to sustain the Turning Point program.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400  
**Action:** Adopted Resolution No. 69,622–N.S.
- 6. Amending Berkeley Municipal Code Chapter 11.28 – Food Establishments**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 11.28, Section 11.28.010 Statutory Provisions, Section 11.28.020 Definitions and adding Section 11.28.370 Microenterprise Home Kitchen Operation (MHKO).  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400  
**Action:** Adopt first reading of Ordinance No. 7,739–N.S. Second reading scheduled for December 15, 2020.
- 7. Grant Application: FEMA Hazard Mitigation Program for Seismic Retrofit of Martin Luther King (MLK) Jr. Youth Services Center/Young Adult Project (YAP)**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to submit a grant application to FEMA for funds in the amount not to exceed of \$1,237,500 for the seismic retrofit of the Martin Luther King (MLK) Jr. Youth Services Center/Young Adult Project (YAP); authorizing the City Manager to accept the grant; to execute any resultant revenue agreement and amendments; and authorizing the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.  
**Financial Implications:** \$1,237,500 in revenue  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted Resolution No. 69,623–N.S.

## Consent Calendar

- 8. Grant Application: the San Francisco Restoration Authority Measure AA Grant Program for Technical Feasibility Studies of Potential Improvement Projects at Aquatic Park**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to: submit a grant application in the amount of \$897,000 to the San Francisco Restoration Authority Measure AA Grant Program to conduct feasibility studies for improvements at Aquatic Park; accept any grants; execute any resulting grant agreements and any amendments; and that Council authorize the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted Resolution No. 69,624–N.S.
- 9. Grant Application: the California Proposition 68 Statewide Parks Program for new park development at selected Santa Fe Right-of-Way parcels**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to: submit a grant application in the amount of up to \$8,000,000 to the California Proposition 68 Statewide Parks Program for new park development at selected Santa Fe Right-of-Way parcels; accept any grants; execute any resulting grant agreements and any amendments; and that Council authorize the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted Resolution No. 69,625–N.S.
- 10. Contract No. 31900040 Amendment: Freitas Landscaping and Maintenance for Hazardous Vegetation Reduction Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to amend Contract No. 31900040 with Freitas Landscaping and Maintenance for additional reduction of hazardous vegetation in high-risk areas of City-owned parks, pathways and landscaped areas during high-risk fire season, by increasing the contract by \$410,000 for a not-to-exceed amount of \$1,235,000.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted Resolution No. 69,626–N.S.

## Consent Calendar

- 11. Measure T1 Loan**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to loan \$198,400 from the Mental Health Realignment Fund balance to complete the Phase 1 Mental Health Adult Clinic renovation project and that authorizes the City Manager to repay the loan to the Mental Health Realignment Fund balance from the Phase 2 Measure T1 bond proceeds once they are available.  
**Financial Implications:** See report  
 Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700; Teresa Berkeley-Simmons, City Manager's Office, (510) 981-7000; Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,627–N.S.
- 12. Donation: Regan Nursery Rose Bushes**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting a donation of 44 potted roses from Regan Nursery, valued at \$1099.78, for replacement of roses stolen from the Berkeley Rose Garden.  
**Financial Implications:** See report  
 Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted Resolution No. 69,628–N.S.
- 13. Proposed Amendments to the Building Energy Saving Ordinance (BESO)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of amendments to the Building Energy Saving Ordinance (BESO), Chapter 19.81 of the Berkeley Municipal Code, to align with building electrification goals, leverage upcoming rebates and incentives, improve transparency in real estate sales process, and develop mandatory energy requirements to be phased in.  
**Financial Implications:** See report  
 Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Action:** Adopt first reading of Ordinance No. 7,740–N.S. Second reading scheduled for December 15, 2020.
- 14. Revenue Grant: Reach Code support from East Bay Community Energy**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager, or her designee, to submit a grant agreement and accept a \$10,000 grant award from East Bay Community Energy (EBCE) for reach code support.  
**Financial Implications:** See report  
 Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Action:** Adopted Resolution No. 69,629–N.S.

## Consent Calendar

- 15. Lease Agreement: Berkeley Housing Authority at 1947 Center Street, Fifth Floor, Southwest Corner**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement with Berkeley Housing Authority to use and occupy the City property at 1947 Center Street, 5th floor Southwest Corner for a ten-year lease term with an option to extend for two additional ten-year terms.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopt first reading of Ordinance No. 7,741–N.S. Second reading scheduled for December 15, 2020.
- 16. Final Map of Tract 8533: 1500 San Pablo Avenue**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the final map of Tract Map 8533, a one hundred seventy-five (175) unit condominium project consisting of one hundred seventy (170) residential units and five (5) commercial units at 1500 San Pablo Avenue.  
**Financial Implications:** None  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,630–N.S.
- 17. Contract: Andes Construction, Inc. for Sanitary Sewer Rehabilitation at Various Locations**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the Sanitary Sewer Project, located on Ashby Avenue, MLK Jr. Way, Benvenue Avenue, Hillegass Avenue, Parker Street, Telegraph Avenue, Bowditch Street, College Avenue, Spruce Street, and Keith Avenue; accepting the bid of the lowest responsive and responsible bidder, Andes Construction, Inc.; and authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$4,968,764, which includes a 10% contingency of \$451,706.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,631–N.S.

## Consent Calendar

- 18. Contract: Glosage Engineering Inc. for Sanitary Sewer Rehabilitation at Walnut Street, Vine Street, Rose Street, Spruce Street, and Glen Avenue**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the Sanitary Sewer Rehabilitation at Walnut Street, Vine Street, Rose Street, Spruce Street, and Glen Avenue; accepting the bid of the lowest responsive and responsible bidder, Glosage Engineering, Inc. (Glosage) and authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$2,711,556, which includes a 10% contingency of \$246,505.  
**Financial Implications:** See report  
 Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,632–N.S.
- 19. Grant Applications: Highway Safety Improvement Program Cycle 10**  
**From: City Manager**  
**Recommendation:** Adopt Resolutions authorizing the City Manager to submit grant applications to the California Highway Safety Improvement Program Cycle 10 for the following projects: Protected Left-Turn Signals at multiple signalized intersections for up to \$6 million and Sacramento Street Pedestrian Crossings for up to \$250,000; accept the grants awarded; and execute any resultant agreements and amendments. This item updates resolutions previously approved by the Berkeley City Council on the July 28, 2020 Consent Calendar in order to increase the grant funds requested to improve more intersections and enhance the pedestrian safety treatments proposed.  
**Financial Implications:** See Report  
 Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,633–N.S. (Protected Left-Turn Signals) and Resolution No. 69,634–N.S. (Sacramento Street).
- 20. Appointment of boona cheema and Margaret Fine to Mental Health Commission**  
**From: Mental Health Commission**  
**Recommendation:** Adopt a Resolution appointing: boona cheema as a representative of the Special Public Interest Category (family), to complete her second 3- year term beginning December 2, 2020 and ending December 1, 2023; and Margaret Fine as a representative of the General Public Interest Category, to complete her second 3-year term beginning December 2, 2020 and ending December 1, 2023.  
**Financial Implications:** None  
 Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400  
**Action:** Adopted Resolution No. 69,635–N.S.



## Council Consent Items

21. **State Alignment on the Treaty on the Prohibition of Nuclear Weapons**  
**From: Mayor Arreguin (Author), Councilmember Hahn (Co-Sponsor), Councilmember Wengraf (Co-Sponsor)**

**Recommendation:** Adopt a Resolution calling on the California State Legislature to introduce a bill to align the State with the UN Treaty on the Prohibition of Nuclear Weapons by creating a non-partisan, advisory Prohibition of Nuclear Weapons Citizens Commission. Copies of this resolution will be sent to Governor Gavin Newsom, Senator Nancy Skinner and Assemblymember Buffy Wicks.

**Financial Implications:** None

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

**Action:** Adopted Resolution No. 69,636–N.S.

22. **Urgency Ordinance Amending Berkeley Municipal Code 13.111.020(a) (Ordinance No. 7,727-N.S.) to Further Limit Third-Party Food Delivery Service Fees**

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

**Recommendation:** Adopt an Urgency Ordinance amending Berkeley Municipal Code Section 13.111.020(a) (Ordinance No. 7,727-N.S.)—which establishes a temporary limit on the charges imposed by third-party delivery services on retail food establishments for the duration of the declared COVID-19 local state of emergency—by reducing the delivery fee cap from 15 percent to 10 percent, while maintaining the limit on other fees, commissions, or costs at 5 percent.

**Financial Implications:** See report

Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

**Action:** Councilmember Harrison added as a co-sponsor. Adopt Urgency Ordinance No. 7,742–N.S.

## Council Consent Items

- 23. Budget Referral to Prioritize Enhanced Lighting in Areas of Elevated Violent Crime**  
**From: Councilmember Kesarwani (Author), Mayor Arreguin (Co-Sponsor), and Councilmember Bartlett (Co-Sponsor)**  
**Recommendation:** In an effort to immediately address safety concerns in blocks where elevated levels of violent crime--including robbery, aggravated assault (including shootings), rape, and homicide--have occurred during the COVID-19 pandemic, adopt the recommendations listed below:
1. Refer to the City Manager to prioritize resident requests for enhanced lighting when such requests come from blocks where elevated violent crime has occurred during the COVID-19 pandemic.
  2. Refer to the City Manager to perform an environmental safety assessment of areas where gun violence has been concentrated specifically in South and West Berkeley, including but not limited to:
    - a) Tenth, Ninth, Eighth, and Seventh Streets between Bancroft Way and Dwight Way;
    - b) Residential streets in the area from Russell Street to Carrison/Tyler Streets between San Pablo Avenue and California Street;
    - c) Other blocks where elevated violent crime is found to have occurred during the period from March to November 2020 based on Berkeley Police data.
  3. Refer costs for additional lighting and environmental safety assessments to the mid-year budget process for FY 2020-21.
- Financial Implications:** None  
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110  
**Action:** Councilmember Wengraf added as a co-sponsor. Approved recommendation as revised in Supplemental Communications Packet #1 from Councilmember Kesarwani.
- 24. Striking Racially Restrictive Covenants in Certain Property Deeds**  
**From: Councilmember Davila (Author), Councilmember Kesarwani (Co-Sponsor), Councilmember Harrison (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution and send a letter to the Alameda County Board of Supervisors and the Governor of California with the following actions:
1. The City calls upon the County of Alameda to determine which parcels of real property have deeds that have racially restrictive covenants associated with them and to proactively strike from those covenants the racially restrictive language, thereby relieving homeowners of the burden of removing such language.
  2. The City urges the California legislature and governor to pass legislation requiring the same actions in every California county.
- Financial Implications:** See report  
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120  
**Action:** Adopted Resolution No. 69,637–N.S.

## Council Consent Items

- 25. Personal Liability Protection for Small Businesses**  
**From: Councilmember Hahn (Author), Councilmember Wengraf (Co-Sponsor)**  
**Recommendation:** 1. Direct the City Manager and City Attorney to draft and submit to the City Council for consideration an emergency ordinance to prohibit the enforcement of personal liability provisions in commercial leases and commercial rental agreements in the City of Berkeley for lessees/renters who have experienced financial impacts related to the Covid-19 pandemic.  
 2. Direct the City Manager to conduct outreach to all commercial tenants regarding any protections enacted by the City Council, with a particular focus on businesses that were required to stop serving food or beverages (e.g., restaurants, bars); close to the public (e.g., hair salons, barbershops, tattoo parlors); cease operations (e.g., gyms, fitness centers); or sharply limit operations (e.g., schools, retail shops, nurseries) due to the COVID-19 crisis.  
**Financial Implications:** See report  
 Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150  
**Action:** Mayor Arreguin and Councilmember Bartlett added as co-sponsors. Approved recommendation revised to strike “lessees/renters” and add “when failure to pay rent results from COVID-19 pandemic.”
- 26. Resolution calling on the BUSD Board and Superintendent to Consider Renaming Thousand Oaks Elementary to Kamala Harris Elementary School**  
**From: Councilmember Hahn (Author)**  
**Recommendation:** Adopt a Resolution calling on the Berkeley Unified School District (BUSD) Board and Superintendent to consider initiating a process, pursuant to BUSD Board Policy and Administrative Regulation 7310, to rename Thousand Oaks Elementary School to Kamala Harris Elementary School in honor of Vice President-Elect Kamala Harris.  
**Financial Implications:** None  
 Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150  
**Action:** Councilmembers Davila and Bartlett added as co-sponsors. Adopted Resolution No. 69,638–N.S.  
**Vote:** Ayes – Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – Kesarwani.
- 27. California Recycling and Plastic Pollution Reduction Act: Endorsement of the 2022 Ballot Initiative**  
**From: Councilmember Wengraf (Author), Councilmember Hahn (Co-sponsor)**  
**Recommendation:** Approve the Resolution endorsing the "California Recycling and Plastic Pollution Reduction Act of 2020", also referred to as “Plastics Free California” so the Ballot Measure campaign can include the City of Berkeley in its list of supporters in campaign literature from now until the 2022 election.  
**Financial Implications:** None  
 Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160  
**Action:** Councilmember Davila added as a co-sponsor. Adopted Resolution No. 69,639–N.S.

## Council Consent Items

### 28. Referral: Commission Low-Income Stipend Reform

**From: Councilmember Robinson (Author)**

**Recommendation:** Refer to the City Manager to develop and return to Council with a plan to improve equity, accessibility, and representation in City of Berkeley commissions by modernizing the low-income stipend program, and in doing so consider:

1. Increasing the annual household income cap for stipend eligibility from \$20,000 to align with the 50% Area Median Income (AMI) guidelines for Alameda County and reflect household size, and updating it annually with the latest HUD data.
2. Increasing the low-income stipend from \$40 to \$78 per meeting, and updating it annually with the City of Berkeley minimum wage to correspond to compensation for 2.5 hours of work.

**Financial Implications:** See report

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

**Action:** Approved recommendation as revised in Supplemental Communications Packet #1 from Councilmember Robinson.

## Action Calendar – Public Hearings

### 29. Correction to Fee Increases for Traffic Engineering Hourly Rates

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion, adopt a Resolution amending Resolution No. 68,939-N.S. to include the rates discussed in the accompanying report in Chapter E of Attachment A that was inadvertently omitted during production of the agenda item.

**Financial Implications:** See report

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

**Public Testimony:** The Mayor opened the public hearing. 0 speakers.

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

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

Councilmember Bartlett absent 10:38- p.m. – 10:39 p.m.

**Action:** M/S/C (Arreguin/Hahn) to adopt Resolution No. 69,640–N.S.

**Vote:** All Ayes.

## Action Calendar – Public Hearings

- 30. Referral Response: Zoning Ordinance Amendments that Reform Residential Off-Street Parking; Amending Berkeley Municipal Code Title 14 and Title 23**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and upon conclusion select among proposed ordinance language options and take the following action:  
Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Title 14 and Title 23 which would:
1. Modify Minimum Residential Off-street Parking Requirements
  2. Impose Residential Parking Maximums in Transit-rich Areas
  3. Amend the Residential Preferential Parking (RPP) Permit Program
  4. Institute Transportation Demand Management (TDM) Requirements
- Financial Implications:** See report  
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- Action:** M/S/C (Arreguin/Harrison) to continue Item 30 to December 15, 2020 as the first item on the Action Calendar.  
**Vote:** Ayes – Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – Kesarwani.

## Information Reports

- 31. City Council Short Term Referral Process – Quarterly Update**  
**From: City Manager**  
Contact: Mark Numainville, City Clerk, (510) 981-6900  
**Action:** Received and filed.
- 32. LPO NOD: 2136-2154 San Pablo Avenue/#LMIN2020-0004**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Action:** Received and filed.

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

## Adjournment

**Action:** M/S/C (Robinson/Droste) to adjourn the meeting.  
**Vote:** All Ayes.

Adjourned at 10:47 p.m.

I hereby certify that the foregoing is a true and correct record of the regular session meeting held on December 1, 2020.

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Mark Numainville  
City Clerk

## Communications

### **Item #4: Contract: Resource Development Associates for Specialized Care Unit**

1. Cindy Shamban

### **Item #14: Revenue Grant: Reach Code Support from East Bay Community Energy**

2. Tom Kelly, on behalf of Kyoto USA (2)

### **Dumpster at University and Frontage Road**

3. Janet Cobb
4. Helen and Paul Canin

### **North Berkeley BART Development**

5. Melissa and Michael Fitzgerald
6. Junko and Robert Kenmotsu

### **T-1 Phase 2**

7. John Caner, on behalf of Citizens for a Cultural Civic Center (2)
8. Ben, Liza, Chuck and Karen, on behalf of Walk Bike Berkeley
9. Kelly Hammargren

### **UC Berkeley's Policing**

10. Russbumper

### **Constructive Fraud in Berkeley**

11. Arthur Stopes III (2)

### **Agenda Deficiency – Financial Implications**

12. Barbara Gilbert

### **Meth in Encampments**

13. Eric Friedman

### **Council Meeting Concerns**

14. Holly Marlin
15. Michai Freeman

## **5G**

16. Vivian Warkentin (2)

**Another Horse Fatality at the Golden Gate Fields**

17. Joe Kaplan

**Homeless Pooping in Front of Commercial Kitchen – Need Porta Potties**

18. Marie and Tom Banis, owners of Certified Kitchens (2)

19. Councilmember Harrison (3)

**Support the African-American Holistic Resource Center**

20. C.W. Devers

21. Carol Perez

**PG&E's Misdeeds**

22. Sheila Goldmacher

**Police Budget/Reimagining Community Safety**

23. Tryn Brown

24. Elana Auerbach

**OpenGov/Berkeley Considers**

25. Jack Litewka

**Supplemental Communications and Reports 1**

**Item #1: Lease for 5385 Cazadero Hwy, Cazadero, CA 95421 – Cazadero Performing Arts Camp (CPAC)**

26. Al Bergstein

27. Ellen Jean Winograd

**Item #21: State Alignment on the Treaty on the Prohibition of Nuclear Weapons**

28. Diana Bohn

**Item #23: Budget Referral to Prioritize Lighting in Areas of Elevated Violent Crime**

29. Supplemental material, submitted by Councilmember Kesarwani

**Item #28: Commission Low-Income Stipend Reform**

30. Revised material, submitted by Councilmember Robinson

**Item #30: Referral Response: Zoning Ordinance Amendments that Reform Residential Off-Street Parking; Amending Berkeley Municipal Code Title 14 and Title**

**23**

31. Cheryl White

32. Jordan Burns

33. Charles Siegel, on behalf of Walk Bike Berkeley

**Supplemental Communications and Reports 2**

**Item #1: Lease for 5385 Cazadero Hwy, Cazadero, CA 95421 – Cazadero Performing Arts Camp (CPAC)**

- 34. Carol Belcher
- 35. Natalie Couch

**Item #30: Referral Response: Zoning Ordinance Amendments that Reform Residential Off-Street Parking; Amending Berkeley Municipal Code Title 14 and Title 23**

- 36. Jean Hohl
- 37. Vicki Sommer
- 38. Tommaso Sciortino
- 39. Gary Miguel
- 40. Teresa Clarke
- 41. Pablo Diaz-Gutierrez
- 42. Mathew Lewis
- 43. Jane Scantlebury
- 44. Carol Hirth
- 45. Libby Lee-Egan
- 46. Kevin Burke
- 47. Maud Engel
- 48. Laura Graham
- 49. Ariella Granett
- 50. Scott Peterson
- 51. Matthew Solomon
- 52. Michael Katz
- 53. David Kellogg
- 54. Ben Grant
- 55. Theo Posselt
- 56. David Campbell

**Supplemental Communications and Reports 3**

**Recognition of Outgoing City Councilmember(s)**

- 57. Alex Mabanta
- 58. Mary Nash
- 59. Peter Woiwode
- 60. Kelly Hammargren
- 61. Moni Law
- 62. Donna Mickleson
- 63. Danielle Epifani
- 64. Andrea Mullarkey
- 65. Eduardo Martinez
- 66. Martin Nicolaus
- 67. Michael Smith
- 68. Sheila Jordan
- 69. Connie Anderson (2)
- 70. Stephanie Thomas



71. Jovi Tseng

**Item #1: Lease for 5385 Cazadero Hwy, Cazadero, CA 95421 – Cazadero Performing Arts Camp (CPAC)**

72. Barbara Fairweather

73. Ricki Blau

74. Karen Wells

75. Andrew Grishaw

76. Melanie Green

**Item #4: Contract: Resource Development Associates for Specialized Care Unit**

77. Carole Marasovic

78. Gene Turitz

**Item #13: Proposed Amendments to the Building Energy Saving Ordinance (BESO)**

79. Stan Momtchev

80. Helene Barkin

81. Sandi Porter

82. Stephanie Christmas

83. Fran Haselsteiner

84. Helen Nicholas

85. Marion Henon

**Item #25: Personal Liability Protection for Small Businesses**

86. Randdep Rekhi (2)

87. Unknown

**Item #30: Referral Response: Zoning Ordinance Amendments that Reform Residential Off-Street Parking; Amending Berkeley Municipal Code Title 14 & Title 23**

88. Elizabeth Baker

89. Jonathan Singh

90. Liza Lutzker

91. Vicki Sommer

92. Jeffrey Wescott

93. Scott MacDougall

94. George Porter

95. Marjory Keenan

96. David Brandon

97. Marjorie Alvord

98. Igor Tregub

99. Lee Bishop

100. Laura Klein

101. Tony Corman

102. Dorothy Walker

103. Savlan Hauser

**Accept \$232,500 from East Bay Community Foundation and Allocate \$200,000 to County CARES Act Matching Grant Program and \$50,000 to Outdoor Dining Support Grant Program**

104. Urgent Item Agenda Material, submitted by Councilmember Bartlett and Mayor Arreguin

**Plant-Based Food and Climate Crisis**

105. Matthew McKeefry

106. Victoria Gu

107. Rasa Petrauskaite

108. Rocky Chau

**Tonight's Meeting a Disaster**

109. Barbara Gilbert

**MINUTES  
BERKELEY CITY COUNCIL  
THURSDAY, DECEMBER 3, 2020  
4:00 P.M.**

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/87650462081>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.*

*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free); enter Meeting ID: 876 5046 2081. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*To submit an e-mail comment during the meeting to be read aloud during public comment, email [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.*

*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.*

## Preliminary Matters

**Roll Call:** 4:02 p.m.

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

**Absent:** Bartlett

Councilmember Bartlett present at 4:06 p.m.

**Public Comment - Limited to items on this agenda only – 12 speakers**

## CLOSED SESSION:

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

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

Negotiators: Dee Williams-Ridley, City Manager, Paul Buddenhagen, Deputy City Manager, David White, Deputy City Manager, LaTanya Bellow, Human Resources Director, Dania Torres-Wong, Chief Labor Negotiator, Burke Dunphy, Chief Labor Negotiator, David Brannigan, Fire Chief.

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

**Action:** No reportable action taken.

## OPEN SESSION:

No reportable action taken.

## Adjournment

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

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

Adjourned at 7:42 p.m.

I hereby certify that the foregoing is a true and correct record of the closed session meeting held on December 3, 2020.

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Mark Numainville  
City Clerk

### **Communications**

- None

### **Supplemental Communications and Reports 1**

- None

### **Supplemental Communications and Reports 2**

#### **Item #1: Conference with Labor Negotiators; Government Code Section 54957.6**

1. Kathy Cassidy

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

#### **Item #1: Conference with Labor Negotiators; Government Code Section 54957.6**

2. Fawn Downs
3. Nick Cartagena
4. Evelyn Chan
5. Adrian Merry
6. Jon Pettus
7. Barbara Ann White
8. Alisa Shen
9. Katie Van Dyke
10. Jenny McNulty
11. Sarah Moore
12. Alene Pearson
13. Jesse Peoples
14. Roberto Terrones
15. Dechen Tsering
16. Kathy Cassidy

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

**Tuesday, December 8, 2020**

**4:00 P.M.**

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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## Preliminary Matters

**Roll Call:** 4:03 p.m.

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

**Absent:** Kesarwani

Councilmember Kesarwani present at 4:04 p.m.

**Action:** M/S/C (Harrison/Bartlett) to accept an urgency item from Councilmember Harrison pursuant to Government Code Section 54954.2(b)(2) entitled Resolution Establishing Local Law Enforcement Policy Pursuant to the November 19, 2020 California Department of Public Health Limited Stay At Home Order and the December 3, 2020 Regional Stay At Home Order.

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

**Action:** M/S/C (Arreguin/Robinson) to accept revised materials from Councilmember Harrison on Item 1.

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

## Action Calendar

1. **Updates to the COVID-19 Emergency Response Ordinance** (*Continued from November 17, 2020. Item contains revised material.*)

**From:** 4x4 Joint Task Force Committee on Housing

**Recommendation:**

1. Adopt first reading of an ordinance (effective February 1) amending Berkeley Municipal Code 13.110, Title 13, "The COVID-19 Emergency Response Ordinance," to enhance emergency tenant protections consistent with recently adopted Alameda County laws, action in other jurisdictions, and consultation with community stakeholders representing marginalized groups.
2. Adopt a resolution, directing the City Manager to promptly issue a written statement, pursuant to Alameda County Municipal Code 6.120.110, affirming or declaring in writing that the City of Berkeley intends to "opt-out" of the County ordinance, enumerating the specific provisions of the County's ordinance from which the City intends to opt out, and including a finding that the City ordinance is stronger.

**Financial Implications:** See report

Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

**Action:** 20 speakers. M/S/C (Harrison/Arreguin) to adopt Ordinance No. 7,743-N.S. as written in the revised materials submitted by Councilmember Harrison at the meeting with amendments in Section 13.110.040.B.1 (reference to state law), Section 13.110.050 (remove Ellis Act exemption), Section 13.110.050.C (intent to damage credit rating), and Section 13.110.080.B (changing "tenant" to "resident"). Second reading scheduled for December 15, 2020.

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

**Urgency Item: Resolution Establishing Local Law Enforcement Policy Pursuant to the November 19, 2020 California Department of Public Health Limited Stay At Home Order and the December 3, 2020 Regional Stay At Home Order**

**From:** Councilmember Harrison

**Recommendation:** State Health officials have recently issued two vaguely worded Stay At Home Orders that closely resemble curfews. The State's Orders lack critical specificity regarding enforcement procedures and mechanisms. The Orders, if enforced vigorously, could disproportionately impact low-income people, unhoused people, and people of color, and have the potential to increase the frequency of interactions between law enforcement and marginalized and vulnerable communities.

The December 3, 2020 order was issued after the deadline for Council items and has the potential to immediately impact community members. In addition, the November 19, 2020 Order is currently in effect and warrants immediate Council action.

Data analyses suggest that the June 2020 curfew correlated with significant increases law enforcement racial disparities within Berkeley. Across the Bay Area, certain law enforcement leaders, including police chiefs and sheriffs, have stated they do not intend to indiscriminately and unconstitutionally stop people encountered away from home merely on suspicion of violating the State's curfew orders. It is in the public interest for the Council and City to adopt a similar policy.

**Financial Implications:** See report

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

**Action:** M/S/C (Arreguin/Droste) to continue the item to December 15, 2020.

**Vote:** All Ayes.



## Adjournment

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

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

Councilmember Kesarwani absent at 6:00 p.m. – 6:02 p.m.

Adjourned at 6:02 p.m.

I hereby certify that the foregoing is a true and correct record of the special session meeting held on December 8, 2020.

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Mark Numainville  
City Clerk

## Communications

**Item #1: Updates to the COVID-19 Emergency Response Ordinance**

1. Matthew Lewis, on behalf of the Berkeley Tenants Union

## Supplemental Communications and Reports 1

- None

## Supplemental Communications and Reports 2

**Resolution Establishing Local Law Enforcement Policy Pursuant to the November 19, 2020 California Department of Public Health Limited Stay At Home Order and the December 3, 2020 Regional Stay At Home Order**

2. Late agenda material, submitted by Councilmember Harrison

## Supplemental Communications and Reports 3

**Item #1: Updates to the COVID-19 Emergency Response Ordinance**

3. Supplemental material, submitted by Councilmember Harrison
4. 13 similarly worded form letters
5. Mathew Lewis
6. Jane Doe
7. Moni Law
8. Sakura Sakura
9. Jeffrey Carter
10. Alfred Twu
11. Marc Janowitz
12. Judy MacLean
13. Barbara Stebbins
14. Kirsten Rose
15. Nancy Stark
16. Elsa Ramos

**Urgency Item: Resolution Establishing Local Law Enforcement Policy Pursuant to the November 19, 2020 California Department of Public Health Limited Stay At Home Order and the December 3, 2020 Regional Stay At Home Order**  
17. Kitty Calavita

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

**Tuesday, December 8, 2020**

**6:00 P.M.**

JESSE ARREGUIN, MAYOR

Councilmembers:

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

DISTRICT 5 – SOPHIE HAHN  
DISTRICT 6 – SUSAN WENGRAF  
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DISTRICT 8 – LORI DROSTE

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## Preliminary Matters

**Roll Call:** 6:17 p.m.

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

**Absent:** None.

## Action Calendar – Public Hearing

### 1. Adoption of the Adeline Corridor Specific Plan and associated General Plan and Municipal Code (Zoning) Amendments and Certification of the Final Environmental Impact Report; Adding Berkeley Municipal Code Chapter 23E.70

**From:** City Manager

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

1. Adopt a Resolution, as recommended by the Planning Commission, to: a. Certify the Environmental Impact Report and make related California Environmental Quality Act (CEQA) findings; and b. Adopt the Adeline Corridor Specific Plan (ACSP) and related General Plan text and map amendments.

2. Adopt first reading of an Ordinance, as recommended by the Planning Commission, amending the Berkeley Municipal Code (BMC) to create the Commercial – Adeline Corridor District regulations and make conforming changes to other BMC sections, as well as adopt Zoning Map changes; adding Berkeley Municipal Code Chapter 23E.70.

3. Authorize the City Manager to make non-substantive, technical conforming edits (e.g. correction of typographical errors and/or clerical errors) to the ACSP, including but not limited to page, figure or table numbering, or zoning regulations in the Municipal Code that may have been overlooked in deleting old sections and cross-referencing new sections of the proposed Adeline Corridor zoning district prior to formal publication of the amendments in the Berkeley Municipal Code, and to return to the Planning Commission and City Council for major revisions only.

4. Authorize staff to create updated versions of the ACSP Implementation Plan (Chapter 8, Table 8.1) as part of the annual progress report on implementation actions to reflect prevailing changes in laws, economic conditions, and the availability of City and other funding sources, which could potentially affect timeframes, responsibilities and potential funding mechanisms.

5. Consider a set of companion recommendations from the Planning Commission.

**Financial Implications:** No direct fiscal impacts

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

Recess 8:35 p.m. – 8:48 p.m.

**Public Testimony:** The Mayor opened the public hearing. 62 speakers.

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

**Vote:** All Ayes.

## Action Calendar – Public Hearing

**Action:** M/S/Failed (Bartlett/Hahn) to:

1. Adopt staff recommendations 1, 2, 3, and 4 as written.
2. Take action on the Planning Commission supplemental recommendations as follows:
  - #1 \$50 million set aside – referred to the Housing Advisory Commission and the Measure O Oversight Committee
  - #2 Affordable Housing Mitigation Fee Ordinance revisions for Moderate Income Level - referred to the City Manager
  - #3 Two-lane street option for Adeline Avenue - referred to the City Manager
  - #4 Funding for parks in the Adeline Corridor - referred to the City Manager
3. Refer to the City Manager to develop a policy for the Affordable Housing Mitigation Fees collected from projects in the Adeline Corridor Planning Area to be placed in a fund dedicated for affordable housing at the Ashby BART site.
4. Re-evaluate the status of the Zoning Ordinance amendments and Adeline Corridor Specific Plan in one year to determine if there is a need for modification.

**Vote:** Ayes – Bartlett, Harrison, Hahn; Noes – Kesarwani, Taplin, Droste; Abstain – Wengraf, Robinson, Arreguin.

**Action:** M/S/Carried (Arreguin/Droste) to adopt the staff recommendation with certain noted amendments.

1. Adopt Resolution No. 69,642–N.S. certifying the Environmental Impact Report and make related California Environmental Quality Act (CEQA) findings, and adopting the Adeline Corridor Specific Plan (ACSP) and related General Plan text and map amendments with the following sentence deleted from page 3-26 “The City will oppose the relocation of the Flea Market away from the BART parking lot without the consent of the designated representative of the vendors, currently Community Services United.”
2. Adopt Ordinance No. 7,744–N.S. amending the Berkeley Municipal Code (BMC) to create the Commercial – Adeline Corridor District regulations and make conforming changes to other BMC sections, as well as adopt Zoning Map changes; adding Berkeley Municipal Code Chapter 23E.70. Amended to increase the stories, feet, floor area ratio, maximum density, and interior lot coverage in Tiers 2, 3, and 4 as written in the modified proposal presented by staff. Second reading scheduled for December 15, 2020.
3. Authorizing the City Manager to make non-substantive, technical conforming edits (e.g. correction of typographical errors and/or clerical errors) to the ACSP, including but not limited to page, figure or table numbering, or zoning regulations in the Municipal Code that may have been overlooked in deleting old sections and cross-referencing new sections of the proposed Adeline Corridor zoning district prior to formal publication of the amendments in the Berkeley Municipal Code, and to return to the Planning Commission and City Council for major revisions only.
4. Authorize staff to create updated versions of the ACSP Implementation Plan (Chapter 8, Table 8.1) as part of the annual progress report on implementation actions to reflect prevailing changes in laws, economic conditions, and the availability of City and other funding sources, which could potentially affect timeframes, responsibilities and potential funding mechanisms.
5. To take action on the Planning Commission supplemental recommendations as follows:

## Action Calendar – Public Hearing

- #1 \$50 million set aside – referred to the Housing Advisory Commission and the Measure O Oversight Committee
  - #2 Affordable Housing Mitigation Fee Ordinance revisions for Moderate Income Level - referred to the City Manager
  - #3 Two-lane street option for Adeline Avenue - referred to the City Manager
  - #4 Funding for parks in the Adeline Corridor - referred to the City Manager
6. To refer to the City Manager to develop a policy for the Affordable Housing Mitigation Fees collected from projects in the Adeline Corridor Planning Area to be placed in a fund dedicated for affordable housing in the Adeline Corridor Planning Area.

**Vote:** Ayes – Kesarwani, Taplin, Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – Harrison.

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 10:50 p.m.

I hereby certify that the foregoing is a true and correct record of the special session meeting held on December 8, 2020.

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Mark Numainville  
City Clerk

## Communications

- None

## Supplemental Communications and Reports 1

- None

## Supplemental Communications and Reports 2

**Item #1: Adoption of the Adeline Corridor Specific Plan and associated General Plan and Municipal Code (Zoning) Amendments and Certification of the Final Environmental Impact Report**

1. 38 similarly worded form-letters (without further delay)
2. 5 similarly worded form-letters (Ashby BART)
3. Charles Siegel, on behalf of Walk Bike Berkeley
4. Steve Martinot
5. Rachel Terp

6. Teresa Clarke
7. Matthew Lewis
8. Jonathan Singh
9. Zipporah Collins
10. Karen Anderson
11. Charis Baz
12. Chris Duncan
13. Laura Stevens
14. Gary Miguel
15. Michael Katz
16. Owen Poindexter
17. Liat Zavodivker
18. Nico Calavita

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

#### **Item #1: Adoption of the Adeline Corridor Specific Plan and associated General Plan and Municipal Code (Zoning) Amendments and Certification of the Final Environmental Impact Report**

19. Joshua Sperry
20. Andrew Collins
21. Abby Thorne-Lyman, on behalf of BART
22. Paul Bickmore
23. Jeffrey Carter
24. Lee Bishop
25. Bonnie Gold
26. Julia Cato
27. Elana Auerbach
28. Chimey Lee
29. Jenna Rubin
30. Todd Darling
31. Mark Rhoades
32. Serena Lim
33. Jeannette McNeil (2)
34. Elaine Bloom
35. Diana Lee
36. Louise Rosenkrantz
37. Andy Pinost
38. Alex Ghenis
39. Heidi Fuchs
40. Jennifer Natali
41. Andrew Fox
42. Sophia DeWitt, on behalf of the East Bay Housing Organization
43. Carol Mancke
44. Teresa Clarke (2)

# BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

TUESDAY, DECEMBER 15, 2020

3:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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## Preliminary Matters

**Roll Call:** 4:04 p.m.

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

**Absent:** Bartlett

Councilmember Bartlett present at 3:22 p.m.

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

## CLOSED SESSION:

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

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

Significant exposure to litigation

**Action:** No reportable action taken.

**2. CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION PURSUANT TO GOVERNMENT CODE SECTIONS 54956.9(a) and 54956.9(d)(1)**

*a. Sandoval v. City of Berkeley, et al. Alameda County Superior Court, Case No. RG19016889*

**Action:** M/S/C (Hahn/Robinson) to authorize the City Attorney to settle Sandoval v. City of Berkeley (Alameda Superior Court Case No. RG19016889) for \$300,000.

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

*b. Moore v. City of Berkeley Alameda County Superior Court, Case No. RG17 863897*

**Action:** M/S/C (Arreguin/Robinson) approved the settlement of \$140,000 in the case of Moore v. City of Berkeley, Alameda County Superior Court No. RG 17 863897, contingent on the plaintiff cooperating with the City Attorney in disclosing and resolving any Medicare lien for medical expenses.

**Vote:** All Ayes.

*c. City of Berkeley v. Regents of the University of California, Alameda Superior Court Case No. RG19023058*

**Action:** No reportable action taken.

## OPEN SESSION:

The City Council met in closed session and authorized the City Attorney to settle Sandoval v. City of Berkeley (Alameda Superior Court Case No. RG19016889) for \$300,000.

The City Council met in closed session and authorized the City Attorney to settle for \$140,000 in the case of Moore v. City of Berkeley, Alameda County Superior Court No. RG 17 863897, contingent on the plaintiff cooperating with the City Attorney in disclosing and resolving any Medicare lien for medical expenses.

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 5:44 p.m.

I hereby certify that the foregoing is a true and correct record of the closed session meeting of December 15, 2020.

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Mark Numainville  
City Clerk

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

**Tuesday, December 15, 2020**

**5:00 P.M.**

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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## Preliminary Matters

**Roll Call:** 5:56 p.m.

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

**Absent:** Bartlett

Councilmember Bartlett present at 5:59 p.m.

**Public Comment - Limited to items on this agenda only - 3 speakers.**

## Consent Calendar

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

**Vote:** All Ayes.

### 1. **Confirming the Results of the November 3, 2020, General Municipal Election**

**From:** City Manager

**Recommendation:**

1. Adopt a Resolution: a) Confirming the results of the November 3, 2020, General Municipal Election; and b) Declaring the passage of Measure FF – Fire, Emergency Services and Wildfire Prevention Tax, Measure GG – Tax on Transportation Network Company Trips, Measure II – Police Accountability Charter Amendment, Measure JJ – Charter Amendment: Mayor and Council Compensation, Measure KK - Charter Amendment: Administrative Provisions and City Attorney, Measure LL - GANN Limit Spending Authority, and Measure MM - Rent Stabilization Ordinance.

2. Adopt three Ordinances amending the Berkeley Municipal Code to incorporate the passage of Measure FF – Fire, Emergency Services and Wildfire Prevention Tax, Measure GG - Tax on Transportation Network Company Trips, and Measure MM - Rent Stabilization Ordinance.

3. Adopt a Resolution codifying the text of Measure LL – GANN Limit Spending Authority.

**Financial Implications:** None

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

**Action:** 1. Adopted Resolution No. 69,643–N.S. (Confirming Results of Election); 2. Adopted Ordinance No. 7,745–N.S. (Measure FF), Ordinance No. 7,746–N.S. (Measure GG), Ordinance No. 7,747–N.S. (Measure MM); 3. Adopted Resolution No. 69,644–N.S. Measure LL.

## Council Consent Items

- 2. 2021-2022 City Council Committee and Regional Body Appointments**  
**From: Mayor Arreguin (Author)**  
**Recommendation:** Adopt a Resolution approving the appointment of Council representatives to City Council Standing Policy Committees, Partnership Committees, Regional Bodies and Liaisons to City Boards and Commissions for a two-year term beginning on January 1, 2021 and ending on December 31, 2022 or until new appointments are made.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, 981-7100  
**Action:** Adopted Resolution No. 69,645–N.S.
- 3. Appointment of Vice-President of the Council for 2021 and 2022**  
**From: Mayor Arreguin (Author)**  
**Recommendation:** Adopt a Resolution appointing Councilmember Lori Droste to be the Vice-President of the Council for a term of one-year effective immediately and ending December 15, 2021 and appointing Councilmember Kate Harrison to be the Vice President of the Council for a term of one-year beginning December 15, 2021 to December 15, 2022 or until new appointments are made.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, 981-7100  
**Action:** Adopted Resolution No. 69,646–N.S.
- 4. 2021 Seating Arrangements for Councilmembers during City Council Meetings**  
**From: Mayor Arreguin (Author)**  
**Recommendation:** Adopt a Resolution rescinding Resolution No. 68,718–N.S and changing the seating placement of City Councilmembers on the dais for calendar year 2021, to accommodate the newly-elected councilmember and newly appointed Vice-Mayor, as follows (From left to right, facing the dais): Kesarwani, Harrison, Bartlett, Droste, Arreguin, Wengraf, Hahn, Robinson, Taplin.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, 981-7100  
**Action:** Adopted Resolution No. 69,647–N.S.

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 6:04 p.m.

I hereby certify that the foregoing is a true and correct record of the special session meeting held on December 15, 2020.

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Mark Numainville  
City Clerk

## **Communications**

- None

## **Supplemental Communications and Reports 1**

- None

## **Supplemental Communications and Reports 2**

- None

## **Supplemental Communications and Reports 3**

- None

**MINUTES**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, December 15, 2020**  
**6:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

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

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/81127849616>. 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: 811 2784 9616. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*To submit an e-mail comment during the meeting to be read aloud during public comment, email [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.*

*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.*

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

## Preliminary Matters

**Roll Call:** 6:05 p.m.

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

**Absent:** None

## Report from Closed Session

The City Council met in closed session and authorized the City Attorney to settle Sandoval v. City of Berkeley (Alameda Superior Court Case No. RG19016889) for \$300,000.

The City Council met in closed session and authorized the City Attorney to settle for \$140,000 in the case of Moore v. City of Berkeley, Alameda County Superior Court No. RG 17 863897, contingent on the plaintiff cooperating with the City Attorney in disclosing and resolving any Medicare lien for medical expenses.

## Ceremonial Matters:

1. Swearing in of newly elected officials
2. Recognition of Vice-Mayor Sophie Hahn
3. Adjourned in memory of Bob Hess, Sr., Berkeley Resident
4. Adjourned in memory of Sean McCabe, Berkeley Resident

## City Auditor Comments:

The City Auditor provided a presentation on her Streets Audit (Item 27)

## City Manager Comments:

The City Manager provided an update on the City's Reimagining Public Safety Process

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

## Consent Calendar

**Public Comment on Consent Calendar and Information Items Only:** 26 speakers.

**Action:** M/S/C (Arreguin/Harrison) to accept revised materials from the Mayor (Item 32) and City Manager (Item 43).

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Hahn) to adopt the Consent Calendar in one motion except as indicated with amended by supplemental items and policy committees as noted.

**Vote:** All Ayes.



## Consent Calendar – Continued Business

- A. Updates to the COVID-19 Emergency Response Ordinance; Amending Berkeley Municipal Code Chapter 13.110** *(Continued from December 8, 2020.)*  
**From:** 4x4 Joint Task Force Committee on Housing  
**Recommendation:** Adopt second reading of Ordinance No. 7,743-N.S. (effective February 1) amending Berkeley Municipal Code 13.110, Title 13, “The COVID-19 Emergency Response Ordinance,” to enhance emergency tenant protections consistent with recently adopted Alameda County laws, action in other jurisdictions, and consultation with community stakeholders representing marginalized groups.  
**First Reading Vote:** Ayes – Taplin, Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – None; Abstain – Kesarwani, Wengraf, Droste.  
**Financial Implications:** See report  
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120  
**Action:** Adopted second reading of Ordinance No. 7,743–N.S.
- B. Adoption of the Adeline Corridor Specific Plan and associated General Plan and Municipal Code (Zoning) Amendments and Certification of the Final Environmental Impact Report; Adding Berkeley Municipal Code Chapter 23E.70** *(Continued from December 8, 2020.)*  
**From:** City Manager  
**Recommendation:** Adopt second reading of Ordinance No. 7,744-N.S., as recommended by the Planning Commission, amending the Berkeley Municipal Code (BMC) to create the Commercial – Adeline Corridor District regulations and make conforming changes to other BMC sections, as well as adopt Zoning Map changes; adding Berkeley Municipal Code Chapter 23E.70.  
**First Reading Vote:** Ayes – Kesarwani, Taplin, Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – Harrison.  
**Financial Implications:** No direct fiscal impacts  
Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Action:** Adopted second reading of Ordinance No. 7,744–N.S.

## Consent Calendar

- 1. Amending Berkeley Municipal Code Chapter 11.28 – Food Establishments**  
**From:** City Manager  
**Recommendation:** Adopt second reading of Ordinance No. 7,739-N.S. amending Berkeley Municipal Code Chapter 11.28, Section 11.28.010 Statutory Provisions, Section 11.28.020 Definitions and adding Section 11.28.370 Microenterprise Home Kitchen Operation (MHKO).  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400  
**Action:** Adopted second reading of Ordinance No. 7,739–N.S.

## Consent Calendar

- 2. Proposed Amendments to the Building Energy Saving Ordinance (BESO); Amending Berkeley Municipal Code Chapter 19.81**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,740-N.S. amending the Building Energy Saving Ordinance (BESO), Chapter 19.81 of the Berkeley Municipal Code, to align with building electrification goals, leverage upcoming rebates and incentives, improve transparency in real estate sales process, and develop mandatory energy requirements to be phased in.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Action:** Adopted second reading of Ordinance No. 7,740–N.S.
- 3. Lease Agreement: Berkeley Housing Authority at 1947 Center Street, Fifth Floor, Southwest Corner**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,741-N.S. authorizing the City Manager to execute a lease agreement with Berkeley Housing Authority to use and occupy the City property at 1947 Center Street, 5th floor Southwest Corner for a ten-year lease term with an option to extend for two additional ten-year terms.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted second reading of Ordinance No. 7,741–N.S.
- 4. Resolution Reviewing and Ratifying the Proclamation of Local Emergency Due to the Spread of a Severe Acute Respiratory Illness Caused by a Novel (New) Coronavirus (COVID-19)**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020 and November 17, 2020.  
**Financial Implications:** See report  
Contact: Farimah Brown, City Attorney, (510) 981-6950  
**Action:** Adopted Resolution No. 69,648–N.S.

## Consent Calendar

5. **1444 Fifth Street, LLC v. City of Berkeley, Case No. RG19032434**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the settlement of the action entitled 1444 Fifth Street, LLC v. City of Berkeley, Case No. RG19032434.  
**Financial Implications:** See report  
 Contact: Farimah Brown, City Attorney, (510) 981-6950  
**Action:** Adopted Resolution No. 69,649–N.S.
  
6. **Minutes for Approval**  
**From: City Manager**  
**Recommendation:** Approve the minutes for the council meetings of November 2, 2020 (closed), November 10, 2020 (closed and regular), November 16, 2020 (closed) and November 17, 2020 (closed and regular).  
**Financial Implications:** None  
 Contact: Mark Numainville, City Clerk, (510) 981-6900  
**Action:** Approved the minutes as submitted.
  
7. **Contract: National Institute for Criminal Justice Reform to Manage and Lead a Community Engagement Process to Develop a New Paradigm of Public Safety in Berkeley**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with the National Institute for Criminal Justice Reform in an amount not-to-exceed \$270,000 for the period beginning January 1, 2021 and ending June 30, 2022.  
**Financial Implications:** See report  
 Contact: Dave White, City Manager's Office, (510) 981-7000  
**Action:** Adopted Resolution No. 69,650–N.S. as revised in Supplemental Communications Packet #2 by the City Manager.
  
8. **Contract No. 31900009 Amendment: Building Opportunities for Self-Sufficiency (BOSS) for McKinley House (2111 McKinley Avenue, Berkeley, CA 94703)**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 31900009 with Building Opportunities for Self-Sufficiency (BOSS) through November 1, 2021, adding \$120,000 for a total contract Not to Exceed (NTE) of \$370,000, to fund Mental Health clients living at 2111 McKinley Avenue in Berkeley. This will extend the contract by one year.  
**Financial Implications:** See report  
 Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400  
**Action:** Adopted Resolution No. 69,651–N.S.

## Consent Calendar

- 9. Contract No. 32000232 Amendment: Worldwide Travel Staffing for Nurse Registry Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32000232 with Worldwide Travel Staffing for nurse registry services. The total not to exceed limit will be \$1,272,580 and the contract end date will be extended to June 30, 2025. The contract will serve the needs of the Health, Housing and Community Services Department, providing fill-in nursing services as necessary at the Mental Health Clinic, Berkeley High School Health Center, COVID-19 Disease Containment Unit, the Public Health Emergency Preparedness' COVID-19 vaccine readiness planning, and the Berkeley Respite Program's nursing services.  
**Financial Implications:** See report  
 Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400  
**Action:** Adopted Resolution No. 69,652–N.S.
- 10. Revenue: Federal COVID-19 Funding from HHS CARES Act Provider Relief Fund**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to accept payments from the Health and Human Services (HHS) CARES Act Provider Relief Fund and to execute any resultant revenue agreements and amendments; which enables City Departments to conduct and implement mitigation strategies in response to COVID-19 in the estimated amount of \$181,962 for FY 2021.  
**Financial Implications:** See report  
 Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400, David Brannigan, Fire, (510) 981-3473  
**Action:** Adopted Resolution No. 69,653–N.S.
- 11. Kovarus, LLC: Using the California Department of General Services' (DGS) Software Licensing Program (SLP) for Software License Purchases**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to increase spending authority with Kovarus LLC ("Kovarus") for the purchase of Varonis software licenses, utilizing pricing and contracts, amendments, and extensions from the California Department of General Services (DGS) Software Licensing Program (SLP) for an amount not-to-exceed \$165,000, and the period beginning December 16, 2020 through June 30, 2021.  
**Financial Implications:** Cost Allocation Fund - \$165,000  
 Contact: Savita Chaudhary, Information Technology, (510) 981-6500  
**Action:** Adopted Resolution No. 69,654–N.S.

## Consent Calendar

- 12. Donation: Friends of Berkeley Tuolumne Camp for Berkeley Tuolumne Camp Construction**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting a cash donation from the Friends of Berkeley Tuolumne Camp up to the amount of \$700,000 for the Berkeley Tuolumne Camp construction.  
**Financial Implications:** See report  
 Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted Resolution No. 69,655–N.S.
- 13. Joint Use Agreement Between the City of Berkeley and Berkeley Unified School District**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution executing a Joint Use Agreement between the City of Berkeley and the Berkeley Unified School District (BUSD) for use of BUSD playgrounds, pools and buildings and City park facilities.  
**Financial Implications:** See report  
 Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted Resolution No. 69,656–N.S.
- 14. Recommendations for Implementing Phase 2 of the Measure T1 Infrastructure Bond Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution to implement the City Manager, Parks and Waterfront Commission, and Public Works Commission Final List of Projects for phase 2 of the Measure T1 infrastructure bond program.  
**Financial Implications:** See report  
 Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700;  
 Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,657–N.S.
- 15. FEMA Hazard Mitigation Grant Application for Seismic Retrofit of the South Berkeley Senior Center**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to submit a grant application to the Federal Emergency Management Agency for funds in the amount of \$1,875,000 for the seismic retrofit of the South Berkeley Senior Center; authorizing the City Manager to accept the grant; to execute any resultant revenue agreement and amendments; authorizing an amount of \$625,000 in local matching funds; and authorizing the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.  
**Financial Implications:** See report  
 Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,658–N.S.

## Consent Calendar

- 16. Receipt of and Funding Agreement Authorization for the Bay Area Air Quality Management District West Oakland Zero-Emission Grant Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to accept \$100,914 in grant funds from the Bay Area Air Quality Management District West Oakland Zero-Emission Grant Program (Project #19RFG23) and to enter into a Funding Agreement in order to support the electrification of the City's fleet vehicles.  
**Financial Implications:** See report  
 Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,659–N.S.
- 17. Grant Application: COVID-19 Rapid Response Bicycle and Pedestrian Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to submit a grant application for up to \$52,000 to the Alameda County Transportation Commission COVID-19 Rapid Response Bicycle and Pedestrian Grant Program for the Berkeley Healthy Streets project, and accept the grant awarded, and execute any resultant agreements and amendments.  
**Financial Implications:** See report  
 Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,660–N.S.
- 18. Extending the Community Workforce Agreement with Building & Construction Trades Council, et al, for Construction Projects Over \$500,000**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract amendment to the Community Workforce Agreement with the Alameda County Building & Construction Trades Council, and twenty-two labor organizations on City capital improvement projects with an estimated value in excess of \$500,000 to extend the agreement through June 30, 2023.  
**Financial Implications:** See report  
 Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,661–N.S.
- 19. Sole Source Contract Negotiations – Community Conservation Center, Inc. and Ecology Center, Inc.**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to continue sole source negotiations with Ecology Center, Inc. and Community Conservation Centers, Inc.  
**Financial Implications:** See report  
 Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,662–N.S.

## Consent Calendar

- 20. Contract: Alameda-Contra Costa County Transit District (AC Transit) for EasyPass Program 2021 to 2025**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Alameda-Contra Costa County Transit District (AC Transit) for the EasyPass bus transit pass program for City of Berkeley employees in an amount not to exceed \$774,453 for the five-year period commencing January 1, 2021 through December 31, 2025.  
**Financial Implications:** Payroll Deduction Trust Fund - \$774,453  
 Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,663–N.S.
- 21. Contract: Benefit Resource, Inc. for Third-Party Administrator of the Employee Commute Benefit Program; Contract No. 8746A Amendment: Edenred USA**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions authorizing the City Manager to:  
 1. Execute a contract and any amendments with Benefit Resource, Inc., (BRI) to provide third-party administrator services for the City of Berkeley's Employee Commute Benefit Program for an amount not to exceed \$28,974 for the period of March 1, 2021 through February 28, 2023; and  
 2. Amend Contract No. 8746A with the City's current third-party administrator, Edenred Commuter Benefit Solutions, a subsidiary of Edenred USA, increasing the contract amount by \$6,000 for a total amount not to exceed \$276,000, and extending the contract period three months through March 31, 2021 to ensure a seamless transition to BRI, the new third-party administrator.  
**Financial Implications:** See report  
 Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,664–N.S. (Benefit Resource, Inc.), and Resolution No. 69,665–N.S. (Edenred USA).
- 22. Purchase Order: TYMCO, Inc. for three Model 600X Regenerative Air Sweeper**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution satisfying City Charter Article XI Section 67.2 requirements allowing the City to participate in Houston-Galveston Area Council contact bid procedures, and authorizing the City Manager to execute a purchase order with TYMCO, Inc. for three Model 600X Regenerative Air Sweeper in an amount not to exceed \$962,000.  
**Financial Implications:** See report  
 Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,666–N.S.

## Consent Calendar

- 23. Purchase Order: Arata Equipment Company for Eleven Side Loader Collection Trucks**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcewell (previously NJPA) contract bid procedures, and authorizing the City Manager to execute a purchase order for eleven (11) Side Loader Collection Trucks with Arata Equipment Company in an amount not to exceed \$4,554,575.  
**Financial Implications:** Equipment Replacement Fund - \$4,554,575  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,667–N.S.
- 24. Purchase Order: Owen Equipment Sales for One Vactor Combination Sewer Cleaner Truck**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcewell (formerly NJPA) contract # 122017-FSC and authorizing the City Manager to execute a purchase order for one Vactor Combination Sewer Cleaner with Owen Equipment Sales in an amount not to exceed \$327,000.  
**Financial Implications:** Various Funds - \$327,000  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,668–N.S.



## Consent Calendar

25. **Prohibition on the Resale of Used Combustion Vehicles in 2040** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*

**From: Community Environmental Advisory Commission**

**Recommendation:** Review and refer to the City Attorney for finalization the attached ordinance prohibiting the resale of used, existing combustion-powered vehicles beginning in 2040.

*(On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to refer to the City Manager for review of the attached ordinance prohibiting the resale of used, existing combustion-powered vehicles beginning in 2040, to the extent legally possible.)*

**Financial Implications:** See report

Contact: Viviana Garcia, Commission Secretary, (510) 981-7460

**Action:** Approved the recommendation of the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee with the referral modified to provide two options of the ordinance: 1) as proposed by the policy committee, and 2) with the proposed additions below:

1. *Replace the word "vehicle" with "passenger vehicle" throughout the Resolution*
2. *Add a section that requires that all purchasers of combustion passenger vehicles in Berkeley be notified of this regulation at point of sale starting 60 days after the passage of this ordinance. (request that Legal craft the language to be used in the disclosure)*
3. *In 0.97.030 Definitions, include "Passenger Vehicle" shall be used as defined in California Vehicle Code 465*
4. *In Section, 9.97.040 Prohibition, clarify that exceptions shall include sales for trade-in and for sales as scrap metal.*

## Consent Calendar

- 26. Allocation of \$3 Million Over Two Years, FY22 and FY23, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs) From: Sugar Sweetened Beverage Product Panel of Experts**  
**Recommendation:** Adopt a Resolution allocating \$3 million from the General Fund in FY22 (July 1, 2021 through June 30, 2022) and FY23 (July 1, 2022 through June 30, 2023) that shall be invested in a grant program administered and coordinated by the Berkeley Public Health Division consistent with the SSBPPE's goals to reduce the consumption of sugar sweetened beverages (SSB) in Berkeley and to address the effects of SSB consumption. The total of \$3 million will be distributed in two installments of \$1.5 million per year for FY22 and FY23. In each of these years, the funds will be distributed as follows: a. Direct the City Manager to award up to 42.5% of the allocated funds to Berkeley Unified School District (BUSD) through a grant proposal to reduce the consumption of sugar-sweetened beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs. The BUSD funding process is separate from the RFP process for the general community-based organization funding process and shall be guided by the SSBPPE Commission's Criteria for BUSD Funding (Attachment 2 to the report). b. Direct the City Manager to award at least 42.5% of the allocated funds through an RFP process managed by the Public Health Division for grants to community-based organizations consistent with the SSBPPE's goals to reduce the consumption of SSBs and to address the effects of SSB consumption. The community-based organization funding RFP process is separate from the BUSD funding process and shall be guided by the SSBPPE Commission's Criteria for Community Agency Grants (Attachment 3 to the report). c. Direct the City Manager to utilize 15% of the allocated funds to support the Berkeley Public Health Division (BPHD) to coordinate and monitor the grant process, coordinate the overall program evaluation, and produce an annual report that disseminates process and outcome data from the epidemiologist resulting from the SSBPPE funding program.  
**Financial Implications:** See report  
 Contact: Dechen Tsering, Commission Secretary, (510) 981-5300  
**Action:** Adopted Resolution No. 69,669–N.S. with the allocation set at total of \$2,662,506 for Fiscal Years 2022 and 2023 combined.
- 27. Rocky Road: Berkeley Streets at Risk and Significantly Underfunded From: Auditor**  
**Recommendation:** We recommend City Council request that the City Manager report back by June 15, 2021, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented by the Public Works Department.  
**Financial Implications:** None  
 Contact: Jenny Wong, Auditor, (510) 981-6750  
**Action:** Approved recommendation.

## Council Consent Items

**28. Tenth Annual Martin Luther King Jr. Celebration: City Sponsorship and Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Fund**

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

**Recommendation:**

1. Adopt a Resolution co-sponsoring the 10th Annual Martin Luther King Jr. Celebration on January 18, 2021.
2. Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$250 from Mayor Arreguin, to the Berkeley Rotary Endowment, the fiscal sponsor of the 10th Annual Martin Luther King Jr. celebration, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguin and any other Councilmembers who would like to contribute.

**Financial Implications:** Mayor's Discretionary Funds - \$250

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

**Action:** Adopted Resolution No. 69,670–N.S. (Co-Sponsor), and Resolution No. 69,671–N.S. (Relinquishment of Funds) revised to include contributions from the following Councilmembers up to the amounts listed: Councilmember Wengraf - \$250; Councilmember Harrison - \$250; Councilmember Robinson - \$200; Vice-Mayor Droste - \$100; Councilmember Kesarwani - \$100; Mayor Arreguin - \$250.

**29. Appoint Alexandria Thomas-Rodriguez to the Berkeley Housing Authority Board**

**From: Mayor Arreguin (Author)**

**Recommendation:** Adopt a Resolution appointing Alexandria Thomas-Rodriguez to serve as a tenant Commissioner on the Berkeley Housing Authority Board of Commissioners for a two-year term.

**Financial Implications:** None

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

**Action:** Adopted Resolution No. 69,672–N.S.

**30. Establishment of Reimagining Public Safety Task Force**

**From: Mayor Arreguin (Author), Councilmember Hahn (Author), Councilmember Bartlett (Author), Councilmember Harrison (Author)**

**Recommendation:**

1. Establish a Reimagining Public Safety Task Force, comprised of: one representative appointed by each member of the City Council and Mayor, one representative appointed by the Mental Health, Police Review and Youth Commissions, one representative appointed by the Associated Students of the University of California (ASUC), one representative appointed by the Berkeley Community Safety Coalition (BCSC), and three additional members to be appointed "At Large" by the Task Force. The Task Force will be guided by a professional consultant, and will include the participation of City Staff from the City Manager's Office, Human Resources, Health, Housing and Community Services, Berkeley Fire Department, Berkeley Police Department, and Public Works Department. For visual,

## Council Consent Items

see Attachment 1.

2. Appointments to the Task Force should be made by January 31, 2021, and reflect a diverse range of experiences, knowledge, expertise and representation. To maintain the Council's July 14, 2020, commitment to centering the voices of those most impacted in our process of reimagining community safety appointments should be made with the goal of achieving a balance of the following criteria: a. Active Members of Berkeley Community (Required of All)\*, b. Representation from Impacted Communities - Formerly incarcerated individuals, - Victims/family members of violent crime - Immigrant community, - Communities impacted by high crime, over-policing and police violence, - Individuals experiencing homelessness, - Historically marginalized populations, c. Faith-Based Community Leaders, d.

Expertise/Leadership in Violence Prevention, Youth Services, Crisis Intervention, and Restorative or Transformative Justice, e. Health/ Public Health Expertise, f. City of Berkeley labor/union representation, g. Law Enforcement Operation Knowledge, h. City Budget Operations/Knowledge, i. Committed to the Goals and Success of The Taskforce (Required of All)

3. The charge of the Task Force is as outlined in the July 14, 2020, City Council Omnibus Action, and should include but is not limited to: I. Building on the work of the City Council, the City Manager, BPD, the PRC and other City commissions and other working groups addressing community health and safety. II. Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley. III. Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of Reduce, Improve and Reinvest as proposed by the National Institute for Criminal Justice Reform considering, among other things: A. The social determinants of health and changes required to deliver a holistic approach to community-centered safety. B. The appropriate response to community calls for help including size, scope of operation and power and duties of a well-trained police force. C. Limiting militarized weaponry and equipment. D. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration. E. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems. F. Reducing the Berkeley Police Department budget to reflect its revised mandates, with a goal of a 50% reduction, based on the results of requested analysis and achieved through programs such as the Specialized Care Unit.

4. Direct the City Manager to ensure that the working group of City Staff as outlined in her October 28th Off-Agenda Memo is coordinating with the Task Force.

The Task Force's goal/output will be a set of recommended programs, structures and initiatives to incorporate into upcoming budget processes for FY 2022-23 and, as a second phase, in the FY 2024-2025 budget processes to ensure that recommended changes will be achieved. The Task Force shall return to City Council an initial plan and timeline by April 1, 2021, to ensure the first phase of changes can be incorporated into the FY 2022-23 Budget Process.

## Council Consent Items

**Financial Implications:** See report

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

**Action:** Adopted Resolution No. 69,673–N.S. and approved recommendation as revised in Supplemental Communications #2 by Mayor Arreguin.

- 31. Adopt a Resolution Advocating for More Effective Methods of Traffic Enforcement**  
**From: Mayor Arreguin (Author), Councilmember Droste (Author), Councilmember Robinson (Author), Councilmember Taplin (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution supporting the California State Legislature to enact legislation that would give municipalities greater flexibility to enforce speeding and vehicle code enforcement laws and send copies of the resolution to Governor Gavin Newsom, Senator Nancy Skinner and Assemblymember Buffy Wicks  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, (510) 981-7100  
**Action:** Adopted Resolution No. 69,674–N.S.
- 32. Deferral of Remaining Permit Fees for 2009 Addison Street**  
**From: Mayor Arreguin (Author), Councilmember Wengraf (Co-Sponsor),**  
**Recommendation:** Approve the deferral of \$720,000 in remaining permit and inspection fees for Berkeley Repertory Theater’s housing project at 2009 Addison Street for a period of ten years, after which point the fees will be repaid to the City of Berkeley. Authorize the City Manager to execute a written agreement to memorialize this deferral and repayment requirements.  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, (510) 981-7100  
**Action:** Approved recommendation as revised in supplemental materials from Mayor Arreguin accepted at the meeting to read as follows:
- Refer to the City Manager to conduct a feasibility analysis and develop an MOU with the Berkeley Repertory Theater to defer \$720,000 in remaining permit and inspection fees for Berkeley Repertory Theater’s housing project at 2009 Addison Street (leaving flexibility for timing, setting of interest, schedule of payments, and fund sources).*
- 33. Support the Installation of a Plaque recognizing United States Vice President-Elect Kamala Harris in front of her childhood home in District 2**  
**From: Councilmember Davila (Author), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution supporting the installation of a plaque recognizing United States Vice President-Elect Kamala Harris in front of her childhood home in District 2, and refer to the City Manager to start the process.  
**Financial Implications:** See report  
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120  
**Action:** Adopted Resolution No. 69,675–N.S.

## Council Consent Items

- 34. Support calling upon food companies within Berkeley to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities**  
**From: Councilmember Davila (Author), Councilmember Harrison (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution calling upon supermarkets, restaurant companies, and other food corporations with locations in Berkeley, CA to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities.  
**Financial Implications:** See report  
 Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120  
**Action:** Item 34 continued to January 19, 2021.
- 35. Potential Bonding and Funding Opportunities for Improving the PCI of Residential Streets, and Creating a Paving Master Plan** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*  
**From: Councilmember Harrison (Author), Councilmember Kesarwani (Co-Sponsor), Councilmember Bartlett (Co-Sponsor)**  
**Recommendation:** Refer to the to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee (FITES) to continue working with the Public Works Department and the Commission to explore potential bonding and funding opportunities for improving the PCI of residential streets, create a paving master plan, and consider the Public Works Commission Paving Policy, once complete. *(On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to send the item to the City Council requesting that the item be referred back to the Facilities committee for further consideration and to request that Council refer the Paving Plan from the Public Works Commission to the committee when the item comes before Council in January.)*  
**Financial Implications:** See report  
 Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140  
**Action:** Approved the recommendation as adopted by the policy committee.
- 36. Reserving \$2.5M in Housing Trust Funds for the Small Sites Program**  
**From: Councilmember Hahn (Author), Mayor Arreguin (Author), Councilmember Harrison (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution reserving \$2.5 million in Housing Trust Funds for the Small Sites Program.  
**Financial Implications:** See report  
 Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150  
**Action:** Councilmember Wengraf added as a co-sponsor. Adopted Resolution No. 69,676 –N.S. as revised in Supplemental Communications Packet #1 by Councilmember Hahn to add a request for the City Manager to provide a status report on the Small Sites Program in six months so that Council can decide on future funding allocations, and adds Councilmember Wengraf as a co-author.  
**Vote:** Ayes – Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin; Noes – None; Abstain – Kesarwani, Droste.

## Council Consent Items

- 37. The Berkeley Baby Book Project: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds**  
**From: Councilmember Wengraf (Author), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$125 per Councilmember, including \$125 from Councilmember Wengraf, to support the Berkeley Baby Book Project, a non-profit, with funds relinquished to the City's general fund. The relinquishment of funds from Councilmember Wengraf and all other Councilmembers who would like to contribute, will provide books to Berkeley children aged 0-5 years. The books are delivered by USPS and addressed to the child who owns them at no cost to their family. \$125 covers 5 years of monthly delivery costs.  
**Financial Implications:** See report  
 Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160  
**Action:** Councilmember Bartlett added as a co-sponsor. Adopted Resolution No. 69,677–N.S. revised to include contributions from the following Councilmembers up to the amounts listed: Councilmember Kesarwani - \$125; Councilmember Robinson - \$125; Councilmember Harrison - \$125; Councilmember Bartlett - \$125; Vice-Mayor Droste - \$100; Mayor Arreguin \$125.
- 38. Resolution: Support of S. 4571 - 2020 Census Deadline Extensions Act**  
**From: Councilmember Robinson (Author), Mayor Arreguin (Co-Sponsor), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution supporting S. 4571, the 2020 Census Deadline Extensions Act, which would extend the Census Bureau's statutory deadlines for delivering apportionment and redistricting data to April and July 2021, respectively.  
**Financial Implications:** None  
 Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170  
**Action:** Adopted Resolution No. 69,678–N.S.
- 39. Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*  
**From: Councilmember Droste (Author), Mayor Arreguin (Author), Councilmember Robinson (Author), Councilmember Harrison (Co-Sponsor)**  
**Recommendation:** Refer to the City Manager to develop a program, and if necessary, ordinance language to facilitate the transition of temporary outdoor dining and commerce permits that were obtained under the City's declaration of emergency to permanent status. Consider criteria for transitioning spaces for public vs. private outdoor use: - Consider the structural, materials, safety and other criteria for temporary vs. permanent outdoor spaces - Consider costs and benefits of private outdoor spaces adjacent to specific businesses on customer access, parking availability, parking revenues, and all other factors. - Consider merchant opt-out vs. opt-in: To encourage and support the use of outdoor commerce, upon the conclusion of the City declaration of emergency, outdoor commerce permit holders might

## Council Consent Items

automatically be transitioned to permanent permit status unless the permit holder chooses to remove the installation, or the city might reach out to temporary permit holders and offer an opt-in or quick transition program. - Consider fees and potential fee waivers for temporary spaces transitioning to permanent status: Fees associated with the minor encroachment permits or sidewalk seating typically necessary for outdoor dining and commerce permits could be waived for all transitioning permits. - Consider and bring forward any and all suggestions to help transition temporary spaces to permanent with as few hurdles and costs possible. - Request the Agenda Committee consider sharing this item on Berkeley Considers. - Consider removing the prohibition of parklets on State Highways (Ashby Ave, San Pablo Ave., for example)

*(On November 2, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to send the item to the City Council with the recommendation language as amended by the committee. The revised recommendation language includes: Refer to the City Manager to develop a program and, if necessary, ordinance language to facilitate the transition of temporary outdoor dining and commerce permits that were obtained under the City's declaration of emergency to permanent status. - Consider criteria for transitioning spaces for Public vs. Private outdoor use. - Consider the structural, materials, safety and other criteria for temporary vs. permanent outdoor spaces. - Consider costs and benefits of private outdoor spaces adjacent to specific businesses on customer access, parking availability, parking revenues, and all other factors. - Consider Merchant opt-out vs. opt-in: To encourage and support the use of outdoor commerce, upon the conclusion of the City declaration of emergency, outdoor commerce permit holders might automatically be transitioned to permanent permit status unless the permit holder chooses to remove the installation, or the City might reach out to temporary permit holders and offer an opt-in or quick transition program. - Consider Fees and potential Fee waivers for temporary spaces transitioning to permanent status: Fees associated with the minor encroachment permits or sidewalk seating typically necessary for outdoor dining and commerce permits could be waived for all transitioning permits. - Consider Protocols for transfer of private use parklets if businesses change, turn over, etc. - Consider and bring forward any and all suggestions to help transition temporary spaces to permanent with as few hurdles and costs possible. - Request the Agenda Committee consider sharing this item on Berkeley Considers.)*

**Financial Implications:** See report

Contact: Lori Droste, Councilmember, District 8, (510) 981-7180

**Action:** Approved the recommendation as adopted by the policy committee.

Recess 9:06 p.m. – 9:16 p.m.



## Action Calendar – Public Hearings

- 40. Referral Response: Zoning Ordinance Amendments that Reform Residential Off-Street Parking; Amending Berkeley Municipal Code Title 14 and Title 23**  
(Continued from December 1, 2020. Item contains revised material.)

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion select among proposed ordinance language options and take the following action:  
Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Title 14 and Title 23 which would:

1. Modify Minimum Residential Off-street Parking Requirements
2. Impose Residential Parking Maximums in Transit-rich Areas
3. Amend the Residential Preferential Parking (RPP) Permit Program
4. Institute Transportation Demand Management (TDM) Requirements

**Financial Implications:** See report

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

**Action:** The Mayor opened the public hearing. M/S/C (Arreguin/Wengraf) to continue the public hearing to a special meeting on January 26, 2021 at 4:00 p.m. including supplemental material submitted in Supplemental Communications Packet #2 from Councilmember Hahn.

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

Councilmember Bartlett absent 9:16 p.m. – 9:19 p.m.

- 41. Referral Response: Amendments to the Home Occupations Ordinance; Amending BMC Sub-Titles 23C, 23D, 23E, and 23F**

**From: City Manager**

**Recommendation:** Conduct a public hearing and, upon conclusion, adopt the first reading of an Ordinance amending the Zoning Ordinance to streamline the permitting process for Home Occupations and amending Berkeley Municipal Code Chapter 23C.16 Home Occupations, Chapter 23E.84 MU-R Mixed Use-Residential District Provisions, Chapter 23F.04 Definitions, and Use Tables in Applicable Zoning Districts.

**Financial Implications:** See report

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

**Action:** The Mayor opened the public hearing. M/S/C (Arreguin/Wengraf) to continue the public hearing to February 9, 2021.

**Vote:** All Ayes.

## Action Calendar

- 42. FY 2020 Year-End Results and FY 2021 First Quarter Budget Update** *(Continued from November 17, 2020. Item contains revised material.)*

**From: City Manager**

Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000

**Action:** See Item 43.

- 43. Amendment: FY 2021 Annual Appropriations Ordinance** *(Continued from November 17, 2020. Item contains revised material.)*

**From: City Manager**

**Recommendation:** Adopt first reading of an Ordinance amending FY 2021 Annual Appropriations Ordinance No. 7,724 - N.S. for fiscal year 2021 based upon recommended re-appropriation of committed FY 2020 funding and other adjustments since July 1, 2020 in the amount of \$184,267,388 (gross) and \$179,848,051 (net).

**Financial Implications:** See report

Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000

**Action:** M/S/C (Arreguin/Hahn) to adopt a temporary rule limiting public comment to one minute per speaker.

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

**Action:** 19 speakers. M/S/C (Arreguin/Harrison) to adopt first reading of Ordinance No. 7,748-N.S. with re-appropriations in the amount of \$198,706,198 (gross) and \$194,286,861 (net) and as amended at the meeting based on revised materials submitted by the City Manager. Second reading scheduled for January 19, 2021.

**Vote:** All Ayes.

- 44. Support Loan Forgiveness to Berkeley Youth Alternatives**

**From: Councilmember Davila (Author)**

**Recommendation:** Adopt a Resolution supporting the forgiveness of the City's \$100,000 loan to Berkeley Youth Alternatives (BYA), and direct the City Manager or her designee to process the loan forgiveness to BYA and release the deed of trust.

**Financial Implications:** \$100,000

Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

**Action:** Moved to Consent Calendar. Adopted Resolution No. 69,679–N.S.

## Action Calendar

### 45. Amendments to Berkeley Police Department Policy 300, Use of Force

**From: City Manager**

**Recommendation:**

A) Adopt the proposed amendments to Policy 300 as proposed by the City Manager, in order to comply with state law, and to provide additional definitions, and to clarify existing language within Policy 300, including the Department's recommendation for section 300.1.2;

-OR-

B) Adopt the proposed amendments to Policy 300 as proposed by the Police Review Commission, in order to comply with state law, and to provide additional definitions, and to clarify existing language within Policy 300, including the Police Review Commission's recommendation for Sections 300.1.2 and 300.1.3.

**Financial Implications:** See report

Contact: Andrew Greenwood, Police, (510) 981-5900

**Action:** M/S/C (Arreguin/Hahn) to suspend the rules and extend the meeting to 12:00 a.m.

**Vote:** All Ayes.

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

**Vote:** All Ayes.

**Action:** 17 speakers. M/S/C (Harrison/Hahn) to adopt Policy 300 as written by the Police Review Commission with the amendments noted below.

#### 300.1.2 USE OF FORCE STANDARD

In dealing with suspects, officers shall ~~strive to~~ use alternatives to physical force whenever reasonably possible. In all cases where physical force is used, officers shall ~~strive to use the~~ a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict.

#### 300.1.2 USE OF FORCE STANDARD

First, it imposes a higher duty upon officers to ~~strive to use the~~ a minimal amount of force objectively necessary to safely achieve their legitimate law enforcement objective.

#### 300.1.3 CORE PRINCIPLES

A. DE-ESCALATION AND FORCE MINIMIZATION. Every officer's goal, throughout an encounter with a member of the public, shall be to de-escalate wherever possible and resolve the encounter without resorting to the use of force. Wherever possible, officers shall employ de-escalation techniques to increase the likelihood of voluntary compliance with law enforcement requests or directives and, thereby, decrease the likelihood that a use of force will become necessary during an incident. Further, in any encounters that do call for applying force, officers must always ~~strive to use the~~ a minimal amount of force that is objectively reasonable and objectively necessary to safely achieve their legitimate law enforcement objective.

#### 300.1.4 DEFINITIONS

Minimal amount necessary – The least amount of force within a range that is objectively reasonable and objectively necessary to safely effect an arrest or achieve some other legitimate law enforcement purpose.

**Vote:** All Ayes.

## Action Calendar – Continued Business

### C. **Urgency Item: Resolution Establishing Local Law Enforcement Policy Pursuant to the November 19, 2020 California Department of Public Health Limited Stay At Home Order and the December 3, 2020 Regional Stay At Home Order**

*(Continued from December 8, 2020.)*

**From: Councilmember Harrison (Author)**

**Recommendation:** State Health officials have recently issued two vaguely worded Stay At Home Orders that closely resemble curfews. The State's Orders lack critical specificity regarding enforcement procedures and mechanisms. The Orders, if enforced vigorously, could disproportionately impact low-income people, unhoused people, and people of color, and have the potential to increase the frequency of interactions between law enforcement and marginalized and vulnerable communities.

The December 3, 2020 order was issued after the deadline for Council items and has the potential to immediately impact community members. In addition, the November 19, 2020 Order is currently in effect and warrants immediate Council action.

Data analyses suggest that the June 2020 curfew correlated with significant increases law enforcement racial disparities within Berkeley. Across the Bay Area, certain law enforcement leaders, including police chiefs and sheriffs, have stated they do not intend to indiscriminately and unconstitutionally stop people encountered away from home merely on suspicion of violating the State's curfew orders. It is in the public interest for the Council and City to adopt a similar policy.

**Financial Implications:** See report

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

**Action:** Moved to Consent Calendar. Adopted Resolution No. 69,680–N.S. with resolved clauses to read as follows:

*NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that City of Berkeley police will not stop individuals driving, or biking, walking or otherwise circulating outside of their homes during curfew hours solely on suspicion of violating curfew terms, November 19, 2020 Limited Stay At Home Order, or the State's December 3, 2020 Regional Stay at Home Order, and the Department will not dispatch or stop or question for these purposes unless there is reasonable suspicion of criminal behavior separate and apart from a curfew violation. Nothing in this resolution shall preclude City enforcement of unpermitted gatherings of groups of individuals of multiple households, or any other provisions of any local Health Order or State Health Order.*

*BE IT FURTHER RESOLVED that members of the public reporting alleged violations of the State's November 19, 2020 Limited Stay At Home Order or the State's December 3, 2020 Regional Stay at Home Order to the City of Berkeley will be advised to call or email 3-1-1 or Police Non-Emergency number after business hours to report their observations and concerns, and such reports shall be routed to the City Manager's office or appropriate city personnel for consideration of appropriate enforcement.*

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

**Adjournment**

Adjourned at 12:30 a.m.

I hereby certify that the foregoing is a true and correct record of the regular session meeting held on December 15, 2020.

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Mark Numainville  
City Clerk

**Communications**

**Item #27: Rocky Road: Berkeley Streets at Risk and Significantly Underfunded**

1. Steve Kromer

**Item #34: Support calling upon food companies within Berkeley to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities**

2. Sabrina Ashjian, on behalf of the California Humane Society

**Item #37: The Berkeley Baby Book Project: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds**

3. Seena Hawley, on behalf of The Berkeley Baby Book Project

**Berkeley Firefighters Staffing**

4. Colin Arnold, on behalf of the Berkeley Firefighters Association

**COVID-19 Concerns**

5. Vivian Warkentin
6. Steven Schuyler
7. Nathan Francis

**Needle Disposal Boxes**

8. Maxina Ventura
9. 11 form-letters

**Pickleball Courts**

10. Elaine
11. Matt Ruby
12. Neil Collier

13. Christy Shepard
14. Fran Wickner
15. Lisa Vogel
16. Mike Hines
17. Gillie Tillson
18. Carmen Figueras
19. Kirk McCarthy
20. Carol Maga
21. Sean O'Doherty
22. Nancy Kaspar
23. Pat Kaspar
24. Nancy Ellis
25. Tess Eisley
26. Soleil Taylor
27. Frank Gilbert
28. Duston Richards
29. David Johnson
30. Holly Coates-Bash
31. Phyllis Mace
32. Chip Wasson
33. R'Sue Caron
34. Paul Kramer
35. Mary Reed Johnson
36. Gina Rieger
37. Naomi Torres
38. Shasta Phillips
39. Gregory Becker
40. Rosie Cohan
41. Jan Stafford
42. Monica Rohrer
43. Catherine Cassel
44. Nancy Cosentino
45. Dana Tillson

**Gun Violence**

46. Moni Law

**Racial Disparities and Curfews**

47. Racial and Criminal Justice Reform Group (2)
48. Sheila Jordan
49. Moni Law
50. Mansour Id-Dean
51. Janice Schroeder
52. Jane Martin

**Pool Problems**

53. Cris Barrere

**Berkeley's Financial Status per State Auditor**

54. Barbara Gilbert

**African American Holistic Resource Center**

55. Dr. M. Angelica Garcia, President, Berkeley City College

**Kayla Moore**

56. Gemma Medlam-Cooke

**Horse Fatalities at Golden Gate Fields**

57. Heather Wilson

58. Latinos Unidos de Berkeley

**Surveillance Cameras**

59. Vivian Warkentin

**5G**

60. Elana Levy

61. Vivian Warkentin (2)

62. Protect Berkeley Consortium

63. Stephanie Thomas

**Vision 2025**

64. Nilang

**BUSD Reopening**

65. Summi Kaipa

66. Maxine Skaggs Kennedy

**Actions Unbecoming of Elected Officials**

67. Margo Smtih

68. Russbumper

**North Berkeley Crime**

69. Vicki Sommer

**Second Hand Smoke**

70. Carol Denny

**Construction Site Fire Safety**

71. David Lerman

72. Dianne Maddox

**N. Berkeley BART**

73. David Brandon

**Letter from Girl Scout Troop 33984**

74. Annabelle, Eliana, Zella, Siena, Nina and Annika

**Supplemental Communications and Reports 1**

**Item #26: Allocation of \$3 Million Over Two Years, FY22 and FY23, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs)**

75. Revised material, submitted by HHCS

76. Holly Scheider, Chair, Sugar-Sweetened Beverage Products Panel of Experts Commission (SSBPPE)

77. Pauline Bondonno

78. Eric Friedman

**Item #36: Reserving \$2.5M in Housing Trust Funds for the Small Sites Program**

79. Supplemental material, submitted by Councilmember Hahn

**Item #37: The Berkeley Baby Book Project: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds**

80. Kristin Chew

81. Namita Dodeja

82. Elizabeth

83. Del Parker

84. Pablo Diaz-Gutierrez

85. Ashely Dorsett

86. Matthew Percival

87. Caitlin Collins

88. Maura Fitzgerald

89. Nirmala Ramalingam

90. Liza Young

91. Christine Mattsson

92. Cecile Bastide

93. Tom Buoye

94. Lizzie Hager-Barnard

95. Zoe Corocran

**Item #39: Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration**

96. Carol Denney

**Item #40: Referral Response: Zoning Ordinance Amendments that Reform Residential Off-Street Parking; Amending Berkeley Municipal Code Title 14 and Title 23**

97. Robert Smith

98. Denise Carlson

99. Jonathan Bailey



100. Mary Ruth Quinn
101. Lisa and Tim Goodman
102. Steven Segal
103. Bob Flasher
104. Susan Scherer
105. Laura Graham
106. Chuck and Mary Ann Wenger
107. Nicholas
108. Guy and Karen Benveniste
109. Joel Huff
110. Victoria Kahn
111. Ethan Karp
112. Rebecca Trumbull

**Item #41: Referral Response: Amendments to the Home Occupations Ordinance; Amending BMC Sub-Titles 23C, 23D, 23E and 23F**

113. Juliana Kramer

**Item #45: Amendments to Berkeley Police Department Policy 300, Use of Force**

114. Supplemental material, submitted by Councilmember Harrison
115. Supplemental material, submitted by the Police Review Commission

## **Supplemental Communications and Reports 2**

**Item A: Updates to the COVID-19 Emergency Response Ordinance; Amending Berkeley Municipal Code Chapter 13.110**

116. Rain Sussman
117. Diana Bohn

**Item B: Adoption of the Adeline Corridor Specific Plan and associated General Plan and Municipal Code (Zoning) Amendments and Certification of the Final Environmental Impact Report; Adding Berkeley Municipal Code Chapter 23E.70**

118. Jane Scantlebury
119. Phyllis Orrick
120. Elliott Schwimmer
121. Mikayla Fussman
122. Paul Bickmore
123. Thomas Luce
124. Daniel Tacci
125. Forest Kaser
126. Friends of Adeline

**Item #5: 1444 Fifth Street, LLC v. City of Berkeley, Case No. RG19032434**

127. David Kellogg

**Item #7: Contract: National Institute for Criminal Justice Reform to Manage and Lead a Community Engagement Process to Develop a New Paradigm of Public Safety in Berkeley**

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

**Item #14: Recommendations for Implementing Phase 2 of the Measure T1 Infrastructure Bond Program**

129. Kate Obenour

130. Corrina Gould

131. Deborah Durant

**Item #27: Rocky Road: Berkeley Streets at Risk and Significantly Underfunded**

132. Supplemental material, submitted by the Auditor

**Item #30: Establishment of Reimagining Public Safety Task Force**

133. Supplemental material, submitted by Mayor Arreguin

**Item #37: The Berkeley Baby Book Project: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds**

134. Helen Marcus

135. Ana Maria Mahiri

136. Lauren Pappone

137. Dora Lopez

138. Jan Volz-Kelly

139. Seena Hawley (2)

140. Marsala Williams

**Item #40: Referral Response: Zoning Ordinance Amendments that Reform Residential Off-Street Parking; Amending Berkeley Municipal Code Title 14 and Title 23**

141. Supplemental material, submitted by Councilmember Hahn

142. Maris1000@

143. Frank Hirtz

144. George Porter

145. Steven Segal

**Item #42: FY 2020 Year-End Results and FY 2021 First Quarter Budget Update**

146. Revised material, submitted by the Budget Manager

147. Moni Law

148. Diana Bohn

149. russbumper

**Item #43: Amendment: FY 2021 Annual Appropriations Ordinance**

150. Supplemental material, submitted by Councilmember Hahn

**Item #45: Amendments to Berkeley Police Department Policy 300, Use of Force**

151. russbumper (5)

**Item #C: Urgency Item: Resolution Establishing Local Law Enforcement Policy Pursuant to the November 19, 2020 California Department of Public Health Limited Stay At Home Order and the December 3, 2020 Regional Stay At Home Order**

152. Revised material, submitted by Councilmember Harrison

**Item #39: Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration**

153. 243 Communications submitted via Berkeley Considers, includes summary information

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

**Item B: Adoption of the Adeline Corridor Specific Plan and associated General Plan and Municipal Code (Zoning) Amendments and Certification of the Final Environmental Impact Report; Adding Berkeley Municipal Code Chapter 23E.70**

154. Diana Bohn

155. Janis Ching

**Item #14: Recommendations for Implementing Phase 2 of the Measure T1 Infrastructure Bond Program**

156. Kristin Leimkuhler

157. Bernard Marszalek

**Item #17: Grant Application: COVID-19 Rapid Response Bicycle and Pedestrian Program**

158. Lisa Lutzker, on behalf of Walk Bike Berkeley

**Item #25: Prohibition on the Resale of Used Combustion Vehicles in 2040**

159. Kathy Dervin

160. Todd Andrews

**Item #27: Rocky Road: Berkeley Streets at Risk and Significantly Underfunded**

161. Chimey Lee

162. Charles Clarke

**Item #32: Deferral of Remaining Permit Fees for 2009 Addison Street**

163. Revised material, submitted by Mayor Arreguin

**Item #37: The Berkeley Baby Book Project: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds**

164. Seena Hawley (2)

165. Daria Evans-Walker

**Item #39: Path to Permanence for Outdoor Dining and Commerce Permits  
Granted Under COVID-19 Public Health Emergency Declaration**

166. Ben Gerhardstein, on behalf of Walk Bike Berkeley

**Item #40: Referral Response: Zoning Ordinance Amendments that Reform  
Residential Off-Street Parking; Amending Berkeley Municipal Code Title 14 and  
Title 23**

167. Mindy Hou

168. George Porter (2)

169. Gradiva Couzin, Chair, Disaster and Fire Safety Commission

170. Nina Torcoletti

171. Norman McKnight

172. Robert Johnson

173. Erica Buhrmann & Ron Drucker

174. Mary Rose

**Item #42: FY 2020 Year-End Results and FY 2021 First Quarter Budget Update**

175. Lindsey Yamane

176. Laura Nguyen

177. Elana Auerbach

178. Sally Sommer

179. Adrienne Lemberger

180. Kennedy Vega

181. Maxina Ventura

182. Yael Platt

183. Sivian Orr

184. Sheila Jordan

185. Gloria Park

186. Alison Lafferty

**Item #43: Amendment: FY 2021 Annual Appropriations Ordinance**

187. Revised material, submitted by the City Manager

188. Janice Schroeder

189. Amy Gorman

190. Linda Worthman

191. Una Elias

192. Josie Gerst

193. Kenneth Higa

194. Councilmember Harrison

195. Patricia Williams

196. Phoebe Tanner

197. Jessica Ching

198. Rina Margolin

199. Erica Buhrmann

200. Eric Arens

201. Raquel Pinderhughes

- 202. Caroline Todd
- 203. Igor Tregub, Chair, Sierra Club Northern Alameda County Group
- 204. Ana Rasquiza
- 205. Tom Kelly
- 206. David Lerman

**Item #45: Amendments to Berkeley Police Department Policy 300, Use of Force**

- 207. Er Elliot
- 208. Maxina Ventura
- 209. Sivian Orr
- 210. Yael Platt
- 211. Elisa Mikiten

**Item #C: Urgency Item: Resolution Establishing Local Law Enforcement Policy Pursuant to the November 19, 2020 California Department of Public Health Limited Stay At Home Order and the December 3, 2020 Regional Stay At Home Order**

- 212. Diana Bohn
- 213. Sivian Orr
- 214. Yael Platt





Office of the City Manager

CONSENT CALENDAR

January 19, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Temporarily Suspending Certain Provisions of the Commissioners' Manual that Apply to Meetings of Subcommittees

RECOMMENDATION

Adopt a Resolution temporarily suspending the provisions of the Commissioners' Manual and Resolution No. 69,063-N.S. that ad hoc subcommittees of City boards and commissions follow State open meeting procedures, thereby enabling ad hoc subcommittees to meet and conduct work while allowing City staff to continue emergency response efforts related to the COVID-19 pandemic.

FISCAL IMPACTS OF RECOMMENDATION

There are no direct fiscal impacts associated with this recommendation. Temporarily suspending the application of State open meeting procedures to ad hoc subcommittees will decrease the amount of staff time required to coordinate and support the functions of City boards and commissions. This will enable staff that are currently assigned to the COVID-19 pandemic emergency response to continue their assignments and efforts with the City's Emergency Operations Center, and at the same time allow the work of ad hoc subcommittees to resume.

CURRENT SITUATION AND ITS EFFECTS

On March 10, 2020, the City Council ratified the proclamation of the Director of Emergency Services for a state of local emergency related to the COVID-19 pandemic. The emergency proclamation has been renewed several times by the Council, most recently on December 15, 2020, and remains in effect.

In response to the emergency proclamation, staff resources and the resources of City legislative bodies have been directed to the pandemic response. This includes staff assigned as commission secretaries, many of whom are engaged in work with the Emergency Operations Center or are fulfilling new duties related to the impacts of the pandemic. Staff are not able to provide support to boards and commissions at the pre-pandemic level, while also supporting the efforts of the pandemic response and Emergency Operations Center.

At the November 30, 2020 Agenda & Rules Committee meeting, the Committee discussed options for enabling City boards and commissions to conduct work, given the limitations on staff resources. One of the options considered is to temporarily suspend the requirement for ad hoc subcommittees of City boards and commissions to notice their meetings and require public participation. Ad hoc subcommittees are temporary single-purpose advisory committees composed of less than a quorum of the members of a commission or board. Under the State's open meeting law (also known as the Brown Act), ad hoc subcommittees are not legislative bodies, and are not required to post agendas or allow for public participation. These requirements are specific to Berkeley and are adopted by resolution in the Commissioners' Manual.

The Agenda & Rules Committee requested that staff prepare an item for the City Council's consideration to temporarily suspend these local noticing and participation requirements for ad hoc subcommittees. Temporary suspension of these requirements will allow ad hoc subcommittees to meet as needed, and without significant additional staff resources, in order to develop recommendations that will be presented to the full board or commission. Staff resources to support City boards and commissions will continue to be evaluated on a regular basis by the City Manager and the Health Officer in consultation with Department Heads and the City Council. Provisions of the Commissioners' Manual that are temporarily suspended may be reinstated at any point by action of the full Council.

#### BACKGROUND

The Commissioners' Manual is a compilation of state and local laws, and local policies and best practices that apply to City boards and commissions. The Commissioners' Manual is a valuable resources for commissioners, commission secretaries, City staff, and the public, and is provided to new commissioners, new commission secretaries, and is accessible to the public via the City website. The Manual was last updated on September 10, 2019 with Resolution No. 69,063-N.S.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### RATIONALE FOR RECOMMENDATION

At the November 30, 2020 Agenda & Rules Committee meeting, the Committee requested that staff present an item to the full City Council that would allow for the temporary suspension of the local requirement that ad hoc subcommittees of City boards and commissions adhere to State open meeting procedures.

#### ALTERNATIVE ACTIONS CONSIDERED

The City Council could leave the existing provisions in place. Under the existing provisions, if ad hoc subcommittee functions were to resume, staff resources would need to be reallocated in order to fulfill the open meeting requirements in the Commissioners' Manual.



CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

1: Resolution

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

TEMPORARILY SUSPENDING CERTAIN PROVISIONS OF THE COMMISSIONERS' MANUAL AND RESOLUTION NO. 69,063-N.S. THAT APPLY TO MEETINGS OF SUBCOMMITTEES

WHEREAS, the Commissioners' Manual is a compilation of state and local laws, and local policies and best practices that apply City boards and commissions; and

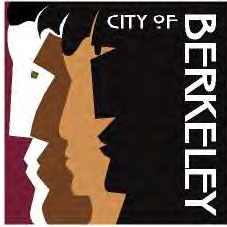
WHEREAS, pursuant to the Commissioners' Manual, ad hoc subcommittees of City boards and commissions are required to follow State open meeting procedures, a requirement that is specific to Berkeley and adopted by resolution in the Commissioners' Manual; and

WHEREAS, ad hoc subcommittees are not legislative bodies under the Brown Act and are not required to post agendas or allow for public participation; and

WHEREAS, due to the emergency response to the COVID-19 pandemic, staff resources are not currently available to support the open meeting requirements of the Commissioners' Manual as they pertain to ad hoc subcommittees; and

WHEREAS, the City Council may take formal action to temporarily suspend the provisions of the Commissioners' Manual that pertain to open meeting procedures for ad hoc subcommittee, thereby allowing ad hoc subcommittees to meet without the need for significant additional staff resources.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Council hereby temporarily suspends the provisions of the Commissioners' Manual and Resolution No. 69,063-N.S. that require ad hoc subcommittees of City boards and commissions to follow State open meeting procedures, thereby enabling ad hoc subcommittees to meet and conduct work while allowing City staff to continue emergency response efforts to the COVID-19 pandemic.



Office of the City Manager

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** November 10, 2020

**Item Number:** 20

**Item Description:** Annual Commission Attendance and Meeting Frequency Report

**Submitted by:** Mark Numainville, City Clerk

The attached memo responds to issues and questions raised at the October 26 Agenda & Rules Committee Meeting and the October 27 City Council Meeting regarding the ability of city boards and commissions to resume regular meeting schedules.



Office of the City Manager

November 9, 2020, 2020

To: Mayor and Council  
From: Dee Williams-Ridley, City Manager  
Subject: Commission Meetings Under COVID-19 Emergency (Item 20)

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This memo provides supplemental information for the discussion on Item 20 on the November 10, 2020 Council agenda. Below is a summary and update of the status of meetings of Berkeley Boards and Commissions during the COVID-19 emergency declaration and the data collected by the City Manager on the ability of commissions to resume meetings in 2021.

On March 10, 2020 the City Council ratified the proclamation of the Director of Emergency Services for a state of local emergency related to the COVID-19 pandemic. The emergency proclamation has been renewed twice by the Council and remains in effect.

On March 17, 2020 the City Council adopted Resolution No. 69,331-N.S. which placed limitations of the meetings of City legislative bodies, including all boards and commissions. The resolution allows for commissions to meet to conduct time-sensitive, legally mandated business with the authorization of the City Manager. Since that time, several commissions have obtained this approval and held meetings; many other commissions have not met at all since March.

The City Manager has periodically reviewed the status of commission meetings with the City Council Agenda & Rules Committee. Recently, at the October 12, 2020 Agenda & Rules Committee meeting, the City Manager presented a proposal to allow all commissions to meet under limited circumstances. The Committee voted to endorse the City Manager's recommendation.

Effective October 12, 2020, all City boards and commissions may meet once to develop and finalize their work plan for 2021 and to complete any Council referrals directly related to the COVID-19 pandemic response. A second meeting may be held to

complete this work with specific authorization by the City Manager. It is recommended that the meeting(s) occur by the end of February 2021.

Commissions that have been granted permission to meet under Resolution No. 69,331-N.S. may continue to meet pursuant to their existing authorization, and may also meet to develop their 2021 work plan.

Commissions that have not requested meetings pursuant to the Resolution No. 69,331-N.S. may meet pursuant to the limitations listed above.

In response to questions from the Agenda & Rules Committee and the Council, the City Manager polled all departments that support commissions to obtain information on their capacity to support the resumption of regular commission meetings. The information in Attachment 1 shows the information received from the departments and notes each commission's ability to resume a regular, or semi-regular, meeting schedule in 2021.

In summary, there are 24 commissions that have staff resources available to support a regular meeting schedule in 2021. Seven of these 24 commissions have been meeting regularly during the pandemic. There are five commissions that have staff resources available to support a limited meeting schedule in 2021. There are seven commissions that currently do not have staff resources available to start meeting regularly at the beginning of 2021. Some of these seven commissions will have staff resources available later in 2021 to support regular meetings. Please see Attachment 1 for the full list of commissions and their status.

With regards to commission subcommittees, there has been significant discussion regarding the ability of staff to support these meetings in a virtual environment. Under normal circumstances, the secretary's responsibilities regarding subcommittees is limited to posting the agenda and reserving the meeting space (if in a city building). With the necessity to hold the meetings in a virtual environment and be open to the public, it is likely that subcommittee meetings will require significantly more staff resources to schedule, train, manage, and support the work of subcommittees on Zoom or a similar platform. This additional demand on staff resources to support commission subcommittees is not feasible for any commission at this time.

One possible option for subcommittees is to temporarily suspend the requirement for ad hoc subcommittees of city commissions to notice their meetings and require public participation. Ad hoc subcommittees are not legislative bodies under the Brown Act and are not required to post agendas or allow for public participation. These requirements are specific to Berkeley and are adopted by resolution in the Commissioners' Manual. If it is the will of the Council, staff could introduce an item to temporarily suspend these

requirements which will allow subcommittees of all commissions to meet as needed to develop recommendations that will be presented to the full commission.

The limitations on the meetings of certain commissions are due to the need to direct staff resources and the resources of city legislative bodies to the pandemic response. Some of the staff assigned as commission secretaries are engaged in work with the City Emergency Operations Center or have been assigned new duties specifically related to the impacts of the pandemic.

Meeting frequency for boards and commissions will continue to be evaluated on a regular basis by the City Manager and the Health Officer in consultation with Department Heads and the City Council.

Attachments:

1. List of Commissions with Meeting Status
2. Resolution 69,331-N.S.

| <b><u>Boards and Commissions</u></b>              | <b><u>Meetings Held Under COVID March - Oct</u></b> | <b><u>Regular Mtg. Date</u></b> | <b><u>Secretary</u></b> | <b><u>Dept.</u></b> | <b><u>Resume Regular Schedule in January 2021?</u></b> | <b><u>Note</u></b>                                |
|---------------------------------------------------|-----------------------------------------------------|---------------------------------|-------------------------|---------------------|--------------------------------------------------------|---------------------------------------------------|
| Fair Campaign Practices Commission                | 9                                                   | 3rd Thur.                       | Sam Harvey              | CA                  | YES                                                    | Have been meeting regularly under COVID Emergency |
| Open Government Commission                        | 6                                                   | 3rd Thur.                       | Sam Harvey              | CA                  | YES                                                    | Have been meeting regularly under COVID Emergency |
| Animal Care Commission                            | 0                                                   | 3rd Wed.                        | Amelia Funghi           | CM                  | YES                                                    |                                                   |
| Police Review Commission                          | 10                                                  | 2nd & 4th Wed.                  | Katherine Lee           | CM                  | YES                                                    | Have been meeting regularly under COVID Emergency |
| Disaster and Fire Safety Commission               | 4                                                   | 4th Wed.                        | Keith May               | FES                 | YES                                                    |                                                   |
| Community Health Commission                       | 0                                                   | 4th Thur.                       | Roberto Terrones        | HHCS                | YES                                                    |                                                   |
| Homeless Commission                               | 0                                                   | 2nd Wed.                        | Josh Jacobs             | HHCS                | YES                                                    |                                                   |
| Homeless Services Panel of Experts                | 5                                                   | 1st Wed                         | Josh Jacobs             | HHCS                | YES                                                    |                                                   |
| Human Welfare & Community Action Commission       | 0                                                   | 3rd Wed.                        | Mary-Claire Katz        | HHCS                | YES                                                    |                                                   |
| Mental Health Commission                          | 1                                                   | 4th Thur.                       | Jamie Works-Wright      | HHCS                | YES                                                    |                                                   |
| Sugar-Sweetened Beverage Product Panel of Experts | 0                                                   | 3rd Thur.                       | Dechen Tsering          | HHCS                | YES                                                    |                                                   |
| Civic Arts Commission                             | 2                                                   | 4th Wed.                        | Jennifer Lovvorn        | OED                 | YES                                                    |                                                   |
| Elmwood BID Advisory Board                        | 1                                                   | Contact Secretary               | Kieron Slaughter        | OED                 | YES                                                    |                                                   |
| Loan Administration Board                         | 0                                                   | Contact Secretary               | Kieron Slaughter        | OED                 | YES                                                    |                                                   |
| Solano Avenue BID Advisory Board                  | 2                                                   | Contact Secretary               | Eleanor Hollander       | OED                 | YES                                                    |                                                   |
| Design Review Committee                           | 6                                                   | 3rd Thur.                       | Anne Burns              | PLD                 | YES                                                    | Have been meeting regularly under COVID Emergency |
| Energy Commission                                 | 0                                                   | 4th Wed.                        | Billi Romain            | PLD                 | YES                                                    |                                                   |
| Landmarks Preservation Commission                 | 6                                                   | 1st Thur.                       | Fatema Crane            | PLD                 | YES                                                    | Have been meeting regularly under COVID Emergency |
| Planning Commission                               | 3                                                   | 1st Wed.                        | Alene Pearson           | PLD                 | YES                                                    | Have been meeting regularly under COVID Emergency |
| Zoning Adjustments Board                          | 11                                                  | 2nd & 4th Thur.                 | Shannon Allen           | PLD                 | YES                                                    | Have been meeting regularly under COVID Emergency |
| Parks and Waterfront Commission                   | 4                                                   | 2nd Wed.                        | Roger Miller            | PRW                 | YES                                                    |                                                   |
| Commission on Disability                          | 0                                                   | 1st Wed.                        | Dominika Bednarska      | PW                  | YES                                                    |                                                   |
| Public Works Commission                           | 4                                                   | 1st Thur.                       | Joe Enke                | PW                  | YES                                                    |                                                   |
| Zero Waste Commission                             | 0                                                   | 4th Mon.                        | Heidi Obermeit          | PW                  | YES                                                    |                                                   |
| Commission on the Status of Women                 | 0                                                   | 4th Wed.                        | Shallon Allen           | CM                  | YES - LIMITED                                          | Secretary has intermittent COVID assignments      |

| <u>Boards and Commissions</u>               | <u>Meetings Held Under COVID March - Oct</u> | <u>Regular Mtg. Date</u> | <u>Secretary</u>   | <u>Dept.</u> | <u>Resume Regular Schedule in January 2021?</u> | <u>Note</u>                                            |
|---------------------------------------------|----------------------------------------------|--------------------------|--------------------|--------------|-------------------------------------------------|--------------------------------------------------------|
| Commission on Aging                         | 0                                            | 3rd Wed.                 | Richard Castrillon | HHCS         | REDUCED FREQUENCY                               | Significant Dept. resources assigned to COVID response |
| Housing Advisory Commission                 | 0                                            | 1st Thur.                | Mike Uberti        | HHCS         | REDUCED FREQUENCY                               | Significant Dept. resources assigned to COVID response |
| Measure O Bond Oversight Committee          | 0                                            | 3rd Monday               | Amy Davidson       | HHCS         | REDUCED FREQUENCY                               | Significant Dept. resources assigned to COVID response |
| Transportation Commission                   | 2                                            | 3rd Thur.                | Farid Javandel     | PW           | REDUCED FREQUENCY                               | Staff assigned to COVID response                       |
| Children, Youth, and Recreation Commission  | 0                                            | 4th Monday               | Stephanie Chu      | PRW          | NO - SEPT 2021                                  | Staff assigned to COVID response                       |
| Youth Commission                            | 0                                            | 2nd Mon.                 | Ginsi Bryant       | PRW          | NO - SEPT 2021                                  | Staff assigned to COVID response                       |
| Community Environmental Advisory Commission | 0                                            | 2nd Thur.                | Viviana Garcia     | PLD          | NO - JUNE 2021                                  | Staff assigned to COVID response                       |
| Cannabis Commission                         | 0                                            | 1st Thur.                | VACANT             | PLD          | NO - JAN. 2022                                  | Staff vacancy                                          |
| Peace and Justice Commission                | 0                                            | 1st Mon.                 | VACANT             | CM           | NO                                              | Staff vacancy                                          |
| Commission on Labor                         | 0                                            | 3rd Wed., alternate mon  | Kristen Lee        | HHCS         | NO                                              | Staff assigned to COVID response                       |
| Personnel Board                             | 1                                            | 1st Mon.                 | La Tanya Bellow    | HR           | NO                                              | Staff assigned to COVID response                       |



## RESOLUTION NO. 69,331-N.S.

RATIFYING THE RECOMMENDATIONS ISSUED BY THE DIRECTOR OF EMERGENCY SERVICES AND THE PUBLIC HEALTH OFFICER REGARDING MEETINGS OF BERKELEY LEGISLATIVE BODIES IN RESPONSE TO THE COVID-19 (NOVEL CORONAVIRUS) PANDEMIC

WHEREAS, on March 3, 2020, pursuant to Berkeley Municipal Code section 2.88.040, the City Manager, serving as the Director of Emergency Services, proclaimed the existence of a local emergency; and

WHEREAS, the proclamation was warranted by virtue of the extreme peril to the safety of persons and property in the City caused by pandemic in the form of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus ("COVID-19"), including confirmed cases in California and the San Francisco Bay Area, and presumed cases in Alameda County prompting the County to declare a local health emergency; and

WHEREAS, the proclamation of the Director of Emergency Services was ratified by the City Council on March 10, 2020; and

WHEREAS, the continued spread of COVID-19 and increase in community transmission cases in surrounding counties warrant further measures be taken by the City to protect the community; and

WHEREAS, the Public Health Officer has issued guidelines for limiting mass gatherings; and

WHEREAS, certain limitations on the meetings of legislative bodies in the City of Berkeley is warranted; and

WHEREAS, the continued essential functions of the City and certain legislative bodies must continue for time-sensitive, legally mandated actions; and

WHEREAS, the Director of Emergency Services presented recommendations to the Agenda & Rules Committee on March 12, 2020 regarding the meetings of legislative bodies; and

WHEREAS, the Agenda & Rules Committee recommended that said recommendations be forwarded to the City Council for acknowledgement and ratification.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following recommendations issued by the Director of Emergency Services and the Public Health Officer regarding limitations and practices for legislative bodies of the City of Berkeley are hereby acknowledged and ratified:

Section 1. Boards and Commissions

Commissions listed below may continue to meet only if they have time-sensitive, legally mandated business to complete, as determined by the Director of Emergency Services. The City may consider teleconferencing for these commissions, if feasible.

Design Review Committee  
Fair Campaign Practices Commission  
Housing Advisory Commission (limited to quasi-judicial activities)  
Joint Subcommittee on the Implementation of State Housing Laws  
Landmarks Preservation Commission  
Open Government Commission  
Personnel Board  
Planning Commission  
Police Review Commission  
Zoning Adjustments Board

Commissions in Category B shall not meet for a period of 60 days. This will be re-evaluated at the Agenda & Rules Committee meeting on April 13, 2020. A Commission in Category B may convene a meeting if it has time-sensitive, legally-mandated business to complete, as determined by the Director of Emergency Services.

Category B

Animal Care Commission  
Cannabis Commission  
Civic Arts Commission  
Children, Youth, and Recreation Commission  
Commission on Aging  
Commission on Disability  
Commission on Labor  
Commission on the Status of Women  
Community Environmental Advisory Commission  
Community Health Commission  
Disaster and Fire Safety Commission  
Elmwood Business Improvement District Advisory Board  
Energy Commission  
Homeless Commission  
Homeless Services Panel of Experts  
Housing Advisory Commission  
Human Welfare and Community Action Commission  
Measure O Bond Oversight Committee  
Mental Health Commission  
Parks and Waterfront Commission  
Peace and Justice Commission  
Public Works Commission  
Solano Avenue Business Improvement District Advisory Board  
Sugar-Sweetened Beverage Product Panel of Experts

Transportation Commission  
Youth Commission  
Zero Waste Commission  
Loan Administration Board

Section 2. City Council Policy Committees

The Agenda & Rules Committee and the Budget & Finance Committee may continue to meet to fulfill their legislative and advisory responsibilities. All other Policy Committees (Facilities, Infrastructure, Transportation, Environment & Sustainability, Public Safety, Land Use, Housing & Economic Development, and Health, Life Enrichment Equity & Community) are suspended indefinitely. The 120-day deadline to consider an item will be tolled during the suspension of business.

Section 3. City Council


For City Council meetings, the City will continue to advise and implement social distancing by limiting the capacity of the Council Chambers, providing an overflow room, attempting to limit the duration of the meeting, only conducting essential business, and limiting or suspending ceremonial items. The City will adhere to and implement the provisions of the Governor's Executive Order #N-25-20 related to the Brown Act and the utilization of technology to facilitate participation.

The foregoing Resolution was adopted by the Berkeley City Council on March 17, 2020 by the following vote:

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

Noes: None.

Absent: None.

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

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





Office of the City Manager

CONSENT CALENDAR

January 19, 2021

*(Continued from November 10, 2020)*

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Mark Numainville, City Clerk  
Subject: Annual Commission Attendance and Meeting Frequency Report

RECOMMENDATION

Review and accept the annual Commission Attendance and Meeting Frequency Report.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Each of the City's 38 commissions that were active during the reporting period submitted an annual attendance report covering the period of September 1, 2019 through August 31, 2020. The reports provide meeting-level information on number and frequency of meetings, meeting cancellations, commissioners in attendance, length of meetings, number of speakers, and members of the public present. The reports also reflect the number of vacant positions on the commission as of August 31, 2020.

Due to the Shelter-in-Place order necessitated by the COVID-19 pandemic, most commissions ceased or greatly scaled back their activities in March, meeting only if they had time-sensitive, legally-mandated business to complete, and all meetings subsequent to the March health order have been held virtually.

On March 17, 2020 the City Council adopted Resolution No. 69,331-N.S. ratifying the City Manager's policy limiting the meetings of city legislative bodies in order to maintain staff resources to address the pandemic. The provisions of that resolution are still in effect. On October 13, 2020, the Agenda & Rules Committee took action to endorse the City Manager's policy to allow commissions to meet up to two times only for the purpose of developing their 2021 work plan and to address any COVID-related referrals from the City Council. Due to these actions, the ongoing meeting frequency for commissions will be adjusted as the pandemic conditions allow. For this reason, staff is not presenting a fixed 2021 meeting frequency schedule to Council for approval at this time.

Commissions are divided into four categories (A, B, C, and D) depending on the permitted frequency of meetings. Based on the information provided in the 2020 annual attendance

reports, the majority of commissions were meeting on a regular and frequent basis up until the COVID-19 restrictions. The meeting activity for the reporting period of September 2019 through August 2020 has been broken down by category and is described below.

Category A

Contains eleven commissions that meet on their own schedule. Most of these commissions resumed meeting virtually after the initial Shelter-in-Place in order to meet their legal obligations.

| <b>Commission</b>                                               | <b>Cancellations due to COVID-19</b> | <b>Cancellations due to other reasons</b> |
|-----------------------------------------------------------------|--------------------------------------|-------------------------------------------|
| Board of Library Trustees                                       | 1                                    |                                           |
| Design Review Committee                                         | 2                                    | 1 - no agenda items                       |
| Fair Campaign Practices Commission                              | 1                                    | 1 - by order of the chair                 |
| Housing Advisory Commission                                     | 4                                    |                                           |
| Joint Subcommittee for the Implementation of State Housing Laws | 1                                    |                                           |
| Landmarks Preservation Commission                               | 2                                    |                                           |
| Open Government Commission                                      | 1                                    | 1 - by order of the chair                 |
| Personnel Board                                                 | 3                                    |                                           |
| Planning Commission                                             | 4                                    | 1 - technical issues                      |
| Police Review Commission                                        | 2                                    | 1 - public safety power shutoff           |
| Zoning Adjustments Board                                        | 4                                    | 1 - no agenda items                       |

Category B

Contains twenty-one commissions that hold a maximum of ten meetings each per year. Prior to the March Shelter-in-Place order, these twenty-one commissions were meeting regularly during the reporting period.

| <b>Commission</b>                          | <b>Cancellations due to COVID-19</b> | <b>Cancellations due to other reasons</b> |
|--------------------------------------------|--------------------------------------|-------------------------------------------|
| Cannabis Commission                        | 4                                    |                                           |
| Children, Youth, and Recreation Commission | 5                                    |                                           |
| Civic Arts Commission                      | 5                                    |                                           |

| <b>Commission</b>                                 | <b>Cancellations due to COVID-19</b> | <b>Cancellations due to other reasons</b> |
|---------------------------------------------------|--------------------------------------|-------------------------------------------|
| Commission on Aging                               | 5                                    |                                           |
| Commission on Disability                          | 4                                    |                                           |
| Commission on Labor                               | 3                                    |                                           |
| Commission on the Status of Women                 | 5                                    | 1 - no quorum                             |
| Community Environmental Advisory Commission       | 1                                    |                                           |
| Community Health Commission                       | 5                                    |                                           |
| Disaster and Fire Safety Commission               | 3                                    |                                           |
| Energy Commission                                 | 5                                    |                                           |
| Homeless Commission                               | 4                                    |                                           |
| Homeless Services Panel of Experts                | 2                                    |                                           |
| Human Welfare and Community Action Commission     | 5                                    |                                           |
| Measure O Bond Oversight Committee                | 3                                    |                                           |
| Mental Health Commission                          | 5                                    |                                           |
| Parks and Waterfront Commission                   | 3                                    |                                           |
| Peace and Justice Commission                      | 4                                    |                                           |
| Public Works Commission                           | 3                                    |                                           |
| Sugar-Sweetened Beverage Product Panel of Experts | 5                                    |                                           |
| Transportation Commission                         | 5                                    |                                           |
| Youth Commission                                  | 3                                    | 1 - no quorum                             |
| Zero Waste Commission                             | 5                                    |                                           |

Category C

Contains three commissions. These commissions may meet as necessary to fulfill their legal obligations. Of the commissions in this category, none cancelled any scheduled meetings during this period.

Category D

Currently contains one commission that meets up to six times per year. The Animal Care Commission cancelled three meetings due to COVID-19.

BACKGROUND

On June 14, 2005, the City Council discussed the reduction of commission meetings as a cost-savings measure. Council adopted a proposal which created three categories of commission meeting schedules, a process for requesting Council approval of any extra meetings, direction to commission secretaries to submit an information report whenever a commission cancels two consecutive meetings for lack of quorum, and an annual attendance report. Council adopted Resolution No. 63,949–N.S. on January 15, 2008, which updated the commission meeting frequency schedule to include a fourth category of meeting frequency. On December 11, 2018, Council adopted Resolution No. 68,705–N.S., which changed the reporting period from November through October to September through August to allow commissions sufficient time to set their schedules for the following year. Most recently, on October 15, 2019, Council adopted Resolution No. 69,127–N.S., which set the 2020 commission meeting frequency schedule.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

The annual commission attendance report informs the Council of commission activity and allows for comparison with the meeting frequency schedule. The annual attendance report documents increased demand on, or under-utilization of commissions which may inform Council decisions related to the meeting frequency of commissions.

CONTACT PERSON

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

Attachments:

- 1: 2020 Annual Commission Attendance Reports
- 2: 2020 Approved Leaves of Absence by Commission Report





# 2020 Annual Commission Attendance Report

Reporting Period: September 1, 2019 through August 31, 2020

|                                                           |
|-----------------------------------------------------------|
| Vacant seats: <u>    0    </u><br>(as of August 31, 2020) |
|-----------------------------------------------------------|

**Commission:**     Board of Library Trustees    

**Commission Secretary:**     Elliot Warren    

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/15/19                |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 2/1/20                 | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason  | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|---------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/4/2019               |                                       | 5 of 5                | 4              | 2               | 1 hr. 18 min.  |
| 10/2/2019              |                                       | 3 of 5                | 6              | 0               | 1 hr. 13 min.  |
| 11/13/2019             |                                       | 5 of 5                | 6              | 1               | 2 hrs. 7 min.  |
| 12/4/2019              |                                       | 5 of 5                | 10             | 2               | 1 hr. 39 min.  |
| 1/15/2020              |                                       | 5 of 5                | 6              | 1               | 2 hrs. 7 min.  |
| 2/5/2020               |                                       | 4 of 5                | 6              | 2               | 1 hr. 18 min.  |
| 3/4/2020               |                                       | 5 of 5                | 3              | 0               | 1 hr. 39 min.  |
| 3/14/2020              |                                       | 5 of 5                | 3              | 1               | 44 min.        |
| 4/1/2020               | Cancelled – COVID-19 Shelter in Place |                       |                |                 |                |
| 5/6/2020               |                                       | 5 of 5                | Unknown        | 0               | 1 hr. 38 min.  |
| 6/3/2020               |                                       | 5 of 5                | Unknown        | 0               | 1 hr. 55 min.  |
| 6/4/2020               |                                       | 5 of 5                | 1              | 1               | 3 hrs. 10 min. |
| 6/24/2020              |                                       | 5 of 5                | 0              | 0               | 1 hr. 30 min.  |
| 7/1/2020               |                                       | 5 of 5                | 2              | 1               | 1 hr. 40 min.  |
| 7/21/2020              |                                       | 5 of 5                | 3              | 0               | 3 hrs.         |
| 7/30/2020              |                                       | 5 of 5                | 0              | 0               | 5 hrs. 55 min. |
| 8/5/2020               |                                       | 5 of 5                | 3              | 1               | 2 hrs.         |
| 8/12/2020              |                                       | 5 of 5                | 8              | 2               | 36 min.        |
|                        |                                       |                       |                |                 |                |
|                        |                                       |                       |                |                 |                |
|                        |                                       |                       |                |                 |                |



















**Commission:** *Disability Commission*

**Commission Secretary:** Dominika Bednarska

Vacant seats: 2  
(as of August 31, 2020)

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9<br>2/1/20            | Yes – no quorum                      | 8 of 9                | 5              | 3               | 2.5 hrs        |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 09/04/2019             |                                      | 7 of 7                | 0              | 0               | 3 hours        |
| 10/02/2019             |                                      | 5 of 6                | 1              | 1               | 3 hours        |
| 11/06/2019             |                                      | 6 of 6                | 0              | 0               | 3 hours        |
| No Dec Meeting         |                                      |                       |                |                 |                |
| 1/08/2020              |                                      | 4 of 6                | 1              | 1               | 3 hours        |
| 02/05/2020             |                                      | 5 of 6                | 1              | 1               | 3 hours        |
| 03/04/2020             |                                      | 4 of 6                | 0              | 0               | 3 hours        |
| 04/01/20               | Yes – COVID-19                       |                       |                |                 |                |
| 05/06/20               | Yes – COVID-19                       |                       |                |                 |                |
| 06/03/20               | Yes – COVID-19                       |                       |                |                 |                |
| 07/01/20               | Yes – COVID-19                       |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |







# 2020 Annual Commission Attendance Report

Reporting Period: September 1, 2019 through August 31, 2020

|                                                           |
|-----------------------------------------------------------|
| Vacant seats: <u>    1    </u><br>(as of August 31, 2020) |
|-----------------------------------------------------------|

**Commission:**     Fair Campaign Practices Commission    

**Commission Secretary:**     Samuel Harvey    

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/15/19                |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 2/1/20                 | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/19/19                |                                      | 6 of 8                | 2              | 2               | 2.9 hrs        |
| 10/17/19               | Yes – by order of Chair              |                       |                |                 |                |
| 11/21/19               |                                      | 7 of 8                | 0              | 0               | 2.9 hrs        |
| 1/16/20                |                                      | 7 of 8                | 1              | 1               | 0.7 hrs        |
| 2/6/20                 |                                      | 5 of 8                | 0              | 0               | 0.1 hrs        |
| 2/20/20                |                                      | 8 of 8                | 1              | 1               | 1.6 hrs        |
| 3/19/20                | Yes – COVID order                    |                       |                |                 |                |
| 3/24/20                |                                      | 8 of 8                | 0              | 0               | 0.4 hrs        |
| 4/23/20                |                                      | 8 of 8                | 0              | 0               | 3.8 hrs        |
| 5/21/20                |                                      | 8 of 8                | 0              | 0               | 2.8 hrs        |
| 6/18/20                |                                      | 6 of 8                | 0              | 0               | 2.1 hrs        |
| 7/16/20                |                                      | 8 of 8                | 0              | 0               | 2.3 hrs        |
| 7/23/20                |                                      | 5 of 8                | 0              | 0               | 0.1 hrs        |
| 8/31/20                |                                      | 6 of 8                | 0              | 0               | 0.2 hrs        |

























# 2020 Annual Commission Attendance Report

Reporting Period: September 1, 2019 through August 31, 2020

|                                                   |
|---------------------------------------------------|
| Vacant seats: <u>1</u><br>(as of August 31, 2020) |
|---------------------------------------------------|

**Commission:** Open Government Commission

**Commission Secretary:** Samuel Harvey

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/15/19                |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 2/1/20                 | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/19/19                |                                      | 6 of 8                | 2              | 2               | 2.9 hrs        |
| 10/17/19               | Yes – by order of Chair              |                       |                |                 |                |
| 11/21/19               |                                      | 7 of 8                | 0              | 0               | 2.9 hrs        |
| 1/16/20                |                                      | 7 of 8                | 1              | 1               | 0.7 hrs        |
| 2/20/20                |                                      | 8 of 8                | 1              | 1               | 1.6 hrs        |
| 3/19/20                | Yes – COVID order                    |                       |                |                 |                |
| 4/23/20                |                                      | 8 of 8                | 0              | 0               | 3.8 hrs        |
| 5/21/20                |                                      | 8 of 8                | 0              | 0               | 2.8 hrs        |
| 6/18/20                |                                      | 6 of 8                | 0              | 0               | 2.1 hrs        |
| 7/16/20                |                                      | 8 of 8                | 0              | 0               | 2.3 hrs        |







# 2020 Annual Commission Attendance Report

Reporting Period: September 1, 2019 through August 31, 2020

|                                                   |
|---------------------------------------------------|
| Vacant seats: <b>0</b><br>(as of August 31, 2020) |
|---------------------------------------------------|

**Commission:** Planning Commission

**Commission Secretary:** Alene Pearson

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason               | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|----------------------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/4/19                 |                                                    | 7 of 9                | 6              | 6               | 3 hrs 59 mins  |
| 10/2/19                |                                                    | 8 of 6                | 6              | 5               | 2 hrs 12 mins  |
| 11/6/19                |                                                    | 9 of 9                | 10             | 5               | 3 hrs 5 mins   |
| 12/4/19                |                                                    | 8 of 9                | 9              | 6               | 2 hrs 40 mins  |
| 1/15/20                |                                                    | 9                     | 14             | 7               | 3 hrs 9 mins   |
| 2/5/20                 |                                                    | 8                     | 33             | 23              | 3 hrs 11 mins  |
| 2/19/20                | Cancelled- Date reserved for subcommittee meeting  |                       |                |                 |                |
| 3/4/20                 |                                                    | 9                     | 13             | 8               | 3 hrs 31 mins  |
| 3/18/20                | Cancelled- COVID                                   |                       |                |                 |                |
| 4/1/20                 | Cancelled- COVID                                   |                       |                |                 |                |
| 5/6/20                 | Cancelled- COVID                                   |                       |                |                 |                |
| 6/3/20                 | Cancelled- COVID                                   |                       |                |                 |                |
| 7/1/20                 |                                                    | 8                     | 7              | 1               | 2 hrs 29 mins  |
| 8/5/20                 | Cancelled – Technical Issues                       |                       |                |                 |                |
| 8/19/20                | Cancelled – Date reserved for subcommittee meeting |                       |                |                 |                |

# Page 45 of 53 2020 Annual Commission Attendance Report

Reporting Period: September 1, 2019 through August 31, 2020

|                                                  |
|--------------------------------------------------|
| Vacant seats: 1 _____<br>(as of August 31, 2020) |
|--------------------------------------------------|

**Commission:** Police Review Commission

**Commission Secretary:** Katherine J. Lee

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/15/19                |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 2/1/20                 | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9-4-19                 |                                      | 9 of 9                | 7              | 4               | 3.0 hrs        |
| 9-18-19                |                                      | 6 of 9                | 2              | 1               | 1.9 hrs        |
| 10-9-19                | Yes – public safety power shutoff    |                       |                |                 |                |
| 10-23-19               |                                      | 8 of 9                | 10             | 3               | 3.2 hrs        |
| 11-13-19               |                                      | 7 of 9                | 11             | 7               | 2.7 hrs        |
| 12-11-19               |                                      | 7 of 9                | 10             | 9               | 3.2 hrs        |
| 1-8-20                 |                                      | 6 of 8                | 7              | 2               | 2.3 hrs        |
| 1-22-20                |                                      | 6 of 8                | 7              | 2               | 1.4 hrs        |
| 2-5-20                 |                                      | 7 of 8                | 11             | 4               | 3.0 hrs        |
| 2-26-20                |                                      | 7 of 8                | 8              | 1               | 1.4 hrs        |
| 3-11-20                |                                      | 7 of 8                | 3              | 0               | 1.8 hrs        |
| 3-25-20                | Yes – COVID 19                       |                       |                |                 |                |
| 4-8-20                 |                                      | 7 of 8                | 9              | 5               | 2.7 hrs        |
| 4-22-20                | Yes – COVID 19                       |                       |                |                 |                |
| 5-13-20                |                                      | 8 of 8                | 3              | 0               | 1.5 hrs        |
| 5-27-20                |                                      | 7 of 8                | 4              | 4               | 1.6 hrs        |
| 6-10-20                |                                      | 8 of 8                | 34             | 19              | 2.0 hrs        |
| 6-24-20                |                                      | 7 of 8                | 15             | 2               | 3.4 hrs        |
| 7-8-20                 |                                      | 7 of 8                | 16             | 8               | 3.3 hrs        |
| 7-22-20                |                                      | 8 of 8                | 13             | 6               | 1.9 hrs        |
|                        |                                      |                       |                |                 |                |

# 2020 Annual Commission Attendance Report

Reporting Period: September 1, 2019 through August 31, 2020

|                                            |
|--------------------------------------------|
| Vacant seats: 0<br>(as of August 31, 2020) |
|--------------------------------------------|

**Commission:** Public Works Commission

**Commission Secretary:** Nisha Patel/Joe Enke

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
|                        |                                      |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/05/19                |                                      | 8 of 9                | 3              | 3               | 2.75 hrs       |
| 10/03/19               |                                      | 7 of 8                | 4              | 2               | 2.75 hrs       |
| 11/07/19               |                                      | 6 of 8                | 4              | 2               | 2.50 hrs       |
| 1/09/20                |                                      | 9 of 9                | 7              | 2               | 3.00 hrs       |
| 1/29/20                |                                      | 6 of 9                | 8              | 8               | 2.75 hrs       |
| 2/06/20                |                                      | 8 of 9                | 20             | 0               | 4.0 hrs        |
| 3/05/20                |                                      | 7 of 9                | 2              | 0               | 2.75 hrs       |
| 4/02/20                | Yes - Covid-19                       |                       |                |                 |                |
| 5/07/20                | Yes - Covid-19                       |                       |                |                 |                |
| 6/04/20                | Yes - Covid-19                       |                       |                |                 |                |
| 7/09/20                |                                      | 9 of 9                | 0              | 0               | 3.25 hrs       |
|                        |                                      |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |











# 2020 Annual Commission Attendance Report

Reporting Period: September 1, 2019 through August 31, 2020

|                                            |
|--------------------------------------------|
| Vacant seats: 0<br>(as of August 31, 2020) |
|--------------------------------------------|

**Commission:** Zoning Adjustments Board

**Commission Secretaries:** Shannon Allen and Steven Buckley

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/15/19                |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 2/1/20                 | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/26/19                |                                      | 9 of 9                | 10             | 6               | 3 hrs          |
| 10/10/19               |                                      | 7 of 9                | 17             | 10              | 3 hrs 53 mins  |
| 10/24/19               |                                      | 9 of 9                | 60             | 49              | 5 hrs 37 min   |
| 11/14/19               |                                      | 9 of 9                | 34             | 16              | 3 hrs 49 min   |
| 12/12/19               |                                      | 9 of 9                | 60             | 41              | 5.75 hrs       |
| 1/9/20                 |                                      | 7 of 9                | 8              | 9               | 1.75 hrs       |
| 1/23/20                |                                      | 8 of 9                | 40             | 15              | 3 hrs 51 mins  |
| 2/13/20                |                                      | 8 of 9                | 21             | 10              | 3 hrs 17 mins  |
| 2/27/20                | Canceled – not enough agenda items   |                       |                |                 |                |
| 3/12/20                |                                      | 8 of 9                | 24             | 16              | 3 hrs 10 mins  |
| 3/26/20                | Canceled due to COVID                |                       |                |                 |                |
| 4/9/20                 | Canceled due to COVID                |                       |                |                 |                |
| 4/23/20                | Canceled due to COVID                |                       |                |                 |                |
| 5/14/20                | Canceled due to COVID                |                       |                |                 |                |
| 5/28/20                |                                      | 9 of 9                | 29             | 7               | 1.25 hrs       |
| 6/11/20                |                                      | 7 of 9                | 14             | 5               | 2 hrs          |
| 6/25/20                |                                      | 9 of 9                | 57             | 37              | 6.75 hrs       |
| 7/9/20                 |                                      | 9 of 9                | 23             | 11              | 3.5 hrs        |
| 7/23/20                |                                      | 9 of 9                | 23             | 6               | 2.5 hrs        |
| 8/13/20                |                                      | 8 of 9                | 30             | 20              | 3.5 hrs        |
| 8/27/20                |                                      | 7 of 9                | 65             | 24              | 3 hrs 41 mins  |



| <b>Approved Leaves of Absence Granted During the Period<br/>September 2019 - August 2020</b> |                            |
|----------------------------------------------------------------------------------------------|----------------------------|
| <b>Commission</b>                                                                            | <b># Leaves of Absence</b> |
| Animal Care Commission                                                                       | 1                          |
| Board of Library Trustees                                                                    | 0                          |
| Cannabis Commission                                                                          | 2                          |
| Children, Youth, and Recreation Commission                                                   | 3                          |
| Civic Arts Commission                                                                        | 4                          |
| Commission on Aging                                                                          | 6                          |
| Commission on Disability                                                                     | 4                          |
| Commission on Labor                                                                          | 2                          |
| Commission on the Status of Women                                                            | 7                          |
| Community Environmental Advisory Commission                                                  | 5                          |
| Community Health Commission                                                                  | 6                          |
| Design Review Committee                                                                      | 0                          |
| Disaster and Fire Safety Commission                                                          | 5                          |
| Elmwood BID Advisory Board                                                                   | 0                          |
| Energy Commission                                                                            | 6                          |
| Fair Campaign Practices Commission                                                           | 10                         |
| Homeless Commission                                                                          | 4                          |
| Homeless Services Panel of Experts                                                           | 6                          |
| Housing Advisory Commission                                                                  | 5                          |
| Human Welfare and Community Action Commission                                                | 1                          |
| Joint Subcommittee for the Implementation of State Housing                                   | 5                          |
| Landmarks Preservation Commission                                                            | 9                          |
| Loan Administration Board                                                                    | 0                          |
| Measure O Bond Oversight Committee                                                           | 6                          |
| Mental Health Commission                                                                     | 0                          |
| Open Government Commission                                                                   | 10                         |
| Parks and Waterfront Commission                                                              | 4                          |
| Peace and Justice Commission                                                                 | 3                          |
| Personnel Board                                                                              | 3                          |
| Planning Commission                                                                          | 4                          |
| Police Review Commission                                                                     | 10                         |
| Public Works Commission                                                                      | 3                          |
| Solano Avenue BID Advisory Board                                                             | 0                          |
| Sugar-Sweetened Beverage Product Panel of Experts                                            | 7                          |
| Transportation Commission                                                                    | 2                          |
| Youth Commission                                                                             | 5                          |
| Zero Waste Commission                                                                        | 7                          |
| Zoning Adjustments Board                                                                     | 29                         |







Office of the City Manager

CONSENT CALENDAR  
January 19, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams Ridley, City Manager  
 Submitted by: David White, Deputy City Manager  
 Subject: Authorized Agent Update for FEMA Public Assistance for COVID-19

RECOMMENDATION

Adopt a Resolution authorizing the Deputy City Managers and AG Witt, LLC to engage with the Federal Emergency Management Agency and the Governor's Office of Emergency Services regarding grants applied for by the City of Berkeley for the FEMA-4482-DR-CA California COVID-19 Pandemic.

FISCAL IMPACTS OF RECOMMENDATION

The California Governor's Office of Emergency Services (Cal OES) is administering applications for disaster relief funding, including Federal Emergency Management Agency (FEMA) Public Assistance (PA) funds. Costs related to COVID-19 that are incurred by the City and deemed eligible for FEMA PA funding are reimbursable by the Federal government at 75% and potentially by the State at up to 18.75%. In other words, for every \$100 dollars of COVID-19 expenditures deemed eligible, the City may be reimbursed for up to \$93.75.

CURRENT SITUATION AND ITS EFFECTS

Currently the City Manager is the only individual authorized to engage with Cal OES and FEMA regarding grants applied for through the FEMA Public Assistance Program. The City is in contract with a Cost Recovery consultant, AG Witt LLC, to develop applications for FEMA Public Assistance funding for the COVID-19 Pandemic. In order for the consulting firm to answer FEMA questions on the City's behalf, the City must formally designate AG Witt, LLC by resolution an Authorized Agent. This resolution must be filed with the California Governor's Office of Emergency Services along with a completed "Designation of Applicant's Agent Resolution for Non-State Agencies" form (Cal OES Form 130) (Exhibit A).

BACKGROUND

On March 3, 2020, the City Manager, in her capacity as Director of Emergency Services, proclaimed a local emergency due to conditions of extreme peril to the safety of persons and property within the City as a consequence of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19). On

March 10, 2020, City Council adopted a resolution ratifying the Proclamation of Local Emergency.

The costs already incurred by the City as a result of the COVID-19 pandemic are substantial. Depending on the length and extent of the crisis, the City will continue to shoulder currently unbudgeted costs associated with COVID-19 for some time to come – all amidst a severe economic downturn.

The City of Berkeley is in contract with AG Witt, LLC (Contract No. 32000282) for strategic advice regarding cost recovery and development of applications (“project worksheets”) for the FEMA Public Assistance Grant Program.

On May 26, 2020, the City Council passed a resolution designating the City Manager as the Authorized Agent to engage with FEMA and Cal OES for the coming three years.

This resolution:

- 1) Confirms the City Manager designation as Authorized Agent for any disasters in the coming three years.
- 2) Adds the Deputy City Manager position as Authorized Agent for any disasters in the coming three years.
- 3) Adds key AG Witt staff as Authorized Agents for the COVID-19 disaster only.

Adding AG Witt staff to this list authorizes the firm to engage with State and federal agencies on the City’s behalf. This new authorization limits AG Witt staff to providing representation for the COVID-19 disaster only, matching the scope of work in their contract.

Given these circumstances, it is incumbent upon the City to maximize opportunities for reimbursement from State and federal sources. Authorizing AG Witt, LLC to engage with FEMA and Cal OES regarding these grants will ensure the City has expert representation for any questions that may arise from funders.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

In order for the City’s cost recovery contractor to engage on the City’s behalf with the State and federal government with regards to the City’s applications for reimbursement through the FEMA Public Assistance Program, Cal OES requires that the Deputy City Managers and AG Witt be designated as Authorized Agents.

CONTACT PERSON

David White, Deputy City Manager, City Manager’s Office, 981-7012

Attachments:

1: Resolution

Exhibit A - Cal OES Form 130 (Designation of Applicant's Agent Resolution for Non-State Agencies) – City Manager and Deputy City Manager

Exhibit B - Cal OES Form 130 (Designation of Applicant's Agent Resolution for Non-State Agencies) – AG Witt

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

CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES – AUTHORIZED  
AGENT FOR DISASTER RELIEF FOR COVID-19

WHEREAS, on March 3, 2020, the City Manager in her capacity as Director of Emergency Services, proclaimed an Emergency due to conditions of extreme peril to the safety of persons and property within the City as a consequence of the global spread of a severe respiratory illness caused by a novel (new) corona virus (COVID-19); and

WHEREAS, on March 10, 2020, City Council adopted a resolution ratifying the March 3, 2020, Proclamation of Local Emergency; and

WHEREAS, on March 4, 2020, the Governor of California ordered a statewide State of Emergency in response to COVID-19; and

WHEREAS, on March 13, 2020, the U.S. President declared that the COVID-19 outbreak in the United States constitutes a National Emergency;

WHEREAS, on March 22, 2020, the U.S. President approved a Major Disaster Declaration for the State of California, making federal funding available to local governments and other jurisdictions to address this crisis, beginning on January 20, 2020 and continuing; and

WHEREAS, to ensure the health and wellbeing of its citizens during the COVID-19 pandemic, the City of Berkeley has incurred significant unbudgeted costs and anticipates additional costs until the resolution of this public health crisis; and

WHEREAS, the main sources for disaster financial assistance are the state and federal government; these sources include, but are not limited, to Federal Emergency Management (FEMA) Public Assistance (PA) funding, which is administered by the California Governor's Office of Emergency Services (Cal OES); and

WHEREAS, in order to obtain certain federal and state financial assistance related to COVID-19, Cal OES requires the City to formally designate by resolution an Authorized Agent to execute applications, agreements, and other actions pertaining to disaster relief with Cal OES; and

WHEREAS, on May 26, 2020, the Council of the City of Berkeley designated the City Manager as Berkeley's Authorized Agent in Resolution 69,400-N.S.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager and Deputy City Managers are hereby designated as Authorized Agents to engage with the Federal Emergency Management Agency and the Governor's Office of Emergency Services regarding grants applied for by the City of Berkeley.

January 19, 2021

BE IT FURTHER RESOLVED that AG Witt, LLC is hereby designated as an additional Authorized Agent to engage with the Federal Emergency Management Agency and the Governor's Office of Emergency Services regarding grants applied for by the City of Berkeley for the FEMA-4482-DR-CA California COVID-19 Pandemic.

BE IT FURTHER RESOLVED that the City Clerk is authorized to submit a Cal OES "Designation of Applicant's Agent Resolution for Non-State Agencies" Form 130 (Exhibit A) with the information contained in this resolution.

BE IT FURTHER RESOLVED that the City Clerk is authorized to submit a Cal OES "Designation of Applicant's Agent Resolution for Non-State Agencies" Form 130 (Exhibit B) with the information contained in this resolution.

**DESIGNATION OF APPLICANT'S AGENT RESOLUTION  
FOR NON-STATE AGENCIES**

BE IT RESOLVED BY THE City Council OF THE City of Berkeley  
(Governing Body) (Name of Applicant)

THAT City Manager, OR  
(Title of Authorized Agent)

Deputy City Manager, OR  
(Title of Authorized Agent)

\_\_\_\_\_  
(Title of Authorized Agent)

is hereby authorized to execute for and on behalf of the City of Berkeley, a public entity  
(Name of Applicant)

established under the laws of the State of California, this application and to file it with the California Governor's Office of Emergency Services for the purpose of obtaining certain federal financial assistance under Public Law 93-288 as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, and/or state financial assistance under the California Disaster Assistance Act.

THAT the City of Berkeley, a public entity established under the laws of the State of California,  
(Name of Applicant)

hereby authorizes its agent(s) to provide to the Governor's Office of Emergency Services for all matters pertaining to such state disaster assistance the assurances and agreements required.

**Please check the appropriate box below:**

- This is a universal resolution and is effective for all open and future disasters up to three (3) years following the date of approval below.
- This is a disaster specific resolution and is effective for only disaster number(s) \_\_\_\_\_

Passed and approved this 19th day of January, 2021

\_\_\_\_\_  
(Name and Title of Governing Body Representative)

\_\_\_\_\_  
(Name and Title of Governing Body Representative)

\_\_\_\_\_  
(Name and Title of Governing Body Representative)

**CERTIFICATION**

I, \_\_\_\_\_, duly appointed and \_\_\_\_\_ of  
(Name) (Title)

\_\_\_\_\_, do hereby certify that the above is a true and correct copy of a  
(Name of Applicant)

Resolution passed and approved by the \_\_\_\_\_ of the \_\_\_\_\_  
(Governing Body) (Name of Applicant)

on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

Cal OES Form 130 Instructions

**A Designation of Applicant's Agent Resolution for Non-State Agencies is required of all Applicants to be eligible to receive funding. A new resolution must be submitted if a previously submitted Resolution is older than three (3) years from the last date of approval, is invalid or has not been submitted.**

When completing the Cal OES Form 130, Applicants should fill in the blanks on page 1. The blanks are to be filled in as follows:

**Resolution Section:**

**Governing Body:** This is the group responsible for appointing and approving the Authorized Agents.  
Examples include: Board of Directors, City Council, Board of Supervisors, Board of Education, etc.

**Name of Applicant:** The public entity established under the laws of the State of California. Examples include: School District, Office of Education, City, County or Non-profit agency that has applied for the grant, such as: City of San Diego, Sacramento County, Burbank Unified School District, Napa County Office of Education, University Southern California.

**Authorized Agent:** These are the individuals that are authorized by the Governing Body to engage with the Federal Emergency Management Agency and the Governor's Office of Emergency Services regarding grants applied for by the Applicant. There are two ways of completing this section:

1. **Titles Only:** If the Governing Body so chooses, the titles of the Authorized Agents would be entered here, not their names. This allows the document to remain valid (for 3 years) if an Authorized Agent leaves the position and is replaced by another individual in the same title. If "Titles Only" is the chosen method, **this document must be accompanied by a cover letter naming the Authorized Agents by name and title.** This cover letter can be completed by any authorized person within the agency and does not require the Governing Body's signature.
2. **Names and Titles:** If the Governing Body so chooses, the names **and** titles of the Authorized Agents would be listed. A new Cal OES Form 130 will be required if any of the Authorized Agents are replaced, leave the position listed on the document or their title changes.

**Governing Body Representative:** These are the names and titles of the approving Board Members.  
Examples include: Chairman of the Board, Director, Superintendent, etc. The names and titles **cannot** be one of the designated Authorized Agents, and a minimum of two or more approving board members need to be listed.

**Certification Section:**

**Name and Title:** This is the individual that was in attendance and recorded the Resolution creation and approval.  
Examples include: City Clerk, Secretary to the Board of Directors, County Clerk, etc. This person **cannot** be one of the designated Authorized Agents or Approving Board Member (if a person holds two positions such as City Manager and Secretary to the Board and the City Manager is to be listed as an Authorized Agent, then the same person holding the Secretary position would sign the document as Secretary to the Board (not City Manager) to eliminate "Self Certification.")

**DESIGNATION OF APPLICANT'S AGENT RESOLUTION  
FOR NON-STATE AGENCIES**

BE IT RESOLVED BY THE City Council OF THE City of Berkeley  
(Governing Body) (Name of Applicant)

THAT AG Witt, LLC, OR  
(Title of Authorized Agent)

\_\_\_\_\_, OR  
(Title of Authorized Agent)

\_\_\_\_\_  
(Title of Authorized Agent)

is hereby authorized to execute for and on behalf of the City of Berkeley, a public entity  
(Name of Applicant)

established under the laws of the State of California, this application and to file it with the California Governor's Office of Emergency Services for the purpose of obtaining certain federal financial assistance under Public Law 93-288 as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, and/or state financial assistance under the California Disaster Assistance Act.

THAT the City of Berkeley, a public entity established under the laws of the State of California,  
(Name of Applicant)

hereby authorizes its agent(s) to provide to the Governor's Office of Emergency Services for all matters pertaining to such state disaster assistance the assurances and agreements required.

**Please check the appropriate box below:**

- This is a universal resolution and is effective for all open and future disasters up to three (3) years following the date of approval below.
- This is a disaster specific resolution and is effective for only disaster number(s) FEMA-4482-DR-CA

Passed and approved this 19th day of January, 2021

\_\_\_\_\_  
(Name and Title of Governing Body Representative)

\_\_\_\_\_  
(Name and Title of Governing Body Representative)

\_\_\_\_\_  
(Name and Title of Governing Body Representative)

**CERTIFICATION**

I, \_\_\_\_\_, duly appointed and \_\_\_\_\_ of  
(Name) (Title)

\_\_\_\_\_, do hereby certify that the above is a true and correct copy of a  
(Name of Applicant)

Resolution passed and approved by the \_\_\_\_\_ of the \_\_\_\_\_  
(Governing Body) (Name of Applicant)

on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)



**Cal OES Form 130 Instructions**

**A Designation of Applicant's Agent Resolution for Non-State Agencies is required of all Applicants to be eligible to receive funding. A new resolution must be submitted if a previously submitted Resolution is older than three (3) years from the last date of approval, is invalid or has not been submitted.**

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**Name of Applicant:** The public entity established under the laws of the State of California. Examples include: School District, Office of Education, City, County or Non-profit agency that has applied for the grant, such as: City of San Diego, Sacramento County, Burbank Unified School District, Napa County Office of Education, University Southern California.

**Authorized Agent:** These are the individuals that are authorized by the Governing Body to engage with the Federal Emergency Management Agency and the Governor's Office of Emergency Services regarding grants applied for by the Applicant. There are two ways of completing this section:

1. **Titles Only:** If the Governing Body so chooses, the titles of the Authorized Agents would be entered here, not their names. This allows the document to remain valid (for 3 years) if an Authorized Agent leaves the position and is replaced by another individual in the same title. If "Titles Only" is the chosen method, **this document must be accompanied by a cover letter naming the Authorized Agents by name and title.** This cover letter can be completed by any authorized person within the agency and does not require the Governing Body's signature.
2. **Names and Titles:** If the Governing Body so chooses, the names **and** titles of the Authorized Agents would be listed. A new Cal OES Form 130 will be required if any of the Authorized Agents are replaced, leave the position listed on the document or their title changes.

**Governing Body Representative:** These are the names and titles of the approving Board Members.  
Examples include: Chairman of the Board, Director, Superintendent, etc. The names and titles **cannot** be one of the designated Authorized Agents, and a minimum of two or more approving board members need to be listed.

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Office of the City Manager

CONSENT CALENDAR

January 19, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance

Subject: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on January 19, 2021

RECOMMENDATION

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

FISCAL IMPACTS OF RECOMMENDATION

Total estimated cost of items included in this report is \$4,235,362.

| <u>PROJECT</u>                                                                                                                             | <u>Fund</u> | <u>Source</u>              | <u>Amount</u>      |
|--------------------------------------------------------------------------------------------------------------------------------------------|-------------|----------------------------|--------------------|
| Mental Health Services Act (MHSA) Community Services & Supports (CSS) Mental Health Services and Supports for Transition Age Youth (TAY)   | 315         | Mental Health Services Act | <b>\$122,856</b>   |
| Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI) Trauma Support Services for individuals who identify as LGBTQIA+ | 315         | Mental Health Services Act | <b>\$100,000</b>   |
| Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI) Trauma Support Services for Latinx                               | 315         | Mental Health Services Act | <b>\$100,000</b>   |
| Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI) Trauma Support Services for African Americans                    | 315         | Mental Health Services Act | <b>\$100,000</b>   |
| Healthy Berkeley Community-Based Organizations 2-Year Funding for FY22 and FY23                                                            | n/a         | n/a                        | <b>\$2,662,506</b> |
| King School Park 2-5 Year                                                                                                                  | 138         | Parks Tax                  | <b>\$650,000</b>   |

Formal Bid Solicitations and Request for Proposals  
 Scheduled for Possible Issuance After Council  
 Approval on November 17, 2020

CONSENT CALENDAR  
 January 19, 2021

|                                                                                  |     |     |                    |
|----------------------------------------------------------------------------------|-----|-----|--------------------|
| Old and 5-12 Year Old Play Areas                                                 |     |     |                    |
| Sanitary Sewer Rehabilitation<br>Project: Urgent Project at various<br>locations | 311 | ESG | \$500,000          |
| <b>Total:</b>                                                                    |     |     | <b>\$4,235,362</b> |

CURRENT SITUATION AND ITS EFFECTS

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

BACKGROUND

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

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Need for the services.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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

Attachments:

1: Formal Bid Solicitations and Request for Proposals Scheduled For Possible Issuance After Council Approval on January 19, 2021

- a) Mental Health Services Act (MHSA) Community Services & Supports (CSS) Mental Health Services and Supports for Transition Age Youth (TAY)

Formal Bid Solicitations and Request for Proposals  
Scheduled for Possible Issuance After Council  
Approval on November 17, 2020

CONSENT CALENDAR  
January 19, 2021

- b) Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI) Trauma Support Services for individuals who identify as LGBTQIA+
- c) Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI) Trauma Support Services for Latinx
- d) Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI) Trauma Support Services for African Americans
- e) Healthy Berkeley Community-Based Organizations 2-Year Funding for FY22 and FY23
- f) King School Park 2-5 Year Old and 5-12 year Old Play Areas
- g) Sanitary Sewer Rehabilitation Project; Urgent Project at various locations

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

DATE SUBMITTED: January 19, 2021

| SPECIFICATION NO. | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED                                                                                            | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                            | ESTIMATED COST | BUDGET CODE TO BE CHARGED                            | DEPT. / DIVISION      | CONTACT NAME & PHONE    |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------------------------|-------------------------------------------------------------------------------------------------------------------------|----------------|------------------------------------------------------|-----------------------|-------------------------|
| 21-11429-C        | Mental Health Services Act (MHSA) Community Services & Supports (CSS) Mental Health Services and Supports for Transition Age Youth (TAY)   | 1/28/2021            | 2/25/2021                | Mental Health services and supports for Transition Age Youth (TAY) who are homeless or marginally housed.               | \$122,856      | MHSA – CSS:<br>315-51-503-526-2017-000-451-636110    | HHCS<br>Mental Health | Karen Klatt<br>981-7644 |
| 21-11430-C        | Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI) Trauma Support Services for individuals who identify as LGBTQIA+ | 1/28/2021            | 2/25/2021                | Support services for trauma exposed LGBTQIA+ and/or individuals in need of coping strategies for stress related issues. | \$100,000      | MH- MHSA -PEI:<br>315-51-503-526-2016-000-451-636110 | HHCS<br>Mental Health | Karen Klatt<br>981-7644 |

DATE SUBMITTED: January 19, 2021

| SPECIFICATION NO. | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED                                                                         | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                     | ESTIMATED COST | BUDGET CODE TO BE CHARGED                            | DEPT. / DIVISION      | CONTACT NAME & PHONE    |
|-------------------|-------------------------------------------------------------------------------------------------------------------------|----------------------|--------------------------|----------------------------------------------------------------------------------------------------------------------------------|----------------|------------------------------------------------------|-----------------------|-------------------------|
| 21-11433-C        | Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI) Trauma Support Services for Latinx            | 1/28/2021            | 2/25/2021                | Support services for trauma exposed Latinx and/or individuals in need of coping strategies for stress related issues.            | \$100,000      | MH- MHSA -PEI:<br>315-51-503-526-2016-000-451-636110 | HHCS<br>Mental Health | Karen Klatt<br>981-7644 |
| 21-11434-C        | Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI) Trauma Support Services for African Americans | 1/28/2021            | 2/25/2021                | Support services for trauma exposed African Americans and/or individuals in need of coping strategies for stress related issues. | \$100,000      | MH- MHSA -PEI:<br>315-51-503-526-2016-000-451-636110 | HHCS<br>Mental Health | Karen Klatt<br>981-7644 |

DATE SUBMITTED: January 19, 2021

| SPECIFICATION NO.  | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED                                 | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                                                                                                                                                                                           | ESTIMATED COST                                                       | BUDGET CODE TO BE CHARGED                                                                                                                                                                                                                                                                                                              | DEPT. / DIVISION              | CONTACT NAME & PHONE                                 |
|--------------------|---------------------------------------------------------------------------------|----------------------|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|------------------------------------------------------|
| 21-11436-C         | Healthy Berkeley Community-Based Organizations 2-Year Funding for FY22 and FY23 | 1/20/2021            | 6/31/2021                | To release a Request For Proposals (RFP) for the second 2-year funding cycle for community-based organizations and BUDS consistent with SSBPPE's goals to reduce the consumption of SSBs and to address the effects of SSB consumption.<br><br>The Council Report by the SSBPPE Commission is slated on the 12/15/2020 Council Agenda. | \$2,662,506 million total over two years. (pending Council approval) | To release a Request For Proposals (RFP) for the second 2-year funding cycle for community-based organizations and BUDS consistent with SSBPPE's goals to reduce the consumption of SSBs and to address the effects of SSB consumption.<br><br>The Council Report by the SSBPPE Commission is slated on the 12/15/2020 Council Agenda. | HHCS/PHD                      | Dechen Tsering, 981-5394<br><br>Janice Chin 981-5121 |
| <b>DEPT. TOTAL</b> |                                                                                 |                      |                          |                                                                                                                                                                                                                                                                                                                                        | <b>\$3,085,362</b>                                                   |                                                                                                                                                                                                                                                                                                                                        |                               |                                                      |
| 21-11435-C         | King School Park 2-5 Year Old and 5-12 Year Old Play Areas                      | 2/1/2021             | 3/1/2021                 | This project includes ADA improvements, drainage improvements, resurfacing, 2-5 play area, and 5-12 play area                                                                                                                                                                                                                          | \$650,000                                                            | 138-52-542-000<br>0000-000-461-663110<br>PRWPK19003                                                                                                                                                                                                                                                                                    | PRW/<br>Capital Projects      | Isaac Carnegie 981-6432                              |
| <b>DEPT. TOTAL</b> |                                                                                 |                      |                          |                                                                                                                                                                                                                                                                                                                                        | <b>\$650,000</b>                                                     |                                                                                                                                                                                                                                                                                                                                        |                               |                                                      |
| 21-11437-C         | Sanitary Sewer Rehabilitation Project: Urgent Project at various locations      | 1/20/2021            | 2/23/2021                | Sewer rehabilitation and replacement project to repair and replace old and deteriorated sewer lines.                                                                                                                                                                                                                                   | \$500,000                                                            | 611-54-623-676-0000-000-473-665130-PWENSR2105<br><br>(830-5213-432-6510-21SR05)                                                                                                                                                                                                                                                        | Public Works -<br>Engineering | Daniel Akagi 981-6394<br><br>Tiffany Pham 981-6427   |
| <b>DEPT. TOTAL</b> |                                                                                 |                      |                          |                                                                                                                                                                                                                                                                                                                                        | <b>\$500,000</b>                                                     |                                                                                                                                                                                                                                                                                                                                        |                               | <b>188</b>                                           |



DATE SUBMITTED: January 19, 2021

| SPECIFICATION NO. | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE | ESTIMATED COST | BUDGET CODE TO BE CHARGED | DEPT. / DIVISION | CONTACT NAME & PHONE |
|-------------------|-------------------------------------------------|----------------------|--------------------------|--------------|----------------|---------------------------|------------------|----------------------|
| GRAND TOTAL       |                                                 |                      |                          |              | \$4,235,362    |                           |                  |                      |





Office of the City Manager

CONSENT CALENDAR  
January 19, 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: Rescinding Housing Trust Fund Guidelines and Adopting New Guidelines

RECOMMENDATION

Adopt a Resolution rescinding the City's current Housing Trust Fund Guidelines (Resolution No. 64,394-N.S.) and adopting new Housing Trust Fund Guidelines that preserve essential components while updating the process to award funds and certain requirements.

SUMMARY

The City's Housing Trust Fund Guidelines last had a major update in 2009. Since then, affordable housing finance and the community's expectations for support for affordable housing have changed. The revised Guidelines included in this report streamline the award process and incorporate the Small Sites Program Guidelines in a cleaner, more user-friendly format. The Housing Advisory Commission (HAC) reviewed the proposed revisions at their November 12, 2020 meeting and recommended this action. The HAC also recommended that staff explore allowing trainee wages (below Prevailing Wage) for HTF projects, which staff concluded was beyond the scope of the Guidelines update since it is a complex labor issue.

FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts associated with the adoption of Guidelines, although the revised Guidelines will update the City's requirements and process for administering loans for affordable housing development.

CURRENT SITUATION AND ITS EFFECTS

The City's Housing Trust Fund Guidelines establish who can apply for City funds, how to apply, the City's process for evaluating funding applications, eligible uses of the funds, and affordability requirements. The City's HTF Guidelines date from the beginning of the program in 2000 and last had a major update over 10 years ago in 2009. The HTF Guidelines contain outdated requirements and redundancies and do not reflect how affordable housing financing and the community's views on affordable housing have changed over the years.

Staff are proposing the attached revised Guidelines, drafted with the following goals in mind:

- Simplify and streamline the process for awarding funds;
- Bring program requirements into alignment with current public lending practices;
- Eliminate redundancies; and
- Provide clear, consistent HTF program requirements.

The Housing Advisory Commission reviewed the proposed revisions at their November 12, 2020 meeting and recommended adoption after four recommended changes.

Action: M/S/C (Sargent/Johnson) to recommend to Council to rescind the existing Housing Trust Fund (HTF) Guidelines and adopt revised HTF Guidelines proposed by staff with the following changes:

1. Provide a more detailed definition for the 10% and 40% caps for predevelopment and development loans, and base the calculation on an annual fiscal year statement of Housing Trust Fund revenue, commitments, and balance;
2. Provide more defined standards for a project's interest rate reduction eligibility that are tied to a project being uncompetitive or ineligible for other funds;
3. Require that other commissions are provided a notice of applications received during a Notice of Funds Available and the timeline for commenting; and
4. Request City staff explore the allowable uses of trainees for labor on Housing Trust Fund-funded projects.

Vote: Ayes: Johnson, Lee-Egan, Mendonca, Sargent, Simon-Weisberg, and Twu.  
Noes: None. Abstain: None. Absent: Sharenko (unapproved). Recused: Wolfe.

Staff incorporated three of HAC's four recommended changes. After review of the fourth, related to trainee wages, staff concluded this issue requires much more analysis and dialogue than feasible within the Guidelines update. This is described in more detail below under Labor Requirements. Staff also notified the five organizations which have most recently sponsored HTF funded projects about the proposed revisions and have not received any feedback as of this writing on November 16, 2020.

Notable changes include updates to the process for soliciting and evaluating funding applications, expansion of and clarification on the types of loans available through the HTF program, changes to loan terms and requirements, and the inclusion of the Small Sites Program (SSP) guidelines and option for smaller projects to be evaluated based on those standards. The SSP expedited fund award process would continue to apply only when Council designates funds for the SSP.

The Housing Trust Fund program is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

### BACKGROUND

The HTF Guidelines provide structure to the City's process of evaluating and awarding funding via the Housing Trust Fund program. The current Guidelines were originally drafted in 2000, last significantly revised in 2009, and lightly amended in 2016. They reflect the time of their drafting, though the City's HTF program and public lending practices have evolved as well as community expectations for City support of affordable housing.

#### *Process for Awarding Funds*

Since the process for awarding funds was first developed about 20 years ago, two factors have changed considerably: (1) the State offers a greater variety of housing funding programs with specific requirements and demanding timelines; and (2) the community has become generally more supportive of affordable housing development, with expectations that affordable housing proposals can be considered efficiently. The lengthy, redundant process no longer seems suited to community priorities and makes it harder to meet State funding timelines.

The revised Guidelines eliminate additional consultation with the Housing Advisory Commission prior to RFP issuance, a more structured commission consultation process, and a public hearing requirement. The revised Guidelines will make projects more competitive for State funding by speeding up the time to award by two months while still providing ample opportunity for public oversight and participation. They will require that applications are reviewed by housing staff, a Commission subcommittee, the Commission, and Council, and include explicit consideration of consistency with local plans and priorities. Affordable housing projects benefit from the more efficient City process, since nonprofit developers need City funding reservations first to leverage their applications for tax credits and other state funding.

The revised HTF Guidelines also expand the definition of at-risk projects, and allow for funding certain projects outside of an RFP. Depending on the urgency of the situation, the request would either follow the standard HTF process (with subcommittee, Commission, and Council review), or could go directly to Council (or City Manager if the project is funded through the Small Sites Program). This will allow the City to be more responsive to changing circumstances and the requirements of other lenders, including the State of California.

#### *Loan Products*

The HTF program provided two loan types under the existing guidelines: predevelopment and development loans. The revised guidelines add a third loan option for acquisition funding. An acquisition loan is inherently riskier for the City, as it may

take several years for the developer to finalize the project design and secure its financing, and it may not move forward. Project sponsors prefer City acquisition funding because of the low cost of funds and the City's early stage support. While acquisition is a currently allowable use and the City has funded acquisition loans before, the revised guidelines establish more explicit requirements and create recommended limits on how much of the HTF can be used for acquisition loans at any given time. The revised guidelines clarify the recommended limit on predevelopment funds, with the intent of ensuring that sufficient development funds are available for future projects.

The revised guidelines eliminate references to ownership projects (limited and non-equity cooperatives have always been and continue to be allowable under the rental guidelines). The City will develop ownership guidelines consistent with the current market and priorities at such time funding for homeownership projects is planned. The material in the HTF Guidelines was not sufficient or current. In the current market, affordable homeownership housing typically requires very large local subsidies even to assist moderate income households since most state and federal funding is exclusively for rental housing.

#### *Loan Terms: Interest Rate and Construction Requirements*

The revised guidelines give the City Manager authority to reduce the interest rate below 3% on a project-by-project basis, and retain the ability to establish a lower interest rate prior to an RFP related to market conditions. In the current market it is not unusual for tax credit projects to need interest rate reductions from public lenders to be feasible. The City Council has approved reductions for several projects, and these changes would be more efficiently handled by the City Manager. Based on the HAC's recommendation, staff clarified that such reductions must be related to competitiveness or eligibility for other funds.

In 2016, the City revised the HTF Guidelines to incorporate language around labor standards. The revised guidelines acknowledge that all projects must meet state and federal labor requirements, giving specific references. Some of the specific language added in 2016 was omitted, including sections that do not apply to HTF projects due to state exemptions for affordable housing.

Staff looked into the HAC's idea of allowing trainees to work on HTF projects at wages lower than prevailing wage. Prevailing wage is applied to HTF projects under Resolution 54,533-N.S., adopted on November 23, 1988, which requires payment of state prevailing wage on all City-funded construction. State Prevailing Wage requirements do include provisions for hiring apprentices, which supports workforce development. Employment of trainees at sub-apprentice wages is a more complex topic that would need more evaluation and discussion with input from the Building Trades Council, Labor Commission, City-funded employment programs, and others, exceeding the scope of this update. If Council is interested in exploring sub-apprentice trainee classifications or wages, it can be referred to the City Manager for follow up.

*Small Sites Program*

The Small Sites Program (SSP) guidelines are now incorporated into the HTF Guidelines. Small sites projects were always eligible under the HTF guidelines, but were subject to the same requirements as larger, tax credit projects. By incorporating the SSP guidelines, projects that apply for funds through the HTF program and fit the SSP criteria (acquisition and rehabilitation, 25 or fewer units, no tax credit financing) would be evaluated based on SSP standards that are designed to support smaller projects with limited cash flow. Funds for these projects would still be reserved through the regular HTF process. When Council designates SSP funding, eligible projects will still be able to access the special SSP over-the-counter, expedited process.

These SSP guidelines were updated slightly from those adopted by Council to change the loan term from 30 years to 55 years to match the regulatory agreement term. The initial loan term was based on San Francisco's program standards, but housing staff saw no discernable advantage to having a loan term shorter than the regulatory period, and found that it added confusion to the first SSP project.

One of the Commission's referrals from Council is the consideration of a long-term Small Sites Program, so the Commission's input on this change to the guidelines falls under those referral responsibilities.

ENVIRONMENTAL SUSTAINABILITY

There are no environmental sustainability impacts associated with updating the Housing Trust Fund guidelines.

RATIONALE FOR RECOMMENDATION

The proposed guidelines simplify and streamline the process for awarding funds, bring program requirements into alignment with current public lending practices, eliminate redundancies; and provide clear, consistent HTF program requirements.

ALTERNATIVE ACTIONS CONSIDERED

The City could leave the existing guidelines in place.

CONTACT PERSON

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

Attachments:

1: Resolution

Exhibit A: Housing Trust Fund Guidelines

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

RESCINDING RESOLUTION 64,394-N.S. AND ADOPTING NEWLY REVISED  
HOUSING TRUST FUND GUIDELINES

WHEREAS, the City began its Housing Trust Fund in 1990 for the purpose of supporting affordable housing development; and

WHEREAS, the Housing Trust Fund Guidelines establish the process, requirements and terms for allocating housing funding; and

WHEREAS, the Guidelines were adopted on April 21, 2009 with Resolution 64,394-N.S. and amended on April 5, 2016 with Resolution 67,430-N.S.; and

WHEREAS, staff drafted new Guidelines which retain essential terms while clarifying the language, and simplifying and streamlining the process for awarding funds, and these Guidelines were recommended for adoption by the Housing Advisory Commission at its November 12, 2020 meeting; and

WHEREAS, Council wishes to update the Housing Trust Fund Guidelines to ensure thoughtful and efficient allocations of housing funding.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council approves the new Housing Trust Fund Guidelines attached as Exhibit A.

BE IT FURTHER RESOLVED that Resolution No. 64,394-N.S. is hereby rescinded.

Exhibits

A: Housing Trust Fund Guidelines



## City of Berkeley Housing Trust Fund and Small Sites Program Guidelines

The City of Berkeley's Housing Trust Fund (HTF) was established in 1990. The purpose of the HTF is to support the creation and preservation of affordable housing in Berkeley. Federal funds such as HOME Investment Partnerships Program (HOME) and the Community Development Block Grant (CDBG) are combined in the HTF with local funds such as revenue from mitigation fees on commercial development (Resolution 66,617-N.S.), new market rate housing (BMC 22.20.065 Affordable Housing Mitigation Fee and BMC 23C.12 Inclusionary Housing Ordinance), and condominium conversions (BMC 21.28). The City Council may approve additional sources of funding for the HTF at any time, such as the 2018 Measure O bond measure, or state and federal sources. The Council may allocate general funds such as those generated through Measure U1. The City's Housing Advisory Commission (HAC) advises the City Council on HTF allocations.

These HTF guidelines establish guidelines for the operation of the HTF. They are not a comprehensive statement of laws and regulations that apply to affordable housing funding and development in Berkeley. In addition to these guidelines, the operation of the HTF must comply with City procurement and contracting requirements as well as state or federal requirements when state or federal funds are used; in case of a conflict, City, State, and Federal requirements will prevail over the HTF guidelines. References to the City Manager in these guidelines will be interpreted as the City Manager or her/his designee. The City Manager may establish additional requirements to implement the HTF program through administrative guidelines and Notices of Funding Availability.

Section I: Threshold Requirements

Section II: Eligible and Ineligible Projects, Activities, and Costs

Section III. Affordability Targeting

Section IV. City Loan Terms

Section V. Process for City Reservations

Section VI. Other City Requirements

Section VII. Small Sites Program

## Section I. Threshold Requirements

This section establishes eligibility requirements for applicants, projects, and costs. Applications that do not satisfy these threshold requirements will not be considered for funding.

### A. Eligible Applicants

The Applicant must demonstrate enough prior experience and current capacity in housing development and management to successfully secure financing and entitlements, construct, complete, and operate the proposed project.

#### 1. Applicant Experience

To be eligible, the Applicant must demonstrate experience and capacity to complete the project. Experience includes the successful development and completion of THREE projects of a similar size and scope by the Applicant in California within the last 10 years. Capacity includes having existing staff assigned to the project who have worked on similar projects and whose résumés demonstrate their ability to guide the project through all stages of the development process. Applicants will be able to submit the following information on completed projects that they believe will qualify their capacity:

- a. Project name and address;
- b. Tenant tenure ownership or rental;
- c. Rehabilitation or new construction;
- d. Number of units and unit mix;
- e. Income levels served;
- f. Types of permanent financing;
- g. Project start and completion dates.

In addition, the following information is also required:

- List of current staff assigned to the project for which funding is requested, including their resumes;
- List of current board members, with resumes and city of residence;
- Audited financial statements for the past 3 years.

#### 2. Joint Venture Requirements

Potential Applicants without the required minimum amount of experience may enter into Joint Venture agreements with eligible Applicants in order to be eligible. Applicants who are submitting as a Joint Venture:

- a. Must provide a binding Joint Venture agreement at application establishing the roles and responsibilities of each entity in the partnership that is acceptable to the City; and
- b. Must demonstrate that the entity with the majority ownership interest in the Joint Venture both holds majority control of the Joint Venture and satisfies the Applicant experience requirements of these guidelines.

3. Construction Management Experience

Applicant must demonstrate that:

- a. Past projects are not encumbered by unexpired mechanics liens that were filed by or on behalf of workers with claims of unpaid wages or fringe benefits;
- b. Past projects are not related to unsatisfied final judgments from the California Labor Commissioner;

4. Property Management Experience

- a. The applicant or the Applicant's property management agent must have managed at least one completed project for at least 24 months and provide documentation of satisfactory performance review by any city or county agency from which the project received funding;
- b. If the proposed project includes a supportive services component designed for very low or extremely low-income families that need services linked to their housing in order to remain stable in the proposed housing project, the property management agent must also provide evidence of managing other housing projects with supportive services for at least 24 months and provide documentation of satisfactory performance review by any city or county agency from which the project received funding.

5. Supportive Services Provider

Any project proposing the inclusion of special needs units must identify a supportive services provider that has at least 24 months of experience with the target population and can provide documentation of satisfactory performance review by any city or county agency from which the project received funding. Changes to the service provider after initial application are subject to approval from the City.

B. Site Control

At the time a development proposal is submitted, the applicant must demonstrate that it has, and will maintain until the land is acquired, site control of the property for which funding is being requested. Site control must be maintained for the full term of the City's loan and regulatory agreement (typically at least 55 years).

Acceptable forms of site control include fee ownership, an option to purchase or enter into a long-term lease dependent only on factors within the applicant's control, or a long-term lease.

## Section II: Eligible and Ineligible Projects, Activities, and Costs

CDBG and HOME, currently significant sources of funds for the HTF, have more restrictive requirements than those described below. Some local funds may also have restricted uses, as may future state and federal sources. The City will work with borrowers to evaluate alternatives and to match funding sources with proposed activities as available funding permits. Borrowers must comply with all applicable federal requirements.

### A. Eligible projects

Projects must be consistent with the HTF's purpose of supporting affordable housing. Development projects for rental occupancy or for operation as a no- or limited-equity cooperative are eligible, including:

- New construction, acquisition, and substantial rehabilitation of residential property for occupancy by lower income households;
- Permanent supportive housing;
- Transitional housing;
- Single room occupancy (SRO) units;
- Live/work units;
- Mixed use (commercial and residential) projects where residential uses are the majority of square footage;
- Conversion of non-residential space to residential use;
- Preservation of existing affordable housing.

Projects of 25 units or fewer that are not using Low Income Housing Credits will be reviewed for eligibility and consistency with the guidelines established for the Small Sites Program (Section VII).

### B. Eligible Costs

Eligible Costs include all reasonable and necessary costs associated with:

- Property acquisition;
- Demolition;
- On-site improvements;
- Off-site utility connections;
- Construction and rehabilitation;
- Developing common areas and supportive service spaces serving the residents;
- Soft costs associated with the development and financing of the project, including environmental review costs;
- Reasonable developer fees;

- Operating reserve (typically limited to the initial marketing period, not to exceed 18 months). Longer periods will be considered for units set aside for homeless households consistent with City policy on homelessness;
- Capitalized replacement reserve;
- Relocation costs;
- Moving of a housing structure within the City limits, when the structure is a nonconforming use in a commercial or industrial zone or when necessary to preserve a residential structure, provided all other requirements of the fund are met.

### C. Ineligible Costs/Uses

Ineligible activities include but are not limited to:

- Development of commercial spaces;
- Property tax penalties;
- Food/refreshments for any purpose;
- Costs associated with community meetings and neighborhood outreach, such as room rental and transportation;
- Community outreach mailings (including postage and printing of flyers or invitations);
- Costs associated with construction items or materials of a luxury nature;
- Furnishings (except where required for special needs projects);
- Most off-site improvements other than utility connections into the adjacent street;
- Borrower/sponsor administrative costs (other than included in the developer fee);
- Marketing events such as groundbreakings and grand openings.

### D. Reasonable Development Costs

Applicant/borrowers must provide project budgets with sufficient itemized detail to evaluate whether the projected costs are sufficient and reasonable, and provide related documentation as needed. Prior to loan closing, the City will request and review documentation such as appraisals, cost estimates, contracts for professional services, and agreements covering reserves with regard to cost reasonableness. Proposed development costs must be sufficient to complete the project proposed and meet property standards for federal funding, as applicable.

In addition, projects must not exceed reasonable development costs. If project budgets submitted through the application are deemed unusually high development costs may request additional information. Projects with unjustified, above-average development costs may not be funded. If costs go up excessively after application and before loan

closing, the City reserves the right to reconsider the project's application and withdraw funding based on new information.

E. Appraisals

For loans that include acquisition costs, applicants are required to submit a recent appraisal of the project site and any existing improvements as part of the application. The appraisal must be completed by an appropriately licensed appraiser (currently, a California Bureau of Real Estate Appraisers (BREAA) Certified General (AG) license).

F. Relocation

State and/or federal relocation law will apply for projects that will temporarily or permanently displace current business or residential occupants, and relocation assistance and benefits may be required which can add substantially to the project cost. Borrowers must provide a relocation plan acceptable to the City demonstrating relocation compliance prior to construction start.

### Section III. Affordability Targeting

Projects that receive HTF funding will be subject to affordability and occupancy requirements. These requirements will be recorded against the property. Projects that have 25 or fewer units and are not using low income housing tax credits may qualify to use the affordability requirements in Section VII., the Small Sites Program.

#### A. Minimum Affordability

The following minimum affordability requirements apply. The City may refuse to consider applications that cannot meet the following requirements:

1. At least 60% of all units in an eligible housing project (City-Assisted Units) must have restricted rents:
  - a. Not less than 20% of all the units must be affordable to households whose income does not exceed 30% of Area Median Income (AMI), and
  - b. The remaining City-Assisted Units, approximately 40% of all the units, must be affordable to households whose income does not exceed 60% of AMI.
2. Restricted rents will be set based on the rent limit for the applicable income level and unit size published by the California Tax Credit Allocation Committee (TCAC), regardless of whether the project includes tax credit financing;
3. The remaining 40% of the units are not required to have restricted rents;
4. Borrowers may provide a larger percentage of affordable units or units restricted at deeper levels of affordability;
5. Income and rent restrictions will apply for the full length of the loan term and regulatory agreement, surviving loan repayment.

#### B. Occupancy requirements

The City's regulatory agreement (one of the required loan documents) will also establish occupancy requirements that restrict occupancy of subsidized units to households that meet income and other eligibility criteria.

#### C. HOME Restricted Units

Generally, the HTF affordability requirements require more units at lower affordability levels than the HOME program. Loan documents for projects receiving HOME funds will identify the project's HOME units and any applicable conditions.

#### D. City Funding in Combination with Rental Assistance Vouchers

- For units funded with local funds and occupied by tenants with tenant-based rental subsidies (i.e. Housing Choice Vouchers (Section 8), Shelter Plus Care or similar programs), borrowers may accept contract rents that exceed the

allowable rent level in the City's regulatory agreement, as long as the tenant portion is below the allowable rent limit;

- For units funded with HOME funds and occupied by tenants with tenant-based Housing Choice Vouchers/Section 8, borrowers may accept contract rents *only* up to the allowable HOME rent limit;
- For units funded with HOME funds and project-based rental assistance (such as project-based Section 8), owners can accept the maximum rent allowed under the rental assistance program provided that they are rented to a very low income household and the tenant contribution to rent is no more than 30% of the household income.

#### E. Annual Recertification of Tenant Income and City Monitoring

Borrowers are required to re-examine tenant incomes annually to ensure that tenants continue to meet the income requirements of this and other applicable funding programs. Rent schedules and utility allowances, including any increases, are subject to restrictions in the loan documents. Borrowers will be required to report on compliance with income and rent restrictions on an annual basis, and to make records available for on-site monitoring. The loan documents will address how over-income tenants will be handled, consistent with the project's funding sources. Decreased applicant capacity points may be awarded to project applicants who are not operating their properties in compliance with the applicable loan agreements and/or working with the City to resolve compliance issues in a timely way.



## Section IV. City Loan Terms

HTF funding is provided as a loan, not as a grant. The City can fund three types of loans: predevelopment (short term), acquisition (long term with short term requirements), and development loans (long term). Any requests for forgiveness of these loans will be reviewed by the HAC and decided by the City Council upon a recommendation from the HAC.

### A. Predevelopment Loan Terms

1. Predevelopment loans will not exceed the predevelopment costs for the project.
2. Predevelopment loan applicants are encouraged to request between \$50,000 and \$500,000. Loans of any size will be considered.
3. At any point in time, predevelopment loan commitments should be 10% or less of the balance of HTF funds available at the time the request is considered in order to ensure adequate development funding for projects in the pipeline.
4. Standard loan terms will be a five year term at 3% interest.
5. The City Manager may approve variations to the standard terms prior to the issuance of an RFP based on market conditions, or for a specific project if the sponsor can demonstrate that the project would either be uncompetitive or ineligible for other funding sources without such a reduction.
6. If permanent financing is provided through the HTF, the predevelopment loan will be added to the permanent loan, extending the term.

### B. Acquisition Loan Terms

1. The acquisition loan amount will not exceed 40% of the project's total costs unless City Council makes a finding that a higher level of funding is justified by the nature of the assisted project and the unavailability of alternative funding. In no event will acquisition loans exceed the acquisition and predevelopment costs for a project.
2. At any point in time, acquisition loan commitments should be 40% or less of the balance of HTF funds available at the time the request is considered in order to ensure adequate development funding for projects in the pipeline.
3. The standard acquisition loan terms will be 55 years at 3% simple interest.
4. Project must secure financing and start construction within five years.
5. The City Manager may approve variations to the standard terms prior to the issuance of an RFP based on market conditions, or for a specific project if the sponsor can demonstrate that the project would either be uncompetitive or ineligible for other funding sources without such a reduction.

C. Development Loan Terms

1. The development loan amount will not exceed 40% of the project's total cost unless City Council makes a finding that a higher level of funding is justified by the nature of the assisted project and the unavailability of alternative funding. In no event will the development loan exceed total development costs.
2. The standard loan terms will be 55 years at 3% simple interest.
3. The City Manager may approve variations to the standard terms prior to the issuance of an RFP based on market conditions, or for a specific project if the sponsor can demonstrate that the project would either be uncompetitive or ineligible for other funding sources without such a reduction.
4. Payments of interest and principal will be due on an annual basis from excess cash flow from operations after payment of operating costs, senior debt, reserves, and deferred developer fee.
5. The City will follow HOME program funding limits when determining awards of HOME funds.

D. Loan Documentation

City acquisition and development loans will apply affordability and occupancy requirements for a minimum of 55 years. All City loans will be evidenced by a promissory note secured by a deed of trust on the project. For predevelopment loans, an Assignment of Work Product may serve as security if Borrower has not yet acquired fee ownership or leasehold interest in the property and the City is unable to record a deed of trust, subject to a requirement to record a deed of trust at acquisition. A loan agreement will specify all Borrower obligations. Post-occupancy use restrictions will be enforced through a regulatory agreement recorded against the project's land and improvements.

E. Subordination

The City will not subordinate its affordability covenants (typically, the regulatory agreement) to the deeds of trust securing other lenders' financing, with the exception of State, Federal, and County funding sources (subject to City approval and to the ratio of debt to total development cost). The City Manager may review exceptions. The affordability covenants control, among other things, the maximum income of tenants of project units, and the maximum rents allowed for project units. The City deed of trust may be subordinated to other financing on a case-by-case basis.

F. Disbursement of Funds

Funds will be disbursed to borrower only for costs actually incurred. Payment for construction costs will be made on a progress payment basis, subject to approval of each draw request by the City. Disbursement of funds for construction is conditioned

upon the borrower having secured full funding commitments for the project. The loan agreement will include provisions for retention that will be withheld until the development requirements have been satisfied.

#### G. Additional Loan Requirements

##### 1. Market Demand

Projects should be planned and designed according to market demand. Demand for the type, location, and size of units at the proposed rents or sales prices must be documented at the time of application. Projects that receive HOME funds (or other projects if deemed necessary by the City Manager) are also required to submit a complete market study prior to loan closing, according to HUD requirements.

##### 2. Cost Certification

Borrowers must arrange for an independent cost certification on completion of a project. Approval of this certification is a requirement for the City's release of retention (City loan funds retained through construction pending completion).

##### 3. Management, Marketing, and Tenant Selection Plans

The City's loan agreements require borrowers to prepare management, marketing, and tenant selection plans acceptable to the City for each project prior to occupancy.

##### 4. Resident Services and Special Needs Units

Developments targeting special needs populations must provide a services plan showing the type and level of services to be provided for residents and how services will be funded. For rental projects, supportive and social service coordination reasonable for the population being served may be included as a cost paid by building operations. However, direct service provision may not be paid for from the building's operating funds unless the direct service is required by another funding source.

##### 5. Environmental Review

Projects may be required to pay for the actual cost of the required environmental review and to pay for Phase 1 and Phase 2 environmental studies, if needed, by a vendor approved by the City.

##### 6. Minimum Equity Requirements.

Profit-motivated borrowers (except for limited partnerships whose general partner is a nonprofit corporation) must provide equity equal to at least 10% of total project costs. The value of the project site may be used to meet the equity requirement. If the site has been owned for more than three years, the equity will be calculated on the basis of the current appraised value of the property, less outstanding debt. For sites which have been owned for less than three years, the equity contribution will be calculated on the basis of the actual acquisition cost of

the property, less outstanding debt. Equity investments generated by syndication of tax credits or deferred developer fees will not be considered as an equity contribution.

Non-profit borrowers are not required to provide equity.

7. Limited Partnerships Requirements.

For projects proposed as limited partnerships, the City reserves the right to approve the limited partnership agreement prior to executing the HTF loan.

8. Monthly Updates.

Upon commitment of funds from the City, borrower must provide written monthly updates to the City. Monthly updates will allow the City to anticipate upcoming approvals needed and to stay informed about efforts to move the project forward on schedule. If monthly updates are not provided in a timely manner, decreased applicant capacity points may be assessed for the next funding request submitted by the borrower. If HOME funds are awarded, monthly updates should include a schedule projection related to the four year completion deadline required by HUD.

9. Replacement and Operating Reserve Requirements.

The City Manager may establish standards for replacement and operating reserves. Use of replacement and operating reserves is subject to prior review and approval by the City.

## Section V. Process for City Reservations

Note that funds designated by the City Council specifically for the Small Sites Program will be administered according to Section VII. All other projects seeking HTF program funding, including Small Sites Program- eligible projects applying for funds outside of a Small Sites Program NOFA, , will follow the process below.

### A. Predevelopment Loan Applications

1. Applicants with documented site control and a feasible proposed development and operating plan can apply over the counter for a predevelopment loan at any time.
2. Applications will only be considered if the amount of funding requested is no more than 25% of the funds available in the HTF at the time of application.
3. The City will provide a predevelopment application form to be completed by applicants. The City Manager may reject an application if the applicant does not provide enough information to evaluate the proposal adequately or if the proposal is not consistent with threshold criteria, including applicant capacity (Section I) and proposed affordability (Section III).
4. Applications that are accepted by the City Manager will be referred to the HTF Review Process (below).

### B. Acquisition Loan Applications

1. Applicants with documented site control and a feasible proposed development and operating financing strategy can submit an application for a site acquisition loan at any time.
2. Applications will only be considered if the amount of funding available in the HTF exceeds the funds requested.
3. The City Manager may reject applications that are incomplete or do not meet HTF threshold requirements
4. Applications that are accepted by the City Manager will be referred to the HTF Review Process (below).

### C. Development Loan Applications

1. When there are sufficient funds in the HTF to warrant releasing a NOFA the City Manager will request authorization from the City Council to release a NOFA.
2. When authorization is granted, the City Manager will prepare a NOFA establishing a competitive process and criteria for submission and review of applications.
3. The City Manager will determine whether applications have satisfied the requirements of the NOFA, including timing requirements and completeness and may offer applicants additional time to provide incomplete items. If the City

Manager rejects any applications due to lateness or incompleteness, the applicant will be notified in writing.

4. Applications that are accepted by the City Manager will be referred to the HTF Review Process (below).

#### D. Projects at Risk

1. Projects that are imminent risk may apply for funds at any time. Projects that are imminent risk will include: projects with documented state and federal funding commitments that are at risk, previously-funded projects that are in construction, and previously-funded projects that have urgent health and safety needs.
2. Applicants are responsible for demonstrating and documenting
  - a. The urgency of the need;
  - b. The steps they have taken to avoid the need for additional City funds; and
  - c. That no other funds are available to meet the need.
3. The City Manager will determine whether the documented need is sufficiently material and urgent to warrant consideration, and whether the applicant has sufficiently pursued alternatives prior to requesting City assistance.
4. Applications that are accepted by the City Manager will be referred to the HTF Review Process (below). If the City Manager determines that unusual, urgent conditions exist such that following the standard process would be a detriment to the City's interest in the project, the City Manager may elect to send a recommendation directly to the Council, or commit funds directly to projects that are eligible under the Small Sites Program guidelines.

#### E. HTF Review Process

1. Upon acceptance of applications during a funding round, the City Manager will prepare a summary of applications received. The summary will include the project sponsor, address, number of units, proposed affordability levels, and populations to be served, as well as information about the expected timeline for Commission review. The summary will be forwarded to the Homeless Commission, Mental Health Commission, Commission on Aging, and the Commission on Disability.
2. The City Manager will evaluate each funding application for feasibility and compliance with applicable requirements, and prepare a summary of the project and a technical analysis. Such evaluation may be completed by City staff or consultants.
3. The City Manager will provide the HAC with evaluation materials for each project. Typically the HAC will designate a HTF subcommittee to evaluate each project and make recommendations to the entire Commission.

4. The HAC may make a recommendation to the City Manager and/or City Council regarding whether to fund the application.
5. HTF funding recommendations, with the exception of Small Sites Program loans (Section VII)), are subject to City procurement guidelines. Funding recommendations that exceed the City Manager's authority (currently \$50,000) will be referred to Council and loans within the City Manager's scope of authority will be determined by the City Manager. The City Manager may also choose to refer any loan application to the City Council.

F. NOFA Selection Criteria.

During a NOFA competitive process, applications will be evaluated based on how well they meet the five key factors identified below:

1. Community objectives;
2. Conformance with adopted plans and policies and current local priorities;
3. Applicant qualifications and experience;
4. Cost effectiveness and feasibility; and
5. HTF program and specific NOFA priorities.

## Section VI. City Priorities

### A. Sustainable Development

Applicants should incorporate energy and water efficient technologies and construction techniques into their developments to achieve the City's General Plan and Climate Action Plan goals and provide healthy, comfortable home environments with low utility bills for future tenants. The use of sustainable materials and technologies are promoted to minimize negative ecological impacts of the construction materials used and provide high indoor air quality for residents.

All newly constructed buildings must be all-electric, without natural gas infrastructure, in accordance with Berkeley's Natural Gas Prohibition (BMC Chapter 12.80). All projects must meet all locally-adopted building code requirements including the Berkeley Green Code (BMC Chapter 19.37, local amendments to CALGreen, Title 24, Part 11) and the Berkeley Energy Code (BMC Chapter 19.36, local amendments to the CA Energy Code, Title 24, Part 6) that are in effect at the time of building permit application. Landscaping must comply with California's Water Efficient Landscaping Ordinance (WELO). All projects are encouraged to incorporate green building features that qualify for a third-party green building certification such as GreenPoint Rated, LEED for Homes, ENERGY STAR Multifamily New Construction Program or ENERGY STAR Certified Homes, and WaterSense Labeled Homes.

Projects should take advantage of programs that provide financial incentives for deep energy and emissions savings. The City Manager may establish additional sustainability requirements.

### B. Labor Requirements

Borrowers are responsible for compliance with all applicable labor laws and regulations, and for maintaining a record of their compliance.

1. First Source Employment Agreement (BMC 13.26)

Borrowers must execute and implement a First Source Hiring agreement with the City of Berkeley and ensure that monitoring occurs during the development period.

2. Prevailing Wages

Funded projects must include the payment of the General Prevailing Rate of Per Diem Wages, as defined in Title 8 of the California Code of Regulations, (Division 1, Chapter 8, Subchapter 3, "Payment of Prevailing Wages Upon Public Works") section 16000, to all workers who perform work that is covered by a State-published prevailing wage determination. This requirement was established by Resolution 54,533-N.S., adopted on November 23, 1988, which requires



payment of State Prevailing Wage on all City-funded construction. More resources on state prevailing wage are available at :  
<https://www.dir.ca.gov/Public-Works/PublicWorks.html>

3. Registration with the Department of Industrial Relations.  
Note that Housing Trust Fund program projects are generally exempt from the DIR registration requirements for public works projects in Labor Code 1771.1 and 1771.4 since they are usually exempted from the definition of public works projects in Labor Code 1720(c)(5)(E).
4. While HTF projects are typically exempt from apprenticeship requirements in the state Labor Code since they are exempt from the definition of public works in Labor Code 1720(c)(5)(E), Borrowers are encouraged to employ apprentices to advance workforce development. When apprentices are employed, ratios consistent with Labor Code 1777.5 must be followed.
5. Projects funded with HOME or CDBG may be subject to federal Davis-Bacon prevailing wages. For projects subject to these requirements, the City may require borrower to hire a third party consultant, or the City may charge a fee for labor compliance monitoring. HUD makes detailed information about Davis-Bacon requirements available online at:  
[https://www.hud.gov/program\\_offices/davis\\_bacon\\_and\\_labor\\_standards](https://www.hud.gov/program_offices/davis_bacon_and_labor_standards)

#### C. Accessibility

Funded projects must comply with applicable federal, state, and local accessibility requirements. Applicants are encouraged to maximize accessibility by going beyond the minimum accessibility standards and to incorporate universal design features.

#### D. Units for Homeless Households and Those at Risk of Homelessness

The EveryOne Home Plan to end homelessness in Alameda County aims to create affordable housing units for the unhoused. The EveryOne Home website provides additional information and resources at <http://www.everyonehome.org>

The City of Berkeley encourages all projects to include as many units as possible to contribute to the City's goal of creating housing opportunities for all who are homeless in Berkeley. Units dedicated to serving homeless households will be required to use the Countywide Coordinated Entry System to identify tenants.

## Section VII. Small Sites Program

The guidelines in this section will be applied to smaller, non-tax credit projects seeking funding through the HTF process as well as those smaller, non-tax credit projects applying after the City Council sets aside Small Sites Program funds. On October 2, 2018, the City Council approved guidelines for the Small Sites Program, which was established to fund the acquisition and renovation of small multifamily properties. This section describes the process and criteria for the Small Sites Program. The expedited, over-the-counter SSP process will be followed only when the City Council designates funds for the SSP; the other criteria in this section will be applied to any eligible project that applies during a HTF funding round.

### A. Purpose.

The purpose of the SSP is to support:

1. Acquisition and renovation of occupied, multifamily rental properties;
2. Conversion of rent controlled properties to restricted affordability; and
3. Potential conversion to limited- or non-equity housing cooperatives (LEHC).

The following criteria apply ONLY when the City Council designates funding for the SSP program:

B. Process. The critical difference between the HTF and the SSP is that funds designated by Council for the SSP will go through a fundamentally different allocation process. With Resolution 68,623-N.S. and Ordinance 7,630 adopted in October 2018, the City Council approved an over the counter process whereby allocations of Small Sites Program funding, consistent with the adopted program guidelines, can be approved by the City Manager. When City Council designates funds for the SSP, funds will be made available via the following process:

1. Release NOFA and accept applications on a first-come, first-served basis (no due date);
2. Applications will be reviewed in the order they are received;
3. For applications received within 10 business days of each other, the City Manager will apply the priorities criteria below to determine funding priority;
4. Project review for consistency with guidelines by the City Manager;
5. Approval by City Manager or her designee only (no subcommittee, HAC, or Council approval);
6. Aim for review, approval, and project funding within 90 days of application.

C. Priorities in the Event of Multiple Applications Received within 10 Days of Each Other.

1. Buildings at imminent risk of Ellis Act eviction;
2. Occupied projects;

3. Existing residents include vulnerable populations (families with minor children, elderly, disabled, and catastrophically-ill persons);
4. Buildings housing residents with lowest incomes;
5. Buildings that require the lowest amount of subsidy per unit;
6. Projects preserving the greatest number of affordable units;
7. Buildings with a potential for conversion to LEHCs.

The following criteria will be applied to any Eligible Project that applies for SSP funds or whose application is considered during an HTF funding round:

D. Eligibility Criteria.

1. Projects must include acquisition and rehabilitation of a rental property.
2. Projects must include 2 to 25 units.
3. Site control is not required at the time of application but funds will only be released at the time of or after fully documented acquisition.
4. All residential units must meet City's definition of 'dwelling unit' (BMC 23F.04.010) and fully conform to applicable local codes. If a project includes occupied, unpermitted units, legalization of the units must be included in the project scope.
5. Properties with commercial spaces are eligible, so long as the majority of the project is residential and
  - a. Commercial space counts as one unit for City subsidy calculation;
  - b. City funds cannot be used for tenant improvements.

E. Project Financing

1. Projects that include Low Income Housing Tax Credits are not eligible for SSP.
2. The project must have a bank or CDFI loan in addition to the funds requested by the City and any equity participation by the borrower/buyer.
3. City will size its loan based on project need: acquisition cost, rehabilitation costs, and developer fee, not to exceed the maximum subsidy limits. SSP projects are not subject to a City loan cap of 40% of total project financing.
4. Maximum City Subsidy:
  - a. \$300,000 per unit for buildings of 10-25 units;
  - b. \$375,000 per unit for buildings of 2-9 units; or
  - c. \$175,000 per bedroom for group living accommodations or single room occupancy (SRO) housing.
5. The standard SSP loan term is 55 years, with a 55-year regulatory agreement period.
6. Repayment of the City loan will be through residual receipts;
  - a. 1/3 of the residual receipts may be retained by the borrower;
  - b. For any year when the replacement reserve balance is less than 1.5 times the original capitalized replacement reserve, the remaining 2/3 must be

deposited into the project's replacement reserve account, if the funding sources allow.;

- c. For any year when the replacement reserve balance is greater than 1.5 times the original capitalized replacement reserve, the remaining 2/3 must be distributed to the City for debt repayment.

F. Renovation Scope

1. Renovations should address health and safety items, and systems with a remaining useful life of 10 years or less; and
2. Renovation scope and costs must be substantiated by a recent physical needs assessment (PNA) of the property.

G. Project Proforma

1. Project proformas must demonstrate a positive cash flow for 15 years after project completion, and must demonstrate sufficient cash flow to support debt and the ability to refinance or repay debt in a timely manner without additional resources from the City.
2. Proformas must show a 5% residential vacancy rate and a 20% commercial vacancy rate.
3. Reserve deposits must comply with the following:
  - a. Operating reserves: None unless balance drops below 25% of prior year's operating expenses.
  - b. Replacement reserves: The higher of
    - i. the amount needed according to the approved 20-year PNA or
    - ii. \$400 per unit per year (\$350 per unit for projects with 11+ units).

H. Project Budget

1. The acquisition price must be substantiated by an appraisal showing both the fair market value and the anticipated restricted value.
2. Fees charged to project must be reasonable, subject to review by the City Manager.
3. The developer fee is limited to \$80,000 plus \$10,000 per unit, not to exceed 5% of project costs excluding the developer fee.
4. Construction management fees may not exceed \$25,500 per project, and will be reimbursed at a rate proportional to the predevelopment or development work completed to date.
5. The construction pricing must be based on the payment of State prevailing wage.
6. Project budget must include a 15% construction contingency. If the project has leftover construction contingency, 50% of the remaining funds will be deposited into the replacement reserve account.
7. Project must include a 15% soft cost contingency.
8. Project budgets must include the following capitalized reserves:
  - a. Operating reserves: 25% of budgeted Year One operating expenses

- b. Replacement reserves: The greater of \$2,000 per unit or the amount necessary to pay replacement costs for the next 10 years, as specified in an approved PNA.
  - c. Vacancy reserves: the monthly rent for units (residential and commercial) vacant at acquisition multiplied by the number of months expected to remain vacant during development and lease-up.
9. If the source of funds allows, up to \$100,000 in unspent City loan funds may be retained by the borrower for deposit into the project's reserve accounts. Subject to final building permit or other documentation of borrower's completion of the approved renovation scope.

I. Affordability

- a. Affordability will be measured at the building level, with the goal of achieving an average of 80% of the area median income (AMI) for the project. The City's loan documents will include guidelines for how this will be calculated. The City may alternatively approve limiting all incomes to 80% of AMI.
- b. Borrower must be willing to accept tenants holding Section 8 or Shelter Plus Care rental assistance vouchers.

J. Existing Tenants

- 1. Borrower must educate tenants on the conversion from rent control to restricted affordability
- 2. At loan closing:
  - a. 75% of existing households must acknowledge their agreement to participate (in the conversion to restricted affordability) in a format approved by the City.
  - b. 66% of existing households must income-certify for the property to be eligible for the program, either on average or individually, depending on the proposed affordability requirements. Up to 34% of existing households may be over income (above 120% AMI) or refuse to certify.
- 3. Within 60 days of loan closing, borrower must submit a relocation plan to the City for approval, outlining plans for the temporary relocation of residents during renovations, if needed.
  - a. Relocation shall not exceed 90 days.
  - b. Borrower must hire a relocation consultant or similar staffing to provide advisory services to tenants.
  - c. Notice will be given to tenants 90 days and 30 days prior to relocation, at a minimum.
  - d. Commercial relocation shall be offered in the form of temporary suspension of rent plus a negotiated lump sum to ensure that the business is able to withstand the relocation period.

K. Applicant Requirements

1. Applicant must have completed one comparable project, and have demonstrated capacity to undertake the proposed project.
2. City and City-controlled entity would be eligible to directly purchase properties under the program.

L. Exceptions to Program Requirements

1. Will be reviewed on a case-by-case basis, and could be approved by the HHCS Director only if they are consistent with the program purpose, project feasibility, and sustainable housing operations. The HHCS Director may determine that certain requested exceptions would require HAC review and Council approval.
2. The source of the City's funds may impact certain program requirements, if the funding carries limitations on its uses.

M. Limited and Non-Equity Housing Cooperatives

1. For projects proposing LEHCs, include successful experience with LEHC conversions as a threshold requirement for applicant experience.
2. Properties acquired with the intent of converting to LEHCs should be considered as homeownership projects.
  - a. Existing tenants have the right to remain in units as tenants.
  - b. Borrower is required to assist tenants in obtaining financing to become owners, if needed.

Editing notes:

Add index

Style notes for editing-

Limit references to “applicant” and “borrower” avoiding other terms such as sponsor and owner

Only refer to City Manager, not staff, HHCS or her designee







Office of the City Manager

CONSENT CALENDAR  
January 19, 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: Authorization to Execute a Revised Programmatic Agreement with the California State Historic Preservation Officer

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a revised Programmatic Agreement (PA) with the California State Historic Preservation Officer (SHPO) to clarify which rehabilitation activities would not require SHPO's review.

FISCAL IMPACTS OF RECOMMENDATION

The proposed changes will streamline the environmental review process by reducing staff time for certain projects, thereby allowing accessibility improvements for disabled residents to be completed more quickly.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley administers federal funding from the Department of Housing and Urban Development (HUD) to carry out various types of projects, including major and minor rehabilitation. Federal regulations (24 CFR Part 58) require that recipients of HUD funds conduct an environmental review before undertaking any of these rehabilitation projects. One component of this review is to comply with federal and state laws governing historic preservation. To streamline the review process for historic preservation, the City entered into a Programmatic Agreement (PA) on February 3, 1993 with the California State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP). The PA allows the City, the SHPO (a state agency), and the ACHP (a federal agency) to mutually agree that certain types of projects will not be reviewed by either agency because the projects are too minor to warrant such a review. ACHP recommends executing a PA for programs that have similar or repetitive effects on properties to avoid the need for a separate historic preservation review for each project.

Under the current PA, the City sends approximately 15 projects to SHPO annually for their concurrence with staff's documented determination of "no effects on historic properties." About half of these projects consist of exterior alterations to improve accessibility for disabled residents of the properties, such as the installation of lifts and construction of wheelchair ramps. SHPO has not objected to any of these

determinations and these types of projects do not rise to the level of ACHP review. Staff is proposing to modify the existing PA in order to include additional types of accessibility improvements and landscaping changes to be excluded from state review. The proposed revisions are modeled after San Francisco's PA and will allow the City to move these types of accessibility projects to completion more quickly than can be accomplished currently. These are important improvements that allow low-income seniors and people with disabilities to remain in their homes and communities rather than be placed in facilities or be forced to move. From an equity lens it is worth noting that homeowners who can afford to pay for rehabilitation projects that allow them to continue to reside in their own homes are not subject to this process.

The Landmark Preservation Commission (LPC) and the City's Historic Preservation Planner have reviewed the proposed changes and took no formal action regarding the proposal. They also indicated that, while they would not want to delay the process, they would be interested in being informed about properties being approved under SHP. Staff are exploring how best to implement this request. In order to expedite these important projects for a very vulnerable population and to align with state and federal recommendations, as well as other local jurisdictions, we recommend that Council approve the item as presented. SHPO has reviewed the revised PA several times and notably requested the removal of ACHP as a signatory since none of the projects covered by the PA would require ACHP review. ACHP requested that the City include stipulations that address emergencies and public outreach.

#### BACKGROUND

Under 24 CFR Part 58, the City of Berkeley is the Responsible Entity and assumes the responsibility of HUD for environmental review, decision-making, and action. A component of the environmental review is historic preservation. Section 106 of the National Historic Preservation Act (NHPA) requires that a federal agency take into account the effect of their undertaking on historic properties. The PA streamlines that process by laying out the agreed upon terms and conditions to resolve potential adverse effects of undertakings and programs affected by the use of funding from HUD.

The City has several programs that use the following HUD funding sources: Community Development Block Grant (CDBG), Emergency Shelter Grant (ESG), and HOME Investment Partnerships (HOME) program. The City's Housing Trust Fund (HTF), which provides loans and grants to create, maintain, or expand the City's affordable housing stock, contains CDBG and HOME funds. The City also provides HUD funds to several programs where community agencies conduct home repairs for low income households and construction of access ramps and lifts for disabled households.

In 2012, staff submitted a revised PA for the LPC and general public to review and comment and in 2015, Council adopted Resolution No. 67,260–N.S. to authorize the City Manager's execution of a revised PA. However, due to changing priorities and conflicting schedules, the revised PA was not executed. When staff attempted to

execute the PA in 2018, ACHP recommended staff reach out to consulting parties and the public again. In December 2018, a modified draft of the PA was reviewed by LPC and the general public. Since the current version of the revised PA differed from the version submitted to Council in 2015, a new authorization is requested.

In addition to the proposed revisions already mentioned in the report, the new PA also contains the following notable changes:

- Clarifies the use of any revenue from HUD is subject to Section 106 and not just programs previously listed in the PA;
- Includes stipulations that address emergencies and public outreach as requested by the ACHP;
- Changes the usage of several terms for consistency (e.g. “COB” changed to “City”);
- Includes a “definitions” section; and
- Eliminates poor drafting errors, such as an erroneous reference to federal law.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### RATIONALE FOR RECOMMENDATION

The PA delegates certain decision making responsibilities to the City of Berkeley by allowing all parties to mutually agree that certain activities will not require review by SHPO. The proposed revisions to the PA will reduce the amount of time it takes for the City to complete its environmental review and this will allow the rehabilitation projects to occur sooner, thereby assisting disabled Berkeley residents quicker.

#### ALTERNATIVE ACTIONS CONSIDERED

If the Council does not authorize the execution of the revised PA, staff would continue using the existing PA which requires requesting concurrence with SHPO on projects containing exterior modifications associated with improving accessibility for disabled City of Berkeley residents. This adds the cost of staffing time and delays implementation of projects that SHPO and ACHP think are unnecessary.

#### CONTACT PERSON

Be Tran, Associate Planner, HHCS, (510) 981-5422

#### Attachments:

##### 1: Resolution

- Exhibit A-1: Proposed Programmatic Agreement (with strike-out, Word doc)
- Exhibit A-2: Proposed Programmatic Agreement (with strike-out, PDF)
- Exhibit A-3: Proposed Programmatic Agreement (clean)

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

REVISED PROGRAMMATIC AGREEMENT WITH THE CALIFORNIA STATE  
HISTORIC PRESERVATION OFFICER

WHEREAS, the City is a recipient of the Community Development Block Grant Program, the HOME Investment Partnerships Program, and the Emergency Shelter Grant Program administered by the Department of Housing and Urban Development (HUD); and

WHEREAS, the City is the Responsible Entity and assumes the responsibility of HUD to comply with the environmental review procedures under the National Environmental Policy Act and Section 106 review requirements under the National Historic Preservation Act; and

WHEREAS, the City executed a Programmatic Agreement with the California State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) on February 3, 1993 to allow for expedited review of HUD funded projects affecting historic properties; and

WHEREAS, the City proposes to revise the Programmatic Agreement to include undertakings that would not require SHPO or ACHP review such as modifications associated with accessibility for disabled people; and

WHEREAS, the City Council previously approved Resolution No. 67,260–N.S. authorizing the City Manager to execute the revised PA in 2015 but the PA was not executed; and

WHEREAS, a new resolution is sought because the current version of the PA differs from the version previously submitted to Council.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute the new revised Programmatic Agreement (Exhibit A) with SHPO, including any additional changes proposed by SHPO and ACHP.

Exhibits

A: Proposed Programmatic Agreement (with track changes (Word doc and PDF) and clean copy)

PROGRAMMATIC AGREEMENT  
 BY AND AMONG  
 THE CITY OF BERKELEY;  
~~THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,~~  
 AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

REGARDING HISTORIC PROPERTIES AFFECTED BY USE  
 OF ~~REVENUE FROM THE DEPARTMENT OF HOUSING AND URBAN  
 DEVELOPMENT PART 58 PROGRAMS COMMUNITY DEVELOPMENT BLOCK  
 GRANTS; RENTAL REHABILITATION BLOCK GRANTS; AND MCKINNEY ACT  
 HOMELESS PROGRAMS INCLUDING  
 THE EMERGENCY SHELTER GRANTS PROGRAM, TRANSITIONAL HOUSING,  
 PERMANENT HOUSING FOR THE HOMELESS HANDICAPPED,  
 AND SUPPLEMENTAL ASSISTANCE FOR FACILITIES TO ASSIST THE HOMELESS;  
 THE HOPE II PROGRAM; THE HOME PROGRAM; THE HOPWA PROGRAM  
 AND THE SHELTER PLUS CARE PROGRAM~~

WHEREAS, the City of Berkeley (~~COB~~ "City"), a "Responsible Entity" under 24 CFR Part 58, proposes to administer and fund projects and programs (~~hereinafter referred to as "Undertakings," as defined in 36 CFR 800.16y~~) in the City of Berkeley, California with monies from the U.S. Department of Housing and Urban Development ("HUD") programs ("Programs") delegated to the City pursuant to 24 CFR Part 58 or any other pertinent HUD regulations; and ~~Community Development Block Grant program (CDBG) of the Department of Housing and Urban Development under Title I of the Housing and Community Development Act of 1974; the McKinney Homeless Programs including the Emergency Shelter Grants Program, Transitional Housing, Permanent Housing for the Homeless Handicapped, and Supplemental Assistance for Facilities to Assist the Homeless; the Hope II program; the HOME program; and the Shelter Plus Care program; and~~

WHEREAS, ~~COB the City~~ has determined the administration of these ~~projects~~ ~~Undertakings~~ and ~~p~~Programs may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places ("~~h~~Historic ~~p~~Properties") and has consulted with the California State Historic Preservation Officer ("SHPO") ~~and the Advisory Council on Historic Preservation (Council) ("ACHP")~~ pursuant to 36 CFR Part 800.13 of the regulations implementing Section 106 of the National Historic Preservation Act (16 USC 470f) ("~~Act~~"); and

WHEREAS, pursuant to the ~~Advisory Council on Historic Preservation's ("ACHP")~~ Section 106 regulations, "Protection of Historic Properties" ("~~Regulations~~") [36 CFR ~~Part~~ 800], the City has requested the comments of the ACHP; and

WHEREAS, pursuant to ACHP's Section 106 regulations, the City has conducted outreach and has actively sought and requested the comments and participation of Indian tribes that attach religious and cultural significance to historic properties that may

be affected by Undertakings funded under the terms of this Agreement; and these Tribes did not respond to our requests to engage in such consultation; and

WHEREAS, the City will continue to conduct outreach and will actively seek and request the comments and participation of Indian tribes that attach religious and cultural significance to historic properties that may be affected by Undertakings funded under the terms of this Agreement; and

WHEREAS, pursuant to ACHP's Section 106 Regulations, the City has considered the nature of the program and its likely effects on historic properties and has taken steps to involve individuals, organizations and entities likely to be effected by the Undertaking; and

WHEREAS, pursuant to ACHP's Section 106 Regulations, the City has arranged for public participation appropriate to the subject matter and scope of the Programmatic Agreement by providing notice to the public and has held meetings before the Landmarks Preservation Commission concerning the Undertaking for the purpose of informing the public and including them in the consultation process; and

WHEREAS, sub-recipients receiving Part 58 funds, which are the subject matter of this agreement, by, from, or through the City agree as a condition of receiving funding to comply fully with the requirements of the National Historic Preservation Act of 1966 (16 USC 470) and the procedures set forth in 36 CFR Part 800 on the Historic Preservation Procedures for Protection of Historic Properties; and

NOW, THEREFORE, ~~COB~~the City, ~~and~~ the SHPO, ~~and the Council~~ ACHP agree that the ~~programs~~ Undertakings shall be administered in accordance with the following stipulations to satisfy ~~SHRA's~~ the City's Section 106 responsibilities under Section 106 for all individual ~~u~~Undertakings of the ~~p~~Programs, ~~involving rehabilitation.~~

## STIPULATIONS

The City of Berkeley shall ensure the following measures are carried out:

### I. TERMINATION OF EXISTING PROGRAMMATIC AGREEMENT

The Programmatic Agreement ("PA") entered into on December 3, 1992 by the Advisory Council on Historic Preservation, the California State Historic Preservation Officer and the City of Berkeley is hereby terminated by mutual agreement and is no longer in effect as of the effective date of this Programmatic Agreement. The stipulations agreed to in the PA are replaced in their entirety by the stipulations agreed to in this PA.

### II. APPLICABILITY OF THE PROGRAMMATIC AGREEMENT

~~COB~~The City shall comply with the stipulations set forth in this Agreement ~~PA~~ for all ~~u~~Undertakings within the City of Berkeley, California, which involve the exterior or interior rehabilitation of residential and commercial structures and is assisted entirely or

in part by monies from the ~~p~~Programs of the U.S. Department of Housing and Urban Development ~~listed above~~ subject to 24 CFR Part 58. This agreement is also applicable to ~~u~~Undertakings which involve solely acquisition and rehabilitation of structures provided that such ~~u~~Undertakings do not involve demolition or new construction. The review process established by this Agreement PA shall be completed prior to ~~COB's the City's~~ final approval of any application for assistance under these ~~p~~Programs, and prior to ~~COB the City~~ or the property owner altering the property, or initiating construction or making irrevocable commitment for construction that may affect a property that is fifty (50) years of age or older. Any Undertaking that does not qualify for review under the terms of this Agreement PA shall be reviewed in accordance with the procedures outlined in 36 CFR Part 800.

III. COORDINATION WITH OTHER FEDERAL AGENCIES—36 CFR § 800.2(C)(4)  
Other Federal agencies providing permits, licenses, or financial assistance for Program activities covered under the terms of this PA may, with the concurrence of the City and SHPO, satisfy their Section 106 responsibilities by accepting and complying with the terms of this PA. In such situations, the City and the Federal Agency shall notify the SHPO in writing of their intent to use this PA to achieve compliance with Section 106 requirements. If the SHPO does not respond within 21 days of receipt of such a notice of intent, the City and other Federal agency will assume SHPO's concurrence, as referenced above. Copies of all such notification letters shall be maintained in the files established by the City for each such Undertaking.

IV. UNDERTAKING NOT REQUIRING REVIEW BY SHPO ~~OR THE COUNCIL~~  
The following Undertakings do not require review by SHPO and no signatory is required by this PA to determine the National Register of Historic Places ("NRHP") eligibility of properties affected by these Undertakings.

- A. Undertakings not requiring review by the SHPO ~~or the Council~~ are enumerated in Attachment "A." An Undertaking consisting of activities ~~enumerated in Attachment "A" as well as activities~~ not listed in Attachment "A" shall be reviewed pursuant to the terms of this Agreement PA. ~~An undertaking, unless exempt from review under the provisions of Stipulation II.B. below, which is exempted from review under Attachment "A" nevertheless will be designed to be in conformity~~ Undertakings involving Historic Properties but nevertheless exempt from review pursuant to Attachment "A" shall be designed to conform with the California State Historic Building Code [State of California, Title 24 Building Standards, Part 8 ("SHBC")]; as well as the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Building ("Standards").
- B. Undertakings affecting only properties that are less than fifty (50) years of age do not require review pursuant to the terms of this Agreement PA.

- C. Undertakings which are limited to the rehabilitation of interior spaces with in single family residential structures where such work will not be visible ~~form~~ from the exterior of the structure do not require review pursuant to the terms of this AgreementPA.

#### III.V. AREA OF POTENTIAL EFFECTS

It is agreed for the purposes of this AgreementPA, with the exception of Stipulation VII.B., that the Area of Potential Effects (“APE”) will be limited to the individual building when a proposed project is limited to the rehabilitation of its existing interior or exterior features.

#### IV.I. IDENTIFICATION OF HISTORIC PROPERTIES

- A. ~~COB~~ The City shall review all existing information on any property within the APE that may be affected by the use of these funds, including the National Register of Historic Places and lists of ~~h~~ Historic ~~p~~ Properties maintained by the City of Berkeley.
  - 1. If the property proposed for rehabilitation is listed in the National Register or has already been determined eligible for inclusion in the National Register, ~~COB~~ the City shall proceed with the review of the project pursuant to Stipulation VII., unless exempted under Stipulation III.V.
  - 2. If the property has been determined by ~~COB~~ the City, in written consultation with the SHPO, within the last five (5) years prior to the current ~~u~~ Undertaking to be ineligible for inclusion in the National Register, then the ~~u~~ Undertaking may proceed without further review under the terms of this AgreementPA.
- B. If the property proposed for rehabilitation is not listed in the National Register, has not been evaluated for the National Register eligibility within the last five (5) years, and is at least 50 years of age, then ~~COB~~ the City shall submit the documentation required pursuant to 36 CFR 800.4 plus a completed California Historic Resources Inventory form (DPR523) to the SHPO for review, ~~included in Attachment “B” to this Agreement~~. Other information may be requested by the SHPO if necessary. ~~COB~~ The City shall apply the National Register ~~e~~ Criteria and notify the SHPO of its determination in the submittal.
  - 1. If the SHPO agrees with ~~COB~~ the City that a property is eligible under the criteria, the property shall be considered eligible for the National Register for purposes of this AgreementPA, and shall hereinafter be referred to as a ~~h~~ Historic ~~p~~ Property. The ~~COB~~ City



shall continue consultation in accordance with the terms of this [Agreement PA](#) for all such properties.

2. If the SHPO agrees with the [COB-City](#) that the criteria are not met, the property shall be considered ineligible for the inclusion in the National Register for a period of five (5) years from the date of the SHPO's review. Such properties need not be reevaluated during this five (5) year period, unless a party to this [Agreement PA](#) notifies the [COB-City](#) in writing of changing perceptions of significance warrants a property reevaluation. Such properties require no further review under this [Agreement PA](#).
3. If the SHPO disagrees with the [COB's-City's](#) determination regarding eligibility, [COB-the City](#) shall consult further with the SHPO to reach agreement. If agreement cannot be reached, [COB the City](#) shall obtain a final determination from the Secretary of the Interior pursuant to the applicable National Park Services regulations, 36 CFR Part 63.

## VII. ASSESSMENTS OF EFFECTS

- A. Prior to undertaking any activities that are not exempt under Stipulation [IIIV](#), [COB-the City](#) shall provide the SHPO with clear, unobstructed photographs of the historic property and a general work description which adequately details the scope of work for each rehabilitation project that may affect a [hHistoric pProperty](#), including work write-ups, working drawings and specifications, as appropriate, and any additional documentation necessary to understand the [uUndertaking](#). The [COB-City](#) shall ensure that the SHBC will be employed [to the greatest extent feasible](#) in all rehabilitation projects. The [COB-City](#) shall apply Criteria of Effect and Adverse Effect (36 CFR 800.9) to any [hHistoric pProperty](#) that may be affected by an [uUndertaking](#), and will review the scope of work to determine if the [uUndertaking](#) conforms to the SHBC as well as the recommended [approached approaches](#) contained in the [The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings \(Standards\)Standards](#).
  1. If the [COB-City](#) determines that an [uUndertaking](#) will have no effect, the [COB-City](#) shall notify the SHPO in writing of this finding. If SHPO does not object to this written notice within fifteen (15) days, the Undertaking may proceed without further review.
  2. If the [COB-City](#) determines that an [uUndertaking](#) conforms to the Standards and complies with SHBC, [COB-the City](#) shall notify the SHPO in writing of this finding. If the SHPO does not object in writing to this determination within thirty (30) days after receipt, the

Undertaking shall be considered to not adversely ~~effect~~ affect ~~Historic~~ ~~Properties~~ and may proceed as submitted without further review.

3. If the ~~COB-City~~ or the SHPO find that an ~~u~~Undertaking does not conform to the Standards or comply with SHBC, the Undertaking will be considered to adversely affect ~~Historic~~ ~~Properties~~. The SHPO may recommend modifications to the scope of work or conditions under which the Undertaking would be found to conform to the Standards and the SHBC in its response to ~~SHRA~~~~the City~~. ~~SHRA~~~~The City~~ shall consult further with the SHPO to seek ways to avoid, minimize, or mitigate the adverse effect. If all adverse effects cannot be avoided, the ~~COB-City~~ shall initiate consultation with ~~the~~ SHPO ~~and Council~~ in accordance with 36CFR 800.~~56~~.
4. The ~~COB-City~~ will notify the SHPO of any changes to the scope of work and shall provide the SHPO with the opportunity to review and approve such changes. If the changes do not conform to the Standards or comply with the SHBC, the parties shall consult further and the ~~COB-City~~ will initiate consultation with the SHPO ~~and Council~~ in accordance with 36 CFR 800.~~5(e)6~~ if an adverse effect cannot be avoided.
5. The ~~COB-City~~ shall provide completion photographs on each rehabilitation project to the SHPO and shall retain documentation of the rehabilitation, including the work write-ups and photographs as part of its permanent records.

- B. Additionally, the ~~COB-City~~ shall consult in writing with the SHPO to determine if an ~~u~~Undertaking which includes ground disturbing activities has the potential to affect ~~an~~ ~~a~~Archeological ~~properties~~~~Resource~~ (as defined by the Archaeological Resources Protection Act of 1979) that may be eligible for inclusion in the National Register. ~~COB~~~~The City~~ shall investigate historical records and pertinent information available at the ~~North-Central Information Center at California State University, Sacramento~~~~Northwest Information Center of the California Historical Resources Information System at Sonoma State University~~ or some institution containing similar records acceptable to SHPO. The ~~COB-City~~ also shall complete any further studies recommended by the SHPO to determine if the ~~u~~Undertaking has the potential to affect ~~a~~Archeological ~~properties~~~~Resources~~ that may be eligible for inclusion in the National Register. It is agreed that the following ground disturbing activities have the potential to affect ~~historic~~~~properties~~~~Archeological Resources~~: excavation for footings and foundations; installation of utilities such as sewer, water, storm drains, electrical, gas, leach lines and septic tanks except where installation is restricted solely to areas previously disturbed

by the installation of these utilities and ~~installation is restricted to areas previously disturbed by the installation of such~~ systems.

1. If an ~~u~~Undertaking has the potential to affect any ~~a~~Archeological ~~property Resource~~ that may be eligible for inclusion in the National Register, ~~COB the City~~ shall redesign the project to avoid the ~~a~~Archeological ~~property Resource~~ and shall provide the SHPO with documentation regarding the property and the steps it has taken to avoid such property.
2. If the Undertaking cannot be redesigned to avoid the ~~a~~Archeological ~~property Resource~~, ~~COB the City~~ shall develop a plan in consultation with the SHPO to complete the identification, evaluation and, if necessary, mitigation of the ~~impact on the property Archeological Resource~~. If ~~COB the City~~ and the SHPO cannot agree ~~that whether~~ the potential to affect ~~a~~Archeological ~~properties Resources~~ exists or cannot agree on a plan for the consideration of such ~~properties resources~~, ~~COB the City~~ will initiate consultation with the SHPO ~~and Council~~ in accordance with 36 CFR 800.5~~(e)~~6.

#### VIII. COMBINED REVIEW OF ELIGIBILITY AND EFFECT

~~COB The City~~ may elect to submit the documentation set out in Stipulations ~~IV-VI~~ and ~~V-VII~~ above in one package for the SHPO's review. The SHPO will provide comments on the ~~COB's City's~~ determinations of eligibility and effect within thirty (30) days after receipt of such submission. ~~COB The City~~ will review any such comment of the SHPO and refer to the detailed procedures set out in Stipulations ~~IV-VI~~ and ~~V-VII~~ to determine if additional review by the SHPO ~~or the Council~~ is required to fulfill the terms of this ~~Agreement PA~~.

#### VIIIIX. SHPO RESPONSIBILITIES

- A. The SHPO is permitted thirty (30) calendar days after receipt of any submitted documentation to review and comment on such material, with the exception of Stipulation VII.A.1. If the SHPO does not provide comments within this time period, the ~~COB City~~ may assume that the SHPO does not object to its determination.
- B. The SHPO will provide technical assistance and training on the application of the Standards and the SHBC to the ~~COB City~~ to the extent possible.

#### X. EMERGENCY UNDERTAKINGS

- A. This Stipulation shall apply only to situations in which a duly authorized local official has determined in accordance with applicable law, that an imminent threat to the public health and safety exists and that such threat must be removed forthwith ("Emergency Conditions").

- B. When the City determines that Emergency Conditions require immediate demolition of a Historic Property in connection with an activity subject to this PA, the City shall in writing concurrently notify the ACHP, the Landmarks Preservation Commission (LPC), the State Historic Preservation Officer and any Indian Tribe that may attach religious and cultural significance of the proposed removal and afford these parties a maximum of seven (7) days to comment on the proposed demolition. Any notification by the City shall be accompanied by documentation that includes, but is not limited to, a description of the Emergency Conditions, the name, location, and significance of the affected Historic Property, an assessment of the historic Property's current condition supplemented by photographs, and the date by which the Emergency Conditions must be abated. If the City determines that circumstances do not permit seven (7) days for comment, the City shall notify the ACHP, the SHPO, the LPC and the Indian tribe and invite any comments within the time available.
- C. The City shall require that any mitigation measures recommended by the ACHP, the LPC, the SHPO and any affected Indian Tribe be implemented if the City deems such measures to be feasible.
- D. The City shall document the actions taken pursuant to this Stipulation in the manner prescribed by Stipulation XIX.A.
- ~~B-E.~~ Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 [36 CFR §800.12(d)].

XI. PUBLIC INVOLVEMENT

- A. The City shall identify any public interest in the Undertakings subject to this PA by informing the public about Historic Properties when complying with the public participation requirements set forth in 24 CFR Part 58 and in the regulations for any other Program delegated by HUD to the City as may be applicable.
- B. The City shall, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an Undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the agency official to consider in decision-making. The City may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in sSubpart B of 36 CFR pPart 800, if they provide adequate opportunities for public involvement consistent with that subpart.

- C. At any time during implementation of the measures stipulated in this PA, should a member of the public raise an objection pertaining to delineation of an APE or to treatment of a Historic Property, the City shall notify the SHPO immediately of the objection and then proceed to consider the objection and consult, as needed, with the objecting party and the SHPO, for a period of time not to exceed fifteen (15) calendar days. The City's responsibility to carry out all other actions under this PA that are not the subject of the dispute shall remain unchanged.

#### ~~VIII~~XII. DISCOVERIES AND UNFORESEEN EFFECTS

If, during the implementation of these ~~p~~Programs, a previously unidentified property that may be eligible for the inclusion in the National Register is encountered, or a known ~~h~~Historic ~~p~~Property may be affected in an unanticipated manner, ~~COB~~the City will assume its responsibility pursuant to 36 CFR 800.~~11(b)(2)~~13(b).

#### ~~IX~~XIII. REPORTING

~~COB~~The City shall forward an annual report of all ~~u~~Undertakings covered by the terms of this ~~Agreement~~PA to the SHPO, ~~council~~ and the U.S. Department of Housing and Urban Development, San Francisco Regional Office, Region IX [or State of California, Department of Housing and Community Development]. This report will list the ~~u~~Undertakings exempted under Stipulation ~~H-IV~~ and those that were reviewed under the terms of this ~~Agreement~~PA. The ~~u~~Undertakings should be listed by property address.

#### ~~XIV~~. MONITORING

The SHPO ~~and the Council~~ may monitor any activities carried out pursuant to this ~~Agreement~~PA ~~and the Council~~ will review such activity if requested. ~~COB~~The City will cooperate with the SHPO ~~and the Council~~ in carrying out these monitoring and review responsibilities.

#### ~~XV~~. DISPUTE RESOLUTION

If ~~COB~~the City and the SHPO are unable to resolve any disagreement arising under the provisions of this ~~Agreement~~PA, ~~COB~~the City shall, unless the dispute relates to the National Register eligibility of any property, forward full documentation regarding the project, the basis for the dispute, and request the comments of ~~the Council~~ACHP in accordance with 36 CFR 800.~~5(e)~~6(b)(1)(v).

#### ~~XIX~~XVI. ~~COB~~CITY STAFFING

~~COB~~The City ~~still will~~ assign staff to assure that rehabilitation work is carried out in accordance with the specifications and work descriptions provided to the SHPO for review in determining effect, including any project modifications recommended by the SHPO which were adopted by ~~COB~~the City. Such staff will also monitor ~~u~~Undertakings limited to work items enumerated in Attachment "A" which are exempted from review by the SHPO to assure that only qualifying work items are properly performed. Responsible ~~COB~~City staff will certify that work was carried out as planned, and will maintain records for each project which document compliance with the terms of this ~~Agreement~~PA.

~~XIII~~XVII. AMENDMENTS

Any party to this Agreement PA may request it be amended, whereupon the parties will consult in accordance with 36 CFR 800.~~13-14~~ to consider such amendment. No amendment to this Agreement PA will go into effect without written concurrence of all consulting parties.

~~XIV~~XVIII. TERMINATION

Any party to this Agreement PA may terminate it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to the termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, ~~COB the City~~ will comply with 36 CFR Part 800.4-800.6 with respect to individual ~~undertakings~~Undertakings covered by this Agreement PA.

~~XIX~~V. FAILURE TO COMPLY WITH TERMS OF THE PROGRAMMATIC AGREEMENT

In the event ~~COB the City~~ cannot carry out the terms of this Agreement PA, it the City shall not take or sanction any action or make any irreversible commitment pursuant to a Program or to carry out an Undertaking that would result in an adverse effect to Historic Properties or would foreclose the Council's SHPO's consideration of modifications or alternatives to the Undertaking, and ~~COB the City~~ will comply with 36 CFR Part 800.4-800.6 with regard to each individual ~~u~~Undertaking covered by this Agreement PA. EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidences that ~~COB the City of Berkeley~~ has afforded the ~~Council~~SHPO a reasonable opportunity to commit on the program and that ~~COB the City~~ has taken into account the effects of the program on ~~h~~Historic ~~p~~Properties.

CITY OF BERKELEY

By: \_\_\_\_\_ Date: \_\_\_\_\_  
~~Director of Housing Department~~ Dee Williams-Ridley, City Manager

APPROVED AS TO FORM

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Farimah Brown, City Attorney

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Julianne Polanco

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
John Fowler, Executive Director



**ATTACHMENT "A"**  
**Programmatic Agreement for Rehabilitation**

~~PROJECT ACTIVITIES NOT REQUIRING REVIEW~~The following Undertakings require only administrative review by the City and not the SHPO pursuant to Stipulation IV of this PA.

1. Electrical work, limited to upgrading or in-kind replacement;
2. Plumbing work, limited to upgrading or in-kind replacement, with the exception of historic fixtures which shall be repaired when possible;
3. Installation of mechanical equipment which does not affect the exterior of the building or requiring installation of new duct work throughout the interior;
4. Repainting of existing painted surfaces if destructive surface preparation treatments, including, but not limited to waterblasting, sandblasting and chemical removal are not used;
5. Repair or partial replacement of porches, decks, cornices, exterior siding, doors, thresholds, balustrades, stairs or other trim, when the repair or replacement is done in-kind to exactly-closely match existing material and form;
6. Replacement of deteriorated windows when the replacement is done in-kind to exactly-closely match the existing material or form;
7. Replacement of window panes in-kind or with double or triple glazing so long as glazing is clear and untinted and replacement does not alter the existing window material or form;
8. Caulking and weatherstripping with compatibly colored materials;
9. Roof repair or replacement with materials which exactly-closely match the existing material and form;
10. Installation of insulation, with the exception of urea formaldehyde foam insulation or any other type of thermal insulation which contains water in its chemical composition and is installed within wall cavities, provided that decorative interior plaster or woodwork or exterior siding is not altered by this work item;
11. Installation of fire, ~~or~~ smoke, and carbon monoxide detectors;
12. Installation of security devices including dead bolts, door locks, window latches, door peepholes, and the installation of electronic security systems;



13. Repair or replacement of driveways or walkways when work is done in-kind to exactly match the existing materials and form; existing roads, driveways, sidewalks, curbs, curb ramps, speed bumps and gutters provided that work is done in-kind to closely match existing materials and forms and provided that there are only minimal changes in the dimensions and configurations of these features;
14. Repair or replacement of fencing, gates, and freestanding exterior walls when work is done in-kind to exactly-closely match the existing materials and form;
15. Floor refinishing;
16. Repair or replacement of floors when work is done in-kind to exactly-closely match the existing materials and form;
17. Installation of grab bars, handrails, guardrails and minor interior and exterior modifications for handicapped accessibility;
18. Modifications of and improvements to path of travel for persons with disabilities from, to, and within a building, structure, playground, or park and includes the installation of exterior ramps and chairlifts for handicapped accessibility;
- ~~18-19.~~ Repair or replacement of signs or awnings when work is done in-kind to exactly closely match existing materials and form; and
20. Repair or replacement of interior stairs when work is done in-kind to exactly closely match the existing materials and form;
21. Repair, replacement, or installation of gutters and down spouts;
- ~~19-22.~~ Repair, replacement, and installation of the following, regardless of their location within or adjacent to an historic district:
  - a. Park furniture, including benches, picnic tables, chairs, planter boxes, barbecue pits and trellises.
  - b. Outdoor yard improvements, including play structure, matting, fencing, gates, play ground lighting, drinking fountain, play ground equipments, path of travel and ramps.
  - c. Landscaping, including tree planting, tree pruning, shrub removal, play court resurfacing or sodding, irrigation, murals and painting of game lines for school play yards and grounds.
23. Repair, replacement or installation of water, gas, storm, and sewer lines when the work qualifies as an exemption pursuant to Stipulation V.5; and
24. Stabilization of foundations and addition of foundation bolts.

**ATTACHMENT “B”**  
**DEFINITIONS**

|                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>“Act”</u>                             | <u>“Act” means the National Historic Preservation Act of 1966, as amended, 16 USC §470.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <u>“ACHP”</u>                            | <u>“ACHP” means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <u>“Archeological Resource”</u>          | <u>“Archeological Resource” means any material remains of past human life or activities which are of archaeological interest as determined under uniform regulations promulgated pursuant to 16 USC §470aa-mm.</u>                                                                                                                                                                                                                                                                                                                                                              |
| <u>“Area of Potential Effects” (APE)</u> | <u>“Area of Potential Effects” means the geographic area or areas within which an Undertaking may cause changes in the character or use of historic properties, if any such properties exist.</u>                                                                                                                                                                                                                                                                                                                                                                               |
| <u>“City”</u>                            | <u>“City” means the City of Berkeley.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <u>“Historic Property”</u>               | <u>“Historic Property” means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places. The term includes, for purposes of this PA, artifacts, records, and remains that are related to and located within such properties. The term “eligible for inclusion in the National Register” includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register of Historic Places listing criteria.</u> |
| <u>“National Register Criteria”</u>      | <u>“National Register Criteria” means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR Part 60).</u>                                                                                                                                                                                                                                                                                                                                                                             |

|                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>“National Register of Historic Places” (NRHP)</u> | <u>“National Register of Historic Places” (NRHP) maintained by the Secretary of the Interior and administered by the National Parks Service, is the official list of the Nation's cultural resources worthy of preservation.</u>                                                                                                                                                                                                                                                                                            |
| <u>“National Register”</u>                           | <u>“National Register” means the National Register of Historic Places maintained by the Secretary of the Interior.</u>                                                                                                                                                                                                                                                                                                                                                                                                      |
| <u>“Programmatic Agreement” (PA)</u>                 | <u>“Programmatic Agreement” means the agreement pursuant to 36 CFR § 800.14(b), between the City, and the SHPO to allow for expedited review of HUD funded projects affecting cultural resources.</u>                                                                                                                                                                                                                                                                                                                       |
| <u>“Secretary”</u>                                   | <u>“Secretary” means the Secretary of the Interior</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <u>“Standards”</u>                                   | <u>“Standards” means the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, &amp; Reconstructing Historic Buildings.</u>                                                                                                                                                                                                                                                                                                             |
| <u>“State Historic Preservation Officer” (SHPO)</u>  | <u>“State Historic Preservation Officer” means the official appointed or designated pursuant to §101(b)(1) of the Act to administer the State Historic Preservation program or a representative designated to act for the State Historic Preservation Officer.</u>                                                                                                                                                                                                                                                          |
| <u>“Undertaking”</u>                                 | <u>“Undertaking” means any project, activity, or Program that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a Federal agency or licensed or assisted by a Federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106.</u> |

PROGRAMMATIC AGREEMENT  
BY AND AMONG  
THE CITY OF BERKELEY,  
~~THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,~~  
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

REGARDING HISTORIC PROPERTIES AFFECTED BY USE  
OF ~~REVENUE FROM THE DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT PART 58 PROGRAMS COMMUNITY DEVELOPMENT BLOCK  
GRANTS; RENTAL REHABILITATION BLOCK GRANTS; AND MCKINNEY ACT  
HOMELESS PROGRAMS INCLUDING  
THE EMERGENCY SHELTER GRANTS PROGRAM, TRANSITIONAL HOUSING,  
PERMANENT HOUSING FOR THE HOMELESS HANDICAPPED,  
AND SUPPLEMENTAL ASSISTANCE FOR FACILITIES TO ASSIST THE HOMELESS;  
THE HOPE II PROGRAM; THE HOME PROGRAM; THE HOPWA PROGRAM  
AND THE SHELTER PLUS CARE PROGRAM~~

WHEREAS, the City of Berkeley (~~COB~~ City), a “Responsible Entity” under 24 CFR Part 58, proposes to administer and fund projects and programs (hereinafter referred to as “Undertakings,” as defined in 36 CFR 800.16y) in the City of Berkeley, California with monies from the U.S. Department of Housing and Urban Development (“HUD”) programs (“Programs”) delegated to the City pursuant to 24 CFR Part 58 or any other pertinent HUD regulations; and Community Development Block Grant program (CDBG) of the Department of Housing and Urban Development under Title I of the Housing and Community Development Act of 1974; the McKinney Homeless Programs including the Emergency Shelter Grants Program, Transitional Housing, Permanent Housing for the Homeless Handicapped, and Supplemental Assistance for Facilities to Assist the Homeless; the Hope II program; the HOME program; and the Shelter Plus Care program; and

WHEREAS, ~~COB~~ the City has determined the administration of these ~~projects~~ Undertakings and ~~p~~Programs may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places (“h~~Historic~~ p~~Properties~~”) and has consulted with the California State Historic Preservation Officer (“SHPO”) and the ~~Advisory Council on Historic Preservation (Council) (“ACHP”)~~ pursuant to 36 CFR Part 800.13 of the regulations implementing Section 106 of the National Historic Preservation Act (16 USC 470f) (“Act”); and

WHEREAS, pursuant to the Advisory Council on Historic Preservation’s (“ACHP”) Section 106 regulations, “Protection of Historic Properties” (“Regulations”) [36 CFR Part 800], the City has requested the comments of the ACHP; and

WHEREAS, pursuant to ACHP’s Section 106 regulations, the City has conducted outreach and has actively sought and requested the comments and participation of Indian tribes that attach religious and cultural significance to historic properties that may be affected by Undertakings funded under the terms of this Agreement; and these Tribes did not respond to our requests to engage in such consultation; and

WHEREAS, the City will continue to conduct outreach and will actively seek and request the comments and participation of Indian tribes that attach religious and cultural significance to historic properties that may be affected by Undertakings funded under the terms of this Agreement; and

WHEREAS, pursuant to ACHP's Section 106 Regulations, the City has considered the nature of the program and its likely effects on historic properties and has taken steps to involve individuals, organizations and entities likely to be effected by the Undertaking; and

WHEREAS, pursuant to ACHP's Section 106 Regulations, the City has arranged for public participation appropriate to the subject matter and scope of the Programmatic Agreement by providing notice to the public and has held meetings before the Landmarks Preservation Commission concerning the Undertaking for the purpose of informing the public and including them in the consultation process; and

WHEREAS, subrecipients receiving Part 58 funds, which are the subject matter of this agreement, by, from, or through the City agree as a condition of receiving funding to comply fully with the requirements of the National Historic Preservation Act of 1966 (16 USC 470) and the procedures set forth in 36 CFR Part 800 on the Historic Preservation Procedures for Protection of Historic Properties; and

NOW, THEREFORE, ~~COB~~the City, and the SHPO, ~~and the Council~~ ACHP agree that the ~~programs~~Undertakings shall be administered in accordance with the following stipulations to satisfy ~~SHRA's~~ the City's Section 106 responsibilities under Section 106 for all individual ~~u~~Undertakings of the ~~p~~Programs, ~~involving rehabilitation.~~

#### **STIPULATIONS**

The City of Berkeley shall ensure the following measures are carried out:

I. TERMINATION OF EXISTING PROGRAMMATIC AGREEMENT

The Programmatic Agreement ("PA") entered into on December 3, 1992 by the Advisory Council on Historic Preservation, the California State Historic Preservation Officer and the City of Berkeley is hereby terminated by mutual agreement and is no longer in effect as of the effective date of this Programmatic Agreement. The stipulations agreed to in the PA are replaced in their entirety by the stipulations agreed to in this PA.

II. APPLICABILITY OF THE PROGRAMMATIC AGREEMENT

~~COB~~The City shall comply with the stipulations set forth in this ~~Agreement~~PA for all ~~u~~Undertakings within the City of Berkeley, California, which involve the exterior or interior rehabilitation of residential and commercial structures and is assisted entirely or in part by monies from the ~~p~~Programs of the U.S. Department of Housing and Urban Development ~~listed above~~subject to 24 CFR Part 58. This agreement is also applicable to ~~u~~Undertakings which involve solely acquisition and rehabilitation of structures provided that such ~~u~~Undertakings do not involve demolition or new construction. The review process established by this ~~Agreement~~PA shall be completed prior to ~~COB's~~ the City's final approval of any application for assistance under these ~~p~~Programs, and prior to ~~COB~~ the City or the property owner altering the property, or initiating construction or making irrevocable commitment for construction that may affect a property that is fifty (50) years of age or older. Any ~~u~~Undertaking that does not qualify for review under the terms of this ~~Agreement~~PA shall be reviewed in accordance with the procedures outlined in 36 CFR Part 800.

III. COORDINATION WITH OTHER FEDERAL AGENCIES—36 CFR § 800.2(c)(4)

Other Federal agencies providing permits, licenses, or financial assistance for Program activities covered under the terms of this PA may, with the concurrence of the City and SHPO, satisfy their Section 106 responsibilities by accepting and complying with the terms of this PA. In such situations, the City and the Federal Agency shall notify the SHPO in writing of their intent to use this PA to achieve compliance with Section 106 requirements. If the SHPO does not respond within 21 days of receipt of such a notice of intent, the City and other Federal agency will assume SHPO's concurrence, as referenced above. Copies of all such notification letters shall be maintained in the files established by the City for each such Undertaking.

IV. UNDERTAKING NOT REQUIRING REVIEW BY SHPO ~~OR THE COUNCIL~~  
The following Undertakings do not require review by SHPO and no signatory is required by this PA to determine the National Register of Historic Places ("NRHP") eligibility of properties affected by these Undertakings.

A. Undertakings not requiring review by the SHPO ~~or the Council~~ are enumerated in Attachment "A." An Undertaking consisting of activities ~~enumerated in Attachment "A" as well as activities~~ not listed in Attachment "A" shall be reviewed pursuant to the terms of this ~~Agreement~~PA. ~~An undertaking, unless exempt from review under the provisions of Stipulation II.B. below, which is exempted from review under Attachment "A" nevertheless will be designed to be in conformity~~ Undertakings involving Historic Properties but nevertheless exempt from review pursuant to Attachment "A" shall be designed to conform with the California State Historic Building Code [State of California, Title 24 Building Standards, Part 8 ("SHBC")]; ~~as well as the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Building ("Standards").~~

B. Undertakings affecting only properties that are less than fifty (50) years of age do not require review pursuant to the terms of this ~~Agreement~~PA.

C. Undertakings which are limited to the rehabilitation of interior spaces with in single family residential structures where such work will not be visible ~~from~~ from the exterior of the structure do not require review pursuant to the terms of this ~~Agreement~~PA.

#### ~~III~~V. AREA OF POTENTIAL EFFECTS

It is agreed for the purposes of this ~~Agreement~~PA, with the exception of Stipulation ~~VII~~II.B., that the Area of Potential Effects ("APE") will be limited to the individual building when a proposed project is limited to the rehabilitation of its existing interior or exterior features.

#### ~~IV~~I. IDENTIFICATION OF HISTORIC PROPERTIES

A. ~~COB~~ The City shall review all existing information on any property within the APE that may be affected by the use of these funds, including the



National Register of Historic Places and lists of ~~h~~Historic ~~p~~Properties maintained by the City of Berkeley.

1. If the property proposed for rehabilitation is listed in the National Register or has already been determined eligible for inclusion in the National Register, ~~COB~~the City shall proceed with the review of the project pursuant to Stipulation ~~VII~~I, unless exempted under Stipulation ~~IV~~I.
  2. If the property has been determined by ~~COB~~the City, in written consultation with the SHPO, within the last five (5) years prior to the current ~~u~~Undertaking to be ineligible for inclusion in the National Register, then the ~~u~~Undertaking may proceed without further review under the terms of this ~~Agreement~~PA.
- B. If the property proposed for rehabilitation is not listed in the National Register, has not been evaluated for the National Register eligibility within the last five (5) years, and is at least 50 years of age, then ~~COB~~the City shall submit the documentation required pursuant to 36 CFR 800.4 plus a completed California Historic Resources Inventory form (DPR523) to the SHPO for review, ~~included in Attachment "B" to this Agreement~~. Other information may be requested by the SHPO if necessary. ~~COB~~The City shall apply the National Register ~~e~~Criteria and notify the SHPO of its determination in the submittal.
1. If the SHPO agrees with ~~COB~~the City that a property is eligible under the criteria, the property shall be considered eligible for the National Register for purposes of this ~~Agreement~~PA, and shall hereinafter be referred to as a ~~h~~Historic ~~p~~Property. The ~~COB~~City shall continue consultation in accordance with the terms of this ~~Agreement~~PA for all such properties.
  2. If the SHPO agrees with the ~~COB~~City that the criteria are not met, the property shall be considered ineligible for the inclusion in the National Register for a period of five (5) years from the date of the SHPO's review. Such properties need not be reevaluated during this five (5) year period, unless a party to this ~~Agreement~~PA notifies the ~~COB~~City in writing of changing perceptions of significance warrants a property reevaluation. Such properties require no further review under this ~~Agreement~~PA.
  3. If the SHPO disagrees with the ~~COB's~~City's determination regarding eligibility, ~~COB~~the City shall consult further with the SHPO to reach agreement. If agreement cannot be reached, ~~COB~~the City shall obtain a final determination from the Secretary of the

Interior pursuant to the applicable National Park Services regulations, 36 CFR Part 63.

## VII. ASSESSMENTS OF EFFECTS

- A. Prior to undertaking any activities that are not exempt under Stipulation ~~IV~~, ~~GOB the City~~ shall provide the SHPO with clear, unobstructed photographs of the historic property and a general work description which adequately details the scope of work for each rehabilitation project that may affect a ~~h~~Historic ~~p~~Property, including work write-ups, working drawings and specifications, as appropriate, and any additional documentation necessary to understand the ~~u~~Undertaking. The ~~GOB City~~ shall ensure that the SHBC will be employed to the greatest extent feasible in all rehabilitation projects. The ~~GOB City~~ shall apply Criteria of Effect and Adverse Effect (36 CFR 800.9) to any ~~h~~Historic ~~p~~Property that may be affected by an ~~u~~Undertaking, and will review the scope of work to determine if the ~~u~~Undertaking conforms to the SHBC as well as the recommended approached approaches contained in the The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Standards) Standards.
1. If the ~~GOB City~~ determines that an ~~u~~Undertaking will have no effect, the ~~GOB City~~ shall notify the SHPO in writing of this finding. If SHPO does not object to this written notice within fifteen (15) days, the Undertaking may proceed without further review.
  2. If the ~~GOB City~~ determines that an ~~u~~Undertaking conforms to the Standards and complies with SHBC, ~~GOB the City~~ shall notify the SHPO in writing of this finding. If the SHPO does not object in writing to this determination within thirty (30) days after receipt, the Undertaking shall be considered to not adversely ~~effect affect~~ ~~h~~Historic ~~p~~Properties and may proceed as submitted without further review.
  3. If the ~~GOB City~~ or the SHPO find that an ~~u~~Undertaking does not conform to the Standards or comply with SHBC, the Undertaking will be considered to adversely affect ~~h~~Historic ~~p~~Properties. The SHPO may recommend modifications to the scope of work or conditions under which the Undertaking would be found to conform to the Standards and the SHBC in its response to ~~SHRA the City~~. ~~SHRA The City~~ shall consult further with the SHPO to seek ways to avoid, minimize, or mitigate the adverse effect. If all adverse effects cannot be avoided, the ~~GOB City~~ shall initiate consultation with the SHPO and Council in accordance with 36CFR 800.56.
  4. The ~~GOB City~~ will notify the SHPO of any changes to the scope of work and shall provide the SHPO with the opportunity to review and approve such changes. If the changes do not conform to the Standards or comply with the SHBC, the parties shall consult



further and the ~~COB-City~~ will initiate consultation with the SHPO ~~and Council~~ in accordance with 36 CFR 800.5~~(e)~~6 if an adverse effect cannot be avoided.

5. The ~~COB-City~~ shall provide completion photographs on each rehabilitation project to the SHPO and shall retain documentation of the rehabilitation, including the work write-ups and photographs as part of its permanent records.
- B. Additionally, the ~~COB-City~~ shall consult in writing with the SHPO to determine if an ~~u~~Undertaking which includes ground disturbing activities has the potential to affect ~~an a~~Archeological ~~properties-Resource~~ (as defined by the Archaeological Resources Protection Act of 1979) that may be eligible for inclusion in the National Register. ~~COB-The City~~ shall investigate historical records and pertinent information available at the ~~North-Central Information Center at California State University, Sacramento~~ Northwest Information Center of the California Historical Resources Information System at Sonoma State University or some institution containing similar records acceptable to SHPO. The ~~COB-City~~ also shall complete any further studies recommended by the SHPO to determine if the ~~u~~Undertaking has the potential to affect ~~a~~Archeological ~~propertiesResources~~ that may be eligible for inclusion in the National Register. It is agreed that the following ground disturbing activities have the potential to affect ~~historic properties~~ Archeological Resources: excavation for footings and foundations; installation of utilities such as sewer, water, storm drains, electrical, gas, leach lines and septic tanks except where installation is restricted solely to areas previously disturbed by the installation of these utilities and ~~installation is restricted to areas previously disturbed by the installation of such systems~~.
1. If an ~~u~~Undertaking has the potential to affect any ~~a~~Archeological ~~property-Resource~~ that may be eligible for inclusion in the National Register, ~~COB-the City~~ shall redesign the project to avoid the ~~a~~Archeological ~~property-Resource~~ and shall provide the SHPO with documentation regarding the property and the steps it has taken to avoid such property.
  2. If the Undertaking cannot be redesigned to avoid the ~~a~~Archeological ~~propertyResource~~, ~~COB-the City~~ shall develop a plan in consultation with the SHPO to complete the identification, evaluation and, if necessary, mitigation of the impact on the propertyArcheological Resource. If ~~COB-the City~~ and the SHPO cannot agree that whether the potential to affect ~~a~~Archeological ~~properties-Resources~~ exists or cannot agree on a plan for the consideration of such ~~propertiesresources~~, ~~COB-the City~~ will initiate

consultation with the SHPO ~~and Council~~ in accordance with 36 CFR 800.5(e)~~6~~.

VIII. COMBINED REVIEW OF ELIGIBILITY AND EFFECT

~~COB~~ The City may elect to submit the documentation set out in Stipulations ~~IV-VI~~ and ~~V-VII~~ above in one package for the SHPO's review. The SHPO will provide comments on the ~~COB's~~ City's determinations of eligibility and effect within thirty (30) days after receipt of such submission. ~~COB~~ The City will review any such comment of the SHPO and refer to the detailed procedures set out in Stipulations ~~IV-VI~~ and ~~V-VII~~ to determine if additional review by the SHPO ~~or the Council~~ is required to fulfill the terms of this Agreement~~PA~~.

~~VIII~~X. SHPO RESPONSIBILITIES

- A. The SHPO is permitted thirty (30) calendar days after receipt of any submitted documentation to review and comment on such material, with the exception of Stipulation VII.A.1. If the SHPO does not provide comments within this time period, the ~~COB~~ City may assume that the SHPO does not object to its determination.
- B. The SHPO will provide technical assistance and training on the application of the Standards and the SHBC to the ~~COB~~ City to the extent possible.

X. EMERGENCY UNDERTAKINGS

- A. This Stipulation shall apply only to situations in which a duly authorized local official has determined in accordance with applicable law, that an imminent threat to the public health and safety exists and that such threat must be removed forthwith ("Emergency Conditions").
- B. When the City determines that Emergency Conditions require immediate demolition of a Historic Property in connection with an activity subject to this PA, the City shall in writing concurrently notify the ACHP, the Landmarks Preservation Commission (LPC), the State Historic Preservation Officer and any Indian Tribe that may attach religious and cultural significance of the proposed removal and afford these parties a maximum of seven (7) days to comment on the proposed demolition. Any notification by the City shall be accompanied by documentation that includes, but is not limited to, a description of the Emergency Conditions, the name, location, and significance of the affected Historic Property, an assessment of the historic Property's current condition supplemented by photographs, and the date by which the Emergency Conditions must be abated. If the City determines that circumstances do not permit seven (7) days for comment, the City shall notify the ACHP, the SHPO, the LPC and the Indian tribe and invite any comments within the time available.
- C. The City shall require that any mitigation measures recommended by the ACHP, the LPC, the SHPO and any affected Indian Tribe be implemented if the City deems such measures to be feasible.
- D. The City shall document the actions taken pursuant to this Stipulation in the manner prescribed by Stipulation XIX.A.

E. Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 [36 CFR §800.12(d)].

XI. PUBLIC INVOLVEMENT

- A. The City shall identify any public interest in the Undertakings subject to this PA by informing the public about Historic Properties when complying with the public participation requirements set forth in 24 CFR Part 58 and in the regulations for any other Program delegated by HUD to the City as may be applicable.
- B. The City shall, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an Undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the agency official to consider in decision-making. The City may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in ~~s~~Subpart B of 36 CFR ~~p~~Part 800, if they provide adequate opportunities for public involvement consistent with that subpart.
- C. At any time during implementation of the measures stipulated in this PA, should a member of the public raise an objection pertaining to delineation of an APE or to treatment of a Historic Property, the City shall notify the SHPO immediately of the objection and then proceed to consider the objection and consult, as needed, with the objecting party and the SHPO, for a period of time not to exceed fifteen (15) calendar days. The City's responsibility to carry out all other actions under this PA that are not the subject of the dispute shall remain unchanged.

VIII~~XII~~. DISCOVERIES AND UNFORESEEN EFFECTS

If, during the implementation of these ~~p~~Programs, a previously unidentified property that may be eligible for the inclusion in the National Register is encountered, or a known ~~h~~Historic ~~p~~Property may be affected in an unanticipated manner, ~~COB~~ the City will assume its responsibility pursuant to 36 CFR 800.41~~(b)(2)~~13(b).

~~IX~~XIII. REPORTING

~~COB~~ The City shall forward an annual report of all ~~u~~Undertakings covered by the terms of this ~~Agreement~~ PA to the SHPO, ~~council~~ and the U.S. Department of Housing and Urban Development, San Francisco Regional Office, Region IX [or State of California, Department of Housing and Community Development]. This report will list the ~~u~~Undertakings exempted under Stipulation ~~H~~IV and those that were reviewed under the terms of this ~~Agreement~~ PA. The ~~u~~Undertakings should be listed by property address.

XIV. MONITORING

The SHPO ~~and the Council~~ may monitor any activities carried out pursuant to this ~~Agreement~~ PA ~~and the Council~~ will review such activity if requested. ~~COB~~ The City will cooperate with the SHPO ~~and the Council~~ in carrying out these monitoring and review responsibilities.

XVI. DISPUTE RESOLUTION

If ~~COB~~ the City and the SHPO are unable to resolve any disagreement arising under the provisions of this ~~Agreement~~ PA, ~~COB~~ the City shall, unless the dispute relates to the National Register eligibility of any property, forward full documentation regarding the

project, the basis for the dispute, and request the comments of ~~the Council~~ ACHP in accordance with 36 CFR 800.5(e)-6(b)(1)(v).

~~XII~~ XVI. ~~COB-CITY~~ STAFFING

~~COB~~ The City ~~still will~~ assign staff to assure that rehabilitation work is carried out in accordance with the specifications and work descriptions provided to the SHPO for review in determining effect, including any project modifications recommended by the SHPO which were adopted by ~~COB~~ the City. Such staff will also monitor ~~u~~ Undertakings limited to work items enumerated in Attachment "A" which are exempted from review by the SHPO to assure that only qualifying work items are properly performed.

Responsible ~~COB~~ City staff will certify that work was carried out as planned, and will maintain records for each project which document compliance with the terms of this

Agreement PA.

~~XIII~~ XVII. AMENDMENTS

Any party to this Agreement PA may request it be amended, whereupon the parties will consult in accordance with 36 CFR 800.13-14 to consider such amendment. No amendment to this Agreement PA will go into effect without written concurrence of all consulting parties.

~~XIV~~ XVIII. TERMINATION

Any party to this Agreement PA may terminate it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to the termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, ~~COB~~ the City will comply with 36 CFR Part 800.4-800.6 with respect to individual ~~undertakings~~ Undertakings covered by this

Agreement PA.

~~XIX~~ V. FAILURE TO COMPLY WITH TERMS OF THE PROGRAMMATIC AGREEMENT

In the event ~~COB~~ the City cannot carry out the terms of this Agreement PA, it the City shall not take or sanction any action or make any irreversible commitment pursuant to a Program or to carry out an Undertaking that would result in an adverse effect to Historic Properties or would foreclose the Council's SHPO's consideration of modifications or alternatives to the Undertaking, and ~~COB~~ the City will comply with 36 CFR Part 800.4-800.6 with regard to each individual ~~u~~ Undertaking covered by this Agreement PA.

EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidences that ~~COB~~ the City of Berkeley has afforded the ~~Council~~ SHPO a reasonable opportunity to commit on the program and that ~~COB~~ the City has taken into account the effects of the program on ~~h~~ Historic ~~p~~ Properties.

CITY OF BERKELEY

By: \_\_\_\_\_ Date \_\_\_\_\_  
~~Director of Housing Department~~ Dee Williams-Ridley, City Manager

APPROVED AS TO FORM

By: \_\_\_\_\_ Date \_\_\_\_\_  
Farimah Brown, City Attorney

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: \_\_\_\_\_ Date \_\_\_\_\_  
Julianne Polanco

~~ADVISORY COUNCIL ON HISTORIC PRESERVATION~~

By: \_\_\_\_\_ Date \_\_\_\_\_  
John Fowler, Executive Director

**ATTACHMENT "A"**  
**Programmatic Agreement for Rehabilitation**

~~PROJECT ACTIVITIES NOT REQUIRING REVIEW~~ The following Undertakings require only administrative review by the City and not the SHPO pursuant to Stipulation IV of this PA.

1. Electrical work, limited to upgrading or in-kind replacement;
2. Plumbing work, limited to upgrading or in-kind replacement, with the exception of historic fixtures which shall be repaired when possible;
3. Installation of mechanical equipment which does not affect the exterior of the building or requiring installation of new duct work throughout the interior;
4. Repainting of existing painted surfaces if destructive surface preparation treatments, including, but not limited to waterblasting, sandblasting and chemical removal are not used;
5. Repair or partial replacement of porches, decks, cornices, exterior siding, doors, thresholds, balustrades, stairs or other trim, when the repair or replacement is done in-kind to exactly-closely match existing material and form;
6. Replacement of deteriorated windows when the replacement is done in-kind to exactly-closely match the existing material or form;
7. Replacement of window panes in-kind or with double or triple glazing so long as glazing is clear and untinted and replacement does not alter the existing window material or form;
8. Caulking and weatherstripping with compatibly colored materials;
9. Roof repair or replacement with materials which exactly-closely match the existing material and form;
10. Installation of insulation, with the exception of urea formaldehyde foam insulation or any other type of thermal insulation which contains water in its chemical composition and is installed within wall cavities, provided that decorative interior plaster or woodwork or exterior siding is not altered by this work item;
11. Installation of fire, ~~or~~ smoke, and carbon monoxide detectors;
12. Installation of security devices including dead bolts, door locks, window latches, door peepholes, and the installation of electronic security systems;

13. Repair or replacement of ~~driveways or walkways when work is done in-kind to exactly match the existing materials and form;~~existing roads, driveways, sidewalks, curbs, curb ramps, speed bumps and gutters provided that work is done in-kind to closely match existing materials and forms and provided that there are only minimal changes in the dimensions and configurations of these features;
14. Repair or replacement of fencing, gates, and freestanding exterior walls when work is done in-kind to ~~exactly~~closely match the existing materials and form;
15. Floor refinishing;
16. Repair or replacement of floors when work is done in-kind to ~~exactly~~closely match the existing materials and form;
17. Installation of grab bars, handrails, guardrails and minor interior and exterior modifications for handicapped accessibility;
18. Modifications of and improvements to path of travel for persons with disabilities from, to, and within a building, structure, playground, or park and includes the installation of exterior ramps and chairlifts for handicapped accessibility;
- ~~18-19.~~ 19. Repair or replacement of signs or awnings when work is done in-kind to ~~exactly~~closely match existing materials and form; ~~and~~
20. Repair or replacement of interior stairs when work is done in-kind to ~~exactly~~closely match the existing materials and form.;
21. Repair, replacement, or installation of gutters and down spouts;
22. Repair, replacement, and installation of the following, regardless of their location within or adjacent to an historic district:
  - a. Park furniture, including benches, picnic tables, chairs, planter boxes, barbecue pits and trellises.
  - b. Outdoor yard improvements, including play structure, matting, fencing, gates, play ground lighting, drinking fountain, play ground equipments, path of travel and ramps.
  - c. Landscaping, including tree planting, tree pruning, shrub removal, play court resurfacing or sodding, irrigation, murals and painting of game lines for school play yards and grounds.
23. Repair, replacement or installation of water, gas, storm, and sewer lines when the work qualifies as an exemption pursuant to Stipulation V.5; and
24. Stabilization of foundations and addition of foundation bolts.



**ATTACHMENT “B”**  
**DEFINITIONS**

|                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>“Act”</u>                             | <u>“Act” means the National Historic Preservation Act of 1966, as amended, 16 USC §470.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <u>“ACHP”</u>                            | <u>“ACHP” means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <u>“Archeological Resource”</u>          | <u>“Archeological Resource” means any material remains of past human life or activities which are of archaeological interest as determined under uniform regulations promulgated pursuant to 16 USC §470aa-mm.</u>                                                                                                                                                                                                                                                                                                                                                              |
| <u>“Area of Potential Effects” (APE)</u> | <u>“Area of Potential Effects” means the geographic area or areas within which an Undertaking may cause changes in the character or use of historic properties, if any such properties exist.</u>                                                                                                                                                                                                                                                                                                                                                                               |
| <u>“City”</u>                            | <u>“City” means the City of Berkeley.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <u>“Historic Property”</u>               | <u>“Historic Property” means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places. The term includes, for purposes of this PA, artifacts, records, and remains that are related to and located within such properties. The term “eligible for inclusion in the National Register” includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register of Historic Places listing criteria.</u> |
| <u>“National Register Criteria”</u>      | <u>“National Register Criteria” means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR Part 60).</u>                                                                                                                                                                                                                                                                                                                                                                             |

|                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>“National Register of Historic Places” (NRHP)</u> | <u>“National Register of Historic Places” (NRHP) maintained by the Secretary of the Interior and administered by the National Parks Service, is the official list of the Nation's cultural resources worthy of preservation.</u>                                                                                                                                                                                                                                                                                            |
| <u>“National Register”</u>                           | <u>“National Register” means the National Register of Historic Places maintained by the Secretary of the Interior.</u>                                                                                                                                                                                                                                                                                                                                                                                                      |
| <u>“Programmatic Agreement” (PA)</u>                 | <u>“Programmatic Agreement” means the agreement pursuant to 36 CFR § 800.14(b), between the City, and the SHPO to allow for expedited review of HUD funded projects affecting cultural resources.</u>                                                                                                                                                                                                                                                                                                                       |
| <u>“Secretary”</u>                                   | <u>“Secretary” means the Secretary of the Interior</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <u>“Standards”</u>                                   | <u>“Standards” means the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, &amp; Reconstructing Historic Buildings.</u>                                                                                                                                                                                                                                                                                                             |
| <u>“State Historic Preservation Officer” (SHPO)</u>  | <u>“State Historic Preservation Officer” means the official appointed or designated pursuant to §101(b)(1) of the Act to administer the State Historic Preservation program or a representative designated to act for the State Historic Preservation Officer.</u>                                                                                                                                                                                                                                                          |
| <u>“Undertaking”</u>                                 | <u>“Undertaking” means any project, activity, or Program that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a Federal agency or licensed or assisted by a Federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106.</u> |

PROGRAMMATIC AGREEMENT  
BY AND AMONG  
THE CITY OF BERKELEY  
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

REGARDING HISTORIC PROPERTIES AFFECTED BY USE OF REVENUE FROM  
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PART 58  
PROGRAMS

WHEREAS, the City of Berkeley ("City"), a "Responsible Entity" under 24 CFR Part 58, proposes to administer and fund projects and programs (hereinafter referred to as "Undertakings," as defined in 36 CFR 800.16y) in the City of Berkeley, California with monies from the U.S. Department of Housing and Urban Development ("HUD") programs ("Programs") delegated to the City pursuant to 24 CFR Part 58 or any other pertinent HUD regulations; and

WHEREAS, the City has determined the administration of these Undertakings and Programs may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places ("Historic Properties") and has consulted with the California State Historic Preservation Officer ("SHPO") pursuant to 36 CFR Part 800 of the regulations implementing Section 106 of the National Historic Preservation Act (16 USC 470f) ("Act"); and

WHEREAS, pursuant to the Advisory Council on Historic Preservation's ("ACHP") Section 106 regulations, "Protection of Historic Properties" ("Regulations") [36 CFR Part 800], the City has requested the comments of the ACHP; and

WHEREAS, pursuant to ACHP's Section 106 regulations, the City has conducted outreach and has actively sought and requested the comments and participation of Indian tribes that attach religious and cultural significance to historic properties that may be affected by Undertakings funded under the terms of this Agreement; and these Tribes did not respond to our requests to engage in such consultation; and

WHEREAS, the City will continue to conduct outreach and will actively seek and request the comments and participation of Indian tribes that attach religious and cultural significance to historic properties that may be affected by Undertakings funded under the terms of this Agreement; and

WHEREAS, pursuant to ACHP's Section 106 Regulations, the City has considered the nature of the program and its likely effects on historic properties and has taken steps to involve individuals, organizations and entities likely to be effected by the Undertaking; and

WHEREAS, pursuant to ACHP's Section 106 Regulations, the City has arranged for public participation appropriate to the subject matter and scope of the Programmatic Agreement by providing notice to the public and has held meetings before the

Landmarks Preservation Commission concerning the Undertaking for the purpose of informing the public and including them in the consultation process; and

WHEREAS, sub-recipients receiving Part 58 funds, which are the subject matter of this agreement, by, from, or through the City agree as a condition of receiving funding to comply fully with the requirements of the National Historic Preservation Act of 1966 (16 USC 470) and the procedures set forth in 36 CFR Part 800 on the Historic Preservation Procedures for Protection of Historic Properties; and

NOW, THEREFORE, the City, and the SHPO agree that the Undertakings shall be administered in accordance with the following stipulations to satisfy the City's responsibilities under Section 106 for all individual Undertakings of the Programs.

### **STIPULATIONS**

The City of Berkeley shall ensure the following measures are carried out:

#### **I. TERMINATION OF EXISTING PROGRAMMATIC AGREEMENT**

The Programmatic Agreement ("PA") entered into on December 3, 1992 by the Advisory Council on Historic Preservation, the California State Historic Preservation Officer and the City of Berkeley is hereby terminated by mutual agreement and is no longer in effect as of the effective date of this Programmatic Agreement. The stipulations agreed to in the PA are replaced in their entirety by the stipulations agreed to in this PA.

#### **II. APPLICABILITY OF THE PROGRAMMATIC AGREEMENT**

The City shall comply with the stipulations set forth in this PA for all Undertakings within the City of Berkeley, California, which involve the exterior or interior rehabilitation of residential and commercial structures and is assisted entirely or in part by monies from the Programs of the U.S. Department of Housing and Urban Development subject to 24 CFR Part 58. This agreement is also applicable to Undertakings which involve solely acquisition and rehabilitation of structures provided that such Undertakings do not involve demolition or new construction. The review process established by this PA shall be completed prior to the City's final approval of any application for assistance under these Programs, and prior to the City or the property owner altering the property, or initiating construction or making irrevocable commitment for construction that may affect a property that is fifty (50) years of age or older. Any Undertaking that does not qualify for review under the terms of this PA shall be reviewed in accordance with the procedures outlined in 36 CFR Part 800.

#### **III. COORDINATION WITH OTHER FEDERAL AGENCIES—36 CFR § 800.2(c)(4)**

Other Federal agencies providing permits, licenses, or financial assistance for Program activities covered under the terms of this PA may, with the concurrence of the City and SHPO, satisfy their Section 106 responsibilities by accepting and complying with the terms of this PA. In such situations, the City and the Federal Agency shall notify the SHPO in writing of their intent to use this PA to achieve compliance with Section 106 requirements. If the SHPO does not respond within 21 days of receipt of such a notice

of intent, the City and other Federal agency will assume SHPO's concurrence, as referenced above. Copies of all such notification letters shall be maintained in the files established by the City for each such Undertaking.

#### IV. UNDERTAKING NOT REQUIRING REVIEW BY SHPO

The following Undertakings do not require review by SHPO and no signatory is required by this PA to determine the National Register of Historic Places ("NRHP") eligibility of properties affected by these Undertakings.

- A. Undertakings not requiring review by the SHPO are enumerated in Attachment "A." An Undertaking consisting of activities not listed in Attachment "A" shall be reviewed pursuant to the terms of this PA. Undertakings involving Historic Properties but nevertheless exempt from review pursuant to Attachment "A" shall be designed to conform with the California State Historic Building Code [State of California, Title 24 Building Standards, Part 8 ("SHBC")] as well as the *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Building* ("Standards").
- B. Undertakings affecting only properties that are less than fifty (50) years of age do not require review pursuant to the terms of this PA.
- C. Undertakings which are limited to the rehabilitation of interior spaces within single family residential structures where such work will not be visible from the exterior of the structure do not require review pursuant to the terms of this PA.

#### V. AREA OF POTENTIAL EFFECTS

It is agreed for the purposes of this PA, with the exception of Stipulation VII.B., that the Area of Potential Effects ("APE") will be limited to the individual building when a proposed project is limited to the rehabilitation of its existing interior or exterior features.

#### VI. IDENTIFICATION OF HISTORIC PROPERTIES

- A. The City shall review all existing information on any property within the APE that may be affected by the use of these funds, including the National Register of Historic Places and lists of Historic Properties maintained by the City of Berkeley.
  - 1. If the property proposed for rehabilitation is listed in the National Register or has already been determined eligible for inclusion in the National Register, the City shall proceed with the review of the project pursuant to Stipulation VII, unless exempted under Stipulation IV.

2. If the property has been determined by the City, in written consultation with the SHPO, within the last five (5) years prior to the current Undertaking to be ineligible for inclusion in the National Register, then the Undertaking may proceed without further review under the terms of this PA.

B. If the property proposed for rehabilitation is not listed in the National Register, has not been evaluated for the National Register eligibility within the last five (5) years, and is at least 50 years of age, then the City shall submit the documentation required pursuant to 36 CFR 800.4 plus a completed California Historic Resources Inventory form (DPR523) to the SHPO for review. Other information may be requested by the SHPO if necessary. The City shall apply the National Register Criteria and notify the SHPO of its determination in the submittal.

1. If the SHPO agrees with the City that a property is eligible under the criteria, the property shall be considered eligible for the National Register for purposes of this PA, and shall hereinafter be referred to as a Historic Property. The City shall continue consultation in accordance with the terms of this PA for all such properties.

2. If the SHPO agrees with the City that the criteria are not met, the property shall be considered ineligible for the inclusion in the National Register for a period of five (5) years from the date of the SHPO's review. Such properties need not be reevaluated during this five (5) year period, unless a party to this PA notifies the City in writing of changing perceptions of significance warrants a property reevaluation. Such properties require no further review under this PA.

3. If the SHPO disagrees with the City's determination regarding eligibility, the City shall consult further with the SHPO to reach agreement. If agreement cannot be reached, the City shall obtain a final determination from the Secretary of the Interior pursuant to the applicable National Park Services regulations, 36 CFR Part 63.

## VII. ASSESSMENTS OF EFFECTS

A. Prior to undertaking any activities that are not exempt under Stipulation IV, the City shall provide the SHPO with clear, unobstructed photographs of the historic property and a general work description which adequately details the scope of work for each rehabilitation project that may affect a Historic Property, including work write-ups, working drawings and specifications, as appropriate, and any additional documentation necessary to understand the Undertaking. The City shall ensure that the SHBC will be employed to the greatest extent feasible in all rehabilitation projects. The City shall apply Criteria of Effect and Adverse Effect (36

CFR 800.9) to any Historic Property that may be affected by an Undertaking, and will review the scope of work to determine if the Undertaking conforms to the SHBC as well as the recommended approaches contained in the Standards.

1. If the City determines that an Undertaking will have no effect, the City shall notify the SHPO in writing of this finding. If SHPO does not object to this written notice within fifteen (15) days, the Undertaking may proceed without further review.
  2. If the City determines that an Undertaking conforms to the Standards and complies with SHBC, the City shall notify the SHPO in writing of this finding. If the SHPO does not object in writing to this determination within thirty (30) days after receipt, the Undertaking shall be considered to not adversely affect Historic Properties and may proceed as submitted without further review.
  3. If the City or the SHPO find that an Undertaking does not conform to the Standards or comply with SHBC, the Undertaking will be considered to adversely affect Historic Properties. The SHPO may recommend modifications to the scope of work or conditions under which the Undertaking would be found to conform to the Standards and the SHBC in its response to the City. The City shall consult further with the SHPO to seek ways to avoid, minimize, or mitigate the adverse effect. If all adverse effects cannot be avoided, the City shall initiate consultation with the SHPO in accordance with 36CFR 800.6.
  4. The City will notify the SHPO of any changes to the scope of work and shall provide the SHPO with the opportunity to review and approve such changes. If the changes do not conform to the Standards or comply with the SHBC, the parties shall consult further and the City will initiate consultation with the SHPO in accordance with 36 CFR 800.6 if an adverse effect cannot be avoided.
  5. The City shall provide completion photographs on each rehabilitation project to the SHPO and shall retain documentation of the rehabilitation, including the work write-ups and photographs as part of its permanent records.
- B. Additionally, the City shall consult in writing with the SHPO to determine if an Undertaking which includes ground disturbing activities has the potential to affect an Archeological Resource (as defined by the Archaeological Resources Protection Act of 1979) that may be eligible for inclusion in the National Register. The City shall investigate historical

records and pertinent information available at the Northwest Information Center of the California Historical Resources Information System at Sonoma State University or some institution containing similar records acceptable to SHPO. The City also shall complete any further studies recommended by the SHPO to determine if the Undertaking has the potential to affect Archeological Resources that may be eligible for inclusion in the National Register. It is agreed that the following ground disturbing activities have the potential to affect Archeological Resources: excavation for footings and foundations; installation of utilities such as sewer, water, storm drains, electrical, gas, leach lines and septic tanks except where installation is restricted solely to areas previously disturbed by the installation of these utilities and systems.

1. If an Undertaking has the potential to affect any Archeological Resource that may be eligible for inclusion in the National Register, the City shall redesign the project to avoid the Archeological Resource and shall provide the SHPO with documentation regarding the property and the steps it has taken to avoid such property.
2. If the Undertaking cannot be redesigned to avoid the Archeological Resource, the City shall develop a plan in consultation with the SHPO to complete the identification, evaluation and, if necessary, mitigation of the impact on the Archeological Resource. If the City and the SHPO cannot agree whether the potential to affect Archeological Resources exists or cannot agree on a plan for the consideration of such resources, the City will initiate consultation with the SHPO in accordance with 36 CFR 800.6.

#### VIII. COMBINED REVIEW OF ELIGIBILITY AND EFFECT

The City may elect to submit the documentation set out in Stipulations VI and VII above in one package for the SHPO's review. The SHPO will provide comments on the City's determinations of eligibility and effect within thirty (30) days after receipt of such submission. The City will review any such comment of the SHPO and refer to the detailed procedures set out in Stipulations VI and VII to determine if additional review by the SHPO is required to fulfill the terms of this PA.

#### IX. SHPO RESPONSIBILITIES

- A. The SHPO is permitted thirty (30) calendar days after receipt of any submitted documentation to review and comment on such material, with the exception of Stipulation VII.A.1. If the SHPO does not provide comments within this time period, the City may assume that the SHPO does not object to its determination.
- B. The SHPO will provide technical assistance and training on the application of the Standards and the SHBC to the City to the extent possible.



X. EMERGENCY UNDERTAKINGS

- A. This Stipulation shall apply only to situations in which a duly authorized local official has determined in accordance with applicable law, that an imminent threat to the public health and safety exists and that such threat must be removed forthwith (“Emergency Conditions”).
- B. When the City determines that Emergency Conditions require immediate demolition of a Historic Property in connection with an activity subject to this PA, the City shall in writing concurrently notify the ACHP, the Landmarks Preservation Commission (LPC), the State Historic Preservation Officer and any Indian Tribe that may attach religious and cultural significance of the proposed removal and afford these parties a maximum of seven (7) days to comment on the proposed demolition. Any notification by the City shall be accompanied by documentation that includes, but is not limited to, a description of the Emergency Conditions, the name, location, and significance of the affected Historic Property, an assessment of the historic Property’s current condition supplemented by photographs, and the date by which the Emergency Conditions must be abated. If the City determines that circumstances do not permit seven (7) days for comment, the City shall notify the ACHP, the SHPO, the LPC and the Indian tribe and invite any comments within the time available.
- C. The City shall require that any mitigation measures recommended by the ACHP, the LPC, the SHPO and any affected Indian Tribe be implemented if the City deems such measures to be feasible.
- D. The City shall document the actions taken pursuant to this Stipulation in the manner prescribed by Stipulation XIX.A.
- E. Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 [36 CFR §800.12(d)].

XI. PUBLIC INVOLVEMENT

- A. The City shall identify any public interest in the Undertakings subject to this PA by informing the public about Historic Properties when complying with the public participation requirements set forth in 24 CFR Part 58 and in the regulations for any other Program delegated by HUD to the City as may be applicable.
- B. The City shall, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an Undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the agency official to consider in decision-making.

The City may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in Subpart B of 36 CFR Part 800, if they provide adequate opportunities for public involvement consistent with that subpart.

- C. At any time during implementation of the measures stipulated in this PA, should a member of the public raise an objection pertaining to delineation of an APE or to treatment of a Historic Property, the City shall notify the SHPO immediately of the objection and then proceed to consider the objection and consult, as needed, with the objecting party and the SHPO, for a period of time not to exceed fifteen (15) calendar days. The City's responsibility to carry out all other actions under this PA that are not the subject of the dispute shall remain unchanged.

## XII. DISCOVERIES AND UNFORESEEN EFFECTS

If, during the implementation of these Programs, a previously unidentified property that may be eligible for the inclusion in the National Register is encountered, or a known Historic Property may be affected in an unanticipated manner, the City will assume its responsibility pursuant to 36 CFR 800.13(b).

## XIII. REPORTING

The City shall forward an annual report of all Undertakings covered by the terms of this PA to the SHPO, and the U.S. Department of Housing and Urban Development, San Francisco Regional Office, Region IX [or State of California, Department of Housing and Community Development]. This report will list the Undertakings exempted under Stipulation IV and those that were reviewed under the terms of this PA. The Undertakings should be listed by property address.

## XIV. MONITORING

The SHPO may monitor any activities carried out pursuant to this PA will review such activity if requested. The City will cooperate with the SHPO in carrying out these monitoring and review responsibilities.

## XV. DISPUTE RESOLUTION

If the City and the SHPO are unable to resolve any disagreement arising under the provisions of this PA, the City shall, unless the dispute relates to the National Register eligibility of any property, forward full documentation regarding the project, the basis for the dispute, and request the comments of ACHP in accordance with 36 CFR 800.6(b)(1)(v).

## XVI. CITY STAFFING

The City will assign staff to assure that rehabilitation work is carried out in accordance with the specifications and work descriptions provided to the SHPO for review in determining effect, including any project modifications recommended by the SHPO which were adopted by the City. Such staff will also monitor Undertakings limited to

work items enumerated in Attachment "A" which are exempted from review by the SHPO to assure that only qualifying work items are properly performed. Responsible City staff will certify that work was carried out as planned, and will maintain records for each project which document compliance with the terms of this PA.

**XVII. AMENDMENTS**

Any party to this PA may request it be amended, whereupon the parties will consult in accordance with 36 CFR 800.14 to consider such amendment. No amendment to this PA will go into effect without written concurrence of all consulting parties.

**XVIII. TERMINATION**

Any party to this PA may terminate it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to the termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the City will comply with 36 CFR Part 800 with respect to individual Undertakings covered by this PA.

**XIX. FAILURE TO COMPLY WITH TERMS OF THE PROGRAMMATIC AGREEMENT**

In the event the City cannot carry out the terms of this PA, it the City shall not take or sanction any action or make any irreversible commitment pursuant to a Program or to carry out an Undertaking that would result in an adverse effect to Historic Properties or would foreclose the Council's SHPO's consideration of modifications or alternatives to the Undertaking, and COB the City will comply with 36 CFR Part 800 with regard to each individual Undertaking covered by this PA.

EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidence that the City of Berkeley has afforded the SHPO a reasonable opportunity to commit on the program and that the City has taken into account the effects of the program on Historic Properties.

CITY OF BERKELEY

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Dee Williams-Ridley, City Manager

APPROVED AS TO FORM

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Farimah Brown, City Attorney

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Julianne Polanco

**ATTACHMENT "A"**  
**Programmatic Agreement for Rehabilitation**

The following Undertakings require only administrative review by the City and not the SHPO pursuant to Stipulation IV of this PA.

1. Electrical work, limited to upgrading or in-kind replacement;
2. Plumbing work, limited to upgrading or in-kind replacement, with the exception of historic fixtures which shall be repaired when possible;
3. Installation of mechanical equipment which does not affect the exterior of the building or requiring installation of new duct work throughout the interior;
4. Repainting of existing painted surfaces if destructive surface preparation treatments, including, but not limited to waterblasting, sandblasting and chemical removal are not used;
5. Repair or partial replacement of porches, decks, cornices, exterior siding, doors, thresholds, balustrades, stairs or other trim, when the repair or replacement is done in-kind to closely match existing material and form;
6. Replacement of deteriorated windows when the replacement is done in-kind to closely match the existing material or form;
7. Replacement of window panes in-kind or with double or triple glazing so long as glazing is clear and untinted and replacement does not alter the existing window material or form;
8. Caulking and weatherstripping with compatibly colored materials;
9. Roof repair or replacement with materials which closely match the existing material and form;
10. Installation of insulation, with the exception of urea formaldehyde foam insulation or any other type of thermal insulation which contains water in its chemical composition and is installed within wall cavities, provided that decorative interior plaster or woodwork or exterior siding is not altered by this work item;
11. Installation of fire, smoke, and carbon monoxide detectors;
12. Installation of security devices including dead bolts, door locks, window latches, door peepholes, and the installation of electronic security systems;
13. Repair or replacement of existing roads, driveways, sidewalks, curbs, curb ramps, speed bumps and gutters provided that work is done in-kind to closely

match existing materials and forms and provided that there are only minimal changes in the dimensions and configurations of these features;

14. Repair or replacement of fencing, gates, and freestanding exterior walls when work is done in-kind to closely match the existing materials and form;
15. Floor refinishing;
16. Repair or replacement of floors when work is done in-kind to closely match the existing materials and form;
17. Installation of grab bars, handrails, guardrails and minor interior and exterior modifications for handicapped accessibility;
18. Modifications of and improvements to path of travel for persons with disabilities from, to, and within a building, structure, playground, or park and includes the installation of exterior ramps and chairlifts for handicapped accessibility;
19. Repair or replacement of signs or awnings when work is done in-kind to closely match existing materials and form;
20. Repair or replacement of interior stairs when work is done in-kind to closely match the existing materials and form;
21. Repair, replacement, or installation of gutters and down spouts;
22. Repair, replacement, and installation of the following, regardless of their location within or adjacent to an historic district:
  - a. Park furniture, including benches, picnic tables, chairs, planter boxes, barbecue pits and trellises.
  - b. Outdoor yard improvements, including play structure, matting, fencing, gates, playground lighting, drinking fountain, playground equipment, path of travel and ramps.
  - c. Landscaping, including tree planting, tree pruning, shrub removal, play court resurfacing or sodding, irrigation, murals and painting of game lines for school play yards and grounds.
23. Repair, replacement or installation of water, gas, storm, and sewer lines when the work qualifies as an exemption pursuant to Stipulation V.5; and
24. Stabilization of foundations and addition of foundation bolts.

**ATTACHMENT “B”  
DEFINITIONS**

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| “Act”                             | “Act” means the National Historic Preservation Act of 1966, as amended, 16 USC §470.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| “ACHP”                            | “ACHP” means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| “Archeological Resource”          | “Archeological Resource” means any material remains of past human life or activities which are of archaeological interest as determined under uniform regulations promulgated pursuant to 16 USC §470aa-mm.                                                                                                                                                                                                                                                                                                                                                              |
| “Area of Potential Effects” (APE) | “Area of Potential Effects” means the geographic area or areas within which an Undertaking may cause changes in the character or use of historic properties, if any such properties exist.                                                                                                                                                                                                                                                                                                                                                                               |
| “City”                            | “City” means the City of Berkeley.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| “Historic Property”               | “Historic Property” means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places. The term includes, for purposes of this PA, artifacts, records, and remains that are related to and located within such properties. The term “eligible for inclusion in the National Register” includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register of Historic Places listing criteria. |
| “National Register Criteria”      | “National Register Criteria” means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR Part 60).                                                                                                                                                                                                                                                                                                                                                                             |

|                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>“National Register of Historic Places” (NRHP)</p> | <p>“National Register of Historic Places” (NRHP) maintained by the Secretary of the Interior and administered by the National Parks Service, is the official list of the Nation's cultural resources worthy of preservation.</p>                                                                                                                                                                                                                                                                                            |
| <p>“National Register”</p>                           | <p>“National Register” means the National Register of Historic Places maintained by the Secretary of the Interior.</p>                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>“Programmatic Agreement” (PA)</p>                 | <p>“Programmatic Agreement” means the agreement pursuant to 36 CFR § 800.14(b), between the City, and the SHPO to allow for expedited review of HUD funded projects affecting cultural resources.</p>                                                                                                                                                                                                                                                                                                                       |
| <p>“Secretary”</p>                                   | <p>“Secretary” means the Secretary of the Interior</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>“Standards”</p>                                   | <p>“Standards” means the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, &amp; Reconstructing Historic Buildings.</p>                                                                                                                                                                                                                                                                                                             |
| <p>“State Historic Preservation Officer” (SHPO)</p>  | <p>“State Historic Preservation Officer” means the official appointed or designated pursuant to §101(b)(1) of the Act to administer the State Historic Preservation program or a representative designated to act for the State Historic Preservation Officer.</p>                                                                                                                                                                                                                                                          |
| <p>“Undertaking”</p>                                 | <p>“Undertaking” means any project, activity, or Program that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a Federal agency or licensed or assisted by a Federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106.</p> |





Office of the City Manager

CONSENT CALENDAR

January 19, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Dr. Lisa Warhuus, Director, Health, Housing, & Community Services  
 Subject: Predevelopment and Acquisition Loan for 2527 San Pablo Avenue

RECOMMENDATION

Adopt a Resolution:

1. Authorizing the execution of a \$5,500,000 loan to Satellite Affordable Housing Associates (SAHA) for costs related to acquisition and predevelopment of the proposed affordable housing development at 2527 San Pablo Avenue (2527 San Pablo), utilizing existing reserved funds previously allocated by Council.
2. Authorizing the City Manager to execute all original or amended documents or agreements to effectuate this action.

FISCAL IMPACTS OF RECOMMENDATION

The recommendation would not change the amount of the existing total reservation for 2527 San Pablo, but would allow the City to disburse up to \$5,500,000 of the total reserved \$12 million as an acquisition and predevelopment loan to ensure other project funding can be secured. On October 29, 2019, City Council reserved \$500,000 in General Funds generated by Measure U1 as a predevelopment loan for 2527 San Pablo with Resolution 69,163. On December 10, 2019, Council reserved \$11,500,000 as a development loan generated by Measure O Funds with Resolution 69,231 for 2527 San Pablo.

CURRENT SITUATION AND ITS EFFECTS

In October 2020, SAHA requested that the City authorize the option of converting a portion of the development funds reserved into an acquisition loan in order to meet the requirements of their acquisition lender, Community Vision (CV) (formerly Northern California Community Loan Fund). Together, the City's predevelopment loan and CV's acquisition loan would exceed a limit set by CV. If the City agrees to provide its acquisition loan to pay off CV's loan if the project is unable to start construction before the end of 2021, SAHA will be able to obtain the CV loan and use the City's predevelopment funds.

Generally, changing a loan from a development loan to an acquisition and predevelopment loan increases the level of risk for the City, since there is less assurance that the project will move forward than loans made at construction start. In this case, the developer's current financing, capacity and track record, the appraised value, and recording the City's Deed of Trust on the property all mitigate the risk to City funds and support the recommended action.

At the time of this writing, 2527 San Pablo is fully funded except for a noncompetitive 4% federal tax credit allocation and a tax exempt bond allocation. SAHA submitted a combined application to TCAC/CDLAC in September of 2020 for those sources and was not awarded funding in the December round. SAHA plans to reapply for TCAC/CDLAC funds in April 2021.

SAHA has already obtained \$16,163,523 in project funding from the State Infrastructure Improvement Grant, State Affordable Housing and Sustainable Communities Program, and California Department of Developmental Services, as well as 17 project-based vouchers from the Berkeley Housing Authority.

Together with City funds, these resources strongly position SAHA's 2527 San Pablo Project to move forward with construction in June 2021.

Supporting 2527 San Pablo Avenue with acquisition and predevelopment funding is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

### BACKGROUND

SAHA applied for funding through the 2019 Housing Trust Fund Request for Proposals. The project is for families and people with special needs on an infill site in the City-designated Dwight and San Pablo node area and will stand six stories tall. One hundred percent of the units are restricted to households with incomes at or below 60% of the area median, excluding the manager's unit that is required by state law. These restrictions will be in place for at least 55 years from initial occupancy. In addition, 12 of the apartments will be set aside for households with intellectual and developmental disabilities.

2527 San Pablo will provide 63 homes as follows: 18 studio units, 11 one-bedroom units, 33 two-bedroom units and one three-bedroom manager's unit. Eighteen of the apartment homes will have private decks or balconies.

The City typically provides two types of loans through the Housing Trust Fund: 1) predevelopment loans that are short-term (five years) and allow developers to assess project feasibility to better position the project to pursue competitive funding at the state level; and 2) development loans that are longer term (55 years), and are closed after all other funding is secured, just prior to construction start. Acquisition is an eligible use in

the HTF Guidelines, but because this project was originally reviewed and recommended for development funding, Council authorization is being sought to convert to an acquisition loan if needed.

ENVIRONMENTAL SUSTAINABILITY

SAHA intends to construct 2527 San Pablo to third-party green building standards, and will seek LEED v4 MidRise certification.

RATIONALE FOR RECOMMENDATION

2527 San Pablo meets local needs and priorities by adding at least 63 new units of affordable housing to the City's inventory. Maintaining the CV acquisition loan allows the project to move forward on time without needing a new acquisition loan source. The City loan has a lower interest rate than a conventional acquisition loan, and will reduce carrying costs as SAHA advances toward construction.

ALTERNATIVE ACTIONS CONSIDERED

SAHA indicated that if the City executed its predevelopment loan without an affordable housing regulatory agreement it would also meet CV's requirements. Since the City's purpose in providing higher-risk predevelopment funds is to promote affordable housing, staff do not recommend providing \$5,500,000 without a regulatory agreement.

CONTACT PERSON

Amanda Montez, Community Development Project Coordinator, HHCS, 510-981-5426

Attachments:

1: Resolution

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

AUTHORIZATION FOR A \$5.5 MILLION ACQUISITION AND PREDEVELOPMENT LOAN FOR 2527 SAN PABLO FROM THE \$12 MILLION IN MEASURE O FUNDS ALREADY RESERVED FOR THE PROJECT

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, on October 29, 2019, the City Council reserved \$500,000 to 2527 San Pablo with Resolution 69,163; and

WHEREAS, on December 10, 2019, the City Council reserved \$11,500,000 to 2527 San Pablo with Resolution 69,231, conditioned on SAHA securing all entitlements and project funding within two years of the reservation; and

WHEREAS, in October 2020, SAHA requested that the City consider authorizing an acquisition and predevelopment loan before the project was fully funded in order to meet the requirements of their acquisition lender, Community Vision.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council authorizes a loan to SAHA Housing Corporation for 2527 San Pablo to allow for the disbursement of up to \$5.5 million of the \$12 million in reserved funds to support acquisition and predevelopment costs.

BE IT FURTHER RESOLVED that the loan will be conditioned on SAHA securing entitlements and full project funding within two years of the signing date of Resolution 69,231-N.S.

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

January 19, 2021

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

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





Office of the City Manager

CONSENT CALENDAR

January 19, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

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

Subject: Revenue Contract: Community Services Block Grant for Calendar Year 2021

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to accept the Community Services Block Grant (CSBG) Contract Number 21F-4001 for the amount of \$275,106 to provide services for low-income people for the period January 1, 2021 to December 31, 2021, with the option to extend the contract period through May 31, 2022.

FISCAL IMPACTS OF RECOMMENDATION

Berkeley's Community Services Block Grant (CSBG) allocation for the period January 1, 2021 through December 31, 2021, with the option to extend the contract period through May 31, 2022, is \$275,106 (Community Action Program Fund - 334-51-504-530-0000-000-000-431110-). The CSBG allocation amount is included in the City's anti-poverty Community Action Fund and supports oversight and management of anti-poverty funds within the Health, Housing and Community Services Department.

CURRENT SITUATION AND ITS EFFECTS

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

The Human Welfare and Community Action Commission (HWCAC) acts as the tripartite advisory Board for CSBG funding. As such, it is responsible for reviewing performance of funded programs, reviewing compliance with the implementation of the community action program, and advising Council on CSBG funding decisions. The Berkeley City Council is responsible for all final CSBG funding decisions.

At its December 2, 2020 meeting, the HWCAC passed a motion to recommend that the City accept the CSBG Funds and contract for 2021. (M/S/C: Dunner/Romo. Ayes: – Dunner, Sood, Kohn, Omodele, Behm-Steinbeg Yun, Romo, Sim. Noes: None. Abstain:

None. Absent: Smith. CSBG funds complement anti-poverty General Funds which are used for other critical community services, including disability and senior services, medical care, child care, and additional homeless services.

BACKGROUND

Community Services Block Grant (CSBG) supports the City of Berkeley's anti-poverty efforts at a minimum funded level. The City received \$160,000 until December of 2005. In 2006 the award for minimum-funded agencies was increased to \$173,556. In 2008, the award for minimum-funded agencies increased to \$259,646 annually; in 2013 the award was reduced to \$244,908. In 2016 and 2017, the annual award was increased to \$265,577. In 2019 and 2020, the award was increased to \$266,863 and \$307,106, respectively.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

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

ALTERNATIVE ACTIONS CONSIDERED

Rejecting CSBG funding would reduce funding for services to low-income Berkeley residents. This would negatively impact low-income services in Berkeley.

CONTACT PERSON

Mary-Claire Katz, Associate Management Analyst, Health, Housing & Community Services Department, (510) 981-5414.

Attachments:

1: Resolution



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

REVENUE CONTRACT: 2021 COMMUNITY SERVICES BLOCK GRANT (CSBG)

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

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

WHEREAS, at the December 9, 2020 HWCAC meeting a motion was passed recommending that the City accept the Community Service Block Grant Funds; and

WHEREAS, this CSBG revenue contract covers the calendar year 2021 with the option to extend the contract period through May 31, 2022 (January 1, 2021 through May 31, 2022) for a contract amount of \$275,106 (334-51-504-530-0000-000-000-431110); and

WHEREAS, the funds have historically been used to support anti-poverty services and to support City of Berkeley oversight and management of anti-poverty programs (budget code (334-51-504-530-0000-000-444-Various to 334-51-504-535-0000-000-444-Various).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to accept Community Service Block Grant Contract Number 21F-4001 for the amount of \$275,106, and execute any resultant agreements and amendments including amendments that may increase the contract amount or add discretionary funding, or to change the contract term, to provide low-income services for the time period January 1, 2020 to December 31, 2021, with the option to extend the contract period through May 31, 2022. A record signature copy of said agreement and any amendments shall be on file in the office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
January 19, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: LaTanya Bellow, Director of Human Resources  
 Subject: 2021 Health Plan Changes

RECOMMENDATION

Adopt two Resolutions:

1) Approving rates for the Kaiser Health Maintenance Organization (HMO) health plans as follows:

- (a) 15.58% increase for Kaiser S1 Group #60 (Active Group);
- (b) 15% increase for the HSA-Qualified Deductible HMO Plan (Active Group)
- (c) 1.89% increase for Pre-Medicare Eligible Retirees (Retiree Group); and
- (d) -4.00% decrease for Post-65 Senior Advantage (Retiree Group)

2) Approving rates for the Sutter Health Plus health plans as follows:

- (a) 1.87% increase for the Active HMO ML 26 group; and
- (b) 1.19% increase for the Pre-Medicare retiree group.

The health plan premium rates will be effective for the period of January 1, 2021 through December 31, 2021.

FISCAL IMPACTS OF RECOMMENDATION

Health care premiums are quoted on a calendar year based on standard industry practices. The City budgets are on a fiscal year basis so half of the premium cost is known and the remainder is estimated based on Budget procedures and trends in medical premium costs.

Funding for the health plan premium increases is included in the Fiscal Year (FY) 2021 adopted budget. Premiums are paid one (1) month in advance; e.g., the January 2021 premium is paid in December 2020.

**Active Employees:** In FY 2020, actual health insurance premium costs totaled \$22,487,758 (\$20,252,276 for Kaiser and \$2,235,482 for Sutter Health Plus). The December 10, 2019, staff report estimated that the health care cost for FY 2020 would be \$22,517,922

(\$20,281,673 for Kaiser and \$2,236,249 for Sutter Health Plus), so the actual cost was actually \$30,164 below projections.

The estimated expenditures for the first half of FY 2021 (July 1, 2020 to December 31, 2020) will total approximately \$ (\$10,278,995 for Kaiser and \$1,139,142 for Sutter Health Plus). The estimated expenditures for the second half of FY 2021 (January 1, 2021 to June 30, 2021) will total approximately \$13,040,907 (\$11,880,463 for Kaiser and \$1,160,444 for Sutter Health Plus), for a total FY 2021 projected cost of \$24,459,044. This represents an approximate increase of \$1,971,286 above FY 2020 actual premium costs.

|                    | <b>Fiscal Year 2021<br/>First Half<br/>(July 1, 2020 to<br/>December 31, 2020)</b> | <b>Fiscal Year 2021<br/>Second Half<br/>(January 1, 2021 to<br/>June 30, 2021)</b> | <b>Fiscal Year 2021<br/>Total</b> |
|--------------------|------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|-----------------------------------|
| Kaiser             | \$10,278,995*                                                                      | \$11,880,463                                                                       | \$22,159,458                      |
| Sutter Health Plus | \$1,139,142*                                                                       | \$1,160,444                                                                        | \$2,299,586                       |
| <b>Totals</b>      | <b>\$11,418,137*</b>                                                               | <b>\$13,040,907</b>                                                                | <b>\$24,459,044</b>               |

*\*Note: Fiscal year projections include November 2020 amounts as an estimate for December 2020, as the data was not available.*

Funding for the health premium increases for Active Employees from January 1 to June 30, 2021 was included as part of the Council authorized expenditures included in the FY 2021 adopted budget.

The estimated cost for the first half of fiscal year 2022 (July 1 to December 31, 2021) will total approximately \$13,040,907 (\$11,880,463 for Kaiser and \$1,160,444 for Sutter Health Plus). Funding for July 1 to December 31, 2021 will be included in the FY 2022 adopted budget.

**The Payroll Deduction Trust Fund, budget code 930-9701-410-2011, provides for these premiums.**

**Retired Employees:** The City's Retiree Health Premium Assistance Plan benefit contribution is capped at an annual increase of 4.5% for Miscellaneous and Berkeley Fire Fighters Association retirees, and 6% for Berkeley Police Association (BPA) retirees. Any premium increase above the City's premium assistance cap is borne by the retirees as an out-of-pocket expense.

Retirees represented by the Berkeley Police Association who retired prior to September 19, 2012 and have a minimum of 10 years of City service (up to a maximum of 20 years of City service) are paid a pro-rated amount equal to the Active two-party Kaiser Plan rate (Berkeley Police Supplemental Retirement Plan). Currently there are 145 participants receiving this benefit at a cost to the City of \$199,932 per month, or \$2,399,184 per year. The rate increase of 15.58% for the Kaiser Health Plan Active Employee group will result

in an increase of approximately \$31,141 per month, or \$373,692 per year. The Berkeley Police Supplemental Retirement Plan is a closed group; members retiring on or after September 19, 2012 are eligible for the Retiree Health Premium Assistance Plan as noted above.

Funding for retiree health premium assistance plan benefits comes from trust funds established for this purpose. The City has established separate retiree health premium assistance plans and trust agreements for the various Unions and unrepresented employees. The City has established a practice to pre-fund each of these trust funds for the purpose of having assets available to pay for the benefit.

#### CURRENT SITUATION AND ITS EFFECTS

The City has contracts with Kaiser and Sutter Health Plus to provide health benefits for all benefited employees, with 1,058 employees in the Kaiser HMO plan and 124 employees in the Sutter Health Plus plan. There are 188 employees receiving cash in lieu benefits.

In September 2020, Kaiser and Sutter Health Plus provided the City with insurance premium rate quotes for calendar year 2021. Kaiser quoted an increase of 15.58% for the Kaiser S1 Group. The increase was primarily due to high utilization of medical services by plan members. The City is required to pay up to the Kaiser S1 Group plan for all active benefitted City employees, thus this represented a significant impact to the City.

The final rates for all the Kaiser plans are as follows:

- 15.58% increase for the Kaiser S1 Active Group;
- 15% increase for Kaiser HSA-Qualified Deductible HMO Active Group Plan;
- 1.89% increase for the Pre-Medicare Retiree Group; and
- 4.00% decrease for the Post-65 Senior Advantage Retiree Group.

The final rates for the Sutter Health Plus plans are as follows:

- 1.87% increase for the Active HMO ML30 group; and
- 1.19% increase for the Pre-Medicare retiree group.

The health plan rates are based primarily on service utilization and claims experience. So these factors, along with rising medical costs and demographic changes, are the reasons given for the premium increases.

The 2021 rates for Active Employees will be:

| Active Employees    | Coverage Level | 2020 Monthly Premium Rate | 2021 Monthly Premium Rate | City Pays  | Employee Pays |
|---------------------|----------------|---------------------------|---------------------------|------------|---------------|
| Kaiser HMO S1 Group | Single         | \$796.55                  | \$920.61                  | \$920.61   | \$0           |
|                     | Two Party      | \$1,593.09                | \$1,841.22                | \$1,841.22 | \$0           |
|                     | Family         | \$2,118.81                | \$2,448.82                | \$2,448.82 | \$0           |
| Sutter Health Plus  | Single         | \$808.11                  | \$823.20                  | \$823.20   | \$0           |
|                     | Two Party      | \$1,616.35                | \$1,646.50                | \$1,646.50 | \$0           |
|                     | Family         | \$2151.09                 | \$2,191.50                | \$2,191.50 | \$0           |

Employees enrolled in a health plan with premiums higher than Kaiser's rates must pay the difference in premium costs. Due to the increase in Kaiser's monthly premiums, employees enrolled with Sutter Health Plus will no longer have to pay the difference.

The Affordable Care Act (ACA) requires employers to offer health insurance that is affordable and provides minimum essential coverage to at least 95% of eligible employees. An eligible employee is anyone who works an average of 30 hours per week within a 12-month period (the City of Berkeley's 12-month period is November 1 through October 31). Employers are required to offer health coverage, regardless of whether the employee would normally not be eligible for health insurance benefits under the employer's own rules. These employees are considered full-time equivalent for the purpose of the ACA.

Although the ACA only requires employers to offer health coverage to 95% of eligible employees, the City offers health coverage to 100% of all ACA eligible employees. This ensures that all ACA eligible employees have the opportunity to receive health insurance coverage.

The plan offered by the City that meets the requirements under the ACA (affordable and provides minimum essential coverage) is the Kaiser HSA-Qualified Deductible HMO Plan. The 2021 monthly premium rates for this plan will be:

| ACA Qualified Plan – Active Employees    | Coverage Level | 2021 Monthly Premium Rate |
|------------------------------------------|----------------|---------------------------|
| Kaiser HSA-Qualified Deductible HMO Plan | Single         | \$627.62                  |
|                                          | Two Party      | \$1,255.24                |
|                                          | Family         | \$1,776.18                |

The City is required to pay 50% of the employee single monthly premium, and the difference is paid by the employee. City staff completed a census, and as of October 31, 2020, five (5) employees will be eligible for this plan. The additional annual cost to the City would be \$18,829 if all five (5) eligible employees enrolled in this plan.

Retiree Group Plans 2021 Rates:

| <b>Pre-Medicare Retirees</b> | <b>Coverage Level</b> | <b>2020 Monthly Premium Rate</b> | <b>2021 Monthly Premium Rate</b> |
|------------------------------|-----------------------|----------------------------------|----------------------------------|
| Kaiser HMO                   | Single                | \$1,402.07                       | \$1,428.52                       |
|                              | Two Party             | \$2,804.15                       | \$2,857.04                       |
|                              | Family                | \$3,967.87                       | \$4,042.70                       |
| Sutter Health Plus HMO       | Single                | \$1,085.27                       | \$1,098.20                       |
|                              | Two Party             | \$2,170.71                       | \$2,196.50                       |
|                              | Family                | \$2,888.58                       | \$2,923.30                       |

| <b>Post 65 Retirees</b> | <b>Coverage Level</b> | <b>2020 Monthly Premium Rate</b> | <b>2021 Monthly Premium Rate</b> |
|-------------------------|-----------------------|----------------------------------|----------------------------------|
| Kaiser Senior Advantage | Single                | \$425.63                         | \$399.96                         |
|                         | Two Party             | \$851.26                         | \$799.92                         |

Currently, Sutter Health Plus does not offer a Medicare coordinated plan. Retirees bear most of the health plan rate increases as an out-of-pocket expense because the benefits from the City's Retiree Health Premium Assistance Plan Trust is capped at a 4.5% annual increase (6% for BPA retirees).

**BACKGROUND**

The City has two (2) group health plans for employees: 1) a Kaiser HMO plan and 2) a Sutter Health Plus HMO plan. The City has a contractual obligation to pay the equivalent of the basic Kaiser rates, including eligible dependents, for all benefited employees. Employees enrolled in a health plan with premiums higher than Kaiser's rates must pay the difference in cost of the premium. Therefore, employees who enroll in the Sutter Health Plus HMO plan will be responsible for the difference.

Separately, the City offers two (2) group health plans for retirees: 1) a Kaiser HMO plan and 2) a Sutter Health Plus HMO plan. Employees who retired prior to July 1, 1998 pay the full cost of the health insurance premium. Employees who retired after July 1, 1998, who meet certain eligibility criteria, are eligible for benefits under the City's Retiree Health Premium Assistance Plan.

Under the City's Retiree Health Premium Assistance Plan, the City pays a portion of the employee's health insurance premiums. The amount is prorated based on the employee's years of service. The City's annual contribution increase is capped at 4.5% (6% for BPA

retirees). The retiree pays the difference between the City's monthly contribution and the actual monthly insurance premium charged by the health plan he or she has elected for retiree medical coverage.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Health insurance is an employee benefit required under various collective bargaining agreements with the City.

ALTERNATIVE ACTIONS CONSIDERED

Staff and Keenan were satisfied with the rate increase for Sutter Health Plus. Kaiser came in with a higher increase in their rates, which would cause employees enrolled in the plan to be responsible for paying a higher co-payment for visits and prescriptions.

CONTACT PERSON

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

Attachments:

1. Resolution to authorize rate changes for Kaiser
2. Resolution to authorize rate changes for Sutter Health Plus



RESOLUTION NO. -N.S.

AUTHORIZING RATE CHANGES FOR THE KAISER HEALTH PLANS  
EFFECTIVE JANUARY 1, 2021 THROUGH DECEMBER 31, 2021

WHEREAS, the City pays for the full health insurance premiums for all employees enrolled under the Kaiser Health Maintenance Organization (HMO) health plan.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a rate increase of 15.58% for the Active Employee Kaiser HMO Group; a 15% rate increase for the HSA-Qualified Deductible HMO Group; a 1.89% rate increase for the Pre-Medicare Retiree Group; and a 4.00% rate decrease for the Post-65 Retiree Senior Advantage group, all effective January 1, 2021, through December 31, 2021, as follows:

| Active Group                                                                           | City Pays  | Employee Pays | Total      |
|----------------------------------------------------------------------------------------|------------|---------------|------------|
| <b>Kaiser S1 (HMO) Group #60 (\$0 office visits, \$5 RX)</b>                           |            |               |            |
| Single                                                                                 | \$920.61   | -0-           | \$920.61   |
| Two Party                                                                              | \$1,841.22 | -0-           | \$1,841.22 |
| Family                                                                                 | \$2,448.82 | -0-           | \$2,448.82 |
| <b>HSA-Qualified Deductible HMO Plan (Deductible - \$2,800 single, \$5,600 family)</b> |            |               |            |
| Single                                                                                 | \$313.81   | \$313.81      | \$627.62   |
| Two Party                                                                              | \$313.81   | \$777.71      | \$1,091.52 |
| Family                                                                                 | \$313.81   | \$1,230.70    | \$1,544.51 |

| Retiree Groups                                                                | City Pays | Employee Pays | Total      |
|-------------------------------------------------------------------------------|-----------|---------------|------------|
| <b>Early Retiree (Pre-Medicare) Retiree Group (\$5 office visits, \$5 RX)</b> |           |               |            |
| Single                                                                        | Varies    | Varies        | \$1,428.52 |
| Two Party                                                                     | Varies    | Varies        | \$2,857.04 |
| Family                                                                        | Varies    | Varies        | \$4,042.70 |
| <b>Senior Advantage (Post-65 Retiree) Group (\$5 office visits, \$5 RX)</b>   |           |               |            |
| Single                                                                        | Varies    | Varies        | \$399.96   |
| Two Party                                                                     | Varies    | Varies        | \$799.92   |

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

RESOLUTION NO. -N.S.

AUTHORIZING RATE CHANGES FOR SUTTER HEALTH PLUS HEALTH PLANS  
EFFECTIVE JANUARY 1, 2021 THROUGH DECEMBER 31, 2021

WHEREAS, the City pays for the health insurance premiums for the Sutter Health Plus Health Maintenance Organization (HMO) plans up to the equivalent of the Kaiser HMO plan rate for all employees except employees.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a rate increase of 1.87% for the Sutter Health Plus HMO for Active Employees, and a rate increase of 1.19% for the Early Retiree Sutter Health Plus HMO group plan, all effective January 1, 2021 through December 31, 2021.

| Active Group                                                                       | City Pays  | Employee Pays | Total      |
|------------------------------------------------------------------------------------|------------|---------------|------------|
| <b>Sutter Health Plus HMO Group #116006 (\$10 office visit, \$10/\$30/\$60 RX)</b> |            |               |            |
| Single                                                                             | \$823.20   | -0-           | \$823.20   |
| Two Party                                                                          | \$1,646.50 | -0-           | \$1,646.50 |
| Family                                                                             | \$2,191.50 | -0-           | \$2,191.50 |

| Retiree Group                                                                                       | City Pays | Employee Pays | Total      |
|-----------------------------------------------------------------------------------------------------|-----------|---------------|------------|
| <b>Pre-Medicare Retiree Sutter Health Plus HMO (Group #116006 - \$10 office, \$10/\$30/\$60 RX)</b> |           |               |            |
| Single                                                                                              | Varies    | Varies        | \$1,098.20 |
| Two Party                                                                                           | Varies    | Varies        | \$2,196.50 |
| Family                                                                                              | Varies    | Varies        | \$2,923.30 |

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

KAISER

Calendar Year 2020

|     | ABT        | BEN           | DED/LWOP | SMPF      | TOTAL         |
|-----|------------|---------------|----------|-----------|---------------|
| JAN | 10,440.11  | 1,716,230.76  | 131.44   | 1,845.65  | 1,728,647.96  |
| FEB | 9,827.70   | 1,707,839.05  | 131.44   | 1,845.65  | 1,719,643.84  |
| MAR | 10,036.84  | 1,722,019.75  | 131.44   | 1,845.65  | 1,734,033.68  |
| APR | 11,033.36  | 1,725,018.25  | 131.44   | 1,845.65  | 1,738,028.70  |
| MAY | 10,635.10  | 1,733,079.28  | 131.44   | 1,845.65  | 1,745,691.47  |
| JUN | 10,585.10  | 1,712,164.23  | 131.44   | 1,845.65  | 1,724,726.42  |
| JUL | 9,856.24   | 1,710,519.35  | 131.44   | 1,845.65  | 1,722,352.68  |
| AUG | 9,208.86   | 1,714,066.18  | 131.44   | 1,845.65  | 1,725,252.13  |
| SEP | 10,335.96  | 1,680,854.23  | 1,724.54 | 1,845.65  | 1,694,760.38  |
| OCT | 10,865.66  | 1,697,545.85  | 1,724.54 | 1,845.65  | 1,711,981.70  |
| NOV | 9,607.12   | 1,699,943.43  | 927.99   | 1,845.65  | 1,712,324.19  |
| DEC | 9,607.12   | 1,699,943.43  | 927.99   | 1,845.65  | 1,712,324.19  |
|     | 122,039.17 | 20,519,223.79 | 6,356.58 | 22,147.80 | 20,669,767.34 |

FY 2021 Projected First Half

10,278,995.27

FY 2021 Projected Second Half

11,880,462.73

Total City-paid: 20,519,223.79 99% -  
 Total Employee paid: 150,543.55 1%  
 Total Calendar Year Kaiser: 20,669,767.34 1,710,843.67 Average monthly calendar year cost to City  
 12 Months reporting

| Fiscal Year 2020 |            |               |          |           |               |
|------------------|------------|---------------|----------|-----------|---------------|
|                  | ABT        | BENEFIT       | DED/LWOP | SMPF      | TOTAL         |
| JUL-19           | 10,874.67  | 1,640,737.40  | 128.14   | 1,106.67  | 1,652,846.88  |
| AUG              | 11,812.93  | 1,663,576.51  | 128.14   | 1,844.45  | 1,677,362.03  |
| SEP              | 10,065.76  | 1,675,682.65  | 128.14   | 1,844.45  | 1,687,721.00  |
| OCT              | 10,842.28  | 1,650,336.08  | 128.14   | 1,844.45  | 1,663,150.95  |
| NOV              | 10,648.15  | 1,652,681.74  | 128.14   | 1,844.45  | 1,665,302.48  |
| DEC              | 10,065.76  | 1,652,911.13  | 128.14   | 1,844.45  | 1,664,949.48  |
| JAN-20           | 10,440.11  | 1,716,230.76  | 131.44   | 1,845.65  | 1,728,647.96  |
| FEB              | 9,827.70   | 1,707,839.05  | 131.44   | 1,845.65  | 1,719,643.84  |
| MAR              | 10,036.84  | 1,722,019.75  | 131.44   | 1,845.65  | 1,734,033.68  |
| APR              | 11,033.36  | 1,725,018.25  | 131.44   | 1,845.65  | 1,738,028.70  |
| MAY              | 10,635.10  | 1,733,079.28  | 131.44   | 1,845.65  | 1,745,691.47  |
| JUN              | 10,585.10  | 1,712,164.23  | 131.44   | 1,845.65  | 1,724,726.42  |
|                  | 126,867.76 | 20,252,276.83 | 1,557.48 | 21,402.82 | 20,402,104.89 |

Total City-paid: 20,252,276.83 99%  
 Total Employee paid: 149,828.06 1%  
 Total Fiscal Year Kaiser: 20,402,104.89  
 1,687,689.74 Average monthly fiscal year cost to City

12 Months reporting



Sutter Health Plus

| 2020          |           |              |          |                     |
|---------------|-----------|--------------|----------|---------------------|
| CALENDAR YEAR | ABT       | BENEFIT      | DED/LWOP | TOTALS              |
| JAN           | 3,118.60  | 188,874.23   | 35.10    | 192,027.93          |
| FEB           | 3,229.68  | 191,411.02   | 35.10    | 194,675.80          |
| MAR           | 3,189.64  | 186,449.08   | 35.10    | 189,673.82          |
| APR           | 3,315.30  | 188,786.31   | 35.10    | 192,136.71          |
| MAY           | 3,432.86  | 196,465.00   | 35.10    | 199,932.96          |
| JUN           | 3,359.28  | 192,209.20   | 35.10    | 195,603.58          |
| JUL           | 3,069.08  | 177,971.43   | 35.10    | 181,075.61          |
| AUG           | 3,244.86  | 185,395.22   | 35.10    | 188,675.18          |
| SEP           | 3,221.74  | 186,717.48   | 35.10    | 189,974.32          |
| OCT           | 3,233.30  | 186,979.29   | 35.10    | 190,247.69          |
| NOV           | 3,420.84  | 191,116.91   | 46.80    | 194,584.55          |
| DEC           | 3,420.84  | 191,116.91   | 46.80    | 194,584.55          |
|               | 39,256.02 | 2,263,492.08 | 444.60   | <b>2,303,192.70</b> |

FY 2021 Projected First Half

**1,139,141.90**

FY 2021 Projected Second Half

**1,160,443.85**

Total City-paid: **2,263,492.08**

Total Employee paid: 39,700.62 98%

TOTAL 2020 Sutter Health Plus: 2,303,192.70 2%

191,932.73 Average Monthly payment  
12 Months counting

| 2020        |           |              |          |                     |
|-------------|-----------|--------------|----------|---------------------|
| FISCAL YEAR | ABT       | BENEFIT      | DED/LWOP | TOTALS              |
| JUL-19      | 1,085.55  | 182,301.04   | -        | 183,386.59          |
| AUG         | 1,235.55  | 176,782.11   | -        | 178,017.66          |
| SEP         | 1,235.55  | 179,590.54   | -        | 180,826.09          |
| OCT         | 852.11    | 179,974.00   | -        | 180,826.11          |
| NOV         | 1,043.83  | 181,871.89   | -        | 182,915.72          |
| DEC         | 1,043.83  | 190,768.11   | -        | 191,811.94          |
| JAN-20      | 3,118.60  | 188,874.23   | 35.10    | 191,992.83          |
| FEB         | 3,229.68  | 191,411.02   | 35.10    | 194,640.70          |
| MAR         | 3,189.64  | 186,449.08   | 35.10    | 189,638.72          |
| APR         | 3,315.30  | 188,786.31   | 35.10    | 192,101.61          |
| MAY         | 3,432.86  | 196,465.00   | 35.10    | 199,897.86          |
| JUN         | 3,359.28  | 192,209.20   | 35.10    | 195,568.48          |
|             | 26,141.78 | 2,235,482.53 | 210.60   | <b>2,261,834.91</b> |

Total City-paid: **2,235,482.53** 99%

Total Employee paid: 26,352.38 1%

**TOTAL FY20 Sutter Health Plus:** 2,261,834.91 188,486.24 Average Monthly payment  
12 Months counting



Office of the City Manager

CONSENT CALENDAR  
January 19, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: LaTanya Bellow, Director of Human Resources

Subject: 2021 Fee Assessment – State of California Self-Insurance Fund  
(Workers' Compensation Program)

RECOMMENDATION

Adopt a Resolution authorizing payment to the State of California Department of Industrial Relations for Fiscal Year 2021 for administering the Workers' Compensation Program, in an amount not to exceed \$235,979.91.

FISCAL IMPACTS OF RECOMMENDATION

The annual fee assessed by the Department of Industrial Relations for Fiscal Year 2021 is \$235,979.91. The 2021 invoice amount is calculated based on the direct workers' compensation premiums reported to the Department of Insurance for total indemnity benefits. Funding for this annual fee is included in the Workers' Compensation Self-Insurance Fund, Budget Code 875-9801-410-8101.

BACKGROUND

The State of California Department of Industrial Relations regulates the Workers' Compensation Insurance Industry. Under California Labor Code Sections 62.5 and 62, every year, each City is assessed a fee by the Department of Industrial Relations to support the administration of the State's Workers' Compensation Program. The assessments provide a stable funding source to support court operations to resolve claims more quickly, improve the overall operation of the state workers' compensation system; to ensure safe and healthy working conditions on the job; including enforcement of labor standards and requirements for workers' compensation coverage.

Labor Code Sections 62.5 and 62.6 require allocation of the total assessment between insured and self-insured employers in proportion to payroll for the most recent year available. The City's total assessment is calculated by multiplying Self-Insured Employer Assessment Factors for each assessment by the total indemnity paid by the City.

This year's assessment is associated with a number of administrative costs. The agency uses these assessments to support the operations of the courts by pursuing employers who break employment laws; enforcement of labor standards, and workplace safety across the state.

The 2021 fee assessment has decreased from \$263,827.15 paid in FY 2019-2020 to \$235,979.19 for FY 2020-2021. This is a total savings of \$27,847.24.

The largest assessment factor this year is the Workers' Compensation Administration Revolving Fund Assessment (WCARF). This fund pays for the administrative of the workers' compensation program to include return-to-work program and enforcement of the insurance coverage program.

The City's share is calculated by multiplying the six self-insured employer assessment factors listed below by the total indemnity paid in the previously reported fiscal year. For fiscal year 2019-2020, the City reported to the Office of Self-Insurance Plans annual program statistics which include indemnity costs. The total City paid indemnity cost for 2019-2020 was \$2,645,073. In 2018-2019, the total indemnity costs were \$3,417,999.

The City's share for the Fiscal Year 2021 assessment authorized under Labor Code Sections 62.5 and 62.6 for our self-insurance plan will be broken down as follows:

- I. Workers' Compensation Administration Revolving Fund Assessment
- II. Uninsured Employers Benefits Trust Fund Assessment
- III. Subsequent Injuries Benefits Trust Fund Assessment
- IV. Occupational Safety and Health Fund Assessment
- V. Workers' Compensation Fraud Account Assessment
- VI. Labor Enforcement and Compliance Fund

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Required annual funding is for the State of California, Department of Industrial Relations.

ALTERNATIVE ACTIONS CONSIDERED

None. This is a state-mandated fee assessment.

CONTACT PERSON

LaTanya Bellow, Director of Human Resources, 981-6807  
July Cole, Associate Human Resources Analyst, 981-6816

Attachments:



1: Resolution

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

AUTHORIZING PAYMENT TO THE STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS FOR FISCAL YEAR 2021 FEES IN AN AMOUNT NOT TO EXCEED \$235,979.91 (WORKERS' COMPENSATION PROGRAM)

WHEREAS, the City of Berkeley is Self-Insured for Workers' Compensation since 1979; and

WHEREAS, the Workers' Compensation Insurance Industry is administered and regulated by the State of California, Department of Industrial Relations; and

WHEREAS, the State of California, under California Labor Code Section 62.5 and 62.6, authorizes the Department of Industrial Relations to assess fees to employers for costs of administering the Workers' Compensation Program; and

WHEREAS, the City of Berkeley is assessed each year by the Department of Industrial Relations to support the state program; and

WHEREAS, for Fiscal Year 2021, the City's share of assessments authorized by Labor Code Sections 62.5 and 62.6 is not expected to exceed \$235,979.91; and

WHEREAS, funds are available in the current budget in the Workers' Compensation Fund, budget code 875-9801-410-8101.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to pay the State of California, Department of Industrial Relations, Self-Insurance Plans invoice for Fiscal Year 2021 for Workers' Compensation Administration Revolving Fund Assessment; Uninsured Employers Benefits Trust Fund Assessment; Subsequent Injuries Benefits Trust Fund Assessment; Occupational Safety and Health Fund Assessment; Labor Enforcement and Compliance Fund; and Workers' Compensation Fraud Account Assessment in an amount not to exceed \$235,979.91.


**Department of Industrial Relations**

Office of Self-Insurance Plans  
 11050 Olson Drive, Suite 230  
 Rancho Cordova, CA 95670  
 (916) 464-7000  
 Fax: (916) 464-7007

**INVOICE**

Invoice Number: OSIP 67882  
 Certificate No.: 7149  
 Invoice Date: December 1, 2020  
 Due Date: December 31, 2020  
 OSIP Federal Tax ID.: 94-3160882

## Customer Information:

| Billing Address: |                                                | Send Payment To: |                                    |
|------------------|------------------------------------------------|------------------|------------------------------------|
| Company:         | City of Berkeley                               | Company:         | Department Of Industrial Relations |
| Name:            | July Cole                                      | Name:            | Office of Self Insurance Plans     |
| Address:         | 2180 Milvia Street, 1st Floor, Human Resources | Address:         | 11050 Olson Drive, Suite 230       |
| City/State/Zip   | Berkeley, CA 94704                             | City/State/Zip   | Rancho Cordova, CA 95670           |

For: City of Berkeley

**Terms:** Due and payable within 30 days

| Factor                         | Assessment for fiscal year July 1, 2020 through June 30, 2021 using 2019 / 2020 Public Annual Report | Paid Indemnity (Line4 minus Line11 on the annual report) | Assessment Due       |
|--------------------------------|------------------------------------------------------------------------------------------------------|----------------------------------------------------------|----------------------|
| 0.044090                       | Workers' Compensation Administration Revolving Fund Assessment (WCARF)                               | \$ 2,664,092                                             | \$ 117,459.81        |
| 0.002976                       | Uninsured Employers Benefits Trust Fund Assessment (UEBTF)                                           | \$ 2,664,092                                             | \$ 7,928.33          |
| 0.015864                       | Subsequent Injuries Benefits Trust Fund Assessment (SIBTF)                                           | \$ 2,664,092                                             | \$ 42,263.15         |
| 0.008939                       | Occupational Safety and Health Fund Assessment (OSHF)                                                | \$ 2,664,092                                             | \$ 23,814.31         |
| 0.009262                       | Workers's Compensation Fraud Account Assessment (FRAUD)                                              | \$ 2,664,092                                             | \$ 24,674.82         |
| 0.007447                       | Labor Enforcement and Compliance Fund (LECF)                                                         | \$ 2,664,092                                             | \$ 19,839.49         |
| <b>License Fee Assessment:</b> |                                                                                                      |                                                          |                      |
|                                | Base Fee (determined by total number of employees)                                                   |                                                          | \$ 0.00              |
|                                | Additional Location Fee (No. of Locations)                                                           |                                                          | \$ 0.00              |
|                                | Per Capita Employee Charge (# of ee's * 0 )                                                          | License Fee Assessment Subtotal:                         | \$ 0.00              |
| <b>Invoice Totals:</b>         |                                                                                                      |                                                          | <b>\$ 235,979.91</b> |
| <b>Amount Paid:</b>            |                                                                                                      |                                                          | <b>\$ 0.00</b>       |
| <b>Balance Due:</b>            |                                                                                                      |                                                          | <b>\$ 235,979.91</b> |

## Notes:

The letter establishing the assessment factors and methodology used for calculation are available on the OSIP website at <http://sip.dir.ca.gov> You can also make an electronic funds transfer(EFT)payment online at <http://www.dir.ca.gov/osip> It is very important to enter the correct invoice number when making an online payment.

## DEPARTMENT OF INDUSTRIAL RELATIONS

Office of the Director  
1515 Clay Street, 17<sup>th</sup> Floor  
Oakland, CA 94612  
Tel: (510) 286-7087 Fax: (510) 622-3265



DATE: November 23, 2020

TO: All Insurers Authorized to Transact Workers' Compensation in California

FROM: Katrina S. Hagen, Director, and Department of Industrial Relations

SUBJECT: Fiscal Year 2020/2021 Assessments:

- Workers' Compensation Administration Revolving Fund (WCARF)
- Uninsured Employers Benefits Trust Fund (UEBTF)
- Subsequent Injuries Benefits Trust Fund (SIBTF)
- Occupational Safety and Health Fund (OSHF)
- Labor Enforcement and Compliance Fund (LECF)
- Workers' Compensation Fraud Account (FRAUD)

Labor Code Sections 62.5 and 62.6 authorize the Department of Industrial Relations to assess employers for the costs of the administration of the workers' compensation, health and safety and labor standards enforcement programs. These assessments provide a stable funding source to the support operations of the courts, to ensure safe and healthy working conditions on the job, to ensure the enforcement of labor standards and requirements for workers' compensation coverage.

Labor Code Sections 62.5 and 62.6 require allocation of the six assessment types between insured and self-insured employers in proportion to payroll for the most recent year available. Enclosed with this letter is an invoice for assessments for your company's (or companies') share of the following total assessments, and a document showing the methodology used to compute the assessment amounts and the resulting determination of the respective assessment/surcharge factors. The factors are applied to the premium amount as described in the following sections of this letter.

| Authority         | Type                                                                   | Total Assessment for all Payers | 2021 Factors Applied to Premium |
|-------------------|------------------------------------------------------------------------|---------------------------------|---------------------------------|
| Labor Code § 62.5 | Workers' Compensation Administration Revolving Fund Assessment (WCARF) | \$543,165,576                   | 0.022646                        |
| Labor Code § 62.5 | Uninsured Employers Benefits Trust Fund Assessment (UEBTF)             | \$54,129,941                    | 0.000775                        |
| Labor Code § 62.5 | Subsequent Injuries Benefits Trust Fund Assessment (SIBTF)             | \$170,550,000                   | 0.006579                        |
| Labor Code § 62.5 | Occupational Safety and Health Fund Assessment (OSHF)                  | \$132,411,468                   | 0.002584                        |
| Labor Code § 62.5 | Labor Enforcement and Compliance Fund Assessment (LECF)                | \$129,025,296                   | 0.002272                        |
| Labor Code § 62.6 | Workers' Compensation Fraud Account Assessment (FRAUD)                 | \$77,909,442                    | 0.004734                        |

The total assessment is calculated based on the direct workers' compensation premiums reported to the Department of Insurance for Calendar Year 2019 by you or your group of carriers. Your first installment is due on or before January 1, 2021, with the balance due on or before April 1, 2021.

Assessment Methodology for Single Carriers

If you were a single carrier and not part of an insurer group who reported data to the WCIRB on an individual company basis for 2019, your Total California Direct Written Premium for assessment purposes is the amount reported for calendar year 2019 to the WCIRB, which reflects the premiums charged to policyholders with the exception that it excludes the impact of deductible credits, retrospective rating adjustments, and policyholder dividends.

Assessment Methodology for Insurer Groups

If you were part of an insurer reporting group who reported data to the WCIRB for 2019, your Total California Direct Written Premium for assessment purposes has been determined as the product of (a) the total 2019 written premium reported to the WCIRB on the aforementioned basis and (b) the ratio of your company's 2019 California written premium as reported in the 2019 Statutory Annual Statement (these amounts include the effect of deductible credits and retrospective rating adjustments) to the total 2019 Statutory Annual Statement of California written premium reported for your insurer group as a whole.

HOW YOUR ASSESSMENT AMOUNTS WERE CALCULATED:

WCARF ASSESSMENT (Section 5.1 of attached Methodology):

$$(0.824697871 * X \text{ 2019 Total California Direct Written Premium}) \times 0.022646$$

UEBTF ASSESSMENT (Section 5.3 of attached Methodology):

$$(0.824697871 * X \text{ 2019 Total California Direct Written Premium}) \times 0.000775$$

SIBTF ASSESSMENT (Section 5.5 of attached Methodology):

$$(0.824697871 * X \text{ 2019 Total California Direct Written Premium}) \times 0.006579$$

OSHF ASSESSMENT (Section 5.7 of attached Methodology):

$$(0.824697871 * X \text{ 2019 Total California Direct Written Premium}) \times 0.002584$$

LECF ASSESSMENT (Section 5.7 of attached Methodology):

$$(0.824697871 * X \text{ 2019 Total California Direct Written Premium}) \times 0.002272$$

FRAUD ASSESSMENT (Section 5.10 of attached Methodology):

$$(0.824697871 * X \text{ 2019 Total California Direct Written Premium}) \times 0.004734$$

\* Ratio of the expected total 2020 premium to the 2019 Total Direct Written Premium of all insurers  $(\$13,100,000,000) \div (\$15,884,605,095) = 0.824697871$

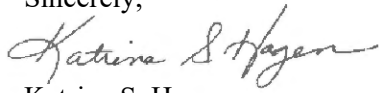
**REQUIRED EMPLOYER ASSESSMENTS**

All workers' compensation insurance policies you issue with an inception date during the calendar year 2021 must be assessed to recover amounts advanced on behalf of policyholders. Assessable Premium is the premium the insured is charged after all rating adjustments (experience rating, schedule rating, premium discounts, expense constants, etc.) except for adjustments resulting from the application of deductible plans, retrospective rating or the return of policyholder dividends.

The assessment factors to be applied to the estimated annual assessable premium for 2021 policies are shown in the table on the first page. These are the same factors that were used to calculate your attached assessment.

If you have any questions relating to this assessment, please contact Naomi P. Carter, Accounting Administrator I, by email to [NCarter@dir.ca.gov](mailto:NCarter@dir.ca.gov)

Sincerely,

A handwritten signature in cursive script that reads "Katrina S. Hagen".

Katrina S. Hagen  
Director

Enclosures

## DEPARTMENT OF INDUSTRIAL RELATIONS

Office of the Director

1515 Clay Street, 17<sup>th</sup> Floor

Oakland, CA 94612

Tel: (510) 286-7087 Fax: (510) 622-3265



DATE: November 23, 2020

TO: California Self-Insured Employer

FROM: Katrina S. Hagen, Director, Department of Industrial Relations

SUBJECT: Fiscal Year 2020/2021 Assessments:

- Workers' Compensation Administration Revolving Fund (WCARF)
- Uninsured Employers Benefits Trust Fund (UEBTF)
- Subsequent Injuries Benefits Trust Fund (SIBTF)
- Occupational Safety and Health Fund (OSHF)
- Labor Enforcement and Compliance Fund (LECF)
- Workers' Compensation Fraud Account (FRAUD)

Labor Code Sections 62.5 and 62.6 authorize the Department of Industrial Relations to assess employers for the costs of the administration of the workers' compensation, health and safety and labor standards enforcement programs. These assessments provide a stable funding source to the support operations of the courts, to ensure safe and healthy working conditions on the job, to ensure the enforcement of labor standards and requirements for workers' compensation coverage.

The purpose of this letter is to inform you that you will be receiving an invoice for your share of the assessments authorized by Labor Code Sections 62.5 and 62.6. The Labor Code requires allocation of the total assessment between insured and self-insured employers in proportion to payroll for the most recent year available

| Authority            | Type                                                                      | Total Assessment<br>for all Payers | 2021 Self-<br>Insured<br>Employer<br>Assessment<br>Factor |
|----------------------|---------------------------------------------------------------------------|------------------------------------|-----------------------------------------------------------|
| Labor Code<br>§ 62.5 | Workers' Compensation Administration<br>Revolving Fund Assessment (WCARF) | \$543,165,576                      | 0.044090                                                  |
| Labor Code<br>§ 62.5 | Uninsured Employers Benefits Trust Fund<br>Assessment (UEBTF)             | \$54,129,941                       | 0.002976                                                  |
| Labor Code<br>§ 62.5 | Subsequent Injuries Benefits Trust Fund<br>Assessment (SIBTF)             | \$170,550,000                      | 0.015864                                                  |
| Labor Code<br>§ 62.5 | Occupational Safety and Health Fund<br>Assessment (OSHF)                  | \$132,411,468                      | 0.008939                                                  |
| Labor Code<br>§ 62.5 | Labor Enforcement and Compliance Fund<br>Assessment (LECF)                | \$129,025,296                      | 0.007447                                                  |
| Labor Code<br>§ 62.6 | Workers' Compensation Fraud Account<br>Assessment (FRAUD)                 | \$77,909,442                       | 0.009262                                                  |

Attached is a worksheet detailing the methodology used to compute the Workers' Compensation Administration Revolving Fund, Uninsured Employers Benefits Trust Fund, Subsequent Injuries Trust Fund, Occupational Safety and Health Fund, Labor, Labor Enforcement and Compliance Fund allocation and Workers' Compensation Fraud Account Assessment and to allocate the assessment between insured and self-insured employers.

Your share of the various assessments will be calculated by multiplying the self-insured employer assessment factors for each assessment by the total indemnity paid by your organization.

If you have any questions, please contact the Office of Self-Insurance Plans in Sacramento at (916)464-7000.

Sincerely,



Katrina S. Hagen  
Director

Enclosure



## DEPARTMENT OF INDUSTRIAL RELATIONS

Office of the Director

1515 Clay Street, 17<sup>th</sup> Floor

Oakland, CA 94612

Tel: (510) 286-7087 Fax: (510) 622-3265



DATE: November 23, 2020

TO: California Legally Uninsured Employer

FROM: Katrina S. Hagen, Director, and Department of Industrial Relations

SUBJECT: Fiscal Year 2020/2021 Assessments:

- Workers' Compensation Administration Revolving Fund (WCARF)
- Uninsured Employers Benefits Trust Fund (UEBTF)
- Subsequent Injuries Benefits Trust Fund (SIBTF)
- Occupational Safety and Health Fund (OSHF)
- Labor Enforcement and Compliance Fund (LECF)
- Workers' Compensation Fraud Account (FRAUD)

Labor Code Sections 62.5 and 62.6 authorize the Department of Industrial Relations to assess employers for the costs of the administration of the workers' compensation, health and safety and labor standards enforcement programs. These assessments provide a stable funding source to the support operations of the courts, to ensure safe and healthy working conditions on the job, to ensure the enforcement of labor standards and requirements for workers' compensation coverage.

The purpose of this letter is to inform you that you will be receiving an invoice for your share of the assessments authorized by Labor Code Sections 62.5 and 62.6. The Labor Code requires allocation of the total assessment between insured and self-insured employers in proportion to payroll for the most recent year available.

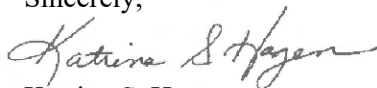
| Authority            | Type                                                                      | Total Assessment<br>for all Payers | 2021 Legally<br>Uninsured<br>Employer<br>Assessment<br>Factor |
|----------------------|---------------------------------------------------------------------------|------------------------------------|---------------------------------------------------------------|
| Labor Code<br>§ 62.5 | Workers' Compensation Administration<br>Revolving Fund Assessment (WCARF) | \$543,165,576                      | 0.044090                                                      |
| Labor Code<br>§ 62.5 | Uninsured Employers Benefits Trust Fund<br>Assessment (UEBTF)             | \$54,129,941                       | 0.002976                                                      |
| Labor Code<br>§ 62.5 | Subsequent Injuries Benefits Trust Fund<br>Assessment (SIBTF)             | \$170,550,000                      | 0.015864                                                      |
| Labor Code<br>§ 62.5 | Occupational Safety and Health Fund<br>Assessment (OSHF)                  | \$132,411,468                      | 0.008939                                                      |
| Labor Code<br>§ 62.5 | Labor Enforcement and Compliance Fund<br>Assessment (LECF)                | \$129,025,296                      | 0.007447                                                      |
| Labor Code<br>§ 62.6 | Workers' Compensation Fraud Account<br>Assessment (FRAUD)                 | \$77,909,442                       | 0.009262                                                      |

Attached is a worksheet detailing the methodology used to compute the Workers' Compensation Administration Revolving Fund, Uninsured Employers Benefits Trust Fund, Subsequent Injuries Trust Fund, Occupational Safety and Health Fund, Labor Enforcement and Compliance Fund allocation and Workers' Compensation Fraud Account Assessment and to allocate the assessment between insured and self-insured employers.

Your share of the various assessments will be calculated by multiplying the self-insured employer assessment factors for each assessment by the total indemnity paid by your organization.

If you have any questions, please contact the Office of Self Insurance Plans in Sacramento at (916)464-7000.

Sincerely,

A handwritten signature in cursive script that reads "Katrina S. Hagen".

Katrina S. Hagen  
Director

Enclosure

**California Department of Industrial Relations  
 2020-2021 Workers' Compensation Administration Revolving Fund Assessment,  
 Uninsured Employers Benefits Trust Fund Assessment,  
 Subsequent Injuries Benefits Trust Fund Assessment,  
 Occupational Safety and Health Fund Assessment,  
 Labor Enforcement and Compliance Fund Assessment and  
 Workers' Compensation Fraud Account Assessment**

**METHODOLOGY**

Labor Code Sections 62.5 and 62.6 require the Department of Industrial Relations to levy the total amounts of the Workers' Compensation Administration Revolving Fund Assessment, Uninsured Employers Benefits Trust Fund Assessment, Subsequent Injuries Trust Fund Assessment, Occupational Safety and Health Fund Assessment, Labor Enforcement and Compliance Fund Assessment and Workers' Compensation Fraud Account Assessment between insured employers and self-insured employers in proportion to payroll paid in the most recent year for which information is available.

**Step 1: Determine Total Assessments Required for 2020-2021**

|              |                                                                                         |                      |
|--------------|-----------------------------------------------------------------------------------------|----------------------|
| <b>(1.1)</b> | Workers' Compensation Administration Revolving Fund Assessment (Labor Code § 62.5)..... | <b>\$427,422,102</b> |
|              | Total Assessment Required.....                                                          | \$543,165,576        |
|              | Fund Balance.....                                                                       | (\$174,997,232)      |
|              | DWC 1920 Over/Undercollection.....                                                      | \$43,160,437         |
|              | SIP 1920 Over/Undercollection.....                                                      | \$16,093,321         |
|              |                                                                                         | <b>\$427,422,102</b> |
| <b>(1.2)</b> | Uninsured Employers Benefits Trust Fund Assessment (Labor Code § 62.5).....             | <b>\$35,405,498</b>  |
|              | Total Assessment Required.....                                                          | \$54,129,941         |
|              | Fund Balance.....                                                                       | (\$38,949,771)       |
|              | DWC 1920 Over/Undercollection.....                                                      | \$17,358,597         |
|              | SIP 1920 Over/Undercollection.....                                                      | \$2,866,731          |
|              |                                                                                         | <b>\$35,405,498</b>  |
| <b>(1.3)</b> | Subsequent Injuries Benefits Trust Fund Assessment (Labor Code § 62.5).....             | <b>\$141,183,496</b> |
|              | Total Assessment Required.....                                                          | \$170,550,000        |
|              | Fund Balance.....                                                                       | (\$60,072,469)       |
|              | DWC 1920 Over/Undercollection.....                                                      | \$28,338,496         |
|              | SIP 1920 Over/Undercollection.....                                                      | \$2,367,469          |
|              |                                                                                         | <b>\$141,183,496</b> |
| <b>(1.4)</b> | Occupational Safety and Health Fund Assessment (Labor Code § 62.5).....                 | <b>\$86,765,754</b>  |
|              | Total Assessment Required.....                                                          | \$132,411,468        |
|              | Fund Balance.....                                                                       | (\$85,209,581)       |
|              | DWC 1920 Over/Undercollection.....                                                      | \$36,271,808         |
|              | SIP 1920 Over/Undercollection.....                                                      | \$3,292,059          |
|              |                                                                                         | <b>\$86,765,754</b>  |
| <b>(1.5)</b> | Labor Enforcement and Compliance Fund Assessment (Labor Code § 62.5).....               | <b>\$81,152,119</b>  |
|              | Total Assessment Required.....                                                          | \$129,025,296        |
|              | Fund Balance.....                                                                       | (\$88,119,338)       |
|              | DWC 1920 Over/Undercollection.....                                                      | \$35,095,081         |
|              | SIP 1920 Over/Undercollection.....                                                      | \$5,151,080          |
|              |                                                                                         | <b>\$81,152,119</b>  |

**California Department of Industrial Relations**  
**2020-2021 Workers' Compensation Administration Revolving Fund Assessment,**  
**Uninsured Employers Benefits Trust Fund Assessment,**  
**Subsequent Injuries Benefits Trust Fund Assessment,**  
**Occupational Safety and Health Fund Assessment,**  
**Labor Enforcement and Compliance Fund Assessment and**  
**Workers' Compensation Fraud Account Assessment**

|                                                                                                                            |                     |
|----------------------------------------------------------------------------------------------------------------------------|---------------------|
| <b>(1.6)</b> Workers' Compensation Fraud Account Assessment (Labor Code § 62.6).....                                       | <b>\$77,339,632</b> |
| <i>The workers' compensation fraud account assessment is established by the Department of Insurance, Fraud Commission.</i> |                     |
| Total Assessment Required.....                                                                                             | \$77,909,442        |
| Fund Balance.....                                                                                                          | (\$3,283,735)       |
| DWC 1920 Over/Undercollection.....                                                                                         | \$2,713,925         |
| SIP 1920 Over/Undercollection.....                                                                                         | \$0                 |
|                                                                                                                            | <b>\$77,339,632</b> |

**Step 2: Determine Payroll Amounts**

|                                                                                                  |                                 |
|--------------------------------------------------------------------------------------------------|---------------------------------|
| <b>(2.1)</b> Total payroll for insured employers.....                                            | <b><u>\$745,572,351,867</u></b> |
| <i>Source: California Workers' Compensation Insurance Rating Bureau (WCIRB) policy year 2017</i> |                                 |

|                                                       |                                      |
|-------------------------------------------------------|--------------------------------------|
| <b>(2.2)</b> Payroll for self-insured employers ..... | <b>\$258,516,691,191<sup>1</sup></b> |
|-------------------------------------------------------|--------------------------------------|

|                                                             |                                 |
|-------------------------------------------------------------|---------------------------------|
| <b>(2.2.1)</b> 2019-20 Fiscal Year for Public Sector* ..... | <b><u>\$136,420,558,468</u></b> |
|-------------------------------------------------------------|---------------------------------|

|                                             |                                 |
|---------------------------------------------|---------------------------------|
| <b>(2.2.2)</b> 2019 for Private Sector..... | <b><u>\$122,096,132,723</u></b> |
|---------------------------------------------|---------------------------------|

*\* Source: Department of Industrial Relations, Office of Self-Insurance Plans (excludes State of California)*

|                                                                      |                                |
|----------------------------------------------------------------------|--------------------------------|
| <b>(2.3)</b> Payroll for State of California (including SCIF)**..... | <b><u>\$19,540,883,338</u></b> |
|----------------------------------------------------------------------|--------------------------------|

*\*\* Source: (Department of Personnel Administration, Fiscal Year 2019-20)*

|                                                            |                                             |
|------------------------------------------------------------|---------------------------------------------|
| <b>(2.4)</b> Total payroll for self-insured employers..... | <b><u>\$278,057,574,529<sup>2</sup></u></b> |
|------------------------------------------------------------|---------------------------------------------|

|                                                                                  |                                               |
|----------------------------------------------------------------------------------|-----------------------------------------------|
| <b>(2.5)</b> Total combined payroll.....<br>(Insured and self-insured employers) | <b><u>\$1,023,629,926,396<sup>3</sup></u></b> |
|----------------------------------------------------------------------------------|-----------------------------------------------|

**Step 3: Calculate Proportional Payroll for Insured and Self-Insured Employers**

**(3.1) Insured Employers:**

$$\frac{\text{Insured Employer Payroll}}{\text{Total Combined Payroll}} = \frac{\text{Methodology Section (2.1)}}{\text{Methodology Section (2.5)}} = \frac{\$745,572,351,867}{\$1,023,629,926,396} = \underline{\underline{72.84\%}}$$

**(3.2) Self-Insured Employers:**

$$\frac{\text{Self-Insured Employer Payroll}}{\text{Total Combined Payroll}} = \frac{\text{Methodology Section (2.4)}}{\text{Methodology Section (2.5)}} = \frac{\$278,057,574,529}{\$1,023,629,926,396} = \underline{\underline{27.16\%}}$$

<sup>1</sup> **(2.2) Payroll for Self-Insured Employers** = Σ of Methodology Section (2.2.1) and Methodology Section (2.2.2)

<sup>2</sup> **(2.4) Total Payroll for Self-Insured Employers** = Σ of Methodology Section (2.2) and Methodology Section (2.3)

<sup>3</sup> **(2.5) Total Combined Payroll** = Σ of Methodology Section (2.1) and Methodology Section (2.4)

**California Department of Industrial Relations**  
**2020-2021 Workers' Compensation Administration Revolving Fund Assessment,**  
**Uninsured Employers Benefits Trust Fund Assessment,**  
**Subsequent Injuries Benefits Trust Fund Assessment,**  
**Occupational Safety and Health Fund Assessment,**  
**Labor Enforcement and Compliance Fund Assessment and**  
**Workers' Compensation Fraud Account Assessment**

**Step 4: Determine the Total Assessments for Insured and Self-Insured Employers**

**Workers' Compensation Administration Revolving Fund Assessment**

**Calculation for Insured Employers:**

|                                                                                                                   |          |   |               |          |  |                             |
|-------------------------------------------------------------------------------------------------------------------|----------|---|---------------|----------|--|-----------------------------|
| ▶ (WCARF Assessment)                                                                                              | X 72.84% | = | \$427,422,102 | X 72.84% |  | \$311,334,259               |
| ▶ INCREASED by credits due individual insurers which undercollected against previous advances [ CCR § 15609]..... |          |   |               |          |  | \$28,491,284                |
| ▶ DECREASED by insurer overcollection 1920 [pursuant to CCR § 15606(f)].....                                      |          |   |               |          |  | (\$43,160,437)              |
| <b>(4.1) Resulting Final Insured Employers Workers' Compensation User Funding Assessment.....</b>                 |          |   |               |          |  | <b><u>\$296,665,106</u></b> |

**Calculation for Self-Insured Employers:**

|                                                                                                        |          |   |               |          |  |                            |
|--------------------------------------------------------------------------------------------------------|----------|---|---------------|----------|--|----------------------------|
| ▶ (WCARF Assessment)                                                                                   | X 27.16% | = | \$427,422,102 | X 27.16% |  | \$116,087,843              |
| ▶ DECREASED by the Self-Insurer overcollection from prior year.....                                    |          |   |               |          |  | (\$16,093,321)             |
| <b>(4.2) Resulting Final Self-Insured Employers Workers' Compensation User Funding Assessment.....</b> |          |   |               |          |  | <b><u>\$99,994,522</u></b> |

**Uninsured Employers Benefits Trust (UEBT) Fund Assessment**

**Calculation for Insured Employers:**

|                                                                                                                   |          |   |              |          |  |                            |
|-------------------------------------------------------------------------------------------------------------------|----------|---|--------------|----------|--|----------------------------|
| ▶ (UEBTF Assessment)                                                                                              | X 72.84% | = | \$35,405,498 | X 72.84% |  | \$25,789,365               |
| ▶ INCREASED by credits due individual insurers which undercollected against previous advances [ CCR § 15609]..... |          |   |              |          |  | \$1,723,750                |
| ▶ DECREASED by insurer overcollection 1920 [pursuant to CCR § 15606(f)].....                                      |          |   |              |          |  | (\$17,358,597)             |
| <b>(4.3) Resulting Final Insured Employers UEBT Fund Assessment.....</b>                                          |          |   |              |          |  | <b><u>\$10,154,518</u></b> |

**Calculation for Self-Insured Employers:**

|                                                                               |          |   |              |          |  |                           |
|-------------------------------------------------------------------------------|----------|---|--------------|----------|--|---------------------------|
| ▶ (UEBTF Assessment)                                                          | X 27.16% | = | \$35,405,498 | X 27.16% |  | \$9,616,133               |
| ▶ DECREASED by the Self-Insurer overcollection from prior year.....           |          |   |              |          |  | (\$2,866,731)             |
| <b>(4.4) Resulting Final Self-Insured Employers UEBT Fund Assessment.....</b> |          |   |              |          |  | <b><u>\$6,749,402</u></b> |

**Subsequent Injuries Benefits Trust (SIBT) Fund Assessment**

**Calculation for Insured Employers:**

|                                                                                                                   |          |   |               |          |  |                            |
|-------------------------------------------------------------------------------------------------------------------|----------|---|---------------|----------|--|----------------------------|
| ▶ (SIBTF Assessment)                                                                                              | X 72.84% | = | \$141,183,496 | X 72.84% |  | \$102,838,058              |
| ▶ INCREASED by credits due individual insurers which undercollected against previous advances [ CCR § 15609]..... |          |   |               |          |  | \$11,688,309               |
| ▶ INCREASED by insurer undercollection 1920 [pursuant to CCR § 15606(f)].....                                     |          |   |               |          |  | (\$28,338,496)             |
| <b>(4.5) Resulting Final Insured Employers SIBT Fund Assessment.....</b>                                          |          |   |               |          |  | <b><u>\$86,187,871</u></b> |

**Calculation for Self- Insured Employers:**

|                                                                               |          |   |               |          |  |                            |
|-------------------------------------------------------------------------------|----------|---|---------------|----------|--|----------------------------|
| ▶ (SIBTF Assessment)                                                          | X 27.16% | = | \$141,183,496 | X 27.16% |  | \$38,345,438               |
| ▶ DECREASED by the Self-Insurer overcollection from prior year.....           |          |   |               |          |  | (\$2,367,469)              |
| <b>(4.6) Resulting Final Self-Insured Employers SIBT Fund Assessment.....</b> |          |   |               |          |  | <b><u>\$35,977,969</u></b> |

**California Department of Industrial Relations  
2020-2021 Workers' Compensation Administration Revolving Fund Assessment,  
Uninsured Employers Benefits Trust Fund Assessment,  
Subsequent Injuries Benefits Trust Fund Assessment,  
Occupational Safety and Health Fund Assessment,  
Labor Enforcement and Compliance Fund Assessment and  
Workers' Compensation Fraud Account Assessment**

**Occupational Safety and Health Fund (OSHF) Assessment**

**Calculation for Insured Employers:**

|                                                                                                                   |                     |          |                            |
|-------------------------------------------------------------------------------------------------------------------|---------------------|----------|----------------------------|
| ▶ (OSHF Assessment) X 72.84% =                                                                                    | <b>\$86,765,754</b> | X 72.84% | <b>\$63,200,175</b>        |
| ▶ INCREASED by credits due individual insurers which undercollected against previous advances [ CCR § 15609]..... |                     |          | <b>\$6,918,688</b>         |
| ▶ DECREASED by insurer overcollection 1920 [pursuant to CCR § 15606(f)].....                                      |                     |          | <b>(\$36,271,808)</b>      |
| <b>(4.7)</b> Resulting Final Insured Employers OSH Fund Assessment.....                                           |                     |          | <b><u>\$33,847,055</u></b> |

**Calculation for Self- Insured Employers:**

|                                                                              |                     |          |                            |
|------------------------------------------------------------------------------|---------------------|----------|----------------------------|
| ▶ (OSHF Assessment) X 27.16% =                                               | <b>\$86,765,754</b> | X 27.16% | <b>\$23,565,579</b>        |
| ▶ DECREASED by the Self-Insurer overcollection from prior year.....          |                     |          | <b>(\$3,292,059)</b>       |
| <b>(4.8)</b> Resulting Final Self-Insured Employers OSH Fund Assessment..... |                     |          | <b><u>\$20,273,520</u></b> |

**Labor Enforcement and Compliance Fund (LECF) Assessment**

**Calculation for Insured Employers:**

|                                                                                                                   |                     |          |                            |
|-------------------------------------------------------------------------------------------------------------------|---------------------|----------|----------------------------|
| ▶ (LECF Assessment) X 72.84% =                                                                                    | <b>\$81,152,119</b> | X 72.84% | <b>\$59,111,203</b>        |
| ▶ INCREASED by credits due individual insurers which undercollected against previous advances [ CCR § 15609]..... |                     |          | <b>\$5,747,039</b>         |
| ▶ DECREASED by insurer overcollection 1920 [pursuant to CCR § 15606(f)].....                                      |                     |          | <b>(\$35,095,081)</b>      |
| <b>(4.9)</b> Resulting Final Insured Employers LEC Fund Assessment.....                                           |                     |          | <b><u>\$29,763,161</u></b> |

**Calculation for Self- Insured Employers:**

|                                                                               |                     |          |                            |
|-------------------------------------------------------------------------------|---------------------|----------|----------------------------|
| ▶ (LECF Assessment) X 27.16% =                                                | <b>\$81,152,119</b> | X 27.16% | <b>\$22,040,916</b>        |
| ▶ DECREASED by the Self-Insurer overcollection from prior year.....           |                     |          | <b>(\$5,151,080)</b>       |
| <b>(4.10)</b> Resulting Final Self-Insured Employers LEC Fund Assessment..... |                     |          | <b><u>\$16,889,836</u></b> |

**Workers' Compensation Fraud Account Assessment**

**Calculation for Insured Employers:**

|                                                                                                                              |                     |          |                            |
|------------------------------------------------------------------------------------------------------------------------------|---------------------|----------|----------------------------|
| ▶ (Fraud Assessment) X 72.84% =                                                                                              | <b>\$77,339,632</b> | X 72.84% | <b>\$56,334,188</b>        |
| ▶ INCREASED by credits due individual insurers which undercollected against previous advances [pursuant to CCR § 15609]..... |                     |          | <b>\$8,397,604</b>         |
| ▶ DECREASED by insurer overcollection 1920 [pursuant to CCR § 15606(f)].....                                                 |                     |          | <b>(\$2,713,925)</b>       |
| <b>(4.11)</b> Resulting Final Insured Employers Workers' Compensation Fraud Account Assessment..                             |                     |          | <b><u>\$62,017,867</u></b> |

**Calculation for Self- Insured Employers:**

|                                                                                                          |                     |          |                            |
|----------------------------------------------------------------------------------------------------------|---------------------|----------|----------------------------|
| ▶ (Fraud Assessment) X 27.16% =                                                                          | <b>\$77,339,632</b> | X 27.16% | <b>\$21,005,444</b>        |
| ▶ DECREASED by the Self-Insurer overcollection from prior year.....                                      |                     |          | <b>\$0</b>                 |
| <b>(4.12)</b> Resulting Final Self-Insured Employers Workers' Compensation Fraud Account Assessment..... |                     |          | <b><u>\$21,005,444</u></b> |

**California Department of Industrial Relations  
 2020-2021 Workers' Compensation Administration Revolving Fund Assessment,  
 Uninsured Employers Benefits Trust Fund Assessment,  
 Subsequent Injuries Benefits Trust Fund Assessment,  
 Occupational Safety and Health Fund Assessment,  
 Labor Enforcement and Compliance Fund Assessment and  
 Workers' Compensation Fraud Account Assessment**

**Step 5: Calculate the Assessment Factors**

**Workers' Compensation Administration Revolving Fund Assessment Factor**

**(5.1) Calculation for Insured Employers:**

$$\frac{\text{Total Insured Employers Assessment}}{\text{Total Direct Workers' Compensation}^*} = \frac{\$296,665,106}{\$13,100,000,000} = \underline{\underline{0.022646}}$$

*\*Estimated Premium (Source: WCIRB estimate for 2019 Policy Year)*

**(5.2) Calculation for Self-Insured Employers:**

$$\frac{\text{Total Self-Insured Employer Assessment}}{\text{Total Amt. of Workers' Comp. Indemnity Pd}^{**}} = \frac{\$99,994,522}{\$2,267,951,632} = \underline{\underline{0.044090}}$$

*\*\* SOURCE: Dept. of Industrial Relations, Office of Self-Insurance Plans [Σ of Methodology Sections (5.2.1) to (5.2.3)]:*

|         |                                     |                 |
|---------|-------------------------------------|-----------------|
| (5.2.1) | 2019-20 Public Sector.....          | \$1,397,990,256 |
| (5.2.2) | 2019 Private Sector.....            | \$641,844,631   |
| (5.2.3) | 2019-20 State of California***..... | \$228,116,745   |

*\*\*\* SOURCE: Department of Personnel Administration*

**Uninsured Employers Benefits Trust (UEBT) Fund Assessment Factor**

**(5.3) Calculation for Insured Employers:**

$$\frac{\text{Total Insured Employers Assessment}}{\text{Total Direct Workers' Compensation}^*} = \frac{\$10,154,518}{\$13,100,000,000} = \underline{\underline{0.000775}}$$

*\*Estimated Premium (Source: WCIRB estimate for 2019 Policy Year)*

**(5.4) Calculation for Self-Insured Employers:**

$$\frac{\text{Total Self-Insured Employer Assessment}}{\text{Total Amt. of Workers' Comp. Indemnity Pd}^{**}} = \frac{\$6,749,402}{\$2,267,951,632} = \underline{\underline{0.002976}}$$

*\*\* SOURCE: Dept. of Industrial Relations, Office of Self-Insurance Plans [Σ of Methodology Sections (5.2.1) to (5.2.3)]:*

**Subsequent Injuries Benefits Trust (SIBT) Fund Assessment Factor**

**(5.5) Calculation for Insured Employers:**

$$\frac{\text{Total Insured Employers Assessment}}{\text{Total Direct Workers' Compensation}^*} = \frac{\$86,187,871}{\$13,100,000,000} = \underline{\underline{0.006579}}$$

*\*Estimated Premium (Source: WCIRB estimate for 2019 Policy Year)*

**(5.6) Calculation for Self-Insured Employers:**

$$\frac{\text{Total Self-Insured Employer Assessment}}{\text{Total Amt. of Workers' Comp. Indemnity Pd}^{**}} = \frac{\$35,977,969}{\$2,267,951,632} = \underline{\underline{0.015864}}$$

*\*\* SOURCE: Dept. of Industrial Relations, Office of Self-Insurance Plans [Σ of Methodology Sections (5.2.1) to (5.2.3)]:*

**Occupational Safety and Health Fund (OSHF) Assessment Factor**

**(5.7) Calculation for Insured Employers:**

$$\frac{\text{Total Insured Employers Assessment}}{\text{Total Direct Workers' Compensation}^*} = \frac{\$33,847,055}{\$13,100,000,000} = \underline{\underline{0.002584}}$$

*\*Estimated Premium (Source: WCIRB estimate for 2019 Policy Year)*

**California Department of Industrial Relations  
 2020-2021 Workers' Compensation Administration Revolving Fund Assessment,  
 Uninsured Employers Benefits Trust Fund Assessment,  
 Subsequent Injuries Benefits Trust Fund Assessment,  
 Occupational Safety and Health Fund Assessment,  
 Labor Enforcement and Compliance Fund Assessment and  
 Workers' Compensation Fraud Account Assessment**

**(5.8) Calculation for Self-Insured Employers:**

|                                               |   |                     |   |                 |
|-----------------------------------------------|---|---------------------|---|-----------------|
| <u>Total Self-Insured Employer Assessment</u> | = | <u>\$20,273,520</u> | = | <u>0.008939</u> |
| Total Amt. of Workers' Comp. Indemnity Pd.**  |   | \$2,267,951,632     |   |                 |

\*\* SOURCE: Dept. of Industrial Relations, Office of Self-Insurance Plans [Σ of Methodology Sections (5.2.1) to (5.2.3)]:

**Labor Enforcement and Compliance Fund (LECF) Assessment Factor**

**(5.9) Calculation for Insured Employers:**

|                                           |   |                     |   |                 |
|-------------------------------------------|---|---------------------|---|-----------------|
| <u>Total Insured Employers Assessment</u> | = | <u>\$29,763,161</u> | = | <u>0.002272</u> |
| Total Direct Workers' Compensation*       |   | \$13,100,000,000    |   |                 |

\*Estimated Premium (Source: WCIRB estimate for 2019 Policy Year)

**(5.10) Calculation for Self-Insured Employers:**

|                                               |   |                     |   |                 |
|-----------------------------------------------|---|---------------------|---|-----------------|
| <u>Total Self-Insured Employer Assessment</u> | = | <u>\$16,889,836</u> | = | <u>0.007447</u> |
| Total Amt. of Workers' Comp. Indemnity Pd.**  |   | \$2,267,951,632     |   |                 |

\*\* SOURCE: Dept. of Industrial Relations, Office of Self-Insurance Plans [Σ of Methodology Sections (5.2.1) to (5.2.3)]:

**Workers' Compensation Fraud Account Assessment Factor**

**(5.11) Calculation for Insured Employers:**

|                                         |   |                     |   |                 |
|-----------------------------------------|---|---------------------|---|-----------------|
| <u>Total Insured Employer Surcharge</u> | = | <u>\$62,017,867</u> | = | <u>0.004734</u> |
| Total Direct Workers' Compensation*     |   | \$13,100,000,000    |   |                 |

\*Estimated Premium (Source: WCIRB estimate for 2019 Policy Year)

**(5.12) Calculation for Self-Insured Employers:**

|                                              |   |                     |   |                 |
|----------------------------------------------|---|---------------------|---|-----------------|
| <u>Total Self-Insured Employer Surcharge</u> | = | <u>\$21,005,444</u> | = | <u>0.009262</u> |
| Total Amt. of Workers' Comp. Indemnity Pd.** |   | \$2,267,951,632     |   |                 |

\*\* SOURCE: Dept. of Industrial Relations, Office of Self-Insurance Plans [Σ of Methodology Sections (5.2.1) to (5.2.3)]:

**Step 6: Determine Individual Employer's Workers' Compensation Administration Revolving Fund Assessment**

**(6.1) Individual Insured Employers:**

Assessment Factor [ 0.022646 ] X Employer's Expected Assessable Premium\*

**(6.2) Calculation for Individual Self-Insured Employers:**

Assessment Factor [ 0.044090 ] X Total Indemnity Paid by the Employer

**Step 7: Determine Individual Employers Uninsured Employers Benefits Trust (UEBT) Fund Assessment**

**(7.1) Individual Insured Employers:**

Assessment Factor [ 0.000775 ] X Employer's Expected Assessable Premium\*

**(7.2) Calculation for Individual Self-Insured Employers:**

Assessment Factor [ 0.002976 ] X Total Indemnity Paid by the Employer



California Department of Industrial Relations  
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 Subsequent Injuries Benefits Trust Fund Assessment,  
 Occupational Safety and Health Fund Assessment,  
 Labor Enforcement and Compliance Fund Assessment and  
 Workers' Compensation Fraud Account Assessment

**Step 8: Determine Individual Employers Subsequent Injuries Benefit Trust (SIBT) Fund Assessment**

- (8.1) Individual Insured Employers:  
 Assessment Factor [ 0.006579 ] X Employer's Expected Assessable Premium\*
- (8.2) Calculation for Individual Self-Insured Employers:  
 Assessment Factor [ 0.015864 ] X Total Indemnity Paid by the Employer

**Step 9: Determine Individual Employers Occupational Safety and Health (OSHF) Fund Assessment**

- (9.1) Individual Insured Employers:  
 Assessment Factor [ 0.002584 ] X Employer's Expected Assessable Premium\*
- (9.2) Calculation for Individual Self-Insured Employers:  
 Assessment Factor [ 0.008939 ] X Total Indemnity Paid by the Employer

**Step 10: Determine Individual Employers Labor Enforcement and Compliance (LECF) Fund Assessment**

- (10.1) Individual Insured Employers:  
 Assessment Factor [ 0.002272 ] X Employer's Expected Assessable Premium\*
- (10.2) Calculation for Individual Self-Insured Employers:  
 Assessment Factor [ 0.007447 ] X Total Indemnity Paid by the Employer

**Step 11: Determine Individual Employer's Workers' Compensation Fraud Account Assessment**

- (11.1) Individual Insured Employers:  
 Assessment Factor [ 0.004734 ] X Employer's Expected Assessable Premium\*
- (11.2) Calculation for Individual Self-Insured Employers:  
 Assessment Factor [ 0.009262 ] X Total Indemnity Paid by the Employer

**\* Assessable Premium**

*The premium the insured is charged after all rating adjustments (experience rating, schedule rating, premium discounts, expense constants, etc.) except for adjustments resulting from the application of deductible plans, retrospective rating or the return policyholder dividends.*





Office of the City Manager

CONSENT CALENDAR

January 19, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: LaTanya Bellow, Director of Human Resources

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

RECOMMENDATION

Adopt a Resolution approving a new one (1) year Memorandum of Understanding (hereafter referred to as “MOU”) with the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 Berkeley Chief Fire Officers Association (hereafter referred to as the “Association”) with a term of June 30, 2020 through June 30, 2021 and authorizing the City Manager to make non-substantive edits to the format and language of the Memorandum of Understanding in alignment with the tentative agreement, and conforming to legal requirements.

FISCAL IMPACTS OF RECOMMENDATION

The terms of the new Memorandum Agreement provide for a 0% salary increase, a 4.8% Higher Class Duty Chief premium for Assistant Chief and 5.6% for Battalion Chiefs, and twenty (20) hours of additional Floating Holiday stipend in lieu of COVID 19 leave to be paid at the beginning of the first full pay period after Council adoption. The reduction of COVID 19 Leave from forty (40) hours will provide the majority funding for two new vehicles. The additional floating holiday hours are in direct response to the COVID 19 pandemic.

The cumulative total cost for the new Memorandum Agreement is approximately \$22,000 over the term of the agreement (Fiscal Year 2021). The funding for this Memorandum Agreement comes from the general fund and other funding sources.

CURRENT SITUATION AND ITS EFFECTS

The City’s labor contract with the Union expired and was fully terminated as of June 29, 2020. In an effort to reach agreement on a successor Memorandum Agreement, representatives of the City and representatives of the Union held approximately six negotiating sessions beginning in May 6, 2020. The parties reached agreement on all outstanding economic issues on December 1, 2020.

While the labor contract expired and fully terminated on June 29, 2020, the laws governing collective bargaining agreements provide that the terms and conditions set forth in the

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

**BACKGROUND**

There are 6 employees represented by the Association in one representational unit (Unit A). The City’s philosophy during negotiations with the Association was to follow City Council policies to protect the City’s short and long-range economic health. City Council policies for labor negotiations include, but are not limited to, the following:

1. Assure that labor organizations and their members are treated fairly and with respect.
2. Negotiate in good faith and within the process established by the parties including honoring the traditional confidentiality of the negotiation process.
3. Negotiate contracts based on a “Total Compensation Package” model (changes in current and future salary, and health and welfare benefits) within the City’s overall financial conditions. The City’s current overall condition included the recent declaration of a fiscal emergency on June 16, 2020.

Major provisions of the new labor contract are as follows:

|                               |                                                                                                                                                                   |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Term                          | June 30, 2020 through June 30, 2021                                                                                                                               |
| Wage Increases                | 0% increase for the term of the contract                                                                                                                          |
| COVID Leave Stipend           | Twenty (20) hours of Floating Holiday COVID stipend. The reduction of COVID 19 Leave from forty (40) hours will provide the majority funding for two new vehicles |
| Standby – Duty Chief Coverage | 4.8% increase to Higher Class Duty Chief for Assistant Chief, 5.6% for Battalion Chiefs                                                                           |

**ENVIRONMENTAL SUSTAINABILITY**

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

**RATIONALE FOR RECOMMENDATION**

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

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

LaTanya Bellow, Director of Human Resources, Human Resources, 981-6800

Attachments:

1. Resolution – Memorandum of Understanding: BFFA Local 1227 I.A.F.F. Berkeley Chief Fire Officers Association
  - Exhibit A: Memorandum of Understanding between the City of Berkeley and the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 Berkeley Chief Fire Officers Association – June 30, 2020 through June 30, 2021 (Edited Version)
  - Exhibit B: Memorandum of Understanding between the City of Berkeley and the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 – June 30, 2020 through June 30, 2021 (Clean Version)

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

MEMORANDUM OF UNDERSTANDING: BFFA LOCAL 1227 I.A.F.F.

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

WHEREAS, representatives of the City and the Berkeley Fire Fighters Association Local 1227 I.A.F.F. Berkeley Chief Fire Officers Association have met and conferred in good faith and have reached agreement on a new one-year Memorandum of Understanding that incorporates all changes and modifications in wages, hours and other terms and conditions of employment agreed to by the parties; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute the new Memorandum of Understanding for the period June 30, 2020 through June 30, 2021 with the Berkeley Fire Fighters Association Local 1227 I.A.F.F. Berkeley Chief Fire Officers Association, including changes in certain benefits on dates specified in the Memorandum of Understanding which is attached hereto, made a part hereof and marked Exhibit A.

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

Exhibit A: Memorandum of Understanding between the City of Berkeley and the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 Berkeley Chief Fire Officers Association – June 30, 2020 through June 30, 2021 (Edited Version)

Exhibit B: Memorandum of Understanding between the City of Berkeley and the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 Berkeley Chief Fire Officers Association – June 30, 2020 through June 30, 2021 (Clean Version)



## MEMORANDUM OF UNDERSTANDING

between

City of Berkeley

and

**Berkeley Fire Fighters Association, Local 1227 I.A.F.F.  
Berkeley Chief Fire Officers Association**

June ~~1730~~, ~~2018-2020~~ to June ~~2930~~, ~~2020~~2021

INTENTIONALLY LEFT BLANK



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

MEMORANDUM OF UNDERSTANDING: BERKELEY FIRE FIGHTERS ASSOCIATION, I.A.F.F  
LOCAL 1227 / BERKELEY CHIEF FIRE OFFICERS ASSOCIATION

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

WHEREAS, representatives of the City of Berkeley Negotiating Team and the Berkeley Fire Fighters Association Local 1227 I.A.F.F., Berkeley Chief Fire Officers Association have met and conferred in good faith and have reached agreement on a new one-year Memorandum of Understanding that incorporates all changes and modifications in wages, hours and other terms and conditions of employment agreed to by the parties; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute the new Memorandum of Understanding for the period June 30, 2020 through June 30, 2021 with the Berkeley Fire Fighters Association Local 1227 I.A.F.F., Local 1227, Berkeley Chief Fire Officers Association Chapters, including changes in certain benefits on dates specified in the Memorandum of Understanding which is attached hereto, made a part hereof and marked Exhibit A.

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

The foregoing Resolution was adopted by the Berkeley city Council on January 19, 2021 by the following vote:

Ayes:

Noes:

Absent:

Attest:



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2020-2021 Memorandum of Understanding

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| City of Berkeley          |                                                                          | BFFA, Local 1227, I.A.F.F., BCFOA |
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2020-2021 Memorandum of Understanding

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## **ARTICLE 1 - ADMINISTRATION**

### **SECTION 1.1: RECITALS**

This Memorandum of Understanding is entered into pursuant to the Meyers-Milias - Brown Act (Government Code Sections 3500-3511, as amended), and has been jointly prepared by the parties.

The City Manager is the representative of the City of Berkeley (herein - after referred to as "the City") in employer-employee relations as provided in Resolution No. 43,397-N.S. and adopted by the City Council on October 14, 1969 and amended as of 1971, and retains management rights as provided therein unless otherwise specifically provided for in this agreement.

The Berkeley Fire Fighters Association Local 1227, International Association of Fire Fighters (hereinafter referred to as "the Association"), is the recognized employee organization for the Berkeley Chief Fire Officers Association employees in Representation Unit A (Represented Fire Management), which organization has been certified as such pursuant to said Resolution No. 43,397-N.S. The employee positions in such Representation Unit are set forth in Exhibit "A" attached hereto and made a part hereof. The Berkeley Firefighters Association, Local 1227, I.A.F.F. is recognized as the sole representative of employees assigned to such positions.

The parties have met and conferred in good faith regarding wages, hours, and other terms and conditions of employment of the employees in said Representation Unit A; have exchanged freely information, opinions and proposals; and have endeavored to reach agreement on all matters relating to the employment conditions and employer-employee relations of such employees. This Memorandum of Understanding (MOU) shall be presented to the City Council as the joint recommendation of the undersigned.

### **SECTION 1.2: RECOGNIZED EMPLOYEE ORGANIZATION**

#### **1.2.1 Recognition**

The Association is the majority representative of all employees within Representation Unit A (Represented Fire Management) (FC00); and shall continue to be recognized as such unless, in accordance with the provisions of Resolution No. 43,397-N.S.

#### **1.2.2 Deduction of Dues**

The City shall deduct, once monthly, the amount of the membership fee or service fee deductions, as appropriate, from the regular periodic payroll warrant of each City



employee and forward the amount to the Association, save amounts deducted due to religious objectors which amount shall be forwarded to the designated charitable organization. An exception from these deductions shall exist in situations when an employee is in a leave without pay or other unpaid status such that there is no payroll amount from which to make a deduction. The City shall continue to deduct insurance premiums and other such deductions as may be specified by the employee in accordance with past practice. The Association shall provide sixty (60) day notice on any changes in dues or assessments or premiums.

- 1.2.3** The City and the Association recognize this MOU (see Glossary) as a binding and legal contract between the two parties.
- 1.2.4** The City shall print the new MOU in booklet form and have it ready for distribution within sixty (60) days of final ratification. The City shall provide the Association with twenty (20) copies of the booklet to assure availability for each member of Unit A.

### **SECTION 1.3: EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION STATEMENT**

The Association certifies that it has no restriction on membership based on race, color, creed, ethnicity, ancestry, religion, marital or domestic partner status, gender, age, sexual orientation, national origin, political affiliation, gender identity or gender expression, parental status, pregnancy, disability or medical condition, Acquired Immune Deficiency (AIDS/HIV) or AIDS related condition, or any other status protected by applicable state or federal law, or protected Union activity. The Association agrees that it will support programs for making members of minority groups and women aware of employment opportunities within the City; and that it will work with the City to increase recruitment efforts of such minorities and women into City service. The Association recognizes and supports the City's commitment to equal employment opportunity.

Neither the City nor the Association shall discriminate against any employee covered by this MOU in a manner which would violate any applicable laws because of race, creed, religion, marital status, color, religion, political affiliation, sexual orientation, sex, national origin, disability or age.

The City of Berkeley Harassment Prevention Policy, as may be amended from time to time to comply with applicable state or federal law, is available on-line on the City's IntraWeb at <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=10318>, in the Department of Human Resources, or by contacting the City's Equal Employment Opportunity and Diversity Officer.

## SECTION 1.4: ASSOCIATION REPRESENTATIVES

### 1.4.1 Association Release Time

The City shall allow two (2) representatives of the Association, subject to the conditions set forth in Sections 1.4.2 (Negotiations) and 1.4.3 (Advance Notice), reasonable time off from work without loss of compensation or other benefits to represent its members in disputes which involve the interpretation or application of those rules, regulations, and resolutions which have been or may hereafter be adopted by the City Council to govern personnel practices and working conditions, including such rules, regulations, and resolutions as may be adopted by the City Council to effect MOU which may result from the meeting and conferring process, and to represent its members in meeting and conferring in good faith for amendments to this MOU in the future.

### 1.4.2 Negotiations

With respect to the meet-and-confer process, three (3) Association representatives shall be the maximum number who will be allowed concurrent time off for negotiations of a successor MOU.

### 1.4.3 Advance Notice

The representative shall advise his or her Fire Chief or Deputy Fire Chief through the chain of command twenty-four (24) hours in advance before leaving their work assignments, except for emergency situations which require the immediate attention of said representative, and, in such situations, the notice shall be given at the earliest possible time. In no case shall an employee leave his or her job without the approval of a chief officer.

### 1.4.4 Association Representative

Per the requirements of the Fire Fighters' Bill of Rights Act, an employee who requests such may have an Association representative present at any meeting with the Deputy Fire Chief and/or the Fire Chief which could result in punitive action of that employee. The Association will make a good faith effort to minimize the response time to an employee's request for representation.

## SECTION 1.5: SEVERABILITY OF PROVISIONS

This MOU is subject to all current and future applicable federal and states laws and regulations, and all lawful rules, policies, and regulations of the City of Berkeley in effect at the time this MOU is adopted, except as expressly modified by this Agreement. If any provision of this MOU is determined to be in conflict or inconsistent with any laws, rules, and/or regulations or is otherwise held to be invalid or unenforceable, such provision may be suspended or superseded, and the remainder of this MOU shall continue in full force and effect. If any provision is invalidated, the parties shall meet and confer in good faith regarding a replacement provision.

Should any City rule, regulation or policy conflict with the MOU, the MOU shall supersede.

#### **SECTION 1.6: FINALITY OF RECOMMENDATIONS**

The recommendations set forth in this MOU are final. No change or modifications shall be offered, urged, or otherwise presented by the Association or the City Manager prior to the beginning of negotiations for the contract that will go into effect when this one has expired; provided however, that nothing herein shall prevent the parties to this MOU from meeting and conferring and making modifications herein by mutual consent. No such amendments to this MOU shall be effective until adopted by City Council and ratified by the Association.

This MOU shall supersede all existing memoranda agreement between the City and the Association.

#### **SECTION 1.7: DURATION**

The term of this MOU shall commence when the terms and conditions set forth herein have been adopted by the City Council but in no event shall this MOU be effective prior to 0001 hours, June 17, 2018. This MOU and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at 2400 hours, June 29, 2020.

**ARTICLE 2 - SALARIES, HOURS OF WORK AND  
COMPENSATIONS ISSUES**

**SECTION 2.1: SALARIES**

Salaries are set according to the classifications and salary ranges assigned to those classifications ~~and with the effective dates as~~ listed in Exhibit "A" to this MOU and attached hereto. In recognition of the City's anticipated revenue shortfall for FY 2021 resulting from the COVID-19 pandemic, the parties agree there will be no increases to salary ranges for the term of this agreement. This is in order to aid the City's ability to continue routine services and minimize fiscal impacts for employees.

~~Effective the first full pay period after Union ratification and Council approval on its regular agenda, the salary ranges for those classifications covered by this MOU as listed in Exhibit A will receive a salary increase of three percent (3.0%) and shall be shown in Exhibit A.~~

~~Effective the first full pay period in July 2019, the salary ranges for those classifications covered by this agreement as listed in Exhibit A will receive a salary increase of two percent (2.0%) and shall be shown in Exhibit A.~~

**Equity Increases**

~~Equity Adjustment effective the first full pay period following Council Adoption: Equity Adjustment for the Battalion Chief classification with corresponding percentage of adjustment is also reflected in Exhibit "A":~~

| <b>Classification Title</b> | <b>Equity Increase</b> |
|-----------------------------|------------------------|
| <del>Battalion Chief</del>  | <del>3.0%</del>        |

**2.1.1 Ranges**

Salaries are set according to the classifications and salary ranges assigned to those classifications and with the effective dates listed in Exhibit "A" to this MOU and attached hereto.

**2.1.2 Step Increases**

No salary advancement shall be made so as to exceed the maximum rate established for the class to which the advanced employee's position is allocated. Advancement shall be in accordance with the compensation plan of the City, provided that step increases within the salary range shall occur on the anniversary date of the appointment, subject to the exception in Section 2.1.5 (Unpaid Leave Effect on Pay Increases) for extended unpaid leaves of absence.

**Step Increases for Assistant Fire Chief and Fire Marshal:** Steps shall be reinstated for the Assistant Fire Chief and the Fire Marshal classifications. Each incumbent will remain in their current salary pending their next Anniversary Date (of promotion or appointment to current position), at which time they will be placed in the higher step of the range closest to their current salary.

### **2.1.3 Salary Placement and Entry – Lateral Incentive**

Employees occupying a position in the competitive service shall be paid a salary or wage within the range established for that position's classification as set forth in Exhibit "A" for the appropriate anniversary date of promotion or appointment. The minimum rate for the classification shall apply to employees upon original appointment of the position, except in cases of lateral entry. For the purpose of this Section a "lateral entry appointment" shall be defined as a person who has completed the probationary period as an Assistant Fire Chief, Fire Marshal, or similar equivalent classification in a paid organized Fire Department or transfers from another agency. The Fire Chief may recommend to the Director of Human Resources and City Manager that a lateral appointment be made at a salary step or pay schedule range above the entry pay rate that is commensurate with the appointee's years of service as an Assistant Fire Chief or Fire Marshal with a paid organized Fire Department.

### **2.1.4 Maximum Pay Rate**

No salary advancement shall be made so as to exceed the maximum rate established for the class to which the advanced employee's position is allocated. Advancement shall be in accordance with the compensation plan of the City and shall depend upon increased service value of an employee to the City as exemplified by recommendations of the department head, performance record, special training, length of service, and other pertinent evidence.

### **2.1.5 Unpaid Leave Effect on Pay Increases**

An employee's pay increase shall not be affected by any leave of absence without pay if the employee is off the payroll for less than one hundred sixty consecutive hours for employees assigned to a forty hour work week or two hundred eighty eight (288) hours for employees assigned to a fifty six (56) hour work week. If the employee is off the payroll for one hundred sixty (160) consecutive hours for employees assigned to a forty (40) hour work week or two hundred eighty eight (288) hours for employees assigned to a fifty six (56) hour work week, the total amount of time off shall be made up before the employee shall be entitled to such pay increase, except that employees on approved parental leave or military leave are exempt from such requirement. Employees must receive an overall evaluation of "meets requirements" in order to advance to the next step in the salary range.

### **2.1.6 Y-Rate**

Any employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary, or any employee occupying a position in a class for which the salary rate or range is reduced, shall

continue to receive his or her present salary. Such salary shall be designated as "Y-rate". When an employee on a "Y-rate" vacates his or her position, subsequent appointments to that position shall be made in accordance with Section 2.1.2 (Step Increases).

**2.1.7 Bi-Weekly Payments**

Payment of salaries herein established shall be bi-weekly. Each pay period shall begin at 8:01 a.m. Sunday, up to and including 8:00 a.m. Sunday, two weeks following. Each payment shall be made not later than the Friday following the ending of each payroll period and shall include payment for all earnings during the previous payroll period.

**2.1.7.1 Payment of Annual Salary in Equal Amounts:** The City has no plans to change the practice of paying employees their annual salary in equal amounts each pay period but if it should become unfeasible to continue this practice, the City will meet and confer with the Association regarding changes to the present practice.

**2.1.7.1.1 40-Hour Week:** For employees on a forty (40) hour week, the hourly rate shall be the quotient of the annual salary (12 times the monthly salary) divided by 2,080 hours carried to four (4) decimal places.

**2.1.7.1.2 56-Hour Week:** For employees on a fifty-six (56) hour week, the hourly rate shall be the quotient of the annual salary (12 times the monthly rate) divided by 2,912 hours carried to four (4) decimal places.

**2.1.7.1.3 Work Period:** For Battalion Chiefs, who are eligible for overtime under this MOU, the work period is defined as twenty-four (24) days with an FLSA overtime threshold of 192 hours.

**2.1.8 Matrix of Comparable Cities**

The following list of jurisdictions is established for the purpose of comparing total compensation:

|                        |                                      |                   |
|------------------------|--------------------------------------|-------------------|
| City of Alameda        | City of Fremont                      | City of Palo Alto |
| County of Alameda      | City of Hayward                      | City of Richmond  |
| County of Contra Costa | Livermore-Pleasanton Fire Department | City of San Mateo |
| City of Daly City      | City of Oakland                      | City of Vallejo   |

The City reserves the right to modify these survey agencies, in its discretion, no later than the first MOU negotiations meeting.

**2.1.9 Emergency Medical Technician Differential**

Unit A employees who maintain current Emergency Medical Technician (EMT) certification shall receive an EMT pay differential of four percent (4%). This EMT shall be reported to CalPERS as Emergency Medical Technician Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

**2.1.10 Pay Effective Dates**

All changes in pay rate will go into effect at the beginning of a pay period (see Section 2.1.7 (Bi-Weekly Payments)) and stay in effect until the last day of a pay period if they are a result of the following:

- a) Application of a cost of living adjustment;
- b) Step increases;
- c) Retroactive adjustments;
- d) Implementation of CalPERS options;
- e) Change of employee's status from career to hourly or vice versa;
- f) Promotion or demotion;

If the pay rate change is triggered by an event which occurs in the second half of the pay period, the change in pay rate will become effective on the first day of the following pay period. Similarly, the changed pay rate should cease to be in effect on the last day of the pay period during which the employee is no longer eligible if the triggering event occurs during the second half of the pay period; or if the triggering event occurs during the first half of the pay period, the changed pay rate would cease to be in effect on the last day of the preceding pay period.

**2.1.11 End of Year Calculation**

For pay purposes of calculating annual pay, the City will utilize the IRS definition of "end of the year" which is the close of the last City pay period for which the payday falls within the calendar year. See Glossary for additional explanation.

**2.1.12 Longevity Pay**

Represented employees in Unit A who complete nineteen (19) years of service shall receive a five percent (5%) differential beginning with their anniversary date that starts their twentieth (20<sup>th</sup>) year of service with the City of Berkeley, and this differential shall apply to all hours in a paid status.

**2.1.13 Standby – Duty Chief Coverage**

As determined by the Fire Chief, Battalion Chiefs or Assistant Chiefs may be assigned as the Duty Chief. A Chief Officer assigned the responsibility and serving in the role of Duty Chief shall receive a differential of 4.8 % (of current step, base salary) for Assistant Chief and 5.60% (of current step, base salary) for Battalion Chief, stand-by pay of eight dollars and thirty cents (\$8.30) per hour for each hour so assigned, When functioning as a Duty Chief, members shall be available for service at any time when called.



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~~If an employee assigned as the Duty Chief is not available when called or is unable or fails for any reason to perform the service when call, the employee shall not receive the pay provided for those hours. equivalent to two hundred dollars (\$200.00) per 24-hour assigned shift-~~

~~Standby service shall mean being available for service outside of regular working hours at any time when called. If an employee assigned to standby service is not available when called or is unable or fails for any reason to perform the service when called, the employee shall not receive the standby pay provided herein.-~~

A Battalion Chief acting as the Duty Chief who is called from his or her living quarters shall respond into the City when so required and shall be compensated in accordance with Section 2.6.2 (Overtime – Eligibility and Rate).

This Higher-Class Duty Chief Premium will be reported to CalPERS as Duty Chief Premium Pay/Temporary Upgrade Pay. However, any hours worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

## SECTION 2.2: PAYROLL ERRORS

To ensure that system or other errors which affect an employee’s pay are processed in an efficient and effective manner, the City shall notify the affected employee(s) as soon as practicable. Payroll errors detected by an employee shall, as soon as practicable, be communicated to the employee’s supervisor. The Fire Chief or Deputy Chief shall notify the department Payroll Clerk. In the case of under payments, the Payroll Clerk shall submit the appropriate adjustments as soon as practicable.

Payroll errors identified by the Auditor will be communicated to the employee either directly by Auditor staff or through the Deputy Chief. Under payments will be processed as soon as practicable.

In the event of an overpayment, the Auditor’s Office will determine a reasonable repayment schedule and inform the employee of the schedule directly, or through the Deputy Fire Chief. The affected employee shall be given an opportunity to discuss the schedule of repayment and, if necessary, to request an adjustment to the repayment schedule as a needed and reasonable accommodation. Factors considered in determining a reasonable accommodation for repayment of wages include, but are not limited to, the length of time the overpayment has occurred, the amount of the overpayment, the employee’s normal salary, and other financial obligations of the employee. The City and the Association agree that the City is authorized to recover any salary overpayment made to the employee from the employee’s wages. In the event that (1) the employee does not respond within 10 working days of being notified of the



overpayment, or (2) mutual agreement on the repayment schedule is not achieved within 10 working days of the employee being notified of the overpayment, the Auditor's Office will proceed to implement a reasonable repayment schedule.

## SECTION 2.3: BILINGUAL PREMIUM PAY

Effective December 8, 2015, the Fire Chief may make a Bilingual Premium Pay Differential assignment of two percent (2%) of an employee who is required as an essential part of his or her job to provide non-English language services, including Braille and sign language. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of 2% will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

### 2.3.1 Applications

The Fire Chief will accept applications from employees wishing to apply for a bilingual differential in the first quarter of each year, or within the first three months of employment.

### 2.3.2 Competency

The bilingual premium will not be applicable under any circumstances except to an employee who possesses second language competency. The Fire Chief reserves the right to require testing for second language appropriate competency prior to a Bilingual Premium Pay Differential and be required to demonstrate use at least on a monthly basis.

### ~~2.3.3 Competency~~

~~The bilingual premium will not be applicable under any circumstances except to an employee who possesses second language competency. The Fire Chief reserves the right to require testing for second language appropriate competency prior to a Bilingual Premium Pay Differential and be required to demonstrate use at least on a monthly basis.~~

## SECTION 2.4: ACTING IN HIGHER CLASSIFICATION

### 2.4.1 Temporary Assignments to a Higher Classification

In order for an employee to be paid for temporary assignment to a higher classification, the following requirements must be observed. Prior to the starting date of the assignment, the employee must be specifically assigned in writing by the Fire Chief or his or her authorized representative with the prior, written approval of the City Manager to temporarily serve in a higher classification. The employee must work a minimum of one (1) day, meet the minimum qualifications, and perform the duties of the higher classification. Employees meeting these requirements shall be paid at the lowest step or range of the higher classification that provides a five percent (5%) differential. An employee will only be eligible for

higher classification pay when working.

## SECTION 2.5: HOURS & DAYS OF WORK / ALTERNATE WORK SCHEDULE PROGRAM

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

### 2.5.1 48/96 Work Schedule

Battalion Chiefs will be required to work a 56-hour suppression work week. This may require a 48/96 schedule as their regular schedule.

### 2.5.2 48/96 Impacts

If the Fire Chief determines the 48/96 schedule is causing negative impacts, such as, but not limited to, an increase of vehicle accidents, industrial injuries, sick leave usage, Alameda County EMS unusual occurrences reports, health and safety complaints, quality improvement or assurance issues, performance of duty reprimands, or customer service complaints, the Union agrees to meet with the Fire Chief upon request to discuss concerns, if any, the Fire Chief might have in the future regarding the 48/96 schedule.

### 2.5.3 Evaluation

The City and the Association share the interest of ensuring responders are well rested and able to make sound decisions during emergency scenarios. Both parties recognize the need to evaluate the potential effects of workload secondary to consecutive work hours.

### 2.5.4 Daylight Saving Time

2.5.4.1 **Spring:** In the Spring when transitioning to Daylight Saving Time (DST), employees Battalion Chiefs working during the one (1) hour transition from Standard Time to DST will be paid only for actual hours worked. Employees working on a shift which includes the one (1) hour transition may be granted an option by the Department Head or his or her designee, to work an additional hour or use compensatory time, floating holiday, or vacation to make up for the lost work hour.

2.5.4.2 **Fall:** In the Fall when transitioning from DST, employees Battalion Chiefs working during the one (1) hour transition will be paid for all hours worked including overtime at one and one-half (1 ) times the straight-time rate of pay for hours worked in excess of the regular workweek as set forth in Section 2.6 (Overtime) of this MOU.

**SECTION 2.6: OVERTIME****2.6.1 FLSA Designation**

Consistent with the provisions of the Fair Labor Standards Act (FLSA), the City shall designate certain administrative, professional, and management positions to be exempt. Said designation shall be in writing and shall include the basis for such exclusion. The Association shall be provided with a list of all such exempt positions along with information as to the reasons for exemption status for employees in Unit A.

**2.6.2 Eligibility and Rate**

Battalion Chiefs, who are not eligible to receive Administrative Leave, shall receive compensation for all work performed during the employee's day off, off-shift, or other scheduled time off during the tour of duty. Battalion Chiefs designated and authorized to work overtime shall be paid for all work performed in an overtime status and shall be compensated at a rate of one and one-half (1 ) times the straight time rate based upon regular monthly salary at the hourly rate to which the employee is entitled under this MOU at the time he or she works the overtime.

**2.6.3 Battalion Chief Compensatory Time Off or Payment**

A Battalion Chief may request compensation for overtime by compensatory time off or by payment. The Fire Chief shall consider the employee's preference. Whether the employee shall be compensated for overtime by compensatory time or by payment shall be at the sole discretion of the Fire Chief.

**2.6.4 Battalion Chief Compensatory Time and Maximum Accumulation**

For the purposes of this MOU the term "Compensatory Time" shall mean the same as the term "Due Time".

A Battalion Chief may accumulate compensatory time for hours worked in excess of the regular workday / workweek in lieu of compensation at the rate of time and one-half (1 ) hours for each hour worked. Compensatory time off shall not accumulate in excess of one hundred eight (108) overtime hours worked which is the equivalent of one hundred sixty two (162) hours of compensatory time a Battalion Chief assigned to a fifty-six (56) hour week work schedule. Compensatory time in excess of 162 shall automatically be paid as compensation.

**2.6.5 Workweek Computation**

For the purpose of computing overtime, the workweek shall be defined as beginning at 8:01 a.m. Sunday morning and ending the following Sunday.

**2.6.6 Battalion Chief Overtime Activities**

Overtime for approved activities not related to suppression staffing or emergency callbacks require the Deputy Fire Chief's approval in advance.

## 2.6.7 Battalion Chief Call-Back

- 2.6.7.1 **Normal Staffing Needs:** Battalion Chiefs who are called back to work by the department for normal staffing needs (i.e., during non-emergency times), shall be paid overtime compensation only for actual time worked, commencing upon reporting for duty.
- 2.6.7.2 **Emergency Call-Back:** A Battalion Chief who is required to report to work for an emergency will be paid for travel time as well, in accordance with FLSA standards.
- 2.6.7.3 **Minimum Call-Back:** In any case of emergency call-back when an employee responds, the minimum time for which such overtime compensation shall be paid will be four (4) hours.
- 2.6.7.4 **Overtime Practices:** The Department will adhere to the overtime hiring procedures and policy as stated in the Overtime Policy and Procedures General Order.

## SECTION 2.7: COURT PAY

An off duty Battalion Chief, who is subpoenaed to appear in court in cases in which the City is a party, or as a witness for criminal acts or civil torts that were witnessed on duty, shall be compensated at one and one-half (1½) times his or her regular straight-time rate for all hours the employee is so ordered to appear.

## **ARTICLE 3 - LEAVES**

### **SECTION 3.1: ADMINISTRATIVE LEAVE**

Employees in classifications identified as not eligible for Overtime under Section 2.6 (Overtime) of this MOU shall be credited with fifty (50) hours of Administrative Leave each January 1. Administrative Leave which is not utilized during any calendar year will be credited to the individual's vacation balance at the end of the calendar year. All rules governing vacation balances and when vacation can be scheduled in Section 3.3 (Vacation) shall apply to Administrative Leave. The classifications eligible to receive Administrative Leave are designated in Exhibit A of this MOU.

Persons appointed to classifications not eligible for overtime compensation during the calendar year shall receive Administrative Leave prorated based on the number of pay periods remaining in the calendar year.

### **SECTION 3.2: INCREMENTAL TIME OFF**

Incremental Time Off is considered time off using vacation, due time, or sick leave bonus.

### **SECTION 3.3: VACATION**

#### **3.3.1 Vacation Leave**

Employees shall be entitled to annual vacation leave subject to the provisions in this chapter. Moreover, all employees who have worked for the City six (6) months or more and have worked half-time or more in the preceding year shall be entitled to vacation leave.

#### **3.3.2 Vacation Approval**

All vacation must be approved, in advance, by the Fire Chief or Deputy Chief, on forms or scheduling system utilized by the City.

#### **3.3.3 Vacation Periods**

**3.3.3.1 48/96 56-Hour Week Employees:** For employees on the 48/96 schedule, a vacation period for employees on a 56-hour week shall consist of three (3) 24-hour shifts (See Glossary).

**3.3.3.2 Incremental Time Off (Battalion Chief):** Incremental vacation shall be taken in increments of ten (10) hours (days) from 0700 hours to 1700 hours or fourteen (14) hours (nights) from 1700 hours to 0700 hours.

**3.3.4 Vacation Accrual Schedule**

3.3.4.1 **Battalion Chief:** The vacation accrual schedule is as follows:

| Years of Service<br>(as provided in Sections 3.3.8; 3.3.8.1; and 3.3.9) | Vacation Accumulation |           |
|-------------------------------------------------------------------------|-----------------------|-----------|
|                                                                         | 56 Hours              | 40 Hours  |
| Through the first five (5) years of service                             | 2 Vacation Periods    |           |
|                                                                         | 144 hours             | 80 hours  |
| Six (6) through eleven (11) years of service                            | 3 Vacation Periods    |           |
|                                                                         | 216 hours             | 120 hours |
| Twelve (12) through eighteen (18) years of service                      | 4 Vacation Periods    |           |
|                                                                         | 288 hours             | 160 hours |
| Nineteen (19 through twenty-four (24) years of service                  | 5 Vacation Periods    |           |
|                                                                         | 360 hours             | 200 hours |
| Twenty-five (25) and subsequent years of service                        | 6 Vacation Periods    |           |
|                                                                         | 432 hours             | 240 hours |

3.3.4.2 **Assistant Fire Chief and Fire Marshal:** The vacation accrual schedule for FLSA Exempt employees eligible for Administrative Leave in the classifications of Assistant Fire Chief and Fire Marshal is as follows:

| Years of Service                                       | Vacation Accumulation     |           |
|--------------------------------------------------------|---------------------------|-----------|
|                                                        | 56 Hours                  | 40 Hours  |
| Through the first five (5) years of service            | <b>2 Vacation Periods</b> |           |
|                                                        | 144 hours                 | 80 hours  |
| Six (6) through eleven (11) years of service           | <b>3 Vacation Periods</b> |           |
|                                                        | 216 hours                 | 120 hours |
| Twelve (12) through eighteen (18) years of service     | <b>4 Vacation Periods</b> |           |
|                                                        | 288 hours                 | 160 hours |
| Nineteen (19 through twenty-four (24) years of service | <b>5 Vacation Periods</b> |           |
|                                                        | 360 hours                 | 200 hours |
| Twenty-five (25) and subsequent years of service       | <b>6 Vacation Periods</b> |           |
|                                                        | 432 hours                 | 240 hours |

**3.3.5 Lateral Entry Vacation Accrual Rate at Time of Appointment**

Subject to the provisions of Section 3.3.3 (Vacation Periods), an employee appointed on or after October 1, 2006 as a lateral entry appointment as described in the Section 2.1.3 (Salary Placement and Entry – Lateral Incentive) of this MOU, shall accrue at time of appointment, and continue to accrue, and be eligible to take Vacation Leave commensurate with his or her years of experience as a sworn Fire Fighter. However, such leave accrual shall be prospective. Vacation privileges associated with seniority from prior employment in another Fire Department as a Fire Fighter shall not apply in Berkeley.

**3.3.6 Accrual Based on Hours in Paid Status**

Employees shall accrue vacation leave credits for only those hours in which the employee is on the payroll and receiving pay. Employees shall earn vacation leave according to the following schedule:

| Hours of Vacation Leave Earned For Each Hour of Service |                       |               |
|---------------------------------------------------------|-----------------------|---------------|
| Vacation Periods Earned<br>Per Year                     | For Employees Working |               |
|                                                         | 56 Hours/Week         | 40 Hours/Week |
| 2                                                       | .0495                 | .0385         |
| 3                                                       | .0742                 | .0577         |
| 4                                                       | .0989                 | .0769         |
| 5                                                       | .1236                 | .0962         |
| 6                                                       | .1484                 | .1154         |

### 3.3.7 Utilization

Each employee shall be entitled to take only such annual vacation leave as the employee has accrued; provided, however, that no employee with less than six (6) months of service shall be entitled to take earned vacation leave.

### 3.3.8 Length of Service Computation

For an employee who has worked on a part-time or intermittent basis or has been on leave of absence without pay for a total of six (6) months or more, or who has been terminated and subsequently reemployed, the actual years of service with the City shall be used for the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5) and six (6) vacation period rate.

3.3.8.1 **Part-Time and Intermittent Work Accrual:** Employees working on an intermittent or part-time basis who have worked half-time or more in the preceding twelve (12) months without termination shall be entitled to a prorated vacation leave based upon the actual years of service with the City and upon the actual amount of time worked in the preceding calendar year.

3.3.8.2 **Time Spent on Military or Parental Leave:** For the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5) or six (6) vacation period rate, time spent on extended military leave or parental leave shall be counted as time spent in the service of the City.

### 3.3.9 Maximum Carryover of Vacation

Employees can carry over from one vacation year (see Glossary) to the next, no more than eight (8) vacation periods of earned vacation.

### 3.3.10 Hours in Excess of Maximum Accumulation

An employee who has attained maximum accumulation may be required to take all projected excess earned vacation or receive pay in lieu thereof, at the option of the City. By October of each year, the City will advise employees who have attained a maximum accrual of vacation and whether such excess earned vacation



must be scheduled as time off prior to the end of the vacation year, which begins in March of each year according to schedules established by the Fire Chief. By November 30th, those employees with projected excess vacation will submit to the Deputy Chief a proposal for use of that projected excess vacation prior to the end of the vacation year.

Employees who accrue unused vacation beyond the eight (8) week maximum shall be paid out annually.

### **3.3.11 Vacation Leave before Retirement**

An employee who is anticipating retirement in the next vacation year will not be forced to use accumulated vacation time in the last year of employment. He or she may request to sell the vacation to the City and the City will honor that request, provided that 1) the employee has filed a CalPERS option form indicating that he or she is planning to retire, and 2) this requirement that the City buy the employee's vacation will be in effect for one (1) year maximum.

### **3.3.12 Return from Leave Prorated Vacation**

An employee who has returned from extended military leave or any other extended leave of absence without pay or who has been reemployed or reinstated shall be entitled, during the calendar year in which the employee returns to the City service, to a prorated vacation based upon the total years of service with the City and upon the total number of months of actual service with the City during the said calendar year. For succeeding calendar years, vacation shall be as provided in this Section 3.3 (Vacation).

### **3.3.13 Extended Leave Accrual Impact**

An employee who is granted a leave of absence without pay and who is off the payroll for less than one hundred sixty (160) consecutive hours for employees assigned to a forty (40) hour work week or two hundred eighty eight (288) hours for employees assigned to a fifty six (56) hour work week shall be entitled to a full vacation. If such an employee is off the payroll for one hundred sixty (160) consecutive hours or more for employees assigned to a forty (40) hour work week or two hundred eighty eight (288) hours or more for employees assigned to a fifty six (56) hour work week, the employee's vacation shall be as provided in Sections 3.3.15 (Payment upon Termination, Military or Extended Unpaid Leave); or 3.3.16 (Vacation Buy Back).

### **3.3.14 Payment upon Death**

If, after six (6) months of continuous service, an employee dies, the employee's estate shall be paid for all accrued unused vacation periods at the employee's base rate at the time of death, and such employee or his or her estate shall reimburse the City for the actual amount of vacation taken in excess of vacation leave earned, as the case may be.



**3.3.15 Payment upon Termination, Military or Extended Unpaid Leave**

Upon termination, extended military leave, or other extended leave of absence without pay, if the employee's vacation balance is positive, such employee shall be paid for 100% of the excess of vacation credits that the employee has earned, banked or held over, at the employee's base rate at the time of termination, military or extended unpaid leave. If the vacation balance is negative, such employee shall reimburse the City or the City may deduct the balance due from the employee's salary due, deferred compensation, accrued floating holidays, holiday pay due, compensatory time due or sick leave, in the listed order of priority.

**3.3.15.1 Basis for Payment:** The basis for such payment by the City or for such reimbursement to the City shall be as follows:

The employee's regular hourly salary, as defined in the Glossary at date of termination, extended military leave, or other extended leave of absence without pay, multiplied by the excess of vacation leave hours earned or vacation leave hours taken, as the case may be.

**3.3.16 Vacation Buy Back**

By March 1 of any calendar year, employees may exercise an option to buy back up to one-half (1/2) of his or her accrued but unused vacation leave, up to a maximum of four (4) weeks.

**3.3.17** For purposes of computing earned vacation, time may be counted up to the end of the second paycheck in February of the current year. Employees will be paid only for vacation time actually earned up to the time of buy back payoff.

**3.3.18** Only whole weeks shall be counted for vacation buy back. For example, seven (7) weeks, twenty - one (21) hours would count as seven (7) weeks of earned vacation.

**3.3.19** The vacation buy back provision as provided for in this section applies only to Personnel assigned to fire suppression and medical response vehicles.

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

**3.3.20.1** Vacation leave accrued on a fifty-six (56) hour per week scheduled is converted to a forty (40) hour per week schedule by multiplying number of hours of vacation leave accrued by the conversion factor of 0.7143.

**3.3.20.2** Vacation leave accrued on a forty (40) hour per week scheduled is converted to a fifty six (56) hour per week schedule by multiplying

number of hours of vacation leave accrued by the conversion factor of 1.4.

**SECTION 3.4: HOLIDAYS**

Assistant Fire Chiefs and the Fire Marshal shall be allowed the following holidays off with pay at the eight (8) hour straight time salary rate based on their regular monthly salaries.

Battalion Chiefs, who are assigned to a 24-hour work schedule (those regularly scheduled to work fifty-six (56) hours) will receive twelve (12) hours of holiday pay as part of the base salary.

The holidays to which this provision applies are:

| Holiday                                          | Day Observed                    |
|--------------------------------------------------|---------------------------------|
| New Year's Day                                   | January 1                       |
| Martin Luther King, Jr.'s Birthday               | Third Monday in January         |
| Lincoln's Birthday                               | February 12                     |
| Washington's Birthday                            | Third Monday in February        |
| Malcolm X's Birthday                             | Monday or Friday nearest May 19 |
| Memorial Day                                     | Last Monday in May              |
| Independence Day                                 | July 4                          |
| Labor Day                                        | First Monday in September       |
| Floating Holiday                                 |                                 |
| Indigenous Peoples' Day                          | Second Monday in October        |
| Veterans' Day                                    | November 11                     |
| Thanksgiving Day                                 | Fourth Thursday in November     |
| The Day After Thanksgiving Day                   | Fourth Friday in November       |
| Christmas Day                                    | December 25                     |
| Any Special Holiday Declared by the City Manager |                                 |

For historical reference only, in addition to the above-referenced 14 holidays (time off with pay), effective June 27, 1999 and as provided in Resolution Nos. 59,954-N.S. and 59,953-N.S., the City converted Holiday Pay (14 holidays, valued at 6.154% of base salary) as additional compensation and rolled the additional compensation into the Unit A classifications base salary (Assistant Fire Chief). When the Fire Marshal and Battalion Chief classifications were established in 2010, the pay range included Holiday Pay in the base salary.

**3.4.2 COVID Leave**

Due to the nature of bargaining unit work, backfill is required so the City will credit floating holiday hours in the form of a stipend to all ranks covered in this Agreement equal to twenty (20) hours to be paid at the beginning of the first full pay period after Council adoption. The reduction of COVID Leave from forty (40) hours will provide the majority of funding for two new vehicles; and the remainder will come from the Berkeley Fire Department budget.

**SECTION 3.5: SICK LEAVE**

**3.5.1 Sick Leave Use**

An employee shall be entitled to take sick leave with full pay in case of sickness, disability or serious illness of that employee or within the immediate family of the employee in accordance with the provisions of Sections 3.5.2 (Accumulation of Sick Leave) to 3.5.6 (Sick Leave Not a Privilege) inclusive.

**3.5.2 Accumulation of Sick Leave**

Each employee shall be credited with one (1) sick leave day (see Glossary) with full pay for each month of service, provided that each employee shall be credited with two (2) sick leave days with full pay for each month of service during the seventeenth (17th) year of employment and thereafter.

**3.5.3 Maximum Accumulation**

Such sick leave as provided in Section 3.5.2 (Accumulation of Sick Leave) when not used shall be cumulative, but the accumulated, unused period of sick leave, beginning in 1990, shall not exceed the following schedule:

| For 56-hour A Week Employees                    | For 40-hour A Week Employees |
|-------------------------------------------------|------------------------------|
| base - 1800 hrs.                                | base - 1200 hrs.             |
| 1st year - 1944 hrs.                            | 1st year - 1296 hrs.         |
| 2nd year - 2088 hrs.                            | 2nd year - 1392 hrs.         |
| 3rd year - 2232 hrs.                            | 3rd year - 1488 hrs.         |
| 4th year - 2376 hrs.                            | 4th year - 1584 hrs.         |
| (and so on, as described in the next paragraph) |                              |

The previously established maximum accumulation level of 1800 hours (1200 hours for 40-hour a week employees) may at the employee's option, be increased by up to 144 hours (96 hours for 40-hour a week employees) each year following the year when the employee reaches 1800 hours (1200 hours for 40-hour a week employees) level.

**3.5.4 Annual Payout for Excessive Sick Leave**

In each year following that 1800 hour (1200 hour for 40 hour a week employees) base year, the employee may, on a form provided by the City, elect to receive pay for excess sick leave or may elect to increase their sick leave accumulated base by the 144 hours (96 hours for 40 hour a week employees) and take any additional excess sick leave in pay at the following prescribed rate: employees who choose to increase their sick leave accumulated base by the 144 hours (96 hours for 40 hour a week employees) will receive 50% pay off rate in March; employees who choose to receive pay out for excess sick leave over the base, and do not exercise the option of increasing their accumulated sick leave base by 144 hours (96 hours for 40 hour a week employees) in any particular year, will be paid for excess sick leave at the 38% pay off rate in March.

Forms, provided by the City along with projected excess sick leave balances, shall be distributed to affected employees by February of each year and shall be returned to the City by February 15th. If an employee uses part of an established "sick leave maximum accumulation level", the employee may replenish the used portion at the applicable rate provided in Section 3.5.2 (Accumulation of Sick Leave).

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

**3.5.5 Accrued Sick Leave Canceled Upon Termination**

All accumulated sick leave shall be canceled when an employee terminates or is terminated.

**3.5.5.1 Unused Sick Leave Payment at Retirement or Termination for Employees Hired on or Before June 30, 2014:** All employees hired on or before June 30, 2014 that retire (non-disability) or voluntarily terminate with twenty (20) years of service shall be entitled to receive payment at retirement or termination of unused sick leave days, based on the following schedule:

| Number of Unused Sick Leave Days | Percentage Payout |
|----------------------------------|-------------------|
| 0 - 74 days                      | 38%               |
| 75 - 99 days                     | 41%               |
| 100 - 124 days                   | 44%               |
| 125 - 149 days                   | 47%               |
| 150 and over                     | 50%               |

This pay-out schedule shall also apply to any employee retiring on permanent disability arising out of and incurred in the course and scope of his or her employment with the City. Employees hired on or after July 1, 2014 shall not be eligible for payment of any unused sick leave days.

**3.5.6 Sick Leave Not a Privilege**

Sick leave shall not be considered as a privilege which an employee may use at his or her discretion but shall be allowed only in case of sickness or disability or in the case of serious illness within the immediate family of the employee. Not more than twelve (12) sick leave days (6 24-hour shifts or 144 hours for a 56-hour schedule, or 96 hours for a 40-hour schedule) in any calendar year may be taken because of the illness of a member of the employee's immediate family. The immediate family of an employee, for the purpose of this Section, shall be defined as: child or dependent residing in the employee's household or spouse, domestic partner, son, daughter or parent.

**3.5.7 Injury Incurred in Outside Employment**

No sick leave shall be allowed for time off for an injury incurred while working for another employer, provided that such injury is covered by the Workers' Compensation laws of the State of California, and no other provision for payment for time off because of injury is made by such other employer. In the event such injury is not covered by the Workers' Compensation laws of the State of California and no other provision for payment for time off because of such injury is made by such other employer, sick leave in accordance with the provisions of this Section shall be allowed only if such outside employment has been approved by the City.

**3.5.8 Notice Requirement**

An employee who is unable to report to duty due to illness shall notify the on-duty supervisor one (1) hour prior to the commencement of the employee's assigned shift in order to receive compensation while absent on sick leave.

**3.5.9 Absence Reporting (2 24-Hour or 3-Days):**

If an illness or injury is anticipated to continue for more than two (2) 24-hour shifts or three (3) days, it shall be reported immediately to the Deputy Chief or Fire Chief via telephone or email.

**3.5.10 Effect of Leave without Pay on Sick Leave Accrual**

An employee who is granted a leave of absence without pay and who is off the payroll for less than two (2) pay periods shall receive earned sick leave credit. If an employee is off the payroll for two (2) or more successive pay periods, the employee shall not earn sick leave credit for each two (2) successive pay periods that he or she is off the payroll.

**3.5.11 Control of Abuse**

The City may establish a reasonable program for the control of abuse of sick leave and absenteeism, subject to Association review and comment.

**3.5.12 Restoration of Sick Leave upon Re-Employment**

Accumulated unused sick leave which has been canceled by reason of any employee's termination shall be credited back to such employee if he or she returns to City of Berkeley employment within two (2) years of such termination.

**3.5.13 Bonus for Unused Sick Leave**

For every six (6) months of uninterrupted non-use of sick leave, a 40-hour per week employee will receive eight (8) hours of bonus time and a 56-hour per week employee will receive twelve (12) hours of sick leave bonus time. Leave without pay and a Workers Compensation leave of absence from work pursuant to workers' compensation is counted as an absence from work in the same manner as sick leave for the purpose of this bonus, except for partial day absences due to a prescribed follow-up physical therapy or medical appointment (Payroll Code M0) for a Workers' Compensation claim which absences shall not disqualify an employee from the sick leave bonus described in this paragraph. Such bonus

time can be used for any leave purpose covered by this Memorandum of Understanding and may, in addition, be used as emergency personal leave. The Department shall track sick leave bonus time separately. Sick leave bonus time accrual will not exceed 300 hours plus the current calendar year accrual. At the end of the calendar year, excess sick leave bonus time will be converted to vacation leave and the rules regarding maximum vacation leave accrual will apply.

### **3.5.14 Use of Sick Leave Bonus**

The use of sick leave bonus time for emergency personal reasons shall not interrupt the earning cycle of sick leave bonus as long as the time being requested is not for use as sick leave or family sick leave. Requests for emergency personal time off shall be directed through the Deputy Chief or Fire Chief.

### **3.5.15 Accrual Conversion Rate**

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

3.5.15.1 Sick leave or sick leave bonus time accrued on a fifty-six (56) hour per week scheduled is converted to a forty (40) hour per week schedule by multiplying number of hours of sick leave or sick leave bonus time by the conversion factor of 0.7143.

3.5.15.2 Sick leave or sick leave bonus time accrued on a forty (40) hour per week scheduled is converted to a fifty six (56) hour per week schedule by multiplying number of hours of sick leave or sick leave bonus time accrued by the conversion factor of 1.4.

## **SECTION 3.6: WORKERS' COMPENSATION**

All employees shall be entitled to such compensation as may be allowed pursuant to the applicable provisions of the Workers' Compensation Insurance and Safety Act of the State of California, specifically Labor Code Sections 4850 et seq.

## **SECTION 3.7: BEREAVEMENT LEAVE**

### **3.7.1 Bereavement Leave and Qualified Immediate Family Members**

In the case of death within the immediate family of an employee such employee shall be entitled to remain absent from duty with pay in order to attend the funeral or memorial service for a period not exceeding 48 hours for employees assigned to the fire suppression schedule and 40 hours for employees on a 40 hour per week work schedule. The immediate family of an employee, for the purpose of this Section, shall be defined as wife, husband, domestic partner (see Glossary),

mother, father, sister, brother, child, grandmother, grandfather, aunt, uncle, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and grandchildren or dependent residing within the household.

**3.7.2 Bereavement Leave Charge**

Leave of absence with pay, because of death in an employee's immediate family, is allowed solely for the purpose of attending funeral and memorial services, and such leave shall not be charged against vacation or sick leave which an employee may be entitled to but shall be in addition thereto.

**3.7.3 Discretionary Approval:**

An employee may submit a request for additional time off as vacation or compensatory time to adjust to the death of a family member.

**SECTION 3.8: MILITARY & MARITIME LEAVE**

Military and Maritime Leave shall be governed by the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), regulations implementing USERRA and the California Military & Veteran’s Code.

**SECTION 3.9: PARENTAL LEAVE**

Any employee with one (1) or more years of benefitted employment with the City of Berkeley shall be entitled to up to one (1) year of parental leave upon the birth of a child or the adoption of a child who is five (5) years or younger as provided in Administrative Regulation 2.4 (Family Care Leave).

**SECTION 3.10: LEAVE OF ABSENCE WITHOUT PAY**

**3.10.1 Authorization for Leave without Pay**

Upon the request of the employee, the Fire Chief may grant a leave of absence without pay for a period not to exceed fifteen (15) leave days (see Glossary). No leave without pay shall be granted for more than fifteen (15) leave days, except upon the written request of an employee and approval of the City Manager. Failure on the part of an employee on leave to report promptly at its expiration shall be cause for discharge.

**3.10.2 Required Exhaustion of Accrued Leave**

An employee must use all available compensatory and vacation leave, including banked vacation, in order to become eligible for an approved leave of absence without pay.

**3.10.2.1 Leave Due to Illness:** In the event of illness, an employee must also exhaust sick leave prior to receiving authorization for leave without pay.



However, in the event of an illness or injury requiring the use of sick leave, an employee has an option to notify the City in writing that he or she wishes to freeze the use of sick leave after thirty (30) calendar days prior to receiving authorization for leave without pay in order to take advantage of an Association sponsored Long Term Disability benefit.

## SECTION 3.11: JURY DUTY LEAVE

### 3.11.1 Absence from Duties

An employee who is called or required to serve as a trial juror shall be entitled to be absent from duties or service with the City with pay during the period of such jury service as defined in the Glossary. The employee shall keep any payment received for jury service, including mileage reimbursement, upon submittal of proof of jury service.

### 3.11.2 Service during Off-Shift

Employees who receive compensation for jury service during off-shift hours shall not be required to assign such compensation to the City. Employees shall not lose pay for adhering to court established rules pertaining to jurors not working on days they perform jury duty. The City may require written instructions from the Court.



## **ARTICLE 4 - HEALTH AND WELFARE BENEFITS**

### **SECTION 4.1: MEDICAL, DENTAL & LIFE INSURANCE**

#### **4.1.1 Medical Insurance Maximum City Payment**

The City will pay 100% of the premium for the applicable (single, two party, family) Kaiser rate. Plans that are less expensive than or equal to the Kaiser plan shall be fully paid by the City. The cost difference between the Kaiser Plan and more expensive plans will be borne by the employee. Effective July 1, 2019, employees shall pay fifty dollars (\$50.00) per month via pre-tax payroll deduction towards their health premium, and the City will pay an amount equal to the balance of the Kaiser monthly premium rate for the employee's applicable single, two party, or family employee category. This requirement for employees to contribute toward their health premiums shall only be effective if Department Head employees at the City are paying at least this amount as of July 1, 2019.

4.1.1.1 **Dependents:** Dependent status will be available until the dependent reaches the age of twenty-six (26) providing the dependent(s) meet the definition of "dependency" in the Internal Revenue Code.

4.1.1.2 **Domestic Partner:** If an employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for medical benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

#### **4.1.2 Annual Maximum Increase**

The amount the City contributes each calendar year toward the payment of health insurance premiums will increase by the lesser of twenty percent (20%) (single, two party, family) or the amount of the Kaiser HMO premium amount (single, two party, family) in effect on that date. The amount the City contributes each calendar year uses the premium rate of the previous calendar year as the basis for the calculation and there shall be no year-to-year carryover.

#### **4.1.3 Medical Cash in Lieu**

The cash in lieu payment to employees who show proof of alternate coverage will be a flat dollar amount of \$560, pro-rated for part-time employees.

#### **4.1.4 Dental Coverage**

The City shall provide a dental care program for employees, spouses, domestic partners and dependents. The City shall pay dental coverage to 90% of the Bay Area Usual, Customary and Reasonable charges. The maximum annual coverage is \$3,000 and the lifetime orthodontia limit is \$3,000.

**4.1.5 Prorated Fringe Benefits**

All career and grant-funded provisional employees working less than a full forty (40) hour week shall receive prorated rather than full fringe benefits and shall pay, by payroll deduction, a prorated portion of the health and dental insurance premiums.

**4.1.6 Life Insurance**

The City shall provide paid group life insurance, by a carrier of the City's choice, in the amount of \$100,000, which shall include a standard accidental death and dismemberment provision of a like amount. Life insurance shall become effective the first day of the calendar month following appointment, and shall continue until the last day of the calendar month in a pay status.

In addition, employees may purchase additional life insurance in increments of \$10,000 up to a maximum of \$300,000 at the rate offered by the City's insurance carrier, subject to any rules and restrictions of the carrier, including but not limited to any medical exam that might be required by the insurance carrier.

**4.1.7 Replacement Health Plan Meet and Confer:**

The Association agrees to meet with the City during the term of this MOU in a timely fashion following a City request, regarding whether the Association will agree to meet and confer regarding how the City can avoid potential 2015 Affordable Care Act (ACA) excise tax obligations and on a new and/or replacement health plan or plans and other methods to reduce the cost of health benefits.

**SECTION 4.2: RETIREE MEDICAL COVERAGE****4.2.1 Reimbursement Plan**

The City will assist in the reimbursement of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner until the death of both. If there is no spouse or domestic partner at the time of retirement, the City shall only reimburse the single party rate. The reimbursement shall be paid directly to the retiree or surviving spouse/domestic partner. The maximum amount the City will reimburse for the cost of Medical Insurance Premiums is described below and is based on the combination of the following factors:

- 4.2.1.1 the years of service of the employee at time of retirement
- 4.2.1.2 whether the employee is eligible to participate in Medicare
- 4.2.1.3 the annual increase of 4.5% on the amount the City will reimburse for the cost of the medical insurance premium.

Minimum eligibility is 10 years of service with the City of Berkeley Fire Department.

The maximum amount the City will reimburse for the cost of the Medical Insurance

Premium is based on the following schedule (to clarify, there is no “pro-rata” incremental increase between these thresholds):

| Years of City Service to be Completed | Percentage of City Reimbursement |
|---------------------------------------|----------------------------------|
| 10                                    | 25%                              |
| 15                                    | 50%                              |
| 20                                    | 75%                              |
| 25                                    | 100%                             |

4.2.1.4 **Annual Increase:** Effective each January 1, the base rates reimbursement as provided throughout this Section shall be increased by 4.5%.

**4.2.2 Employees Who Retired On or After July 1, 1997 through June 30, 2006**

4.2.2.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/or domestic partner as follows:

4221.1 **Reimbursement Amount as of January 1, 2001:** Effective January 1, 2001, each month after the employee retires, the City’s maximum reimbursement for the cost of Medical Insurance Premiums total \$387.47 for two party coverage for the retiree and spouse or domestic partner or \$194.41 for single party coverage.

4221.2 **Reimbursement Amount as of January 1, 2016:** As of January 1, 2016, the City’s maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 4.2.1.4 (Annual Increase), total \$749.86 for two party coverage for the retiree and spouse or domestic partner or \$376.24 for single party coverage.

4.2.2.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/or domestic partner as follows:

4222.1 **Reimbursement Amount as of January 1, 2001:** Effective January 1, 2001, each month after the retiree reaches age 65 and is eligible for Medicare, the City’s maximum reimbursement for the cost of Medical Insurance Premiums total \$315.40 for two party coverage for the retiree and spouse or domestic partner or \$157.70 for single party coverage.

42222 **Reimbursement Amount as of January 1, 2016:** As of January 1, 2016, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 4.2.1.4 (Annual Increase), totals \$610.39 for two party coverage for the retiree and spouse or domestic partner or \$305.19 for single party coverage.

#### 4.2.3 Employees Who Retired On or After July 1, 2006

4.2.3.1 **Not Medicare Eligible:** For employees who retire on or after July 1, 2006 and are not eligible for Medicare, the City will reimburse the retiree and/or surviving spouse or domestic partner for the cost of the Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

4231.1 **Reimbursement Amount as of July 1, 2006:** On July 1, 2006, the City will reimburse the cost of Medical Insurance Premiums in an amount totaling \$327.76 per month (single party) and \$653.86 per month (two party).

4231.2 **Reimbursement Amount as of January 1, 2016:** As of January 1, 2016, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 4.2.1.4 (Annual Increase), totals \$1,015.42 for two party coverage for the retiree and spouse or domestic partner or \$509.00 for single party coverage.

4.2.3.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/or domestic partner as follows:

42321 **Reimbursement Amount as of July 1, 2006:** Effective July 1, 2006, each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$393.05 per month (two party) or \$196.52 per month (single party).

42322 **Reimbursement as of January 1, 2016:** As of January 1, 2016, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 4.2.1.4 (Annual Increase), totals \$610.39 for two party coverage for the retiree and spouse or domestic partner or \$305.19 for single party coverage.

**4.2.4 Retiree Definition**

For the purposes of this section a "Retiree" is anyone who meets all the following conditions: is vested in CalPERS; has reached the age of CalPERS retirement (age 50 for classic employees or age of 57 for new members as defined in Section 8.1 (California Public Employees' Retirement System) of this MOU; and has separated from the City.

4.2.4.1 **Disability Retirement:** A "Retiree" is also anyone, regardless of age, who receives a retirement benefit (disability or industrial disability) from CalPERS.

**4.2.5 Enrollment in City Group Plans**

Retiring employees may receive continuing health coverage in City sponsored group health plans subject to the limitations and co-pay amounts permitted by the health care providers. The City has no present intention, nor any proposal under consideration, to remove retirees from eligibility to participate in the City's group health and medical plan. Should such a proposal receive future consideration, the Association will be notified in advance and shall be afforded the opportunity to discuss such proposal.

**SECTION 4.3: SUPPLEMENTAL RETIREMENT PLAN (401a)**

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

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

Employees in the classification of Assistant Fire Chief are enrolled effective July 2, 1995, employees in the classification of Battalion Chief are enrolled effective March 10, 2009, and employees in the classification of Fire Marshal on January 20, 2015.

## **ARTICLE 5 - TERMS AND CONDITIONS OF EMPLOYMENT**

### **SECTION 5.1: PROBATIONARY PERIOD**

#### **5.1.1 Original Appointment**

Original appointments from employment lists shall be tentative and subject to a probationary period of one (1) year of actual service.

#### **5.1.2 Satisfactory Service**

If the service of the probationary employee has been satisfactory to the Fire Chief, the Fire Chief shall file with the Director of Human Resources a statement in writing to such effect and stating that the retention of such probationary employee in the service is desired.

#### **5.1.3 Service Unsatisfactory**

If such service has been unsatisfactory, the Fire Chief shall file with the Director of Human Resources such a statement, in writing, with the recommendation to the City Manager that the employee be rejected.

### **SECTION 5.2: EXAMINATIONS**

#### **5.2.1 Examination Process**

Examinations may consist of any method of evaluation to measure the capacities of the persons examined to execute the duties and responsibilities of the career classification to which they seek to be appointed. The probationary period shall be considered as a portion of the examination process.

#### **5.2.2 Promotional Examinations**

Promotional examinations may be conducted whenever the needs of the service require. Promotional examinations may include any of the selection techniques as deemed appropriate by the Director of Human Resources. Only permanent employees in the career service or on active mandatory layoff reemployment lists who meet the requirement set forth in the class specification may compete in promotional examinations.

#### **5.2.3 Notification of Results and Review of Papers**

Each candidate in a formal written examination where scores are provided shall be given notice of the results thereof, and if successful, of the final earned score and/or rank on the employment list.

All such candidates shall have the right to inspect their written test answer sheet within ten (10) working days after the results are mailed. Such personal examination shall be made in the presence of the Director of Human Resources, or his or her authorized representative, and no notes shall be made by the

applicant.

**SECTION 5.3: METHOD OF FILLING VACANCIES**

**5.3.1 General Provisions**

All vacancies in the career service shall be filled by transfer, demotion, re-employment, reinstatement, or from eligible list certified by the Director of Human Resources, if available. In the absence of persons eligible in these ways, temporary appointments may be made in accordance with the provisions of this MOU.

**5.3.2 Promotion and Open Competitive**

Insofar as is practicable and consistent with the best interest of the City, all vacancies in the career service shall be filled by promotion from within the career service, after a promotional examination has been given and a promotional list established.

If, in the opinion of the appointing authority, the best interest of the service can be served by an open competitive examination instead of a closed promotional examination, and if there is not already an existing promotional list for the higher position, which list has not been abolished and from which the vacancy could be filled, the appointing authority may instruct the Director of Human Resources to call for applications for the vacancy and arrange for an open competitive examination and for preparation and publication of an eligible list.

**5.3.3 Scheduling & Announcing Examinations**

Promotional examinations shall be administered in accordance with the schedule noted below:

| Test                 | CYCLE BEGINS             | QUARTER FOR TEST | INTERVAL BETWEEN TEST |
|----------------------|--------------------------|------------------|-----------------------|
| Battalion Chief      | 2018 and then Even Years | First Quarter    | 2 Years starting 2018 |
| Assistant Fire Chief | 2018 and then Even Years | First Quarter    | 2 Years starting 2018 |

**5.3.4 Seniority**

5.3.4.1 The Fire Department shall establish and maintain two (2) seniority lists, one (1) by total service in the Department and one (1) by time in classification, and they shall be brought up-to-date once a year prior to vacation picks and shall be issued in January of each year. Any objections to the seniority lists, as posted, shall be reported to the Fire Chief in written form within ten (10) days.

#### SECTION 5.4: PERFORMANCE EVALUATION

The City will implement a program of annual performance evaluation. Such evaluation shall be conducted by the employee's immediate supervisor(s). Each employee may make written comments on the evaluation, which shall be made a part of the employee's personnel record.



## **ARTICLE 6 - GRIEVANCE AND APPEAL PROCEDURE**

### **SECTION 6.1: GRIEVANCE PROCEDURE**

#### **6.1.1 Definition**

A grievance is any dispute which involves the interpretation, application, claimed violation, or claimed noncompliance with the provisions of the MOU between the City and the Association. The grievance procedure discussed below shall be the sole grievance mechanism applicable to employees covered by this MOU.

#### **6.1.2 Deadline for Filing**

No matter shall be considered as a grievance under this Section unless it is presented within thirty (30) calendar days after the employee or the Association could reasonably have been aware of events on which the grievance is based. Failure to comply with the time lines of the Grievance Procedure by either party will constitute forfeiture of their position on the grievance. In the event of a forfeiture by the City, the City will comply with the request for resolution. However, the provisions of Section 6.1.9 (Suspension of Discharge) of this MOU will apply in the event of forfeiture. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.

#### **6.1.3 Grievances Process**

Grievances shall be processed in the following manner:

6.1.3.1 **Step I - Informal Step:** Any employee who believes he or she has a grievance (and/or the employee's Association representative) shall discuss the employee's complaint with the Deputy Fire Chief. If the issue is not resolved within fifteen (15) calendar days, the employee (and/or the employee's Association representative) may elect to invoke the procedure hereinafter specified by filing a formal grievance.

6.1.3.2 **Step II - Fire Chief:** Any grievance that has not been resolved at Step I (Informal Step) may be referred to the Fire Chief (or his or her designee) by the grievant (and/or the employee's Association representative). Any such referral shall be in writing to the Fire Chief with a copy to the Human Resources Department, on a grievance form provided by the City (see Exhibit E), and approved by the Association. The written statement shall be a clear concise statement of the grievance, including specific provisions of this agreement and/or City ordinance, rule or regulation, and/or past practice alleged to have been violated, the circumstances involved in the decision rendered at Step I, and the specific remedy sought. Either party shall be entitled to a personal conference upon request.

The Fire Chief shall communicate a decision to the grievant with a copy to the Association and to the Director of Human Resources in writing within ten (10) working days after receiving the grievance or ten (10) working days from the date of the personal conference, whichever is later, and such action will terminate Step II.

- 6.1.3.3 **Step III - City Manager:** In the event that the employee (or the employee's Association representative) is not satisfied with the decision at Step II, the employee (or the employee's Association representative) may appeal the decision in writing to the City Manager or his or her designee within ten (10) working days after the termination of Step II.

The written statement shall include a copy of the original grievance, the decision rendered at Step II, and a clear and concise statement of the reasons for the appeal. The grievant or the City Manager or his / her designee shall be entitled to a personal conference upon request within the time limits specified.

The City Manager or his or her designee shall communicate a decision within ten (10) working days after receiving the appeal or ten (10) working days from the date of the personal conference, whichever is later and such decision will terminate Step III.

- 6.1.3.4 **Step IV - Arbitration:** If the Association is not satisfied with the City Manager's response at Step III- the Association may require that the grievance be referred to an impartial arbitrator, who shall be designated by mutual agreement between the Association and the City Manager. The Association must notify the City Manager in writing within ten (10) working days of receipt of the City Manager's decision that they intend to move the grievance to arbitration.

The fees and expenses of the State Mediation and Conciliation Services arbitrator and the court reporter shall be shared equally by the Association and the City. Each party, however, shall bear the cost of its own presentation including preparation and post-hearing briefs, if any. The Association shall provide the City with half of the cost charged by State Mediation to provide the parties with an arbitrator list no later than 30 days following notification to the City Manager that the Association wishes to advance the grievance to arbitration. Failure to timely do so shall result in a waiver of the right to advance the grievance to arbitration.

**6.1.4 Suspensions or Discharge Arbitration Decisions**

Arbitrator decisions on matters properly before them which pertain to the suspension or discharge of an employee shall be final and binding upon both parties hereto to the extent permitted by the Charter of the City.

**6.1.5 Non-Disciplinary Arbitration Matters**

Those arbitration decisions on matters properly before them which do not pertain to suspension or discharge shall be in the form of recommendations to the City Manager, who may, within five (5) working days of receipt of said decision, reject said decision.

In the event of said rejection, then as to that particular grievance the fees and expenses of the arbitrator and court reporter shall not be shared by the Association, and full payment thereof shall be the sole responsibility of the City.

**6.1.6 Letters of Reprimand**

Formal letters of reprimand concerning work rules or time and attendance shall be removed from an employee's official files upon request after 18 months provided the employee has maintained satisfactory performance. Letters of reprimand concerning all other subjects shall be removed from an employees' official personnel file upon request after 36 months provided the employee has maintained satisfactory performance.

**6.1.7 Equal Employment Opportunity (EEO) Program**

Any grievance which in any way affects implementation of the City's EEO program shall not be subject to arbitration. The decision as to whether or not implementation of the EEO program is in any way involved shall be made in the sole discretion of the City Manager. If, in the City Manager's judgment, any grievance involves the EEO program, the EEO & Diversity Officer shall notify the Association to that effect in writing within seven (7) days of the date upon which the grievance is received by the City Manager and, in such notification shall refer to that section of the EEO program which is involved; provided, however, that such notice may come at any time prior to arbitration if additional factors come to the attention of the EEO & Diversity Officer on the basis of which he/she considers it appropriate to change his /her original determination.

**6.1.8 Limits of Arbitrator**

No arbitrator shall entertain, hear, decide, or make recommendations on the dispute a) unless the Association seeks a determination, or b) if the dispute involves the issue of unit determination, or c) if the dispute involves a question of representation, or d) if the aggrieved employee is not in a classification within the unit represented by the Association.

**6.1.9 Suspension or Discharge**

No grievance involving the suspension or discharge of an employee will be entertained unless it is filed in writing with the City Manager within fifteen (15) calendar days of the time at which the affected employee was notified by certified mail. If the City Manager, in pursuance of the procedures outlined in Section 6.1.3 (Grievance Process) above, resolves a grievance which involves suspension or discharge, he or she may order payment for lost time or reinstatement with or without payment for lost time.

**6.1.10 Compensation Grievances**

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Fire Chief or his or her designated representative for payroll issues within 30 working days from the date when the employee may reasonably be expected to have learned of the alleged compensation violation. If such issues cannot be resolved by the Fire Chief (or in consultation with the Auditor), the Fire Chief will refer the matter to the Director of Human Resources within ten (10) working days of receipt of the grievance. The Director of Human Resources or his or her designee shall have 30 working days to research the issue and provide a written response to the Association and the affected employee. In such cases no adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed or thirty (30) days from the date when an employee may reasonably be expected to have learned of said claimed violation whichever is later. Only complaints which allege that employees are not being compensated in accordance with the rules, regulations, and resolutions of the City Council or in accordance with the understanding contained in any MOU which has resulted from meet-and-confer process shall be considered as grievances. Any other matters of compensation shall be deemed withdrawn until the meet-and-confer process is next opened for discussion.

If the affected employee is not satisfied with the written decision of the Director of Human Resources or his or her designee, the affected employee will have ten (10) working days to appeal the decision in writing to the City Manager and the grievance will move to Step III of the Grievance Procedure as provided in Section 6.1.3.4 (Step IV – Arbitration).

**6.1.11 Changes to Agreement**

No changes in the MOU or interpretation thereof (except interpretation resulting from arbitration proceedings hereunder) will be recognized unless agreed to by the City Manager and the Association.

**6.1.12 Probationary Employees**

**6.1.12.1 Appeal Limitations:** Notwithstanding their probationary status, probationary employees have appeal rights for disciplinary actions where the employee's allegation is that the City's action was for an illegal

or discriminatory reason, such as the exercise of Association membership, political affiliation, or other constitutionally-protected activities; provided, however, that any appeal by a probationary employee alleging a violation of his or her rights under Title VII (42 U.S.C. Section 2000e, et. seq.) or the California Fair Employment Practices Act (California Labor Code Section 12900, et seq.) may be pursued only as provided in the City's Equal Employment Opportunity program, which shall be specifically amended to allow probationary employee rights of appeal under that program.

6.1.12.2 **Grievance Limitation:** The grievance procedure is also available to probationary employees for matters other than those related to discharge, discipline, or other performance issues, where the claim is a City breach of agreed-upon wages, hours, working conditions, or discrimination based on Association activity.

**6.1.13 Calendar Days**

All references in this Section 6.1 (Grievance Procedure) to days shall mean calendar day unless otherwise provided.

**6.1.14 Association Right to File**

No provisions shall prevent the Association from filing and/or appealing grievances on behalf of the employees represented by the Association.

## **ARTICLE 7 - MISCELLANEOUS TERMS AND CONDITIONS**

### **SECTION 7.1: UNIFORM ALLOWANCE & DRESS UNIFORM REQUIREMENTS**

#### **7.1.1 Uniform Allowance**

Annual uniform allowance shall be \$1,100.00 and is to be paid annually by the first pay period in December thereafter. The entire uniform allowance will be paid to those employees who are on the payroll on December 1 of any year. However, the amount the City contributes toward the uniform allowance is subject to federal and state income tax withholding.

7.1.1.1 **Advance:** The City agrees to advance the sum of \$550.00 to new hires, which shall be used for uniform purchase and which shall then be repayable in two (2) equal yearly installments over the first two (2) years of employment, to be deducted by the City from the uniform allowance of the employee.

7.1.1.2 **Payment:** The uniform allowance shall be paid with a separate check. CalPERS will be deducted for all members in accordance with the provisions of Section 8.1 (California Public Employees' Retirement System). The check title shall be "Uniform Allowance".

7.1.1.3 **Purpose:** The uniform allowance is for the purpose of purchase and maintenance of station uniforms, and other required or optional garments, as necessary, for the term of this MOU. The City shall continue to purchase turn out gear.

### **SECTION 7.2: SAFETY COMMITTEE**

(1) The Assistant Fire Chief assigned to the Training and Safety Division shall be the designated safety officer for the department. The Safety Officer shall appoint a safety committee consisting of three (3) individuals on each shift (preferably one (1) complete company). The City's Occupational Safety Officer shall be a standing member of that Committee.

7.2.2 The safety committee shall meet on shift every two (2) months and shall review personal injury reports and reported safety deficiencies and perform follow-up investigations if necessary.

## SECTION 7.3: ANNUAL PHYSICAL EXAMINATIONS

### 7.3.1 Wellness Fitness Initiative (WFI)

The City and the Association are committed to maintaining a wellness program that provides represented employees with information and resources that aid in maintaining health and wellness. Part of this WFI may include a physical assessment (based on the City's specification as to scope of examination and examiner), diagnostics, education and referrals to other practitioners at a schedule to be determined by the Fire Chief or when required by the Association MOU, departmental policy, and/or applicable law.

## SECTION 7.4: ASSIGNMENTS FOR TEMPORARILY DISABLED EMPLOYEES

### 7.4.1 Industrial Disability Modified Duty

The City may accommodate, when feasible, employees covered by this MOU who are on Workers' Compensation leave, and such work assignments are to incorporate the following provisions:

- 7.4.1.1 The modified assignment shall be consistent with medical limitations as determined by the attending physician.
- 7.4.1.2 The assignment shall be within the Fire Department, if feasible, or in other City departments if an assignment is not available in the Fire Department and shall be on the day shift (8:00 a.m. to 5:00 p.m., Monday through Friday). The assignment shall be consistent with the skills and abilities of the individual employee.

### 7.4.2 Non-Industrial Disability Modified Duty

The City may accommodate an employee temporarily disabled with a non-industrial disability by providing a modified work assignment in that employee's classification. If modification of that position does not serve the best interests of the City, other classifications within the City may be considered, subject to the approval of the Director of Human Resources. To be eligible for such a modified assignment, the employee must provide the Human Resources Department with a medical statement from his or her treating physician that clearly states the medical limitations and abilities of the employee. Compensation will be provided at the level of the classification in which the temporarily disabled employee is reassigned. The employee must meet standards of satisfactory performance for the duration of the work assignment.

- 7.4.2.1 **Modified Duty for Pregnancy:** However, an employee who is temporarily transferred as a result of pregnancy to a less strenuous or hazardous position or to less strenuous or hazardous duties shall receive the equivalent rate of pay and benefits of the employee's regular position. The alternative position must be one for which the



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employee is qualified, and the position must better accommodate recurring periods of leave than the employee's regular job.

### 7.4.3 City Manager Authority on Modified Duty

Nothing herein shall require the City Manager to approve modified work assignments nor shall give an employee the right to refuse an assignment which complies with medical restrictions. Such refusal may subject an employee to loss of benefits and/or disciplinary action.

## SECTION 7.5: RESIDENCY REQUIREMENT

~~Employees who are hired subsequent to January 1, 1995, may not reside greater than forty (40) air miles from Berkeley City limits~~ Section 7.5 of the MOU shall be deleted due to adoption and passage of the ballot measure.

## SECTION 7.6: MEAL PERIODS

Because each employee may be called upon to perform emergency services during the meal period, employees rarely leave the station during their scheduled meal periods. Meals are often organized at each station because employees are required to be available for emergency calls during meal periods. Because of this, employees are required to contribute financially to an organized meal, supervised at each individual station, at a charge equal to the value of each employee's portion of the meal, regardless of whether the employee chooses to eat the meal. The portion of each organized meal attributable to each employee is required to be contributed to an organized "kitty" fund, which will be deducted monthly by the Association. Employees shall be solely responsible for any financial or tax liability regarding this provision.

## SECTION 7.7: STAFFING

- 7.7.1 Except as specifically provided for herein, the normal staffing requirements shall provide that at all times there shall be at least one promoted or acting Battalion Chief assigned per shift (total of 3). During the term of this 2018 to 2020 MOU, the City agrees to provide notice to the Union and meet and discuss permanent staffing changes related to the Assistant Fire Chief and Fire Marshal classifications.
- 7.7.2 The City retains the discretion to temporarily reduce staffing in the Division of Operations only upon the declaration of a "fiscal emergency" via a 2/3 vote of the City Council.
- 7.7.3 If the City Manager determines during the Fiscal Year that fund revenues have or will decline substantially below the estimate of fund revenues in the adopted



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Budget and/or expenditures have or will increase substantially above the projected expenditures in the adopted Budget, the City Council may declare a "fiscal emergency" that shall thereupon cause the City of Berkeley and the Berkeley Chief Fire Officers Association to assemble in a meet and confer process regarding a temporary staffing reduction plan.

- 7.7.4 Prior to a policy change which will result in a temporary reduction in the number of Chief Officers (see Sections 7.7.1 through 7.7.2) or a temporary change in staffing levels of suppression or transport units, as soon as is reasonably possible, the City will meet and confer about the matter with the Association.
- 7.7.5 As soon as possible following the end of the "fiscal emergency", it is the intent of the City to restore the staffing of the fire department to the levels defined above.
- 7.7.6 The Association strenuously objects to any reduction, on the grounds of standards set forth by the National Fire Protection Association (#1500 and #1710), employee safety, and reduced firefighting efficiency, but understands that, in the City's view, fiscal constraints may dictate such a reduction. The Association accepts no responsibility for any increased exposure or liability to employees or the public resulting from any such reduction.
- 7.7.7 All reductions necessary to accomplish this staffing reduction shall be accomplished by attrition, and not by reduction in force or by layoffs.

## SECTION 7.8: TRADES

Battalion Chiefs are allowed shift trades as detailed in the Trade Policy General Order.

## SECTION 7.9: PHYSICAL & PSYCHOLOGICAL EXAMINATIONS

The City may require employees to submit to physical or psychiatric examinations by a City appointed physician where reasonable cause exists to believe that the employee is suffering from a physical or psychiatric condition which adversely impacts the employee's ability to perform his or her duties. Whenever possible, an employee shall be advised in writing of the basis for the existence of "reasonable cause" and the grounds thereof before being directed to report to any such examination. In any case, such written notice is to be provided within forty-eight (48) hours of such an examination.

Any psychiatric report to the City shall consist of the psychiatrist's ultimate conclusion as to the employee's fitness to serve and return to work date, if any. If the psychiatrist believes that the employee is not fit for duty he/she shall advise the City of any functional limitations which relate to the employee's ability to perform his or her duties, if such information may be provided without revealing the cause of those limitations. The psychiatrist shall respect the physician-patient privilege in all other regards and shall not, without the employee's written permission, release any other information, documents,

reports or conclusions to the City.

Failure to report for a medical or psychiatric examination under this section may constitute grounds for discipline.

## **SECTION 7.10: HAIR SAFETY STANDARDS**

7.10.1 There are many hair styles that are acceptable. So long as the person's hair is kept in a neat, clean manner, the acceptability of the style will be judged by the following criteria:

7.10.1.1 Hair styles that preclude the proper wearing of SCBA are not permitted.

7.10.1.2 Hair may be pinned or worn so as to minimize the potential of being caught in machinery or in any way become a safety hazard.

7.10.2 These standards have been developed to accommodate contemporary hair styles without jeopardizing the safety of Fire Fighters involved in the hazardous activities associated with the varied operational requirements of the modern fire service.

## **SECTION 7.11: YMCA**

The cost of YMCA membership will be divided between the City and the employees, with the City contribution to be 75% of the monthly membership fee. The amount the City contributes toward the employee's monthly membership fee is subject to federal and state income tax withholding.

Use of a YMCA membership by a City of Berkeley employee, as provided for in this MOU, is non-compensable, is not a part of the employee's work-related duties, is not required for employment and is not condoned as part of a physical fitness program, or required to maintain top physical conditioning for the employee's job performance.

The City of Berkeley or its Claims Administrator may not be liable for any injury which arises out of a City of Berkeley employee's participation in and use of a YMCA membership.

## **SECTION 7.12: REIUMBURSEABLE INCIDENTS AND TRAINING**

In recognition of the Alameda County Mutual Aid System, the Fire Chief may authorize employees to participate in mutual aid deployments, such as strike team assignments; overhead deployments; urban search and rescue missions; or other events where the

City is reimbursed from the state or federal government for the labor costs incurred by the City.

If an employee works on the Alameda County Mutual Aid System beyond the employee's normal work week, the employee shall be reimbursed at the California Governor's Office of Emergency Service, Salary Survey/Actual Administrative rate but in no case will the employee's compensation for participating in the Alameda County Mutual Aid System exceed the rate that is reimbursed to the City by the State of California or other external entity.

For employees who are designated as exempt from the Fair Labor Standards Act's overtime requirements under Section 2.6 of this MOU, nothing in this section will alter their exempt status.

**SECTION 7.13: USE OF CITY VEHICLES**

At the direction of the Fire Chief, Assistant Fire Chiefs and Battalion Chiefs are subject to recall as a Duty Chief, wildland interface fires and for other greater alarm incidents. To facilitate response, the City shall provide a City-owned automobile that is code 3 equipped at no-cost to the employee. Note: The City will provide two new gasoline vehicles for the three Battalion Chiefs in FY21 and will endeavor to purchase a third when funding becomes available. The City will provide additional funding to assist in funding the purchase of the two vehicles.

The Fire Marshall is also subject to recall to investigate fire scenes and the City shall provide a City-owned automobile at no-cost to the employee.

## **ARTICLE 8 - PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

### **SECTION 8.1: CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

#### **8.1.1 Continued Participation**

The City shall continue participating under the Safety Members Plan of the Public Employees' Retirement System (CalPERS).

#### **8.1.2 New Members' CalPERS Retirement Formula**

"New Members" as defined by PEPRAs who are hired by the City on or after January 1, 2013 shall be entitled to the 2.7% at 57 retirement formula with highest three (3) year average compensation as set forth in PEPRAs.

#### **8.1.3 Classic Employees' CalPERS Retirement Formula**

Current employees and other employees who do not qualify as "New Members" under PEPRAs shall continue to be entitled to the 3% at 50 retirement formula in effect since December 22, 2000, with single highest year compensation. In addition to the single highest year earnings formula, Classic Employees' retirement benefit will continue to include all other benefits as were in effect as of November 28, 1996. The Plan will continue to require retirement at age sixty (60) as permitted by law.

#### **8.1.4 Optional Benefits**

Except as otherwise noted, for both Classic Employees and New Members, the City's contract with CalPERS shall include the following optional benefits:

- a) One-Year Final Compensation as provided in Section 20042 (July 22, 1976) (Classic Employees only).
- b) Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (March 1, 1973).
- c) Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).
- d) Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988).  
1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (March 1, 1973).
- e) Military Service Credit as Public Service as provided in Section 21024 (July 14, 2000).
- f) Indexed Level 1959 Survivor Benefit as provided in Section 21574.5 (June 13, 2003).

#### **8.1.5 Classic Employees' Pension Contribution**

On July 1, 1994, the City increased the base salary for Classic Employees participating in the Safety Fire Plan, in the amount of nine percent (9%). Employees then assumed responsibility for payment of the normal employee

retirement contribution to CalPERS. The City designated and shall continue to designate such payments as an Employer Pickup as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code. The employee contributions shall be made through automatic payroll deduction.

8.1.5.1 **Classic Employees' Additional Contribution:** Effective November 8, 2015, employees assumed, and shall continue to assume responsibility for contributing an additional two percent (2%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis. The City shall designate such payment to the City's CalPERS employer contribution rate as Employer Pickup as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code.

#### 8.1.6 New Members' Pension Contributions

New Members hired on or after January 1, 2013 shall pay 50% of the normal share of cost required by PEPRA.

8.1.6.1 **New Members' Additional Contribution:** Effective November 8, 2015, New Members assumed, and shall continue to assume responsibility for contributing an additional two percent (2%) of pensionable compensation (in addition to contributing 50% of the normal cost) towards the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis. The City shall designate such payments to the City's CalPERS employer contribution rate as an Employer Pickup as defined by Section 414(h)(2) of the Internal Revenue Code.

#### 8.1.7 Supplementary Retirement and Income Plan II

In lieu of participating in the Federal Social Security Program, the City provides the Supplementary Retirement and Income Plan II (SRIP II). The City's contributions to this on behalf of participating employees is not subject to income tax until it is paid out to the employees upon retirement or termination, or to the employee's beneficiary in the event of the employee's death. The City contributes 6.7% of the participating employee's salary (up to a maximum annual salary of \$32,400) into an investment account and pays into a disability insurance benefit plan on the employee's behalf; and employees may also borrow up to 50% of the balance in their SRIP II investment accounts, subject to certain limitations. Employees in the classification of Assistant Fire Chief enrolled effective July 2, 1995; employees in the classification of Battalion Chief enrolled effective March 10, 2009; and employees in the classification of Fire Marshal on January 20, 2015.

## **ARTICLE 9 - LAYOFF PROCEDURE**

### **SECTION 9.1: LAYOFF PROCEDURE**

The layoff policy for the City of Berkeley is intended to provide the maximum employment protection to City staff should a layoff become necessary. The policy also aims to minimize the impact such a layoff might have on the City's affirmative action accomplishments.

#### **9.1.1 Announcement of Layoff**

9.1.1.1 **Notification:** The City Council, City Manager, and department heads shall make every reasonable effort to manage and budget the City's resources effectively and to plan for the delivery of City services in a manner which will avoid the necessity of laying off career City employees. If a reduction in the work force for more than thirty (30) calendar days is necessitated by, but not limited to, the following: a material change in duties and organization, adverse working conditions, return of employee from leave of absence, or shortage of work or funds, the City Manager shall notify the Director of Human Resources of the intended action and the reason for layoff.

9.1.1.2 **Freezing of Positions:** Immediately following a decision which may involve the potential layoff of career City employees, the City Manager shall freeze all current City vacancies in the competitive service in similar and related classifications to those likely to be targeted for layoff, as well as all related full-time, benefited, temporary positions which are expected to last six (6) months or more, and notify all department heads that such current and anticipated vacancies will be frozen until further notice in order to implement the provisions of Section 9.1.7 (Reemployment Lists).

#### **9.1.2 Seniority Service Date**

9.1.2.1 **Time Counted:** All service in the employ of the City shall be counted toward the establishment of the employee's seniority service date, including, for example, permanent, probationary, provisional, temporary (full-time and intermittent), seasonal, and exempt employment, as well as leaves of absence for parental leave or obligatory military service while an employee of the City. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the seniority service date. Time off as result of formal disciplinary action will be subtracted from the seniority service date.

- 9.1.2.2 **Service in Promotional Rank:** All service of persons in the employ of the City in a promotional rank above the entry-level rank shall be counted toward the establishment of an employee's rank seniority service date including only probationary and permanent service as well as leaves of absence for parental leave or obligatory military service while an employee of the City. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the rank seniority service date. Time off as a result of disciplinary action will be subtracted from the rank seniority service date.
- 9.1.2.3 **Service in Appointed Rank:** All time spent in an appointed rank shall be credited to the employee's service in the employee's permanent rank. In computing both City and rank seniority, all time spent on paid leaves of absence shall be included, and all time spent on unpaid leaves of absence in excess of two consecutive payroll periods shall be excluded with the exception of parental leave.
- 9.1.2.4 **Maintenance of Current Seniority Dates:** The Human Resources Department will maintain up-to-date and current seniority dates for all City employees holding probationary and permanent appointments.

### 9.1.3 Establishment of Seniority Lists

- 9.1.3.1 **Probationary and Permanent Seniority Lists:** Whenever a layoff of one or more career employees becomes necessary, as defined above, such layoffs shall be made according to City-wide classification seniority lists. Upon receiving notification that the City Manager must proceed with a possible reduction in the work force and following receipt of information concerning the specific positions, programs, and departments involved, the Human Resources Department will immediately establish separate probationary and permanent seniority lists for each classification targeted for layoff.
- 9.1.3.2 **Layoff Order:** The names of all City employees holding permanent and probationary appointments in a given classification will be listed on the appropriate list in descending order by City seniority service date in the entry-level position and by rank seniority service date in promotional positions. Except as provided in 9.1.4 (Employee Retreat Rights) below, employees on all lists shall be laid off on the basis of their seniority service dates, i.e., employees with the least amount of total service shall be laid off first. All emergency, temporary, and provisional employees working in classifications similar to those identified for layoff must be terminated prior to the layoff of probationary or permanent employees. Employees on the probationary seniority list for a specific classification



will be laid off prior to employees on the permanent seniority list for that class.

- 9.1.3.3 **Provisional Appointments:** Probationary or permanent employees holding a provisional appointment in another classification will only be listed on a seniority list of the class in which they hold permanent or probationary status targeted for layoff.
- 9.1.3.4 **Seniority Tie Break:** If two (2) or more employees on a seniority list have an identical seniority service date, the tie shall be broken in the following order: If an employee has taken the one-year written probationary examination, the score on that examination will be used to break ties. If an employee has not taken that examination, then the written entrance examination and agility test scores shall be used to break ties; the written exam and the agility test will be equally considered.
- 9.1.3.5 **Promotions:** If two (2) or more employees have the same promotion date in rank, seniority in the promoted rank at the time of promotion shall be determined based on the selection order made by the Fire Chief.

#### 9.1.4 Employee Retreat Rights

- 9.1.4.1 **Retreat Consideration:** Before an employee with permanent or probationary status may be released from employment with the City of Berkeley, the Human Resources Department must consider the employee's right to retreat to lower-level classification through which he or she was originally promoted or any subsequently created intermediate-level career classification which provides normal progression through the classification series. Retreat rights shall also extend to employees who have not previously been promoted through a classification but for whom the classification is a natural progression or beginning in the classification series.
- 9.1.4.2 **Process:** In the process of retreating, the rank seniority date list shall be utilized. Employees with the least amount of rank seniority shall retreat first; provided, however, that a retreat from any rank below the employee's current rank shall be based on a rank seniority date which is derived from combination of all credited service in the rank to which the employee has retreated and all credited service in higher ranks held on a probationary or permanent basis. Retreat rights to the rank of permanent Assistant Fire Chief, Battalion Chief, Fire Marshal, Deputy Fire Marshal, or Fire Captain will be available only to employees who have previously held this rank on a permanent or probationary basis.



9.1.4.3 **Retreat to More than 1 Classification:** If an employee is qualified for retreat into more than one classification with comparable salary ranges or if a vacancy exists in a classification to which an employee is entitled to retreat, the options shall be discussed with the employee, and due consideration shall be given to the employee's preferences. However, it is the prerogative of the City Manager to determine the final placement offer to the employee.

9.1.4.4 **Salary:** The retreating employee has a right to be retained in the highest salary range possible which is equal to or less than his or her present salary range. An employee involved in layoff does not have a right of mandatory placement to positions with a higher salary range, i.e., promotion.

### 9.1.5 Employee Notification

9.1.5.1 **Non-Career Notifications:** Emergency, temporary, intermittent, seasonal, etc., employees shall be notified individually, in writing, of pending layoff as soon as possible, but no definite time period is required. However, at least two (2) weeks notification is desirable if possible.

9.1.5.2 **Provisional Notifications:** Provisional employees shall be notified individually, in writing, of pending layoff as soon as possible, with no less than fifteen (15) calendar days notification if targeted for release or reassignment.

9.1.5.3 **Probationary and Career Notifications:** Permanent, probationary, and career-exempt employees should be notified individually, in writing, of pending layoffs as soon as possible, with no less than thirty (30) calendar days notification if targeted for release or reassignment or retreat. Notice to an employee absent from work for any reason shall be sent by United States Mail, return receipt requested.

**Forfeiture of Offer:** If an employee fails to accept a bona fide offer of reassignment or retreat in writing within five (5) calendar days after the offer has been made, he or she forfeits further right to employment retention. Acceptance of a reassignment does not remove the right of appeal under Section 9.1.9 (Appeal Procedures).

### 9.1.6 Flexible Placement Program

9.1.6.1 **Freeze of Vacancies:** In order to minimize the negative impact of a layoff, the City Manager will, as previously stated in Section 9.1.1 (Announcement of Layoff), impose a City-wide freeze on all appropriate

vacancies as soon as it has been determined that a layoff of career City employees may be necessary.

- 9.1.6.2 **Placements by Human Resources:** Following the release of all emergency, temporary, and provisional employees in classes similar to those targeted for layoff and as soon as employees targeted for layoff have been identified and the provisions under Section 9.1.4 (Employee Retreat Rights) have been carried out, the Human Resources Department will review and identify the frozen vacant classifications into which employees ultimately targeted for layoff may be placed on the basis of total experience and education. In making this decision, a waiver of minimum qualification standard and/or the substitution of related experience and education may be made, with an understanding on the part of management and supervisory personnel that adequate on-the-job training, which can be completed within no more than six (6) months, will be provided to facilitate job adjustment and to compensate for the waiver of qualification standards, if that has occurred.
- 9.1.6.3 **Limits of Assignments:** Assignments under the flexible placement program shall be limited to positions in the same or lesser salary range as the classification for which the employee is to be laid off.
- 9.1.6.4 **Offers Made:** Offers of positions under the flexible placement program shall be made according to seniority service date and in accordance with the probationary and permanent seniority list certification process outlined in Section 9.1.3 (Establishment of Seniority Lists). All offers and placements made under this provision of the layoff policy shall be documented in detail, with records available for audit and review at all times, including written acceptance of the offer.
- 9.1.6.5 **Forfeiture of Offer:** If an employee fails to accept a bona fide written offer of an alternative job within five (5) calendar days after the offer has been made he or she forfeits further rights to employment retention. Acceptance of an alternative job under the flexible placement program in no way jeopardizes an employee's standing on the reemployment priority lists on which his or her name has been placed in accordance with Section 9.1.7 (Reemployment Lists).

## 9.1.7 Reemployment Lists

- 9.1.7.1 **Placement of Names:** The names of all probationary and permanent employees released from positions in the competitive service as a result of layoff must be placed on reemployment priority lists for those classifications from which they were separated, as well as all other classifications to which they have retreat rights in accordance with

## Section 9.1.4 (Employee Retreat Rights).

- 9.1.7.2 **List Duration:** A reemployment priority list shall remain in effect for three (3) years. Said list shall remain in effect indefinitely for employees who were retreated.
- 9.1.7.3 **Use of Reemployment Priority List:** Departments with vacancies in any classification for which there is an active reemployment priority list must use the reemployment priority list to fill their positions and may not use any other recruitment or appointment method to fill a vacancy until appropriate reemployment lists have been exhausted.
- 9.1.7.4 **Order of Rehire from Reemployment List:** When a vacancy occurs in a class for which there is a reemployment priority list, the name of the employee on the appropriate reemployment priority list with the highest seniority date shall be certified to the selecting official. Employees so certified from the reemployment priority list must be appointed to the existing vacancy.
- 9.1.7.5 **Forfeiture of Offer:** If a former employee fails to accept a bona fide written offer or reemployment within five (5) calendar days, his or her name will be removed permanently from the reemployment priority list from which the offer was made. Failure to accept an offer of reemployment to the class with the highest salary range for which the employee is eligible for reemployment will result in automatic removal from all reemployment priority lists. However, the employee may decline (or accept) reemployment to lower salary range classifications without jeopardizing his or her standing on the reemployment priority list for the classification from which he or she was originally terminated.
- 9.1.7.6 **Salary/Step Placement:** Upon reappointment to the classification from which the employee was originally separated or demoted, the employee has the right to be placed at the step of the salary range which the employee held at the time of layoff or demotion.
- 9.1.7.7 Employees reinstated or reemployed after layoff shall receive a rate within the range established for the class. Transfers shall not affect an employee's salary rate. Employees appointed to any of the positions set forth in Exhibit "A" and employed and working on a part-time basis, shall be paid in proportion to the time worked as described in their appointment.

### 9.1.8 Career-Exempt Employees

Only those employees holding full-time, benefited exempt positions who in the past have achieved permanent status and have been continuously employed without a break in service between their career and exempt appointment have the right to retreat to previously held career classifications, placement on the reemployment priority lists, and all other provisions governing layoff procedures. For the purpose of layoff, such employees shall be referred to as "career-exempt".

### 9.1.9 Appeal Procedures

Any permanent, probationary, or career-exempt employee who is laid off, demoted, or reassigned as a result of layoff and who believes that the layoff procedure has been administered in violation of the terms of this agreement as it pertains to the employee's case may appeal the action under Section 6.1 (Grievance Procedure). In addition, employees may, at all times before, during, and subsequent to layoff, review all records including seniority lists, reemployment priority lists, documentation pertaining to appointments under the flexible placement program, etc., which pertain to their classification and their rights under the provisions of the layoff policy.

### 9.1.10 Audit

- 9.1.10.1 On an annual basis, the City Manager's office shall order an audit by an outside auditor of all vacant positions filled in each department and authorized positions which have not been filled to determine whether the vacancies occurred in classifications for which reemployment priority lists were in existence, and, if so, whether the appointments made by the selecting official were in accordance with the procedures outlined in Section 9.1.7 (Reemployment Lists). In the event vacancies for which reemployment priority lists were in existence remain unfilled, the auditor shall offer an opinion as to whether or not the reasons for leaving the positions vacant appear to be legitimate. A report of the audit must be transmitted to the City Manager and the City Council.
- 9.1.10.2 If it is determined that a vacancy has been filled by a non-reemployment priority list eligible in a classification for which a reemployment priority list existed and which included available applicants at the time, the former employee with reemployment rights shall be hired and given retroactive pay from the date that the vacancy occurred. The employee who was originally hired to fill the vacancy shall continue to be retained in City employment.

City of Berkeley ~~2018~~2020-2020-2021 Memorandum of BFFA, Local 1227, I.A.F.F., BCFOA

**Signature Page**

**Employee Representatives  
Berkeley Fire Fighters Association,  
International Association of Fire Fighters  
Local 1227  
Berkeley Chief Fire Officers Association**

**Employer Representatives  
City of Berkeley**

\_\_\_\_\_  
William Kehoe Date  
BCFOA President

\_\_\_\_\_  
Dee Williams-Ridley Date  
City Manager

\_\_\_\_\_  
Jonathan Fischer Date  
BFFA President

\_\_\_\_\_  
LaTanya Bellow Date  
Director of Human Resources

\_\_\_\_\_  
Abe Roman Date  
Assistant Fire Chief

City of Berkeley

~~20182020-2020-2021~~ Memorandum of

BFFA, Local 1227, I.A.F.F., BCFOA

**EXHIBIT A – Salaries**

| <b>Initial 3.0% Equity Increase (Battalion Chief only)</b> |      |                      |      |          |        |         |         |         |         |
|------------------------------------------------------------|------|----------------------|------|----------|--------|---------|---------|---------|---------|
| Job Code                                                   | Unit | Title                | FLSA | AL (Y/N) | STEP 1 | STEP 2  | STEP 3  | STEP 4  | STEP 5  |
| 81740                                                      | A    | Assistant Fire Chief | E    | Y        |        |         | 81.0921 |         | 89.2230 |
| 81750                                                      | A    | Battalion Chief      | E    | N        |        | 49.9059 | 52.4000 | 55.0202 | 57.7715 |
| 81760                                                      | A    | Fire Marshal         | E    | Y        |        |         | 81.0921 |         | 89.2294 |

| <b>Period: Effective 10/21/2018 - 3.0% Salary Increase</b> |      |                      |      |          |        |         |         |         |         |
|------------------------------------------------------------|------|----------------------|------|----------|--------|---------|---------|---------|---------|
| Job Code                                                   | Unit | Title                | FLSA | AL (Y/N) | STEP 1 | STEP 2  | STEP 3  | STEP 4  | STEP 5  |
| 81740                                                      | A    | Assistant Fire Chief | E    | Y        |        |         | 83.5249 |         | 91.8997 |
| 81750                                                      | A    | Battalion Chief      | E    | N        |        | 51.4030 | 53.9720 | 56.6708 | 59.5046 |
| 81760                                                      | A    | Fire Marshal         | E    | Y        |        |         | 83.5249 |         | 91.9063 |

| <b>Period: Effective 07/13/2019 - 2.0% Salary Increase</b> |      |                      |      |          |        |         |         |         |         |
|------------------------------------------------------------|------|----------------------|------|----------|--------|---------|---------|---------|---------|
| Job Code                                                   | Unit | Title                | FLSA | AL (Y/N) | STEP 1 | STEP 2  | STEP 3  | STEP 4  | STEP 5  |
| 81740                                                      | A    | Assistant Fire Chief | E    | Y        |        |         | 85.1954 |         | 93.7377 |
| 81750                                                      | A    | Battalion Chief      | E    | N        |        | 52.4311 | 55.0515 | 57.8043 | 60.6947 |
| 81760                                                      | A    | Fire Marshal         | E    | Y        |        |         | 85.1954 |         | 93.7444 |

## **EXHIBIT B – Glossary of Terms**

**ALLOCATION:** The assignment of a single position to its proper class in accordance with the duties performed, and the authority and responsibilities exercised.

**ANNIVERSARY DATE:** For the purposes of determining step increases, Anniversary shall be the date an employee is appointed or promoted to their current rank.

**CAREER EMPLOYEE:** An employee who is appointed to a position in the competitive service and who has a probationary or permanent appointment with the City of Berkeley.

**CLASSIFICATION (CLASS):** A group of positions sufficiently similar in respect to their duties and responsibilities that: (a) the same descriptive title may be used with clarity to designate each position allocated to the class; (b) the same minimum requirements as to education, experience, knowledge, ability and other qualifications may be required of all incumbents; (c) the same tests of fitness may be used to choose qualified employees and, (d) the same schedule of compensation can be made to apply with equity under the same or substantially the same employment conditions.

**COMPENSATORY TIME:** Shall mean paid time off the job which is earned and accrued by an employee in lieu of immediate cash payment for employment in excess of the statutory hours for which overtime is required by this MOU or the Fair Labor Standards Act. For the purpose of this MOU, the term “Due Time” shall mean the same as Compensatory Time.

**DEMOTION:** The movement of an employee from one class to another class having a lower maximum rate of pay.

**DOMESTIC PARTNER:** A person residing with and sharing the common necessities of life with a City of Berkeley employee, where both intend to continue this arrangement indefinitely. They are unmarried; at least eighteen (18) years of age; not related by blood closer than would bar marriage in the State of California and mentally competent to consent to contracts.

**EMPLOYEE:** A person who has been legally appointed under the City of Berkeley Personnel Ordinance and the Personnel Rules and Regulations, who is on the City payroll and whose employment has not been terminated and whose position is included in this representation unit.

**END OF YEAR:** For payroll-related purposes, the last day of the last pay period in December for which the payday occurs in December. For example, if the last pay day in December falls on Thursday, the 31st (because the following Friday, January 1st is a holiday), the corresponding pay period would end on December 26. The last day of the year for payroll-related purposes would be December 26. Similarly, if the last pay day of

the calendar year were December 28, the last day of the payroll year would be December 22.

**EXEMPT:** Appointment which is exempt from the competitive service, in accordance with Section 4.04.120 of City of Berkeley Personnel Ordinance, No. 6280-N.S.

**FULL-TIME:** An assignment or combination of assignments which total forty (40) or fifty-six (56) hours per week.

**HIGH RISK CLASSIFICATIONS:** A group of positions whose duties and responsibilities present a) significant probability or chance of injury, damage or loss of life; b) exposure to risk; and c) ability to incur the risk.

**JURY DUTY PERIOD:** The period of time from which an employee appears in court as required by law to serve on an inquest jury or trial jury until such time as the employee is discharged from such service by the court. "Jury Duty Period" expressly covers only that period of time spent by the employee in service of the court as a juror and does not include any time spent in court by the employee as a result of being a party to the action, being a witness to the action, or being subpoenaed to testify in the action.

**LEAVE DAY:** A leave day is used for computing earned leave and is equivalent to a 12-hour working day for a 56-hour per week employee, or is equivalent to an 8-hour working day for a 40-hour per week employee. Leave taken is computed as the actual hours used.

**MEMORANDUM OF UNDERSTANDING:** A binding contract, as provided for by the Meyers-Milias-Brown Act, between the City of Berkeley and the Berkeley Fire Fighters Association specifying wages, hours and other terms and conditions of employment.

**PROMOTION:** The movement of an employee from one class to another class having a higher maximum rate of pay.

**PROMOTIONAL EXAMINATION:** An examination for promotion to a class in the competitive service in which participation is limited to current employees with permanent status and/or to former permanent or probationary employees who are on current mandatory reemployment lists of layoff.

**PROVISIONAL:** A career employee who is temporarily serving in a higher level or unclassified position as a temporary assignment, pending examination, classification, or in the absence of the permanent incumbent.

**RECLASSIFICATION:** Reallocation of a position from one classification to another classification based upon consideration of the kind and level of assigned duties and responsibilities.



**REEMPLOYMENT:** Reappointment of a former probationary or permanent employee to a vacant position who has been laid off under Section 9.1.7 (Reemployment Lists) in this MOU.

**REGULAR HOURLY SALARY:** The Regular Monthly Salary multiplied by twelve (12) months and divided by 2080 annual work hours for forty (40) hour per week employees. For fifty six (56) hour per week assignments, the Regular Monthly Salary is multiplied by twelve (12) and divided by 2912 annual work hours, except that time worked on the day shift is multiplied by a factor of 1.2 and time worked on the night shift is multiplied by a factor of 0.85714.

**REGULAR MONTHLY SALARY:** The base pay for a classification (as included in Exhibits "A" of this MOU).

**REINSTATEMENT:** Appointment to a vacant position of a former probationary or permanent employee, within two years of the termination date, without obtaining new eligibility through examination. Reinstatement is not mandatory and a former employee must request consideration in writing. Eligibility for reinstatement is no guarantee of appointment and former probationary employees who did not obtain permanent status must complete their probationary period in accordance with Section 5.1 (Probationary Period).

**REJECTION (PROBATION):** The separation of an employee from the service during or at the completion of the probationary period.

**RELEASE TIME:** Paid time off permitted employees, during their scheduled hours of work, to perform Association activities as provided by this MOU. This paid time off is in addition to the employee paid leave and is subject to the conditions of the applicable sections of this MOU.

**SHIFT:** A set of continuous work hours. For 40-hour per week employees, a shift comprises eight (8) hours. For 56-hour per week employees, a shift comprises twenty-four (24) hours, except that the term "day shift" means ten (10) consecutive hours and "night shift" means fourteen (14) consecutive hours and "12-hour shift" is used for purposes of computing leave time and compensatory overtime (for purposes of this MOU). The term "working shift" refers to a day or night shift for 56-hour employees or a regular shift for 40-hour employees. The term "assigned shift" refers to separate schedules in effect for 56 hour employees, such as A-shift", "B-Shift" and "C-Shift". For purposes of computing leave time and compensatory overtime (for purposes of this MOU), an average twelve (12) hour shift is used.

**TERMINATION:** The separation of an employee from the service of the City. Termination may include death, discharge, layoff, resignation, retirement, and work completion.

**TOUR (48/96):** The basic work cycle; for example, the 56-hour employee's tour consists

of six consecutive days, during which time the employee is scheduled for 2 shifts on duty and 4 off duty.

**TRANSFER:** The movement of an employee from one position to another within the same class in another department or the movement of an employee from one class to another class having a comparable level of duties and responsibilities and the same maximum rate of pay.

**VACATION YEAR:** A vacation year runs twelve (12) months, (i.e. 26 payroll periods), starting and ending on a payroll period break.

**Y-RATE:** An employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary or occupying a position in a class the salary rate or range for which is reduced, shall continue to receive his or her present salary. Such salary shall be designated as a Y rate and when that employee vacates this position, it shall be filled in accordance with new salary range established. Y-rating shall not apply to employees who are demoted for just cause, including unacceptable level of performance, or as a result of demotion under the provisions of the Layoff policy.

**EXHIBIT C – Grievance Forms**

STEP 1 - Informal Step

STEP 1.1 - Deputy Fire Chief Response

STEP 2 – Appeal to Fire Chief

STEP 2.1 – Fire Chief Response

STEP 2.2 – Director of Human Resources Response (Compensation)

STEP 3 – Appeal to City Manager

STEP 3.1 - City Manager Response

STEP 4 – Appeal to Arbitration



BFFA Local 1227 – City of Berkeley  
Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



**STEP 1 – Informal Step**

**Important Notes (MOU Section 6.1 (Grievance Procedure)):** A grievance is any dispute which involves the interpretation, application, claimed violation, or claimed noncompliance with the provisions of the Memorandum of Understanding between the City and the Association or any City ordinance, rule, regulation, or past practice which may have been or may hereafter be adopted by the City to govern personnel practices or working conditions of the City's employees covered by such Memorandum of Understanding, including any rule, regulation, or resolution which may be adopted by the City Council which results from the meet-and-confer process.

No matter shall be considered as a grievance under this Section unless it is presented within thirty (30) calendar days after the employee or the Association could reasonably have been aware of events on which the grievance is based. All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Fire Chief or his or her designated representative for payroll issues within 30 working days from the date when the employee may reasonably be expected to have learned of the alleged compensation violation. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.

Grievance Tracking No.: \_\_\_\_\_

Grievant First Name \_\_\_\_\_ Grievant Last Name \_\_\_\_\_ Date: \_\_\_\_\_

Job Title: Firefighter Dept/Location: Station One E-Board Rep: First, Last Name

Nature of Grievance (Include specific provisions of the MOU, City ordinance, rule or regulation and/or past practice, and the circumstances involved):

Relief Desired:

Grievant: \_\_\_\_\_ Rep./Steward: \_\_\_\_\_  
Signature Signature

Date Rec'd by Chief Officer: Meeting Requested: Yes  No  Date meeting occurred: \_\_\_\_\_

Deputy Fire Chief: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

**Instructions:** The grievant should complete this form electronically and print it out. It should then be given to an Executive Board member who will submit it to the Deputy Fire Chief and obtain a signature confirming receipt. Return a copy of the signed form to your assigned 1227 Executive Board representative.



BFFA Local 1227 – City of Berkeley  
Grievance Form  
(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking No.: \_\_\_\_\_

Grievant First Name \_\_\_\_\_ Grievant Last Name \_\_\_\_\_ Date: \_\_\_\_\_

**STEP 1.1 – Deputy Fire Chief Response**

**Important Note:** Any employee who believes he or she has a grievance (and/or the employee's Association representative) shall discuss the employee's complaint with the Deputy Fire Chief. If the issue is not resolved within fifteen (15) calendar days, the employee (and/or the employee's Association representative) may elect to invoke the formal grievance procedure (Step II).

Deputy Fire Chief's Response (1227 must be in receipt of this response within 15-days of their initial receipt of this grievance):

Deputy Fire Chief: \_\_\_\_\_ Date: \_\_\_\_\_  
*Signature*

Receipt of Return to 1227:

Rep/Steward: \_\_\_\_\_ Date Rec'd: \_\_\_\_\_

Rep/Steward: *Signature*  
*First Name*  
\_\_\_\_\_  
*Printed Name*

**Response to Deputy Fire Chief (to be completed by 1227 Rep./Steward):**

Date:

Deputy Fire Chief's Response is:

Satisfactory:  Unsatisfactory:

Grievance is:

Appealed:  Withdrawn:

**Instructions:** The Deputy Fire Chief shall complete this page electronically, print and return to a 1227 Executive Board representative. The 1227 representative shall immediately notify the President, 1<sup>st</sup> Vice President, or the 2<sup>nd</sup> Vice President.



BFFA Local 1227 – City of Berkeley  
Grievance Form  
(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking No.: \_\_\_\_\_

Grievant First Name | Grievant Last Name | Date: \_\_\_\_\_

**STEP 2 – Appeal to Fire Chief**

**Important Notes:** The written statement shall be a clear concise statement of the grievance, including specific provisions of this agreement and/or City ordinance, rule or regulation, and/or past practice alleged to have been violated, the circumstances involved in the decision rendered at Step I, and the specific remedy sought. Either party shall be entitled to a personal conference upon request.

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Fire Chief or his or her designated representative for payroll issues within 30 working days from the date when the employee may reasonably be expected to have learned of the alleged compensation violation. If such issues cannot be resolved by the Fire Chief (or in consultation with the Auditor), the Fire Chief will refer the matter to the Director of Human Resources within ten (10) working days of receipt of the grievance.

Reasons for the appeal:

Date Rec'd by Fire Chief: \_\_\_\_\_

Fire Chief: \_\_\_\_\_  
*Signature*

Meeting Requested by 1227: Yes  No

Meeting Requested by Fire Chief: Yes  No

Date meeting occurred: \_\_\_\_\_

**Instructions:** The grievant and their Executive Board representative shall complete this form electronically, print it out and submit it directly to the Fire Chief along with all previous forms (Step I Nature, Step I DC Response, and any addendum documents) within 10 working days of receiving the DC response.



### BFFA Local 1227 – City of Berkeley

### Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking No.: \_\_\_\_\_

Grievant First Name | Grievant Last Name | Date: \_\_\_\_\_

## STEP 2.1 – Fire Chief Response

**Important Notes:** The Fire Chief shall communicate a decision to the grievant with a copy to the Association and to the Director of Human Resources in writing within ten (10) working days after receiving the grievance or ten (10) working days from the date of the personal conference, whichever is later, and such action will terminate Step II.

Fire Chief's Response:

Fire Chief: \_\_\_\_\_ Date: \_\_\_\_\_  
*Signature*

Receipt of Return to 1227:  
Rep/Steward: \_\_\_\_\_ Date Rec'd: \_\_\_\_\_  
*Signature*

**Response to Fire Chief (to be completed by 1227 Rep./Steward):**

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

Fire Chief's Response is:

Satisfactory:       Unsatisfactory:

Grievance is:

Appealed:       Withdrawn:

**Instructions:** The Fire Chief shall complete this page electronically, print and return to a 1227 Executive Board representative. The 1227 representative shall immediately notify the President, 1<sup>st</sup> Vice President, or the 2<sup>nd</sup> Vice President.



### BFFA Local 1227 – City of Berkeley

### Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking  
No.:

Grievant First Name

Grievant Last Name

Date:

## STEP 2.2 – Director of Human Resources Response (Compensation)

**Important Notes:** The Director of Human Resources or his or her designee shall have 30 working days to research the issue and provide a written response to the Association and the affected employee. In such cases no adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed or thirty (30) days from the date when an employee may reasonably be expected to have learned of said claimed violation whichever is later.

If the affected employee is not satisfied with the written decision of the Director of Human Resources or his or her designee, the affected employee will have ten (10) working days to appeal the decision in writing to the City Manager and the grievance will move to Step III of the Grievance Procedure as provided in Section 6.1.3.3 (Step III - City Manager).

|                                                                                 |                          |                               |                              |
|---------------------------------------------------------------------------------|--------------------------|-------------------------------|------------------------------|
| <b>Compensation Matter:</b>                                                     |                          | Yes: <input type="checkbox"/> | No: <input type="checkbox"/> |
| HR Representative:                                                              | Enter Name               |                               | Date:                        |
| Signature                                                                       |                          |                               |                              |
| HR Response (required within 30-working days of receipt of grievance) received: |                          |                               |                              |
|                                                                                 |                          |                               |                              |
| Receipt of Return to 1227:                                                      |                          |                               |                              |
| Rep/Steward:                                                                    |                          | Date Rec'd:                   |                              |
| Signature                                                                       |                          |                               |                              |
| <b>Response to Human Resources (to be completed by 1227 Rep./Steward):</b>      |                          |                               |                              |
| Human Resources Response is:                                                    |                          |                               |                              |
| Satisfactory:                                                                   | <input type="checkbox"/> | Unsatisfactory:               | <input type="checkbox"/>     |
| Grievance is:                                                                   |                          |                               |                              |
| Appealed:                                                                       | <input type="checkbox"/> | Withdrawn:                    | <input type="checkbox"/>     |
| Appeal deadline: 10-working days from receipt of HR response.                   |                          |                               |                              |





# BFFA Local 1227 – City of Berkeley Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking  
No.: \_\_\_\_\_

Grievant First Name \_\_\_\_\_ Grievant Last Name \_\_\_\_\_ Date: \_\_\_\_\_

## STEP 3 – Appeal to City Manager

**Important Notes:** In the event that the employee (or the employee’s Association representative) is not satisfied with the decision at Step II – Fire Chief, the employee (or the employee’s Association representative) may appeal the decision in writing to the City Manager or his or her designee within ten (10) working days after the termination of Step II – Fire Chief.

The grievant or the City Manager or his / her designee shall be entitled to a personal conference upon request within the time limits specified.

Reasons for the appeal:

Date Rec'd by  
City Manager: \_\_\_\_\_

City Manager (or designee): \_\_\_\_\_ Date: \_\_\_\_\_  
*Signature*

Meeting Requested: Yes  No

Date meeting occurred: \_\_\_\_\_

**Instructions:** The grievant and their Executive Board representative shall complete this form electronically, print it out and submit it to the City Manager along with all previous forms (Step I Nature, Step I DC Response, and any addendum documents) within **10 working days** after the termination of Step II. Once a signature of receipt is obtained a copy of this form shall be made and returned to the assigned Executive Board representative.

Grievant First Name | Grievant Last Name | Date: |

**STEP 3.1 – City Manager Response**

**Important Notes:** The City Manager or his or her designee shall communicate a decision within ten (10) working days after receiving the appeal or ten (10) working days from the date of the personal conference, whichever is later and such decision will terminate Step III – City Manager.

City Manager Response:

City Manager: | Date: |  
*Signature*

Return to 1227:

Rep/Steward: | Date Rec'd: |  
*Signature*

**Response to City Manager (to be completed by 1227 Rep./Steward):**

Date:

City Manager's Response is:

Satisfactory:       Unsatisfactory:

Grievance is:

Appealed:       Withdrawn:

Instructions: The City Manager (or his or her designee) shall complete this page electronically, print and return to a 1227 Executive Board representative. The 1227 representative shall immediately notify the President, 1<sup>st</sup> Vice President, or the 2<sup>nd</sup> Vice President.

Grievant First Name

Grievant Last Name

Date:

**STEP 4 – Appeal to Arbitration**

**Important Notes:** If the Association is not satisfied with the City Manager's response at Step III- the Association may require that the grievance be referred to an impartial arbitrator, who shall be designated by mutual agreement between the Association and the City Manager. The Association must notify the City Manager in writing within ten (10) working days of receipt of the City Manager's decision that they intend to move the grievance to arbitration.

**1227 Executive Board Arbitration Request:**

Date:

City Manager's Response was:

Satisfactory:       Unsatisfactory:

Association Requires Grievance to be Submitted to Arbitration:

Yes:       Withdrawn:

|                                 |                  |
|---------------------------------|------------------|
| President:                      | <i>Signature</i> |
| 1 <sup>st</sup> Vice President: | <i>Signature</i> |
| 2 <sup>nd</sup> Vice President: | <i>Signature</i> |

**Instructions:** The 1227 Executive Board shall complete this form electronically and submit it to the City Manager along with all previous forms (Step I Nature, Step I DC Response, and any addendum documents) with copies to the Director of Human Resources, the Fire Chief, the Union President, and the 1<sup>st</sup> Vice President. This must occur within ten (10) **working days** of receipt of the City Manager's decision that they intend to move the grievance to arbitration.

Exhibit D - Tentative Agreement

CITY OF BERKELEY / BCFOA (IAFF 1227) 2020 MOU NEGOTIATIONS  
TENTATIVE AGREEMENT – December 1, 2020

**SECTION 1.7: DURATION**

The Memorandum of Understanding and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at 2400 hours June 30, 2021, the last day of the last full pay period in June 2021. Nothing in this agreement shall be retroactive.

**SECTION 2.1: SALARIES**

Salaries are set according to the classifications and salary ranges assigned to those classifications as listed in the attached Exhibit "A" to this MOU. In recognition of the City's anticipated revenue shortfall for FY 2021 resulting from the COVID-19 pandemic, the parties agree there will be no increases to salary ranges for the term of this agreement. This is in order to aid the City's ability to continue routine services and minimize fiscal impacts for employees.

**SECTION 2.1.13: STANDBY – DUTY CHIEF COVERAGE**

As determined by the Fire Chief, Battalion Chiefs or Assistant Chiefs may be assigned as the Duty Chief. A Chief Officer assigned the responsibility and serving in the role of Duty Chief shall receive a differential of 4.8% (of current step, base salary) for Assistant Chief and 5.60% (of current step, base salary) for Battalion Chief, per hour for each hour so assigned. When functioning as a Duty Chief, members shall be available for service at any time when called. If an employee assigned as the Duty Chief is not available when called or is unable or fails for any reason to perform the service when called, the employee shall not receive the pay provided for those hours.

A Battalion Chief acting as the Duty Chief who is called from his or her living quarters shall respond into the City when so required and shall be compensated in accordance with Section

**2.6.2 (Overtime – Eligibility and Rate).**

This Higher-Class Duty Chief Premium will be reported to CalPERS as Duty Chief Premium Pay/Temporary Upgrade Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

**NEW SECTION 2.6.8: ASSISTANT CHIEFS WORKING AS BATTALION CHIEFS**

40-hour Assistant Chiefs shall be eligible to work as a Battalion Chief, for straight pay, compensated hour for hour during non-regularly scheduled working hours. This does not apply to relief provided to the on Duty Battalion Chief during an Assistant Chief's normal work schedule.

For employees who are designated as exempt from the Fair Labor Standards Act's overtime requirements under Section 2.6 of this MOU, nothing in this section will alter their exempt status.

**NEW SECTION 3.4.2: COVID LEAVE**

Due to the nature of bargaining unit work, backfill is required so the City will credit floating holiday hours in the form of a stipend to all ranks covered in this Agreement equal to twenty (20) hours to be paid at the beginning of the first full pay period after Council adoption. The reduction of COVID Leave from forty (40) hours will provide the majority of funding for two new vehicles; and the remainder will come from the Berkeley Fire Department budget.

**NEW SECTION 7.13: USE OF CITY VEHICLES**

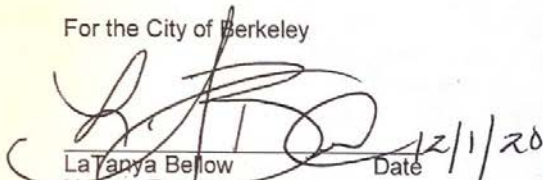
At the Direction of the Fire Chief, Assistant Fire Chiefs and Battalion Chiefs are subject to recall as a Duty Chief, wildland interface fires and for other greater alarm incidents. To facilitate response, the City shall provide a City-owned automobile that is code 3 equipped at no-cost to the employee. Note: The City will provide two new gasoline vehicles for the three Battalion Chiefs in FY21 and will endeavor to purchase a third when funding becomes available. The City will provide additional funding to assist in funding the purchase of the two vehicles.

The Fire Marshall is also subject to recall to investigate fire scenes and the City shall provide a City-owned automobile at no-cost to the employee.

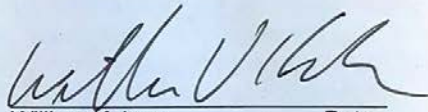
**SECTION 7.5: RESIDENCY REQUIREMENT**

Section 7.5 of the MOU shall be deleted due to adoption and passage of the ballot measure.

For the City of Berkeley

  
LaTanya Bell  
Human Resources  
Director  
Date 12/1/20

For BFFA, Local 1227

  
William Kehoe  
President, BCFOA, Local 1227  
Date



## **MEMORANDUM OF UNDERSTANDING**

**between**

**City of Berkeley**

**and**

**Berkeley Fire Fighters Association, Local 1227 I.A.F.F.  
Berkeley Chief Fire Officers Association**

**June 30, 2020 to June 30, 2021**

INTENTIONALLY LEFT BLANK

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

MEMORANDUM OF UNDERSTANDING: BERKELEY FIRE FIGHTERS ASSOCIATION, I.A.F.F  
LOCAL 1227 / BERKELEY CHIEF FIRE OFFICERS ASSOCIATION

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

WHEREAS, representatives of the City of Berkeley Negotiating Team and the Berkeley Fire Fighters Association Local 1227 I.A.F.F., Berkeley Chief Fire Officers Association have met and conferred in good faith and have reached agreement on a new one-year Memorandum of Understanding that incorporates all changes and modifications in wages, hours and other terms and conditions of employment agreed to by the parties; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute the new Memorandum of Understanding for the period June 30, 2020 through June 30, 2021 with the Berkeley Fire Fighters Association Local 1227 I.A.F.F., Local 1227, Berkeley Chief Fire Officers Association Chapters, including changes in certain benefits on dates specified in the Memorandum of Understanding which is attached hereto, made a part hereof and marked Exhibit A.

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

The foregoing Resolution was adopted by the Berkeley city Council on January 19, 2021 by the following vote:

Ayes:

Noes:

Absent:

Attest:





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2020-2021 Memorandum of Understanding

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2020-2021 Memorandum of Understanding

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## **ARTICLE 1 - ADMINISTRATION**

### **SECTION 1.1: RECITALS**

This Memorandum of Understanding is entered into pursuant to the Meyers-Milias - Brown Act (Government Code Sections 3500-3511, as amended), and has been jointly prepared by the parties.

The City Manager is the representative of the City of Berkeley (herein - after referred to as "the City") in employer-employee relations as provided in Resolution No. 43,397-N.S. and adopted by the City Council on October 14, 1969 and amended as of 1971, and retains management rights as provided therein unless otherwise specifically provided for in this agreement.

The Berkeley Fire Fighters Association Local 1227, International Association of Fire Fighters (hereinafter referred to as "the Association"), is the recognized employee organization for the Berkeley Chief Fire Officers Association employees in Representation Unit A (Represented Fire Management), which organization has been certified as such pursuant to said Resolution No. 43,397-N.S. The employee positions in such Representation Unit are set forth in Exhibit "A" attached hereto and made a part hereof. The Berkeley Firefighters Association, Local 1227, I.A.F.F. is recognized as the sole representative of employees assigned to such positions.

The parties have met and conferred in good faith regarding wages, hours, and other terms and conditions of employment of the employees in said Representation Unit A; have exchanged freely information, opinions and proposals; and have endeavored to reach agreement on all matters relating to the employment conditions and employer-employee relations of such employees. This Memorandum of Understanding (MOU) shall be presented to the City Council as the joint recommendation of the undersigned.

### **SECTION 1.2: RECOGNIZED EMPLOYEE ORGANIZATION**

#### **1.2.1 Recognition**

The Association is the majority representative of all employees within Representation Unit A (Represented Fire Management) (FC00); and shall continue to be recognized as such unless, in accordance with the provisions of Resolution No. 43,397-N.S.

#### **1.2.2 Deduction of Dues**

The City shall deduct, once monthly, the amount of the membership fee or service fee deductions, as appropriate, from the regular periodic payroll warrant of each City

employee and forward the amount to the Association, save amounts deducted due to religious objectors which amount shall be forwarded to the designated charitable organization. An exception from these deductions shall exist in situations when an employee is in a leave without pay or other unpaid status such that there is no payroll amount from which to make a deduction. The City shall continue to deduct insurance premiums and other such deductions as may be specified by the employee in accordance with past practice. The Association shall provide sixty (60) day notice on any changes in dues or assessments or premiums.

- 1.2.3** The City and the Association recognize this MOU (see Glossary) as a binding and legal contract between the two parties.
- 1.2.4** The City shall print the new MOU in booklet form and have it ready for distribution within sixty (60) days of final ratification. The City shall provide the Association with twenty (20) copies of the booklet to assure availability for each member of Unit A.

### **SECTION 1.3: EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION STATEMENT**

The Association certifies that it has no restriction on membership based on race, color, creed, ethnicity, ancestry, religion, marital or domestic partner status, gender, age, sexual orientation, national origin, political affiliation, gender identity or gender expression, parental status, pregnancy, disability or medical condition, Acquired Immune Deficiency (AIDS/HIV) or AIDS related condition, or any other status protected by applicable state or federal law, or protected Union activity. The Association agrees that it will support programs for making members of minority groups and women aware of employment opportunities within the City; and that it will work with the City to increase recruitment efforts of such minorities and women into City service. The Association recognizes and supports the City's commitment to equal employment opportunity.

Neither the City nor the Association shall discriminate against any employee covered by this MOU in a manner which would violate any applicable laws because of race, creed, religion, marital status, color, religion, political affiliation, sexual orientation, sex, national origin, disability or age.

The City of Berkeley Harassment Prevention Policy, as may be amended from time to time to comply with applicable state or federal law, is available on-line on the City's IntraWeb at <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=10318>, in the Department of Human Resources, or by contacting the City's Equal Employment Opportunity and Diversity Officer.



## SECTION 1.4: ASSOCIATION REPRESENTATIVES

### 1.4.1 Association Release Time

The City shall allow two (2) representatives of the Association, subject to the conditions set forth in Sections 1.4.2 (Negotiations) and 1.4.3 (Advance Notice), reasonable time off from work without loss of compensation or other benefits to represent its members in disputes which involve the interpretation or application of those rules, regulations, and resolutions which have been or may hereafter be adopted by the City Council to govern personnel practices and working conditions, including such rules, regulations, and resolutions as may be adopted by the City Council to effect MOU which may result from the meeting and conferring process, and to represent its members in meeting and conferring in good faith for amendments to this MOU in the future.

### 1.4.2 Negotiations

With respect to the meet-and-confer process, three (3) Association representatives shall be the maximum number who will be allowed concurrent time off for negotiations of a successor MOU.

### 1.4.3 Advance Notice

The representative shall advise his or her Fire Chief or Deputy Fire Chief through the chain of command twenty-four (24) hours in advance before leaving their work assignments, except for emergency situations which require the immediate attention of said representative, and, in such situations, the notice shall be given at the earliest possible time. In no case shall an employee leave his or her job without the approval of a chief officer.

### 1.4.4 Association Representative

Per the requirements of the Fire Fighters' Bill of Rights Act, an employee who requests such may have an Association representative present at any meeting with the Deputy Fire Chief and/or the Fire Chief which could result in punitive action of that employee. The Association will make a good faith effort to minimize the response time to an employee's request for representation.

## SECTION 1.5: SEVERABILITY OF PROVISIONS

This MOU is subject to all current and future applicable federal and states laws and regulations, and all lawful rules, policies, and regulations of the City of Berkeley in effect at the time this MOU is adopted, except as expressly modified by this Agreement. If any provision of this MOU is determined to be in conflict or inconsistent with any laws, rules, and/or regulations or is otherwise held to be invalid or unenforceable, such provision may be suspended or superseded, and the remainder of this MOU shall continue in full force and effect. If any provision is invalidated, the parties shall meet and confer in good faith regarding a replacement provision.

Should any City rule, regulation or policy conflict with the MOU, the MOU shall supersede.

#### **SECTION 1.6: FINALITY OF RECOMMENDATIONS**

The recommendations set forth in this MOU are final. No change or modifications shall be offered, urged, or otherwise presented by the Association or the City Manager prior to the beginning of negotiations for the contract that will go into effect when this one has expired; provided however, that nothing herein shall prevent the parties to this MOU from meeting and conferring and making modifications herein by mutual consent. No such amendments to this MOU shall be effective until adopted by City Council and ratified by the Association.

This MOU shall supersede all existing memoranda agreement between the City and the Association.

#### **SECTION 1.7: DURATION**

The term of this MOU shall commence when the terms and conditions set forth herein have been adopted by the City Council but in no event shall this MOU be effective prior to 0001 hours, June 30, 2020. This MOU and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at 2400 hours, June 30, 2021.

## **ARTICLE 2 - SALARIES, HOURS OF WORK AND COMPENSATIONS ISSUES**

### **SECTION 2.1: SALARIES**

Salaries are set according to the classifications and salary ranges assigned to those classifications as listed in Exhibit "A" to this MOU and attached hereto. In recognition of the City's anticipated revenue shortfall for FY 2021 resulting from the COVID-19 pandemic, the parties agree there will be no increases to salary ranges for the term of this agreement. This is in order to aid the City's ability to continue routine services and minimize fiscal impacts for employees.

#### **2.1.1 Ranges**

Salaries are set according to the classifications and salary ranges assigned to those classifications and with the effective dates listed in Exhibit "A" to this MOU and attached hereto.

#### **2.1.2 Step Increases**

No salary advancement shall be made so as to exceed the maximum rate established for the class to which the advanced employee's position is allocated. Advancement shall be in accordance with the compensation plan of the City, provided that step increases within the salary range shall occur on the anniversary date of the appointment, subject to the exception in Section 2.1.5 (Unpaid Leave Effect on Pay Increases) for extended unpaid leaves of absence.

**Step Increases for Assistant Fire Chief and Fire Marshal:** Steps shall be reinstated for the Assistant Fire Chief and the Fire Marshal classifications. Each incumbent will remain in their current salary pending their next Anniversary Date (of promotion or appointment to current position), at which time they will be placed in the higher step of the range closest to their current salary.

#### **2.1.3 Salary Placement and Entry – Lateral Incentive**

Employees occupying a position in the competitive service shall be paid a salary or wage within the range established for that position's classification as set forth in Exhibit "A" for the appropriate anniversary date of promotion or appointment. The minimum rate for the classification shall apply to employees upon original appointment of the position, except in cases of lateral entry. For the purpose of this Section a "lateral entry appointment" shall be defined as a person who has completed the probationary period as an Assistant Fire Chief, Fire Marshal, or similar equivalent classification in a paid organized Fire Department or transfers from another agency. The Fire Chief may recommend to the Director of Human Resources and City Manager that a lateral appointment be made at a salary step or pay schedule range

above the entry pay rate that is commensurate with the appointee's years of service as an Assistant Fire Chief or Fire Marshal with a paid organized Fire Department.

#### **2.1.4 Maximum Pay Rate**

No salary advancement shall be made so as to exceed the maximum rate established for the class to which the advanced employee's position is allocated. Advancement shall be in accordance with the compensation plan of the City and shall depend upon increased service value of an employee to the City as exemplified by recommendations of the department head, performance record, special training, length of service, and other pertinent evidence.

#### **2.1.5 Unpaid Leave Effect on Pay Increases**

An employee's pay increase shall not be affected by any leave of absence without pay if the employee is off the payroll for less than one hundred sixty consecutive hours for employees assigned to a forty hour work week or two hundred eighty eight (288) hours for employees assigned to a fifty six (56) hour work week. If the employee is off the payroll for one hundred sixty (160) consecutive hours for employees assigned to a forty (40) hour work week or two hundred eighty eight (288) hours for employees assigned to a fifty six (56) hour work week, the total amount of time off shall be made up before the employee shall be entitled to such pay increase, except that employees on approved parental leave or military leave are exempt from such requirement. Employees must receive an overall evaluation of "meets requirements" in order to advance to the next step in the salary range.

#### **2.1.6 Y-Rate**

Any employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary, or any employee occupying a position in a class for which the salary rate or range is reduced, shall continue to receive his or her present salary. Such salary shall be designated as "Y-rate". When an employee on a "Y-rate" vacates his or her position, subsequent appointments to that position shall be made in accordance with Section 2.1.2 (Step Increases).

#### **2.1.7 Bi-Weekly Payments**

Payment of salaries herein established shall be bi-weekly. Each pay period shall begin at 8:01 a.m. Sunday, up to and including 8:00 a.m. Sunday, two weeks following. Each payment shall be made not later than the Friday following the ending of each payroll period and shall include payment for all earnings during the previous payroll period.

**2.1.7.1 Payment of Annual Salary in Equal Amounts:** The City has no plans to change the practice of paying employees their annual salary in equal amounts each pay period but if it should become unfeasible to continue this practice, the City will meet and confer with the Association regarding changes to the present practice.

2.1.7.1.1 **40-Hour Week:** For employees on a forty (40) hour week, the hourly rate shall be the quotient of the annual salary (12 times the monthly salary) divided by 2,080 hours carried to four (4) decimal places.

2.1.7.1.2 **56-Hour Week:** For employees on a fifty-six (56) hour week, the hourly rate shall be the quotient of the annual salary (12 times the monthly rate) divided by 2,912 hours carried to four (4) decimal places.

2.1.7.1.3 **Work Period:** For Battalion Chiefs, who are eligible for overtime under this MOU, the work period is defined as twenty-four (24) days with an FLSA overtime threshold of 192 hours.

**2.1.8 Matrix of Comparable Cities**

The following list of jurisdictions is established for the purpose of comparing total compensation:

|                        |                                      |                   |
|------------------------|--------------------------------------|-------------------|
| City of Alameda        | City of Fremont                      | City of Palo Alto |
| County of Alameda      | City of Hayward                      | City of Richmond  |
| County of Contra Costa | Livermore-Pleasanton Fire Department | City of San Mateo |
| City of Daly City      | City of Oakland                      | City of Vallejo   |

The City reserves the right to modify these survey agencies, in its discretion, no later than the first MOU negotiations meeting.

**2.1.9 Emergency Medical Technician Differential**

Unit A employees who maintain current Emergency Medical Technician (EMT) certification shall receive an EMT pay differential of four percent (4%). This EMT shall be reported to CalPERS as Emergency Medical Technician Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

**2.1.10 Pay Effective Dates**

All changes in pay rate will go into effect at the beginning of a pay period (see Section 2.1.7 (Bi-Weekly Payments)) and stay in effect until the last day of a pay period if they are a result of the following:

- a) Application of a cost of living adjustment;
- b) Step increases;
- c) Retroactive adjustments;
- d) Implementation of CalPERS options;
- e) Change of employee's status from career to hourly or vice versa;
- f) Promotion or demotion;

If the pay rate change is triggered by an event which occurs in the second half of the pay period, the change in pay rate will become effective on the first day of the following pay period. Similarly, the changed pay rate should cease to be in effect on the last day of the pay period during which the employee is no longer eligible if the triggering event occurs during the second half of the pay period; or if the triggering event occurs during the first half of the pay period, the changed pay rate would cease to be in effect on the last day of the preceding pay period.

**2.1.11 End of Year Calculation**

For pay purposes of calculating annual pay, the City will utilize the IRS definition of "end of the year" which is the close of the last City pay period for which the payday falls within the calendar year. See Glossary for additional explanation.

**2.1.12 Longevity Pay**

Represented employees in Unit A who complete nineteen (19) years of service shall receive a five percent (5%) differential beginning with their anniversary date that starts their twentieth (20<sup>th</sup>) year of service with the City of Berkeley, and this differential shall apply to all hours in a paid status.

**2.1.13 Standby – Duty Chief Coverage**

As determined by the Fire Chief, Battalion Chiefs or Assistant Chiefs may be assigned as the Duty Chief. A Chief Officer assigned the responsibility and serving in the role of Duty Chief shall receive a differential of 4.8 % (of current step, base salary) for Assistant Chief and 5.60% (of current step, base salary) for Battalion Chief, per hour for each hour so assigned. When functioning as a Duty Chief, members shall be available for service at any time when called. If an employee assigned as the Duty Chief is not available

when called or is unable or fails for any reason to perform the service when call, the employee shall not receive the pay provided for those hours.

A Battalion Chief acting as the Duty Chief who is called from his or her living quarters shall respond into the City when so required and shall be compensated in accordance with Section 2.6.2 (Overtime – Eligibility and Rate).

This Higher-Class Duty Chief Premium will be reported to CalPERS as Duty Chief Premium Pay/Temporary Upgrade Pay. However, any hours worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

## SECTION 2.2: PAYROLL ERRORS

To ensure that system or other errors which affect an employee’s pay are processed in an efficient and effective manner, the City shall notify the affected employee(s) as soon as practicable. Payroll errors detected by an employee shall, as soon as practicable, be communicated to the employee’s supervisor. The Fire Chief or Deputy Chief shall notify the department Payroll Clerk. In the case of under payments, the Payroll Clerk shall submit the appropriate adjustments as soon as practicable.

Payroll errors identified by the Auditor will be communicated to the employee either directly by Auditor staff or through the Deputy Chief. Under payments will be processed as soon as practicable.

In the event of an overpayment, the Auditor's Office will determine a reasonable repayment schedule and inform the employee of the schedule directly, or through the Deputy Fire Chief. The affected employee shall be given an opportunity to discuss the schedule of repayment and, if necessary, to request an adjustment to the repayment schedule as a needed and reasonable accommodation. Factors considered in determining a reasonable accommodation for repayment of wages include, but are not limited to, the length of time the overpayment has occurred, the amount of the overpayment, the employee’s normal salary, and other financial obligations of the employee. The City and the Association agree that the City is authorized to recover any salary overpayment made to the employee from the employee’s wages. In the event that (1) the employee does not respond within 10 working days of being notified of the overpayment, or (2) mutual agreement on the repayment schedule is not achieved within 10 working days of the employee being notified of the overpayment, the Auditor's Office will proceed to implement a reasonable repayment schedule.

## SECTION 2.3: BILINGUAL PREMIUM PAY

Effective December 8, 2015, the Fire Chief may make a Bilingual Premium Pay

Differential assignment of two percent (2%) of an employee who is required as an essential part of his or her job to provide non-English language services, including Braille and sign language. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of 2% will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

### **2.3.1 Applications**

The Fire Chief will accept applications from employees wishing to apply for a bilingual differential in the first quarter of each year, or within the first three months of employment.

### **2.3.2 Competency**

The bilingual premium will not be applicable under any circumstances except to an employee who possesses second language competency. The Fire Chief reserves the right to require testing for second language appropriate competency prior to a Bilingual Premium Pay Differential and be required to demonstrate use at least on a monthly basis.

## **SECTION 2.4: ACTING IN HIGHER CLASSIFICATION**

### **2.4.1 Temporary Assignments to a Higher Classification**

In order for an employee to be paid for temporary assignment to a higher classification, the following requirements must be observed. Prior to the starting date of the assignment, the employee must be specifically assigned in writing by the Fire Chief or his or her authorized representative with the prior, written approval of the City Manager to temporarily serve in a higher classification. The employee must work a minimum of one (1) day, meet the minimum qualifications, and perform the duties of the higher classification. Employees meeting these requirements shall be paid at the lowest step or range of the higher classification that provides a five percent (5%) differential. An employee will only be eligible for higher classification pay when working.

## **SECTION 2.5: HOURS & DAYS OF WORK / ALTERNATE WORK SCHEDULE PROGRAM**

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

### **2.5.1 48/96 Work Schedule**

Battalion Chiefs will be required to work a 56-hour suppression work week. This may require a 48/96 schedule as their regular schedule.

### **2.5.2 48/96 Impacts**



If the Fire Chief determines the 48/96 schedule is causing negative impacts, such as, but not limited to, an increase of vehicle accidents, industrial injuries, sick leave usage, Alameda County EMS unusual occurrences reports, health and safety complaints, quality improvement or assurance issues, performance of duty reprimands, or customer service complaints, the Union agrees to meet with the Fire Chief upon request to discuss concerns, if any, the Fire Chief might have in the future regarding the 48/96 schedule.

### 2.5.3 Evaluation

The City and the Association share the interest of ensuring responders are well rested and able to make sound decisions during emergency scenarios. Both parties recognize the need to evaluate the potential effects of workload secondary to consecutive work hours.

### 2.5.4 Daylight Saving Time

2.5.4.1 **Spring:** In the Spring when transitioning to Daylight Saving Time (DST), employees Battalion Chiefs working during the one (1) hour transition from Standard Time to DST will be paid only for actual hours worked. Employees working on a shift which includes the one (1) hour transition may be granted an option by the Department Head or his or her designee, to work an additional hour or use compensatory time, floating holiday, or vacation to make up for the lost work hour.

2.5.4.2 **Fall:** In the Fall when transitioning from DST, employees Battalion Chiefs working during the one (1) hour transition will be paid for all hours worked including overtime at one and one-half (1 ) times the straight-time rate of pay for hours worked in excess of the regular workweek as set forth in Section 2.6 (Overtime) of this MOU.

## SECTION 2.6: OVERTIME

### 2.6.1 FLSA Designation

Consistent with the provisions of the Fair Labor Standards Act (FLSA), the City shall designate certain administrative, professional, and management positions to be exempt. Said designation shall be in writing and shall include the basis for such exclusion. The Association shall be provided with a list of all such exempt positions along with information as to the reasons for exemption status for employees in Unit A.

### 2.6.2 Eligibility and Rate

Battalion Chiefs, who are not eligible to receive Administrative Leave, shall receive compensation for all work performed during the employee's day off, off-shift, or other scheduled time off during the tour of duty. Battalion Chiefs designated and authorized to work overtime shall be paid for all work performed in an overtime status and shall be compensated at a rate of one and one-half (1 ) times the straight time rate based upon regular monthly salary at the hourly rate to which the employee is entitled under this MOU at the time he or she works the overtime.

### 2.6.3 Battalion Chief Compensatory Time Off or Payment

A Battalion Chief may request compensation for overtime by compensatory time off or by payment. The Fire Chief shall consider the employee's preference. Whether the employee shall be compensated for overtime by compensatory time or by payment shall be at the sole discretion of the Fire Chief.

### 2.6.4 Battalion Chief Compensatory Time and Maximum Accumulation

For the purposes of this MOU the term "Compensatory Time" shall mean the same as the term "Due Time".

A Battalion Chief may accumulate compensatory time for hours worked in excess of the regular workday / workweek in lieu of compensation at the rate of time and one-half (1 ) hours for each hour worked. Compensatory time off shall not accumulate in excess of one hundred eight (108) overtime hours worked which is the equivalent of one hundred sixty two (162) hours of compensatory time a Battalion Chief assigned to a fifty-six (56) hour week work schedule. Compensatory time in excess of 162 shall automatically be paid as compensation.

### 2.6.5 Workweek Computation

For the purpose of computing overtime, the workweek shall be defined as beginning at 8:01 a.m. Sunday morning and ending the following Sunday.

### 2.6.6 Battalion Chief Overtime Activities

Overtime for approved activities not related to suppression staffing or emergency callbacks require the Deputy Fire Chief's approval in advance.

## 2.6.7 Battalion Chief Call-Back

- 2.6.7.1 **Normal Staffing Needs:** Battalion Chiefs who are called back to work by the department for normal staffing needs (i.e., during non-emergency times), shall be paid overtime compensation only for actual time worked, commencing upon reporting for duty.
- 2.6.7.2 **Emergency Call-Back:** A Battalion Chief who is required to report to work for an emergency will be paid for travel time as well, in accordance with FLSA standards.
- 2.6.7.3 **Minimum Call-Back:** In any case of emergency call-back when an employee responds, the minimum time for which such overtime compensation shall be paid will be four (4) hours.
- 2.6.7.4 **Overtime Practices:** The Department will adhere to the overtime hiring procedures and policy as stated in the Overtime Policy and Procedures General Order.

## SECTION 2.7: COURT PAY

An off duty Battalion Chief, who is subpoenaed to appear in court in cases in which the City is a party, or as a witness for criminal acts or civil torts that were witnessed on duty, shall be compensated at one and one-half (1½) times his or her regular straight-time rate for all hours the employee is so ordered to appear.

## **ARTICLE 3 - LEAVES**

### **SECTION 3.1: ADMINISTRATIVE LEAVE**

Employees in classifications identified as not eligible for Overtime under Section 2.6 (Overtime) of this MOU shall be credited with fifty (50) hours of Administrative Leave each January 1. Administrative Leave which is not utilized during any calendar year will be credited to the individual's vacation balance at the end of the calendar year. All rules governing vacation balances and when vacation can be scheduled in Section 3.3 (Vacation) shall apply to Administrative Leave. The classifications eligible to receive Administrative Leave are designated in Exhibit A of this MOU.

Persons appointed to classifications not eligible for overtime compensation during the calendar year shall receive Administrative Leave prorated based on the number of pay periods remaining in the calendar year.

### **SECTION 3.2: INCREMENTAL TIME OFF**

Incremental Time Off is considered time off using vacation, due time, or sick leave bonus.

### **SECTION 3.3: VACATION**

#### **3.3.1 Vacation Leave**

Employees shall be entitled to annual vacation leave subject to the provisions in this chapter. Moreover, all employees who have worked for the City six (6) months or more and have worked half-time or more in the preceding year shall be entitled to vacation leave.

#### **3.3.2 Vacation Approval**

All vacation must be approved, in advance, by the Fire Chief or Deputy Chief, on forms or scheduling system utilized by the City.

#### **3.3.3 Vacation Periods**

**3.3.3.1 48/96 56-Hour Week Employees:** For employees on the 48/96 schedule, a vacation period for employees on a 56-hour week shall consist of three (3) 24-hour shifts (See Glossary).

**3.3.3.2 Incremental Time Off (Battalion Chief):** Incremental vacation shall be taken in increments of ten (10) hours (days) from 0700 hours to 1700 hours or fourteen (14) hours (nights) from 1700 hours to 0700 hours.

### 3.3.4 Vacation Accrual Schedule

3.3.4.1 **Battalion Chief:** The vacation accrual schedule is as follows:

| Years of Service<br>(as provided in Sections 3.3.8; 3.3.8.1; and 3.3.9) | Vacation Accumulation |           |
|-------------------------------------------------------------------------|-----------------------|-----------|
|                                                                         | 56 Hours              | 40 Hours  |
| Through the first five (5) years of service                             | 2 Vacation Periods    |           |
|                                                                         | 144 hours             | 80 hours  |
| Six (6) through eleven (11) years of service                            | 3 Vacation Periods    |           |
|                                                                         | 216 hours             | 120 hours |
| Twelve (12) through eighteen (18) years of service                      | 4 Vacation Periods    |           |
|                                                                         | 288 hours             | 160 hours |
| Nineteen (19) through twenty-four (24) years of service                 | 5 Vacation Periods    |           |
|                                                                         | 360 hours             | 200 hours |
| Twenty-five (25) and subsequent years of service                        | 6 Vacation Periods    |           |
|                                                                         | 432 hours             | 240 hours |

3.3.4.2 **Assistant Fire Chief and Fire Marshal:** The vacation accrual schedule for FLSA Exempt employees eligible for Administrative Leave in the classifications of Assistant Fire Chief and Fire Marshal is as follows:

| Years of Service                                        | Vacation Accumulation     |           |
|---------------------------------------------------------|---------------------------|-----------|
|                                                         | 56 Hours                  | 40 Hours  |
| Through the first five (5) years of service             | <b>2 Vacation Periods</b> |           |
|                                                         | 144 hours                 | 80 hours  |
| Six (6) through eleven (11) years of service            | <b>3 Vacation Periods</b> |           |
|                                                         | 216 hours                 | 120 hours |
| Twelve (12) through eighteen (18) years of service      | <b>4 Vacation Periods</b> |           |
|                                                         | 288 hours                 | 160 hours |
| Nineteen (19) through twenty-four (24) years of service | <b>5 Vacation Periods</b> |           |
|                                                         | 360 hours                 | 200 hours |
| Twenty-five (25) and subsequent years of service        | <b>6 Vacation Periods</b> |           |
|                                                         | 432 hours                 | 240 hours |

### 3.3.5 Lateral Entry Vacation Accrual Rate at Time of Appointment

Subject to the provisions of Section 3.3.3 (Vacation Periods), an employee appointed on or after October 1, 2006 as a lateral entry appointment as described in the Section 2.1.3 (Salary Placement and Entry – Lateral Incentive) of this MOU, shall accrue at time of appointment, and continue to accrue, and be eligible to take Vacation Leave commensurate with his or her years of experience as a sworn Fire Fighter. However, such leave accrual shall be prospective. Vacation privileges associated with seniority from prior employment in another Fire Department as a Fire Fighter shall not apply in Berkeley.

### 3.3.6 Accrual Based on Hours in Paid Status

Employees shall accrue vacation leave credits for only those hours in which the employee is on the payroll and receiving pay. Employees shall earn vacation leave according to the following schedule:

| Hours of Vacation Leave Earned For Each Hour of Service |                       |               |
|---------------------------------------------------------|-----------------------|---------------|
| Vacation Periods Earned<br>Per Year                     | For Employees Working |               |
|                                                         | 56 Hours/Week         | 40 Hours/Week |
| 2                                                       | .0495                 | .0385         |
| 3                                                       | .0742                 | .0577         |
| 4                                                       | .0989                 | .0769         |
| 5                                                       | .1236                 | .0962         |
| 6                                                       | .1484                 | .1154         |

### 3.3.7 Utilization

Each employee shall be entitled to take only such annual vacation leave as the employee has accrued; provided, however, that no employee with less than six (6) months of service shall be entitled to take earned vacation leave.

### 3.3.8 Length of Service Computation

For an employee who has worked on a part-time or intermittent basis or has been on leave of absence without pay for a total of six (6) months or more, or who has been terminated and subsequently reemployed, the actual years of service with the City shall be used for the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5) and six (6) vacation period rate.

3.3.8.1 **Part-Time and Intermittent Work Accrual:** Employees working on an intermittent or part-time basis who have worked half-time or more in the preceding twelve (12) months without termination shall be entitled to a prorated vacation leave based upon the actual years of service with the City and upon the actual amount of time worked in the preceding calendar year.

3.3.8.2 **Time Spent on Military or Parental Leave:** For the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5) or six (6) vacation period rate, time spent on extended military leave or parental leave shall be counted as time spent in the service of the City.

### 3.3.9 Maximum Carryover of Vacation

Employees can carry over from one vacation year (see Glossary) to the next, no more than eight (8) vacation periods of earned vacation.

### 3.3.10 Hours in Excess of Maximum Accumulation

An employee who has attained maximum accumulation may be required to take all projected excess earned vacation or receive pay in lieu thereof, at the option of the City. By October of each year, the City will advise employees who have attained a maximum accrual of vacation and whether such excess earned vacation

must be scheduled as time off prior to the end of the vacation year, which begins in March of each year according to schedules established by the Fire Chief. By November 30th, those employees with projected excess vacation will submit to the Deputy Chief a proposal for use of that projected excess vacation prior to the end of the vacation year.

Employees who accrue unused vacation beyond the eight (8) week maximum shall be paid out annually.

### **3.3.11 Vacation Leave before Retirement**

An employee who is anticipating retirement in the next vacation year will not be forced to use accumulated vacation time in the last year of employment. He or she may request to sell the vacation to the City and the City will honor that request, provided that 1) the employee has filed a CalPERS option form indicating that he or she is planning to retire, and 2) this requirement that the City buy the employee's vacation will be in effect for one (1) year maximum.

### **3.3.12 Return from Leave Prorated Vacation**

An employee who has returned from extended military leave or any other extended leave of absence without pay or who has been reemployed or reinstated shall be entitled, during the calendar year in which the employee returns to the City service, to a prorated vacation based upon the total years of service with the City and upon the total number of months of actual service with the City during the said calendar year. For succeeding calendar years, vacation shall be as provided in this Section 3.3 (Vacation).

### **3.3.13 Extended Leave Accrual Impact**

An employee who is granted a leave of absence without pay and who is off the payroll for less than one hundred sixty (160) consecutive hours for employees assigned to a forty (40) hour work week or two hundred eighty eight (288) hours for employees assigned to a fifty six (56) hour work week shall be entitled to a full vacation. If such an employee is off the payroll for one hundred sixty (160) consecutive hours or more for employees assigned to a forty (40) hour work week or two hundred eighty eight (288) hours or more for employees assigned to a fifty six (56) hour work week, the employee's vacation shall be as provided in Sections 3.3.15 (Payment upon Termination, Military or Extended Unpaid Leave); or 3.3.16 (Vacation Buy Back).

### **3.3.14 Payment upon Death**

If, after six (6) months of continuous service, an employee dies, the employee's estate shall be paid for all accrued unused vacation periods at the employee's base rate at the time of death, and such employee or his or her estate shall reimburse the City for the actual amount of vacation taken in excess of vacation leave earned, as the case may be.

**3.3.15 Payment upon Termination, Military or Extended Unpaid Leave**

Upon termination, extended military leave, or other extended leave of absence without pay, if the employee's vacation balance is positive, such employee shall be paid for 100% of the excess of vacation credits that the employee has earned, banked or held over, at the employee's base rate at the time of termination, military or extended unpaid leave. If the vacation balance is negative, such employee shall reimburse the City or the City may deduct the balance due from the employee's salary due, deferred compensation, accrued floating holidays, holiday pay due, compensatory time due or sick leave, in the listed order of priority.

**3.3.15.1 Basis for Payment:** The basis for such payment by the City or for such reimbursement to the City shall be as follows:

The employee's regular hourly salary, as defined in the Glossary at date of termination, extended military leave, or other extended leave of absence without pay, multiplied by the excess of vacation leave hours earned or vacation leave hours taken, as the case may be.

**3.3.16 Vacation Buy Back**

By March 1 of any calendar year, employees may exercise an option to buy back up to one-half (1/2) of his or her accrued but unused vacation leave, up to a maximum of four (4) weeks.

**3.3.17** For purposes of computing earned vacation, time may be counted up to the end of the second paycheck in February of the current year. Employees will be paid only for vacation time actually earned up to the time of buy back payoff.

**3.3.18** Only whole weeks shall be counted for vacation buy back. For example, seven (7) weeks, twenty - one (21) hours would count as seven (7) weeks of earned vacation.

**3.3.19** The vacation buy back provision as provided for in this section applies only to Personnel assigned to fire suppression and medical response vehicles.

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

**3.3.20.1** Vacation leave accrued on a fifty-six (56) hour per week scheduled is converted to a forty (40) hour per week schedule by multiplying number of hours of vacation leave accrued by the conversion factor of 0.7143.

**3.3.20.2** Vacation leave accrued on a forty (40) hour per week scheduled is converted to a fifty six (56) hour per week schedule by multiplying



number of hours of vacation leave accrued by the conversion factor of 1.4.

**SECTION 3.4: HOLIDAYS**

Assistant Fire Chiefs and the Fire Marshal shall be allowed the following holidays off with pay at the eight (8) hour straight time salary rate based on their regular monthly salaries.

Battalion Chiefs, who are assigned to a 24-hour work schedule (those regularly scheduled to work fifty-six (56) hours) will receive twelve (12) hours of holiday pay as part of the base salary.

The holidays to which this provision applies are:

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

For historical reference only, in addition to the above-referenced 14 holidays (time off with pay), effective June 27, 1999 and as provided in Resolution Nos. 59,954-N.S. and 59,953-N.S., the City converted Holiday Pay (14 holidays, valued at 6.154% of base salary) as additional compensation and rolled the additional compensation into the Unit A classifications base salary (Assistant Fire Chief). When the Fire Marshal and Battalion Chief classifications were established in 2010, the pay range included Holiday Pay in the base salary.

**3.4.2\_COVID Leave**

Due to the nature of bargaining unit work, backfill is required so the City will credit floating holiday hours in the form of a stipend to all ranks covered in this Agreement equal to twenty (20) hours to be paid at the beginning of the first full pay period after Council adoption. The reduction of COVID Leave from forty (40) hours will provide the majority of funding for two new vehicles; and the remainder will come from the Berkeley Fire Department budget.

**SECTION 3.5: SICK LEAVE**

**3.5.1 Sick Leave Use**

An employee shall be entitled to take sick leave with full pay in case of sickness, disability or serious illness of that employee or within the immediate family of the employee in accordance with the provisions of Sections 3.5.2 (Accumulation of Sick Leave) to 3.5.6 (Sick Leave Not a Privilege) inclusive.

**3.5.2 Accumulation of Sick Leave**

Each employee shall be credited with one (1) sick leave day (see Glossary) with full pay for each month of service, provided that each employee shall be credited with two (2) sick leave days with full pay for each month of service during the seventeenth (17th) year of employment and thereafter.

**3.5.3 Maximum Accumulation**

Such sick leave as provided in Section 3.5.2 (Accumulation of Sick Leave) when not used shall be cumulative, but the accumulated, unused period of sick leave, beginning in 1990, shall not exceed the following schedule:

| <b>For 56-hour A Week Employees</b>             | <b>For 40-hour A Week Employees</b> |
|-------------------------------------------------|-------------------------------------|
| base - 1800 hrs.                                | base - 1200 hrs.                    |
| 1st year - 1944 hrs.                            | 1st year - 1296 hrs.                |
| 2nd year - 2088 hrs.                            | 2nd year - 1392 hrs.                |
| 3rd year - 2232 hrs.                            | 3rd year - 1488 hrs.                |
| 4th year - 2376 hrs.                            | 4th year - 1584 hrs.                |
| (and so on, as described in the next paragraph) |                                     |

The previously established maximum accumulation level of 1800 hours (1200 hours for 40-hour a week employees) may at the employee's option, be increased by up to 144 hours (96 hours for 40-hour a week employees) each year following the year when the employee reaches 1800 hours (1200 hours for 40-hour a week employees) level.

**3.5.4 Annual Payout for Excessive Sick Leave**

In each year following that 1800 hour (1200 hour for 40 hour a week employees) base year, the employee may, on a form provided by the City, elect to receive pay for excess sick leave or may elect to increase their sick leave accumulated base by the 144 hours (96 hours for 40 hour a week employees) and take any additional excess sick leave in pay at the following prescribed rate: employees who choose to increase their sick leave accumulated base by the 144 hours (96 hours for 40 hour a week employees) will receive 50% pay off rate in March; employees who choose to receive pay out for excess sick leave over the base, and do not exercise the option of increasing their accumulated sick leave base by 144 hours (96 hours for 40 hour a week employees) in any particular year, will be paid for excess sick leave at the 38% pay off rate in March.

Forms, provided by the City along with projected excess sick leave balances, shall be distributed to affected employees by February of each year and shall be returned to the City by February 15th. If an employee uses part of an established "sick leave maximum accumulation level", the employee may replenish the used portion at the applicable rate provided in Section 3.5.2 (Accumulation of Sick Leave).

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

### 3.5.5 Accrued Sick Leave Canceled Upon Termination

All accumulated sick leave shall be canceled when an employee terminates or is terminated.

3.5.5.1 **Unused Sick Leave Payment at Retirement or Termination for Employees Hired on or Before June 30, 2014:** All employees hired on or before June 30, 2014 that retire (non-disability) or voluntarily terminate with twenty (20) years of service shall be entitled to receive payment at retirement or termination of unused sick leave days, based on the following schedule:

| Number of Unused Sick Leave Days | Percentage Payout |
|----------------------------------|-------------------|
| 0 - 74 days                      | 38%               |
| 75 - 99 days                     | 41%               |
| 100 - 124 days                   | 44%               |
| 125 - 149 days                   | 47%               |
| 150 and over                     | 50%               |

This pay-out schedule shall also apply to any employee retiring on permanent disability arising out of and incurred in the course and scope of his or her employment with the City. Employees hired on or after July 1, 2014 shall not be eligible for payment of any unused sick leave days.

### 3.5.6 Sick Leave Not a Privilege

Sick leave shall not be considered as a privilege which an employee may use at his or her discretion but shall be allowed only in case of sickness or disability or in the case of serious illness within the immediate family of the employee. Not more than twelve (12) sick leave days (6 24-hour shifts or 144 hours for a 56-hour schedule, or 96 hours for a 40-hour schedule) in any calendar year may be taken because of the illness of a member of the employee's immediate family. The immediate family of an employee, for the purpose of this Section, shall be defined as: child or dependent residing in the employee's household or spouse, domestic partner, son, daughter or parent.

**3.5.7 Injury Incurred in Outside Employment**

No sick leave shall be allowed for time off for an injury incurred while working for another employer, provided that such injury is covered by the Workers' Compensation laws of the State of California, and no other provision for payment for time off because of injury is made by such other employer. In the event such injury is not covered by the Workers' Compensation laws of the State of California and no other provision for payment for time off because of such injury is made by such other employer, sick leave in accordance with the provisions of this Section shall be allowed only if such outside employment has been approved by the City.

**3.5.8 Notice Requirement**

An employee who is unable to report to duty due to illness shall notify the on-duty supervisor one (1) hour prior to the commencement of the employee's assigned shift in order to receive compensation while absent on sick leave.

**3.5.9 Absence Reporting (2 24-Hour or 3-Days):**

If an illness or injury is anticipated to continue for more than two (2) 24-hour shifts or three (3) days, it shall be reported immediately to the Deputy Chief or Fire Chief via telephone or email.

**3.5.10 Effect of Leave without Pay on Sick Leave Accrual**

An employee who is granted a leave of absence without pay and who is off the payroll for less than two (2) pay periods shall receive earned sick leave credit. If an employee is off the payroll for two (2) or more successive pay periods, the employee shall not earn sick leave credit for each two (2) successive pay periods that he or she is off the payroll.

**3.5.11 Control of Abuse**

The City may establish a reasonable program for the control of abuse of sick leave and absenteeism, subject to Association review and comment.

**3.5.12 Restoration of Sick Leave upon Re-Employment**

Accumulated unused sick leave which has been canceled by reason of any employee's termination shall be credited back to such employee if he or she returns to City of Berkeley employment within two (2) years of such termination.

**3.5.13 Bonus for Unused Sick Leave**

For every six (6) months of uninterrupted non-use of sick leave, a 40-hour per week employee will receive eight (8) hours of bonus time and a 56-hour per week employee will receive twelve (12) hours of sick leave bonus time. Leave without pay and a Workers Compensation leave of absence from work pursuant to workers' compensation is counted as an absence from work in the same manner as sick leave for the purpose of this bonus, except for partial day absences due to a prescribed follow-up physical therapy or medical appointment (Payroll Code M0) for a Workers' Compensation claim which absences shall not disqualify an employee from the sick leave bonus described in this paragraph. Such bonus

time can be used for any leave purpose covered by this Memorandum of Understanding and may, in addition, be used as emergency personal leave. The Department shall track sick leave bonus time separately. Sick leave bonus time accrual will not exceed 300 hours plus the current calendar year accrual. At the end of the calendar year, excess sick leave bonus time will be converted to vacation leave and the rules regarding maximum vacation leave accrual will apply.

### **3.5.14 Use of Sick Leave Bonus**

The use of sick leave bonus time for emergency personal reasons shall not interrupt the earning cycle of sick leave bonus as long as the time being requested is not for use as sick leave or family sick leave. Requests for emergency personal time off shall be directed through the Deputy Chief or Fire Chief.

### **3.5.15 Accrual Conversion Rate**

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

3.5.15.1 Sick leave or sick leave bonus time accrued on a fifty-six (56) hour per week scheduled is converted to a forty (40) hour per week schedule by multiplying number of hours of sick leave or sick leave bonus time by the conversion factor of 0.7143.

3.5.15.2 Sick leave or sick leave bonus time accrued on a forty (40) hour per week scheduled is converted to a fifty six (56) hour per week schedule by multiplying number of hours of sick leave or sick leave bonus time accrued by the conversion factor of 1.4.

## **SECTION 3.6: WORKERS' COMPENSATION**

All employees shall be entitled to such compensation as may be allowed pursuant to the applicable provisions of the Workers' Compensation Insurance and Safety Act of the State of California, specifically Labor Code Sections 4850 et seq.

## **SECTION 3.7: BEREAVEMENT LEAVE**

### **3.7.1 Bereavement Leave and Qualified Immediate Family Members**

In the case of death within the immediate family of an employee such employee shall be entitled to remain absent from duty with pay in order to attend the funeral or memorial service for a period not exceeding 48 hours for employees assigned to the fire suppression schedule and 40 hours for employees on a 40 hour per week work schedule. The immediate family of an employee, for the purpose of this Section, shall be defined as wife, husband, domestic partner (see Glossary),

mother, father, sister, brother, child, grandmother, grandfather, aunt, uncle, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and grandchildren or dependent residing within the household.

### **3.7.2 Bereavement Leave Charge**

Leave of absence with pay, because of death in an employee's immediate family, is allowed solely for the purpose of attending funeral and memorial services, and such leave shall not be charged against vacation or sick leave which an employee may be entitled to but shall be in addition thereto.

### **3.7.3 Discretionary Approval:**

An employee may submit a request for additional time off as vacation or compensatory time to adjust to the death of a family member.

## **SECTION 3.8: MILITARY & MARITIME LEAVE**

Military and Maritime Leave shall be governed by the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), regulations implementing USERRA and the California Military & Veteran's Code.

## **SECTION 3.9: PARENTAL LEAVE**

Any employee with one (1) or more years of benefitted employment with the City of Berkeley shall be entitled to up to one (1) year of parental leave upon the birth of a child or the adoption of a child who is five (5) years or younger as provided in Administrative Regulation 2.4 (Family Care Leave).

## **SECTION 3.10: LEAVE OF ABSENCE WITHOUT PAY**

### **3.10.1 Authorization for Leave without Pay**

Upon the request of the employee, the Fire Chief may grant a leave of absence without pay for a period not to exceed fifteen (15) leave days (see Glossary). No leave without pay shall be granted for more than fifteen (15) leave days, except upon the written request of an employee and approval of the City Manager. Failure on the part of an employee on leave to report promptly at its expiration shall be cause for discharge.

### **3.10.2 Required Exhaustion of Accrued Leave**

An employee must use all available compensatory and vacation leave, including banked vacation, in order to become eligible for an approved leave of absence without pay.

**3.10.2.1 Leave Due to Illness:** In the event of illness, an employee must also exhaust sick leave prior to receiving authorization for leave without pay.

However, in the event of an illness or injury requiring the use of sick leave, an employee has an option to notify the City in writing that he or she wishes to freeze the use of sick leave after thirty (30) calendar days prior to receiving authorization for leave without pay in order to take advantage of an Association sponsored Long Term Disability benefit.

## **SECTION 3.11: JURY DUTY LEAVE**

### **3.11.1 Absence from Duties**

An employee who is called or required to serve as a trial juror shall be entitled to be absent from duties or service with the City with pay during the period of such jury service as defined in the Glossary. The employee shall keep any payment received for jury service, including mileage reimbursement, upon submittal of proof of jury service.

### **3.11.2 Service during Off-Shift**

Employees who receive compensation for jury service during off-shift hours shall not be required to assign such compensation to the City. Employees shall not lose pay for adhering to court established rules pertaining to jurors not working on days they perform jury duty. The City may require written instructions from the Court.

## **ARTICLE 4 - HEALTH AND WELFARE BENEFITS**

### **SECTION 4.1: MEDICAL, DENTAL & LIFE INSURANCE**

#### **4.1.1 Medical Insurance Maximum City Payment**

The City will pay 100% of the premium for the applicable (single, two party, family) Kaiser rate. Plans that are less expensive than or equal to the Kaiser plan shall be fully paid by the City. The cost difference between the Kaiser Plan and more expensive plans will be borne by the employee. Effective July 1, 2019, employees shall pay fifty dollars (\$50.00) per month via pre-tax payroll deduction towards their health premium, and the City will pay an amount equal to the balance of the Kaiser monthly premium rate for the employee's applicable single, two party, or family employee category. This requirement for employees to contribute toward their health premiums shall only be effective if Department Head employees at the City are paying at least this amount as of July 1, 2019.

4.1.1.1 **Dependents:** Dependent status will be available until the dependent reaches the age of twenty-six (26) providing the dependent(s) meet the definition of "dependency" in the Internal Revenue Code.

4.1.1.2 **Domestic Partner:** If an employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for medical benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

#### **4.1.2 Annual Maximum Increase**

The amount the City contributes each calendar year toward the payment of health insurance premiums will increase by the lesser of twenty percent (20%) (single, two party, family) or the amount of the Kaiser HMO premium amount (single, two party, family) in effect on that date. The amount the City contributes each calendar year uses the premium rate of the previous calendar year as the basis for the calculation and there shall be no year-to-year carryover.

#### **4.1.3 Medical Cash in Lieu**

The cash in lieu payment to employees who show proof of alternate coverage will be a flat dollar amount of \$560, pro-rated for part-time employees.

#### **4.1.4 Dental Coverage**

The City shall provide a dental care program for employees, spouses, domestic partners and dependents. The City shall pay dental coverage to 90% of the Bay Area Usual, Customary and Reasonable charges. The maximum annual coverage is \$3,000 and the lifetime orthodontia limit is \$3,000.



**4.1.5 Prorated Fringe Benefits**

All career and grant-funded provisional employees working less than a full forty (40) hour week shall receive prorated rather than full fringe benefits and shall pay, by payroll deduction, a prorated portion of the health and dental insurance premiums.

**4.1.6 Life Insurance**

The City shall provide paid group life insurance, by a carrier of the City's choice, in the amount of \$100,000, which shall include a standard accidental death and dismemberment provision of a like amount. Life insurance shall become effective the first day of the calendar month following appointment, and shall continue until the last day of the calendar month in a pay status.

In addition, employees may purchase additional life insurance in increments of \$10,000 up to a maximum of \$300,000 at the rate offered by the City's insurance carrier, subject to any rules and restrictions of the carrier, including but not limited to any medical exam that might be required by the insurance carrier.

**4.1.7 Replacement Health Plan Meet and Confer:**

The Association agrees to meet with the City during the term of this MOU in a timely fashion following a City request, regarding whether the Association will agree to meet and confer regarding how the City can avoid potential 2015 Affordable Care Act (ACA) excise tax obligations and on a new and/or replacement health plan or plans and other methods to reduce the cost of health benefits.

**SECTION 4.2: RETIREE MEDICAL COVERAGE****4.2.1 Reimbursement Plan**

The City will assist in the reimbursement of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner until the death of both. If there is no spouse or domestic partner at the time of retirement, the City shall only reimburse the single party rate. The reimbursement shall be paid directly to the retiree or surviving spouse/domestic partner. The maximum amount the City will reimburse for the cost of Medical Insurance Premiums is described below and is based on the combination of the following factors:

- 4.2.1.1 the years of service of the employee at time of retirement
- 4.2.1.2 whether the employee is eligible to participate in Medicare
- 4.2.1.3 the annual increase of 4.5% on the amount the City will reimburse for the cost of the medical insurance premium.

Minimum eligibility is 10 years of service with the City of Berkeley Fire Department.

The maximum amount the City will reimburse for the cost of the Medical Insurance

Premium is based on the following schedule (to clarify, there is no “pro-rata” incremental increase between these thresholds):

| Years of City Service to be Completed | Percentage of City Reimbursement |
|---------------------------------------|----------------------------------|
| 10                                    | 25%                              |
| 15                                    | 50%                              |
| 20                                    | 75%                              |
| 25                                    | 100%                             |

4.2.1.4 **Annual Increase:** Effective each January 1, the base rates reimbursement as provided throughout this Section shall be increased by 4.5%.

#### 4.2.2 Employees Who Retired On or After July 1, 1997 through June 30, 2006

4.2.2.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/or domestic partner as follows:

4221.1 **Reimbursement Amount as of January 1, 2001:** Effective January 1, 2001, each month after the employee retires, the City’s maximum reimbursement for the cost of Medical Insurance Premiums total \$387.47 for two party coverage for the retiree and spouse or domestic partner or \$194.41 for single party coverage.

4221.2 **Reimbursement Amount as of January 1, 2016:** As of January 1, 2016, the City’s maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 4.2.1.4 (Annual Increase), total \$749.86 for two party coverage for the retiree and spouse or domestic partner or \$376.24 for single party coverage.

4.2.2.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/or domestic partner as follows:

4222.1 **Reimbursement Amount as of January 1, 2001:** Effective January 1, 2001, each month after the retiree reaches age 65 and is eligible for Medicare, the City’s maximum reimbursement for the cost of Medical Insurance Premiums total \$315.40 for two party coverage for the retiree and spouse or domestic partner or \$157.70 for single party coverage.

42222 **Reimbursement Amount as of January 1, 2016:** As of January 1, 2016, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 4.2.1.4 (Annual Increase), totals \$610.39 for two party coverage for the retiree and spouse or domestic partner or \$305.19 for single party coverage.

#### 4.2.3 Employees Who Retired On or After July 1, 2006

4.2.3.1 **Not Medicare Eligible:** For employees who retire on or after July 1, 2006 and are not eligible for Medicare, the City will reimburse the retiree and/or surviving spouse or domestic partner for the cost of the Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

4231.1 **Reimbursement Amount as of July 1, 2006:** On July 1, 2006, the City will reimburse the cost of Medical Insurance Premiums in an amount totaling \$327.76 per month (single party) and \$653.86 per month (two party).

4231.2 **Reimbursement Amount as of January 1, 2016:** As of January 1, 2016, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 4.2.1.4 (Annual Increase), totals \$1,015.42 for two party coverage for the retiree and spouse or domestic partner or \$509.00 for single party coverage.

4.2.3.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/or domestic partner as follows:

42321 **Reimbursement Amount as of July 1, 2006:** Effective July 1, 2006, each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$393.05 per month (two party) or \$196.52 per month (single party).

42322 **Reimbursement as of January 1, 2016:** As of January 1, 2016, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 4.2.1.4 (Annual Increase), totals \$610.39 for two party coverage for the retiree and spouse or domestic partner or \$305.19 for single party coverage.

**4.2.4 Retiree Definition**

For the purposes of this section a "Retiree" is anyone who meets all the following conditions: is vested in CalPERS; has reached the age of CalPERS retirement (age 50 for classic employees or age of 57 for new members as defined in Section 8.1 (California Public Employees' Retirement System) of this MOU; and has separated from the City.

4.2.4.1 **Disability Retirement:** A "Retiree" is also anyone, regardless of age, who receives a retirement benefit (disability or industrial disability) from CalPERS.

**4.2.5 Enrollment in City Group Plans**

Retiring employees may receive continuing health coverage in City sponsored group health plans subject to the limitations and co-pay amounts permitted by the health care providers. The City has no present intention, nor any proposal under consideration, to remove retirees from eligibility to participate in the City's group health and medical plan. Should such a proposal receive future consideration, the Association will be notified in advance and shall be afforded the opportunity to discuss such proposal.

**SECTION 4.3: SUPPLEMENTAL RETIREMENT PLAN (401a)**

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

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

Employees in the classification of Assistant Fire Chief are enrolled effective July 2, 1995, employees in the classification of Battalion Chief are enrolled effective March 10, 2009, and employees in the classification of Fire Marshal on January 20, 2015.

## **ARTICLE 5 - TERMS AND CONDITIONS OF EMPLOYMENT**

### **SECTION 5.1: PROBATIONARY PERIOD**

#### **5.1.1 Original Appointment**

Original appointments from employment lists shall be tentative and subject to a probationary period of one (1) year of actual service.

#### **5.1.2 Satisfactory Service**

If the service of the probationary employee has been satisfactory to the Fire Chief, the Fire Chief shall file with the Director of Human Resources a statement in writing to such effect and stating that the retention of such probationary employee in the service is desired.

#### **5.1.3 Service Unsatisfactory**

If such service has been unsatisfactory, the Fire Chief shall file with the Director of Human Resources such a statement, in writing, with the recommendation to the City Manager that the employee be rejected.

### **SECTION 5.2: EXAMINATIONS**

#### **5.2.1 Examination Process**

Examinations may consist of any method of evaluation to measure the capacities of the persons examined to execute the duties and responsibilities of the career classification to which they seek to be appointed. The probationary period shall be considered as a portion of the examination process.

#### **5.2.2 Promotional Examinations**

Promotional examinations may be conducted whenever the needs of the service require. Promotional examinations may include any of the selection techniques as deemed appropriate by the Director of Human Resources. Only permanent employees in the career service or on active mandatory layoff reemployment lists who meet the requirement set forth in the class specification may compete in promotional examinations.

#### **5.2.3 Notification of Results and Review of Papers**

Each candidate in a formal written examination where scores are provided shall be given notice of the results thereof, and if successful, of the final earned score and/or rank on the employment list.

All such candidates shall have the right to inspect their written test answer sheet within ten (10) working days after the results are mailed. Such personal examination shall be made in the presence of the Director of Human Resources, or his or her authorized representative, and no notes shall be made by the

applicant.

**SECTION 5.3: METHOD OF FILLING VACANCIES**

**5.3.1 General Provisions**

All vacancies in the career service shall be filled by transfer, demotion, re-employment, reinstatement, or from eligible list certified by the Director of Human Resources, if available. In the absence of persons eligible in these ways, temporary appointments may be made in accordance with the provisions of this MOU.

**5.3.2 Promotion and Open Competitive**

Insofar as is practicable and consistent with the best interest of the City, all vacancies in the career service shall be filled by promotion from within the career service, after a promotional examination has been given and a promotional list established.

If, in the opinion of the appointing authority, the best interest of the service can be served by an open competitive examination instead of a closed promotional examination, and if there is not already an existing promotional list for the higher position, which list has not been abolished and from which the vacancy could be filled, the appointing authority may instruct the Director of Human Resources to call for applications for the vacancy and arrange for an open competitive examination and for preparation and publication of an eligible list.

**5.3.3 Scheduling & Announcing Examinations**

Promotional examinations shall be administered in accordance with the schedule noted below:

| Test                 | CYCLE BEGINS             | QUARTER FOR TEST | INTERVAL BETWEEN TEST |
|----------------------|--------------------------|------------------|-----------------------|
| Battalion Chief      | 2018 and then Even Years | First Quarter    | 2 Years starting 2018 |
| Assistant Fire Chief | 2018 and then Even Years | First Quarter    | 2 Years starting 2018 |

**5.3.4 Seniority**

5.3.4.1 The Fire Department shall establish and maintain two (2) seniority lists, one (1) by total service in the Department and one (1) by time in classification, and they shall be brought up-to-date once a year prior to vacation picks and shall be issued in January of each year. Any objections to the seniority lists, as posted, shall be reported to the Fire Chief in written form within ten (10) days.

## SECTION 5.4: PERFORMANCE EVALUATION

The City will implement a program of annual performance evaluation. Such evaluation shall be conducted by the employee's immediate supervisor(s). Each employee may make written comments on the evaluation, which shall be made a part of the employee's personnel record.

## **ARTICLE 6 - GRIEVANCE AND APPEAL PROCEDURE**

### **SECTION 6.1: GRIEVANCE PROCEDURE**

#### **6.1.1 Definition**

A grievance is any dispute which involves the interpretation, application, claimed violation, or claimed noncompliance with the provisions of the MOU between the City and the Association. The grievance procedure discussed below shall be the sole grievance mechanism applicable to employees covered by this MOU.

#### **6.1.2 Deadline for Filing**

No matter shall be considered as a grievance under this Section unless it is presented within thirty (30) calendar days after the employee or the Association could reasonably have been aware of events on which the grievance is based. Failure to comply with the time lines of the Grievance Procedure by either party will constitute forfeiture of their position on the grievance. In the event of a forfeiture by the City, the City will comply with the request for resolution. However, the provisions of Section 6.1.9 (Suspension of Discharge) of this MOU will apply in the event of forfeiture. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.

#### **6.1.3 Grievances Process**

Grievances shall be processed in the following manner:

6.1.3.1 **Step I - Informal Step:** Any employee who believes he or she has a grievance (and/or the employee's Association representative) shall discuss the employee's complaint with the Deputy Fire Chief. If the issue is not resolved within fifteen (15) calendar days, the employee (and/or the employee's Association representative) may elect to invoke the procedure hereinafter specified by filing a formal grievance.

6.1.3.2 **Step II - Fire Chief:** Any grievance that has not been resolved at Step I (Informal Step) may be referred to the Fire Chief (or his or her designee) by the grievant (and/or the employee's Association representative). Any such referral shall be in writing to the Fire Chief with a copy to the Human Resources Department, on a grievance form provided by the City (see Exhibit E), and approved by the Association. The written statement shall be a clear concise statement of the grievance, including specific provisions of this agreement and/or City ordinance, rule or regulation, and/or past practice alleged to have been violated, the circumstances involved in the decision rendered at Step I, and the specific remedy sought. Either party shall be entitled to a personal conference upon request.



The Fire Chief shall communicate a decision to the grievant with a copy to the Association and to the Director of Human Resources in writing within ten (10) working days after receiving the grievance or ten (10) working days from the date of the personal conference, whichever is later, and such action will terminate Step II.

- 6.1.3.3 **Step III - City Manager:** In the event that the employee (or the employee's Association representative) is not satisfied with the decision at Step II, the employee (or the employee's Association representative) may appeal the decision in writing to the City Manager or his or her designee within ten (10) working days after the termination of Step II.

The written statement shall include a copy of the original grievance, the decision rendered at Step II, and a clear and concise statement of the reasons for the appeal. The grievant or the City Manager or his / her designee shall be entitled to a personal conference upon request within the time limits specified.

The City Manager or his or her designee shall communicate a decision within ten (10) working days after receiving the appeal or ten (10) working days from the date of the personal conference, whichever is later and such decision will terminate Step III.

- 6.1.3.4 **Step IV - Arbitration:** If the Association is not satisfied with the City Manager's response at Step III- the Association may require that the grievance be referred to an impartial arbitrator, who shall be designated by mutual agreement between the Association and the City Manager. The Association must notify the City Manager in writing within ten (10) working days of receipt of the City Manager's decision that they intend to move the grievance to arbitration.

The fees and expenses of the State Mediation and Conciliation Services arbitrator and the court reporter shall be shared equally by the Association and the City. Each party, however, shall bear the cost of its own presentation including preparation and post-hearing briefs, if any. The Association shall provide the City with half of the cost charged by State Mediation to provide the parties with an arbitrator list no later than 30 days following notification to the City Manager that the Association wishes to advance the grievance to arbitration. Failure to timely do so shall result in a waiver of the right to advance the grievance to arbitration.

**6.1.4 Suspensions or Discharge Arbitration Decisions**

Arbitrator decisions on matters properly before them which pertain to the suspension or discharge of an employee shall be final and binding upon both parties hereto to the extent permitted by the Charter of the City.

**6.1.5 Non-Disciplinary Arbitration Matters**

Those arbitration decisions on matters properly before them which do not pertain to suspension or discharge shall be in the form of recommendations to the City Manager, who may, within five (5) working days of receipt of said decision, reject said decision.

In the event of said rejection, then as to that particular grievance the fees and expenses of the arbitrator and court reporter shall not be shared by the Association, and full payment thereof shall be the sole responsibility of the City.

**6.1.6 Letters of Reprimand**

Formal letters of reprimand concerning work rules or time and attendance shall be removed from an employee's official files upon request after 18 months provided the employee has maintained satisfactory performance. Letters of reprimand concerning all other subjects shall be removed from an employees' official personnel file upon request after 36 months provided the employee has maintained satisfactory performance.

**6.1.7 Equal Employment Opportunity (EEO) Program**

Any grievance which in any way affects implementation of the City's EEO program shall not be subject to arbitration. The decision as to whether or not implementation of the EEO program is in any way involved shall be made in the sole discretion of the City Manager. If, in the City Manager's judgment, any grievance involves the EEO program, the EEO & Diversity Officer shall notify the Association to that effect in writing within seven (7) days of the date upon which the grievance is received by the City Manager and, in such notification shall refer to that section of the EEO program which is involved; provided, however, that such notice may come at any time prior to arbitration if additional factors come to the attention of the EEO & Diversity Officer on the basis of which he/she considers it appropriate to change his /her original determination.

**6.1.8 Limits of Arbitrator**

No arbitrator shall entertain, hear, decide, or make recommendations on the dispute a) unless the Association seeks a determination, or b) if the dispute involves the issue of unit determination, or c) if the dispute involves a question of representation, or d) if the aggrieved employee is not in a classification within the unit represented by the Association.

**6.1.9 Suspension or Discharge**

No grievance involving the suspension or discharge of an employee will be entertained unless it is filed in writing with the City Manager within fifteen (15) calendar days of the time at which the affected employee was notified by certified mail. If the City Manager, in pursuance of the procedures outlined in Section 6.1.3 (Grievance Process) above, resolves a grievance which involves suspension or discharge, he or she may order payment for lost time or reinstatement with or without payment for lost time.

**6.1.10 Compensation Grievances**

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Fire Chief or his or her designated representative for payroll issues within 30 working days from the date when the employee may reasonably be expected to have learned of the alleged compensation violation. If such issues cannot be resolved by the Fire Chief (or in consultation with the Auditor), the Fire Chief will refer the matter to the Director of Human Resources within ten (10) working days of receipt of the grievance. The Director of Human Resources or his or her designee shall have 30 working days to research the issue and provide a written response to the Association and the affected employee. In such cases no adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed or thirty (30) days from the date when an employee may reasonably be expected to have learned of said claimed violation whichever is later. Only complaints which allege that employees are not being compensated in accordance with the rules, regulations, and resolutions of the City Council or in accordance with the understanding contained in any MOU which has resulted from meet-and-confer process shall be considered as grievances. Any other matters of compensation shall be deemed withdrawn until the meet-and-confer process is next opened for discussion.

If the affected employee is not satisfied with the written decision of the Director of Human Resources or his or her designee, the affected employee will have ten (10) working days to appeal the decision in writing to the City Manager and the grievance will move to Step III of the Grievance Procedure as provided in Section 6.1.3.4 (Step IV – Arbitration).

**6.1.11 Changes to Agreement**

No changes in the MOU or interpretation thereof (except interpretation resulting from arbitration proceedings hereunder) will be recognized unless agreed to by the City Manager and the Association.

**6.1.12 Probationary Employees**

**6.1.12.1 Appeal Limitations:** Notwithstanding their probationary status, probationary employees have appeal rights for disciplinary actions where the employee's allegation is that the City's action was for an illegal

or discriminatory reason, such as the exercise of Association membership, political affiliation, or other constitutionally-protected activities; provided, however, that any appeal by a probationary employee alleging a violation of his or her rights under Title VII (42 U.S.C. Section 2000e, et. seq.) or the California Fair Employment Practices Act (California Labor Code Section 12900, et seq.) may be pursued only as provided in the City's Equal Employment Opportunity program, which shall be specifically amended to allow probationary employee rights of appeal under that program.

6.1.12.2 **Grievance Limitation:** The grievance procedure is also available to probationary employees for matters other than those related to discharge, discipline, or other performance issues, where the claim is a City breach of agreed-upon wages, hours, working conditions, or discrimination based on Association activity.

#### 6.1.13 Calendar Days

All references in this Section 6.1 (Grievance Procedure) to days shall mean calendar day unless otherwise provided.

#### 6.1.14 Association Right to File

No provisions shall prevent the Association from filing and/or appealing grievances on behalf of the employees represented by the Association.

## **ARTICLE 7 - MISCELLANEOUS TERMS AND CONDITIONS**

### **SECTION 7.1: UNIFORM ALLOWANCE & DRESS UNIFORM REQUIREMENTS**

#### **7.1.1 Uniform Allowance**

Annual uniform allowance shall be \$1,100.00 and is to be paid annually by the first pay period in December thereafter. The entire uniform allowance will be paid to those employees who are on the payroll on December 1 of any year. However, the amount the City contributes toward the uniform allowance is subject to federal and state income tax withholding.

7.1.1.1 **Advance:** The City agrees to advance the sum of \$550.00 to new hires, which shall be used for uniform purchase and which shall then be repayable in two (2) equal yearly installments over the first two (2) years of employment, to be deducted by the City from the uniform allowance of the employee.

7.1.1.2 **Payment:** The uniform allowance shall be paid with a separate check. CalPERS will be deducted for all members in accordance with the provisions of Section 8.1 (California Public Employees' Retirement System). The check title shall be "Uniform Allowance".

7.1.1.3 **Purpose:** The uniform allowance is for the purpose of purchase and maintenance of station uniforms, and other required or optional garments, as necessary, for the term of this MOU. The City shall continue to purchase turn out gear.

### **SECTION 7.2: SAFETY COMMITTEE**

(1) The Assistant Fire Chief assigned to the Training and Safety Division shall be the designated safety officer for the department. The Safety Officer shall appoint a safety committee consisting of three (3) individuals on each shift (preferably one (1) complete company). The City's Occupational Safety Officer shall be a standing member of that Committee.

7.2.2 The safety committee shall meet on shift every two (2) months and shall review personal injury reports and reported safety deficiencies and perform follow-up investigations if necessary.

## SECTION 7.3: ANNUAL PHYSICAL EXAMINATIONS

### 7.3.1 Wellness Fitness Initiative (WFI)

The City and the Association are committed to maintaining a wellness program that provides represented employees with information and resources that aid in maintaining health and wellness. Part of this WFI may include a physical assessment (based on the City's specification as to scope of examination and examiner), diagnostics, education and referrals to other practitioners at a schedule to be determined by the Fire Chief or when required by the Association MOU, departmental policy, and/or applicable law.

## SECTION 7.4: ASSIGNMENTS FOR TEMPORARILY DISABLED EMPLOYEES

### 7.4.1 Industrial Disability Modified Duty

The City may accommodate, when feasible, employees covered by this MOU who are on Workers' Compensation leave, and such work assignments are to incorporate the following provisions:

- 7.4.1.1 The modified assignment shall be consistent with medical limitations as determined by the attending physician.
- 7.4.1.2 The assignment shall be within the Fire Department, if feasible, or in other City departments if an assignment is not available in the Fire Department and shall be on the day shift (8:00 a.m. to 5:00 p.m., Monday through Friday). The assignment shall be consistent with the skills and abilities of the individual employee.

### 7.4.2 Non-Industrial Disability Modified Duty

The City may accommodate an employee temporarily disabled with a non-industrial disability by providing a modified work assignment in that employee's classification. If modification of that position does not serve the best interests of the City, other classifications within the City may be considered, subject to the approval of the Director of Human Resources. To be eligible for such a modified assignment, the employee must provide the Human Resources Department with a medical statement from his or her treating physician that clearly states the medical limitations and abilities of the employee. Compensation will be provided at the level of the classification in which the temporarily disabled employee is reassigned. The employee must meet standards of satisfactory performance for the duration of the work assignment.

- 7.4.2.1 **Modified Duty for Pregnancy:** However, an employee who is temporarily transferred as a result of pregnancy to a less strenuous or hazardous position or to less strenuous or hazardous duties shall receive the equivalent rate of pay and benefits of the employee's regular position. The alternative position must be one for which the

employee is qualified, and the position must better accommodate recurring periods of leave than the employee's regular job.

### **7.4.3 City Manager Authority on Modified Duty**

Nothing herein shall require the City Manager to approve modified work assignments nor shall give an employee the right to refuse an assignment which complies with medical restrictions. Such refusal may subject an employee to loss of benefits and/or disciplinary action.

## **SECTION 7.5: RESIDENCY REQUIREMENT**

Section 7.5 of the MOU shall be deleted due to adoption and passage of the ballot measure.

## **SECTION 7.6: MEAL PERIODS**

Because each employee may be called upon to perform emergency services during the meal period, employees rarely leave the station during their scheduled meal periods. Meals are often organized at each station because employees are required to be available for emergency calls during meal periods. Because of this, employees are required to contribute financially to an organized meal, supervised at each individual station, at a charge equal to the value of each employee's portion of the meal, regardless of whether the employee chooses to eat the meal. The portion of each organized meal attributable to each employee is required to be contributed to an organized "kitty" fund, which will be deducted monthly by the Association. Employees shall be solely responsible for any financial or tax liability regarding this provision.

## **SECTION 7.7: STAFFING**

- 7.7.1 Except as specifically provided for herein, the normal staffing requirements shall provide that at all times there shall be at least one promoted or acting Battalion Chief assigned per shift (total of 3). During the term of this 2020 to 2021 MOU, the City agrees to provide notice to the Union and meet and discuss permanent staffing changes related to the Assistant Fire Chief and Fire Marshal classifications.
- 7.7.2 The City retains the discretion to temporarily reduce staffing in the Division of Operations only upon the declaration of a "fiscal emergency" via a 2/3 vote of the City Council.
- 7.7.3 If the City Manager determines during the Fiscal Year that fund revenues have or will decline substantially below the estimate of fund revenues in the adopted Budget and/or expenditures have or will increase substantially above the projected expenditures in the adopted Budget, the City Council may declare a "fiscal

emergency” that shall thereupon cause the City of Berkeley and the Berkeley Chief Fire Officers Association to assemble in a meet and confer process regarding a temporary staffing reduction plan.

- 7.7.4 Prior to a policy change which will result in a temporary reduction in the number of Chief Officers (see Sections 7.7.1 through 7.7.2) or a temporary change in staffing levels of suppression or transport units, as soon as is reasonably possible, the City will meet and confer about the matter with the Association.
- 7.7.5 As soon as possible following the end of the “fiscal emergency”, it is the intent of the City to restore the staffing of the fire department to the levels defined above.
- 7.7.6 The Association strenuously objects to any reduction, on the grounds of standards set forth by the National Fire Protection Association (#1500 and #1710), employee safety, and reduced firefighting efficiency, but understands that, in the City's view, fiscal constraints may dictate such a reduction. The Association accepts no responsibility for any increased exposure or liability to employees or the public resulting from any such reduction.
- 7.7.7 All reductions necessary to accomplish this staffing reduction shall be accomplished by attrition, and not by reduction in force or by layoffs.

## SECTION 7.8: TRADES

Battalion Chiefs are allowed shift trades as detailed in the Trade Policy General Order.

## SECTION 7.9: PHYSICAL & PSYCHOLOGICAL EXAMINATIONS

The City may require employees to submit to physical or psychiatric examinations by a City appointed physician where reasonable cause exists to believe that the employee is suffering from a physical or psychiatric condition which adversely impacts the employee's ability to perform his or her duties. Whenever possible, an employee shall be advised in writing of the basis for the existence of "reasonable cause" and the grounds thereof before being directed to report to any such examination. In any case, such written notice is to be provided within forty-eight (48) hours of such an examination.

Any psychiatric report to the City shall consist of the psychiatrist's ultimate conclusion as to the employee's fitness to serve and return to work date, if any. If the psychiatrist believes that the employee is not fit for duty he/she shall advise the City of any functional limitations which relate to the employee's ability to perform his or her duties, if such information may be provided without revealing the cause of those limitations. The psychiatrist shall respect the physician-patient privilege in all other regards and shall not, without the employee's written permission, release any other information, documents, reports or conclusions to the City.



Failure to report for a medical or psychiatric examination under this section may constitute grounds for discipline.

## SECTION 7.10: HAIR SAFETY STANDARDS

7.10.1 There are many hair styles that are acceptable. So long as the person's hair is kept in a neat, clean manner, the acceptability of the style will be judged by the following criteria:

7.10.1.1 Hair styles that preclude the proper wearing of SCBA are not permitted.

7.10.1.2 Hair may be pinned or worn so as to minimize the potential of being caught in machinery or in any way become a safety hazard.

7.10.2 These standards have been developed to accommodate contemporary hair styles without jeopardizing the safety of Fire Fighters involved in the hazardous activities associated with the varied operational requirements of the modern fire service.

## SECTION 7.11: YMCA

The cost of YMCA membership will be divided between the City and the employees, with the City contribution to be 75% of the monthly membership fee. The amount the City contributes toward the employee's monthly membership fee is subject to federal and state income tax withholding.

Use of a YMCA membership by a City of Berkeley employee, as provided for in this MOU, is non-compensable, is not a part of the employee's work-related duties, is not required for employment and is not condoned as part of a physical fitness program, or required to maintain top physical conditioning for the employee's job performance.

The City of Berkeley or its Claims Administrator may not be liable for any injury which arises out of a City of Berkeley employee's participation in and use of a YMCA membership.

## SECTION 7.12: REIUMBURSEABLE INCIDENTS AND TRAINING

In recognition of the Alameda County Mutual Aid System, the Fire Chief may authorize employees to participate in mutual aid deployments, such as strike team assignments; overhead deployments; urban search and rescue missions; or other events where the

City is reimbursed from the state or federal government for the labor costs incurred by the City.

If an employee works on the Alameda County Mutual Aid System beyond the employee's normal work week, the employee shall be reimbursed at the California Governor's Office of Emergency Service, Salary Survey/Actual Administrative rate but in no case will the employee's compensation for participating in the Alameda County Mutual Aid System exceed the rate that is reimbursed to the City by the State of California or other external entity.

For employees who are designated as exempt from the Fair Labor Standards Act's overtime requirements under Section 2.6 of this MOU, nothing in this section will alter their exempt status.

### **SECTION 7.13: USE OF CITY VEHICLES**

At the direction of the Fire Chief, Assistant Fire Chiefs and Battalion Chiefs are subject to recall as a Duty Chief, wildland interface fires and for other greater alarm incidents. To facilitate response, the City shall provide a City-owned automobile that is code 3 equipped at no-cost to the employee. Note: The City will provide two new gasoline vehicles for the three Battalion Chiefs in FY21 and will endeavor to purchase a third when funding becomes available. The City will provide additional funding to assist in funding the purchase of the two vehicles.

The Fire Marshall is also subject to recall to investigate fire scenes and the City shall provide a City-owned automobile at no-cost to the employee.

## **ARTICLE 8 - PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

### **SECTION 8.1: CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

#### **8.1.1 Continued Participation**

The City shall continue participating under the Safety Members Plan of the Public Employees' Retirement System (CalPERS).

#### **8.1.2 New Members' CalPERS Retirement Formula**

"New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the 2.7% at 57 retirement formula with highest three (3) year average compensation as set forth in PEPRA.

#### **8.1.3 Classic Employees' CalPERS Retirement Formula**

Current employees and other employees who do not qualify as "New Members" under PEPRA shall continue to be entitled to the 3% at 50 retirement formula in effect since December 22, 2000, with single highest year compensation. In addition to the single highest year earnings formula, Classic Employees' retirement benefit will continue to include all other benefits as were in effect as of November 28, 1996. The Plan will continue to require retirement at age sixty (60) as permitted by law.

#### **8.1.4 Optional Benefits**

Except as otherwise noted, for both Classic Employees and New Members, the City's contract with CalPERS shall include the following optional benefits:

- a) One-Year Final Compensation as provided in Section 20042 (July 22, 1976) (Classic Employees only).
- b) Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (March 1, 1973).
- c) Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).
- d) Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988).  
1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (March 1, 1973).
- e) Military Service Credit as Public Service as provided in Section 21024 (July 14, 2000).
- f) Indexed Level 1959 Survivor Benefit as provided in Section 21574.5 (June 13, 2003).

#### **8.1.5 Classic Employees' Pension Contribution**

On July 1, 1994, the City increased the base salary for Classic Employees participating in the Safety Fire Plan, in the amount of nine percent (9%). Employees then assumed responsibility for payment of the normal employee

retirement contribution to CalPERS. The City designated and shall continue to designate such payments as an Employer Pickup as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code. The employee contributions shall be made through automatic payroll deduction.

8.1.5.1 **Classic Employees' Additional Contribution:** Effective November 8, 2015, employees assumed, and shall continue to assume responsibility for contributing an additional two percent (2%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis. The City shall designate such payment to the City's CalPERS employer contribution rate as Employer Pickup as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code.

### 8.1.6 New Members' Pension Contributions

New Members hired on or after January 1, 2013 shall pay 50% of the normal share of cost required by PEPRA.

8.1.6.1 **New Members' Additional Contribution:** Effective November 8, 2015, New Members assumed, and shall continue to assume responsibility for contributing an additional two percent (2%) of pensionable compensation (in addition to contributing 50% of the normal cost) towards the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis. The City shall designate such payments to the City's CalPERS employer contribution rate as an Employer Pickup as defined by Section 414(h)(2) of the Internal Revenue Code.

### 8.1.7 Supplementary Retirement and Income Plan II

In lieu of participating in the Federal Social Security Program, the City provides the Supplementary Retirement and Income Plan II (SRIP II). The City's contributions to this on behalf of participating employees is not subject to income tax until it is paid out to the employees upon retirement or termination, or to the employee's beneficiary in the event of the employee's death. The City contributes 6.7% of the participating employee's salary (up to a maximum annual salary of \$32,400) into an investment account and pays into a disability insurance benefit plan on the employee's behalf; and employees may also borrow up to 50% of the balance in their SRIP II investment accounts, subject to certain limitations. Employees in the classification of Assistant Fire Chief enrolled effective July 2, 1995; employees in the classification of Battalion Chief enrolled effective March 10, 2009; and employees in the classification of Fire Marshal on January 20, 2015.

## **ARTICLE 9 - LAYOFF PROCEDURE**

### **SECTION 9.1: LAYOFF PROCEDURE**

The layoff policy for the City of Berkeley is intended to provide the maximum employment protection to City staff should a layoff become necessary. The policy also aims to minimize the impact such a layoff might have on the City's affirmative action accomplishments.

#### **9.1.1 Announcement of Layoff**

9.1.1.1 **Notification:** The City Council, City Manager, and department heads shall make every reasonable effort to manage and budget the City's resources effectively and to plan for the delivery of City services in a manner which will avoid the necessity of laying off career City employees. If a reduction in the work force for more than thirty (30) calendar days is necessitated by, but not limited to, the following: a material change in duties and organization, adverse working conditions, return of employee from leave of absence, or shortage of work or funds, the City Manager shall notify the Director of Human Resources of the intended action and the reason for layoff.

9.1.1.2 **Freezing of Positions:** Immediately following a decision which may involve the potential layoff of career City employees, the City Manager shall freeze all current City vacancies in the competitive service in similar and related classifications to those likely to be targeted for layoff, as well as all related full-time, benefited, temporary positions which are expected to last six (6) months or more, and notify all department heads that such current and anticipated vacancies will be frozen until further notice in order to implement the provisions of Section 9.1.7 (Reemployment Lists).

#### **9.1.2 Seniority Service Date**

9.1.2.1 **Time Counted:** All service in the employ of the City shall be counted toward the establishment of the employee's seniority service date, including, for example, permanent, probationary, provisional, temporary (full-time and intermittent), seasonal, and exempt employment, as well as leaves of absence for parental leave or obligatory military service while an employee of the City. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the seniority service date. Time off as result of formal disciplinary action will be subtracted from the seniority service date.

- 9.1.2.2 **Service in Promotional Rank:** All service of persons in the employ of the City in a promotional rank above the entry-level rank shall be counted toward the establishment of an employee's rank seniority service date including only probationary and permanent service as well as leaves of absence for parental leave or obligatory military service while an employee of the City. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the rank seniority service date. Time off as a result of disciplinary action will be subtracted from the rank seniority service date.
- 9.1.2.3 **Service in Appointed Rank:** All time spent in an appointed rank shall be credited to the employee's service in the employee's permanent rank. In computing both City and rank seniority, all time spent on paid leaves of absence shall be included, and all time spent on unpaid leaves of absence in excess of two consecutive payroll periods shall be excluded with the exception of parental leave.
- 9.1.2.4 **Maintenance of Current Seniority Dates:** The Human Resources Department will maintain up-to-date and current seniority dates for all City employees holding probationary and permanent appointments.

### 9.1.3 Establishment of Seniority Lists

- 9.1.3.1 **Probationary and Permanent Seniority Lists:** Whenever a layoff of one or more career employees becomes necessary, as defined above, such layoffs shall be made according to City-wide classification seniority lists. Upon receiving notification that the City Manager must proceed with a possible reduction in the work force and following receipt of information concerning the specific positions, programs, and departments involved, the Human Resources Department will immediately establish separate probationary and permanent seniority lists for each classification targeted for layoff.
- 9.1.3.2 **Layoff Order:** The names of all City employees holding permanent and probationary appointments in a given classification will be listed on the appropriate list in descending order by City seniority service date in the entry-level position and by rank seniority service date in promotional positions. Except as provided in 9.1.4 (Employee Retreat Rights) below, employees on all lists shall be laid off on the basis of their seniority service dates, i.e., employees with the least amount of total service shall be laid off first. All emergency, temporary, and provisional employees working in classifications similar to those identified for layoff must be terminated prior to the layoff of probationary or permanent employees. Employees on the probationary seniority list for a specific classification

will be laid off prior to employees on the permanent seniority list for that class.

- 9.1.3.3 **Provisional Appointments:** Probationary or permanent employees holding a provisional appointment in another classification will only be listed on a seniority list of the class in which they hold permanent or probationary status targeted for layoff.
- 9.1.3.4 **Seniority Tie Break:** If two (2) or more employees on a seniority list have an identical seniority service date, the tie shall be broken in the following order: If an employee has taken the one-year written probationary examination, the score on that examination will be used to break ties. If an employee has not taken that examination, then the written entrance examination and agility test scores shall be used to break ties; the written exam and the agility test will be equally considered.
- 9.1.3.5 **Promotions:** If two (2) or more employees have the same promotion date in rank, seniority in the promoted rank at the time of promotion shall be determined based on the selection order made by the Fire Chief.

#### 9.1.4 Employee Retreat Rights

- 9.1.4.1 **Retreat Consideration:** Before an employee with permanent or probationary status may be released from employment with the City of Berkeley, the Human Resources Department must consider the employee's right to retreat to lower-level classification through which he or she was originally promoted or any subsequently created intermediate-level career classification which provides normal progression through the classification series. Retreat rights shall also extend to employees who have not previously been promoted through a classification but for whom the classification is a natural progression or beginning in the classification series.
- 9.1.4.2 **Process:** In the process of retreating, the rank seniority date list shall be utilized. Employees with the least amount of rank seniority shall retreat first; provided, however, that a retreat from any rank below the employee's current rank shall be based on a rank seniority date which is derived from combination of all credited service in the rank to which the employee has retreated and all credited service in higher ranks held on a probationary or permanent basis. Retreat rights to the rank of permanent Assistant Fire Chief, Battalion Chief, Fire Marshal, Deputy Fire Marshal, or Fire Captain will be available only to employees who have previously held this rank on a permanent or probationary basis.

9.1.4.3 **Retreat to More than 1 Classification:** If an employee is qualified for retreat into more than one classification with comparable salary ranges or if a vacancy exists in a classification to which an employee is entitled to retreat, the options shall be discussed with the employee, and due consideration shall be given to the employee's preferences. However, it is the prerogative of the City Manager to determine the final placement offer to the employee.

9.1.4.4 **Salary:** The retreating employee has a right to be retained in the highest salary range possible which is equal to or less than his or her present salary range. An employee involved in layoff does not have a right of mandatory placement to positions with a higher salary range, i.e., promotion.

### 9.1.5 Employee Notification

9.1.5.1 **Non-Career Notifications:** Emergency, temporary, intermittent, seasonal, etc., employees shall be notified individually, in writing, of pending layoff as soon as possible, but no definite time period is required. However, at least two (2) weeks notification is desirable if possible.

9.1.5.2 **Provisional Notifications:** Provisional employees shall be notified individually, in writing, of pending layoff as soon as possible, with no less than fifteen (15) calendar days notification if targeted for release or reassignment.

9.1.5.3 **Probationary and Career Notifications:** Permanent, probationary, and career-exempt employees should be notified individually, in writing, of pending layoffs as soon as possible, with no less than thirty (30) calendar days notification if targeted for release or reassignment or retreat. Notice to an employee absent from work for any reason shall be sent by United States Mail, return receipt requested.

**Forfeiture of Offer:** If an employee fails to accept a bona fide offer of reassignment or retreat in writing within five (5) calendar days after the offer has been made, he or she forfeits further right to employment retention. Acceptance of a reassignment does not remove the right of appeal under Section 9.1.9 (Appeal Procedures).

### 9.1.6 Flexible Placement Program

9.1.6.1 **Freeze of Vacancies:** In order to minimize the negative impact of a layoff, the City Manager will, as previously stated in Section 9.1.1 (Announcement of Layoff), impose a City-wide freeze on all appropriate



vacancies as soon as it has been determined that a layoff of career City employees may be necessary.

- 9.1.6.2 **Placements by Human Resources:** Following the release of all emergency, temporary, and provisional employees in classes similar to those targeted for layoff and as soon as employees targeted for layoff have been identified and the provisions under Section 9.1.4 (Employee Retreat Rights) have been carried out, the Human Resources Department will review and identify the frozen vacant classifications into which employees ultimately targeted for layoff may be placed on the basis of total experience and education. In making this decision, a waiver of minimum qualification standard and/or the substitution of related experience and education may be made, with an understanding on the part of management and supervisory personnel that adequate on-the-job training, which can be completed within no more than six (6) months, will be provided to facilitate job adjustment and to compensate for the waiver of qualification standards, if that has occurred.
- 9.1.6.3 **Limits of Assignments:** Assignments under the flexible placement program shall be limited to positions in the same or lesser salary range as the classification for which the employee is to be laid off.
- 9.1.6.4 **Offers Made:** Offers of positions under the flexible placement program shall be made according to seniority service date and in accordance with the probationary and permanent seniority list certification process outlined in Section 9.1.3 (Establishment of Seniority Lists). All offers and placements made under this provision of the layoff policy shall be documented in detail, with records available for audit and review at all times, including written acceptance of the offer.
- 9.1.6.5 **Forfeiture of Offer:** If an employee fails to accept a bona fide written offer of an alternative job within five (5) calendar days after the offer has been made he or she forfeits further rights to employment retention. Acceptance of an alternative job under the flexible placement program in no way jeopardizes an employee's standing on the reemployment priority lists on which his or her name has been placed in accordance with Section 9.1.7 (Reemployment Lists).

## 9.1.7 Reemployment Lists

- 9.1.7.1 **Placement of Names:** The names of all probationary and permanent employees released from positions in the competitive service as a result of layoff must be placed on reemployment priority lists for those classifications from which they were separated, as well as all other classifications to which they have retreat rights in accordance with

## Section 9.1.4 (Employee Retreat Rights).

- 9.1.7.2 **List Duration:** A reemployment priority list shall remain in effect for three (3) years. Said list shall remain in effect indefinitely for employees who were retreated.
- 9.1.7.3 **Use of Reemployment Priority List:** Departments with vacancies in any classification for which there is an active reemployment priority list must use the reemployment priority list to fill their positions and may not use any other recruitment or appointment method to fill a vacancy until appropriate reemployment lists have been exhausted.
- 9.1.7.4 **Order of Rehire from Reemployment List:** When a vacancy occurs in a class for which there is a reemployment priority list, the name of the employee on the appropriate reemployment priority list with the highest seniority date shall be certified to the selecting official. Employees so certified from the reemployment priority list must be appointed to the existing vacancy.
- 9.1.7.5 **Forfeiture of Offer:** If a former employee fails to accept a bona fide written offer or reemployment within five (5) calendar days, his or her name will be removed permanently from the reemployment priority list from which the offer was made. Failure to accept an offer of reemployment to the class with the highest salary range for which the employee is eligible for reemployment will result in automatic removal from all reemployment priority lists. However, the employee may decline (or accept) reemployment to lower salary range classifications without jeopardizing his or her standing on the reemployment priority list for the classification from which he or she was originally terminated.
- 9.1.7.6 **Salary/Step Placement:** Upon reappointment to the classification from which the employee was originally separated or demoted, the employee has the right to be placed at the step of the salary range which the employee held at the time of layoff or demotion.
- 9.1.7.7 Employees reinstated or reemployed after layoff shall receive a rate within the range established for the class. Transfers shall not affect an employee's salary rate. Employees appointed to any of the positions set forth in Exhibit "A" and employed and working on a part-time basis, shall be paid in proportion to the time worked as described in their appointment.

### **9.1.8 Career-Exempt Employees**

Only those employees holding full-time, benefited exempt positions who in the past have achieved permanent status and have been continuously employed without a break in service between their career and exempt appointment have the right to retreat to previously held career classifications, placement on the reemployment priority lists, and all other provisions governing layoff procedures. For the purpose of layoff, such employees shall be referred to as "career-exempt".

### **9.1.9 Appeal Procedures**

Any permanent, probationary, or career-exempt employee who is laid off, demoted, or reassigned as a result of layoff and who believes that the layoff procedure has been administered in violation of the terms of this agreement as it pertains to the employee's case may appeal the action under Section 6.1 (Grievance Procedure). In addition, employees may, at all times before, during, and subsequent to layoff, review all records including seniority lists, reemployment priority lists, documentation pertaining to appointments under the flexible placement program, etc., which pertain to their classification and their rights under the provisions of the layoff policy.

### **9.1.10 Audit**

- 9.1.10.1 On an annual basis, the City Manager's office shall order an audit by an outside auditor of all vacant positions filled in each department and authorized positions which have not been filled to determine whether the vacancies occurred in classifications for which reemployment priority lists were in existence, and, if so, whether the appointments made by the selecting official were in accordance with the procedures outlined in Section 9.1.7 (Reemployment Lists). In the event vacancies for which reemployment priority lists were in existence remain unfilled, the auditor shall offer an opinion as to whether or not the reasons for leaving the positions vacant appear to be legitimate. A report of the audit must be transmitted to the City Manager and the City Council.
- 9.1.10.2 If it is determined that a vacancy has been filled by a non-reemployment priority list eligible in a classification for which a reemployment priority list existed and which included available applicants at the time, the former employee with reemployment rights shall be hired and given retroactive pay from the date that the vacancy occurred. The employee who was originally hired to fill the vacancy shall continue to be retained in City employment.

**Signature Page**

**Employee Representatives  
Berkeley Fire Fighters Association,  
International Association of Fire Fighters  
Local 1227  
Berkeley Chief Fire Officers Association**

**Employer Representatives  
City of Berkeley**

\_\_\_\_\_  
William Kehoe  
BCFOA President

Date

\_\_\_\_\_  
Dee Williams-Ridley  
City Manager

Date

\_\_\_\_\_  
Jonathan Fischer  
BFFA President

Date

\_\_\_\_\_  
LaTanya Bellow  
Director of Human Resources

Date

\_\_\_\_\_  
Abe Roman  
Assistant Fire Chief

Date

2020-2021 Memorandum of Understanding

City of Berkeley

BFFA, Local 1227, I.A.F.F., BCFOA

**EXHIBIT A – Salaries**

| <b>Initial 3.0% Equity Increase (Battalion Chief only)</b> |      |                      |      |          |        |         |         |         |         |
|------------------------------------------------------------|------|----------------------|------|----------|--------|---------|---------|---------|---------|
| Job Code                                                   | Unit | Title                | FLSA | AL (Y/N) | STEP 1 | STEP 2  | STEP 3  | STEP 4  | STEP 5  |
| 81740                                                      | A    | Assistant Fire Chief | E    | Y        |        |         | 81.0921 |         | 89.2230 |
| 81750                                                      | A    | Battalion Chief      | E    | N        |        | 49.9059 | 52.4000 | 55.0202 | 57.7715 |
| 81760                                                      | A    | Fire Marshal         | E    | Y        |        |         | 81.0921 |         | 89.2294 |

| <b>Period: Effective 10/21/2018 - 3.0% Salary Increase</b> |      |                      |      |          |        |         |         |         |         |
|------------------------------------------------------------|------|----------------------|------|----------|--------|---------|---------|---------|---------|
| Job Code                                                   | Unit | Title                | FLSA | AL (Y/N) | STEP 1 | STEP 2  | STEP 3  | STEP 4  | STEP 5  |
| 81740                                                      | A    | Assistant Fire Chief | E    | Y        |        |         | 83.5249 |         | 91.8997 |
| 81750                                                      | A    | Battalion Chief      | E    | N        |        | 51.4030 | 53.9720 | 56.6708 | 59.5046 |
| 81760                                                      | A    | Fire Marshal         | E    | Y        |        |         | 83.5249 |         | 91.9063 |

| <b>Period: Effective 07/13/2019 - 2.0% Salary Increase</b> |      |                      |      |          |        |         |         |         |         |
|------------------------------------------------------------|------|----------------------|------|----------|--------|---------|---------|---------|---------|
| Job Code                                                   | Unit | Title                | FLSA | AL (Y/N) | STEP 1 | STEP 2  | STEP 3  | STEP 4  | STEP 5  |
| 81740                                                      | A    | Assistant Fire Chief | E    | Y        |        |         | 85.1954 |         | 93.7377 |
| 81750                                                      | A    | Battalion Chief      | E    | N        |        | 52.4311 | 55.0515 | 57.8043 | 60.6947 |
| 81760                                                      | A    | Fire Marshal         | E    | Y        |        |         | 85.1954 |         | 93.7444 |

## **EXHIBIT B – Glossary of Terms**

**ALLOCATION:** The assignment of a single position to its proper class in accordance with the duties performed, and the authority and responsibilities exercised.

**ANNIVERSARY DATE:** For the purposes of determining step increases, Anniversary shall be the date an employee is appointed or promoted to their current rank.

**CAREER EMPLOYEE:** An employee who is appointed to a position in the competitive service and who has a probationary or permanent appointment with the City of Berkeley.

**CLASSIFICATION (CLASS):** A group of positions sufficiently similar in respect to their duties and responsibilities that: (a) the same descriptive title may be used with clarity to designate each position allocated to the class; (b) the same minimum requirements as to education, experience, knowledge, ability and other qualifications may be required of all incumbents; (c) the same tests of fitness may be used to choose qualified employees and, (d) the same schedule of compensation can be made to apply with equity under the same or substantially the same employment conditions.

**COMPENSATORY TIME:** Shall mean paid time off the job which is earned and accrued by an employee in lieu of immediate cash payment for employment in excess of the statutory hours for which overtime is required by this MOU or the Fair Labor Standards Act. For the purpose of this MOU, the term “Due Time” shall mean the same as Compensatory Time.

**DEMOTION:** The movement of an employee from one class to another class having a lower maximum rate of pay.

**DOMESTIC PARTNER:** A person residing with and sharing the common necessities of life with a City of Berkeley employee, where both intend to continue this arrangement indefinitely. They are unmarried; at least eighteen (18) years of age; not related by blood closer than would bar marriage in the State of California and mentally competent to consent to contracts.

**EMPLOYEE:** A person who has been legally appointed under the City of Berkeley Personnel Ordinance and the Personnel Rules and Regulations, who is on the City payroll and whose employment has not been terminated and whose position is included in this representation unit.

**END OF YEAR:** For payroll-related purposes, the last day of the last pay period in December for which the payday occurs in December. For example, if the last pay day in December falls on Thursday, the 31st (because the following Friday, January 1st is a holiday), the corresponding pay period would end on December 26. The last day of the year for payroll-related purposes would be December 26. Similarly, if the last pay day of

the calendar year were December 28, the last day of the payroll year would be December 22.

**EXEMPT:** Appointment which is exempt from the competitive service, in accordance with Section 4.04.120 of City of Berkeley Personnel Ordinance, No. 6280-N.S.

**FULL-TIME:** An assignment or combination of assignments which total forty (40) or fifty-six (56) hours per week.

**HIGH RISK CLASSIFICATIONS:** A group of positions whose duties and responsibilities present a) significant probability or chance of injury, damage or loss of life; b) exposure to risk; and c) ability to incur the risk.

**JURY DUTY PERIOD:** The period of time from which an employee appears in court as required by law to serve on an inquest jury or trial jury until such time as the employee is discharged from such service by the court. "Jury Duty Period" expressly covers only that period of time spent by the employee in service of the court as a juror and does not include any time spent in court by the employee as a result of being a party to the action, being a witness to the action, or being subpoenaed to testify in the action.

**LEAVE DAY:** A leave day is used for computing earned leave and is equivalent to a 12-hour working day for a 56-hour per week employee, or is equivalent to an 8-hour working day for a 40-hour per week employee. Leave taken is computed as the actual hours used.

**MEMORANDUM OF UNDERSTANDING:** A binding contract, as provided for by the Meyers-Milias-Brown Act, between the City of Berkeley and the Berkeley Fire Fighters Association specifying wages, hours and other terms and conditions of employment.

**PROMOTION:** The movement of an employee from one class to another class having a higher maximum rate of pay.

**PROMOTIONAL EXAMINATION:** An examination for promotion to a class in the competitive service in which participation is limited to current employees with permanent status and/or to former permanent or probationary employees who are on current mandatory reemployment lists of layoff.

**PROVISIONAL:** A career employee who is temporarily serving in a higher level or unclassified position as a temporary assignment, pending examination, classification, or in the absence of the permanent incumbent.

**RECLASSIFICATION:** Reallocation of a position from one classification to another classification based upon consideration of the kind and level of assigned duties and responsibilities.

**REEMPLOYMENT:** Reappointment of a former probationary or permanent employee to a vacant position who has been laid off under Section 9.1.7 (Reemployment Lists) in this MOU.

**REGULAR HOURLY SALARY:** The Regular Monthly Salary multiplied by twelve (12) months and divided by 2080 annual work hours for forty (40) hour per week employees. For fifty six (56) hour per week assignments, the Regular Monthly Salary is multiplied by twelve (12) and divided by 2912 annual work hours, except that time worked on the day shift is multiplied by a factor of 1.2 and time worked on the night shift is multiplied by a factor of 0.85714.

**REGULAR MONTHLY SALARY:** The base pay for a classification (as included in Exhibits "A" of this MOU).

**REINSTATEMENT:** Appointment to a vacant position of a former probationary or permanent employee, within two years of the termination date, without obtaining new eligibility through examination. Reinstatement is not mandatory and a former employee must request consideration in writing. Eligibility for reinstatement is no guarantee of appointment and former probationary employees who did not obtain permanent status must complete their probationary period in accordance with Section 5.1 (Probationary Period).

**REJECTION (PROBATION):** The separation of an employee from the service during or at the completion of the probationary period.

**RELEASE TIME:** Paid time off permitted employees, during their scheduled hours of work, to perform Association activities as provided by this MOU. This paid time off is in addition to the employee paid leave and is subject to the conditions of the applicable sections of this MOU.

**SHIFT:** A set of continuous work hours. For 40-hour per week employees, a shift comprises eight (8) hours. For 56-hour per week employees, a shift comprises twenty-four (24) hours, except that the term "day shift" means ten (10) consecutive hours and "night shift" means fourteen (14) consecutive hours and "12-hour shift" is used for purposes of computing leave time and compensatory overtime (for purposes of this MOU). The term "working shift" refers to a day or night shift for 56-hour employees or a regular shift for 40-hour employees. The term "assigned shift" refers to separate schedules in effect for 56 hour employees, such as A-shift", "B-Shift" and "C-Shift". For purposes of computing leave time and compensatory overtime (for purposes of this MOU), an average twelve (12) hour shift is used.

**TERMINATION:** The separation of an employee from the service of the City. Termination may include death, discharge, layoff, resignation, retirement, and work completion.

**TOUR (48/96):** The basic work cycle; for example, the 56-hour employee's tour consists



of six consecutive days, during which time the employee is scheduled for 2 shifts on duty and 4 off duty.

**TRANSFER:** The movement of an employee from one position to another within the same class in another department or the movement of an employee from one class to another class having a comparable level of duties and responsibilities and the same maximum rate of pay.

**VACATION YEAR:** A vacation year runs twelve (12) months, (i.e. 26 payroll periods), starting and ending on a payroll period break.

**Y-RATE:** An employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary or occupying a position in a class the salary rate or range for which is reduced, shall continue to receive his or her present salary. Such salary shall be designated as a Y rate and when that employee vacates this position, it shall be filled in accordance with new salary range established. Y-rating shall not apply to employees who are demoted for just cause, including unacceptable level of performance, or as a result of demotion under the provisions of the Layoff policy.

**EXHIBIT C – Grievance Forms**

STEP 1 - Informal Step

STEP 1.1 - Deputy Fire Chief Response

STEP 2 – Appeal to Fire Chief

STEP 2.1 – Fire Chief Response

STEP 2.2 – Director of Human Resources Response (Compensation)

STEP 3 – Appeal to City Manager

STEP 3.1 - City Manager Response

STEP 4 – Appeal to Arbitration



BFFA Local 1227 – City of Berkeley  
Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



**STEP 1 – Informal Step**

**Important Notes (MOU Section 6.1 (Grievance Procedure)):** A grievance is any dispute which involves the interpretation, application, claimed violation, or claimed noncompliance with the provisions of the Memorandum of Understanding between the City and the Association or any City ordinance, rule, regulation, or past practice which may have been or may hereafter be adopted by the City to govern personnel practices or working conditions of the City's employees covered by such Memorandum of Understanding, including any rule, regulation, or resolution which may be adopted by the City Council which results from the meet-and-confer process.

No matter shall be considered as a grievance under this Section unless it is presented within thirty (30) calendar days after the employee or the Association could reasonably have been aware of events on which the grievance is based. All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Fire Chief or his or her designated representative for payroll issues within 30 working days from the date when the employee may reasonably be expected to have learned of the alleged compensation violation. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.

Grievance Tracking No.: \_\_\_\_\_

Grievant First Name | Grievant Last Name | Date: |

Job Title: | Firefighter | Dept/Location: | Station One | E-Board Rep: | First, Last Name

Nature of Grievance (Include specific provisions of the MOU, City ordinance, rule or regulation and/or past practice, and the circumstances involved):

Relief Desired:

Grievant: | \_\_\_\_\_ | Rep./Steward: | \_\_\_\_\_ |  
Signature | Signature

Date Rec'd by Chief Officer: | Meeting Requested: | Yes  No  | Date meeting occurred: |

Deputy Fire Chief: | \_\_\_\_\_ | Date: |  
Signature

**Instructions:** The grievant should complete this form electronically and print it out. It should then be given to an Executive Board member who will submit it to the Deputy Fire Chief and obtain a signature confirming receipt. Return a copy of the signed form to your assigned 1227 Executive Board representative.



BFFA Local 1227 – City of Berkeley  
Grievance Form  
(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking No.: \_\_\_\_\_

Grievant First Name | Grievant Last Name | Date: \_\_\_\_\_

**STEP 1.1 – Deputy Fire Chief Response**

**Important Note:** Any employee who believes he or she has a grievance (and/or the employee's Association representative) shall discuss the employee's complaint with the Deputy Fire Chief. If the issue is not resolved within fifteen (15) calendar days, the employee (and/or the employee's Association representative) may elect to invoke the formal grievance procedure (Step II).

Deputy Fire Chief's Response (1227 must be in receipt of this response within 15-days of their initial receipt of this grievance):

Deputy Fire Chief: \_\_\_\_\_ | Date: \_\_\_\_\_  
*Signature*

Receipt of Return to 1227:

Rep/Steward: \_\_\_\_\_ | Date Rec'd: \_\_\_\_\_

Rep/Steward: *Signature*  
*First Name*  
\_\_\_\_\_  
*Printed Name*

**Response to Deputy Fire Chief (to be completed by 1227 Rep./Steward):**

Date:

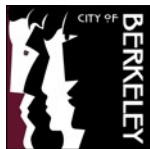
Deputy Fire Chief's Response is:

Satisfactory:  Unsatisfactory:

Grievance is:

Appealed:  Withdrawn:

**Instructions:** The Deputy Fire Chief shall complete this page electronically, print and return to a 1227 Executive Board representative. The 1227 representative shall immediately notify the President, 1<sup>st</sup> Vice President, or the 2<sup>nd</sup> Vice President.



# BFFA Local 1227 – City of Berkeley Grievance Form

*(Days defined as Calendar Days, unless otherwise noted)*



Grievance Tracking  
No.: \_\_\_\_\_

Grievant First Name \_\_\_\_\_ Grievant Last Name \_\_\_\_\_ Date: \_\_\_\_\_

## STEP 2 – Appeal to Fire Chief

**Important Notes:** The written statement shall be a clear concise statement of the grievance, including specific provisions of this agreement and/or City ordinance, rule or regulation, and/or past practice alleged to have been violated, the circumstances involved in the decision rendered at Step I, and the specific remedy sought. Either party shall be entitled to a personal conference upon request.

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Fire Chief or his or her designated representative for payroll issues within 30 working days from the date when the employee may reasonably be expected to have learned of the alleged compensation violation. If such issues cannot be resolved by the Fire Chief (or in consultation with the Auditor), the Fire Chief will refer the matter to the Director of Human Resources within ten (10) working days of receipt of the grievance.

Reasons for the appeal:

Date Rec'd by  
Fire Chief: \_\_\_\_\_

Fire Chief: \_\_\_\_\_  
*Signature*

Meeting Requested by 1227: Yes  No

Meeting Requested by Fire Chief: Yes  No

Date meeting occurred: \_\_\_\_\_

**Instructions:** The grievant and their Executive Board representative shall complete this form electronically, print it out and submit it directly to the Fire Chief along with all previous forms (Step I Nature, Step I DC Response, and any addendum documents) within 10 working days of receiving the DC response.



BFFA Local 1227 – City of Berkeley  
Grievance Form  
(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking No.: \_\_\_\_\_

Grievant First Name | Grievant Last Name | Date: \_\_\_\_\_

**STEP 2.1 – Fire Chief Response**

**Important Notes:** The Fire Chief shall communicate a decision to the grievant with a copy to the Association and to the Director of Human Resources in writing within ten (10) working days after receiving the grievance or ten (10) working days from the date of the personal conference, whichever is later, and such action will terminate Step II.

Fire Chief's Response:

Fire Chief: \_\_\_\_\_ Date: \_\_\_\_\_  
*Signature*

Receipt of Return to 1227:  
Rep/Steward: \_\_\_\_\_ Date Rec'd: \_\_\_\_\_  
*Signature*

**Response to Fire Chief (to be completed by 1227 Rep./Steward):**

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

Fire Chief's Response is:

Satisfactory:       Unsatisfactory:

Grievance is:

Appealed:       Withdrawn:

**Instructions:** The Fire Chief shall complete this page electronically, print and return to a 1227 Executive Board representative. The 1227 representative shall immediately notify the President, 1<sup>st</sup> Vice President, or the 2<sup>nd</sup> Vice President.



### BFFA Local 1227 – City of Berkeley

### Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking  
No.:

Grievant First Name

Grievant Last Name

Date:

## STEP 2.2 – Director of Human Resources Response (Compensation)

**Important Notes:** The Director of Human Resources or his or her designee shall have 30 working days to research the issue and provide a written response to the Association and the affected employee. In such cases no adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed or thirty (30) days from the date when an employee may reasonably be expected to have learned of said claimed violation whichever is later.

If the affected employee is not satisfied with the written decision of the Director of Human Resources or his or her designee, the affected employee will have ten (10) working days to appeal the decision in writing to the City Manager and the grievance will move to Step III of the Grievance Procedure as provided in Section 6.1.3.3 (Step III - City Manager).

|                                                                                 |                          |                               |                              |
|---------------------------------------------------------------------------------|--------------------------|-------------------------------|------------------------------|
| <b>Compensation Matter:</b>                                                     |                          | Yes: <input type="checkbox"/> | No: <input type="checkbox"/> |
| HR Representative:                                                              | Enter Name               |                               | Date:                        |
| Signature                                                                       |                          |                               |                              |
| HR Response (required within 30-working days of receipt of grievance) received: |                          |                               |                              |
|                                                                                 |                          |                               |                              |
| Receipt of Return to 1227:                                                      |                          |                               |                              |
| Rep/Steward:                                                                    |                          | Date Rec'd:                   |                              |
| Signature                                                                       |                          |                               |                              |
| <b>Response to Human Resources (to be completed by 1227 Rep./Steward):</b>      |                          |                               |                              |
| Human Resources Response is:                                                    |                          |                               |                              |
| Satisfactory:                                                                   | <input type="checkbox"/> | Unsatisfactory:               | <input type="checkbox"/>     |
| Grievance is:                                                                   |                          |                               |                              |
| Appealed:                                                                       | <input type="checkbox"/> | Withdrawn:                    | <input type="checkbox"/>     |
| Appeal deadline: 10-working days from receipt of HR response.                   |                          |                               |                              |



# BFFA Local 1227 – City of Berkeley Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking  
No.: \_\_\_\_\_

Grievant First Name \_\_\_\_\_ Grievant Last Name \_\_\_\_\_ Date: \_\_\_\_\_

## STEP 3 – Appeal to City Manager

**Important Notes:** In the event that the employee (or the employee’s Association representative) is not satisfied with the decision at Step II – Fire Chief, the employee (or the employee’s Association representative) may appeal the decision in writing to the City Manager or his or her designee within ten (10) working days after the termination of Step II – Fire Chief.

The grievant or the City Manager or his / her designee shall be entitled to a personal conference upon request within the time limits specified.

Reasons for the appeal:

Date Rec'd by  
City Manager: \_\_\_\_\_

City Manager (or designee): \_\_\_\_\_ Date: \_\_\_\_\_  
*Signature*

Meeting Requested: Yes  No

Date meeting occurred: \_\_\_\_\_

**Instructions:** The grievant and their Executive Board representative shall complete this form electronically, print it out and submit it to the City Manager along with all previous forms (Step I Nature, Step I DC Response, and any addendum documents) within **10 working days** after the termination of Step II. Once a signature of receipt is obtained a copy of this form shall be made and returned to the assigned Executive Board representative.



|                     |                    |       |
|---------------------|--------------------|-------|
| Grievant First Name | Grievant Last Name | Date: |
|---------------------|--------------------|-------|

**STEP 3.1 – City Manager Response**

**Important Notes:** The City Manager or his or her designee shall communicate a decision within ten (10) working days after receiving the appeal or ten (10) working days from the date of the personal conference, whichever is later and such decision will terminate Step III – City Manager.

City Manager Response:

|                  |       |
|------------------|-------|
| City Manager:    | Date: |
| <i>Signature</i> |       |

Return to 1227:

|                  |             |
|------------------|-------------|
| Rep/Steward:     | Date Rec'd: |
| <i>Signature</i> |             |

**Response to City Manager** *(to be completed by 1227 Rep./Steward):*

Date:

City Manager's Response is:

Satisfactory:       Unsatisfactory:

Grievance is:

Appealed:       Withdrawn:

Instructions: The City Manager (or his or her designee) shall complete this page electronically, print and return to a 1227 Executive Board representative. The 1227 representative shall immediately notify the President, 1<sup>st</sup> Vice President, or the 2<sup>nd</sup> Vice President.

Grievant First Name

Grievant Last Name

Date:

**STEP 4 – Appeal to Arbitration**

**Important Notes:** If the Association is not satisfied with the City Manager's response at Step III- the Association may require that the grievance be referred to an impartial arbitrator, who shall be designated by mutual agreement between the Association and the City Manager. The Association must notify the City Manager in writing within ten (10) working days of receipt of the City Manager's decision that they intend to move the grievance to arbitration.

**1227 Executive Board Arbitration Request:**

Date:

City Manager's Response was:

Satisfactory:       Unsatisfactory:

Association Requires Grievance to be Submitted to Arbitration:

Yes:       Withdrawn:

President:

*Signature*

1<sup>st</sup> Vice  
President:

*Signature*

2<sup>nd</sup> Vice  
President:

*Signature*

**Instructions:** The 1227 Executive Board shall complete this form electronically and submit it to the City Manager along with all previous forms (Step I Nature, Step I DC Response, and any addendum documents) with copies to the Director of Human Resources, the Fire Chief, the Union President, and the 1<sup>st</sup> Vice President. This must occur within ten (10) **working days** of receipt of the City Manager's decision that they intend to move the grievance to arbitration.

Exhibit D - Tentative Agreement

CITY OF BERKELEY / BCFOA (IAFF 1227) 2020 MOU NEGOTIATIONS  
TENTATIVE AGREEMENT – December 1, 2020

**SECTION 1.7: DURATION**

The Memorandum of Understanding and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at 2400 hours June 30, 2021, the last day of the last full pay period in June 2021. Nothing in this agreement shall be retroactive.

**SECTION 2.1: SALARIES**

Salaries are set according to the classifications and salary ranges assigned to those classifications as listed in the attached Exhibit "A" to this MOU. In recognition of the City's anticipated revenue shortfall for FY 2021 resulting from the COVID-19 pandemic, the parties agree there will be no increases to salary ranges for the term of this agreement. This is in order to aid the City's ability to continue routine services and minimize fiscal impacts for employees.

**SECTION 2.1.13: STANDBY – DUTY CHIEF COVERAGE**

As determined by the Fire Chief, Battalion Chiefs or Assistant Chiefs may be assigned as the Duty Chief. A Chief Officer assigned the responsibility and serving in the role of Duty Chief shall receive a differential of 4.8% (of current step, base salary) for Assistant Chief and 5.60% (of current step, base salary) for Battalion Chief, per hour for each hour so assigned. When functioning as a Duty Chief, members shall be available for service at any time when called. If an employee assigned as the Duty Chief is not available when called or is unable or fails for any reason to perform the service when called, the employee shall not receive the pay provided for those hours.

A Battalion Chief acting as the Duty Chief who is called from his or her living quarters shall respond into the City when so required and shall be compensated in accordance with Section

2.6.2 (Overtime – Eligibility and Rate).

This Higher-Class Duty Chief Premium will be reported to CalPERS as Duty Chief Premium Pay/Temporary Upgrade Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

**NEW SECTION 2.6.8: ASSISTANT CHIEFS WORKING AS BATTALION CHIEFS**

40-hour Assistant Chiefs shall be eligible to work as a Battalion Chief, for straight pay, compensated hour for hour during non-regularly scheduled working hours. This does not apply to relief provided to the on Duty Battalion Chief during an Assistant Chief's normal work schedule.

For employees who are designated as exempt from the Fair Labor Standards Act's overtime requirements under Section 2.6 of this MOU, nothing in this section will alter their exempt status.

**NEW SECTION 3.4.2: COVID LEAVE**

Due to the nature of bargaining unit work, backfill is required so the City will credit floating holiday hours in the form of a stipend to all ranks covered in this Agreement equal to twenty (20) hours to be paid at the beginning of the first full pay period after Council adoption. The reduction of COVID Leave from forty (40) hours will provide the majority of funding for two new vehicles; and the remainder will come from the Berkeley Fire Department budget.

**NEW SECTION 7.13: USE OF CITY VEHICLES**

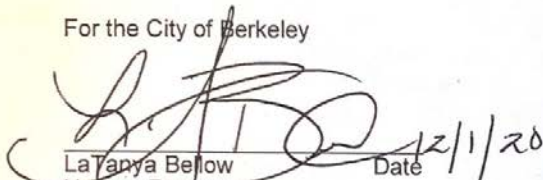
At the Direction of the Fire Chief, Assistant Fire Chiefs and Battalion Chiefs are subject to recall as a Duty Chief, wildland interface fires and for other greater alarm incidents. To facilitate response, the City shall provide a City-owned automobile that is code 3 equipped at no-cost to the employee. Note: The City will provide two new gasoline vehicles for the three Battalion Chiefs in FY21 and will endeavor to purchase a third when funding becomes available. The City will provide additional funding to assist in funding the purchase of the two vehicles.

The Fire Marshall is also subject to recall to investigate fire scenes and the City shall provide a City-owned automobile at no-cost to the employee.

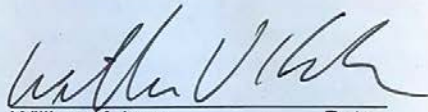
**SECTION 7.5: RESIDENCY REQUIREMENT**

Section 7.5 of the MOU shall be deleted due to adoption and passage of the ballot measure.

For the City of Berkeley

  
LaTanya Bell  
Human Resources  
Director  
Date 12/1/20

For BFFA, Local 1227

  
William Kehoe  
President, BCFOA, Local 1227  
Date



Office of the City Manager

CONSENT CALENDAR  
January 19, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jordan Klein, Interim Director, Planning and Development Department  
 Subject: Contract Amendments: Plan Check Services

RECOMMENDATION

Adopt two Resolutions authorizing the City Manager to execute contract amendments for an additional amount of \$500,000 each, to new total amounts not to exceed \$1,500,000 for each contract, and extending the terms of the contracts for a one-year period to June 30, 2022 with:

- West Coast Code Consulting, Contract No. 119641-2
- Telesis Engineers, Contract No. 119639-1

FISCAL IMPACTS OF RECOMMENDATION

Fees paid by project applicants to the Permit Service Center Fund fully cover the cost of contracted plan check, inspection and special services for the Building and Safety Division. Plan check fees are assessed at 65% of the building permit fee and received under revenue code 621-53-585-634-0000-000-000-446140. Contracts are used on an as-needed basis, which varies based on the level and complexity of projects and staffing levels.

| <b>Contractor</b>           | <b>Contract No.</b> | <b>Current Not-to-Exceed Amount</b> | <b>This Amendment</b> | <b>New Not-to-Exceed Amount</b> |
|-----------------------------|---------------------|-------------------------------------|-----------------------|---------------------------------|
| West Coast Code Consultants | 119641-2            | \$1,000,000                         | \$500,000             | \$1,500,000                     |
| Telesis Engineers           | 119639-1            | \$1,000,000                         | \$500,000             | \$1,500,000                     |
| <b>TOTAL</b>                |                     | <b>\$2,000,000</b>                  | <b>\$1,000,000</b>    | <b>\$3,000,000</b>              |

The resolutions amend these two contracts for a total additional expenditure of \$500,000 per contractor, to new total not-to-exceed amounts of \$1,500,000 per contractor. The Planning Department has budgeted \$1.23 million for professional services in FY 2021, primarily for plan check contractors, of which \$725,000 remains. The Planning Department will budget a similar amount for FY 2022.

**CURRENT SITUATION AND ITS EFFECTS**

These contracts are typically used for complex, larger projects which require extensive plan review time, as well as other project types during periods where there is an especially high volume of permitting activity or unanticipated staff shortages. Since fees for plan check services cover all costs associated with the use of such outside consultants, these proposed amendments would be fully funded by project applicants through plan check fees collected upfront at the time of the initial submittal.

As shown in the table below, the Planning Department will soon meet the not-to-exceed amounts in the contracts with West Coast Consultants and Telesis Engineers. The existing amounts in these two contracts are expected to be depleted in January 2021 if no further action is taken, due to the number of permit applications which have recently been submitted for large projects. The Building and Safety Division’s third contractor for plan check services, Interwest Consulting, still has almost \$400,000 remaining in its contract, so no additional funds are needed for this contractor.

| <b>Contractor</b>           | <b>Encumbered</b> | <b>Invoiced</b> | <b>Remaining*</b> |
|-----------------------------|-------------------|-----------------|-------------------|
| West Coast Code Consultants | \$903,906         | \$871,905       | \$128,095         |
| Telesis Engineers           | \$965,000         | \$881,272       | \$118,728         |
| *Amounts as of Dec 15, 2020 |                   |                 |                   |

**BACKGROUND**

The City released a Request for Proposals (RFP) on November 1, 2017 for plan check services (Specification No. 18-11174-C). Planning staff received and reviewed a total of 10 proposals and selected four contractors: West Coast Code Consultants, Telesis Engineers, Interwest Consulting Group and 4 Leaf, Inc. Contracts were executed in May and June of 2018, with expiration dates of June 30, 2021 and not-to-exceed amounts of \$1,000,000 for West Coast Code Consultants and Telesis Engineers, \$700,000 for Interwest Consulting Group, and \$300,000 for 4 Leaf, Inc.

The Planning and Development Department has established performance measures that provide benchmarks for permit services including plan checking and inspections. The department has maintained contracts for outside plan check services to ensure reasonable turnaround times for customers since 1989. The contracts provide:

- Plan review services for all types of projects
- Temporary in-house plan check support
- Temporary staff for field inspection services
- Review for high rise projects including special life safety features
- Structural specialty reviews such as Soft Story, URM, and complex structural systems
- Geotechnical review by a qualified engineer

- Accelerated plan reviews upon applicant request, at their expense
- Recommendations regarding alternative materials and methods of construction
- Facilitating and participating in structural advisory committee panels

The selected firms have adequate capability to meet current and expected demand for outside plan check services. The firms have considerable expertise and familiarity with City procedures, and provide quality service at competitive prices. Because the use of the service depends largely on the number and complexity of private building projects, it has been common for the City to amend such contracts to increase the authorized amounts as needed, especially during periods of increased service needs.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects associated with this report.

#### RATIONALE FOR RECOMMENDATION

Consultant services are needed for the Building and Safety Division to maintain a turnaround time for plan review that meets the City's performance requirements, and the expectations and needs of the community. Consultants can be used flexibly when volume is higher than staff can handle, to maintain necessary services during unforeseeable staff shortages, or if the City prefers not to increase staff beyond what it deems to be a sustainable level. Consultants also provide specialized expertise.

Without these outside services, review time would be increased substantially, particularly on large and complex projects. Amending contracts with the existing contractors without going through a new procurement process is the most resource-effective manner to continue these services.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

Jenny McNulty, Resilient Buildings Program Manager, 510-981-7451  
Alex Roshal, Building Official, 510-981-7445

#### Attachments:

1. Resolution: West Coast Code Consulting
2. Resolution: Telesis Engineers

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

CONTRACT NO. 119641-2 AMENDMENT: WEST COAST CODE CONSULTING TO  
PROVIDE PLAN CHECKING SERVICES

WHEREAS, the City of Berkeley has utilized the services of private plan checking consultants since 1989 to provide expertise and the flexibility to respond to varying work demand; and

WHEREAS, there is a continuing need for flexibility to provide timely plan review when City staff are not available to provide the required services within the timeframe established to meet the City's performance requirements; and

WHEREAS, ten firms responded to a Request for Proposals released on November 1, 2017 (Specification No. 18-11174-C) and a selection committee reviewed the proposals and determined that Telesis Engineers, Interwest Consulting Group, West Coast Code Consulting and 4 Leaf, Inc were the best qualified to provide the services needed; and

WHEREAS, contracts were executed with these vendors in 2018, which will expire June 30, 2021; and

WHEREAS, the cost of the contracted services and overhead is fully recoverable in plan check fees paid by applicants; and

WHEREAS, funding for this recommendation is available in the professional services budget item (621-53-585-634-0000-000-472-612990) of the Permit Service Fund set at \$1.23 million for FY21.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager execute an amendment to Contract No. 119641-2 with West Coast Code Consulting for an additional amount of \$500,000 not to exceed \$1,500,000 to provide plan checking services for the Planning and Development Department (from account 621-53-585-634-0000-000-472-612990).

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



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

CONTRACT NO. 119639-1 AMENDMENT: TELESIS ENGINEERS TO PROVIDE  
PLAN CHECKING SERVICES

WHEREAS, the City of Berkeley has utilized the services of private plan checking consultants since 1989 to provide expertise and the flexibility to respond to varying work demand; and

WHEREAS, there is a continuing need for flexibility to provide timely plan review when City staff are not available to provide the required services within the timeframe established to meet the City's performance requirements; and

WHEREAS, ten firms responded to a Request for Proposals released on November 1, 2017 (Specification No. 18-11174-C) and a selection committee reviewed the proposals and determined that Telesis Engineers, Interwest Consulting Group, West Coast Code Consulting and 4 Leaf, Inc were the best qualified to provide the services needed; and

WHEREAS, contracts were executed with these vendors in 2018, which will expire June 30, 2021; and

WHEREAS, the cost of the contracted services and overhead is fully recoverable in plan check fees paid by applicants; and

WHEREAS, funding for this recommendation is available in the professional services budget item (621-53-585-634-0000-000-472-612990) of the Permit Service Fund set at \$1.23 million for FY21.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager execute an amendment to Contract No. 119639-1 with Telesis Engineers for an additional amount of \$500,000 not to exceed \$1,500,000 to provide plan checking services for the Planning and Development Department (from account 621-53-585-634-0000-000-472-612990).

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





Human Welfare and Community Action Commission

CONSENT CALENDAR

January 19, 2021

To: Honorable Mayor and Members of the City Council  
 From: Human Welfare and Community Action Commission  
 Submitted by: Samuel Kohn, Chairperson, Human Welfare and Community Action Commission  
 Subject: Filling Vacancies Among the Elected Representatives of the Poor

RECOMMENDATION

Adopt a Resolution confirming the appointments of Ms. Denah Bookstein (District 1); and Mr. Carlos Hill (District 1) as elected representatives of the poor on the Human Welfare and Community Action Commission (HWCAC), having been voted onto the Commission at the HWCAC December 9, 2020 meeting, and that their terms expire December 9, 2022.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Failure to maintain full membership on the HWCAC, which also acts as the Board of the Berkeley Community Action Agency (CAA), could result in a loss of Community Services Block Grant (CSBG) funding. Vacancies on the Berkeley CAA Board were noted as a “finding” during the most recent desk review of this program conducted by the State Department of Community Services and Development.

BACKGROUND

The HWCAC is made up of fifteen members, nine of whom are appointed by Berkeley City Council members and six of whom are elected representatives of the poor. Berkeley Municipal Code Section 3.78.080 stipulates that elections of representatives of the poor are held biennially in the month of November in even numbered years. The next election will take place in November 2022. Subsection C of the code states, “...the remaining representatives of the poor...shall select a person to fill the vacancy until the next election...” and that the, “...name of the selected representatives shall be submitted to the City Council for confirmation.” BMC 3.78.030 (b) also states in part, that the remaining elected commission members shall recommend to the Council that the newly elected person fill out the term of the appointment.

There was only one elected representative of the poor at the meeting; therefore, the elected representative of the poor and the remaining commissioners voted (Roll Call

Vote: Ayes – Dunner, Sood, Behm-Steinberg, Kohn, Omodele, Sim, Romo; Noes – None; Abstain – None; Absent: Smith) to select Ms. Bookstein to fill one of the current vacancies;

and voted (Roll Call Vote: Ayes – Dunner, Sood, Behm-Steinberg, Kohn, Omodele, Sim, Romo; Noes – None; Abstain – None; Absent: Smith) to select Mr. Hill to fill one of the current vacancies.

ENVIRONMENTAL SUSTAINABILITY

There are no known environmental impacts associated with the recommendation of this report.

RATIONALE FOR RECOMMENDATION

Failure to maintain full membership on the HWCAC could threaten future CSBG funding.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager takes no position on the recommendation but supports maintaining full commission membership.

CONTACT PERSON

Mary-Claire Katz, Secretary, HHCS, (510) 981-5414

Attachments:

1: Resolution

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

CONFIRMING THAT MS. DENAH BOOKSTEIN AND MR. CARLOS HILL, MAY FILL TWO VACANCIES AMONG THE ELECTED REPRESENTATIVES OF THE POOR ON THE HUMAN WELFARE AND COMMUNITY ACTION COMMISSION (HWCAC), HAVING BEEN SELECTED AT THE HWCAC DECEMBER 9, 2020 MEETING

WHEREAS, Berkeley Municipal Code Section 3.78.080 stipulates that election of representatives of the poor are held biennially in the month of November in even numbered years, and the next election will take place in November 2022; and

WHEREAS, Subsection C states "...the remaining representatives of the poor...shall select a person to fill the vacancy until the next election..." and that the "...name of the selected representatives shall be submitted to the City Council for confirmation"; and

WHEREAS, at the December 9, 2020 HWCAC regular meeting, the Commission elected Ms. Denah Bookstein (District 1) by unanimous roll-call vote to fill one vacancy with her term ending December 9, 2022; and

WHEREAS, at the December 9, 2020 HWCAC regular meeting, the Commission elected Mr. Carlos Hill (District 1) by unanimous roll-call vote to fill one vacancy with his term ending December 9, 2022; and

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that Ms. Denah Bookstein (District 1); and Mr. Carlos Hill (District 1); are confirmed as elected representatives of the poor serving on the Human Welfare and Community Action Commission until December 9, 2022.





Open Government Commission

CONSENT CALENDAR

January 19, 2021

To: Honorable Mayor and Members of the City Council

From: Brad Smith, Chair, Open Government Commission

Submitted by: Samuel Harvey, Secretary, Open Government Commission

Subject: Amendments to the Berkeley Lobbyist Registration Act

RECOMMENDATION

Adopt an ordinance amending the Berkeley Lobbyist Registration Act (BMC Chapter 2.09) to incorporate the recommendations of the Open Government Commission (OGC).

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

These recommended amendments to the Berkeley Lobbyist Registration Act were approved by the Open Government Commission at its regular meeting of September 17, 2020

**Action:** Motion to approve proposed amendments to Lobbyist Registration Act and send to City Council.

**Vote:** M/S/C: Metzger/Sheahan; Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, McLean, Tsang, Smith Noes: none; Abstain: none; Absent: none.

This recommendation is provided by the OGC pursuant to its authority under BMC § 2.06.190.A.2 to “propose additional legislation or procedures that it deems advisable to ensure the City’s compliance with ... the Lobbyist Registration Act, and advise the City Council as to any other action or policy that it deems advisable to enhance open and effective government in Berkeley.” This ordinance may be adopted by majority vote of the Council. The Council may amend the proposed ordinance without resubmitting the ordinance to the OGC.

BACKGROUND

The Berkeley Lobbyist Registration Act (BMC Chapter 2.09) was adopted by the City Council on October 16, 2018 and went into effect on January 1, 2020. During the first year of implementation, City staff and the OGC have fielded a variety of questions from

residents and entities subject to the Act. During this period, staff and the OGC have noted some areas where the Act could benefit from amendments in order to facilitate easier compliance and provide greater clarity while ensuring fairness and transparency.

Particularly, staff have identified areas where the Act's provisions pertaining to registration, payment of fees, lobbyist training and reporting are silent as to their application in certain scenarios. Additionally, the OGC has noted that a number of organizations subject to the Act have expressed concern about the burdensomeness of complying with the Act. The OGC therefore is recommending the Act be amended to enable entities and organizations that employ in-house lobbyists to prepare and submit all required registrations, reports and declarations on behalf of their in-house lobbyists to simplify compliance with the Act. Finally, the OGC is recommending a number of minor "clean-up" changes which generally provide clarity without substantively altering the affected provisions.

To these ends, the amendments to the Act in the attached Ordinance make the following changes and clarifications:

**Definitions:**

1. Clarifies that, in the case of an in-house lobbyist, the "client" for the sake of registration and reporting is the in-house lobbyist's employer. (BMC § 2.09.050.C)
2. Adds clarifying language to the definition of "governmental action." (BMC § 2.09.050.K)
3. Creates three new defined terms as part of clarifying the treatment of in-house lobbyists and organizations: "in-house local governmental lobbyist," "lobbyist employer," and "lobbying firm." (BMC § 2.09.050.M-O)
4. Clarifies that a lobbyist includes someone paid to lobby by their employer regardless of whether they are salaried or paid hourly. (BMC § 2.09.050.P)

**Registration and reporting:**

1. Allows a grace period of ten business days for registration fee payment with provision that failure to timely pay will invalidate registration. (BMC § 2.09.050.E-F)
2. Provides that registration fees are non-refundable. (BMC § 2.09.060.E)
3. Provides that registrations and fees are non-transferrable. (BMC § 2.09.060.G)
4. Provides/clarifies that failure to complete lobbyist training and file signed declaration within 30 days of registration is a violation of the Act and may result in invalidation of registration. (BMC § 2.09.080.D)
5. Adds 501(c)(6) organizations (i.e., non-profit business leagues, chambers of commerce, real-estate boards, boards of trade) to groups exempt from paying the registration fee. (BMC § 2.09.060.G)
6. Clarifies that proof of tax-exempt status includes IRS determination letter or other documentation deemed sufficient by City Clerk. (BMC § 2.09.060.G)



7. Clarifies that a lobbyist who terminates lobbying activities must file a final disclosure report and final registration indicating termination. (BMC § 2.09.070)
8. Clarifies that a lobbyist must submit an amended registration form when they add a new client. (BMC § 2.09.170)

**Exemptions:**

1. Adds language clarifying but not changing exemption for persons acting on behalf of a union. (BMC § 2.09.090.H)
2. Adds exemption for an attorney acting on behalf of a party to litigation or administrative proceeding. (BMC § 2.09.090.I)

**Registration and reporting by businesses and organizations retaining in-house lobbyists:**

1. Provides that a lobbyist-employer (e.g., company or organization employing an in-house lobbyist) may prepare and submit registrations, reports and declarations on behalf of in-house lobbyists. (BMC §§ 2.09.120, 2.09.150)
2. Provides that an in-house lobbyist whose employer has four or fewer employees must file annual rather than quarterly reports. (BMC § 2.09.140)

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

The proposed amendments to the Berkeley Lobbyist Registration Act will provide clarification, simplify compliance for certain regulated persons and entities, and improve the Act's ability to provide the public important information about lobbying in the City of Berkeley.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

CONTACT PERSON

Brad Smith, Chair, Open Government Commission, (510) 981-6998

Samuel Harvey, Commission Secretary, Open Government Commission (510) 981-6998

Attachments:

1. Ordinance

ORDINANCE NO. -N.S.

AMENDMENTS TO THE BERKELEY LOBBYIST REGISTRATION ACT

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

That Chapter 2.09 of the Berkeley Municipal Code (Berkeley Lobbyist Registration Act) is hereby amended to read as follows:

**Chapter 2.09**

**LOBBYIST REGISTRATION AND REGULATIONS**

**Article 1. General Provisions**

**Section 2.09.010 Title.**

This chapter shall be known as the Berkeley Lobbyist Registration Act, hereafter "the Act."

**Section 2.09.020 Findings.**

A. Democracy in our representative form of government requires that the public have an opportunity to know as much as possible what lobbying efforts are taking place that may affect decisions being made by our elected officials, City staff, boards, and commissions.

B. To the extent possible, it is the government's responsibility to balance the responsibility to ensure the health, safety, and general welfare of the public at large in a fiscally and environmentally sustainable manner.

**Section 2.09.030 Purpose.**

Therefore, the purpose of this ordinance is to codify certain existing practices, as well as to adopt new practices, to ensure that the public has an adequate opportunity to be informed of the City's activities and to communicate its concerns to its elected and appointed officials.

**Article 2. Definitions and Interpretation of This Act**

**Section 2.09.040 Words and phrases.**

Words and phrases used in this Act shall have the same meanings and be interpreted in the same manner as words and phrases used in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12) and the Political Reform Act of 1974, California Government Code 81000 — 91014, hereafter the Political Reform Act, as amended and the regulations issued pursuant thereto, unless otherwise expressly provided or unless the context otherwise requires.

**Section 2.09.050 Definitions.**

For the purposes of this Act, the following definitions shall be applicable:

A. "Campaign consultant" means any person or entity that receives or is promised

economic consideration equaling \$1,000 or more in a calendar year for campaign consulting services. The term "campaign consultant" includes any person or entity that subcontracts with a campaign consultant to provide campaign consulting services, and that receives or is promised economic consideration equaling \$1,000 or more in a calendar year for providing campaign consulting services. The term "campaign consultant" does not include attorneys who provide only legal services, accountants who provide only accounting services, pollsters who provide only polling services, and treasurers who provide only those services which are required of treasurers by the Political Reform Act and the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12).

B. "Campaign consulting services" means participating in campaign management or developing or participating in the development of campaign strategy.

C. "Client" means the real party in interest for whose benefit the services of a local governmental lobbyist are actually performed. In the case of an in-house local governmental lobbyist, "client" means the lobbyist employer of which the in-house local governmental lobbyist is an employee, officer or director. An individual member of an organization shall not be deemed to be a "client" solely by reason of the fact that such member is individually represented by an employee or agent of the organization as a regular part of such employee's or agent's duties with the organization as long as such member does not pay an amount of money or other consideration in addition to the usual membership fees for such representation.

D. "Committee" shall be defined as set forth in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12).

E. "Contractor" means any party to an agreement in which the value of the consideration exceeds one thousand dollars (\$1,000), and, (1) The City is a party, or (2) the agreement or its effectiveness is in any way dependent or conditioned upon approval by the City Council or any board or commission, officer or employee of the City.

F. "Contribution" shall have the same meaning as set forth in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12).

G. "Controlled committee" shall have the same meaning as set forth in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12), but shall not include any state committees.

H. "Employee" shall have the same meaning as set out in Title 20 of the Code of Federal Regulations § 404.1007(b).

I. "Gift" shall be defined as set forth in the Political Reform Act, and the regulations adopted thereunder.

J. "Gift of travel" shall mean payment, advance, or reimbursement for travel, including transportation, lodging, and food and refreshment connected with the travel.

K. "Governmental action" means any discretionary administrative or legislative action of the City other than an action which is ministerial in nature. An action is ministerial in nature if it does not require the City official or employee who is the subject of the communication or contact to exercise any discretion concerning an outcome or course of action.

L. "Influence" or "influencing" means contacting a City elected or appointed official or employee, either directly or indirectly, for the purpose of promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the official actions.

M. "In-house local governmental lobbyist" means a local governmental lobbyist who is an employee, officer or director of a business, firm or organization and who lobbies solely on behalf of that business, firm or organization. "In-house local governmental lobbyist" does not include a local governmental lobbyist who is a partner, owner, officer or employee of a lobbying firm.

N. "Lobbyist employer" means any business, firm, or organization for which an employee, officer or director qualifies as an in-house local governmental lobbyist. "Lobbyist employer" does not include a lobbying firm.

O. "Lobbying firm" means any business entity which receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, for the purpose of influencing any proposed or pending governmental action of the City on behalf of any other person or entity, and any partner, owner, officer, or employee of the business entity is a local governmental lobbyist. "Lobbying firm" does not include a bona fide trade, labor or membership organization which is ongoing in nature and whose membership services are not limited to influencing governmental action of the City.

M. P. "Local governmental lobbyist" means any individual who: (1) receives or is entitled to receive one thousand dollars (\$1,000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, to communicate directly or through agents with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City; or (2) whose duties as a ~~paid~~salaried employee, officer or director of any ~~corporation, organization or association~~business, firm, or organization include communication directly or through agents with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City. No person is a local governmental lobbyist by reason of activities described in Section 2.09.090. In case of any ambiguity, the definition of "local governmental lobbyist" shall be interpreted broadly.

M.Q. "Payment" means a payment, distribution transfer, loan advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

N.R. "Person doing business with the City" means any person whose financial interests are materially affected by governmental action as defined by Section 2.09.050(K). It includes persons currently doing business with the City, planning to do business with the City, or having done business with the City within two years. For purposes of this Act a person's financial interests shall not be found to be materially affected by the issuance of any license or permit which does not require the exercise of discretion by City elected or appointed officials or employees.

O.S. "Public event" shall mean an event or gathering that any member of the public may attend, has been publicly announced and publicized in advance, and for which there is no admission cost or fee.

P.T. "Public official" means an elected or appointed officer or employee or officially designated representative, whether compensated or not, of the United States or any of its agencies, the State of California, any political subdivision of the state, including cities, counties, districts, or any public corporation, agency or commission.

Q.U. "Registered client" means any client of a local governmental lobbyist listed as part of the requirements of sections 2.09.060 and 2.09.140.

~~R.V.~~ "State committee" shall mean a committee that makes contributions or expenditures to support or oppose candidates or measures voted on in state elections, or in more than one county.

### Article 3. Registration of Lobbyists

#### Section 2.09.060 Registration with the Open Government Commission.

A. No person shall act as local governmental lobbyist before registering as a local governmental lobbyist with the Open Government Commission, through the office of the City Clerk.

B. At the time of registering, the local governmental lobbyist shall file with the City Clerk, in writing:

1. His or her name, business address, e-mail address, and business telephone number.
2. The name, business address, and business telephone number of each client for whom the local governmental lobbyist attempts or receives compensation to influence any proposed or pending governmental action of the City.
3. The name, business address, and business telephone number of the local governmental lobbyist's employer, firm or business affiliation.

C. The local governmental lobbyist shall reregister annually during the month of January and at that time shall resubmit the required information.

D. Local governmental lobbyists shall amend any information submitted to the Open Government Commission through registration and quarterly disclosures within five business days of the changed circumstances that require correction or updating of such information.

E. ~~At the time of~~ Within ten business days of initial registration, and ~~during~~ each annual registration, each local governmental lobbyist shall pay a non-refundable fee of \$500.

F. Failure to pay the annual fee shall ~~constitute a termination of~~ invalidate a local governmental lobbyist's registration with the Open Government Commission. The Open Government Commission is also authorized to establish additional processes for the termination of a local governmental lobbyist's registration.

G. The City Clerk shall waive all registration fees for any employee, officer or director of a tax-exempt organization presenting proof of the organization's tax-exempt status under 26 U.S.C. Sections 501(c)(3), or 501(c)(4), or 501(c)(6) so long as they are acting in that capacity. Proof of an organization's tax-exempt status shall include an Internal Revenue Service determination letter or other documentation deemed sufficient by the City Clerk.

H. The City Clerk shall deposit all fees collected pursuant to this Section in the General Fund of the City of Berkeley.

I. A local governmental lobbyist's registration and fee are not transferrable to any other local governmental lobbyist.

#### Section 2.09.070 Cessation of employment Lobbying Activities.

A local governmental lobbyist who has terminated all activities requiring registration shall ~~notify the City Clerk of that fact~~ file a final disclosure report no later than the date required by Section 2.09.140 along with a final registration form indicating that all lobbying activities have terminated, and thereupon shall be relieved of any further obligations under this Act until such time as he or she commences activity requiring registration.

**Section 2.09.080 Lobbyist training.**

A. Each local governmental lobbyist must complete a lobbyist training session offered by the Open Government Commission, through the Office of the Clerk, within 30 days of the local governmental lobbyist's initial registration. Thereafter, local governmental lobbyists shall engage in additional training sessions as required by the Open Government Commission, at its discretion.

B. The Open Government Commission shall make local governmental lobbyist training sessions available on its website.

C. On or before the deadline for completing any required local governmental lobbyist training session, a local governmental lobbyist must file a signed declaration with the Open Government Commission stating, under penalty of perjury, that the local governmental lobbyist has completed the required training session.

D. Failure to file the signed declaration required by this section within 30 days of the local governmental lobbyist's initial registration shall constitute a violation of this Act. The Open Government Commission may invalidate a registration for failure to comply with this section.

**Section 2.09.090 Exceptions.**

The provisions of this Act shall not apply:

A. To a public official acting in his or her official capacity.

B. To the publication or broadcasting of news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge governmental action.

C. To a person specifically invited by the City Council or any committee thereof, or by any board or commission, or any committee of a board or commission, or by any officer or employee of the City charged by law with the duty of conducting a hearing or making a decision, for the purpose of giving testimony or information in aid of the body or person extending the invitation.

D. To a person who, without extra compensation and not as part of, or in the ordinary course of, his or her regular employment, presents the position of his or her organization when that organization has one or more of its officers, directors, employees or representatives already registered under the provisions of this Act.

E. To designated representatives of a recognized employee organization whose activities are limited to communicating with elected or appointed City officials or their representatives regarding (1) wages, hours and other terms and conditions of employment pursuant to the procedures set forth in Government Code Sections 3500—3510, or (2) the administration, implementation or interpretation of an existing employment agreement.

F. To persons whose only activity is to (1) submit a bid on a competitively bid contract, (2) respond to a request for proposal or qualifications, or (3) apply for grant funding or (4) negotiate the terms of a written contract or grant if selected pursuant to such bid or request for proposal or qualifications. This exception shall not apply to persons who attempt to influence the award or terms of a contract or grant with any elected or appointed official, unless their attempts are limited to speaking during public comment at a publicly noticed meeting.

G. To any individuals serving in their professional capacity (e.g. attorneys, architects, or engineers), who are employed by a local government lobbyist, and whose attempts to influence governmental action are limited to:

(1) Publicly appearing at a public meeting, public hearing, or other official proceeding open to the public to represent or testify on behalf of a proposed development;

(2) Preparing or submitting documents or writings in connection with the proposed development for use at a public meeting, public hearing, or other official proceeding open to the public; and

(3) Contacting city employees or agents working under the direction of the city manager directly relating to (1) and (2) above, or contacting elected or appointed City officials directly relating to (1) and (2) above.

H. ~~To Ppersons appearing or acting on behalf of employed by, or a member of,~~ a labor union of which they are an employee or member.

I. To an attorney who communicates with a City official or employee regarding representation of a party or potential party to pending or actual litigation, or to a pending or actual administrative enforcement proceeding, brought by or against the City or City agent, officer or employee.

#### **Section 2.09.100 Failure to Register.**

If the Open Government Commission determines that a person is subject to registration and he or she fails to register within seven days of that determination, he or she shall be barred from acting as a local governmental lobbyist except when appearing before the City Council or other board or commission at a noticed public meeting. Such debarment shall be in effect for three months from the date of such determination or until registration, whichever is later.

#### **Section 2.09.110 Availability of information.**

All registration information shall be retained by the City Clerk for a period of five years from the date of filing, shall constitute part of the public records of the City, and shall be open to public inspection.

#### **Section 2.09.120 Filing under penalty of perjury.**

All information required by this Act shall be filed with the City Clerk on forms prescribed by the Open Government Commission, and accompanied by a declaration by the local governmental lobbyist that the contents thereof are true and correct under penalty of perjury. In the case of an in-house local governmental lobbyist, the lobbyist employer, or agent thereof, may complete and file any declaration required by this section.

#### **Section 2.09.130 Records.**

A local governmental lobbyist shall retain, for a period of five years, all books, papers and documents necessary to substantiate the registration required to be made under this Chapter.

### **Article 4. Disclosure of Lobbying Activities and Audits**

#### **Section 2.09.140 Quarterly/Annual disclosure.**

For each calendar quarter in which a local governmental lobbyist was required to be registered, he or she shall file a quarterly report with the City Clerk, unless the local governmental lobbyist is a sole proprietorship, is an in-house local governmental lobbyist who lobbies solely on behalf of a lobbyist employer with four or fewer employees, or works for a lobbying firm with four or fewer employees, in which case they shall file annually. The



reports shall be due no later than thirty (30) days after the end of the reporting period. The report shall contain the following information:

A. The item(s) of governmental action and the name and address of the client(s) on whose behalf the local governmental lobbyist sought to influence.

B. For each item of governmental action sought to be influenced, the name and title of each City employee, or elected or appointed City official with whom the local governmental lobbyist specifically met or communicated.

C. A brief narrative description (no longer than three sentences) of the position advocated by the local governmental lobbyist on behalf of the identified client.

D. If any local governmental lobbyist, or a registered client at the behest of a local governmental lobbyist, employs or requests, recommends or causes a client of the local governmental lobbyist to employ, and such client does employ, any City employee, or elected or appointed City official, in any capacity whatsoever, or a member of the immediate family of one of these individuals, the local governmental lobbyist shall disclose (1) the name of the person employed or hired, (2) a description of the services actually performed, and (3) the total payments made to the City employee or elected or appointed City official during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.

E. If any elected City officeholder or candidate for elected City office employs or hires a local governmental lobbyist to provide compensated services to the officeholder or candidate, the local governmental lobbyist shall disclose (1) the name of the person who employed or hired the local governmental lobbyist, (2) a description of the services actually performed, and (3) the total payments made during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.

F. If a local governmental lobbyist solicits any person to make a contribution to an elected City officeholder, candidate for City office or to any committee or campaign fund controlled by such officeholder or candidate, the local governmental lobbyist shall disclose the names of the persons whom the local governmental lobbyist solicited, and the officeholder or candidate for whose benefit each solicitation was made. A solicitation does not include a request for a contribution made:

1. in a mass mailing sent to members of the public;
2. in response to a specific request for a recommendation;
3. to a gathering which members of the public may attend; or
4. in a newspaper, on radio or television, or in any other mass media.

A local governmental lobbyist does not "solicit" solely because his or her name is printed with other names on stationery or a letterhead used to request contributions. If a local governmental lobbyist sources a donation from more than fifty individual members or employees of a corporation, union or other association that is a registered client of the local governmental lobbyist, or if the local governmental lobbyist makes a solicitation to all members or employees of a corporation, union or association that is a registered client of the local governmental lobbyist, the local governmental lobbyist may choose to disclose the name of the registered client instead of the names of the persons whom the lobbyist actually solicited.



**Section 2.09.150 Registration and filing of disclosures by organizations.**

A lobbyist employer, or agent thereof, may complete and submit any registration or local governmental lobbyist disclosure on behalf of any in-house local governmental lobbyist it employs. The Open Government Commission is authorized to establish procedures to permit the registration and filing of local governmental lobbyist disclosures by a business, firm, or organization on behalf of the in-house local governmental~~individual local governmental~~ lobbyists employed by those businesses, firms, or organizations.

**Section 2.09.160 Audits.**

At least once every year, the Open Government Commission shall initiate audits of at least 5% of registered local governmental lobbyists, at minimum one local governmental lobbyist, selected at random. At the request of the Open Government Commission, the City Clerk may assist in conducting these audits. This requirement shall not restrict the authority of the Open Government Commission or the City Clerk to undertake any other audits or investigations of a local governmental lobbyist authorized by law or regulation. Within ten business days of a request by the Open Government Commission or City Clerk, a local governmental lobbyist or anyone required to register as a local governmental lobbyist shall provide the requested documents required to be retained under this Chapter. (Ord. 7629-NS § 1 (part), 2018)

**Article 5. Prohibitions**

**Section 2.09.170 No unregistered employment or activity.**

A. A local governmental lobbyist shall not engage in any activity on behalf of a client as a local governmental lobbyist unless such local governmental lobbyist is registered and has listed such client with the City Clerk. A local governmental lobbyist shall submit an amended registration form indicating the addition of a new client before lobbying on behalf of that client.

B. No person shall accept compensation for acting as a local governmental lobbyist except upon condition that he or she forthwith register as required by this Act.

**Section 2.09.180 Personal obligation of City officials prohibited.**

Local governmental lobbyists, or clients shall abstain from carrying out any act with the express purpose and intent of placing any elected or appointed City official or City employee under personal obligation to such local governmental lobbyist, client, contractor or person.

**Section 2.09.190 Deception prohibited.**

No local governmental lobbyist or client shall deceive or attempt to deceive a City employee, or elected or appointed City official as to any material fact pertinent to any pending or proposed governmental action.

**Section 2.09.200 False appearances prohibited.**

No local governmental lobbyist or client shall attempt in any way to create a fictitious appearance of public favor or disfavor of any governmental action or to cause any communication to be sent to a city employee in the name of any fictitious person or in the name of any real person without the real person's consent.

**Section 2.09.210 Prohibited representations.**

No local governmental lobbyist or client shall represent, either directly or indirectly, orally or in writing that such person can control or obtain the vote or action of any City employee, or elected or appointed City official.

**Section 2.09.220 Restrictions on payments and expenses benefiting local public officials.**

A. No local government lobbyist or a registered client shall make any payment or incur any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals, in which the cumulative value of such payments or expenses exceeds \$240 during any calendar year. This \$240 limit may be adjusted every four years by the OGC to account for inflation. The payments and expenses specified in subsections 2.09.220(A)-(D) include gifts, honoraria and any other form of compensation but do not include:

1. gifts of food or refreshment worth \$25 or less per occasion, if the local governmental lobbyist is a 501 (c)(3) nonprofit organization, the gift of food or refreshment is offered in connection with a public event held by the 501 (c)(3) nonprofit organization, and the same gift of food or refreshment is made available to all attendees of the public event;
2. payments or expenses that, within thirty (30) days after receipt, are returned unused or are reimbursed;
3. gifts of food or beverage worth \$25 or less per occasion, if said gift is provided in the home of an individual local governmental lobbyist or individual local governmental lobbyist's registered client when the individual or member of the individual's family is present;
4. a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code;
5. informational material;
6. campaign contributions not to exceed the limit imposed by the Berkeley Election Reform Act or state law, as applicable; and
7. salaries, consulting fees or other payments for services rendered or bargained for. No other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this section.

For purposes of the gift limits imposed by subsections (A)-(C), gifts shall be aggregated set forth in California Code of Regulations, Title 2, Section 18945.1, as it may hereafter be amended.

B. No lobbyist or a lobbyist's registered client shall make any payment to a third-party for the purpose of making any payment or incurring any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals.

C. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from any lobbyist for the individual's personal benefit or for the personal benefit of a member of the immediate family of one of these individuals.

D. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from a third-party if the officer knows or has reason to know that the third-party is providing the payment or expense on behalf of a lobbyist.

**Section 2.09.230 Restriction on campaign consultants lobbying current and former clients.**

A. No campaign consultant, individual who has an ownership interest in the campaign consulting business, or employee of the campaign consultant shall lobby any elected or appointed City official of the city who is a current or former client of the campaign consultant.

B. This prohibition shall not apply to:

1. an employee of a campaign consultant whose sole duties are clerical; or
2. an employee of a campaign consultant who did not personally provide campaign consulting services to the officer of the city with whom the employee seeks to communicate in order to influence local legislative or administrative action.

C. The exceptions in Subsection (B) shall not apply to any person who communicates with an officer of the city in his or her capacity as an employee of the campaign consultant who is prohibited by Subsection (A) from making the communication.

D. Whenever the following words or phrases are used in this Section, they shall be defined as follows:

1. "Current client" shall mean a person for whom the campaign consultant has been contracted to provide campaign consulting services. If such person is a committee as defined by Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12), the current client shall be any individual who controls such committee; any candidate that such committee was primarily formed to support; and any proponent or opponent of a ballot measure that the committee is primarily formed to support or oppose.
2. "Employee" shall mean an individual employed by a campaign consultant, but does not include any individual who has an ownership interest in the campaign consultant that employs them.
3. "Former client" shall mean a person for whom the campaign consultant has terminated all campaign consulting services within the past twenty-four (24) months.

**Article 6. Enforcement**

**Section 2.09.240 Rules and regulations.**

The Open Government Commission may adopt, amend, and rescind rules, procedures, and regulations to carry out the purposes of this Chapter, and to govern the Commission's procedures to enforce this Chapter.

**Section 2.09.250 Complaint, investigative procedures, and probable cause.**

A. Any person who believes that a violation of any portion of this chapter has occurred may file a complaint with the Open Government Commission. The Open Government Commission may initiate an investigation of a possible violation of this chapter based on information brought before the commission, including information presented by staff.

B. After receiving a complaint or information regarding a possible violation of this chapter, the Open Government Commission shall decide whether to (1) refer to the secretary to investigate, to the extent the secretary has not done so; (2) dismiss the complaint; or (3) find probable cause that a violation of this chapter has occurred.

**Section 2.09.260 Notice and hearing on violations.**

After the Open Government Commission determines there is probable cause for believing that a provision of this Chapter has been violated and makes a good faith effort to give reasonable written notice to the person or persons involved in the allegation using the contact information with which they registered, it may hold a hearing to determine if a violation has occurred, and may determine an appropriate remedy if a violation is found. The hearing pursuant to this section shall be conducted in an impartial manner, consistent with the requirements of due process. A record shall be maintained of the proceedings, and a report summarizing the facts, issues, and any remedial actions shall be issued by the commission following the conclusion of the hearing.

The commission shall conduct such hearings and proceedings with respect to determinations of probable cause pursuant to adopted procedures. All interested persons may participate in the hearing.

**Section 2.09.270 Violations – commission action.**

If the Open Government Commission finds a violation of this Act, the Open Government Commission may:

(1) Find mitigating circumstances and take no further action; (2) issue a public statement or reprimand, (3) impose a civil penalty in accordance with this Act, or (4) take other action as specified in 2.06.190(A)(1).

**Section 2.09.280 Civil actions.**

If the commission has reason to believe that a violation of this chapter has occurred or is about to occur, it may also institute action at law or equity to enforce and compel compliance with the provision of this chapter. Any resident of the City who believes that a violation of this chapter has occurred, may institute such action at law or equity for injunctive relief and to compel compliance with the provisions of this chapter.

**Section 2.09.290 Civil penalties.**

A. Except as otherwise specified in this Act, the Open Government Commission may impose penalties of up to one thousand dollars (\$1,000) for each violation or, if the violation was a prohibited payment, expense or gift under section 2.09.220, of up to three times the value of each prohibited payment, expense or gift.

B. If any civil penalty imposed by the Open Government Commission is not timely paid, the Open Government Commission shall refer the debt to the appropriate City agency or department for collection.

C. For local government lobbyists found to have repeatedly over more than one quarter, knowingly, or willfully violated the Act, the Open Government Commission may impose penalties of up to twenty-five thousand dollars (\$25,000) for any violation, using factors adopted by the Open Government Commission through its rules, regulations, or procedures.

**Section 2.09.300 Criminal violation.**

A. Any person who knowingly or willfully violates the provisions of this Act is guilty of a misdemeanor.

B. The prosecution of any misdemeanor violation of this Act shall commence within four years after the date on which the alleged violation occurred.

C. No person convicted of a misdemeanor violation of this Act may act as a local governmental lobbyist, render consultation or advice to any registered client, or otherwise attempt to influence a governmental action for compensation for one year after such conviction.

**Section 2.09.310 Joint and several liability.**

A. Should two or more persons be responsible for any violation under this Chapter, they may be jointly and severally liable.

B. The client or employer of a local governmental lobbyist shall be jointly and severally liable for all violations of this Chapter committed by the local governmental lobbyist in connection with acts or omissions undertaken on behalf of that client or employer.

C. If a business, firm or organization registers or files local governmental lobbyist disclosures on behalf of its employees pursuant to Section 2.09.150 the business, firm or organization may be held jointly and severally liable for any failure to disclose its employees' lobbying activities.

**Section 2.09.320 Effective date.**

The effective date of this Act shall be January 1, 2020. The Act may be effective at an earlier date if administratively feasible.

**Section 2.09.330 Severability.**

The provisions of this Chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this Chapter, or the validity of its application to other persons or circumstances.





Public Works Commission

CONSENT CALENDAR  
January 19, 2021

To: Honorable Mayor and Members of the City Council

From: Public Works Commission

Submitted by: Matthew Freiberg, Chairperson, Public Works Commission

Subject: Renaming of Four City Paths for Founders of the Berkeley Path Wanderers Association

RECOMMENDATION

Adopt a resolution pursuant to Berkeley's Policy for Naming and Renaming Public Facilities, the Public Works Commission (PWC) recommends the naming and renaming of four Berkeley Paths, as identified on the map at Attachment 1, in honor of the four women founders of the Berkeley Path Wanderers:

- Rename a path off of Keith Avenue near Shasta Road, currently named Eleanor Path, to "Eleanor Hall Gibson Path," after founder Eleanor Hall Gibson, who passed away in 2016;
- Name the following paths, subject to a 2/3 vote of the City Council as provided at Section 2(B) of the Policy, as follows:
  - The extension connector of Walnut Street through the UC complex between Hearst and Berkeley Way to be named "Ruth Armstrong Path" in honor of Ruth Armstrong (Moskovitz);
  - The path parallel to the top of Solano Avenue running along Los Angeles Avenue up the tunnel slope towards the Marin Circle, to be named "Jacque Ensign Way" in honor of Jacque Ensign; and
  - Path 71 to be named "Patricia DeVito Path" in honor of Pat DeVito.

In addition to the renaming of these four paths, the Public Works commission supports the inclusion of interpretive signage describing the contributions of each of the honored individuals.

FISCAL IMPACTS OF RECOMMENDATION

The Public Works Department estimated a cost of approximately \$2,500 for fabrication and installation of eight (8) signs, and has stated that funds are available under existing programs. Impacts, if any, on private owners are minimal given the location of each named path.

### CURRENT SITUATION AND ITS EFFECTS

Motion to approve and submit to Council Path Renaming on October 1, 2020. Motion made by [Schueler](#) and seconded by [Erbe](#). Ayes:Freiberg, Erbe, Nesbitt, Hitchen, Humbert, Schueler, Krpata, Bernnan, Constantine ; Noes: none; Abstain: none.

Throughout Berkeley's history, important community work has been initiated, championed, and performed by women of Berkeley. One of the many great examples of women's' leadership in our City has been the Berkeley Path Wanderers, founded by Jacque Ensign, Eleanor Hall Gibson, Ruth Armstrong (nee Moskovitz), and Pat DeVito. Since 1997, Berkeley Path Wanderers has played an essential role in preserving and restoring pathways throughout Berkeley.

Though women have long served Berkeley with distinction, most streets and other named facilities in our City have been named after men. Because some of the paths in Berkeley are unnamed or have generic names taken from adjoining streets, they present a meaningful opportunity to name and rename public facilities. Naming four paths in honor of the women founders of the Berkeley Path Wanderers Association serves the dual purposes of honoring individuals who have done important work for our community and helping to rectify the gender imbalance in Berkeley's place names.

This action supports the City's Strategic Plan goal of creating a resilient, safe, connected, and prepared City.

### BACKGROUND

On September 24, 2019, City Council issued a referral to the Public Works Commission to consider a recommendation regarding the naming and renaming of the four paths under consideration.

On January 9, 2020 and February 6, 2020, Aliana Constantinescu, the President of Berkeley Path Wanderers Association, presented to the PWC the history of the BPWA and its founding, the contributions that each of these founding members made to the community, and the value of the work that the BPWA continues to provide to the City of Berkeley. Aliana described how the four women met and formed BPWA, working collaboratively with each other, spending countless hours raising funds, working to resolve concerns of immediate neighbors, and working collaboratively and productively with the City. Aliana also highlighted the importance of these paths for public safety, access to public transit, and for the provision of healthy outdoor recreational activities.

Council Member Hahn further presented differences in how women and men tend to contribute to society, which may contribute to an inequity in recognition for those efforts.

### ENVIRONMENTAL SUSTAINABILITY

Walking is a key strategy for reducing GHG emissions, as is taking public transit. Paths invite and support both of these activities. By supporting and highlighting the work of the



Berkeley Path Wanderers and drawing attention to our paths, we reinforce the importance of Berkeley's paths for sustainability, safety and health.

RATIONALE FOR RECOMMENDATION

Berkeley Path Wanderers is an organization that provides important services to the City of Berkeley on a 100% volunteer basis. Paths are created, upgraded and maintained, providing both an important public safety improvement in the case of fire or earthquake, and a delightful amenity for those who walk Berkeley for pleasure, or to access transit or shops. Honoring the four women founders of Berkeley Path Wanderers by naming paths after each of them is a fitting tribute to their important and lasting contributions to the City and community of Berkeley.

It is the opinion of the Public Works Commission, pending approval by a 2/3 majority of City Council, that this recommendation is not only appropriate, but also meets all of the relevant criteria for the renaming of a path as identified in the City Policy for Naming and Renaming public facilities, specifically Sections 4 and 5. These honorees have a record of outstanding service to their community and have made significant contributions towards the development of the City Path System. This process has also achieved all of the procedural requirements of the naming and renaming process as outlined in Section 5 of the policy.

ALTERNATIVE ACTIONS CONSIDERED

Leave the path names as they are today.

CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report.

CONTACT PERSON

Joe Enke, Supervising Civil Engineer, Public Works Commission Secretary (510) 981-6411

Attachment:

1: Resolution

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

NAMING OF FOUR CITY PATHWAYS FOR FOUR FOUNDERS OF THE  
BERKELEY PATH WANDERERS ASSOCIATION

WHEREAS, refurbishment of the Berkeley path system enjoys broad and sustained support from residents and the City; and

WHEREAS, in the past women contributors have rarely been recognized in the naming of City assets; and

WHEREAS, the Public Works Commission has reviewed the request for renaming and found the proposal to be in accordance with the City's Naming Policy.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the path from Keith Avenue near Shasta Road, currently named Eleanor Path, be known as "Eleanor Hall Gibson Path".

The extension connector of Walnut Street through the UC complex between Hearst and Berkeley Way be named "Ruth Armstrong Path".

The path running between Solano Avenue and Los Angeles Avenues at be named "Jacque Ensign Way".

The unbuilt path from Sterling Avenue to Miller Avenue be renamed from "Path 71" to "Patricia DeVito Path.

In honor of the aforementioned founders of the Berkeley Path Wanderers Association (BPWA).



Office of the Mayor

CONSENT CALENDAR

January 19, 2021

To: Members of the City Council

From: Mayor Jesse Arreguín

Subject: Revisions to Enabling Legislation for Reimagining Public Safety Task Force

RECOMMENDATION:

Adopt a Resolution:

1. Rescinding Resolution No. 69,673-N.S.; and
2. Establishing a Reimagining Public Safety Task Force, comprised of: (a) one representative appointed by each member of the City Council and Mayor pursuant to the Fair Representation Ordinance, B.M.C. Sections 2.04.030-2.04.130, (b) one representative appointed by the Mental Health Commission, Youth Commission, and Police Review Commission (to be replaced by a representative of the Police Accountability Board once it is established), and (c) one representative appointed by the Associated Students of the University of California (ASUC) External Affairs Vice President, one representative appointed by the Berkeley Community Safety Coalition (BCSC) Steering Committee, and three additional members to be appointed “At-Large” by the Task Force, with appointments subject to confirmation by the City Council.

The Task Force will be facilitated by a professional consultant, the National Institute for Criminal Justice Reform (NICJR), with administrative support by the City Manager’s office, and will serve as the hub of community engagement for the Reimagining Public Safety effort initiated and guided by the NICJR team. The Task Force will also include the participation of City Staff from the City Manager’s Office, Human Resources, Health, Housing and Community Services, Berkeley Fire Department, Berkeley Police Department, and Public Works Department. For visual, see Attachment 3.

With the exception of “At-Large” appointments, appointments to the Task Force should be made by January 31, 2021,<sup>1</sup> and reflect a diverse range of experiences, knowledge, expertise and representation. To maintain the Council’s July 14, 2020,<sup>2</sup> commitment to

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<sup>1</sup> With the exception of the “At Large” appointments, which will be selected by the initial appointees with an eye for adding outstanding perspectives, knowledge and experience.

<sup>2</sup> “Be It Further Resolved that the City Council will engage with every willing community member in Berkeley, centering the voices of Black people, Native American people, people of color, immigrants, LGBTQ+ people, victims of harm, and other stakeholders who have been historically marginalized or under-served by our present

centering the voices of those most impacted in our process of reimagining community safety appointments should be made with the goal of achieving a balance of the following criteria:

- a. Active Members of Berkeley Community (Required of All)\*<sup>3</sup>
- b. Representation from Impacted Communities
  - Formerly incarcerated individuals
  - Victims/family members of violent crime
  - Immigrant community
  - Communities impacted by high crime, over-policing and police violence
  - Individuals experiencing homelessness
  - Historically marginalized populations
- c. Faith-Based Community Leaders
- d. Expertise/Leadership in Violence Prevention, Youth Services, Crisis Intervention, and Restorative or Transformative Justice
- e. Health/ Public Health Expertise
- f. City of Berkeley labor/union representation
- g. Law Enforcement Operation Knowledge
- h. City Budget Operations/Knowledge
- i. Committed to the Goals and Success of The Taskforce (Required of All)

As outlined in the July 14, 2020, City Council Omnibus Action,<sup>4</sup> City Council provided direction for the development of a new paradigm of public safety that should include, but is not limited to:

- 1) Building on the work of the City Council, the City Manager, Berkeley Police Department (BPD), the Police Review Commission and other City commissions and other working groups addressing community health and safety.
- 2) Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.
- 3) Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform considering,<sup>5</sup> among other things:

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system. Together, we will identify what safety looks like for everyone.”, [Item 18d, Transform Community Safety, July 14, 2020, Berkeley City Council Agenda](#),

<sup>3</sup> \* At Large Appointees are not required to be Berkeley Residents, as long as they are active, committed Berkeley Stakeholders.

<sup>4</sup> [July 14th, 2020, Berkeley City Council Item 18a-e Proposed Omnibus Motion on Public Safety Items](#)

<sup>5</sup> [Transforming Police](#), NICJR

- A. The social determinants of health and changes required to deliver a holistic approach to community-centered safety.
- B. The appropriate response to community calls for help including size, scope of operation and power and duties of a well-trained police force.
- C. Limiting militarized weaponry and equipment.
- D. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
- E. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.
- F. Reducing the Berkeley Police Department budget to reflect its revised mandates, with a goal of a 50% reduction, based on the results of requested analysis and achieved through programs such as the Specialized Care Unit.

Direct the City Manager to ensure that the working group of City Staff as outlined in the October 28th Off-Agenda Memo is coordinating with the Task Force.<sup>6</sup>

The Task Force will provide input to and make recommendations to NICJR and City Staff on a set of recommended programs, structures and initiatives incorporated into a final report and implementation plan developed by NICJR to guide future decision making in upcoming budget processes for FY 2022-23 and, as a second phase produced, in the FY 2024-2025 budget processes.<sup>7</sup>

#### FINANCIAL IMPLICATIONS

City Council allocated \$270,000 in General Fund revenues to support engagement of outside consultants in the Reimagining Public Safety process.

#### BACKGROUND

On July 14, 2020, the Berkeley City Council made a historic commitment to reimagine the City's approach to public safety with the passage of an omnibus package of referrals, resolutions and directions. Central to this proposal is a commitment to a robust community process to achieve this "new and transformative model of positive, equitable and community centered safety for Berkeley". Item 18d, Transforming Community Safety, provides direction on the development of a "Community Safety Coalition", goals and a timeline led by a steering committee and guided by professional consultants. Recommendation 3 above reflects the original scope voted on by the council. However,

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<sup>6</sup>[October 28, 2020 Off-Agenda Memo: Update on Re-Imagining Public Safety](#)

<sup>7</sup> The final report and implementation plan are referenced in the contract approved by the City Council with the NICJR Consultant team on December 15, 2020.

that item did not specify the structure, exact qualifications or process of appointing this steering committee. This item follows the spirit of the original referral, and provides direction on structure, desired qualifications and appointment process.

To avoid confusion with the community organization that has independently formed since the passage of that referral, this steering committee is now being referred to as the Reimagining Public Safety Task Force.

City staff has been diligently been working to implement the referrals in the omnibus motion, including the development, release and evaluation of a request for proposals (RFP) for a consultant to facilitate this process.<sup>8</sup> Initially, the expectation was that the development of a structure and process for the Task Force would be developed in consultation with the professionals selected by this RFP. However, to ensure thorough review of these proposals the timeline for selecting the consultant is longer than initially expected. At the July 18, 2020, meeting, City Council clearly stated that the Task Force will begin meeting no later than January 2021. To meet this timeline, the Council should adopt the proposed framework and appointment process so that the Task Force and our community process can begin shortly after the RFP process is completed.

This resolution is being reintroduced to clarify the process for transitioning appointments from the Police Review Commission to the newly established Police Accountability Board and to ensure that the Task Force works with the NICJR consultant team to develop one report and set of recommendations. The initial resolution was written prior to the finalization of a contract with NICJR. After consultation with city staff and the consultant team, the revised language will set clear expectations and a foundation for successful collaboration between the work of the Task Force and the consultant team.

#### RATIONALE FOR RECOMMENDATION

The proposed structure creates a Task Force with 17 total seats, ensuring representation from each Councilmember and the Mayor, key commissions including the Police Review Commission, the Youth Commission and the Mental Health Commission as well as representation from the ASUC, the Berkeley Community Safety Coalition (BCSC) and three “at-large” members to be selected by the Task Force to fill any unrepresented stakeholder position or subject matter expertise, with the community based organization and at-large appointments subject to confirmation by the City Council.<sup>9</sup>

This model was developed with input from all co-authors, the City Manager, community stakeholders including the ASUC and BCSC as well organizations and experts with experience running community engagement processes. Additionally, the Mayor’s office researched a wide range of public processes that could inform the structure and approach

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<sup>8</sup> Ibid

<sup>9</sup> [The Berkeley Community Safety Coalition](#), initially known as Berkeley United for Community Safety, produced a 40 page report that was shared with the council in July. Their recommendations were referred to the reimagining process as part of the Mayor’s omnibus motion. Co-Founder Moni Law describes BCSC as a “principled coalition that is multiracial, multigenerational and Black and brown centered. We include over 2,000 people and approximately a dozen organizations and growing.”

for Berkeley, including youth-led campaigns, participatory budgeting processes, and long-term initiatives like the California Endowment Building Healthy Communities initiative.<sup>10</sup>

The proposed Task Force structure and process draws most directly on the processes underway in Oakland and in Austin, Texas.<sup>1112</sup> In July, Oakland voted to establish a Reimagining Public Safety Task Force with 17 members, including appointees from all councilmembers and the Mayor, three appointees from their public safety boards, two appointees to represent youth and two at-large appointees selected by their council co-chairs<sup>13</sup>. The model proposed for Berkeley draws heavily from the Oakland approach. A key difference is that, unlike Oakland, this proposed structure does not recommend developing additional community advisory boards. Instead, it is recommended that Berkeley leverage our commissions and community organizations to provide additional input and research to inform the Task Force's work rather than establish additional community advisory boards.

The list of proposed qualifications for appointees (recommendation 2) is also modeled after Oakland's approach. In July, the city council committed to centering the voices of those that are most impacted by our current system of public safety as we reimagine it for the future. The list of qualifications is intended to guide councilmembers and other appointing bodies and organizations to ensure that the makeup of the Task Force reflects that commitment. After all appointments are made, the Task Force will select 3 additional "at large" members to join the Task Force with an eye on adding perspectives, expertise or experience that are missing in initial appointments. At Large members are not required to be Berkeley residents, as long as they are active, committed Berkeley stakeholders, and work in the City of Berkeley.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the action requested in this report.

#### ALTERNATIVE ACTIONS CONSIDERED

Alternative appointment structures were evaluated, including a citywide application process and an independent selection committee. However, given that the Task Force will ultimately advise the City Council, there was broad agreement that the Council should have a strong role in appointing the Task Force.

#### CONTACT PERSON

Jesse Arreguín, Mayor, (510) 981-7100

#### Attachments:

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<sup>10</sup> [California Endowment Building Healthy Communities Initiative.](#)

<sup>11</sup> [Austin, Texas Reimagining Public Safety Task Force](#)

<sup>12</sup> [Reimagining Public Safety](#), Oakland website

<sup>13</sup> [Oakland Reimagining Public Safety Task Force Framework](#)

1. Resolution Establishing Reimagining Public Safety Task Force
2. Resolution No. 69,673-N.S.
3. Framework for Reimagining Public Safety Task Force
4. July 14, 2020 City Council Item 18d, Transforming Community Safety
5. July 14, 2020 City Council Item a-e, Proposed Omnibus Motion on Public Safety Items



RESOLUTION NO.

ESTABLISHING THE REIMAGINING PUBLIC SAFETY TASK FORCE

WHEREAS, On July 14, 2020, the Berkeley City Council made a historic commitment to reimagine the City's approach to public safety with the passage of an omnibus package of referrals, resolutions and directions; and

WHEREAS, Central to this proposal is a commitment to a robust community process to achieve this "new and transformative model of positive, equitable and community centered safety for Berkeley". Item 18d, Transforming Community Safety, provides direction on the development of a "Community Safety Coalition", goals and a timeline led by a steering committee and guided by professional consultants; and

WHEREAS, on December 15, 2020, the City Council authorized the City Manager to enter into a contract with the National Institute for Criminal Justice Reform (NICJR) who will conduct research, analysis, and use its expertise to develop reports and recommendations for community safety and police reform as well as plan, develop, and lead an inclusive and transparent community engagement process to help the City achieve a new and transformative model of positive, equitable and community-centered safety for Berkeley; and

WHEREAS, the NICJR has agreed to perform the following work:

- Working with the City Auditor on the assessment of emergency and non-emergency calls for service.
- Developing a summary and presentation of new and emerging models of community safety and policing.
- Developing and implementing a communications strategy to ensure that the community is well informed, a robust community engagement process, and managing the Task Force to be established by the City Council.
- Identifying the programs and/or services that are currently provided by the Berkeley Police Department that can be provided by other City departments and / or organizations.
- Developing a final report and implementation plan that will be used to guide future decision making.

WHEREAS, to avoid confusion with the community organization that has independently formed since the passage of that referral, this steering committee is now being referred to as the Reimagining Public Safety Task Force; and

WHEREAS, the purpose of this Resolution is to specify the structure, criteria, and role of the Reimagining Public Safety Task Force.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Resolution No. 69,673-N.S. is hereby rescinded; and

BE IT FURTHER RESOLVED that the Berkeley City Council does hereby establish the Reimagining Public Safety Task Force.

1. The membership shall be comprised of:
  - a. One (1) representative appointed by each member of the City Council and Mayor, pursuant to the Fair Representation Ordinance, B.M.C. Sections 2.04.030-2.04.130,
  - b. One (1) representative appointed from the Mental Health Commission, Youth Commission and Police Review Commission (to be replaced by a representative of the Police Accountability Board once it is established), and
  - c. Subject to confirmation by the City Council, one (1) representative appointed by the Associated Students of the University of California (ASUC) External Affairs Vice President, one (1) representative appointed by the Berkeley Community Safety Coalition (BCSC) Steering Committee, and three (3) additional members to be appointed "At-Large" by the Task Force.
  
2. With the exception of the "At-Large" appointments, appointments to the Task Force should be made by January 31, 2021,<sup>14</sup> and reflect a diverse range of experiences, knowledge, expertise and representation. To maintain the Council's July 14, 2020,<sup>15</sup> commitment to centering the voices of those most impacted in our process of reimagining community safety, appointments should be made with the goal of achieving a balance of the following criteria:
  - a. Active Members of Berkeley Community (Required of All)<sup>\*16</sup>
  - b. Representation from Impacted Communities
    - Formerly incarcerated individuals
    - Victims/family members of violent crime
    - Immigrant community
    - Communities impacted by high crime, over-policing and police violence

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<sup>14</sup> With the exception of the "At Large" appointments, which will be selected by the initial appointees with an eye for adding outstanding perspectives, knowledge and experience.

<sup>15</sup> "Be It Further Resolved that the City Council will engage with every willing community member in Berkeley, centering the voices of Black people, Native American people, people of color, immigrants, LGBTQ+ people, victims of harm, and other stakeholders who have been historically marginalized or under-served by our present system. Together, we will identify what safety looks like for everyone.", [Item 18d, Transform Community Safety, July 14, 2020, Berkeley City Council Agenda](#).

- Individuals experiencing homelessness
  - Historically marginalized populations
  - c. Faith-Based Community Leaders
  - d. Expertise/Leadership in Violence Prevention, Youth Services, Crisis Intervention, and Restorative or Transformative Justice
  - e. Health/ Public Health Expertise
  - f. City of Berkeley labor/union representation
  - g. Law Enforcement Operation Knowledge
  - h. City Budget Operations/Knowledge
  - i. Committed to the Goals and Success of The Taskforce (Required of All)
3. At Large Appointees are not required to be Berkeley Residents, as long as they are active, committed Berkeley stakeholders and work in the City of Berkeley.
4. As outlined in the July 14, 2020, City Council Omnibus Action,<sup>17</sup> City Council provided direction for the development of a new paradigm of public safety that should include, but is not limited to:
- 1) Building on the work of the City Council, the City Manager, Berkeley Police Department, the Police Review Commission and other City commissions and other working groups addressing community health and safety.
  - 2) Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.
  - 3) Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform (NICJR) considering,<sup>18</sup> among other things:
    - A. The social determinants of health and changes required to deliver a holistic approach to community-centered safety.
    - B. The appropriate response to community calls for help including size, scope of operation and power and duties of a well-trained police force.
    - C. Limiting militarized weaponry and equipment.
    - D. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
    - E. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with

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<sup>17</sup> [July 14th, 2020, Berkeley City Council Item 18a-e Proposed Omnibus Motion on Public Safety Items](#)

<sup>18</sup> [Transforming Police](#), NICJR

educational, community serving, restorative and other positive programs, policies and systems.

- F. Reducing the Berkeley Police Department budget to reflect its revised mandates, with a goal of a 50% reduction, based on the results of requested analysis and achieved through programs such as the Specialized Care Unit; and

BE IT FURTHER RESOLVED, that the Task Force will provide input to and make recommendations to NICJR and City Staff on a set of recommended programs, structures and initiatives incorporated into a final report and implementation plan developed by NICJR to guide future decision making in upcoming budget processes for FY 2022-23 and, as a second phase produced, in the FY 2024-2025 budget processes.<sup>19</sup>; and

BE IT FURTHER RESOLVED, that the City Manager is requested to provide updates and coordinate with the Task Force regarding the work that is underway on various aspects of the July 14, 2020 Omnibus package adopted by City Council including the Specialized Care Unit, BerkDoT, and priority dispatching (For visual, see Attachment 2); and

BE IT FURTHER RESOLVED, the Task Force shall sunset at the earlier of City Council's adoption of the final report and implementation plan developed by NICJR or three years after appointments are made unless the Task Force is otherwise extended by the City Council; and

BE IT FURTHER RESOLVED, the Task Force should be subject to the Commissioner's Manual; and

BE IT FURTHER RESOLVED, Mayor and City Council appointments to the Task Force shall be made, and vacancies shall be filled, in accordance with the provisions of Sections 2.04.030 through 2.04.130 of the Berkeley Municipal Code; and

BE IT FURTHER RESOLVED, The appointment of any member of the Task Force shall automatically terminate as set forth in Berkeley Municipal Code Chapter 3.02 due to attendance; and

BE IT FURTHER RESOLVED, The City Clerk shall notify any member whose appointment has automatically terminated and report to the appointing City Councilmember or appointing authority that a vacancy exists on the Task Force and that an appointment should be made to fill the vacancy; and

BE IT FURTHER RESOLVED, Temporary appointments may be made and leaves of absence may be granted by the appointing authority pursuant to Berkeley Municipal Code Section 3.03.030 and the Commissioners' Manual; and

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<sup>19</sup> The final report and implementation plan are referenced in the contract approved by the City Council with the NICJR Consultant team on December 15, 2020

BE IT FURTHER RESOLVED, A majority of the members appointed to the Task Force shall constitute a quorum and the affirmative vote of a majority of the members appointed is required to take any action; and

BE IT FURTHER RESOLVED, The Task Force shall keep an accurate record of its proceedings and transactions; and

BE IT FURTHER RESOLVED, The Task Force may make and alter rules governing its organization and procedures which are not inconsistent with Resolution or any other applicable ordinance of the city, or any resolution of the city governing commission procedures and conduct; and

BE IT FURTHER AND FINALLY RESOLVED, The Task Force shall establish a regular place and time for meeting. All meetings shall be noticed as required by law and shall be scheduled in a way to allow for maximum input from the public. The frequency of meetings shall be as determined by the Task Force Chair in consultation with NICJR and City Staff.

RESOLUTION NO. 69,673-N.S.

ESTABLISHING THE REIMAGINING PUBLIC SAFETY TASK FORCE

WHEREAS, On July 14, 2020, the Berkeley City Council made a historic commitment to reimagine the City's approach to public safety with the passage of an omnibus package of referrals, resolutions and directions; and

WHEREAS, Central to this proposal is a commitment to a robust community process to achieve this "new and transformative model of positive, equitable and community centered safety for Berkeley". Item 18d, Transforming Community Safety, provides direction on the development of a "Community Safety Coalition", goals and a timeline led by a steering committee and guided by professional consultants; and

WHEREAS, that item did not specify the structure, exact qualifications or process of appointing this steering committee; and

WHEREAS, To avoid confusion with the community organization that has independently formed since the passage of that referral, this steering committee is now being referred to as the Reimagining Public Safety Task Force.

NOW, THEREFORE BE IT RESOLVED that the City Council does hereby establish the Reimagining Public Safety Task Force.

1. The membership shall be comprised of: One (1) representative appointed by each member of the City Council and Mayor, one (1) representative appointed by the Mental Health, Police Review and Youth Commissions, one (1) representative appointed by the Associated Students of the University of California (ASUC), one (1) representative appointed by the Berkeley Community Safety Coalition (BCSC), and three (3) additional members to be appointed "At Large" by the Task Force, all subject to confirmation by the City Council. The Task Force will be guided by a professional consultant, and will include the participation of City Staff from the City Manager's Office, Human Resources, Health, Housing and Community Services, Berkeley Fire Department, Berkeley Police Department, and Public Works Department. For visual, see Attachment 2.
2. Appointments to the Task Force should be made by January 31, 2021,<sup>1</sup> and reflect a diverse range of experiences, knowledge, expertise and representation. To maintain the Council's July 14, 2020,<sup>2</sup> commitment to centering the voices of those most

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<sup>1</sup> With the exception of the "At Large" appointments, which will be selected by the initial appointees with an eye for adding outstanding perspectives, knowledge and experience.

<sup>2</sup> "Be It Further Resolved that the City Council will engage with every willing community member in Berkeley, centering the voices of Black people, Native American people, people of color, immigrants, LGBTQ+ people, victims of harm, and other stakeholders who have been historically marginalized or

impacted in our process of reimagining community safety appointments should be made with the goal of achieving a balance of the following criteria:

- a. Active Members of Berkeley Community (Required of All)\*<sup>3</sup>
  - b. Representation from Impacted Communities
    - Formerly incarcerated individuals
    - Victims/family members of violent crime
    - Immigrant community
    - Communities impacted by high crime, over-policing and police violence
    - Individuals experiencing homelessness
    - Historically marginalized populations
  - c. Faith-Based Community Leaders
  - d. Expertise/Leadership in Violence Prevention, Youth Services, Crisis Intervention, and Restorative or Transformative Justice
  - e. Health/ Public Health Expertise
  - f. City of Berkeley labor/union representation
  - g. Law Enforcement Operation Knowledge
  - h. City Budget Operations/Knowledge
  - i. Committed to the Goals and Success of The Taskforce (Required of All)
3. The charge of the Task Force is as outlined in the July 14, 2020, City Council Omnibus Action,<sup>4</sup> and should include but is not limited to:
- 1) Building on the work of the City Council, the City Manager, BPD, the PRC and other City commissions and other working groups addressing community health and safety.
  - 2) Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.
  - 3) Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform considering,<sup>5</sup> among other things:
    - A. The social determinants of health and changes required to deliver a holistic approach to community-centered safety.

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under-served by our present system. Together, we will identify what safety looks like for everyone.”, Item 18d, Transform Community Safety, July 14, 2020, Berkeley City Council Agenda,

<sup>3</sup> \* At Large Appointees are not required to be Berkeley Residents, as long as they are active, committed Berkeley Stakeholders.

<sup>4</sup> July 14th, 2020, Berkeley City Council Item 18a-e Proposed Omnibus Motion on Public Safety Items

<sup>5</sup> Transforming Police, NICJR

- B. The appropriate response to community calls for help including size, scope of operation and power and duties of a well-trained police force.
- C. Limiting militarized weaponry and equipment.
- D. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
- E. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.
- F. Reducing the Berkeley Police Department budget to reflect its revised mandates, with a goal of a 50% reduction, based on the results of requested analysis and achieved through programs such as the Specialized Care Unit; and

BE IT FURTHER RESOLVED, that the outcome of the Task Force will be a set of recommended programs, structures and initiatives to incorporate into upcoming budget processes for FY 2022-23 and, as a second phase, in the FY 2024-2025 budget processes to ensure that recommended changes will be achieved. The Task Force shall return to City Council an initial plan and timeline by April 1, 2021, to ensure the first phase of changes can be incorporated into the FY 2022-23 Budget Process; and

BE IT FURTHER RESOLVED, the Task Force shall sunset after two years unless otherwise extended by the City Council;

BE IT FURTHER RESOLVED, the Task Force should be subject to the Commissioner's Manual; and

BE IT FURTHER RESOLVED, Berkeley City Council appointments to the Task Force shall be made, and vacancies shall be filled, in accordance with the provisions of Sections 2.04.030 through 2.04.130 of the Berkeley Municipal Code; and

BE IT FURTHER RESOLVED, The appointment of any member of the Task Force shall automatically terminate as set forth in Berkeley Municipal Code Chapter 3.02 due to attendance; and

BE IT FURTHER RESOLVED, The City Clerk shall notify any member whose appointment has automatically terminated and report to the appointing City Councilmember or appointing authority that a vacancy exists on the Task Force and that an appointment should be made to fill the vacancy; and

BE IT FURTHER RESOLVED, Temporary appointments may be made and leaves of absence may be granted by the appointing authority pursuant to Berkeley Municipal Code Section 3.03.030 and the Commissioners' Manual; and



BE IT FURTHER RESOLVED, The Task Force annually shall elect one of its members as the chairperson and one of its members as the vice-chairperson; and

BE IT FURTHER RESOLVED, A majority of the members appointed to the Task Force shall constitute a quorum and the affirmative vote of a majority of the members appointed is required to take any action; and

BE IT FURTHER RESOLVED, The Task Force shall keep an accurate record of its proceedings and transactions; and

BE IT FURTHER RESOLVED, The Task Force may make and alter rules governing its organization and procedures which are not inconsistent with this Resolution or any other applicable ordinance of the city, or any resolution of the city governing commission procedures and conduct; and

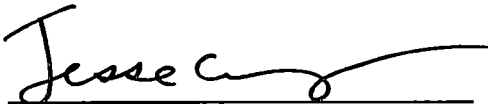
BE IT FURTHER RESOLVED, The Task Force shall establish a regular place and time for meeting. All meetings shall be noticed as required by law and shall be scheduled in a way to allow for maximum input from the public. The frequency of meetings shall be as determined by the Task Force Chair in consultation with City Staff.

The foregoing Resolution was adopted by the Berkeley City Council on December 15, 2020 by the following vote:

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

Noes: None.

Absent: None.

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

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



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# Reimagining Public Safety Task Force

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# Task Force Purpose & Goals



As Defined by July 14<sup>th</sup> Council Action

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**Purpose:** The Community Safety Coalition, guided by a task force, will serve as the hub for a broad, deep and representative process, and uplift the community's input into a new positive, equitable, anti-racist system of community health and safety.

The work of the task force should include but not be limited to:

1. Building on the work of the City Council, the City Manager, BPD, the PRC and other City commissions and other working groups addressing community health and safety.
2. Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.

# Task Force Purpose & Goals



Continued...

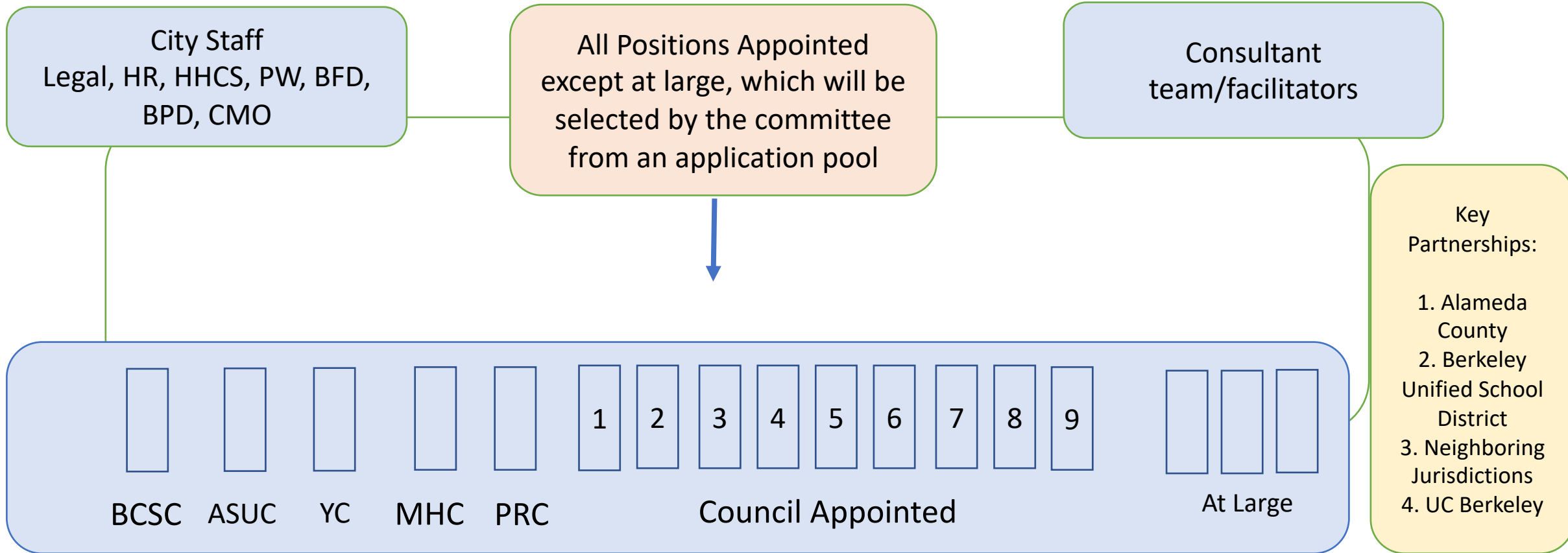
3. Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform considering, among other things:

- a) The social determinants of health and changes required to deliver a holistic approach to community-centered safety
- b) The appropriate response to community calls for help including size, scope of operation and power and duties of a well-trained police force.
- c) Limiting militarized weaponry and equipment.
- d) Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
- e) Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.
- f) Reducing the Berkeley Police Department budget to reflect its revised mandates, with a goal of a 50% reduction, based on the results of requested analysis and achieved through programs such as the Specialized Care Unit



# Proposed Task Force Structure

Selected by Councilmembers, Mayor & Key Commissions and Community Stakeholders



Parallel Community Engagement





# Task Force Membership

## Knowledge, Expertise, & Experience Needed

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- Active Members of Berkeley Community (Required of All\*)
- Representation from Impacted Communities
  - Formerly incarcerated individuals
  - Victims/family members of violent crime
  - Immigrant community
  - Communities impacted by high crime, over-policing and police violence
  - Individuals experiencing homelessness
  - Historically marginalized populations
- Faith-Based Community Leaders
- Expertise/Leadership in Violence Prevention, Youth Services, Crisis Intervention, and Restorative or Transformative Justice
- Health/ Public Health Expertise
- City of Berkeley labor/union representation
- Law Enforcement Operation Knowledge
- City Budget Operations/Knowledge
- Committed to the Goals and Success of The Taskforce (Required of All)

*\*At Large appointees may not be Berkeley residents, so long as they are active and committed stakeholders* <sup>522</sup>

# Task Force Responsibilities



Active membership & Participation Required of Selected members

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- Work collaboratively to achieve the purpose and goals established
- Thorough preparation for and active participation in all taskforce meetings (1-2 meetings per month)
- Participate in and support various community engagement efforts
- Other responsibilities – to be determined





Office of the Mayor  
Jesse Arreguín

ACTION CALENDAR  
July 14, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín, Vice-Mayor Sophie Hahn, Councilmember Ben Bartlett, Councilmember Kate Harrison

Subject: Transform Community Safety and Initiate a Robust Community Engagement Process

### **RECOMMENDATIONS**

1. Adopt a Resolution expressing the City Council's commitment to:
  - a. A transformative approach to community-centered safety and reducing the scope of policing,
  - b. Equitable investment in the essential conditions of a safe and healthy community, especially for those who have been historically marginalized and have experienced disinvestment, and
  - c. A broad, inclusive community process that will result in deep and lasting change to support safety and wellbeing for all Berkeley residents.
2. Direct the City Manager to track and report progress on actions to implement this initiative, and other actions that may be identified by the Coalition and referred by Council to the City Manager. Updates shall be provided by written and verbal reports to Council and posted on a regularly updated and dedicated page on the City website.
3. Direct the City Manager to collaborate with Mayor and select Councilmembers to complete the following work, to inform investments and reallocations to be incorporated into future Budget processes:
  - a. Contract with independent subject matter experts to:
    - i. Analyze the scope of work of, and community needs addressed by, the Berkeley Police Department, to identify a more limited role for law enforcement, and identify elements of police work that could be achieved through alternative programs, policies, systems, and community



investments. Analysis should include but not be limited to: calls received by dispatch by type of complaint, stops by law enforcement generated at officer discretion (as contained in the Police Department's open data portal) or on request of other city agencies, number of officers and staff from other city agencies that respond to incidents, estimated time in response to different types of calls, daily patrol activities, organizational structure, and beat staffing. Work to include broad cost estimates of police and other city agency response to different types of calls, and other information and analysis helpful to identify elements of current police work that could be transferred to other departments or programs or achieved through alternative means. Work should be completed in time for the November 2020 Annual Appropriation Ordinance revision.

- ii. Identify immediate and longer-term opportunities to shift policing resources to alternative, non-police responses and towards alternative and restorative justice models, to better meet community needs, that could be considered in the November 2020 AAO#1 budget process. Some areas to be considered include homeless outreach and services, substance abuse prevention and treatment, and mental health/crisis management, as well as alternative models for traffic and parking enforcement, "neighborhood services" and code enforcement. Provide a broad timeline and process for transitioning functions not ready for transition at this first milestone.

Deliverables should coincide with budget cycles, including the November 2020 AAO and FY 2022-2023 Budget processes, and provide a suggested timeline for transitioning functions at these and other budget opportunities, so that alternative investments may be considered for funding and launched in a timely and orderly manner.

- b. Contract with independent Change Management experts to initiate and facilitate a representative Community Safety Coalition, guided by a Steering Committee, that will begin meeting no later than January 2021. The CSC and its Steering Committee should be broadly inclusive and representative of Berkeley residents and stakeholders. The Steering Committee, with the support of Change Management professionals, shall be responsible for engaging the Coalition and the broader Berkeley community and relevant City Staff in a robust process, to achieve a new and transformative model of positive, equitable and community-centered safety for Berkeley.

The work of the Coalition should include but not be limited to:

1. Building on the work of the City Council, the City Manager, the PRC and other City commissions and other working groups addressing community health and safety.
2. Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.
3. Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform (Attachment 3), considering, among other things:
  - a. The social determinants of health and changes required to deliver a holistic approach to community-centered safety
  - b. The appropriate response to community calls for help including size, scope of operation and powers and duties of a well-trained police force.
  - c. Limiting militarized weaponry and equipment.
  - d. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
  - e. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.
- c. The Coalition's goal/output will be a set of recommended programs, structures and initiatives to incorporate into upcoming budget processes for FY 2022-23 and, as a second phase, in the FY2024-2025 budget processes to ensure that recommended changes will be achieved. The Coalition shall return to City Council an initial plan and timeline by April 1, 2021, to ensure the first phase of changes can be incorporated into the FY2022-23 Budget Process.

## **SUMMARY**

Local government's most fundamental role is to provide for the health and safety of its residents. Cities around the country are acknowledging that they are falling behind in this basic function, and are embarking on efforts to reimagine health and safety, and to consider reallocating resources towards a more holistic approach; one that shifts resources away from policing towards health, education and social services, and is able to meet crises with a variety of appropriate responses.

The current re-energized movement for social justice and police reform highlights a problematic expansion, over many decades, in the roles and responsibilities of the police. As other systems have been defunded, most notably mental health, education, affordable housing and other health and safety-net programs, the police have been asked to respond to more and more crises that could have been avoided with a different set of investments in community wellbeing. Rather than being the responders of last resort, focused on criminal, aggressive and violent behaviors, police are now frontline responders routinely called to address mental health crises, poverty and homelessness, substance abuse, stress in the school environment, traffic and code violations and neighborhood disputes. This is an extensive set of responsibilities that is not traditionally the purview of the police.

This item initiates a restructure and redefinition of "health and safety" for all Berkeleyans, with immediate, intermediate and longer-term steps to transform the city to a new model that is equitable and community-centered. It roots the transformative process in broad, deep and representative community engagement which empowers the community to address social determinants of health and safety and deliver transformative change, with the help of change management professionals and informed by research and analysis of current and best practices.

## **BACKGROUND**

The recent murders of George Floyd, Breonna Taylor and Ahmaud Arbery have ignited the nation in passionate protest against police brutality and racial injustice. Across the country, community members have gathered for weeks to demand change and called out the enduring, systemic racism, white supremacy and accompanying police brutality that have defined the United States for too long. Among the more immediate demands are calls to reduce funding and the scope of police work and to invest in alternative models to achieve positive, equitable community safety.

These demands for change go beyond necessary efforts in procedural justice, implicit bias training, and improved use of force policies. Activists, organizers and their allies in our community are seeking a broader discussion about the true foundations for a safe and healthy community for all people. For too long, "public safety" has been equated

with more police, while economic and social welfare programs have been viewed as special projects unrelated to health and safety.

Responding from the epicenter of this moment, the City of Minneapolis has voted to disband their police department and engage in a deep and detailed year long process to fundamentally transform community health and safety in their city.<sup>1</sup> Closer to home, Mayor London Breed has announced that San Francisco will demilitarize their police force and end the use of police as a response for non-criminal activity.<sup>2</sup>

As this movement ripples across the nation, Berkeley has an opportunity to lead in transforming our approach to public health and safety. We need the right response for each crisis rather than defaulting to police. This resolution and recommendations initiate a thoughtful, thorough approach to restructuring and redefining health and safety through investment in the social determinants of health, rooted in deep community engagement and empowerment.

Community members are calling on city leaders to be creative in reimagining the city's approach to health and safety and to make clear, demonstrated commitments and timelines for this work.

In order to earn community buy-in for these important changes it is critical that the future of community health and safety be defined by the Berkeley community, centering the voices of our Black, Native American/First Peoples and other communities of color, LGBTQ+ people, victims of harm and other stakeholders that have been historically, and continue to be, marginalized and under-served by our current system. A community-wide process would ultimately inform recommended investments and approaches to achieve a higher and more equitable level of community safety for the entire community.

## **CURRENT SITUATION AND ITS EFFECTS**

Despite strong efforts and leadership on police reform, homelessness, health, education and housing affordability in Berkeley, racial disparities remain stark across virtually every meaningful measure. According to the City of Berkeley's 2018 Health Status Summary Report, African Americans are 2.3 times more likely to die in a given year from any condition as compared to Whites. In 2013, African Americans were twice as likely to live in poverty in Berkeley. By 2018, they were eight times more likely. The Center for Policing Equity (CPE) found that Black drivers are 6.5 times as likely as white drivers to be stopped by Berkeley police officers and four times as likely to be searched. Latinx people are also searched far more often than white people. Furthermore, there is a striking disproportionality in BPD's use of force against Black community members.

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<sup>1</sup> <https://lms.minneapolismn.gov/Download/File/3806/Transforming%20Community%20Safety%20Resolution.pdf>

<sup>2</sup> <https://sfmayor.org/article/mayor-london-breed-announces-roadmap-new-police-reforms>

Black people comprise 8% of Berkeley's population but 46% of people who are subjected to police force.<sup>3</sup>

Local government's most fundamental role is to provide for the health and safety of its residents. Cities around the country are acknowledging that they are falling behind in this basic function and are embarking on efforts to reimagine health and safety, and to consider reallocating resources towards a more holistic approach; one that shifts resources away from policing towards health, education and social services, and is able to meet crises with a variety of appropriate responses.

In addition to renewed efforts around policing in places like Minneapolis and San Francisco that were prompted by George Floyd's murder, the financial and public health impacts of COVID-19 had already required Berkeley to reimagine and innovate to meet the moment. Berkeley now faces multiple intersecting crises: the COVID-19 pandemic and its economic impacts, the effects of systemic racism and the ongoing climate emergency. There is no returning to "normal."

COVID-19 has demonstrated that we are only as healthy and safe as the most vulnerable amongst us, and we are in fact one community. There is both a moral and fiscal imperative to restructure the way Berkeley envisions and supports health and safety.

Berkeley is facing a \$40 million budget deficit, and while deferrals of projects and positions can help close the gap in the short term, the economic impacts of the pandemic will require deeper restructuring in the coming years. The current structure of the police department consumes over 44% of the City's General Fund Budget. With the increase in payments required to meet pension and benefit obligations, the police budget could overtake General Fund capacity within the next 10 years. Thus, even before the important opportunity for action created through outrage at the murder of George Floyd, the City's current investments in safety were unsustainable. To provide meaningful safety and continue critical health and social services, Berkeley must commit to, and invest in, a new, positive, equitable and community-centered approach to health and safety - this is affordable and sustainable.

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<sup>3</sup> <https://www.berkeleyside.com/wp-content/uploads/2018/05/Berkeley-Report-May-2018.pdf>

## **RATIONALE FOR RECOMMENDATIONS**

### **1. Resolution expressing City Council's commitment to a new city-wide approach to public health and safety**

Transforming our system of health and safety requires strong commitment from our leaders and the community. This resolution (Attachment 1) is an expression of commitment and a tool for accountability to the public.

The proposed set of principles as well as specific initiatives are the starting point for a robust and inclusive process. Some actions will require significantly more work and additional council direction prior to implementation. For example, moving traffic and parking enforcement from police is a concept that is recommended but would require a significant redesign of city operations. Other changes may be able to move forward more quickly. These ideas are submitted in a spirit of conviction and humility. The future of community health and safety must be addressed in a fundamentally different way and the Council is committed to collaborating with the community to define a new, positive and equitable model of health and safety for everyone.

### **2. Direct the City Manager to publicly track progress on actions that respond to the directives of the principles herein and others identified by the Coalition. Progress shall be updated regularly and available on a dedicated page on the City website.**

This webpage should include a summary of the actions outlined in this item, as well as other work already underway such as the Mayor's Fair and Impartial Working group, the Use of Force policy updates, other work underway by the Police Review Commission and any other Council referrals or direction on public safety, including existing referrals addressing alternative and restorative justice, that reflect the spirit and scope of this item.

Transformative change will only be successful if processes are transparent and information widely disseminated, as the City has so successfully demonstrated in managing the COVID-19 crisis. By publicly posting this information, the public will have the capacity to keep its elected officials, city staff, and our whole community accountable for realizing a new system of community centered safety that meets the needs of all of Berkeley's residents.

**3. Direct the City Manager to collaborate with Mayor and select Councilmembers to complete the following work, to inform investments and reallocations to be incorporated into future Budget processes:**

***(a) Begin the process of structural change including directing the analysis of the activities of the Berkeley Police Department and other related departments.***

Transforming community health and safety has to start by understanding the existing system, the calls to which it responds and other activities. This recommendation seeks to build on Councilmember Bartlett's George Floyd Community Safety Act to immediately engage independent, outside experts to conduct a data-driven analysis of police calls and responses and a broader understanding of how the police actually spend their time.<sup>45</sup>

Engaging the services of outside experts will ensure a transparent and trusted process and provide accurate data required to effectuate substantive change will be identified and that data will inform immediate change and the work throughout the community engagement process. The experts must be knowledgeable about policing, code enforcement, criminal justice and community safety and have deep experience with current and emerging theories, as well as expertise in data collection and analysis to inform recommendations for transformative change.

This analysis should commence as quickly as possible with the goal of providing some recommendations in time for the November 2020 AAO and then to more broadly inform the work of the Community Safety Coalition.

***(b) Identify immediate opportunities to shift elements of current policing resources to fund more appropriate community agency responses***

This re-energized movement for social justice also highlights a problematic expansion, over many decades, in the roles and responsibilities of the police. As other systems have been defunded, most notably mental health, education, affordable housing and other health and safety-net programs, the police have been asked to respond to more and more crises that could be avoided with a different set of investments in community wellbeing. Rather than being the responders of last resort, focused on criminal, aggressive and violent behaviors, police are now frontline responders routinely called to address mental health crises, poverty and homelessness, substance abuse, stress in the school environment, traffic and code violations and neighborhood disputes. This is an extensive set of responsibilities that have slowly accreted to the police.

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<sup>4</sup>[https://www.cityofberkeley.info/uploadedFiles/Clerk/Update\\_Budget%20Request%20to%20Hire%20a%20Consultant%20to%20Perform%20Police%20Call%20and%20Re...pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Update_Budget%20Request%20to%20Hire%20a%20Consultant%20to%20Perform%20Police%20Call%20and%20Re...pdf)

<sup>5</sup> [New York Times- How Do the Police Actually Spend Their Time?](#)

By November 2020, with preliminary information provided by outside experts, the City Manager and Council should identify some responsibilities that can be quickly shifted to other programs, departments and agencies. Some areas to be considered include:

- Mental health and crisis management (consideration should be given to possible expansion of the Mobile Integrated Paramedic Unit (MIP) Pilot initiated by the Berkeley Fire Department during the COVID-19 pandemic), and other models for mental health outreach and crisis response, including by non-profits
- Homeless outreach and services
- Civilianizing some or all Code Enforcement + Neighborhood Services and placing these functions elsewhere
- Alternatives for traffic and parking enforcement, and
- Substance abuse prevention and treatment

The consultants should work with the City Manager to provide a specific timeline and process for transitioning functions as quickly as possible, with deliverables to coincide with timelines for budget processes.

**(c) Contract with Change Management experts to initiate and facilitate a Community Safety Coalition (“CSC”) and Steering Committee that will begin meeting no later than January 2021.**

While the Council can make some important changes and investments in the near future, a complete and enduring transformation in community safety is only possible through robust community engagement. It is critical that the future of community health and safety is defined by the Berkeley community, elevating the voices of our Black, Native American/First Peoples and other communities of color, LGBTQ+ people, victims of harm and other stakeholders that have been historically marginalized and under-served by current systems. The Community Safety Coalition, guided by a steering committee, will serve as the hub for a broad, deep and representative process, and uplift the community’s input into a new positive, equitable, anti-racist system of community health and safety.

Berkeley has a history in leading transformational change to achieve a more equitable society. The robust public process that led to school desegregation is an example of our community’s success in bringing about significant, transformative change (Attachment 4).

The robust public process, led by the Community Safety Coalition and its steering committee, will be guided and facilitated by outside experts.



The work of the Coalition should include but not be limited to:

- Build upon the work of the City Council, City Manager, the Fair and Impartial Policing Working Group, the Use of Force subcommittee and other efforts of the Police Review and other City Commissions, and the work of other community agencies addressing community-centered health and safety
- Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley. This research should explore and propose investments in restorative justice models, gun violence intervention programs, and substance abuse support, among other things.
- Recommend a positive, equitable, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform (Attachment 3), considering, among other things:
  - The social determinants of health and changes required to deliver a holistic approach to community-centered safety
  - The appropriate response to community calls for help including size, scope of operation and powers and duties of a well-trained police force.
  - Limiting militarized weaponry and equipment.
  - Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
  - Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.

The Coalition's goal/output will be a set of recommended programs, structures and initiatives to incorporate into upcoming budget processes for FY 2022-23 and, as a second phase, in the FY2024-2025 budget processes to ensure that recommended changes will be achieved. The Coalition shall return to City Council an initial plan and timeline by April 1, 2021, to ensure the first phase of changes can be incorporated into the FY2022-23 Budget Process.

## FINANCIAL IMPLICATIONS

\$160,000 from the Auditor's budget to assess police calls and responses

\$200,000 from current budget cycle from Fund 106, Civil Asset Forfeiture, for initial subject matter expertise and engagement of outside consultants

Staff time to support the process of identifying and implementing change.

## REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES AND LAWS

This effort is in support of the following strategic plan goals:

- Champion and demonstrate social and racial equity
- Create a resilient, safe, connected, and prepared City
- Create affordable housing and housing support services for our most vulnerable community members
- Provide an efficient and financially-healthy City government
- Be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community

## ENVIRONMENTAL SUSTAINABILITY

No Environmental Impact.

## CONTACT PERSON

Mayor Jesse Arreguin 510-981-7100

Vice-Mayor Sophie Hahn

Councilmember Ben Bartlett

Councilmember Kate Harrison

Attachments:

1. Resolution
2. Safety for All: The George Floyd Community Safety Act - Budget Request to Hire a Consultant to Perform Police Call and Response Data Analysis
3. "Shrink the Beast" A Framework for Transforming Police, National Institute for Criminal Justice Reform
4. School Desegregation in Berkeley: The Superintendent Reports, Neil Sullivan 1968

RESOLUTION

Whereas, The recent murders of George Floyd, Breonna Taylor and Ahmaud Arbery have ignited the nation in passionate protest against police brutality and racial injustice; and

Whereas, Demands for change go beyond necessary efforts in procedural justice, implicit bias training, and use of force policies and seek a broader discussion about investment in the conditions for a safe and healthy community; and

Whereas, Investment in “public safety” has been equated with more police for too long while economic and social welfare programs have been viewed as special projects unrelated to health and safety; and

Whereas, This movement is highlighting the problematic expansion in the roles and responsibilities of police officers. Rather than being the responders of last resort, focused on criminal, aggressive and violent behaviors, police are now frontline responders to mental health crises, homelessness, drug addiction, sex work, school disruption, traffic and code violations and neighborhood conflicts; and

Whereas, the adopted 2020 budget allocated \$74 million to the Berkeley Police Department, which represents over 44% of the City’s General Fund of \$175 million, and is more than twice as much as the combined City budgets for Health Housing and Community Services, and Economic Development; and

Whereas, It is clear that our current system of public health and safety is not working and is not sustainable in Berkeley. Despite strong efforts and leadership on police reform, homelessness and affordable housing, racial inequity remains stark across virtually every meaningful measure of health and well-being; and

Whereas, Local government’s most fundamental role is to provide for the health and safety of its residents. Cities around the country are acknowledging that they are falling behind in this basic function and are embarking on efforts to reimagine health and safety, and to consider reallocating resources towards a more holistic approach that shifts resources away from policing towards equitable health, education and social services that promote wellbeing up front;<sup>678</sup> and

Whereas, As this movement ripples across the nation, Berkeley has an opportunity to lead in transforming our approach to public health and safety. We need the right response for each crisis rather than defaulting to using the police; and

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<sup>6</sup> [Transforming Community Safety Resolution-Minneapolis](#)

<sup>7</sup> [San Francisco Mayor, Supervisor announce effort to redirect some police funding to African-American community](#)

<sup>8</sup> [The cities that are already defunding the police](#)

Now, Therefore, Be It Resolved by The City Council of The City of Berkeley:

That the City Council commits to the principles of reduce, improve and re-invest: reduce the scope and investment in policing, improve the response and accountability of public and community agencies, reinvest in racial equity and community-based intervention initiatives<sup>9</sup>;

Be It Further Resolved that the City Council will engage with every willing community member in Berkeley, centering the voices of Black people, Native American people, people of color, immigrants, LGBTQ+ people, victims of harm, and other stakeholders who have been historically marginalized or under-served by our present system. Together, we will identify what safety looks like for everyone.

Be It Further Resolved that the process will center the role of healing and reconciliation. The process will require healers, elders, youth, artists, and organizers to lead deep community engagement on race and public safety. We will work with local and national leaders on transformative justice in partnerships informed by the needs of every block in our city.

Be It Further Resolved that decades of police reform efforts have not created equitable public safety in our community, and our efforts to achieve transformative public safety will not be deterred by the inertia of existing institutions, contracts, and legislation.

Be It Further Resolved that these efforts heed the words of Angela Davis, “In a racist society, it is not enough to be non-racist. We must be anti-racist.”

Be It Further Resolved that the transformation under consideration has a citywide impact, and will be conducted by the City Council in a spirit of collaboration and transparency with all constructive stakeholder contributors including the Mayor’s Office, the City Manager, the Police Chief, and community organizations.

Be It Further Resolved that the City Council of the City of Berkeley is committed to:

1. A transformative approach to community-centered safety and reducing the scope of policing
2. Equitable investment in the essential conditions of a safe and health community especially for those who have been historically marginalized and have experienced disinvestment
3. A broad, inclusive community process that will result in deep and lasting change to support safety and wellbeing for all Berkeley residents.

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<sup>9</sup> [A Framework fo Transforming Police- NICJR](#)

Be it Further Resolved that the City Council supports taking the following actions to realize this transformation:

1. Direct the City Manager to track and report progress on actions to implement this initiative, and other actions that may be identified by the Coalition and referred by Council to the City Manager. Updates shall be provided by written and verbal reports to Council, and posted on a regularly updated and dedicated page on the City website.
2. Direct the City Manager to collaborate with Councilmembers later selected by the Mayor to complete the following work, to inform investments and reallocations to be incorporated into future Budget processes:
  - a. Contract with independent consultants/Change Management and subject matter experts to:
    - i. Analyze the scope of work of, and community needs addressed by, the Berkeley Police Department, to identify a more limited role for law enforcement, and identify elements of police work that could be achieved through alternative programs, policies, systems, and community investments. Analysis should include but not be limited to: calls received by dispatch by type of complaint, stops by law enforcement generated at officer discretion (as contained in the Police Department's open data portal) or on request of other city agencies, number of officers and staff from other city agencies that respond to incidents, estimated time in response to different types of calls, daily patrol activities, organizational structure, and beat staffing. Work to include broad cost estimates of police and other city agency response to different types of calls, and other information and analysis helpful to identify elements of current police work that could be transferred to other departments or programs, or achieved through alternative means. Work should be completed in time for the November 2020 Annual Appropriation Ordinance revision.
    - ii. Identify immediate and longer term opportunities to shift policing resources to alternative, non-police responses and towards alternative and restorative justice models, to better meet community needs, that could be considered in the

November 2020 AAO#1 budget process. Some areas to be considered include homeless outreach and services, substance abuse prevention and treatment, and mental health/crisis management, as well as alternative models for traffic and parking enforcement, “neighborhood services” and code enforcement. Provide a broad timeline and process for transitioning functions not ready for transition at this first milestone.

Deliverables should coincide with budget cycles, including the November 2020 AAO and FY 2022-2023 Budget processes, and provide a suggested timeline for transitioning functions at these and other budget opportunities, so that alternative investments may be considered for funding and launched in a timely and orderly manner.

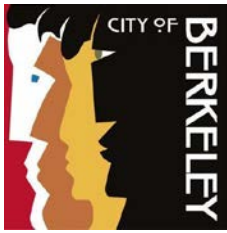
- b. Contract with independent Change Management experts to create and facilitate a representative Community Safety Coalition, guided by a Steering Committee, that will begin meeting no later than January 2021. The CSC and its Steering Committee, should be broadly inclusive and representative of Berkeley residents and stakeholders. The Steering Committee, with the support of Change Management professionals, shall be responsible for engaging the Coalition and the broader Berkeley community and relevant City Staff in a robust process, to achieve a new and transformative model of positive, equitable and community-centered safety for Berkeley.

The work of the Coalition should include but not be limited to:

4. Building on the work of the City Council, the City Manager, the PRC and other City commissions and other working groups addressing community health and safety.
5. Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.
6. Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform (Attachment 3), considering, among other things:

- a. The social determinants of health and changes required to deliver a holistic approach to community-centered safety
- b. The appropriate response to community calls for help including size, scope of operation and powers and duties of a well-trained police force.
- c. Limiting militarized weaponry and equipment.
- d. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
- e. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.

The Coalition's goal/output will be a set of recommended programs, structures and initiatives to incorporate into upcoming budget processes for FY 2022-23 and, as a second phase, in the FY2024-2025 budget processes to ensure that recommended changes will be achieved. The Coalition shall return to City Council an initial plan and timeline by April 1, 2021, to ensure the first phase of changes can be incorporated into the FY2022-23 Budget Process.



Councilmember Ben Bartlett  
City of Berkeley, District 3

## EMERGENCY ITEM AGENDA MATERIAL

**Meeting date:** June 16, 2020  
**Item Description:** Safety for All: The George Floyd Community Safety Act - Budget Request to Hire a Consultant to Perform Police Call and Response Data Analysis  
**Submitted by:** Councilmember Ben Bartlett (Author), Mayor Jesse Arreguin, and Councilmembers Kate Harrison (Co-Sponsor)

### Rationale:

Pursuant to California Government Code Section 54954.2(b) (2), Councilmember Ben Bartlett submits the attached item to the City Council for placement on the June 16, 2020 meeting agenda. Gov. Code Section 54954.2(b) (2) states that “Upon a determination by a two-thirds vote of the members of a legislative body presents at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).”

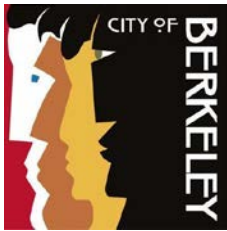
This item meets the criteria for “immediate action” as follows:

- 1) The budget is being considered and there is public outcry for Council to take action.
- 2) Racism Is a Public Health Emergency.
- 3) Council is considering numerous police items right now.

Hundreds of thousands of people in every state have marched in solidarity to call for an end to police brutality, to demand police accountability, and to reform law enforcement, bringing justice to the Black lives and people of color who have been wrongfully harmed at the hands of the criminal justice system. Police brutality has taken the lives of 46-year-old Black man George Floyd, 26-year-old Black woman Breonna Taylor, and countless other people of color. Often resorting to violent means of punishment, police officers are not trained to handle noncriminal and nonviolent situations. Unfortunately, the lack of sufficient data and reporting has allowed police misconduct to be swept under the rug, which has increased police militarization, failed to prioritize community safety, and prevented providing the civilian with the necessary treatment to resolve the situation.

To respond to urgent calls for police transparency and accountability, this item requests the City Manager to hire third-party consultants to conduct a data-driven analysis of the Berkeley Police Department’s calls, responses, budget, and expenditures to determine which calls can be serviced to non-law enforcement agencies, ensuring noncriminal and nonviolent situations are properly handled by trained community professionals.





Councilmember Ben Bartlett  
City of Berkeley, District 3

CONSENT CALENDAR

June 16, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Ben Bartlett (Author), Mayor Jesse Arreguin, and  
Councilmembers Kate Harrison (Co-Sponsor)  
Subject: Safety for All: The George Floyd Community Safety Act - Budget Request to  
Hire a Consultant to Perform Police Call and Response Data Analysis

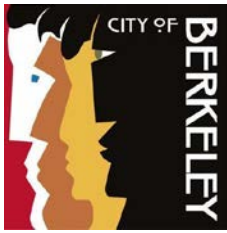
RECOMMENDATION:

1. Refer to the Thursday, 6/18/2020 Budget & Finance Policy Committee and the FY 2020-21 Budget Process the \$150,000 to
  - a. Hire a consultant to conduct a data-driven analysis of police calls and responses to determine the quantity and proportion of these calls that can be responded to by non-police services. The third-party consultant must be hired and engaged in work within three months of the item's passage.
  - b. Hire a consultant to conduct an analysis of the Berkeley Police Department's budget and its expenditures by call type. The third-party consultant must be hired and engaged in work within three months of the item's passage.
2. Direct the City Manager to:
  - a. Implement initiatives and reforms that reduce the footprint of the police department and limit the police's response to violent and criminal service calls.

CURRENT SITUATION

In all 50 states and more than 145 cities, Americans are calling to end police violence and brutality, to legitimize police accountability, and to transform the police system to protect the safety of communities and people of color. Police violence and brutality led to the death of a 46-year-old Black man George Floyd and the murders of other Black people, igniting a flame that has been brewing for a long time. These events of police violence gave rise to a wave of demonstrations and demands for change, including many in the City of Berkeley.

Due to the Coronavirus pandemic, the City of Berkeley is facing a nearly 30+ million dollar budget deficit, sharply stalling economic growth with effects that parallel the Great Depression. At the same time, the City is projected to undergo an increase in people experiencing homelessness, trauma, and mental health crises. Therefore, the City must ensure that each dollar is spent for the residents' best interest and will produce the maximum return.



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City of Berkeley, District 3

In order to better respond to the needs of the Berkeley community, it is critical that the Council takes local-level action on police reform. In particular, the City must examine the types of calls and responses from the police department and analyze the agency's budgets and expenditures according to call type.

As a component of the **REDUCE, IMPROVE, RE-INVEST** framework, this item works towards the REDUCE goal: *the City should implement initiatives and reforms that reduce the footprint of the police department and limit the police's response to violent and criminal service calls.* Specifically, this item proposes to hire an outside consultant to conduct an analysis of police calls and responses as well as the department budget.

With military-style techniques and structure, police officers are trained to combat crime in a manner that exerts violence through punishments, establishing a monopoly on force in communities. While law enforcement is supposed to protect our communities and keep us safe, crime waves from the 1970s and 1980s have transformed the police community into a body for crime control, maintaining such focus until modern-day despite declines in criminal activity<sup>1</sup>. With this focus on crime control, police officers lack the necessary training to adequately respond to noncriminal and nonviolent crimes. Non Criminal crimes refer to issues involving mental health, the unhoused community, school discipline, and neighborhood civil disputes<sup>2</sup>. Nonviolent crimes are categorized as property, drug, and public order offenses where injury or force is absent<sup>3</sup>. When police respond to these types of matters, they resort to violent means of arrest or problem escalation because they are ill-equipped and not trained to resolve the underlying issues.

According to the Vera Institute of Justice's report between 1980 and 2016, more than 10.5 million arrests are made every year; only 4.83 percent of those arrests were for violent offenses<sup>4</sup>. Eighty percent of these arrests were for low-level offenses, such as "disorderly conduct," non-traffic offenses, civil violations, and other offenses. This criminalization may be attributed to the arrest quotas for police productivity, which promotes punishment by rewarding the number of arrests for police funding instead of finding solutions to these issues<sup>5</sup>. This high percentage of low-level offenses resulted in

<sup>1</sup> <https://www.theatlantic.com/ideas/archive/2020/06/first-step-figuring-out-what-police-are/612793/>

<sup>2</sup> <https://www.latimes.com/california/story/2020-06-12/san-francisco-police-reforms-stop-response-noncriminal-calls>

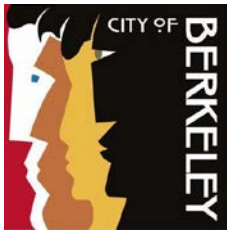
<sup>3</sup>

<https://www.bjs.gov/content/pub/ascii/pnoesp.txt#:~:text=Nonviolent%20crimes%20are%20defined%20as%20possession%2C%20burglary%2C%20and%20larceny.>

<sup>4</sup>

<https://arresttrends.vera.org/arrests?compare%5Boffense%5D%5Bpart1%5D=part1&compare%5Boffense%5D%5Bpart2%5D=part2#infographic>

<sup>5</sup> <https://theintercept.com/2019/01/31/arrests-policing-vera-institute-of-justice/>



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arrest when other nonviolent, rehabilitative methods could have occurred from the solutions of community workers with the experience to handle these situations.

It is imperative that the City of Berkeley develops, implements, and enforces a clear and effective roadmap towards making real change, ending anti-Black racism, stopping police violence, and holding police accountable for their actions. Thus, the Council should direct the City Manager to hire third party consultants to conduct a data-driven analysis of police calls and responses as well as their budget and expenditures in order to determine ways in which experienced community workers can reduce the police footprint by addressing noncriminal situations. We recommend that community workers also resolve nonviolent situations.

### BACKGROUND

In order to achieve the aforementioned goals, the City must implement a series of important law enforcement reforms and take action by initiating the following:

#### **REDUCE:**

##### **I. Hire a consultant to conduct a data driven analysis of police calls and responses.**

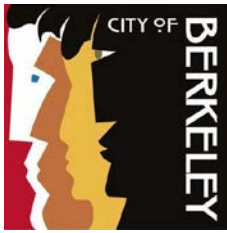
University of Denver Political Science Professor Laurel Eckhouse stated, “One method of reducing police presence... is to separate and reassign to other authorities various problems currently delegated to the police... such as the problems of people who don’t have housing... mental health issues... and even things like traffic<sup>6</sup>.” Community organizations, civilian workers trained in mental health situations, or neighborhood problem-solvers would better address these specific issues due to their experience, ensuring that the police are not the only force addressing these issues and promoting community vitality<sup>7</sup>.

Conducting a data driven analysis of police calls and responses would signify a report of the calls and responses that police receive and would inform the city where to better allocate resources to resolve specific issues. Noncriminal and nonviolent activities can thus be properly addressed by those who are equipped to handle these situations and would relieve law enforcement from these calls to then pursue more serious criminal situations. For example, the San Francisco Police Department receives approximately 40,000 calls per year about homeless people on the streets<sup>8</sup>. Social workers who can help unhoused citizens and those with mental health disorders are better equipped to help these citizens receive

<sup>6</sup> <https://www.stanforddaily.com/2020/06/04/police-abolition-looks-like-palo-alto/>

<sup>7</sup> <https://www.theatlantic.com/ideas/archive/2020/06/first-step-figuring-out-what-police-are/612793/>

<sup>8</sup> <https://www.latimes.com/california/story/2020-06-12/san-francisco-police-reforms-stop-response-noncriminal-calls>



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proper treatment while also protecting the safety of our communities, which would give law enforcement time to handle other crimes.

One suggestion to reduce the costs of policing is to boost productivity by allocating a portion of the calls for service to community organizations who have the resources and training to handle such situations<sup>9</sup>. For example, in Mesa, Arizona from 2006 to 2008, a third of calls for service are handled by civilians; these calls are for incidents of “vehicle burglaries, unsecured buildings, accidents, loose dogs, stolen vehicles, traffic hazards, and residential burglaries<sup>10</sup>.” Approximately half of calls for service in Mesa are handled by police officers, but among those, there are ways to reduce police authority. For example, 11 percent of those calls that police officers handled were in response to burglary alarms, where 99 percent were false. Six percent of those calls included “juveniles disturbing the peace.” This situation in Mesa demonstrates the possibility of reduced police force in exchange for community based response teams who can better resolve these issues with their experience.

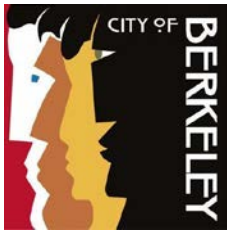
The City Manager should hire a third party consultant within three months of this item’s passage to conduct the data analysis, ensuring that the report is completed in an impartial and timely manner.

The third party consultant should create a report with the following information by analyzing and gathering the data from the police department, reporting their findings to the City every two years. We recommend the following data to be considered for analysis:

- a. Number of calls the police department receives per day, week, month, and year, which will be categorized into noncriminal, misdemeanor, nonviolent felony, and serious and violent felony calls.
- b. Demographics for these calls
- c. Characteristics of traffic stops
  - i. Quantity
  - ii. Type/reason
  - iii. Number of those resulting in searchings paired with the frequency at which illegal items were found
  - iv. Police response (i.e. citation, arrest, use of force)
  - v. Demographics of the civilian in the traffic stop that is broken into type of stop and whether a search occurred
- d. Number of complaints against an officer
  - i. Enumerate the officers with a high number of complaints

<sup>9</sup> <https://www.ncjrs.gov/pdffiles1/nij/231096.pdf>

<sup>10</sup> <https://www.ncjrs.gov/pdffiles1/nij/231096.pdf>



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ii. Reason behind the complaints.

With the results of the data analysis, the City can determine the portion of calls that the community crisis worker pilot can properly address with the resources and experience they have.

**II. Hire a consultant to conduct an analysis of the police department budget.**

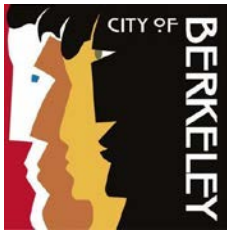
Using the analysis generated by a review of police call and response data, a third party consultant should be hired to analyze the police department's expenditures and budgets for various calls of service and report their findings to the City every two years.

According to the 2019 budget, the Berkeley Police Department's expenditures were approximately \$69 million, which consists of 5.6 percent of the city's net expenditures. However, for the 2020 budget, the BPD is expected to have \$74 million in expenditures, reflecting a \$5 million increase from the previous year and approximately \$8 million higher than 2017's expenditures<sup>11</sup>. Unfortunately, anecdotal evidence suggests that only 20 percent of police time is spent on solving crime and the majority is spent towards addressing those experiencing homelessness and mental health crises. The City should reallocate resources to a crisis worker entity who would be tasked with responding to noncriminal calls. We recommend that nonviolent calls also be addressed by this entity. This would give police officers more time to focus on crime, leading to better outcomes for public safety, community health, and a higher quality of life.

In Canada, Police Information and Statistics Committee police services Waterloo Police Regional Service and Ontario Provincial Police collaborated with Justice Canada and Public Safety to collect data on their calls for service and determine the costs of policing<sup>12</sup>. Their research reported that in 2013, bylaw complaints were listed as the most frequent call for service in Waterloo at 8,769 calls and non-crime policing activities were listed as the most frequent. In contrast, the only criminal activity listed in the top 10 generated calls were domestic dispute, theft under \$5000, and major violent crime in property damage. Considering the most frequent of costly calls are noncriminal activities such as selective traffic enforcement programs (\$22,212.45 in sum of total unit service time in hours) and vehicle stops (\$206,668.13), the greatest cost in calls were for noncriminal activities. As noncriminal activities result in the greatest costs, it would be more efficient for community workers to handle these situations in order to reduce

<sup>11</sup> <https://www.cityofberkeley.info/uploadedFiles/Manager/Budget/FY-2020-2021-Adopted-Budget-Book.pdf>

<sup>12</sup> <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2015-r018/index-en.aspx#c-1-i>



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police department costs, allowing trained professionals to resolve the issue and giving police officers time to spend on more serious criminal offenses.

By analyzing the budget expenditures for the police for each call type, the community can divest from the police and reallocate those funds for trained community organizations who can handle noncriminal and nonviolent offenses. Considering the significantly delayed response to former requests for the police department's budget, the data analysis should be conducted by a third party consultant that is hired and engaged in active service within three months of this item's passage, ensuring that the police department's budget information is transparent to the public and reported in an impartial, timely manner.

#### REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

The City Manager provides regular reports on crime in Berkeley and on the policies of the Berkeley Police Department<sup>13</sup>. The data on serious crime is collected annually by the Federal Bureau of Investigation (FBI), which consists of over 17,000 law enforcement agencies that represent over 90 percent of the United States population. The FBI's Uniform Crime Report (UCR) reports crime statistics on violent crimes (including murder, rape, robbery, and aggravated assault) and property crimes (including burglary, larceny, auto theft, and arson). This data allows the BPD to analyze national and local crime trends, determine effectiveness of response to crime, and plan for future policies and resource allocation. Additionally, the City of Berkeley implements the Daily Calls for Service Log that the community can access to see the volume and nature of police activity.

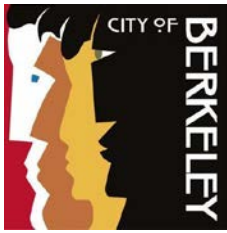
Currently, Utah requires agencies to report tactical deployment and forcible entries where such reports are summarized by the Utah Commission on Criminal and Juvenile Justice. Utah Law Enforcement Transparency reporting interface was added to Utah Criminal Justice Information System in 2014 through the use of federal grant funding. Law enforcement agencies are required to report incidents of forcible entry and the deployment of tactical groups, representing data collection of police use of force<sup>14</sup>.

However, these reports do not analyze the demographics or types of calls and responses from the BPD, which makes it difficult to hold police officers accountable for the mistreatment of individuals. Without this information, it becomes difficult to determine how to decrease the police footprint or implement safer policing practices if the analysis only pertains to the quantity and types of arrests and does not include the

<sup>13</sup> [https://www.cityofberkeley.info/Police/Home/Annual\\_Crime\\_Reports.aspx](https://www.cityofberkeley.info/Police/Home/Annual_Crime_Reports.aspx)

<sup>14</sup> <https://justice.utah.gov/Documents/CCJJ/LETR/2018%20LET%20Annual%20Report.html>





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background, call of service, reason, demographics, complaints against the police officer, and other important factors to the BPD's response.

Despite voluntary data sharing and crime reports, data collection still remains vague and insufficient, leaving many unanswered questions regarding the number of instances of and reasons for use of force, complaint process against police officers, and other information about police actions. This lack of clarity allows police misconduct to perpetuate due to the lack of research that would hold police departments accountable.

#### ACTIONS/ALTERNATIVES CONSIDERED

One possible alternative to the community response teams would be to implement better training procedures so that police officers are more equipped to handle nonviolent and noncriminal activities. For example, the state of Washington requires both violence de-escalation and mental health training for police officers<sup>15</sup>. Such reform may render the data analysis on the types of calls unnecessary because the police department would be trained to handle all services regardless of the type of call.

However, training police officers to handle situations such as mental health or homelessness would signify an increase in funding for the police department to provide such training services. Not only would this type of training be difficult to maneuver when police forces are currently trained in a militarized manner, but it would be more efficient for community professionals to peacefully and properly resolve such issues since they have already engaged in this training and experience for years.

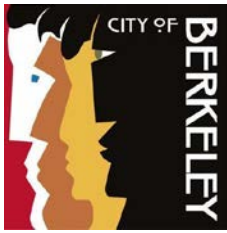
Reforming police training may be beneficial, but in this case, it would also indicate the lack of basis for reporting the police department's types of calls and responses, which is necessary to hold the police accountable and ensure safer practices. While reporting the data analysis could still occur without the community crisis workers, only having the police department manage all situations would increase their authority over the communities, which would lead to increased militarization of the police forces if other community organizations do not intervene or hold them accountable.

#### OUTREACH OVERVIEW AND RESULTS

The District 3 Office has consulted with David Muhammad, who is the Executive Director of the National Institute for Criminal Justice Reform; the former Chief Probation Officer in Alameda County; and the former Deputy Commissioner of Probation in New York City. David Muhammad is a leading expert on criminal justice who has helped inform our response to the current situation.

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<sup>15</sup> <https://www.theatlantic.com/ideas/archive/2020/06/how-actually-fix-americas-police/612520/>



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The District 3 Office has also consulted with Marcus McKinney, the Senior Director of Government Affairs & Public Policy at the Center for Policing Equity.

The District 3 Office has also consulted with Professor Tracey L. Meares, Walton Hale Hamilton Professor and Faculty Director of the Justice Collaboratory at Yale Law School.

### RATIONALE FOR RECOMMENDATION

Police departments across the country enforce policies and practices that breed a culture of violence resulting in killings--like those of Floyd and Moore, and of countless other people of color. These authoritative, militarized behaviors are often rooted in anti-Black racism, and such behavior must stop being acceptable. Transformation of police departments, their role, and relationship to our communities requires a change in culture, accountability, training, policies, and practices.

To prioritize community safety and reduce police violence, the City must hire a third party consultant to analyze police data in order to decide how to divest from the police to fund experienced community workers who can adequately resolve noncriminal and nonviolent situations. These community workers would protect the community from violence and emphasize revitalization and rehabilitation over the punishment that police officers often enforce. Implementing a data-driven analysis on police data would increase the transparency of the police department and hold them accountable, detecting the issues within the police force that community response teams can help heal. The Council must make informed legislative decisions that will reduce police footprint, improve current practices of law enforcement, and reinvest in the community for the safety of our civilians.

### FISCAL IMPACTS OF RECOMMENDATION

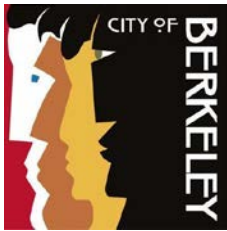
The third party consultant/s would cost approximately \$150,000 to \$200,000. It is up to the City Manager to hire the third party consultants who will analyze the data of the police department's calls, responses, budget, and expenditures. Consultants must be hired and engaged in service within three months if this item passes. These consultants would ensure that noncriminal situations are handled by those with the necessary training, which may lead to a decrease in repeat offenses when community workers properly resolve the situation and guide civilians to helpful resources.

### ENVIRONMENTAL SUSTAINABILITY

We do not expect this recommendation to have significant negative impacts on environmental sustainability.

### OUTCOMES AND EVALUATION





Councilmember Ben Bartlett  
City of Berkeley, District 3

If this item is passed, third party consultants would be hired by the City and engaged in data analysis within three months of passage. These consultants would produce biennial reports regarding the Berkeley Police Department's types of calls and responses as well as the budgets and expenditures in order to inform the City how to reallocate funds from the police into a community response team with better experience to handle noncriminal situations. We recommend that nonviolent situations also be addressed by community crisis workers.

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#### ATTACHMENTS

1. Cover Letter - Safety for All: George Floyd Community Safety Act
  - <https://drive.google.com/file/d/16pqqd9J6NPRzh6298Bgazo7jw1qxTK6Y/view?usp=sharing>

# SHRINK THE BEAST:

A Framework for Transforming Police

NICJR★  
National Institute for  
Criminal Justice Reform



The killing of George Floyd by Minneapolis police was the match that lit a fire that has been building in our communities for a long time. Nationwide demands for not just reform, but complete transformation of policing have put pressure on local jurisdictions across the country to make rapid and real change.

Since its founding, the National Institute for Criminal Justice Reform (NICJR) has worked to reform the juvenile and criminal justice systems through a process of Reduce – Improve – and Reinvest. This framework can also be effective in transforming policing. In the past 15 years, the U.S. juvenile justice system has been reduced by more than half. Youth correctional facilities have been shuttered and investment into community services has increased. While there is certainly more progress to be made, the movement to transform policing can learn a great deal from criminal justice reform.

**NICJR's framework to Shrink the Beast focuses on three areas:** reducing the footprint of law enforcement, significantly improving what remains of policing, and reinvesting the savings from smaller police budgets into community services.

## Reduce

One of the most significant structural reforms we must advance in policing, already happening in the criminal justice arena, is shrinking its scope. Officers are asked to do too much with too few resources. The warrior mentality that police are indoctrinated with, starting as early as the first day of the police academy, does not allow them to handle many of those responsibilities well. It is time for an alternative response network for all non-violent calls for service. Similar to the community-based organizations that provide diversion programs for youth and adults who would otherwise end up in the justice system, a new infrastructure of community safety and problem-solving responders, with expertise in crisis response, mental health, and de-escalation techniques, must be developed. Such a network should be vast and well equipped, including 24-hour on-call community crisis response and outreach workers. The resulting reduced police force would then focus primarily on responding to serious violence. Small, but promising examples of this model already exist:

- › **In Oakland, CA**, non-profit organizations employ street outreach workers and crisis response specialists who respond to shooting scenes, intervene in and mediate conflicts, and sit down with young adults who have been identified as being at very high risk of violence to inform them of their risk and offer them intensive services. These City-funded efforts have been credited with a [50 percent reduction in shootings](#) and homicides in the city.
- › **In Eugene, OR**, Crisis Assistance Helping Out on the Streets ([CAHOOTS](#)) responds to more than 22,000 requests for service annually with its Crisis Intervention Workers. This represents nearly 20 percent of the total public safety call volume for the metropolitan area.
- › **In Austin, TX**, the [Expanded Mobile Crisis Outreach Team](#) is equipped to respond to 911 calls where callers indicate that a mental health response, not police, is needed.
- › **In Albuquerque, NM**, where the police have been involved in numerous unjustified killings, the Mayor has proposed creating a [new non-law enforcement public safety agency](#) that will respond to non-violent calls.

## Steps To Reduction



Create a robust alternative emergency response network with mental health workers, crisis intervention specialists, and street outreach workers – the Community Emergency Response Network (CERN).



Significantly reduce police patrol divisions which are currently primarily responsible for responding to 911 calls. Police will instead focus on responding to serious and violent incidents, a small percentage of all current calls.



CERN Crisis Intervention Specialists would respond to all other calls.



Traffic policing should be replaced by technology to the maximum extent possible.



Violence reduction teams should be created or remain intact: Patrol and investigation units focused on reducing gun violence. Like all remaining police personnel, these units must be trained in and adhere to strict use of force and Procedural Justice policies.



Investigation Units should also remain intact.

## Improve

The primary challenge in police agencies is culture. Many have described it as a warrior culture. Adrenaline-filled young officers want to “knock heads” during their shifts; the “us vs them,” military occupation syndrome. We must confront and transform this destructive culture. Policing should focus on protection and service to the community.

Improving the smaller police departments that remain, after taking the steps to reduction outlined above, includes three components: policy, training, and accountability. Implement new policies including restricting the use of force, mandating verbal de-escalation, community policing, and eliminating stop and frisk. Implement high quality and frequent training on these newly developed policies. And, most importantly, hold all police personnel accountable for adhering to and demonstrating these policies in action.



### Steps To Improvement

- 1 Increase hiring standards to screen out candidates with any signs of racial bias, interest in the warrior culture, or those who have been fired or forced to resign from previous law enforcement positions.
- 2 Prioritize hires of those who grew up in the city and/or live in the city.
- 3 Make deliberate efforts to have the police force representative of the community it serves.
- 4 Revise use of force policies to limit any use of deadly force as a last resort in situations where a suspect is clearly armed with a firearm and is using or threatening to use the firearm.
- 5 All other force must be absolutely necessary and proportional.
- 6 Provide thorough, high quality, and intensive training in subjects including:
  - New use of force policy
  - Verbal de-escalation
  - Bias-free policing
  - Procedural Justice
- 7 Transparency: Provide regular reports to the public on stops, arrests, complaints, and uses of force, including totals, demographics, and aggregate outcomes data.
- 8 Effectively use an early intervention system that tracks various data points to identify high risk officers and implement discipline, training, and dismissal where necessary.
- 9 Use aggressive, progressive discipline to root out bad officers.
- 10 Rescind state and local laws that provide undue protection to police unions and prohibit effective and efficient disciplinary action.

## Reinvest

A smaller footprint of law enforcement should result in a reduced police budget. Resources should be shifted away from the police department to the CERN and other community-based intervention initiatives, including Credible Messengers/Life Coaches, social workers, and mental health service providers.



The National Institute for Criminal Justice Reform (NICJR) is a non-profit organization providing technical assistance, consulting, research, and organizational development in the fields of juvenile and criminal justice, youth development, and violence prevention. NICJR provides consultation, program development, technical assistance, and training to an array of organizations, including government agencies, non-profit organizations, and philanthropic foundations.

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[NICJR.org](http://NICJR.org)

## R E P O R T R E S U M E S

ED 015 988

UD 004 752

SCHOOL DESEGREGATION IN BERKELEY--THE SCHOOL SUPERINTENDENT REPORTS.

BY- SULLIVAN, NEIL V.

PUB DATE NOV 67

EDRS PRICE MF-\$0.25 HC-\$0.92 21F.

DESCRIPTORS- \*SCHOOL INTEGRATION, \*BOARD OF EDUCATION POLICY, \*BOARD OF EDUCATION ROLE, SCHOOL ADMINISTRATION, SCHOOL SUPERINTENDENTS, JUNIOR HIGH SCHOOLS, ELEMENTARY SCHOOLS, COMMUNITY COOPERATION, BUS TRANSPORTATION, STAFF ROLE, ELECTIONS, INTEGRATION PLANS, BERKELEY, CALIFORNIA

DESCRIBED IS THE HISTORY OF THE EFFORTS TO DESEGREGATE THE BERKELEY, CALIFORNIA, SCHOOL DISTRICT, WHICH IS SCHEDULED TO BE FULLY DESEGREGATED BY SEPTEMBER 1968. CHANGE BEGAN IN THE 1950'S WITH THE ELECTION OF A "LIBERAL" TO THE BOARD OF EDUCATION. FIRST STEPS INVOLVED IMPROVING EDUCATIONAL OPPORTUNITIES FOR MINORITY GROUP CHILDREN AND MAKING EFFORTS FOR BETTER RACE RELATIONS. DESEGREGATION BEGAN IN THE JUNIOR HIGH SCHOOLS BUT NOT WITHOUT COMMUNITY FRICTION TO THE POINT OF A DEMAND FOR A RECALL ELECTION OF THE BOARD. HOWEVER THE BOARD WAS VINDICATED ON ITS STAND FOR VOLUNTARY INITIATION OF DESEGREGATION. A NEW SCHOOL SUPERINTENDENT WAS FACED WITH THE JOB OF IMPLEMENTING THE PLAN AND BEGAN HIS EFFORTS BY DEVELOPING COMMUNITY SUPPORT AND PRODUCTIVE LIAISON WITH HIS STAFF. THE NEXT STEP INVOLVED DESEGREGATING THE ELEMENTARY SCHOOLS. THE WIDE GEOGRAPHIC SEPARATION OF IMBALANCED SCHOOLS IN THE CITY REQUIRED THE DESIGNATION OF CERTAIN WHITE SCHOOLS AS RECEIVING SCHOOLS AND THE USE OF FEDERALLY FUNDED BUSES AND ADDITIONAL STAFF FOR THE 230 INCOMING PUPILS. HOWEVER THIS WAS ONLY A "TOKEN" EFFORT. VOLUNTARY REVERSE BUSING AND A TIMETABLE FOR COMPLETE DESEGREGATION HAVE BEEN RECOMMENDED. IT IS FELT THAT THE REQUISITES FOR SUCCESSFUL SCHOOL DESEGREGATION ARE FULL COMMITMENT BY THE SCHOOL ADMINISTRATION AND THE BOARD, COMMUNITY INVOLVEMENT WITH AND FAITH IN THE BOARD AND ADMINISTRATION, AND THE DEVELOPMENT OF "WORKABLE" PLANS. THIS PAPER WAS PREPARED FOR THE NATIONAL CONFERENCE ON EQUAL EDUCATIONAL OPPORTUNITY IN AMERICA'S CITIES, SPONSORED BY THE U.S. COMMISSION ON CIVIL RIGHTS, WASHINGTON, D.C., NOVEMBER 16-18, 1967. (NH)

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**SCHOOL DESEGREGATION IN BERKELEY:  
THE SCHOOL SUPERINTENDENT REPORTS**

Prepared by  
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for the  
National Conference on Equal Educational Opportunity  
in America's Cities  
sponsored by the  
U.S. Commission on Civil Rights, Washington, D.C.  
November 16-18, 1967

**U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE  
OFFICE OF EDUCATION**

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In recent years Berkeley, California, has been fortunate to have a school district which recognizes its problems and works effectively toward their solution. The city schools already have completely desegregated the junior high schools, and have made a token start at the elementary level. The School Board has committed itself to completing the process in all schools by September 1968. When that goal is reached, Berkeley will be a rare example of a major city working out a solution to this problem without court orders, violence, boycotts, or compulsion, but only with the conviction of the Board of Education, the Administration, and the citizens that it was right.

This has not been achieved overnight. To place the present achievements in their proper context it is necessary to trace the development of events in the recent past.

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PRE-1964

The Liberal Renaissance - Prior to the mid-1950's Berkeley's local government -- including the Board of Education -- was typical of those found in most middle-size, middle-class communities. The orientation was pro-business, with a heavy emphasis on keeping the tax rate down. This condition was so pronounced that teachers, in order to obtain a much needed and earned salary increase, were forced to use an initiative petition to get school revenues raised; the Board had refused to do so.

There are many different versions concerning the beginning of the liberal renaissance. There is general agreement that the first concrete step was the election of one liberal to the Board in 1957, followed by another in 1959, and two more in 1961. With the 1961 election the liberals assumed control of both the Board of Education and the City Council. However, even with only one "liberal" Board member in the late 1950's, the Board began to give attention to the problems of race relations in a multi-racial city.

Preliminary Steps - A citizens committee (named the Staats Committee after its chairman) was organized to study race relations within schools. This committee did not come to grips with the question of de facto segregation but sought to deal otherwise with improving educational opportunities for minority youngsters and improving race relations in the schools. For the late 1950's this report was a forward-looking document. It led to two particularly noteworthy developments.



First, the hiring practices for minority teachers were greatly improved. The number of Negro teachers increased from 36 in 1958 to 75 in 1962. Negroes also were advanced to principalships and other high positions in the District's administrative hierarchy. And by 1962 there were about 30 Orientals on the certificated staff.\*

Second was the Intergroup Education Project (IEP). This project was designed to help teachers appreciate cultural diversities and better understand youngsters from other than middle-class backgrounds. It conducted seminars for teachers, mass community meetings, and weekend conferences for this purpose. The IEP helped prepare the ground for the high staff support for later integration efforts.

Junior High School Desegregation - In 1962 a delegation from the Congress on Racial Equality visited the Superintendent of Schools -- and later the Board of Education. Complimenting the School District for progress already made, the CORE delegation suggested that it was time to get on with the task of desegregating the schools. CORE asked that a citizens committee be appointed to study this problem.

The report included a recommendation for desegregating the junior high schools by assigning some students from the predominantly Caucasian "hill" area to Burbank, the Negro junior high school; students from predominantly Negro west Berkeley would be assigned partly

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\* The distribution of minority teachers among the various schools did not keep pace with progress in hiring. Most of these recruits were assigned to predominantly Negro schools. In more recent years we have made a concerted effort to achieve a better racial balance on all faculties. It is important, especially to combat stereotypes, to the education of all children to see members of all races working together in such respected vocations as teaching.

to Garfield, the Caucasian junior high school. Since the third junior high school already was racially balanced, this recommendation would have eliminated de facto segregation at the junior high school level.

The report struck the community like a bombshell. Although the community was aware that the committee was functioning, most people had not taken seriously the possibility that such a concrete recommendation would be made. The reaction was intense. During the remainder of 1963 and through January of 1964 there was extensive community discussion of the proposal. Two hearings were held -- one attracting 1200 people and other drawing over 2000. PTA's and other groups set up study committees on this problem; never before had such crowds attended PTA meetings!

In the hill area affected by the recommendation many liberals faced a dilemma. Some asked: "How do we express our opposition to this particular proposal without sounding like bigots?" Our response was to ask them to develop a better plan. Many sincere critics of the citizens committee proposal set out to do just that.

One of these alternative proposals was named the "Ramsey Plan" after the junior high school English teacher who suggested it. This plan proposed desegregation of Berkeley's three junior high schools by making the predominantly Negro school into a 9th grade school and dividing the 7th and 8th graders between the two remaining junior high schools.

In February 1964 a five-member staff committee was asked to study the reactions of the Berkeley school staff to the citizens committee proposal and to other ideas that had been offered. Every school faculty was asked to consider the matter.

In March the 5-member staff committee reported to the Board that the staff as a whole was favorable toward integration, and preferred the Ramsey Plan to the original citizens committee proposal. The Board instructed the Superintendent to consider the educational pros and cons of the Ramsey Plan, and its feasibility for September 1964 implementation.

The results of this study were presented to the Board and the community on May 19, 1964, a landmark date in the history of Berkeley schools. Again there were over 2000 people in the audience. The opposition, which had formed the "Parents Association for Neighborhood Schools" (PANS) solemnly warned that if the Ramsey Plan or any such desegregation proposal were adopted, the Board would face a recall election. The Board members did vote for the Ramsey Plan -- and they did face recall.

The Recall - Through the summer months the opponents of the Board collected signatures on recall petitions. A rival group was formed to defend the Board (Berkeley Friends of Better Schools). By late July the PANS group had enough signatures to force a recall election.

There followed a series of procedural skirmishes before the City Council and the state courts. Finally, an election was called for October 6, and after an intensive and heated campaign it was held. It was a stunning triumph for the courageous incumbent Board members. This election was another landmark for Berkeley education and for the cause of desegregation across the nation. There was more at stake than indi-

vidual Board members continuing in office. The basic issue was the survival of a Board of Education which voluntarily took effective action to desegregate schools -- not because of court order or other compulsion, but simply because the Board believed desegregation was right. If such a board of Education could not be sustained the lesson would not be lost on boards of education in other cities facing the same problem. Thus, it was extremely significant that in this election the Board was vindicated by the Berkeley community.

#### SULLIVAN ADMINISTRATION

The New Administration - On September 1, 1964, five weeks prior to the recall election, I took office as Berkeley's Superintendent of Schools in the midst of a climate of change and uncertainty. Of the five-member Board of Education which had unanimously invited me to come to Berkeley, only two remained in office. One had resigned because his business interests led him to move from the city. Another was transferred to become minister of one of the largest churches of his denomination in New York City, and a third was appointed by the Governor to be a Superior Court judge. The two who remained were facing a recall election.

There also was a sweeping change in the school administration. Virtually every top ranking member of the central administration was either new to the District or new in his position. Over one-third of our schools had new principals.

Making the New Plan Work - The decision to desegregate the junior high schools had been made before I arrived. The role of the

new administration was to make it work.

School opened as usual and the new system was put into effect with no marked difficulties. In fact, the orderliness of the transition was an important contribution to the defeat of the recall attempt. It demonstrated clearly that desegregation could be achieved without the dire consequences that had been forecast.

Developing Community Support - Defeat of the recall election meant that courageous Board members would remain in office, and the junior high school desegregation plan would continue. My next task as Superintendent was to attempt to reunite a badly split community, to develop a sense of community understanding, and to provide a basis for school support.

I approached this problem by creating a climate of openness with the public. We immediately established the practice of recognizing and admitting our problems and inviting the community's help in seeking solutions. As a new superintendent, I was beset by invitations to speak publicly. I accepted as many as I could and during the 1964-65 school year scheduled over 100 speaking engagements.

I issued an open invitation to citizens to visit my office and discuss their school concerns, to share their ideas and suggestions. In addition I telephoned or wrote to dozens of people who had been recommended to me as community leaders deeply interested in schools. For several months I met almost continually, often a few times a day, with citizens individually and in groups. These meetings made me familiar with the Berkeley community and established a climate that encouraged exchange of ideas.

I established a liaison channel between my office and the area-wide PTA Council. I made it a practice to convene three or four briefing sessions a year with the unit presidents and council officers of that organization, and included other groups such as the League of Women Voters. At these sessions problems and issues facing the schools, as well as hopes and plans for improvement were discussed.

The day after the recall election I recommended the formation of a broadly-based School Master Plan Committee, to examine all facets of the School District's operation and to develop guidelines for the future. I urged participation of all elements of the community, making it clear that we wanted cooperation, regardless of positions in the recall election. The response was heartwarming; over 200 highly qualified citizens were nominated or volunteered their services. The Board of Education selected 91 people from this list to serve on the committee. Also named were 47 staff members. The committee has been hard at work for two years, and presented its report in the fall of 1967.

During my first year in Berkeley, I was invited by the local newspaper to write a weekly column on local and national education matters. This column has been a valuable means of keeping the community informed and introducing some new ideas. During the past year I accepted the invitation from a local radio station to conduct a weekly program of fifteen minute sessions dealing with events in the school system and issues facing public education. Each month the final week's program is extended to one hour, and features a direct phone-in from the radio audience.



In addition to developing relationships with the general public, we have worked to maintain good liaison with the staff. We have frequent breakfast conferences with the leaders of both teacher organizations, and meet regularly with the Superintendent's Teacher Advisory Council, made up of teacher representatives chosen by each faculty.

The purpose of these communication efforts has been three-fold. First, extensive dialogue with staff and community helps to identify and define problems needing attention. Second, it serves as an excellent source of new ideas and suggestions. Third, it helps interpret our problems, goals, and programs to the community.

Our efforts have been, in short, to "mold consensus" in the community behind the school system. Although we have not achieved unanimity on any single subject (that would be impossible in Berkeley!) there have been good indications during the past three years. It seems that we have succeeded in molding community support for the schools, and in developing sufficient consensus to resolve some of the crucial problems facing urban schools today.

#### A START TOWARD ELEMENTARY INTEGRATION

Segregation in the Elementary Schools - The Board's adoption of the Ramsey Plan, followed by the defeat of recall election, insured desegregation at the junior high school level. Since there is only one regular senior high school, our entire secondary school program, beginning with grade 7, was desegregated. However, we still face de facto segregated elementary schools. The four elementary schools in south and west Berkeley are overwhelmingly Negro. The seven schools located in

the northern and eastern hill areas of the city are overwhelmingly Caucasian. In between, in a strip running through the middle of Berkeley, are three desegregated schools. Since the racially imbalanced Negro and Caucasian schools are on opposite sides of the city, separated by the integrated schools, boundary adjustments will not solve the problem.

When the Ramsey Plan was adopted the Board tabled a companion recommendation that would have desegregated the elementary schools by dividing the city into four east-to-west strips, each containing three or four schools. The schools within each of these strips would have been assigned students on a Princeton principle, i.e., 1-3 in some schools, grades 4-6 in others.

Educational Considerations - It is not the function of this paper to develop fully the case for school desegregation. However, the basic motivation underlying our progress in Berkeley can be stated concisely.

Many studies, in Berkeley and elsewhere, have documented the fact that segregation hurts the achievement of disadvantaged youngsters. Schools with a preponderance of these boys and girls have low prestige and generally lack an atmosphere conducive to serious study.

The emotional and psychological harm done to children through this type of isolation also has been demonstrated. Regardless of cause, racial segregation carries with it the symbol of society's traditional rejection of Negroes.

The benefit of integration extends to children of all races. We are all sharing this society, and if it is to be successful we must learn to respect each other and get along with one another. This will not happen if segregation remains.



These considerations have been taken seriously in Berkeley as we move toward total school integration.

ESEA Busing Program - The Elementary and Secondary Education Act of 1965 allowed the schools to make a beginning on the problem of elementary school segregation. Berkeley's share under Title I of that Act was approximately a half-million dollars. A major share of these funds was used to reduce pupil-teacher ratios in our four target area (Negro) schools and to provide extra specialists and services for students attending them. The reduction of pupil-teacher ratios left a surplus of 235 children. The seven predominantly Caucasian hill-area schools had spaces for these youngsters. Our proposal for the first year's use of Title I funds, then, included improved services and reduced pupil-teacher ratio in the target area schools and the purchase of buses to transport the 235 "surplus" youngsters to the hill area schools.

In the preparation of this project we again employed our principle of mass community involvement. Each school faculty was invited to submit suggestions. Their response was gratifying. These suggestions, when piled together, produced a stack of paper several inches high. When they had been sifted and evaluated, and a project developed, we submitted it to the Board. Copies were made available to the school faculties and the public for their reactions. Two major public meetings were held in different sections of the city, and the Board of Education held a workshop session at which teachers could react. Many valuable suggestions and constructive criticisms resulted and were incorporated into the final proposal.

As might have been predicted, most of the public attention was centered on the busing proposal, although it involved a relatively minor share of the funds. This time the opposition, though by no means silent, was much less severe.

Since the children in the hill area schools were not being asked to go anywhere else -- the hill schools were simply going to receive youngsters from the other areas of the city -- this provided no focal point for the development of opposition. And the proposal included employing eleven extra teachers, paid with local money, and placing them in the receiving schools to maintain the pupil-teacher ratio there. A few scattered voices were raised against the proposal, but the preponderance of community opinion was favorable. Both teacher organizations endorsed the project, and on November 30, 1965, the Board adopted the program for implementation the spring semester.

The proposal went to the State Board of Education and became one of the first fourteen ESEA projects approved in the State of California. We had approximately two months to prepare for its implementation -- the selection of youngsters (this was voluntary on the part of the parents), the employment of teachers, arrangement of transportation, and other administrative details. Parent groups in the receiving schools helped by establishing contact with the parents of the transferring students. The students in the receiving schools likewise participated, and some wrote letters of welcome to the newcomers. Dry runs were conducted with the buses so that by the time the program was implemented in February 1966, the necessary advance preparation had been accomplished.

Results to Date - Although the program has not been in effect long enough for an extensive objective evaluation, early indications are that it has been extremely successful. The children have adjusted well in their new school environment and, by their performance, have made friends for integration. One evaluation, made by an outside consultant employed by the District, found that receiving school parents whose children were in class with Negroes were more favorable to integration than parents whose children were not in class with Negroes. And parents of the bused students were so pleased with the results that many requested that their other children be included.

This limited program provided an integrated experience for the 230 youngsters being transferred, less than 10 percent of the sending schools' enrollment. It also provided token integration for the receiving schools. However, it left the four southwest Berkeley schools just as segregated as they were before, although with a somewhat improved program due to the reduced pupil-teacher ratio and added services.

#### COMMITMENT TO TOTAL INTEGRATION

The Problem - Although the ESEA program has provided a start in the direction of elementary school desegregation, we never regarded the busing of only 235 youngsters as the solution to the segregation problem. The problem will not be solved as long as our four south and west Berkeley schools remain overwhelmingly Negro, and the schools in the north and east overwhelmingly Caucasian. The segregation problem must be solved if minority youngsters are ever to close the achievement gap and if all youngsters, regardless of race, are to be adequately prepared for life in a multi-racial world.

Although we have integrated the schools down to the 7th grade, we strongly believe that integration must begin earlier. In too many cases attitudes already are hardened and stereotypes developed by the time the youngsters reach the 7th grade. It is, of course, politically and logistically easier to desegregate the secondary schools. In fact, a bi-racial city that has not desegregated its secondary schools is by definition not committed to integration. The problem is much more difficult at the elementary level. Buildings and attendance areas are smaller, children are younger, and community emotions are more intense. Yet, the problem must be solved at the elementary level. It is ironic that solutions come more easily at one level, but more good can be accomplished at the other.

The Commitment - The commitment of the Board of Education to desegregation of all elementary schools in Berkeley came in the spring of 1967. In early April a delegation from west Berkeley made a resen- tation to the Board, stating that it was time to get on with the job of total desegregation. The delegation had many other recommendations specifically relating to the south and west Berkeley schools and the programs available to minority youngsters. At this meeting I recommended that the Board authorize the Administration to develop a program of voluntary reverse busing from Caucasian areas to south and west Berkeley. I let it be known that this was to be regarded only as a stop-gap measure to demonstrate good faith and did not represent a solution to the desegregation problem.

At the next meeting, however, before we could develop a reverse busing plan, the issue moved ahead. Both of our certificated staff organizations made appeals to the Board for action either to erase de facto

segregation completely or at least to make a significant step in that direction. Officials of the local NAACP and other members of the audience supported these appeals. A motion was presented to the Board calling for desegregation of all Berkeley schools. The Board concurred and established September 1968 as the target date for desegregating the schools.

The next two or three Board meetings, including one workshop or "open hearing", drew crowds of several hundred spectators and many speakers. Most of the speakers and most of the crowds were supportive of the Board's action; there was a minority who disagreed with the Board's position -- some opposed desegregation altogether, and others felt that 1968 was too long to wait.

On May 16 the Board adopted a formal resolution reaffirming the September 1968 commitment and adding an interim calendar of deadlines for the various steps required to achieve desegregation. The Administration was instructed to develop plans for total integration. We were instructed to make our report by the first Board meeting in October, 1967. The timetable calls for the Board to adopt a particular program by January or February 1968. Seven or eight months would then remain for implementing the program in time for the opening of school in September 1968. This is the calendar on which we now are operating.

The Board included in its Resolution on Integration two other features: first, the assumption that desegregation is to be accomplished in the context of continued quality education, and second, that massive community involvement was to be sought in development and selection of the program. Both of these features I heartily support.

Developing the Plan - We went to work immediately. The Administration compiled information on enrollment and racial makeup of each school, school capacities and financial data. This information was distributed to each faculty. We then called a meeting of all elementary school teachers; I relayed our charge from the Board and asked each faculty to meet separately and develop suggestions. We also sent information packets to over sixty community groups and invited them to contribute their ideas. By the end of June we had received many suggestions, both from staff members and lay citizens.

Meanwhile both local and national endorsements were pouring in. The Berkeley City Council passed a resolution commending the Board on its commitment to integration. Other local organizations and individuals did the same.

During the summer months two task groups were assigned to work on the problem. One was concerned with the logistics of achieving desegregation and the other was concerned with the instructional program under the new arrangement. The Board appointed a seven-member lay citizens group to advise the Administration in development of its recommendations. Even after the Administration's recommendation has been given to the Board, this group will continue to function as an advisory body to the Board. Upon receiving the Administration's recommendation, the Board plans a series of workshop sessions to provide every opportunity for community reaction and suggestion.

As this paper is written (mid-September) we are making excellent progress toward meeting our deadline. Soon after the opening of school, a report from the Summer Task Group outlining four or five



of the most promising plans was sent to each school faculty and to each group or individual who submitted a plan during the summer. These proposals are being made available to the community as well, along with the many suggestions received earlier from staff and lay citizens. School faculties and the community-at-large are invited to react to these proposals and to make suggestions to the Administration. Procedures have been organized to facilitate a response from school and community groups. Each faculty has been asked to meet at least twice. On one afternoon, schools will be dismissed early and the district-wide staff divided into cross sectional "buzz" groups. Each of these groups will submit ideas. Following these steps we will use the task group proposals, along with the reactions and suggestions that come from the staff and community, in developing our recommendation to the Board. This recommendation will be presented to the Board on schedule, at the first meeting in October. From that point on the matter will be in the hands of the Board, which is to make its decision by January or February 1968.

As our plans develop, we have received invitations to appear before many groups, large and small. Some have been hostile at first. However, meeting with them has made possible an excellent exchange of views and an opportunity for explaining our program to people who had not been reached earlier. We anticipate that the fall months will be crowded with such speaking assignments. It is our firm commitment, and that of the Board of Education, to inform the citizens of Berkeley thoroughly about the issue and about prospective plans prior to the Board's adoption of a program in January or February.

LESSONS LEARNED

While working toward integration in the Berkeley schools over the past several years, we have learned some lessons:

1. Support by the Administration and the Board of Education for the concept of school integration is absolutely essential. The Board must give its consent before any plan of desegregation can occur. The support of the Superintendent and his administrative team is vital in helping to obtain Board support and in making a success of any program adopted. While the Board nor the Administration need broad community support, their leadership role is vital.

2. Integration has the best chance of success when a climate of openness has been established in the community. Lines of communication with Board, Administration, teachers, and the community-at-large must be kept open through frequent use. Anyone who thinks a solution to the problem of integration can be developed in a "smoke-filled room" and then rammed through to adoption while the community is kept in ignorance is simply wrong.

Our citizens are vitally interested; they are going to form opinions and express them, whether we like it or not. It is in our interest to see that these opinions are formed on the basis of correct information. Furthermore, the success of integration, once adopted, depends upon broad community support and understanding between the lay community and the schools. This can be created only through a climate of openness.



3. It can be done! A school district can move voluntarily to desegregate without a court order and without the compulsion of violence or boycotts. Berkeley has demonstrated that a school community can marshal its resources, come to grips with the issue of segregation, and develop a workable solution.

Furthermore, if the new arrangement is well planned and executed, it will gain acceptance on the part of many who opposed it at first.

Many fears and threats which arose in Berkeley were not realized. The Board was not recalled. Our teachers did not quit in droves. In fact, the reverse happened; our teacher turnover rate has been drastically reduced during the last two or three years. Integration did not lead to the kind of mass white exodus being experienced in other cities (which, interestingly enough, have not moved toward integration). In fact, last year for the first time in many years the long-standing trend toward a declining white enrollment in the Berkeley schools was reversed.

The not-so-subtle hints that direct action for integration would lead to loss of tax measures at the ballot box proved to be unfounded. In June 1966 we asked the voters for a \$1.50 increase in the ceiling of our basic school tax rate. Much smaller increase proposals were being shot down in neighboring districts and across the nation. In Berkeley we won the tax increase with over a 60 percent majority.

4. A community can grow. Berkeley did! When the citizens committee report came out in the fall of 1963 with an actual plan for desegregation of the junior high schools, the community suddenly awoke to the fact that desegregation was a real possibility. The furor that

resulted could be predicted in any city. However, as large public hearings and countless smaller meetings were held by dozens of groups, support for integration began to grow and opposition diminish. One area of the city that reacted emotionally at first later provided some of our strongest supporters.

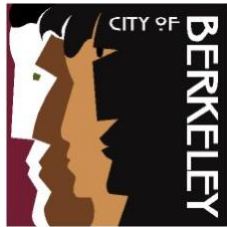
An example in a different but related field can illustrate this point. Berkeley held a referendum election on a Fair Housing Proposal early in 1963, before the citizens committee report, and the measure was defeated by a narrow margin. A year and a half later the community, together with the rest of California, voted on the same issue -- Proposition 14. Although the statewide vote on that issue was a resounding defeat for Fair Housing, the City of Berkeley voted the direct opposite by almost a two-to-one margin. The Proposition 14 election was held only a month after the recall election, after almost a full year of intensive community involvement with the school desegregation issue. In other words, a city that voted down its own Fair Housing proposal, later voted two-to-one for Fair Housing in a statewide election. Many of us feel that this change of direction was substantially influenced by the extensive community involvement in the school integration question between the two elections. The community grew in understanding as it studied the issues.

5. Community confidence in the good faith of its school administration and school board must be maintained. Berkeley has been successful in doing this. The good faith of our Board and Administration has been demonstrated. There have been no court orders, no pickets, no boycotts, no violence. Each advance has been made, after extensive

study and community deliberation, because the staff, the Board and the community thought it was right. By moving in concert with the community we have avoided being placed in polarized positions of antagonism. The climate thus produced has enabled us, as we move step by step, to work with rather than against important segments of the community in seeking solutions. If this climate of good faith is missing, even the good deeds of school officials are suspect.

#### CONCLUSION

There is no greater problem facing the schools of America today than breaking down the walls of segregation. If our society is to function effectively its members must learn to live together. Schools have a vital role to play in preparing citizens for life in a multi-racial society. The Berkeley experience offers hope that integration can be successfully achieved in a good-sized city. This success can be achieved if the Board of Education, the school staff, and the citizens of the community are determined to solve the problem and work together toward this end.



Office of the Mayor

## SUPPLEMENTAL AGENDA MATERIAL

**Meeting Date:** July 14, 2020

**Item Number:** #18a-e

**Supplemental/Revision Submitted By:** Mayor Arreguin

**“Good of the City” Analysis:**

*The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.*

The City Council has before it tonight five different proposals to initiate a robust community process to reimagine policing, and also specific proposals to conduct analyses and initiate new approaches to public safety.

The Mayor is proposing an omnibus motion that adopts elements of every one of the five proposals with some modifications.

Given that the Council is discussing various proposals relating to public safety tonight, and there is strong community interest in Berkeley initiating reforms in light of the murder of George Floyd and the nationwide movement for racial justice, the Good of the City outweighs the lack of time for prior citizen review or evaluation by the Council.

***Consideration of supplemental or revised agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)***

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.



Office of the Mayor

**Proposed Omnibus Motion on Public Safety Items (Items 18a-e)  
July 14, 2020**

**RECOMMENDATION**

That the Berkeley City Council adopts the following motion:

1. To APPROVE item 18a “George Floyd Community Safety Act - Budget Request to Hire a Consultant to Perform Police Call and Response Data Analysis” (Bartlett) as revised in Supplemental Packet 1 and further amended below:

- Reaffirming the Council’s prior action adopting Recommendation # 1 through its allocation of \$160,000 for an Auditor I position in the FY 2021 Budget to conduct a data-driven study that includes analysis of police calls and responses, as well as analysis of the Berkeley Police Department (BPD) budget and expenditures by call type, including FTE (full-time equivalent position), cost per FTE, overtime and special pay expenditures and supervisory structure. Recommended data points/areas of focus are included in pages 4-7 of the Bartlett item. The Auditor is encouraged to consult subject matter experts in developing the scope of work for this study and to consult with the community-based organization selected for community outreach (Item 18d) throughout her work.

- Approving Recommendation # 2 as revised below:

Refer to the City Manager and the public safety reimagining process in item 18d to evaluate initiatives and reforms that reduce the footprint of the Police Department and limit the Police’s scope of work primarily to violent and criminal matters.

- Allocate \$100,000 from the FY 2021 Unallocated General Fund Balance (of \$141,518 unallocated in the FY 2021 Adopted Budget) to analyze and develop a pilot program to re-assign non-criminal police service calls to a Specialized Care Unit. This Specialized Care Unit (SCU) consisting of trained crisis-response workers would respond to 911 calls that the operator evaluated as non-criminal and that posed no imminent threat to the safety of first responders. The program would be designed by staff based on existing successful models and likely employ a combination of mental health professionals as well as EMTs and/or nurses, who would be unarmed. The program should be designed to reduce costs while enhancing outcomes in public safety, community health, mental health, social services, civil rights, and overall quality of life. Based on pilot results, a proposal to adjust and/or expand and continue the program, and related reductions in policing services, should be presented to the City Council for consideration in time for

inclusion in the FY 2022 budget. *(Council previously approved a study of the creation of a Specialized Care Unit pilot on June 16, 2020)*

2. To APPROVE the following recommendations based on Councilmember Davila's item 18b "Support Redistribution of City Resources and Operations from the Berkeley Police":

- As previously recommended in other areas of this motion by other Councilmembers, refer as part of the public safety reimagining process to evaluate functions currently served by Berkeley Police personnel which could be better served by trained non-sworn city staff or community partners and how those positions/responsibilities could be transferred out of the police department as soon as practicable. (Davila Recommendation 1 modified)
- Refer to the public safety reimagining process the goal of reducing the Berkeley Police Department budget by 50%, to be based on the results of requested studies and analysis and achieved through programs such as the Specialized Care Unit. Functions to consider shifting away from the Police Department include non-emergency calls that are evaluated to pose no danger to the safety of responders, such as calls related to enforcement of COVID-19 Shelter in Place orders, mental health calls (including wellness checks), calls related to quality of life crimes, calls related to homelessness, and any other calls that can be safely served by another new or existing city or community partner resource (Davila Recommendation 2 and 3 modified)
- Engage in a full and complete operational analysis, undertake meaningful community consultation and develop a transition plan. This reduction will enable a reallocation of public safety resources so that Police are focused on violent and criminal matters, and consider how to shift resources to, among others, non-sworn mental health, homeless outreach, and parking and traffic enforcement professionals. This will also enable the reallocation of existing police dollars for community programs and priorities to support communities of color, promote violence prevention and restorative justice and improve community health and safety. (Davila Recommendation 3 modified)
- Reducing the Berkeley Police Department budget will allow funding to be considered for these and other similar priorities: youth programs, or community groups and programs, violence prevention and restorative justice programs, domestic violence prevention, housing and homeless services, food security, mental health services including a specialized care unit, healthcare, new city jobs, expanded partnerships with community organizations, public health services, and the creation of a new Department of Transportation to administer parking regulations and traffic laws. (Davila Recommendation 4 modified)
- Refer to the City Manager and the public safety re-imagining process to identify the expertise needed for non-police responses to calls, taking into account comparable

approaches including CAHOOTS and other existing programs that might be expanded such as the Berkeley Free Clinic, Building Opportunities for Self Sustainability (BOSS), and the Women's Daytime Drop-in Center, Consider the Homeless and others. (Davila recommendation 6 modified)

- Create plans and protocols for emergency/911 dispatch to send calls to the preferred responding entity and consider placing dispatch in the Fire Department or elsewhere outside the Police Department. (Davila recommendation 7 modified)
- Request that the Berkeley Unified School District end programs that place police officers in schools. (Davila recommendation 8 modified)

*(Councilmember Davila's suggested language encouraging BUSD to adopt policies to safeguard information from ICE is already adopted district policy. BUSD was one of the first districts in the country to adopt a sanctuary schools policy and should be commended for its forward-thinking leadership.)*

- Refer to the City Manager and public safety reimagining process to explore the creation of a city policy to prohibit the expenditure of Police Department settlements from the General Fund. In the interim, it is recommended that the projected cost of settlements be included in the Police Department budget and the Department be responsible for requesting additional funding as needed. (Davila recommendation 9 modified)

3. To APPROVE the report and resolution in item 18d "Transform Community Safety and Initiate a Robust Community Engagement Process" (Mayor/Hahn/Bartlett/Harrison) with the following revisions below:

- Amend recommendation 3 to clarify that the City Manager would "collaborate with the Mayor and **all** Councilmembers to complete the work, to inform investments and reallocations to be incorporated into future Budget processes."
- Amend recommendation 3 to refer all of the recommendations from the Berkeley United for Community Safety coalition (see attached) to the City Manager and public safety reimagining process.
- Amend recommendations 3(a) (ii) to clarify that the analysis and initial recommendations on shifting police resources to alternate, non-police responses and toward alternative and restorative justice models will coincide with the November 2020 AAO#1 process and the **June 2021 budget process**.
- Amend recommendation 3(b) to add the following language proposed by Councilmember Wengraf in item 18c:

This work should include public, transparent community forums to listen, learn and receive people's ideas about how policing should be re-imagined and transformed so that communities of color can be safer within their neighborhoods, the City of Berkeley, and trust in the Berkeley Police Department can begin to be rebuilt.

- Amend recommendation 3(b)(1) to read:  
Building on the work of the City Council, the Council Public Safety Policy Committee, the City Manager, the PRC, other City commissions and working groups (e.g. the Mayor's Fair and Impartial Policing Working Group) addressing community health and safety, the Community Safety Coalition and community process will engage relevant city commissions in this work on an ongoing basis.

4. To APPROVE Item 18e "BerkDOT: Reimagining Transportation for a Racially Just Future" (Robinson) as revised in Supplemental Packet 1:

Refer to the City Manager, the FY 2021-22 budget process, and the proposed community engagement process to reimagine public safety to:

- (1) Pursue the creation of a Berkeley Department of Transportation (*BerkDOT*) to ensure a racial justice lens in traffic enforcement and the development of transportation policy, programs, & infrastructure, and
- (2) Identify & implement approaches to reduce and/or eliminate the practice of pretextual stops based on minor traffic violations.





## Berkeley United for Community Safety

### June 27, 2020 / Event Recommendations (Partial List)

- Adopt best practices, one example Alameda County Connect: access screening, resources, mobile crisis team.
- Look for models that provide services that keep the community healthy and safe. Research the Oakland Model and the Oakland Power Project.
- We need an all new well-resourced, holistic and intersectional first responder team that responds to mental health, addiction issues, sexual harm, and homeless camp response. One that does not involve the police.
- We need more licensed and trained mental health professionals; culturally competent, compassionate, and aware. Diverse therapists also needed to relate to clients.
- We need to train professionals; “mental health clinicians” in both substance abuse and mental health issues. Outreach workers are needed who can de escalate and properly assist fellow community members in crisis.
- Fund a program with Community Care Workers on the street with proper training and resources to assist - leaving police to work on investigating and arresting criminals.
- Consider whether Berkeley Free Clinic can assist with developing a group of Community Care volunteers who assist in responding to crisis in homes and on the street that exhibit mental health, substance abuse when no crime is being committed.
- Create a City Department that focuses on Social Equity and Racial Justice.
- Make the city budget process MORE TRANSPARENT. Invest in Budget Town Halls that break down how the document works.
- Protect funding for youth programming including schools, Anticipated cuts to BUSD (2-6 million) due to COVID-19. Black and Brown Youth disproportionately affected by these cuts (fund and fast track African American Holistic Health Center)
- Divest funds from BPD into restorative justice programming run by the city or contracted to a community organization.
- Bolster nutrition programs that are at risk of being cut.
- Offer officer trainings that align with annual goals for the department. Professional development opportunities are to be made available only when these trainings support achievement of the annual goals for the department.



- BPD should not accept, request or seek to acquire military grade weapons or materials.
- BPD should receive a revised mission statement as a result of community discussions that redefines what is wanted from a "police force".
- Grant the community the ability to be autonomous.
- Have a specific public security priority to consolidate funding for all the communities' security efforts and needs. This will help create a system that will help further accountability in the police department.
- Create a stronger police accountability board.
- Ban rubber bullets as tear gas has been banned. Use less lethal tools.
- Council members need to fight for accountability and for what the community needs.

CONSENT CALENDAR

January 19, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmembers Terry Taplin (Author) and Ben Bartlett and Mayor Jesse Arreguin (Co-Sponsors)

Subject: Urging the National Parks Service to Establish a National Parks Unit in the San Francisco Bay Area to Honor the Black Panther Party for Self Defense.

RECOMMENDATION

Adopt a resolution calling on the National Parks Service to conduct a Reconnaissance Survey to assess the suitability of lands in the San Francisco Bay Area to honor the Black Panther Party in Berkeley, Oakland, Richmond, and the surrounding Bay Area; send letter to the National Parks Service, and President[-elect] Joseph R. Biden, Jr with resolution.

BACKGROUND

The Huey P. Newton Foundation's President Frederika Newton, widow of Party founder Dr. Huey P. Newton, has requested that the City of Berkeley support national recognition of the Black Panther Party for Self Defense. Formally recognizing their struggle would also be a way of reaffirming the City Council's mandate as public servants.

In the late 1960s, the Nixon Administration embraced white supremacy with renewed vigor and began dismantling President Lyndon B. Johnson's Great Society and War on Poverty programs almost immediately upon inauguration, heralding a new era of targeted disinvestment and systematic discrimination of Black people, and violent repression of Black activist groups. But even during the preceding Democratic administration, sympathetic government officials made limited progress in a society that systematically excluded Black communities from access to capital, civic institutions, and basic necessities while enforcing geographic segregation. It was the policy of the U.S. government to condemn Black people to the poverty trap of urban ghettos and blame them for their own poverty.

The Black Panther Party for Self Defense was founded in 1966 in West Oakland, a historically Black working-class community literally being torn apart by urban renewal and the construction of BART, to organize in the revolutionary struggle for Black Power. White liberal society had failed to deliver on its promise of opening up the economy and

civic institutions to Black people. The East Bay's African diaspora remained excluded from most of the region's labor market, capital investment, and political representation, while bearing a disproportionate burden of police brutality and dispossession of property. The Black Panthers resisted hostile white institutions through what historian Robert Self described as "the political imagining of a nation within a nation."<sup>1</sup> Through its Community Survival Programs, the Black Panthers provided free breakfasts for children, medical clinics, self-defense trainings, emergency ambulance transportation, and education, among other services that the U.S. government regularly withheld from its Black constituents. In Berkeley, the Black Panther Party distributed free groceries at San Pablo Park, established Black Panther Office #3 at 3106 Shattuck Avenue, and held rallies at Sproul Plaza on the UC Berkeley campus.

Mired in violent reprisals, members of the Black Panther Party were routinely persecuted, imprisoned, and murdered by law enforcement agencies. Although the Party formally disbanded in 1982, they left an indelible mark on our body politic. Many of our civic leaders inherited their struggle for justice and Black power.

#### RATIONALE FOR RECOMMENDATION

The City of Berkeley is joining in a nationwide reckoning with persistent systemic racism as an economic, moral, and public health crisis. It is long past time for a National Monument to accompany this reckoning. We are in the process of developing new policies to redress racial inequities in public safety, education, housing and transportation. We join cities across the country in renaming schools originally named after slave owners. Our City Manager is partnering with civil rights groups to reimagine public safety. We must commit ourselves to building civic institutions that affirmatively include people of all backgrounds and actively redress historic injustices. To that end, the East Bay should honor the legacy of the Black Panther Party and the bravery of the Black Power movement—local residents who stepped up and took the wellbeing of their community in their own hands when the government failed them.

Many of our Black political leaders in the East Bay can trace the history of their activism directly to the unparalleled organizing feats of the Black Panther Party. Our city and nation should honor this heritage. While racism persists in our society, so, too, does the inspiration of those who fought back, fed their families, clothed their children, and healed the sick. Memorializing their struggle for freedom is one way we can ensure their unfinished work continues.

#### ENVIRONMENTAL IMPACTS

None—Contingent on National Park Service action.

#### FISCAL IMPACTS

None.

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<sup>1</sup> Self, Robert O. *American Babylon: Race and the Struggle for Postwar Oakland*. (Politics and Society in Twentieth-Century America.) Princeton: Princeton University Press. 2004. p. 217.

CONTACT

Councilmember Terry Taplin, [ttaplin@cityofberkeley.info](mailto:ttaplin@cityofberkeley.info)

ATTACHMENTS/SUPPORTING MATERIALS

Attachment 1: Resolution

Attachment 2: Letter from Frederika Newton

CITY OF BERKELEY RESOLUTION URGING THE NATIONAL PARK SERVICE AND PRESIDENT BIDEN TO ESTABLISH A NATIONAL PARK UNIT TO RECOGNIZE THE HISTORY AND CONTRIBUTIONS OF THE BLACK PANTHER PARTY FOR SELF DEFENSE

WHEREAS, originally called the Black Panther Party for Self Defense, the party was founded in 1966 by Huey P. Newton and Bobby Seale in response to the wide-spread poverty, lack of economic and educational opportunities, and police oppression experienced by the African American community in Oakland, California; and

WHEREAS, pervasive and unrelenting police terrorism directed at communities of color during the 1960s made necessary the formation of the Black Panther Party for Self-Defense; and

WHEREAS, Numerous dedicated and courageous young people of African ancestry enlisted in the ranks of the Black Panther Party to monitor and deter police violence, and to staff community service programs called “survival programs” aimed at providing food, health care, legal assistance, transportation and other services to Black and other poor people living in poverty; and

WHEREAS, Promoting the idea of “All Power to the People”, the Panthers took action themselves to force change and bring about liberation from all forms of human exploitation and oppression; and

WHEREAS, 3106 Shattuck Avenue, San Pablo Park and Sproul Plaza in UC Berkeley was the location of numerous Black Panther Party activities including speeches, meetings, rallies, and free grocery giveaways; and

WHEREAS, As the Panther influence grew nationwide, J. Edgar Hoover, then-Director of the FBI, proclaimed that the Black Panther Party was “the greatest threat to the internal security’ of the United States in 1968; and

WHEREAS, The FBI commenced an illegal campaign of terror against the Black Panther Party that came to be known as “COINTELPRO’ (Counter Intelligence Program) to monitor, obstruct, undermine and neutralize the Party and its members; and

WHEREAS, Despite this opposition by the authorities, throughout the 1960’s and 1970’s the Panthers became a national force for social change, empowering a new generation of African Americans to seize political power, partnering with other disenfranchised communities around the country, and demonstrating that the legacy of slavery and racial oppression still prevented so many from experiencing the promise of prosperity and equality that is the foundation of the American dream; and

WHEREAS, The United States of America has yet to provide national recognition or a publicly accessible space for citizens and visitors to gain educational awareness about the history of the Panthers, one of the most influential groups of freedom fighter in recent history; and

WHEREAS, National recognition would also acknowledge the thousands of people that laid their lives on the lines to feed families in their communities, educate their children, provide free medical services, train a generation of organizers, academics and politicians, and fight for a freer world; and

WHEREAS, The public has demonstrated an interest in unbiased information and interpretation of the history of the Panthers which was illustrated by the overwhelming success of the “All Power to the People: Black Panthers at 50” exhibit at the Oakland Museum of California in 2016/2017; and

WHEREAS, The Party was founded in Oakland, California and had a significant presence with offices, activities and important sites throughout Berkeley and the San Francisco Bay area; and

BE IT RESOLVED, That the City Council for the City of Berkeley calls upon the National Park Service to initiate a Reconnaissance Survey to analyze the appropriateness of the establishment of a National Park or National Monument in Oakland, CA and throughout the Bay Area; and

BE IT FURTHER RESOLVED, That the City Council for the City of Berkeley urges President Joseph R. Biden to utilize the results of the Reconnaissance Survey to establish a Black Panther Party National Monument through the Antiquities Act (16. U.S.C. 431-433) in the appropriate locations in the San Francisco Bay Area and beyond.

December 8, 2020

Councilmember Terry Taplin  
Berkeley City Council  
2180 Milvia Street  
5th Floor  
Berkeley, CA 94704

Re: Local and National Recognition for the Black Panther Party in Richmond, San Francisco Bay Area and throughout the United States

On behalf of the [Huey P. Newton Foundation](#), the nation's largest repository of Black Panther Party-related material, I, Fredrika Newton, the widow of Dr. Huey P. Newton and President of the Huey P. Newton Foundation asks that the City of Berkeley support the national recognition of the Black Panther Party for Self-Defense (Black Panther Party). The Foundation urges the City of Berkeley to pass a resolution requesting the National Park Service to perform a Reconnaissance Survey to assess the suitability of establishing portions of the City of Oakland, Berkeley, Richmond, San Francisco and other San Francisco Bay Area locations as a unit of the National Park Service in recognition of the Black Panther Party. We believe that the result of the survey will clearly indicate the need to establish a National Park Service Historical Site or Monument. Despite the groundbreaking function of the Party, there is no national recognition for the thousands of men, women, and young people who served within the Black Panther Party or for the social programs that were created by the Party, many of which, such as the free school breakfast program, still exist today as governmental programs. The Foundation therefore seeks formal recognition as follows.

Specifically, the Foundation believes that sites such as, but not limited to, would showcase the Party's historic role in advancing African American civil rights in Berkeley and in the San Francisco Bay Area. Among these sites are: the Black Panther Party Office #3, 3106 Shattuck Avenue, location of numerous speeches and Black Panther Party activities, Sproul Plaza, UC Berkeley, location of free grocery giveaways and other Black Panther Party activities, San Pablo Park<sup>1</sup>.

In addition, there are numerous locations in the nearby cities of Oakland, Richmond and San Francisco worthy of acknowledgment such as: the Black Panther Party Office #1 (currently the home of It's All Good Bakery) 5622 Martin Luther King Jr. Way; Black Panther Party Office #2, 4419 Martin Luther King Jr. Way; Black Panther Party Office #4, 1048 Peralta Street; De Fremery Park (aka Little Bobby Hutton Memorial Park), 1651 Adeline Street; the Alameda County Superior Court House, 12th and Fallon Street; St. Augustine's Episcopal Church (site of the Party's first free breakfast program, now St. Andrews Baptist Church), 2624 West Street; 5500 Market Street (the Party's 10 Point Program was written at this site in 1966); the traffic signal, corner of Market and 55th Street; Merritt Junior College, Martin Luther King Junior Way and 57th Street; and the site of Black Panther Party co-founder Huey P. Newton's Murder, 1456 Center Street; Free Breakfast Program, Fifth and Chesley St, Richmond, CA; Numerous locations in San Francisco, CA.

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<sup>1</sup> <https://www.berkeleyside.com/2017/08/24/east-bay-food-justice-black-panther-party>



The Huey P. Newton Foundation also requests a reauthorization of the \$98,000 grant previously approved from the National Park Service to conduct the Black Panther Party Research, Interpretation & Memory Project<sup>2</sup>. This grant was approved under the Obama administration and was subsequently withdrawn abruptly by the Trump administration<sup>3</sup>. This technical assistance intended to “memorialize a history that brought meaning to lives far beyond the San Francisco Bay Area,” and the overarching goal was to implement a National Park Service model for bringing diverse voices and communities together to understand their collective past and inspire a better future. Technical assistance will also provide interpretive functions, including preservation and display of artifacts and oral histories from former Party members.

While the City of Oakland is the birthplace of the Black Panther Party, the City of Berkeley played an important role in the establishment, growth and popularity of the Black Panther Party and there were countless Berkeleyans that were members of the Black Panther Party as well as allies. The Foundation believes the locations and resources listed above are worthy of National Park Service designation, interpretation and preservation. In order to be considered for a reconnaissance survey, resources shall meet the following National Park Service criteria. The Foundation has provided the necessary findings that we believe meet the criteria to begin the reconnaissance survey:

**“It is an outstanding example of a particular type of resource.”** The National Park Service currently operates several Historic Sites, Historical Parks, and Historic Monuments such as the Rosie the Riveter/World War II Home Front National Historical Park, Port Chicago Naval Magazine, Cesar Chavez National Monument, and the Martin Luther King Jr. Memorial, all of which acknowledge historic contributions to our nation. A Black Panther Party memorial site would similarly honor the historic contributions of a movement that advanced social change for African Americans everywhere.

1. **“It possesses exceptional value or quality illustrating or interpreting the natural or cultural themes of our Nation’s heritage.”** The Black Panther Party sites named above possess exceptional value in interpreting cultural themes of our Nation’s heritage in that history literally unfolded at each of these sites. Further, these sites are intact much as they were forty years ago and therefore offer a firsthand look at select locations that served as turning points in Civil Rights Movement history. In addition, De Fremery Park (aka Little Bobby Hutton Memorial Park) and the recreation center are owned and operated by the City of Oakland which would make a future transition to Federal ownership more feasible.
2. **“It offers superlative opportunities for recreation for public use and employment, or for scientific study.”** Since the majority of the sites are located within central and North Oakland, they offer perfect opportunities to create a walking and bicycling tour for public recreation and education, particularly for young adults who live in these same neighborhoods but may not be aware of the local history. These sites are currently being

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2

<https://www.grants.gov/web/grants/search-grants.html?keywords=Black%20Panther%20Party%20Research%2C%20Interpretation%20%26%20Memory%20Project>

3

<https://www.dailycal.org/2017/10/29/backlash-national-parks-service-pulls-98k-grant-black-panther-party-research-project-uc-berkeley/>

promoted by numerous organizations such as Visit Oakland<sup>4</sup>, as locations for residents, visitors and tourists to experience historically significant sites.

3. **“It retains a high degree of integrity as a true, accurate, and relatively unspoiled example of the resource.”** As the Black Panther Party’s chief educational advocate, the Foundation attests to the accuracy of the Party’s history as enacted at each of these sites. Although in some instances new entities exist in old Party offices and worksites, the original buildings remain. In the case of De Fremery Park, the space is virtually unaltered since the 1960s when the Party first served the community through free social services. As such it, among other sites, is a **“living history” for Oakland.** The San Francisco Bay Area was the launching point for the Black Panther Party movement that eventually included as many as forty chapters around the world. Oakland is to the Black Liberation Movement what Montgomery, Alabama, is to the Civil Rights Movement, and the Foundation consequently requests formal recognition of that historic role. Only by understanding the Black Panthers’ historic roots can we adequately understand the impact of Black Liberation on Americans of all races.

Lastly, in 2016, the Foundation pursued the establishment of a National Park Service Monument by the outgoing Obama administration and received letters of support from numerous San Francisco Bay Area elected officials which are attached for your reference. In addition, the City of Oakland recently named 9th Street Dr. Huey P. Newton Way and Congresswoman Barbara Lee honored the 50<sup>th</sup> Anniversary of the Black Panther Party provided at the House of Representatives.

Thank you in advance for your consideration of this request. Please contact Fredrika Newton, Co-Founder and President of the Huey P. Newton Foundation at [1fredrika@gmail.com](mailto:1fredrika@gmail.com) for further discussion. We look forward to working with the City of Berkeley and the National Park Service on this matter and welcome all queries.

Sincerely,



Fredrika Newton  
Huey P. Newton Foundation, President

CC: Huey P. Newton Foundation Board  
Berkeley Landmarks Commission

A: Draft Resolution

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<sup>4</sup> <https://www.visitoakland.com/blog/post/black-panther-party/>

**SOPHIE HAHN**

Berkeley City Council, District 5  
 2180 Milvia Street, 5th Floor  
 Berkeley, CA 94704  
 (510) 981-7150  
 shahn@cityofberkeley.info

CONSENT CALENDAR  
 January 19, 2021

To: Honorable Members of the City Council  
 From: Councilmember Sophie Hahn (Author), Councilmember Kate Harrison (Co-Sponsor), Councilmember Susan Wengraf (Co-Sponsor), Mayor Jesse Arreguin (Co-Sponsor)  
 Subject: Relief for Child Care Providers

**RECOMMENDATION**

Adopt a resolution making child care providers, including all forms of early childhood education, eligible for grants and other assistance under the Berkeley Relief Fund.

**BACKGROUND****Berkeley Relief Fund**

On March 17, 2020, the City Council allocated \$3 million to launch the Berkeley Relief Fund to assist businesses, arts organizations, and renters in Berkeley that have experienced financial hardship due to the COVID-19 pandemic.<sup>1</sup> Berkeley's residents, business community, and philanthropists have made generous contributions.<sup>2</sup>

On March 30, the City announced the first phase of the Berkeley Relief Fund program: the Berkeley Business Continuity Grants, an allocation of \$1 million to help mitigate COVID-19 related financial losses suffered by small businesses. Through this program, grants of up to \$10,000 were made available to Berkeley-based small businesses and nonprofits to enable continuity through and/or beyond the COVID-19 pandemic.

The Office of Economic Development (OED) received over 1000 applications to the Business Continuity Grant Program, testimony to the great number of needs in Berkeley. In the first phase of the grant program, the City issued 353 grants totaling \$968,499 to businesses and nonprofits.

<sup>1</sup> ["Berkeley COVID-19 Relief Fund and Expanding Flexible Housing Pool." Berkeley City Council, March 17, 2020 meeting, item 3](#)

<sup>2</sup> [Berkeley Relief Fund](#)

While the Fund continues to raise philanthropic donations, demonstrating the generous support of our community, and has provided vital assistance to hundreds of small businesses, it is clear that many local businesses impacted by COVID-19 have not received needed assistance.

### **Child Care Provider Need**

Child care is critical to Berkeley's recovery from the COVID-19 health crisis and to our children's long-term development and success. However, the pandemic has placed severe strain on the child care system.

The situation child care providers are facing is dire. Without immediate relief, it is likely that many programs will be forced to close in the coming months, leaving children without access to high-quality care, and limiting the ability of low-income and frontline-worker parents to work.

To make ends meet, many childcare providers have been charging supplies to their personal credit cards, struggling to hang on through the pandemic. Most childcare providers are women, and often women of color, who under normal circumstances receive very low wages and are themselves eligible for public benefits. *Small amounts of support at this critical juncture could mean the difference between hanging on through the final months of shelter-in-place, or shutting down for good.*

As of last summer, approximately 130 child care programs were operating in Berkeley. Due to the COVID-19 health crisis, many of these providers have had to close temporarily or permanently due to increased costs, stress, and health concerns.

UC Berkeley's Center for the Study of Childcare Employment, working with the City's Economic Development Department, did a survey of childcare providers in Berkeley. When asked what it would take to reopen or maintain current services safely and sustainably throughout the duration of the pandemic, Berkeley providers consistently request funds to cover expenses such as payroll for staff, rent, utilities, and other expenses related to their operations, and survival.

Research shows that children are more successful in life if they are given a strong foundation when they are young. Infancy and toddlerhood are times of intense intellectual engagement.<sup>3</sup> During this time, the brain undergoes its most dramatic development, as children acquire the ability to think, speak, learn, and reason. Babies and toddlers need positive early learning experiences to foster their intellectual, social,

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<sup>3</sup> Shonkoff, Jack and Phillips, Deborah. 2000. *From neurons to neighborhoods: The science of early childhood development*. Washington, DC: National Academy Press.

and emotional development and to lay the foundation for later success.<sup>4</sup> In the long run, the benefits stemming from greater investments in children lead to an increasingly productive workforce that will boost economic growth, save public dollars, and reduce involvement with the criminal justice system.<sup>5</sup>

Providing access to high-quality early care and education not only promotes healthy child development, but it also allows parents to participate in the labor force.<sup>6</sup> Without reliable and affordable child care, parents often must choose between spending a large percentage of their budget on child care or cutting back work hours.<sup>7</sup> Many parents -- often women -- are forced to leave the workforce altogether because of struggles to provide child care.<sup>8</sup>

This resolution makes child care providers, including those providing all forms of early childhood education, eligible for assistance under the Berkeley Relief Fund. It will help provide vital financial help to those in our community who care for our children and cannot pay for supplies and operating expenses through no fault of their own.

#### FISCAL IMPACTS

Allocations to be determined by the City Manager based on available funds in the Berkeley Relief Fund.

#### ENVIRONMENTAL SUSTAINABILITY

Will support the economic sustainability and child care needs of the Berkeley community as it recovers from the COVID19 pandemic.

#### CONTACT INFORMATION

Vice Mayor Sophie Hahn, Council District 5, 510-682-5905 (cell)

#### ATTACHMENT

1. Resolution

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<sup>4</sup> <https://www.zerotothree.org/resources/477-early-head-start-works>

<sup>5</sup> <https://www.epi.org/publication/its-time-for-an-ambitious-national-investment-in-americas-children>

<sup>6</sup> <https://www.americanprogress.org/issues/early-childhood/reports/2018/12/06/461643/americas-child-care-deserts-2018>

<sup>7</sup> <https://www.americanprogress.org/issues/early-childhood/reports/2020/08/04/488642/costly-unavailable-america-lacks-sufficient-child-care-supply-infants-toddlers>

<sup>8</sup> <https://www.americanprogress.org/issues/early-childhood/reports/2016/06/21/139731/calculating-the-hidden-cost-of-interrupting-a-career-for-child-care>

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

MAKING CHILD CARE PROVIDERS ELIGIBLE FOR ASSISTANCE FROM THE BERKELEY RELIEF FUND

WHEREAS, on March 17, 2020, the City Council allocated \$3 million to launch the Berkeley Relief Fund to assist businesses, arts organizations, and renters in Berkeley that have experienced financial hardship due to the COVID-19 pandemic; and

WHEREAS, thanks to the generous support of Berkeley's residents, business community, and philanthropists, the community was able to raise \$1.3 million for the Berkeley Relief Fund; and

WHEREAS, the Office of Economic Development (OED) received over 1000 applications to the Business Continuity Grant Program and issued 353 grants totaling \$968,499 to businesses and nonprofits in the first phase of the grant program; and

WHEREAS, further support is needed to help those financially impacted, as COVID-19 continues to worsen and restrictions tighten this winter; and

WHEREAS, many local businesses and organizations impacted by COVID-19, including child care providers and after-school enrichment programs, have not received needed assistance; and

WHEREAS, child care is critical to Berkeley's recovery from the COVID-19 health crisis and to our children's long-term development and success; and

WHEREAS, providing access to high-quality early care and education promotes healthy child development and allows parents to participate in the labor force; and

WHEREAS, the pandemic has placed severe strain on the child care system, causing many providers to close temporarily or permanently due to increased costs, stress, and health concerns; and

WHEREAS, without immediate relief, it is likely that additional child care programs will be forced to close in the coming months, leaving children without access to high-quality care, and limiting the ability of low-income and frontline-worker parents to work;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that child care providers, including all forms of early childhood education, are hereby made eligible for grants and other assistance under the Berkeley Relief Fund.



Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
January 19, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Wengraf (Author), Vice Mayor Droste (Co-Sponsor) and Councilmembers Hahn and Taplin (Co-Sponsors)

Subject: Resolution Reaffirming the City of Berkeley's Commitment to Roe v. Wade

RECOMMENDATION

Adopt a Resolution reaffirming the City of Berkeley's commitment to Roe v. Wade and honoring the 48<sup>th</sup> anniversary of its passage.

FINANCIAL IMPLICATIONS

None

BACKGROUND

On January 22, 1973, the U.S. Supreme Court announced its decision in Roe v. Wade, a challenge to a Texas statute that made it a crime to perform an abortion unless a woman's life was at stake. The case had been filed by "Jane Roe," an unmarried woman who wanted to safely and legally end her pregnancy. Siding with Roe, the court struck down the Texas law. In a ruling, the court recognized for the first time that the constitutional right to privacy "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy" (Roe v. Wade, 1973).

Roe has come to be known as the case that legalized abortion nationwide. At the time the decision was handed down, nearly all states outlawed abortion. Roe rendered these laws unconstitutional, making abortion services safer and more accessible to women throughout the country.

However, since coming to power, the Trump administration has tried to shut down Planned Parenthood in every way possible — in presidential budgets, health care reform bills, tax reform legislation, and federal resolutions and regulations, as well as by nominating anti-abortion judges. They have attempted to block access to care at Planned Parenthood health centers, which serve more than 2.4 million people each year — including many who have nowhere else to go for basic health services.

January 22, 2020 will be the 48<sup>th</sup> anniversary of the decision that effectively legalized abortion in the United States. The City has traditionally marked the anniversary with a proclamation recognizing the anniversary. The City has consistently passed resolutions denouncing the fraudulent media campaigns against Planned Parenthood and has

expressed continued support for access to all reproductive healthcare services and all reproductive healthcare providers. The City also adopted a resolution against proposed funding cuts to the Title X Family Planning program, the only federal program dedicated solely to providing low income women and men with comprehensive family planning and related preventive health services.

ENVIRONMENTAL SUSTAINABILITY

N/A

CONTACT PERSON

Councilmember Susan Wengraf, Council District 6, 510-981-7160

Attachments:

1: Resolution



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

REAFFIRMING THE CITY OF BERKELEY'S COMMITMENT TO ROE V. WADE

WHEREAS, January 21, 2020 marks the 48<sup>th</sup> anniversary of the historic Supreme Court decision, Roe v. Wade, which legalized abortion and recognized women's freedom of reproductive choice as essential to the lives, rights, health and equality of women; and

WHEREAS, Prior to 1973, the year when Roe v. Wade was enacted, women faced significant obstacles to safe reproductive health services, resulting in widespread loss of life and serious illness; and

WHEREAS, In 2020, 24 abortion restrictions were enacted and two abortion cases that would have significant implications for abortion access asked for Supreme Court review this fall: Dobbs v. Jackson Women's Health Organization and FDA v ACOG; and

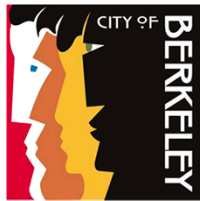
WHEREAS, The right to safe, legal and accessible abortion continues to be undermined by federal initiatives, threatening the health and safety of women's lives, including the most marginalized women: low-income women, women of color, refugee and immigrant women; and

WHEREAS, Throughout the Bay Area, hundreds of health care workers have devoted their careers to ensuring that the women of the Bay Area have access to safe and legal reproductive health services, while often putting their own safety at great risk due to harassment and violent opposition; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF BERKELEY that we RECOGNIZE AND CELEBRATE THE 48<sup>th</sup> ANNIVERSARY OF ROE V. WADE and praise the perilous and self-sacrificing work of the healthcare providers who face threats and violence for providing safe and legal health services to women throughout the Bay Area.

NOW FURTHER BE IT RESOLVED that the City of Berkeley re-affirms its commitment to the human rights afforded to all women under Roe v. Wade, regardless of socioeconomic, ethnic, racial, cultural or religious background, age or sexual orientation and to opposing any laws or regulations that pose a threat to abortion, reproductive rights, sexual freedom and/or self-determination.





CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 January 21, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson, Mayor Jesse Arreguin,  
 Councilmember Kate Harrison, and Councilmember Terry Taplin

Subject: Support for AB 15 and AB16

RECOMMENDATION

Send a letter of support for AB 15, the Tenant Stabilization Act of 2021, and AB 16, the Tenant, Small Landlord, and Affordable Housing Provider Stabilization Act of 2021, to Assemblymembers Buffy Wicks and David Chiu and Senator Nancy Skinner, and urge the legislature not to preempt cities like Berkeley from taking robust steps to protect tenants.

BACKGROUND

The COVID-19 pandemic and resultant economic catastrophe have had a disproportionate impact on tenants throughout our community and the nation. While the City of Berkeley has taken robust and impactful actions to safeguard tenants against eviction and provide financial relief for those who cannot afford rent payments, the City simply lacks the resources, legal and financial, to provide an adequate response. An abdication of responsibility at both the state and national levels have left communities like Berkeley with no good choices.

This past legislative cycle, a disappointingly watered-down AB 3088 was the State Legislature's response to the profound suffering facing California's tenants. Our community, like many, was caught off-guard and dismayed that eleventh-hour preemptions to our local ordinances, ordinances that had been authorized under Governor Newsom's April anti-eviction order, were inserted into AB 3088. These preemptions penalized jurisdictions like Berkeley that proactively addressed the COVID-19 economic and public health crisis. The preemption of local action in AB 3088 created a needlessly complex legal environment, compromising and even invalidating some local protections.

AB 3088 is now set to expire in less than one month's time. Despite its deep flaws, the expiration of AB 3088 would be cataclysmic for tenants and all California communities, and set the stage for a wave of homelessness not seen in our state since the Hoovervilles of the Great Depression. AB 15, primarily authored by Assemblymember David Chiu alongside Berkeley's Assemblymember Buffy Wicks, would extend and strengthen the provisions of AB 3088 through the end of 2021. AB 16, currently a shell bill, seeks to move beyond the short-term protections of AB 3088 and move towards long term stability for California's tenant community.

While the amendments envisioned in AB 15 to AB 3088 are insufficient to fully allow Berkeley's local protections to serve tenants as originally intended, it is critical and non-negotiable that the extension of state-level protections for renters and small property owners function as a baseline for local protections and not further hamstring the City's ability to respond swiftly and effectively to our constituents' dire needs. The Council should therefore support AB 15 as currently drafted and oppose the inclusion of statewide preemption of local protections.

FINANCIAL IMPLICATIONS

The eviction crisis that would result from the failure to extend AB 3088 would critically exacerbate the already overwhelming burden the City faces to assist our community in weathering the COVID-19 pandemic.

ENVIRONMENTAL SUSTAINABILITY

Eviction and displacement contribute to longer commutes from former residents who must often then travel farther to their places of employment.

CONTACT PERSON

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

Attachment:

1: Letter

The Honorable David Chiu  
Member of the Assembly  
State Capitol, Room 4112  
Sacramento, CA, 94249

Re: AB 15 and AB 16

Dear Assemblymember Chiu,

The Berkeley City Council expresses its deep concern over the impending expiration of AB 3088 and its support for AB 15 and 16.

The COVID-19 pandemic and resultant economic catastrophe have had a disproportionate impact on tenants throughout our community and the nation. While the City of Berkeley has taken robust and impactful actions to safeguard tenants against eviction and provide financial relief for those who cannot afford rent payments, the City simply lacks the resources, legal and financial, to provide an adequate response. An abdication of responsibility at both the state and national levels have left our community with no good choices.

This past legislative cycle, a disappointingly watered-down AB 3088 was the State Legislature's response to the profound suffering facing California's tenants. Our community, like many, was caught off-guard and dismayed that eleventh-hour preemptions to our local ordinances, ordinances that had been authorized under Governor Newsom's April anti-eviction order, were inserted into AB 3088. These preemptions penalized jurisdictions like Berkeley that proactively addressed the COVID-19 economic and public health crisis. The preemption of local action in AB 3088 created a needlessly complex legal environment, compromising and even invalidating some local protections.

AB 3088 is now set to expire in less than one month's time. Despite its deep flaws, the expiration of AB 3088 would be cataclysmic for tenants and all California communities, and set the stage for a wave of homelessness not seen in our state since the Hoovervilles of the Great Depression.

While the amendments envisioned in AB 15 to AB 3088 are insufficient to fully allow Berkeley's local protections to serve tenants as originally intended, it is critical and non-negotiable that the extension of state-level protections for renters and small property owners function as a baseline for local protections and not further hamstring the City's ability to respond swiftly and effectively to our constituents' dire needs. We therefore support AB 15 as currently drafted and oppose the inclusion of statewide preemption of local protections. We also support AB 16 as it seeks to move beyond the short-term protections of AB 3088 and move towards long term stability for California's tenant community.

Sincerely,

The Council of the City of Berkeley

CC: Senator Nancy Skinner

Assemblymember Buffy Wicks



Cheryl Davila  
Councilmember  
District 2

## REVISED AGENDA MATERIAL

**Meeting Date:** December 15, 2020

**Item:** Introduce an Ordinance terminating the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2025

**Submitted by:** Councilmember Cheryl Davila

### Revisions:

Council Report and Resolution amended to reflect the action at the Wednesday, November 18, 2020 Meeting of the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee, the Committee reviewed this item and voted with a positive recommendation with the following amended actions:

1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles.
2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any “just transition” elements related to the above action, including the impact upon and opportunities for auto mechanics.

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Cheryl Davila  
Councilmember  
District 2

ACTION CALENDAR  
January 21, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Introduce an Ordinance terminating the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2025

RECOMMENDATION

Adopt a resolution with the following actions:

~~1. Direct the City Attorney to prepare any draft ordinances to terminate the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2025; this shall include the termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out such as cars over \$28K by 2023, cars over \$22K by 2024, and all cars by 2025, so as to actively create a used electric vehicle market for lower income customers.~~

~~(At the Wednesday, November 18, 2020 Meeting of the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee, the Committee reviewed this item and voted with a positive recommendation with the following amended actions)~~

~~1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles.~~

~~2. Short term referral to the City Manager and/or designee(s) to report to the City Council in 90 days, in consultation with other City Departments with the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the sale of all electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates; the simplification of building code requirements for chargers; and the establishment of charging stations and related infrastructure to support all electric vehicles; (C) any "just transition" elements related to the above action, including the impact upon and opportunities for auto mechanics.~~



2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any “just transition” elements related to the above action, including the impact upon and opportunities for auto mechanics.

#### POLICY COMMITTEE RECOMMENDATION

On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Harrison/Davila) to the send the item with a positive recommendation as amended by the committee with the following recommendation:

Adopt a resolution with the following actions: 1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include the termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars over \$28K by 2025, cars over \$23K by 2026, and all other cars by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles.

2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments with the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between

an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any “just transition” elements related to the above action, including the impact upon and opportunities for auto mechanics.

Vote: All Ayes.

#### BACKGROUND

The earth is already too hot for safety. Humanity can no longer safely emit greenhouse gases if it wishes to avoid reaching irreversible climate tipping points.

Only one degree Celsius of global warming is already causing excessive and unnecessary damage worldwide. Together, Hurricanes Harvey and Irma are estimated to have cost upwards of \$290 billion dollars. Hurricane Maria has cost Puerto Rico up to \$90 billion. Hurricane Dorian was the most costly disaster in Bahamian history, estimated at \$7 billion in property damage. The combined death tolls from these hurricanes are unprecedented.

Closer to home, the devastating wildfires in California have killed dozens of people, burned thousands of homes and other structures, caused the evacuation of hundreds of thousands of people, and are estimated to cost the state upwards of \$80 billion a year.

Low income communities of color continue to suffer the most extreme impacts of climate disasters, underlying the environmental justice component of inaction. The nation and the world is in a climate emergency.

Extreme storm damage to refineries in Florida, Texas and along the Gulf Coast have caused price spikes in gasoline prices across the country. The volatility of fossil fuel prices will continue in a climate-disrupted future and will particularly impact low income residents.

Additionally, emissions from vehicles powered by fossil fuels and from production and refinement of fossil fuels contribute substantially to health problems for frontline communities living near freeways, oil drill sites and refineries. Disproportionately, the burden of dirty fuel energy is borne by low income communities of color, while reductions in fossil fuel burning would have a measurable impact on asthma-induced emergency room visits across.

To drastically reduce greenhouse gas emissions, countries such as Great Britain, India, China and Germany have already set an end date on the sales of gasoline and diesel powered passenger vehicles. Due to the short-term climate emission dangers posed by methane leaks associated with natural gas extraction, the sale of natural gas vehicles should be included in any ban.

Furthermore, automobile manufacturers such as Audi and Volvo are moving toward all-electric vehicle (EV) sales and General Motors, Ford, Land Rover and BMW are introducing new lines as well. A healthy secondary electric vehicle market is already making EVs more affordable than ever.

If the City is to continue to thrive and play a role as an international leader in climate action, all efforts must be made to reduce greenhouse gas emissions in every sector, including transportation, as soon as possible. In order to protect and promote the health of its residents, the City should make all efforts to reduce exposure to toxic emissions from freeways, oil drill sites and refineries.

#### FINANCIAL IMPLICATIONS

To be determined.

#### ENVIRONMENTAL SUSTAINABILITY

The Berkeley City Council unanimously passed the Climate Emergency Declaration in June 2018, and has a record of passing legislation to protect our climate. It is important, now more than ever to take the next step to insure that we are prepared and ready for the climate crisis we will face.

#### CONTACT PERSONS

Cheryl Davila  
Councilmember District 2  
510.981.7120  
[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

#### ATTACHMENTS:

1. Resolution

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY IN SUPPORT OF INTRODUCING AN ORDINANCE TERMINATING THE SALE OF GASOLINE, DIESEL, NATURAL GAS VEHICLES THROUGHOUT THE CITY OF BERKELEY BY 2025

WHEREAS, The Berkeley City Council unanimously passed the Climate Emergency Declaration on June 12, 2018; and

WHEREAS, the cities of Richmond, Oakland, Hayward, Alameda, El Cerrito, Chico, Fairfax, Healdsburg, Davis, Arcata, Cloverdale, Malibu, Petaluma, San Jose, San Mateo County, Santa Cruz City & County, Sonoma County and Windsor have also passed Climate Emergency Declarations; and

WHEREAS, There are over 48 cities throughout the United States who have declared, as well as over 1180 governments and 23 countries throughout the world. The declaration is the first step; and

WHEREAS, As unprecedented winter wildfires and ensuing mudslides destroyed parts of our City and region, a climate emergency mobilization of our City has never been more fiercely urgent; and

WHEREAS, Such an effort must end to the maximum extent technically feasible city-wide greenhouse gas emissions in every sector by 2025 and begin a large-scale effort to safely and justly remove carbon from the atmosphere; and

WHEREAS, Without an immediate and drastic change from the status quo, humans will cause irreversible and ever-worsening damage to the Earth's climate; and

WHEREAS, To act too late, or to be too cautious in our vision and do too little, carries the risk of condemning the City and its residents to an increasingly uninhabitable climate and potentially catastrophic economic losses caused by worsening disasters; and

WHEREAS, Abnormal wildfires, mudslides and other demonstrate that the climate emergency threatens everyone, the disasters wrought by an abruptly destabilizing climate have so far most devastatingly impacted lower-income communities of color first and worst. Drought, famine, and instability have devastated countries in the Global South; and

WHEREAS, Millions of climate refugees have already left their homes in search of a safe place to live. In the United States, we have seen after Hurricanes Katrina, Sandy, Harvey, Irma, Maria and Dorian how environmentally and economically vulnerable have been generally left to fend for themselves; and

WHEREAS, The City must therefore aggressively move to reduce and remove greenhouse gas emissions and adapt and restore ecosystems by rapidly adopting legislation to mandate such efforts Citywide and by doing so in such a way that lower-income and frontline communities of color benefit first from mitigation and adaptation funds. The City can thereby create a model for other cities to follow and use its global climate leadership standing to lead the way. By doing so,

Berkeley can trigger a global mobilization to restore a safe climate, thereby creating the conditions for a future, not of chaos and misery, but of community and dignity; and

~~NOW, THEREFORE IT BE RESOLVED, that the Berkeley City Council directs the City Attorney be to prepare any draft ordinances to terminating the sale of gasoline, diesel and natural gas passenger vehicles by 2025; this shall include the termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out such as cars over \$28K by 2023, cars over \$22K by 2024, and all cars by 2025, so as to actively create a used electric vehicle market for lower income customers.~~

NOW, THEREFORE IT BE RESOLVED, that the Berkeley City Council refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles; and

BE IT FURTHER RESOLVED, that the Berkeley City Council refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any "just transition" elements related to the above action, including the impact upon and opportunities for auto mechanics.

~~BE IT FURTHER RESOLVED, that the City Council directs the City Manager and Staff to be instructed to report to the Council in 90 days, in consultation with other City Departments on the feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles throughout the city by 2025; this review should also include the termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out such as cars over \$28K by 2023, cars over \$22K by 2024, and all cars by 2025, so as to actively create a used electric vehicle market for lower income customers.~~

~~BE IT FURTHER RESOLVED, that the City Council directs all City Departments and proprietaries to report back on maximum emergency reductions in greenhouse gas emissions from their operations feasible by the end of 2025, with the highest priority on an equitable and just transition in all sectors; and~~

~~BE IT FURTHER RESOLVED, that the City Council directs the City Manager and/or Designee to report on ways to promote and facilitate the sale of all electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates; the simplification of building code requirements for chargers; and the establishment of charging stations and related infrastructure to support all electric vehicles.~~

~~BE IT FURTHER RESOLVED, that the City Council directs the City Manager and/or Designee, in consultation with the Economic Development Department, be directed to report to Council in 90 days on any "just transition" elements related to the above action, including the impact and opportunities upon auto mechanics.~~



Cheryl Davila  
Councilmember  
District 2

ACTION CALENDAR  
January 19, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Introduce an Ordinance terminating the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2025

RECOMMENDATION

Adopt a resolution with the following actions:

*(At the Wednesday, November 18, 2020 Meeting of the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee, the Committee reviewed this item and voted with a positive recommendation with the following amended actions)*

1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles.
2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any "just transition" elements related to the above action, including the impact upon and opportunities for auto mechanics.

POLICY COMMITTEE RECOMMENDATION

On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Harrison/Davila) to the send the item with a positive recommendation as amended by the committee with the following

recommendation:

Adopt a resolution with the following actions: 1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include the termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars over \$28K by 2025, cars over \$23K by 2026, and all other cars by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles.

2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments with the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any “just transition” elements related to the above action, including the impact upon and opportunities for auto mechanics.

Vote: All Ayes.

#### BACKGROUND

The earth is already too hot for safety. Humanity can no longer safely emit greenhouse gases if it wishes to avoid reaching irreversible climate tipping points.

Only one degree Celsius of global warming is already causing excessive and unnecessary damage worldwide. Together, Hurricanes Harvey and Irma are estimated to have cost upwards of \$290 billion dollars. Hurricane Maria has cost Puerto Rico up to \$90 billion. Hurricane Dorian was the most costly disaster in Bahamian history, estimated at \$7 billion in property damage. The combined death tolls from these hurricanes are unprecedented.

Closer to home, the devastating wildfires in California have killed dozens of people, burned thousands of homes and other structures, caused the evacuation of hundreds of thousands of people, and are estimated to cost the state upwards of \$80 billion a year.

Low income communities of color continue to suffer the most extreme impacts of climate disasters, underlying the environmental justice component of inaction. The nation and the world is in a climate emergency.

Extreme storm damage to refineries in Florida, Texas and along the Gulf Coast have caused price spikes in gasoline prices across the country. The volatility of fossil fuel prices will continue in a climate-disrupted future and will particularly impact low income residents.

Additionally, emissions from vehicles powered by fossil fuels and from production and refinement of fossil fuels contribute substantially to health problems for frontline communities living near freeways, oil drill sites and refineries. Disproportionately, the burden of dirty fuel energy is borne by low income communities of color, while reductions in fossil fuel burning would have a measurable impact on asthma-induced emergency room visits across.

To drastically reduce greenhouse gas emissions, countries such as Great Britain, India, China and Germany have already set an end date on the sales of gasoline and diesel powered passenger vehicles. Due to the short-term climate emission dangers posed by methane leaks associated with natural gas extraction, the sale of natural gas vehicles should be included in any ban.

Furthermore, automobile manufacturers such as Audi and Volvo are moving toward all-electric vehicle (EV) sales and General Motors, Ford, Land Rover and BMW are introducing new lines as well. A healthy secondary electric vehicle market is already making EVs more affordable than ever.

If the City is to continue to thrive and play a role as an international leader in climate action, all efforts must be made to reduce greenhouse gas emissions in every sector, including transportation, as soon as possible. In order to protect and promote the health of its residents, the City should make all efforts to reduce exposure to toxic emissions from freeways, oil drill sites and refineries.

#### FINANCIAL IMPLICATIONS

To be determined.

#### ENVIRONMENTAL SUSTAINABILITY

The Berkeley City Council unanimously passed the Climate Emergency Declaration in June 2018, and has a record of passing legislation to protect our climate. It is important, now more than ever to take the next step to insure that we are prepared and ready for the climate crisis we will face.

#### CONTACT PERSONS

Cheryl Davila  
Councilmember District 2  
510.981.7120  
[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

#### ATTACHMENTS:

1. Resolution



RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY IN SUPPORT OF INTRODUCING AN ORDINANCE TERMINATING THE SALE OF GASOLINE, DIESEL, NATURAL GAS VEHICLES THROUGHOUT THE CITY OF BERKELEY BY 2025

WHEREAS, The Berkeley City Council unanimously passed the Climate Emergency Declaration on June 12, 2018; and

WHEREAS, the cities of Richmond, Oakland, Hayward, Alameda, El Cerrito, Chico, Fairfax, Healdsburg, Davis, Arcata, Cloverdale, Malibu, Petaluma, San Jose, San Mateo County, Santa Cruz City & County, Sonoma County and Windsor have also passed Climate Emergency Declarations; and

WHEREAS, There are over 48 cities throughout the United States who have declared, as well as over 1180 governments and 23 countries throughout the world. The declaration is the first step; and

WHEREAS, As unprecedented winter wildfires and ensuing mudslides destroyed parts of our City and region, a climate emergency mobilization of our City has never been more fiercely urgent; and

WHEREAS, Such an effort must end to the maximum extent technically feasible city-wide greenhouse gas emissions in every sector by 2025 and begin a large-scale effort to safely and justly remove carbon from the atmosphere; and

WHEREAS, Without an immediate and drastic change from the status quo, humans will cause irreversible and ever-worsening damage to the Earth's climate; and

WHEREAS, To act too late, or to be too cautious in our vision and do too little, carries the risk of condemning the City and its residents to an increasingly uninhabitable climate and potentially catastrophic economic losses caused by worsening disasters; and

WHEREAS, Abnormal wildfires, mudslides and other demonstrate that the climate emergency threatens everyone, the disasters wrought by an abruptly destabilizing climate have so far most devastatingly impacted lower-income communities of color first and worst. Drought, famine, and instability have devastated countries in the Global South; and

WHEREAS, Millions of climate refugees have already left their homes in search of a safe place to live. In the United States, we have seen after Hurricanes Katrina, Sandy, Harvey, Irma, Maria and Dorian how environmentally and economically vulnerable have been generally left to fend for themselves; and

WHEREAS, The City must therefore aggressively move to reduce and remove greenhouse gas emissions and adapt and restore ecosystems by rapidly adopting legislation to mandate such efforts Citywide and by doing so in such a way that lower-income and frontline communities of color benefit first from mitigation and adaptation funds. The City can thereby create a model for other cities to follow and use its global climate leadership standing to lead the way. By doing so, Berkeley can trigger a global mobilization to restore a safe climate, thereby creating the conditions for a future, not of chaos and misery, but of community and dignity; and

NOW, THEREFORE IT BE RESOLVED, that the Berkeley City Council refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles; and

BE IT FURTHER RESOLVED, that the Berkeley City Council refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any "just transition" elements related to the above action, including the impact upon and opportunities for auto mechanics.



~~Cheryl Davila~~ Kate Harrison  
Councilmember  
District 42

CONSENT CALENDAR  
January 19, 2020 ~~December 15, 2020~~

To: Honorable Mayor and Members of the City Council

From: ~~Councilmember Cheryl Davila and~~ Councilmember Kate Harrison

Subject: Support calling upon food companies within Berkeley to implement the requirements of Proposition 12 as soon as possible ~~by only selling eggs and meat from cage-free facilities.~~

#### RECOMMENDATION

Adopt a Resolution calling upon supermarkets, restaurant companies, and other food corporations with locations in Berkeley, CA to implement the requirements of Proposition 12 as soon as possible. ~~urge the to only selling eggs and meat from cage-free facilities.~~

#### BACKGROUND

California's Proposition 12, the Prevention of Cruelty to Farm Animals Act, passed into law on the 2018 ballot. V; ~~v~~oters approved Proposition 12 by an overwhelming 25-point margin.

71.6% of voters in Alameda county voted in favor of Proposition 12.

Proposition 12 ensures that egg-laying hens, mother pigs, and calves used for veal ~~aren't~~ are ~~not~~ confined in tiny cages, and that the products sold from these caged animals ~~aren't~~ are not sold in the California marketplace.

The Proposition 12 mandate came into effect for calves used for veal on December 31, 2019, and the standards for egg-laying hens and mother pigs ~~standards~~ have a compliance date of December 31, 2021.

In passing Proposition 12, California voters sent a strong message that it is cruel and inhumane to lock animals in cramped cages for their whole lives.

~~By approving Proposition 12, Californians and residents of Berkeley, CA made clear that they~~ and do not want eggs, pork and veal sold in the city to be sourced from animals confined in cages.

Proposition 12 builds on the momentum of McDonald's, Walmart, Costco, and 200 other major food companies, as well as numerous small businesses, that have pledged to stop sourcing eggs and other animal products from animals forced to live in extreme confinement.

Multiple food corporations headquartered in California, such as Safeway, Chipotle, Taco Bell, Jack in the Box, IHOP, and Bon Appétit Management Company have adopted cage-free policies.

There is a national trend to help curb factory farm abuses and move toward cage-free housing systems for egg-laying hens, mother pigs and calves used for veal.

In addition to California, eleven states have passed laws to phase out intensive confinement of farm animals.

The conditions required by Proposition 12 confer significant local benefits for food safety, public health and protection of the environment as well as the humane treatment of animals.

Berkeley, CA is known for its social responsibility and humane values, including its adoption of the [Fish Prize / Award](#) [Fur](#) Ban, Declawing Ban, and Meatless Mondays.

#### FINANCIAL IMPLICATIONS

To be determined.

#### ENVIRONMENTAL SUSTAINABILITY

Confined animal feeding operations (CAFOs, or "factory farms") pack enormous numbers of animals into small spaces by confining egg-laying hens, mother pigs, and veal calves in cages so restrictive they are rendered virtually immobile. Factory farms are a leading cause of air and water pollution. The prestigious Pew Commission on Industrial Farm Animal Production released the results of a 2.5-year investigation into the problems associated with factory farming. The Commission found that the factory farming system "often poses unacceptable risks to public health, the environment and the welfare of the animals themselves."

Proposition 12 helps reduce some of the worst environmental impacts of CAFOs. Encouraging companies to come into compliance with Proposition 12 as soon as possible sends a strong message about the importance of protecting rivers, air and land from factory farms.

#### CONTACT PERSONS

[Cheryl Davila](#) [Kate Harrison](#)

Councilmember District 4

510.981.7120 [7140](#)

[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info) [kharrison@cityofberkeley.info](mailto:kharrison@cityofberkeley.info)

#### ATTACHMENTS:

1. Resolution

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA SUPPORT CALLING UPON FOOD COMPANIES WITHIN BERKELEY TO IMPLEMENT THE REQUIREMENTS OF PROPOSITION 12 AS SOON AS POSSIBLE BY ONLY SELLING EGGS AND MEAT FROM CAGE-FREE FACILITIES

WHEREAS, California's Proposition 12, the Prevention of Cruelty to Farm Animals Act, passed into law on the 2018 ballot; voters approved Proposition 12 by an overwhelming 25-point margin; and

WHEREAS, 71.6% of voters in Alameda county voted in favor of Proposition 12; and

WHEREAS, Proposition 12 ensures that egg-laying hens, mother pigs, and calves used for veal are n'ot confined in tiny cages, and that the products sold from these caged animals are n'ot sold in the California marketplace; and

WHEREAS, The Proposition 12 mandate came into effect for calves used for veal on December 31, 2019, and the egg-laying hens and mother pigs standards have a compliance date of December 31, 2021; and

WHEREAS, In passing Proposition 12, California and Berkeley voters sent a strong message that it is cruel and inhumane to lock animals in cramped cages for their whole lives; and

~~WHEREAS, By approving Proposition 12, Californians and residents of Berkeley, CA made clear that they do not want eggs, pork and veal sold in the city to be sourced from animals confined in cages; and~~

WHEREAS, Proposition 12 builds on the momentum of McDonald's, Walmart, Costco, and 200 other major food companies, as well as numerous small businesses, that have pledged to stop sourcing eggs and other animal products from animals forced to live in extreme confinement; and

WHEREAS, Multiple food corporations headquartered in California, such as Safeway, Chipotle, Taco Bell, Jack in the Box, IHOP, and Bon Appétit Management Company have adopted cage-free policies; and

WHEREAS, There is a national trend to help curb factory farm abuses and move toward cage-free housing systems for egg-laying hens, mother pigs and calves used for veal; and

WHEREAS, In addition to California, eleven states have passed laws to phase out intensive confinement of farm animals; and

WHEREAS, The conditions required by Proposition 12 confer significant local benefits for food safety, public health and protection of the environment as well as the humane treatment of animals; and

WHEREAS, Berkeley, CA is known for its social responsibility and humane values, including its adoption of the ~~Fish Prize / Award~~Fur Ban, Declawing Ban, and Meatless Mondays.

NOW THEREFORE BE IT RESOLVED that the City Council of Berkeley hereby calls upon supermarkets, restaurants ~~companies~~, and other food corporations with locations in Berkeley, CA to implement the requirements of Proposition 12 as soon as possible ~~by only selling eggs and meat from cage-free facilities~~

~~BE IT FURTHER RESOLVED, that the City Council takes the monitoring and enforcement of animal cruelty laws seriously, and is committed to ensuring compliance of this important law.~~



Cheryl Davila  
Councilmember  
District 2

ACTION CALENDAR

January 19, 2021

*(Continued from December 15, 2020)*

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila and Councilmember Kate Harrison

Subject: Support calling upon food companies within Berkeley to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities.

RECOMMENDATION

Adopt a Resolution calling upon supermarkets, restaurant companies, and other food corporations with locations in Berkeley, CA to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities.

BACKGROUND

California's Proposition 12, the Prevention of Cruelty to Farm Animals Act, passed into law on the 2018 ballot; voters approved Proposition 12 by an overwhelming 25-point margin.

71.6% of voters in Alameda county voted in favor of Proposition 12.

Proposition 12 ensures that egg-laying hens, mother pigs, and calves used for veal aren't confined in tiny cages, and that the products sold from these caged animals aren't sold in the California marketplace.

The Proposition 12 mandate came into effect for calves used for veal on December 31, 2019, and the egg-laying hens and mother pigs standards have a compliance date of December 31, 2021.

In passing Proposition 12, California voters sent a strong message that it is cruel and inhumane to lock animals in cramped cages for their whole lives.

By approving Proposition 12, Californians and residents of Berkeley, CA made clear that they do not want eggs, pork and veal sold in the city to be sourced from animals confined in cages.

Proposition 12 builds on the momentum of McDonald's, Walmart, Costco, and 200 other major food companies, as well as numerous small businesses, that have pledged to stop sourcing eggs and other animal products from animals forced to live in extreme confinement.

Multiple food corporations headquartered in California, such as Safeway, Chipotle, Taco Bell, Jack in the Box, IHOP, and Bon Appétit Management Company have adopted cage-free policies.

There is a national trend to help curb factory farm abuses and move toward cage-free housing systems for egg-laying hens, mother pigs and calves used for veal.

In addition to California, eleven states have passed laws to phase out intensive confinement of farm animals.

The conditions required by Proposition 12 confer significant local benefits for food safety, public health and protection of the environment as well as the humane treatment of animals.

Berkeley, CA is known for its social responsibility and humane values, including its adoption of the Fish Prize / Award Ban, Declawing Ban, and Meatless Mondays.

#### FINANCIAL IMPLICATIONS

To be determined.

#### ENVIRONMENTAL SUSTAINABILITY

Confined animal feeding operations (CAFOs, or "factory farms") pack enormous numbers of animals into small spaces by confining egg-laying hens, mother pigs, and veal calves in cages so restrictive they are rendered virtually immobile. Factory farms are a leading cause of air and water pollution. The prestigious Pew Commission on Industrial Farm Animal Production released the results of a 2.5-year investigation into the problems associated with factory farming. The Commission found that the factory farming system "often poses unacceptable risks to public health, the environment and the welfare of the animals themselves."

Proposition 12 helps reduce some of the worst environmental impacts of CAFOs. Encouraging companies to come into compliance with Proposition 12 as soon as possible sends a strong message about the importance of protecting rivers, air and land from factory farms.

#### CONTACT PERSONS

Cheryl Davila  
Councilmember District 2  
510.981.7120  
[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

#### ATTACHMENTS:

1. Resolution



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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA  
SUPPORT CALLING UPON FOOD COMPANIES WITHIN BERKELEY TO IMPLEMENT THE  
REQUIREMENTS OF PROPOSITION 12 AS SOON AS POSSIBLE BY ONLY SELLING EGGS  
AND MEAT FROM CAGE-FREE FACILITIES

WHEREAS, California's Proposition 12, the Prevention of Cruelty to Farm Animals Act, passed into law on the 2018 ballot; voters approved Proposition 12 by an overwhelming 25-point margin; and

WHEREAS, 71.6% of voters in Alameda county voted in favor of Proposition 12; and

WHEREAS, Proposition 12 ensures that egg-laying hens, mother pigs, and calves used for veal aren't confined in tiny cages, and that the products sold from these caged animals aren't sold in the California marketplace; and

WHEREAS, The Proposition 12 mandate came into effect for calves used for veal on December 31, 2019, and the egg-laying hens and mother pigs standards have a compliance date of December 31, 2021; and

WHEREAS, In passing Proposition 12, California voters sent a strong message that it is cruel and inhumane to lock animals in cramped cages for their whole lives; and

WHEREAS, By approving Proposition 12, Californians and residents of Berkeley, CA made clear that they do not want eggs, pork and veal sold in the city to be sourced from animals confined in cages; and

WHEREAS, Proposition 12 builds on the momentum of McDonald's, Walmart, Costco, and 200 other major food companies, as well as numerous small businesses, that have pledged to stop sourcing eggs and other animal products from animals forced to live in extreme confinement; and

WHEREAS, Multiple food corporations headquartered in California, such as Safeway, Chipotle, Taco Bell, Jack in the Box, IHOP, and Bon Appétit Management Company have adopted cage-free policies; and

WHEREAS, There is a national trend to help curb factory farm abuses and move toward cage-free housing systems for egg-laying hens, mother pigs and calves used for veal; and

WHEREAS, In addition to California, eleven states have passed laws to phase out intensive confinement of farm animals; and

WHEREAS, The conditions required by Proposition 12 confer significant local benefits for food safety, public health and protection of the environment as well as the humane treatment of animals; and

WHEREAS, Berkeley, CA is known for its social responsibility and humane values, including its adoption of the Fish Prize / Award Ban, Declawing Ban, and Meatless Mondays.

NOW THEREFORE BE IT RESOLVED that the City Council of Berkeley hereby call upon supermarkets, restaurant companies, and other food corporations with locations in Berkeley, CA to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities.

BE IT FURTHER RESOLVED, that the City Council takes the monitoring and enforcement of animal cruelty laws seriously, and is committed to ensuring compliance of this important law.



Cheryl Davila  
Councilmember  
District 2

ACTION CALENDAR  
January 19, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmembers Cheryl Davila (Author) and Ben Bartlett (Co-Sponsor)

Subject: Declare Racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley

RECOMMENDATION

Declare Racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley, and commit to eliminate all socioeconomic barriers to health equity. In addition:

1. Declare the resolution an emergency measure for the immediate preservation of public peace, property, health, or safety, especially during the COVID-19 pandemic and it shall take effect and be in force immediately upon its adoption.
2. Budget Referral to convene a series of town hall sessions for all community members, City workers, and small business owners to discuss the concerns of people of color and marginalized community members, and develop strategies and programs (especially Mental Health Programs for the unhoused stay housed) for greater inclusivity, understanding, empathy, compassion, and unity. The purpose of these meetings should be to strengthen anti-racist capacity building and commitments within the city. This can be done by discussing the current quantitative and qualitative reality of racial justice and injustice, racism and non-racism in all areas of city life toward developing measures to ensure the achievement racial equity in Berkeley. These town halls, strategies and programs could include: the definition and lived experience of racism in systemic and institutional forms the effects and trauma caused by them, and provide resources to combat implicit bias on all levels. Community partners to consider to facilitate such workshops include Beyond Diversity: Courageous Conversations About Race and Showing Up for Racial Justice (SURJ).
3. City Council will establish a working group to promote racial equity as well as the development of programs to address racial equity in this City.
4. Direct the City Manager or his/her designee to record COVID-19 data by race/ethnicity and to explore greater health disparities that have emerged as a result of this crisis.
5. Direct the City Manager or his/her designee to hold several fundraisers at town hall sessions for black-owned small businesses, research of state and federal RFPs for the purpose of grants acquisitions for program development in the City of Berkeley that have been affected by Covid-19 and/or recent protests.
6. Direct the City Manager or his/her designee to prepare a Health in All Policies Ordinance (see attached City of Richmond Ordinance) for Council review and adoption, critically evaluating the public health impact of all legislative and budgetary proposals, especially upon people of color and marginalized community members.

7. Direct the City Manager or his/her designee to adopt a mandatory requirement of 16 hours of ongoing annual online and in-person training on implicit bias, cultural sensitivity, and cultural humility for City Employees, commissioners, and community members; and
8. Direct the City Manager or his/her designee in partnership with the Berkeley Public Health Division and the Mental Health Division to develop a Strategic Plan for Health Equity, with the inclusion of a diverse group of staff with expertise in this subject matter and begin immediate implementation of recommendations.
9. Direct the City Manager or his/her designee to have an antiracism dashboard that delineates and tracks progress towards specific antiracist goals. This would involve: 1) tracking and measuring specific data that shows the extent to which racism has become a public health crisis; which would in turn enable 2) the City and the Community to dramatically reduce instances of racism, if not totally eliminate some of them; and 3) demonstrate to constituents that the other recommendations have made, and must continue to make, a tangible difference. The dashboard shall include: analyzing hospital infant mortality by race; tracking food insecurity among Berkeley residents, and correlation to racial demographics; analyzing the effects of biological weathering and resultant mental health challenges on immune strength for black individuals, and studying mental health resource availability and outreach targeting at-risk black communities; analyzing the administration of medications and health therapies by race, in an attempt to understand Berkeley health providers position vis a vis the systemic under-prescription and under-treatment of Black patients pain; tracking violent incidents targeting queer Black residents, and studying the availability of mental health resources and culturally competent healthcare for queer Black patients; identifying the largest sources of corporate environmental or carcinogenic pollution in Berkeley, and the racial demographics of people with prolonged exposure to those regions (i.e. workers and residents within range of toxic substances); identifying the locations of city waste storage/processing and the racial demographics of those most closely exposed; examining property taxes by neighborhood, and correlation to school resources and student racial demographics; examining the availability of stable and affordable Internet access, as necessary for all possible student activities offered and required by Berkeley public schools;
10. Collaborate with the Berkeley Unified School District and the Vision 2020 to see how this is correlated to household racial demographics; analyzing students' realistic access to extracurricular activities such as arts and athletics; race-based differential access means that some students have less access to educational opportunities that help with physical and mental health; identifying the levels of lead and other toxins in public school buildings, and correlation to resource allocation and racial demographics among schools.
11. Submit copies of this resolution to State Assemblymember Buffy Wicks, State Senator Nancy Skinner, Congresswoman Barbara Lee, Alameda County Supervisor Keith Carson, as well as various organizations such as the Berkeley NAACP, the African American Holistic Resource Center Steering Committee, and Healthy Black Families.

#### POLICY COMMITTEE RECOMMENDATION

On November 23, 2020, the Health, Life Enrichment, Equity & Community Committee made a qualified positive recommendation (M/S/C Bartlett/Hahn) for the City Council to take the following action:

1. Make the following statement:  
Declare Racism as a public health crisis and a threat and safety issue for the City of Berkeley, and commit the City of Berkeley to eliminating all racial and socioeconomic barriers to health equity.
2. Recommend that City Councilmembers consider working together or independently to convene a public session or sessions in their districts on racism as a public health crisis and threat and safety issue, to further public knowledge and input on these

important matters and help create a movement to address racial disparities in Berkeley.

3. Refer to the Mayor and City Manager to discuss how to incorporate programs and policies to address racial equity in the work of the City of Berkeley.
4. Refer to the City Manager and Office of Economic Development to consider how the City of Berkeley can support women and minority owned businesses through the COVID crisis and recovery period.
5. Refer to the City Manager to adapt the Richmond Health in All Policies Ordinance and return to Council a version for the City Council to consider adopting, or any other recommendation related to the proposed Ordinance.
6. Refer to the City Manager to consider requiring and providing antiracism, implicit bias, cultural sensitivity and cultural humility training for all City of Berkeley employees, and the City Council, and to consider ways to make such training accessible to the public via online or other training opportunities.
7. Refer to the City Manager to include an Anti-Racism dashboard on the City of Berkeley's new website, to consolidate information about racial disparities across all City of Berkeley services and initiatives.
8. Recommit to continuing the City of Berkeley's work with Berkeley Unified School District through the 2020 Vision process, and recommend adding a focus on extracurricular activities and access to enrichment and support outside of the classroom.

Vote: Ayes – Bartlett, Hahn; Noes – None; Abstain – None; Absent – Kesarwani.

#### BACKGROUND

There is clear data that proves racism negatively impacts the lives of people of color in the City of Berkeley and throughout the County and Nation.

Almost all 400 years of African American's experience was under enslavement and Jim Crow laws and upheld White Supremacy that provided preferential opportunity to some, while at the same time subjected people of color, especially African Americans to hardship and disadvantages in all areas of life.

Racism – not race - causes disproportionately high rates of homelessness, incarceration, poor education and health outcomes, and economic hardship for African Americans in this country.

Racism acts on systemic, institutional, and interpersonal levels, all of which operate throughout time and across generations.

Racism is an organized social system in which a dominant group categorizes and ranks people into social groups, "races", and uses its power to devalue, disempower, and differentially allocate valued societal resources and opportunities to groups classified as inferior. Racism can act in multiple domains, including structural/institutional, cultural, and individual-level discrimination, reinforcing ideologies of inferiority and hierarchy in media images, laws, interpersonal interactions, and opportunities. Structural or institutional racism embeds racism into policies and practices in society that provide advantages for racial groups deemed superior, while oppressing, disadvantaging, or neglecting racial groups viewed as inferior. Structural racism results in differential access to housing, employment, education, healthy food, clean air and drinking water, and exposure to violence, thus has a significant impact on public health.

Structural racism has profound public health impacts. Now, in this critical moment of a global pandemic caused by COVID-19, previous health disparities are being exacerbated by the lack of infrastructure and provisions of basic resources afforded to marginalized communities. While coronavirus does not seem to discriminate against whom it infects, it does have differential

impacts on people who were already in a compromised position in society, due to socioeconomic factors, access to healthcare and housing, and suffering from a compromised immune system due to the effects of stress, the trauma experience of discrimination and the impacts of living in communities that are disproportionately impacted by environmental injustice.

Reports are emerging, highlighting the disparity in the rates of COVID-19 outcomes for communities of color. Cities like Milwaukee, Washington DC, Detroit, Chicago, and New Orleans have experienced a disproportionate morbidity and mortality for black residents due to Coronavirus. The Congressional Black Caucus has called for all states to track public health data regarding coronavirus by race and ethnicity<sup>1</sup>. To this point, Representative Robin Kelly, Chair of the Congressional Black Caucus Healthcare Braintrust, stated: “the reason more Blacks are dying from COVID-19 is a result of a history of structural racism, environmental injustice, income inequality, and the lack of resources in Black communities, which have led to the prominence of health-related risk factors such as diabetes and hypertension.” According to data from the Centers for Disease Control, almost one-third of infections nationwide have affected black-Americans, even though blacks only represent 13% of the U.S. population. Additionally, an analysis done by the Associated Press found that nearly one-third of those who passed due to COVID-19 across the country are black.

### Racism Forms Defined:

- **Racism** - Racism is the belief that groups of humans possess different behavioral traits corresponding to physical appearance, and can be divided based on the superiority of one race over another.<sup>[1][2][3][4]</sup> It may also mean prejudice, discrimination, or antagonism directed against other people because they are of a different race or ethnicity.<sup>[2][3]</sup> Modern variants of racism are often based in social perceptions of biological differences between peoples. These views can take the form of social actions, practices or beliefs, or political systems in which different races are ranked as inherently superior or inferior to each other, based on presumed shared inheritable traits, abilities, or qualities.<sup>[2][3][5]</sup>
- **Environmental racism** - Environmental racism is a concept used to describe environmental injustice that occurs in practice and in policy within a racialized context.<sup>[1]</sup> In a national context, environmental racism criticizes inequalities between urban and exurban areas after white flight. Charges of environmental racism can also prompt usages of civil rights legislation like the Civil Rights Act of 1964 to prosecute environmental crimes in the areas in which racialized people live. Internationally, environmental racism can refer to the effects of the global waste trade, like the negative health impact of the export of electronic waste to China from developed countries.
- **Institutional/systemic racism** - Institutional racism (also known as systemic racism) is a form of racism expressed in the practice of social and political institutions. It is reflected in disparities regarding wealth, income, criminal justice, employment, housing, health care, political power, and education, among other factors. The term "institutional racism" was coined by Stokely Carmichael and Charles V. Hamilton. Carmichael and Hamilton wrote that while individual racism is often identifiable because of its overt nature, institutional racism is less perceptible because of its "less overt, far more subtle" nature. Institutional racism "originates in the operation of established and respected forces in the society, and thus receives far less public condemnation than [individual racism]".<sup>[2]</sup>
- **Interpersonal racism** - Interpersonal racism is a component of individual-level racism and has been defined as “directly perceived discriminatory interactions between individuals whether in their institutional roles or as public and private individuals” (Krieger, 1999, p. 301). Interpersonal racism includes maltreatment that the targeted

<sup>1</sup> <https://cbc.house.gov/news/documentsingle.aspx?DocumentID=2174>

individual attributes, at least in part, to conscious or unconscious racial/ethnic bias on the part of the perpetrator of the maltreatment.

- **Internalized racism** - Internalized racism is a form of internalized oppression, defined by sociologist Karen D. Pyke as the "internalization of racial oppression by the racially subordinated."<sup>[1]</sup> In her study *The Psychology of Racism*, Robin Nicole Johnson emphasizes that internalized racism involves both "conscious and unconscious acceptance of a racial hierarchy in which whites are consistently ranked above people of color."<sup>[2]</sup> These definitions encompass a wide range of instances, including, but not limited to, belief in negative racial stereotypes, adaptations to white cultural standards, and thinking that supports the status quo (i.e. denying that racism exists).<sup>[3]</sup>
- **Structural racism** - Structural Racism in the U.S. is the normalization and legitimization of an array of dynamics – historical, cultural, institutional, and interpersonal – that routinely advantage whites while producing cumulative and chronic adverse outcomes for people of color. It is a system of hierarchy and inequity, primarily characterized by white supremacy – the preferential treatment, privilege, and power for white people at the expense of Black, Latino, Asian, Pacific Islander, Native American, Arab, and other racially oppressed people.
- **Prejudice** - Prejudice<sup>[1]</sup> is an affective feeling towards a person based on their perceived group membership. The word is often used to refer to a preconceived, usually unfavorable, evaluation of another person based on that person's political affiliation, sex, gender, beliefs, values, social class, age, disability, religion, sexuality, race/ethnicity, language, nationality, beauty, occupation, education, criminality, sport team affiliation or other personal characteristics.<sup>[2]</sup>
- **Discrimination** - In human social behavior, discrimination is prejudiced treatment or consideration of, or making a distinction towards, a being based on the group, class, or category to which they are perceived to belong. These include age, caste, criminal record, height, disability, family status, gender identity, gender expression, generation, genetic characteristics, marital status, nationality, color, race and ethnicity, religion, sex and sex characteristics, sexual orientation, social class, species, as well as other categories. Discrimination consists of treatment of an individual or group, based on their actual or perceived membership in a certain group or social category, "in a way that is worse than the way people are usually treated".<sup>[1]</sup> It involves the group's initial reaction or interaction going on to influence the individual's actual behavior towards the group leader or the group, restricting members of one group from opportunities or privileges that are available to another group, leading to the exclusion of the individual or entities based on illogical or irrational decision making.<sup>[2]</sup>
- 
- **Systemic Racism:** Systemic racism today is composed of intersecting, overlapping, and codependent racist institutions, policies, practices, ideas, and behaviors that give an unjust amount of resources, rights, and power to white people while denying them to people of color. Developed by sociologist Joe Feagin, systemic racism is a popular way of explaining, within the social sciences and humanities, the significance of race and racism both historically and in today's world. Feagin describes the concept and the realities attached to it in his well-researched and readable book, *Racist America: Roots, Current Realities, & Future Reparations*. In it, Feagin uses historical evidence and demographic statistics to create a theory that asserts that the United States was founded in racism since the Constitution classified black people as the property of whites. Feagin illustrates that the legal recognition of racialized slavery is a cornerstone of a racist social system in which resources and rights were and are unjustly given to white people and unjustly denied to people of color. (thoughtco.com)
  - The effects of systemic racism are pervasive in Indigenous communities. The causal pathways driving racism and its negative effects are complex, intertwined, and deeply embedded in diverse systems, including economic, political, and psychosocial. Below are some examples of how systemic racism leads to health

inequities that are reflective of the broad disadvantage that Indigenous communities face:

- Colonial policies: Mandatory residential schools, the outlawing of Indigenous gatherings and ceremonies, forced community dislocations, and discriminatory child welfare legislation have had lasting and intergenerational effects on mental health, family relationships, and Indigenous language and culture.
- Limited healthy food choices: Dispossession of traditional lands has interfered with traditional economies and access to traditional foods; urban, rural, and remote Indigenous peoples often have inadequate access to affordable healthy and nutritious foods.
- Inadequate living conditions: Indigenous peoples living in cities and rural and remote communities are faced with inadequate housing and living conditions. For example, the peoples of Inuit Nunangat experience overcrowding and poor respiratory health from low-quality housing stock, leading to elevated rates of TB infection. There is also increased overcrowding in housing.
- Substandard health care: In addition to the differential access to acute cardiac imaging and intervention, studies describe high levels of perceived interpersonal racism toward Indigenous patients from health care providers across health care settings. Experiences of racism, including unfair treatment as a result of racism, have been reported in multiple Indigenous survey studies, across geographic settings, with prevalence rates ranging from 39 percent to 78 per cent. In some cases, this is so severe that Indigenous patients strategized on how to manage racism before seeking care in the emergency room.
- **Islamophobia** - Islamophobia is the fear, hatred of, or prejudice against the Islamic religion or Muslims generally, especially when seen as a geopolitical force or the source of terrorism.
- **Xenophobia** - Xenophobia is the fear or hatred of that which is perceived to be foreign or strange. It is an expression of the perceived conflict between an ingroup and an outgroup and may manifest in suspicion by one of the other's activities, a desire to eliminate their presence, and fear of losing national, ethnic, or racial identity.
- Anti-semitism - Anti-semitism is hostility to, prejudice, or discrimination against [Jews](#).<sup>[1][2][3]</sup> A person who holds such positions is called an anti-semite. Anti-semitism is generally considered to be a form of [racism](#). Anti-semitism may be manifested in many ways, ranging from expressions of hatred of or discrimination against individual Jews to organized by mobs, state police, or even military attacks on entire Jewish communities. Anti-zionism is not anti-semitism
- 
- **Intersectionality** - Intersectionality is a theoretical framework for understanding how aspects of one's social and political identities (e.g., gender, race, class, sexuality, disability, etc.) might combine to create unique modes of discrimination. It aims to broaden the agenda of the first waves of feminism, which largely focused on the experiences of white, middle-class women. The broad agenda means that intersectionality is used to find combinations of injustices that are felt by members of society. For example, a black woman might face discrimination from a company that is not distinctly due to her race (because the company does not discriminate against black men) nor her gender (because the company does not discriminate against white women), but by a unique combination of the two. Intersectional feminism aims to separate itself from white feminism by acknowledging the fact that all women have different experiences and identities.<sup>[1]</sup> It is a qualitative analytic framework that identifies how interlocking systems of power affect those who are most marginalized in society.<sup>[2]</sup>



- **Zionism** - Zionism ~~is~~ is a political ideology, a form of Jewish nationalism. Zionism is a set of beliefs that drove the founding of the State of Israel in Palestine. Also defined as the nationalist movement of the Jewish people that espouses the re-establishment of and support for a Jewish state in the territory defined as the historic Land of Israel (roughly corresponding to Canaan, the Holy Land, or the region of Palestine). Anti-Zionism is not anti-semitism, it is the opposition to Zionism, the racist, apartheid policies of the Israeli state. Anti-Zionism is Anti Racist.
- **"ISM"** - a system of oppression based on target identity (race, sex, etc)

Racism, sexism, heterosexism (homophobia), ageism, ableism, classism, xenophobia, religious prejudice, and other forms of oppression have damaged us all. All the -isms are connected.

Beyond this, the COVID-19 (Coronavirus) Pandemic has unleashed an increased amount of racism in this country. There have been a number of documented instances of harassment and physical violence targeting Asian people since the outbreak of the coronavirus, as well as the use of stigmatizing terms like "Chinese Virus" to denote COVID-19. The President of the United States has continued to spew hate, racism, xenophobia, and Islamophobia since he began campaigning for office. COVID-19 has exacerbated the President's racism towards our commUNITY members, and throughout the world, **as** a number of violent attacks have been made towards Asian Americans.

The World Health Organization defines "public health" as "the art and science of preventing disease, prolonging life and promoting health through the organized efforts of society" and those efforts "aim to provide conditions under which people can... be healthy, improve their health and well-being, or prevent the deterioration of their health."

The United States Office of Disease Prevention recognizes that discrimination negatively impacts health outcomes.

The negative repercussions of historical racism, including but not limited to, discriminatory lending practices of the 20th century known as "redlining," impact current outcomes regarding access to nutritious food, economic security, educational achievement, rates of lead poisoning, and infant mortality.

Research indicates that adverse childhood experiences are disproportionately experienced by black children when compared to white children thus having negative impacts on academic, behavioral, and physical health outcomes of black children.

Statistics show a national disparity between black and white infant mortality rates, and the State consistently ranks among the worst states concerning black infant mortality rates.

The rates of chronic diseases, including asthma, diabetes, and hypertension, are significantly higher in predominantly black neighborhoods.

The Department of Health and Human Services defines the social determinants of health as conditions in the environments in which people are born, live, learn, work, play, worship, and age, which affect a wide range of health, functioning, and quality-of-life outcomes and risks. Social determinants of health include access to resources like safe and affordable housing, education, public safety, availability of healthy foods, local emergency/health services, and environments free of life-threatening toxins. Beyond genetic predispositions or individual life choices, the World Health Organization notes that the social determinants of health predict a

person's life expectancy. By these means, structural racism threatens public health by hindering equitable access to the social determinants of health.

Utilizing an intersectional framework, it is clear that discrimination based on race can be linked to disadvantages for a number of people with marginalized identities, in particular the poor or unhoused, queer and trans, disabled, Muslim, immigrant, and Indigenous communities.<sup>JP</sup>

Massar because higher levels of discrimination are associated with an elevated risk to a broad range of diseases, for instance, contraction of heart disease, cancer, and HIV. And everyday over 200 Black people die prematurely due to health inequities between Whites and Blacks.

Like many cities in the United States, the City of Berkeley has a long history of racism. Studies conducted on Berkeley's employment practices and modes of policing have demonstrated structural racism and discrimination at the core of the City's functions. Waves of racial housing segregation, codified by redlining in the past, and currently operating through gentrification and displacement, is a major factor influencing racial/ethnic disparities in health outcomes. The 2018 Berkeley Health Status Report demonstrated that within the City of Berkeley, African Americans and other People of Color die prematurely and are more likely to experience a wide variety of adverse health conditions throughout their lives. Specifically, Black people make up a disproportionately high percentage of the city's homeless population, are less likely to attain higher education, are more likely to live in poverty, and have poorer health outcomes, morbidity, and mortality from cardiovascular disease, heart disease, cancers, and birth complications.

The Alameda County Department of Public Health has demonstrated racial/ethnic health disparity in our community, noting a 17-year difference in life expectancy between a child born in West Oakland and the Oakland Hills. Supervisor Keith Carson has begun a process of trying to address health inequities through the launch of the Health Matters Initiative.

Additionally, the City of Richmond also views racism as a major threat to public health and has adopted a Health in all Policies Ordinance in order to rectify health inequities. Other cities throughout the United States, like Kansas City, Milwaukee, Pittsburgh, and Cleveland, have also come to view racism as a public health crisis, passing legislation to turn the tide and ensure everyone (regardless of their race or ethnicity) has the opportunity to live healthy, fulfilling lives.

On any given night, more than 1,000 Berkeley residents do not have shelter (i.e. living outdoors in tents, on sidewalks, or in vehicles) according to the Alameda County 2019 Point-In-Time Count. A growing number of residents are housing insecure and at risk of becoming homeless. A majority of unhoused Berkeley residents are people of color, seniors, and disabled. Many have passed away.

The City of Berkeley should follow the example of other cities that have declared racism as a threat to public health. We should adopt a Health in All Policies Ordinance, and take all necessary legislative steps to ensure health equity in our city. Minimally this will involve the curation of a number of town hall sessions to hear the concerns of marginalized community members and with careful collaborations, develop a strategic plan for health equity. Additionally, the City should provide training on ways to reduce implicit bias for City employees and interested members of the community. This will allow us to critically evaluate our prejudices and take the initiative to reduce bias and remove racist barriers to the social determinants of health.

The City must recognize that racism is a public health crisis that affects all members of our society both locally and nationwide and deserves action from all levels of government and civil society.

The time is *now* to declare racism as a public health threat in our community. The time has come to change business as usual. We must confront the systemic racism that has permeated society throughout our lifetime. Because in the words of Ibram X. Kendi, “the only way to undo racism is to consistently identify and describe it - and then to dismantle it.”

The City Council should support the establishment of a working group to address these issues and to: seek solutions to reshape the discourse and actively engage all citizens in racial justice work; continue to work to build alliances with organizations that are confronting racism and encourage partners to recognize racism as a public health crisis; continue to promote racially equitable economic and workforce development; continue to promote racially equitable hiring and promotion of all employees including City employees; and advocate and draft relevant policies that prioritize the health of people of color and mitigate exposure to adverse childhood experiences and trauma in childhood.

California Government Code 54956.5 states: “An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.”

With multiple crises to contend with (COVID-19 pandemic, racism, etc), and all the reasons stated earlier, it is the utmost urgency to declare racism as a nuisance and a crisis to public health and safety in the City of Berkeley, as well as adopt it as an emergency measure for the immediate preservation of public peace, property, health or safety.

#### FISCAL IMPACTS OF RECOMMENDATION

It is estimated \$50,000 for hiring of facilitators and the coordination of 3-5 town hall sessions.

#### ENVIRONMENTAL SUSTAINABILITY

With a focus on health equity and the adoption of a ‘Health in All Policies ’ordinance, a number of environmental benefits should result in the City, including reduced air pollution, cleaner waterways, and reduced greenhouse gas emissions by being proactive about ending environmental racism.

#### CONTACT PERSON

Cheryl Davila  
Councilmember District 2  
510.981.7120  
[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

#### ATTACHMENTS:

1. Resolution
2. Racism - Public Health Crisis, published on May 5, 2017  
Leslie Gregory, Founder and Director of Right to Health in Portland, Oregon  
[https://www.youtube.com/watch?v=9oKg-870R3I&feature=emb\\_title](https://www.youtube.com/watch?v=9oKg-870R3I&feature=emb_title)
3. City of Richmond Health in All Policies Ordinance:  
<http://www.ci.richmond.ca.us/ArchiveCenter/ViewFile/Item/6999>

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

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF BERKELEY TO DECLARE RACISM AS A PUBLIC HEALTH CRISIS, A THREAT AND SAFETY ISSUE IN THE CITY OF BERKELEY

WHEREAS, Racism is defined as “an organized social system in which the dominant racial group categorizes and ranks people into social groups called “races” and uses its power to devalue, disempower, and differentially allocate valued societal resources and opportunities to groups defined as inferior”<sup>2</sup>; and

WHEREAS, Racism can take on many principal domains, including structural/institutional, cultural, and individual-level discrimination; and

WHEREAS, Racism Forms are defined as:

- **Racism** - Racism is the belief that groups of humans possess different behavioral traits corresponding to physical appearance, and can be divided based on the superiority of one race over another.<sup>[1][2][3][4]</sup> It may also mean prejudice, discrimination, or antagonism directed against other people because they are of a different race or ethnicity.<sup>[2][3]</sup> Modern variants of racism are often based in social perceptions of biological differences between peoples. These views can take the form of social actions, practices or beliefs, or political systems in which different races are ranked as inherently superior or inferior to each other, based on presumed shared inheritable traits, abilities, or qualities.<sup>[2][3][5]</sup>
- **Environmental racism** - Environmental racism is a concept used to describe environmental injustice that occurs in practice and in policy within a racialized context.<sup>[1]</sup> In a national context, environmental racism criticizes inequalities between urban and exurban areas after white flight. Charges of environmental racism can also prompt usages of civil rights legislation like the Civil Rights Act of 1964 to prosecute environmental crimes in the areas in which racialized people live. Internationally, environmental racism can refer to the effects of the global waste trade, like the negative health impact of the export of electronic waste to China from developed countries.
- **Institutional/systemic racism** - Institutional racism (also known as systemic racism) is a form of racism expressed in the practice of social and political institutions. It is reflected in disparities regarding wealth, income, criminal justice, employment, housing, health care, political power, and education, among other factors. The term "institutional racism" was coined by Stokely Carmichael and Charles V. Hamilton. Carmichael and Hamilton wrote that while individual racism is often identifiable because of its overt nature, institutional racism is less perceptible because of its "less overt, far more subtle" nature. Institutional racism "originates in the operation of established and respected forces in the society, and thus receives far less public condemnation than [individual racism]".<sup>[2]</sup>

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<sup>2</sup> Williams, David R., Jourdyn A. Lawrence, and Briggette A. Davis. "Racism and health: evidence and needed research." *Annual review of public health* 40 (2019): 105-125.

- **Interpersonal racism** - Interpersonal racism is a component of individual-level racism and has been defined as “directly perceived discriminatory interactions between individuals whether in their institutional roles or as public and private individuals” (Krieger, 1999, p. 301). Interpersonal racism includes maltreatment that the targeted individual attributes, at least in part, to conscious or unconscious racial/ethnic bias on the part of the perpetrator of the maltreatment.
- **Internalized racism** - Internalized racism is a form of internalized oppression, defined by sociologist Karen D. Pyke as the "internalization of racial oppression by the racially subordinated."<sup>[1]</sup> In her study *The Psychology of Racism*, Robin Nicole Johnson emphasizes that internalized racism involves both "conscious and unconscious acceptance of a racial hierarchy in which whites are consistently ranked above people of color."<sup>[2]</sup> These definitions encompass a wide range of instances, including, but not limited to, belief in negative racial stereotypes, adaptations to white cultural standards, and thinking that supports the status quo (i.e. denying that racism exists).<sup>[3]</sup>
- **Structural racism** - Structural Racism in the U.S. is the normalization and legitimization of an array of dynamics – historical, cultural, institutional, and interpersonal – that routinely advantage whites while producing cumulative and chronic adverse outcomes for people of color. It is a system of hierarchy and inequity, primarily characterized by white supremacy – the preferential treatment, privilege, and power for white people at the expense of Black, Latino, Asian, Pacific Islander, Native American, Arab, and other racially oppressed people.
- **Prejudice** - Prejudice<sup>[1]</sup> is an affective feeling towards a person based on their perceived group membership. The word is often used to refer to a preconceived, usually unfavorable, evaluation of another person based on that person's political affiliation, sex, gender, beliefs, values, social class, age, disability, religion, sexuality, race/ethnicity, language, nationality, beauty, occupation, education, criminality, sport team affiliation or other personal characteristics.<sup>[2]</sup>
- **Discrimination** - In human social behavior, discrimination is prejudiced treatment or consideration of, or making a distinction towards, a being based on the group, class, or category to which they are perceived to belong. These include age, caste, criminal record, height, disability, family status, gender identity, gender expression, generation, genetic characteristics, marital status, nationality, color, race and ethnicity, religion, sex and sex characteristics, sexual orientation, social class, species, as well as other categories. Discrimination consists of treatment of an individual or group, based on their actual or perceived membership in a certain group or social category, "in a way that is worse than the way people are usually treated".<sup>[1]</sup> It involves the group's initial reaction or interaction going on to influence the individual's actual behavior towards the group leader or the group, restricting members of one group from opportunities or privileges that are available to another group, leading to the exclusion of the individual or entities based on illogical or irrational decision making.<sup>[2]</sup>
- **Systemic Racism:** Systemic racism today is composed of intersecting, overlapping, and codependent racist institutions, policies, practices, ideas, and behaviors that give an unjust amount of resources, rights, and power to white people while denying them to people of color. Developed by sociologist Joe Feagin, systemic racism is a popular way of explaining, within the social sciences and humanities, the significance of race and racism both historically and in today's world. Feagin describes the concept and the realities attached to it in his well-researched and readable book, *Racist America: Roots, Current Realities, & Future Reparations*. In it, Feagin uses historical evidence and demographic statistics to create a theory that asserts that the United States was founded in racism since the Constitution classified black people as the property of whites. Feagin illustrates that the legal recognition of racialized slavery is a cornerstone of a racist social system in which resources and rights were and are unjustly given to white people and unjustly denied to people of color. (thoughtco.com)

- The effects of systemic racism are pervasive in Indigenous communities. The causal pathways driving racism and its negative effects are complex, intertwined, and deeply embedded in diverse systems, including economic, political, and psychosocial. Below are some examples of how systemic racism leads to health inequities that are reflective of the broad disadvantage that Indigenous communities face:
  - Colonial policies: Mandatory residential schools, the outlawing of Indigenous gatherings and ceremonies, forced community dislocations, and discriminatory child welfare legislation have had lasting and intergenerational effects on mental health, family relationships, and Indigenous language and culture.
  - Limited healthy food choices: Dispossession of traditional lands has interfered with traditional economies and access to traditional foods; urban, rural, and remote Indigenous peoples often have inadequate access to affordable healthy and nutritious foods.
  - Inadequate living conditions: Indigenous peoples living in cities and rural and remote communities are faced with inadequate housing and living conditions. For example, the peoples of Inuit Nunangat experience overcrowding and poor respiratory health from low-quality housing stock, leading to elevated rates of TB infection. There is also increased overcrowding in housing.
  - Substandard health care: In addition to the differential access to acute cardiac imaging and intervention, studies describe high levels of perceived interpersonal racism toward Indigenous patients from health care providers across health care settings. Experiences of racism, including unfair treatment as a result of racism, have been reported in multiple Indigenous survey studies, across geographic settings, with prevalence rates ranging from 39 percent to 78 per cent. In some cases, this is so severe that Indigenous patients strategized on how to manage racism before seeking care in the emergency room.
- **Islamophobia** - Islamophobia is the fear, hatred of, or prejudice against the Islamic religion or Muslims generally, especially when seen as a geopolitical force or the source of terrorism.
- **Xenophobia** - Xenophobia is the fear or hatred of that which is perceived to be foreign or strange. It is an expression of the perceived conflict between an ingroup and an outgroup and may manifest in suspicion by one of the other's activities, a desire to eliminate their presence, and fear of losing national, ethnic, or racial identity.
- **Anti-semitism** - Anti-semitism is hostility to, prejudice, or discrimination against [Jews](#).<sup>[1][2][3]</sup> A person who holds such positions is called an anti-semite. Anti-semitism is generally considered to be a form of [racism](#). Anti-semitism may be manifested in many ways, ranging from expressions of hatred of or discrimination against individual Jews to organized by mobs, state police, or even military attacks on entire Jewish communities. Anti-zionism is not anti-semitism
- **Intersectionality** - Intersectionality is a theoretical framework for understanding how aspects of one's social and political identities (e.g., gender, race, class, sexuality, disability, etc.) might combine to create unique modes of discrimination. It aims to broaden the agenda of the first waves of feminism, which largely focused on the experiences of white, middle-class women. The broad agenda means that intersectionality is used to find combinations of injustices that are felt by members of society. For example, a black woman might face discrimination from a company that is not distinctly due to her race (because the company does not discriminate against black men) nor her gender (because the company does not discriminate against white women), but by a unique combination of the two. Intersectional feminism aims to separate itself from white feminism by acknowledging the fact that all women have

different experiences and identities.<sup>[1]</sup> It is a qualitative analytic framework that identifies how interlocking systems of power affect those who are most marginalized in society.<sup>[2]</sup>

- **Zionism** - Zionism ~~is~~ is a political ideology, a form of Jewish nationalism. Zionism is a set of beliefs that drove the founding of the State of Israel in Palestine. Also defined as the nationalist movement of the Jewish people that espouses the re-establishment of and support for a Jewish state in the territory defined as the historic Land of Israel (roughly corresponding to Canaan, the Holy Land, or the region of Palestine). **Anti-Zionism is not anti-semitism, it is the opposition to Zionism, the racist, apartheid policies of the Israeli state. Anti-Zionism is Anti Racist.**
- **“ISM”** - a system of oppression based on target identity (race, sex, etc)

WHEREAS, Racism, sexism, heterosexism (homophobia), ageism, ableism, classism, xenophobia, religious prejudice, and other forms of oppression have damaged us all. All the -isms are connected; and

WHEREAS, Structural racism is supported by and reinforced in multiple societal systems, including the housing, labor, and credit markets, as well as education, criminal justice, the economy, and health care systems; and

WHEREAS, Sequencing the human genome has revealed that racial groups are not genetically discrete, reliably measured, or scientifically meaningful, and thus “race” is a social construction, not a biological category<sup>3</sup>; and

WHEREAS, A number of epidemiological studies have demonstrated the negative impacts of racism on both physical and mental health<sup>4</sup>, with racism acting through a number of pathways to increase stress and allostatic load, which have been associated with chronic disease and mortality, diminish participation in healthy behaviors, and result in greater exposure to physical violence; and

WHEREAS, almost all of the 400 years of Black American’s experience under slavery and Jim Crow laws has allowed preferential opportunity to some while at the same time subjected people of color to hardship and disadvantage in all areas of life; and

WHEREAS, still now, racism – not race- causes disproportionately high rates of homelessness, incarceration, poor education and health outcomes, and economic hardship for African Americans; and

WHEREAS, racism acts on systemic, institutional, interpersonal level and psychological levels, all of which operate throughout time and across generations; and

WHEREAS, this Council believes that the time is now to declare racism a public health crisis in our community; and

WHEREAS, the World Health Organization defines “public health” as “the art and science of preventing disease, prolonging life and promoting health through the organized efforts of

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<sup>3</sup> Smedley, Audrey, and Brian D. Smedley. "Race as biology is fiction, racism as a social problem is real: Anthropological and historical perspectives on the social construction of race." *American Psychologist* 60.1 (2005): 16.

<sup>4</sup> Paradies, Yin, et al. "Racism as a determinant of health: a systematic review and meta-analysis." *PLoS one* 10.9 (2015): e0138511.



society” and those efforts “aim to provide conditions under which people can... be healthy, improve their health and well-being, or prevent the deterioration of their health”; and

WHEREAS, the United States Office of Disease Prevention recognizes that discrimination negatively impacts health outcomes; and

WHEREAS, the Social Determinants of Health – the social and material factors that influence health outcomes - impact life-long outcomes beginning even before birth; and

WHEREAS, the negative repercussions of historical racism, including but not limited to discriminatory lending practices of the 20th century known as “redlining,” impact current outcomes regarding access to nutritious food, economic security, educational achievement, rates of lead poisoning, wealth accumulation, and infant mortality; and

WHEREAS, research indicates that adverse childhood experiences are disproportionately experienced by black children when compared to white children thus having negative impacts on academic, behavioral, and physical health outcomes of black children; and

WHEREAS, The United States Department of Health and Human Services defines social determinants of health as “conditions in the environments in which people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks,” and has highlighted access to resources like safe and affordable housing, education, public safety, availability of healthy foods, local emergency/health services, and environments free of life-threatening toxins as major foci for community health promotion<sup>5</sup>; and

WHEREAS, Principally racism works to compromise public health by hindering equitable access to housing, employment, education, and safety, which are social determinants of health; and

WHEREAS, On any given night, more than 1,000 Berkeley residents do not have shelter (i.e. living outdoors in tents, on sidewalks, or in vehicles) according to the Alameda County 2019 Point-In-Time Count. A growing number of residents are housing insecure and at risk of becoming homeless. A majority of unhoused Berkeley residents are people of color, seniors, and disabled. Many have passed away; and

WHEREAS, The Alameda County Public Health Department has stated their vision for health equity in our county, declaring that “every resident – no matter who you are, where you live, how much money you make, or the color of your skin – should have the opportunity to lead a healthy, fulfilling, and productive life”; and

WHEREAS, The neighboring City of Richmond has established a Health Equity Partnership with the goal of addressing “avoidable inequalities by equalizing the conditions for health for all groups, especially for those who have experienced socioeconomic disadvantage or historical injustices (such as racism)”<sup>6</sup> and adopted a Health in All Policies Ordinance; and

WHEREAS, Health in All Policies is a healthcare framework proposed by the World Health Organization, also known as “healthy public policy,” which acknowledges health begins in the places that people live, work, learn, worship, and play, and more so than individual choices,

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<sup>5</sup> <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-of-health>

<sup>6</sup> <http://www.ci.richmond.ca.us/2574/Richmond-Health-Equity-Partnership-RHEP>

health is influenced by a plethora of societal factors, such as policies related to agriculture, education, the environment, fiscal planning, housing, and transport<sup>7</sup>; and

WHEREAS, The City of Richmond has developed a toolkit for implementation of Health in All Policies and views this ordinance as an “integrated and comprehensive approach to bring health, well-being, and equity considerations into the development and implementation of policies, programs, and services of traditionally non-health related government systems or agencies”<sup>8</sup>

WHEREAS, Other cities in the country have introduced legislation declaring racism a threat to public health, for instance, Pittsburgh, PA,<sup>9</sup> proposed a trio of bills that would declare racism a public health crisis in the City, establish a leadership forum, and invest in a fund to eliminate racial inequalities and barriers; and

WHEREAS, Milwaukee, WI,<sup>10</sup> passed legislation declaring racism a public health crisis and is undergoing a process to advocate for policies that improve health for communities of color and will train city employees to understand how racism impacts residents; and

WHEREAS, Kansas City, MI,<sup>11</sup> introduced a resolution likewise declaring racism a public health crisis, tasking the city manager to establish a comprehensive plan to address inequities that leave black men and other people of color vulnerable to early death; and

WHEREAS, Cleveland, OH, passed a resolution also declaring racism to be a public health crisis, creating a working group to promote racial equity in their City that seeks solutions to reshape the discourse and actively engage all citizens in racial justice work; continues to work to build alliances with organizations that are confronting racism and encourage partners to recognize racism as a public health crisis; continues to promote racially equitable economic and workforce development; continues to promote racially equitable hiring and promotion of all employees including City employees; and advocates and draft relevant policies that prioritize the health of people of color and mitigate exposure to adverse childhood experiences and trauma in childhood; and

WHEREAS, Increasing opportunities for good health requires investment in the municipality and community infrastructure by facilitating access to parks, safe walkable streets, grocery stores, quality housing, public transportation, good jobs, strong local business, and financial institutions, as well as clean air and water; and

WHEREAS, The Alameda County Place Matters Initiative<sup>12</sup>, spearheaded by Supervisor Keith Carson, was successful in its attempts to address and analyze social determinants of health, including criminal justice, economics, education, housing, land-use, and transportation; and

WHEREAS, The City of Berkeley’s Strategic Plan includes goals to ‘Champion and demonstrate social and racial equity ’and ‘Be a global leader in... advancing environmental justice’; and

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<sup>7</sup> [http://www.euro.who.int/\\_data/assets/pdf\\_file/0003/109146/E89260.pdf](http://www.euro.who.int/_data/assets/pdf_file/0003/109146/E89260.pdf)

<sup>8</sup> <http://www.ci.richmond.ca.us/DocumentCenter/View/27173/Tool-Kit-DRAFT-52813-v3?bidId=>

<sup>9</sup> <https://triblive.com/local/pittsburgh-allegheeny/pittsburgh-councilmen-want-racism-to-be-treated-as-a-public-health-crisis/>

<sup>10</sup> <https://ips-dc.org/racism-is-a-public-health-crisis/>

<sup>11</sup> <https://www.kansascity.com/opinion/editorials/article234471712.html>

<sup>12</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3945449/>

WHEREAS, The City of Berkeley Health Status Report of 2018<sup>13</sup> demonstrated that in Berkeley, African Americans and other People of Color die prematurely and are more likely than White people to experience a wide variety of adverse health conditions throughout their lives; and

WHEREAS, The Health Status Report specifically highlights how African Americans make up a disproportionately high percentage of Berkeley's homeless population (50%), earn 3.4x less than White families, are 2.8x less likely to have a college degree, and have a 9x higher teenage birth rate than White families, and additionally, at every life-stage African Americans have poorer health outcomes, including lower birth weight, cardiovascular disease, heart disease, cancer, asthma, and hypertension; and

WHEREAS, Berkeley's historical legacy of redlining (the process by which mortgage lenders determined the value of neighborhoods and whether to provide loans in those areas according to the racial composition and socioeconomic status of residents) has had a lingering impact of racial/ethnic segregation and the ability of Black families to build intergenerational wealth through home-ownership, particularly in South Berkeley and District 2<sup>14</sup>; and

WHEREAS, Gentrification, the process by which the influx of capital and higher-income, higher educated residents, move into working-class neighborhoods, has strongly impacted the Bay Area and has resulted in displacement (forced movement attributable to changes in housing conditions) in 48% of neighborhoods<sup>15</sup>; and

WHEREAS, Between the years 2000-2015, Berkeley (specifically District 2), has experienced a change in median rent over 50%, resulting in displacement of low-income communities of color<sup>16</sup>; and

WHEREAS, The Center for Disease Control has linked gentrification with negative health outcomes for women, children, the elderly, and racial/ethnic minorities, through processes which trigger stress, and increase exposure to injury, violence and crime, mental health disorders, and social and environmental hazards<sup>17</sup>; and

WHEREAS, The City of Berkeley as an employer has come under scrutiny for the way it has discriminated against Black employees, warranting investigations by an outside consulting firm (Mason Tillman)<sup>18</sup> to assess the response to labor grievances raised by people of color; and

WHEREAS, An investigative study by the Center for Policing Equity also demonstrated discrimination by Berkeley Police in their detainment and treatment of people color, noting that Black people were 6.5x more likely to be stopped by BPD than White people while driving, and 4.5x more likely to be stopped on foot, and additionally Black people were 4x more likely to be searched compared to Whites<sup>19</sup>; and

WHEREAS, In addition to struggling with racism, the City of Berkeley is confronted with issues of Islamophobia, xenophobia, transphobia, and the dehumanization of homeless people; and

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<sup>13</sup> [https://www.cityofberkeley.info/uploadedFiles/Health\\_Human\\_Services/Level\\_3\\_-\\_Public\\_Health/health-status-summary-report-2018.pdf](https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Level_3_-_Public_Health/health-status-summary-report-2018.pdf)

<sup>14</sup> <https://www.berkeleyside.com/2018/09/20/redlining-the-history-of-berkeleys-segregated-neighborhoods>

<sup>15</sup> [https://www.urbandisplacement.org/sites/default/files/images/urban\\_displacement\\_project\\_-\\_executive\\_summary.pdf](https://www.urbandisplacement.org/sites/default/files/images/urban_displacement_project_-_executive_summary.pdf)

<sup>16</sup> <https://www.urbandisplacement.org/rentchangemap>

<sup>17</sup> <https://www.cdc.gov/healthyplaces/healthtopics/gentrification.htm>

<sup>18</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_General/Mason%20Tillman%20Associates%20Report%20051614.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Mason%20Tillman%20Associates%20Report%20051614.pdf)

<sup>19</sup> <https://www.berkeleyside.com/wp-content/uploads/2018/05/Berkeley-Report-May-2018.pdf>

WHEREAS, Implicit bias is defined as the attitudes or stereotypes that affect our understanding, actions, and decisions in a subconscious manner, encompassing both favorable and unfavorable assessments that cause us to have feelings and attitudes about other people based on characteristics such as race, ethnicity, age, gender, and appearance<sup>20</sup>; and

WHEREAS, A number of tools, programs, and trainings exist to help individuals and organizations reduce their implicit bias, with strategies involving stereotype replacement, counter-stereotypic imaging, individuation, perspective taking, increasing opportunities for contact with individuals from different groups, and partnership building<sup>21</sup>; and

WHEREAS, The Congressional Black Caucus sent a letter to the Center of Disease Control asking for states to report statistics of COVID-19 morbidity and mortality by race and ethnicity, and data emerged that Black people in Milwaukee and Illinois are dying of coronavirus at disproportionately high rates<sup>22</sup>; and

WHEREAS, The Centers for Disease Control finds that almost one-third of infections nationwide have affected black-Americans, even though blacks only represent 13% of the U.S. population; nearly one-third of those who passed due to COVID-19 across the country are black; and

WHEREAS, this Council recognizes that racism is a public health crisis that affects all members of our society both locally and nationwide and deserves action from all levels of government and civil society; and

WHEREAS, this Council supports the establishment of a working group to address these issues and to: seek solutions to reshape the discourse and actively engage all citizens in racial justice work; continue to work to build alliances with organizations that are confronting racism and encourage partners to recognize racism as a public health crisis; continue to promote racially equitable economic and workforce development in the city; continue to promote racially equitable hiring and promotion of all employees including City employees; and advocate and draft relevant policies that prioritize the health of people of color and mitigate exposure to adverse childhood experiences and trauma in childhood; and

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley declare racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley, and commit to eliminate all socioeconomic barriers to health equity;

BE IT FURTHER RESOLVED, Declare the resolution an emergency measure for the immediate preservation of public peace, property, health, or safety, especially during the COVID-19 pandemic and it shall take effect and be in force immediately upon its adoption.

BE IT FURTHER RESOLVED, A Budget Referral to convene a series of town hall sessions for all community members, City workers, and small business owners to discuss the concerns of people of color and marginalized community members, and develop strategies and programs (especially Mental Health Programs for the unhoused stay housed) for greater inclusivity, understanding, empathy, compassion, and unity. The purpose of these meetings should be to strengthen anti-racist capacity building and commitments within the city. This can be done by discussing the current quantitative and qualitative reality of racial justice and injustice, racism and non-racism in all areas of city life toward developing measures to ensure the achievement

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<sup>20</sup> <http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/>

<sup>21</sup> <http://www.ihl.org/communities/blogs/how-to-reduce-implicit-bias>

<sup>22</sup> [https://cbc.house.gov/uploadedfiles/cbc-cbc\\_health\\_braintrust\\_racial\\_disparities\\_letter\\_to\\_cdc.pdf](https://cbc.house.gov/uploadedfiles/cbc-cbc_health_braintrust_racial_disparities_letter_to_cdc.pdf)

racial equity in Berkeley. These town halls, strategies and programs could include: the definition and lived experience of racism in systemic and institutional forms the effects and trauma caused by them, and provide resources to combat implicit bias on all levels. Community partners to consider to facilitate such workshops include Beyond Diversity: Courageous Conversations About Race and Showing Up for Racial Justice (SURJ).

BE IT FURTHER RESOLVED, City Council will establish a working group to promote racial equity as well as the development of programs to address racial equity in this City.

BE IT FURTHER RESOLVED, Direct the City Manager or his/her designee to record COVID-19 data by race/ethnicity and to explore greater health disparities that have emerged as a result of this crisis.

BE IT FURTHER RESOLVED, Direct the City Manager or his/her designee to hold several fundraisers at town hall sessions for black-owned small businesses, research of state and federal RFPs for the purpose of grants acquisitions for program development in the City of Berkeley that have been affected by Covid-19 and/or recent protests.

BE IT FURTHER RESOLVED, Direct the City Manager or his/her designee to prepare a Health in All Policies Ordinance (see attached City of Richmond Ordinance) for Council review and adoption, critically evaluating the public health impact of all legislative and budgetary proposals, especially upon people of color and marginalized community members.

BE IT FURTHER RESOLVED, Direct the City Manager or his/her designee to adopt a mandatory requirement of 16 hours of ongoing annual online and in-person training on implicit bias, cultural sensitivity, and cultural humility for City Employees, commissioners, and community members; and

BE IT FURTHER RESOLVED, Direct the City Manager or his/her designee in partnership with the Berkeley Public Health Division and the Mental Health Division to develop a Strategic Plan for Health Equity, with the inclusion of a diverse group of staff with expertise in this subject matter and begin immediate implementation of recommendations.

BE IT FURTHER RESOLVED, Direct the City Manager or his/her designee to have an antiracism dashboard that delineates and tracks progress towards specific antiracist goals. This would involve: 1) tracking and measuring specific data that shows the extent to which racism has become a public health crisis; which would in turn enable 2) the City and the Community to dramatically reduce instances of racism, if not totally eliminate some of them; and 3) demonstrate to constituents that the other recommendations have made, and must continue to make, a tangible difference. The dashboard shall include: analyzing hospital infant mortality by race; tracking food insecurity among Berkeley residents, and correlation to racial demographics; analyzing the effects of biological weathering and resultant mental health challenges on immune strength for black individuals, and studying mental health resource availability and outreach targeting at-risk black communities; analyzing the administration of medications and health therapies by race, in an attempt to understand Berkeley health providers position vis a vis the systemic under-prescription and under-treatment of Black patients pain; tracking violent incidents targeting queer Black residents, and studying the availability of mental health resources and culturally competent healthcare for queer Black patients; identifying the largest sources of corporate environmental or carcinogenic pollution in Berkeley, and the racial demographics of people with prolonged exposure to those regions (i.e. workers and residents within range of toxic substances); identifying the locations of city waste storage/processing and the racial demographics of those most closely exposed; examining property taxes by

neighborhood, and correlation to school resources and student racial demographics; examining the availability of stable and affordable Internet access, as necessary for all possible student activities offered and required by Berkeley public schools;

BE IT FURTHER RESOLVED, Collaborate with the Berkeley Unified School District and the Vision 2020 to see how this is correlated to household racial demographics; analyzing students' realistic access to extracurricular activities such as arts and athletics; race-based differential access means that some students have less access to educational opportunities that help with physical and mental health; identifying the levels of lead and other toxins in public school buildings, and correlation to resource allocation and racial demographics among schools.

BE IT FURTHER RESOLVED, Submit copies of this resolution to State Assemblymember Buffy Wicks, State Senator Nancy Skinner, Congresswoman Barbara Lee, Alameda County Supervisor Keith Carson, as well as various organizations such as the Berkeley NAACP, the African American Holistic Resource Center Steering Committee, and Healthy Black Families.



Racism - Public Health Crisis

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White On Race  
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Leslie Gregory, founder and director of Right to Health in Portland, Oregon, makes her case to the CDC (Center for Disease Control) for racism being a public health threat.

[https://www.youtube.com/watch?v=9oKg-870R3I&feature=emb\\_title](https://www.youtube.com/watch?v=9oKg-870R3I&feature=emb_title)



**ORDINANCE NO. 27-15 N.S.**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF RICHMOND AMENDING ARTICLE IX OF THE MUNICIPAL CODE OF THE CITY OF RICHMOND. THIS ORDINANCE AMENDS THE HEALTH IN ALL POLICIES ORDINANCE.

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The Council of the City of Richmond do ordain as follows:

Section I. Amendment of Chapter 9.15. Chapter 9.15 of the Municipal Code of the City of Richmond is hereby amended to read as follows:

**CHAPTER 9.15**

**HEALTH IN ALL POLICIES**

**Sections:**

**9.15.010 Findings**

**9.15.020 Definitions**

**9.15.030 Health in All Policies Implementation**

**9.15.010 Findings.**

- (a) Health starts where we live, learn, work and play, and everyday decisions within the City of Richmond can promote greater health and equity.
- (b) All Richmond residents should have the opportunity to make the choices that allow them to live a long, healthy life, regardless of their job, neighborhood of residence, level of education, immigration status, sexual orientation, ethnic background or religion.
- (c) Good health enhances quality of life, improves workforce productivity, increases the capacity for learning, strengthens families and communities, supports environmental sustainability and helps reduce overall economic and social insecurity.
- (d) In the City of Richmond, those at greatest risk for poor health outcomes are low-income residents of color, especially African Americans residents, who have a shorter life expectancy than other county residents.
- (e) In comparison to other cities in Contra Costa County, Richmond residents experience the highest proportion of deaths from diabetes, a higher than average rate of children requiring hospitalization due to asthma, and the second highest number of hospitalizations for mental health disorders and substance abuse.
- (f) Richmond residents are also disproportionately affected by heart disease, cancer and stroke.
- (g) Recognizing the presence of critical health disparities in the community and the opportunity to intervene on health outcomes, the City has developed and defined public health broadly in the Community Health and Wellness Element of the General Plan 2030.
- (h) Health in All Policies is an approach to operationalizing the vision of health laid out in the Richmond General Plan 2030 and to creating institutional change by prioritizing health and health equity in all policies.
- (i) Health in All Policies is fundamentally about creating systems-level change both within City departments and in the community.
- (j) In developing strategies to address health disparities, it is important to recognize that at its heart, promoting equity is not just about providing more services.



- (k) It is also about how services are developed, prioritized and delivered.
- (l) The Health in All Policies strategy guides the City of Richmond on how to address the social determinants of health, or the root causes of current health disparities in the development, prioritization and delivery of these services and policies.
- (m) The City of Richmond's Health in All Policies is designed to be consistent with the State of California's Health in All Policies Plan and the California Health and Safety Code Section 131019.5.

**9.15.020 Definitions.**

The definitions in this section apply throughout this ordinance unless the context clearly requires otherwise:

- (a) "Health in All Policies" (HiAP) is both a process and a goal.
  - (1) The goal of HiAP is to address inequities at the systems, policy and structural levels to eliminate the resulting health disparities.
  - (2) At the root of the HiAP is an approach to improving health of all people by incorporating health considerations into collaborative decision-making across sectors, agencies, and departments. HiAP brings city departments and community groups together to identify ways in which all policies can take health outcomes into consideration. The HiAP process places health at the center of all work, and through discussion and compromise, gains stakeholder buy-in from all agencies, groups, and departments.
  - (3) Health in All Policies works to create a new policy and organizing framework within city government and beyond in the community. It emphasizes the consequences of public policies, plans, and programs on health determinants, and aims to improve health outcomes at all levels of government within the city and those agencies responsible for serving Richmond residents.
  - (4) Robust stakeholder engagement is essential for ensuring that Health in All Policies is responsive to community needs. Community-based knowledge provides important information about opportunities and barriers for health and insight into the ways in which policies may impede or promote health.
- (b) "Health" is not simply the absence of disease, but the state of complete physical, mental, cultural and social well-being. HiAP is based on the premise that good health is fundamental for a strong economy and vibrant society, and that health outcomes are largely dependent on the social determinants of health, which in turn are shaped by decisions made within the health sector and internally and externally outside of the health sector.
- (c) "Health equity" refers to efforts to ensure that all people have full and equal access to opportunities that enable them to lead healthy lives, while respecting differences that include but are not limited to culture, language, race, gender, sexuality, economic status, citizenship, ability, age and religion.
  - (1) Health equity entails focused societal efforts to address avoidable inequalities by equalizing the conditions for health for all groups, especially for those who have experienced socioeconomic disadvantage or historical injustices.
  - (2) These communities include, but are not limited to women, people of color, low-income individuals and families, individuals who have been incarcerated, individuals with disabilities, individuals with mental health

conditions, children, youth and young adults, seniors, immigrants and refugees, individuals who are limited-English proficient (LEP), and lesbian, gay, bisexual, transgender, questioning, intersex and asexual (LGBTQIA) communities, or combinations of these populations.

- (d) “Health disparities” are differences of presence of disease, health outcomes, or access to care among distinct segments of the population, including differences that occur by race or ethnicity, gender identity, sexual orientation, education or income, immigration status, age, disability or functional impairment, or geographic location, or the combination of any of these factors.
- (e) “Health inequities” are health disparities resulting from factors that are systemic and avoidable and, therefore, considered unjust or unfair.
- (f) Determinants of health equity include the social, economic, geographic, political, institutional and physical environmental conditions that lead to the creation of a fair and just society.
- (g) “Social determinants of health” refer to everything outside of direct health care services, such as the conditions in the environment in which people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks. The social determinants of health include but are not limited to:
  - (1) The availability of resources to meet our daily needs (e.g. safe housing, access to healthy and affordable food).
  - (2) Access to educational, economic, and job opportunities that lead to sustainable employment.
  - (3) Neighborhood safety and communities free of crime, violence, and social disorder (e.g. presence of trash and other forms of blight); and
  - (4) Accessible built environments that promote health and safety, including improved pedestrian, bicycle, and automobile safety, parks and green space, and healthy school siting.
  - (5) Social norms and attitudes (e.g. discrimination and racism), socioeconomic conditions (e.g. concentrated poverty and the chronically stressful conditions that accompany it).
- (h) “Toxic stress” refers to prolonged and repeated exposure to multiple negative factors, especially in early childhood. Contributing factors include but are not limited to racial profiling, poor air quality, residential segregation and economic insecurity. Toxic stress has known physical and mental health impacts and contributes to a host of chronic conditions such as heart disease and diabetes. Toxic stress has also been shown to have negative intergenerational health effects. Toxic stress does not refer to individual stressful events, but rather the unrelieved accumulation of these events over one’s life.

**9.15.030 Health in All Policies Implementation.**

To effectively implement and maintain Health in All Policies the City shall:

- (a) Apply health equity and social justice foundational practices to City actions and endeavor to integrate these practices into the city’s strategic, operational and business plans; management and reporting systems for accountability and performance; and budgets in order to eliminate inequities and create opportunities for all people and neighborhoods;

- (b) Use the Health in All Policies Strategy Document as the guiding plan for implementing Health in All Policies in the City. The strategy document will outline the vision, mission and goals, and identify a timeline as well as the process to reach these goals. The strategy document will be a living plan that is designed to grow over time as progress is made and the needs of the community and City change;
- (c) Establish the Interdepartmental Health in All Policies Team. The Interdepartmental team will be comprised of representatives from each department within the City and are responsible for:
  - (1) Selecting health and health equity indicators for each department to track as a way of prioritizing goals and measuring progress aligned with existing City guiding documents (General Plan, 5 Year Strategic Business Plan, etc.);
  - (2) Attending regularly scheduled Interdepartmental Team meetings chaired by the City Manager's office;
  - (3) Reporting to the Interdepartmental Team on progress and challenges from his or her respective department;
  - (4) Working with his or her respective department to integrate and track health equity indicators for his or her department;
  - (5) Committing to attending ongoing health equity training, such as health equity impact assessments; and
  - (6) Assisting with the writing of the Tri-Annual HiAP Report and provide a report with the adoption of the City budget.
- (d) Design and publish a tri-annual report on the status of health and health equity in the City of Richmond and progress of HiAP implementation for the City Council, city staff, community organizations, residents, businesses, and other governmental agencies within the City.
  - (1) Implementation will be measured based on health and health equity indicators selected by the Interdepartmental HiAP Team.
  - (2) In addition to reporting on indicators, the Tri-Annual Report will include any updates to the HiAP strategy document.
- (e) Develop and implement an ongoing community engagement plan to work directly with stakeholders throughout the process of the HiAP Strategy development and implementation to ensure that perspectives are consistently understood, considered, and reflected in decisions. The goal is to partner with stakeholders in each aspect of decision making in order to develop and implement collaborative solutions.

Section II. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

Section III. Effective Date.

This Ordinance becomes effective 30 days after its final passage and adoption.

First read at a regular meeting of the Council of the City of Richmond held on November 24, 2015, and finally passed and adopted at a regular meeting thereof held on December 15, 2015, by the following vote:

- AYES: Councilmembers Bates, Beckles, Martinez, McLaughlin, Pimplé, Vice Mayor Myrick, and Mayor Butt.
- NOES: None.
- ABSTENTIONS: None.
- ABSENT: None.

**PAMELA CHRISTIAN**  
CLERK OF THE CITY OF RICHMOND  
(SEAL)

Approved:

**TOM BUTT**  
Mayor

Approved as to form:

**BRUCE GOODMILLER**  
City Attorney

State of California            }  
County of Contra Costa        }        : ss.  
City of Richmond                }

I certify that the foregoing is a true copy of **Ordinance No. 27-15 N.S.**, passed and adopted by the City Council of the City of Richmond at a regular meeting held on December 15, 2015.

  
Pamela Christian, City Clerk of the City of Richmond

ACTION CALENDAR

January 19, 2021

To: Honorable Mayor and the City Council

From: Councilmembers Terry Taplin (Author) and Ben Bartlett and Mayor Jesse Arreguin (Co-Sponsors)

Subject: Guaranteeing COVID-19 Hazard Pay for Grocery Store Workers

RECOMMENDATION

Refer the City Manager and City Attorney to draft an emergency ordinance to guarantee hazard pay of an additional five dollars an hour for grocery store workers, effective upon adoption and until the City returns to the Yellow-Tier 4 rate of positivity for COVID-19.

BACKGROUND

While many workers in Berkeley have shifted to working from home amidst the COVID-19 pandemic, grocery store workers have continued to report to work and provide the City with a critical service while placing their own health and lives at risk. Grocery store workers interact indoors with large numbers of people on a daily basis and, despite the efforts of grocery stores to make precautions and keep customers and employees safe, there have nevertheless been outbreaks of COVID-19 among grocery store employees.<sup>1</sup> UFCW Local 5, the union representing grocery store workers, reports that over 600 grocery workers in their ranks have tested positive with COVID-19, and members of their union have been hospitalized or lost their life to the disease.

Many companies like Whole Foods' Amazon and Safeway's Albertsons implemented increased wages and one-time bonuses in the form of "Hero Pay" or "Appreciation Pay" in the early weeks of the shutdown, but ended those pay increases in the late spring despite no comparable decrease in the risks COVID-19 poses to grocery store employees. While the wages of many grocery workers have returned to their pre-pandemic levels, the risk of COVID-19 infection is at its worst level ever, both in Berkeley and throughout the United States. This threat is felt particularly hard by women and people of color, who are overrepresented among retail and grocery workers. Despite the unprecedented risk to employees and a lack of wages that match the

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<sup>1</sup> Hahn, Sarah. "Multiple Berkeley Bowl employees test positive for COVID-19." *Berkeleyside*. July 9, 2020. <https://www.berkeleyside.com/2020/07/09/berkeley-bowl-grocery-store-berkeley-employees-test-positive-for-coronavirus>

hazards workers face every day, grocery retailers have for the most part seen a major jump in their profits this year.<sup>2</sup>

#### RATIONALE FOR RECOMMENDATION

The City of Berkeley must take action to ensure that the wages of its grocery store employees reflect the hazards that they face each time they report for their jobs. Even as the vaccine becomes more available, pay increase of five (5) dollars an hour while the threat of COVID-19 stays above the minimum level in the City are necessary to treat our grocery store workers as the heroes they are.

#### ENVIRONMENTAL IMPACTS

None.

#### FISCAL IMPACTS

None.

#### CONTACT

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

#### ATTACHMENTS/SUPPORTING MATERIALS

1. Resolution

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<sup>2</sup> Kinder, Molly, Laura Stateler, and Julia Du. "Windfall profits and deadly risks: How the biggest retail companies are compensating essential workers during the COVID-19 pandemic." *Brookings*. November 2020. <https://www.brookings.edu/essay/windfall-profits-and-deadly-risks/>

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

GUARANTEEING COVID-19 HAZARD PAY FOR GROCERY STORE WORKERS

WHEREAS, since the beginning of the COVID-19 pandemic, grocery workers in the City of Berkeley have continued to report to work and serve their communities, despite the ongoing hazards and danger of being exposed to the novel coronavirus. The pandemic is far from over and the health threats that grocery workers face are just as real now as they were when this crisis began.

WHEREAS, because of the work of these essential grocery workers, families throughout the City have had access to the food they need during this pandemic.

WHEREAS, given the nature of these jobs, grocery workers must be there to help countless customers who are stressed and fearful for their wellbeing. Moreover, they are staying inside with large crowds every day, with ventilation systems that could be spreading the novel coronavirus.

WHEREAS, these essential grocery workers cannot choose to work from home-- they must come to work to do their jobs, which involve substantial interaction with customers. Workers are wearing masks, social distancing, and constantly wiping down cash registers, food conveyor belts and shopping carts to protect the public health. Moreover, these workers are continuously working to restock items that households desperately need like toilet paper, cleaning supplies and other essentials.

WHEREAS, these essential grocery workers continue to live with the daily fear of not only contracting the virus but also bringing it home to their families.

WHEREAS, the number of COVID-19 clusters within the grocery industry in the City of Berkeley continues to rise significantly. The health threat that these grocery workers face cannot be overstated. UFCW Local 5, the Union that represents grocery workers, reports that over 600 grocery workers in their ranks have tested positive with COVID-19, and members of their union and been hospitalized or lost their life to the coronavirus. In addition there have been highly publicized outbreaks at local grocery stores in Berkeley. The health threat that these grocery workers face cannot be overstated.

WHEREAS, we are now in the height of the pandemic with a stay at home order in our region with ICU capacity below 15 percent. We are a long way from minimal risk where there would be 1 daily new case per 100,000 or less than 2 percent positivity

WHEREAS, the City recognizes that these workers must be justly compensated for the clear and present dangers of doing their jobs during the pandemic by requiring their employers to provide hazard pay at all times that the City is at a coronavirus risk level of moderate, substantial, or widespread under the State Health orders.

WHEREAS, the City already knows that wage raises result in more money being spent in our small businesses and also act as a stimulus for our local economy.

WHEREAS, the United States' top retail companies have earned record-breaking profits during the pandemic, this increase in profit has not transferred to workers, according to a Brookings Institution analysis.

WHEREAS, the City has previously adopted ordinances specific to grocery establishments both to address worker retention and recently to address COVID-19-related protections.

WHEREAS, the City has lawfully crafted wage ordinances specific to employment sectors in the past.

WHEREAS, the drafted ordinance should apply to commercial establishments classified as Industry 445110 under the North American Industry Classification System with a total floor area over 2,500 square feet and selling 25 linear feet or more of food.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Berkeley refers the City Manager, City Attorney, and the Health, Life Enrichment, Equity & Community Committee to draft an emergency ordinance providing all employees of grocery stores an additional five (5) dollars an hour in wages for the period of the effective date of this Ordinance through until such time as the City returns to the Yellow-Tier 4 designation of COVID-19 infection rates under the State Health orders.



**SOPHIE HAHN**

Berkeley City Council, District 5  
 2180 Milvia Street, 5th Floor  
 Berkeley, CA 94704  
 (510) 981-7150  
 shahn@cityofberkeley.info

ACTION CALENDAR  
 January 19, 2021

To: Honorable Members of the City Council  
 From: Councilmember Sophie Hahn (Author), Councilmember Kate Harrison (Co-Sponsor), Councilmember Ben Bartlett (Co-Sponsor)  
 Subject: Extending Time for Temporary Parklets and Sidewalk Seating Post-COVID-19

RECOMMENDATION

Adopt an ordinance revising BMC Chapter 16.18 *Right-of-Way Encroachments and Encroachment Permits* and BMC Section 14.48.150 *Sidewalk Seating, Benches, and Planters* to extend the period of time that Parklets and Sidewalk Seating established under the COVID-19 declared City emergency can remain in place to 365 days after the termination of the declared City emergency rather than the current 90 days.

BACKGROUND

On June 2, 2020, the City Council referred to the City Manager to explore and identify, on an expedited basis, potential public locations throughout Berkeley, including but not limited to wide sidewalks, street medians, building curtilages, parking bays and strips, streets and portions of streets, parking lots, and parks, for the temporary placement of tables and chairs to be used for open air dining to support restaurants, cafes, food shops, and other small businesses impacted by the COVID-19 emergency.<sup>1</sup>

The item further directed the City Manager to facilitate and expedite potential use of both public and private property for outdoor dining and other retail activities by implementing or, where necessary, returning to Council for approval any and all required temporary or permanent changes to, or suspensions of, Berkeley Municipal Code sections, fees, permitting requirements/timelines, and other rules and regulations. To eliminate a financial burden on small businesses, the City Manager was requested to consider reducing or waiving permitting and other fees.

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<sup>1</sup> "Berkeley Safe Open Air Dining and Commerce," Berkeley City Council, June 2, 2020, [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/06\\_June/Documents/2020-06-02\\_Supp\\_2\\_Reports\\_Item\\_11\\_Rev\\_Hahn\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/06_June/Documents/2020-06-02_Supp_2_Reports_Item_11_Rev_Hahn_pdf.aspx).

On June 16, the Council adopted an Urgency Ordinance taking actions to allow for increased outdoor dining and commerce in the public right-of-way, including to simplify the permitting process for parklets during a declared local emergency; and to expand the areas and scope of activities that may be permitted via a sidewalk seating permit during the term of a declared City emergency; and a Resolution authorizing the City Manager to waive permit fees for one year for temporary structures and activities permitted in the public right of way.<sup>2</sup>

City staff responded by expanding the range of allowed outdoor activities on both public and private property and streamlining permitting processes. The City offered options for permitting outdoor business activities during COVID-19, on private property or in the public right-of-way, including street closure permits, sidewalk seating, and parklets.

Since the adoption of the Berkeley Safe Open Air Dining and Commerce referral and subsequent Urgency Ordinance, dozens of businesses have utilized parklets and built facilities for outdoor seating, allowing patrons space to safely dine and shop in the open air while maintaining social distance. Overall, the program has been a tremendous success, affording local restaurants and other businesses the ability to survive and continue to pay staff during a difficult time.<sup>3</sup>

On December 15, the Council referred to the City Manager to develop a program, and if necessary, ordinance language to facilitate the transition of temporary outdoor dining and commerce permits that were obtained under the City's declaration of emergency to permanent status.<sup>4</sup> Some businesses may follow this path to permanence, while others may choose to end outdoor dining and commerce when the COVID-19 emergency is terminated.

This item offers a third path by adopting an ordinance to extend the period of time that parklets and sidewalk seating established under the COVID-19 emergency order can remain in place to 365 days after the termination of the declared City emergency rather than the current 90 days.

Under this proposal, businesses that have made an investment in open air dining and commerce structures during the pandemic will have longer to recoup their costs and to decide whether to transition to a permanent facility. In addition, extending the period of time that sidewalk seating and parklets can remain in place will allow staff more time to work with those seeking to transition their temporary outdoor dining and commerce permits to permanent status.

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<sup>2</sup> Urgency Ordinance: Outdoor Dining and Commerce in the Public Right-of-Way," Berkeley City Council, June 16, 2020, <https://www.cityofberkeley.info/uploadedFiles/Clerk/Urgency%20Item%20Outdoor%20Commerce.pdf>

<sup>3</sup> <https://www.berkeleyside.com/2020/12/05/december-outdoor-dining-ban-in-berkeley>

<sup>4</sup> Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration," Berkeley City Council, Dec. 15, 2020, [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/12\\_Dec/Documents/2020-12-15\\_Item\\_39\\_Path\\_to\\_Permanence\\_for\\_Outdoor.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/12_Dec/Documents/2020-12-15_Item_39_Path_to_Permanence_for_Outdoor.aspx).

FISCAL IMPACTS

Potential impact on revenues that would have been generated by parking meters, fees, and citations.

CONTACT INFORMATION

Vice Mayor Sophie Hahn, Council District 5, 510-682-5905 (cell)

ATTACHMENT

1. Ordinance 16.18.010 Right of Way Encroachments and Encroachment Permits and 14.48.150 Sidewalk Seating, Benches, and Planters

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

AMENDING CHAPTER 16.18 RIGHT-OF-WAY ENCROACHMENTS AND ENCROACHMENT PERMITS OF THE BERKELEY MUNICIPAL CODE AND AMENDING SECTION 14.48.150 SIDEWALK SEATING, BENCHES, AND PLANTERS

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

Section 1. That Berkeley Municipal Code Section 16.18.010 is amended to read as follows:

**16.18.010 Definitions.**

A. "Encroach" means constructing or placing permanent structures or improvements over, upon, under, or using any public right-of-way or watercourse in any manner other than its intended use.

B. "Encroachment" shall include any of the following acts:

1. Erecting or maintaining any flag, banner, decoration, post, sign, pole, fence, guard-rail, wall, loading platform, mailbox, pipe, conduit, wire, or other structure on, over, or under a public right-of-way;

2. Constructing, placing, or maintaining, on, over, under, or within the public right-of-way any subsurface drainage structure or facility, any pipe, conduit, wire or cable.

C. "Major encroachment" means any permanent improvement attached to a structure or constructed in place so that it projects into the public right-of-way such as basement vaults, earth retaining structures over three feet above grade, structure connected planter boxes, ramps, or fences over six feet above grade. Improvements identified in chapters 16.04, 16.24 and 17.16, and any items conforming to the Berkeley Building Code, shall not be considered Major encroachments. Projections over any part of the public right-of-way that are not permitted by or which are in excess of the limitations specified in the Berkeley Building Code shall also be classified as major encroachments, including theatre marquees, signs suspended above the sidewalk, oriel windows, balconies, cornices and other architectural projections.

D. "Minor encroachment" means encroachment into the public right-of-way resting on or projecting into the sidewalk area such as: subsurface tiebacks and soil nails; concrete stairs; disabled Access Ramps where more than six feet of sidewalk area is preserved; subsurface foundations extending less than 2 feet from the property line; level landings for garages; landscape features less than two feet in height; conduit for privately owned phone and data lines connecting buildings owned by the permittee; flower pots; permanent planter boxes; clocks; bus shelters; phone booths; bike racks; fences less than six feet above grade; earth retaining structures less than three feet above grade; benches; Parklets, as defined in Section 14.48.190; and curbs around planter areas. Any encroachment which is not a minor encroachment is a major encroachment. During a declared City emergency in response to a disease outbreak, a Parklet shall be considered a temporary structure not subject to the encroachment permit requirement and shall be permitted with an engineering permit. Upon termination of the declared City emergency, any Parklet present in the public right-of-way shall within 90 365 days of date of termination either obtain a valid encroachment permit or be removed from the public right-of-way.

E. "Assistant City Manager for Public Works" includes the Assistant City Manager for Public Works and their authorized delegate.

F. "Permittee" means any person(s), firm, company, corporation, association, public agency, public utility, or organization and the permittee's successors-in-interest which has been issued a permit for said encroachment by the Assistant City Manager for Public Works. All obligations, responsibilities, and other requirements of the permittee as herein described, shall be binding on successors-in-interest of the original permittee and subsequent owners of the property benefitted by the encroachment unless otherwise specified in the permit. (Ord. 7706-NS § 2, 2020; Ord. 7598-NS § 2, 2018; Ord. 7301-NS § 1, 2013; Ord. 6998-NS, 09/18/07; Ord. 5514-NS § 1, 1983)

Section 2. That Berkeley Municipal Code Section 14.48.150 is amended to read as follows:

**14.48.150 Sidewalk seating, benches and planters.**

A. Notwithstanding anything to the contrary in this Chapter, the City of Berkeley Engineering Division of the Department of Public Works, or its successor, may approve Sidewalk Seating, Benches and/or Planters on sidewalks, parking lanes, street areas, and other public right of way locations as set forth in, and in compliance with, this Section.

1. No permit may be issued under this Section for any sidewalk area in front of a single parcel if there are any current violations of this Chapter in that sidewalk area.
2. A permit for Sidewalk Seating, Benches and/or Planters may not be issued unless the business for which the Sidewalk Seating, Benches and/or Planters is/are proposed is in full compliance with Title 23 and any Permit issued thereunder.

B. For purposes of this Chapter, the following terms shall be defined as follows:

1. "Bench" means a seat designed for two or more persons.
2. "Bus Bench" means a bench installed and maintained under an agreement between the City, A.C. Transit and Lamar Transit Advertising or another public or semi-public transit provider.
3. "Commercial Establishment" means, but is not limited to, a place where Business Activity is established. Business activity is defined as any activity subject to BMC Chapter 9.04 and any economic activity which generates receipts but is exempt from BMC Chapter 9.04 by state or federal law.
4. "District-wide Sidewalk Bench/Planter Area Plan" means a City-approved plan for a specific commercial district as defined in said plan, that establishes area-specific regulations for benches, planters and/or plant material, and establishes general regulations for the placement of benches and planters in the public right-of-way, for the designated district.

5. "District-wide Sidewalk Seating Area Plan" means a City-approved plan for a specific commercial district as defined in said plan, that establishes area-specific regulations for sidewalk cafe seating, and establishes general regulations for the placement of sidewalk cafe seating in the public right-of-way, for the designated district.
6. "Food Service Establishment" has the same meaning as set forth in BMC Chapter 23F.04.
7. "Furniture" means amenities such as but not limited to tables, chairs, benches, and other equipment that facilitates the stationary use of sidewalk, parking lanes, street area, and other public right of way spaces.
8. "Planter" means a container that is designed or used for growing plants.
9. "Parking Lane" and "Street Area" are considered to be part of the Public right-of-way (PROW), known as, "any public street, public way, public place or rights-of-way, now laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, owned, operated and/or controlled by the City or subject to an easement owned by City and any privately-owned area within City's jurisdiction which is not yet, but is designated as a proposed public place on a tentative subdivision map approved by City." as defined in BMC 23F.04.010.
10. "Sidewalk" has the same meaning as set forth in BMC 1.04.010(18).
11. "Sidewalk Seating" means tables and/or chairs (including benches) and umbrellas and other associated furniture with lawfully operating Food Service Establishments or other commercial establishments, in or on the sidewalk. During cases of a declared City emergency in response to a disease outbreak, "Sidewalk Seating" includes seating and associated furniture in the public right-of-way or resting on, or projecting into, the sidewalk, parking lane, or street area, or any combination thereof which are not physically or structurally attached to a building, retaining wall or fence. Such Sidewalk Seating shall be permitted in any area of the public right-of-way for the duration of the declared City emergency if Traffic Engineer makes a finding that the use of the right-of-

way for Sidewalk Seating purposes does not create a dangerous condition for customers, pedestrians, or bicycle or motor vehicle traffic. Upon termination of the declared City emergency, any Sidewalk Seating present in the public right-of-way and not on the sidewalk shall within ~~90~~ 365 days of date of termination either obtain a valid encroachment permit or be removed from the public right-of-way.

12. "Transit Stop" means an AC Transit bus stop, UC Berkeley bus stop, a paratransit bus stop, Bay Area Rapid Transit station entrance, or another public transit provider.

13. "Window Box Planter" means a box, designed to hold soil for growing plants, attached at or on a windowsill.

C. Sidewalk Seating, Benches and Planters shall fully conform to the following requirements of this subdivision:

1. Any object permitted under this Section shall leave a minimum horizontal clear space of six feet for ADA-compliant path of travel, (or reduce to 5 feet at a single point of contact) or such greater (or smaller) amount of clear space as the Engineering Division finds necessary to protect and enhance pedestrian and vehicle traffic for public use in the sidewalk area, as that space is determined by the City of Berkeley Engineering Division of the Department of Public Works, or its successor.

2. Objects permitted under this Section shall not:

a. Unduly interfere with access by public employees and utility workers to meters, fire hydrants or other objects (street hardware) in the right-of-way;

b. Block or obstruct the view of necessary authorized traffic devices;

c. Unduly interfere with pedestrian traffic in the public ROW/sidewalk, pedestrian safety, access to public or private parking, traffic circulation, and/or vehicular safety;

d. Be closer than 25 feet to any curb return or fire hydrant; except in such cases where the geometry of the roadway has been designed to accommodate, or will



accommodate, Sidewalk Seating, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshal as appropriate;

e. Be affixed to any City or utility company-owned poles or appurtenances;

3. All sidewalk seating shall be subject to the following additional standards and requirements:

a. All Sidewalk Seating configurations shall comply with applicable Americans with Disabilities Act (ADA) accessibility standards.

b. All Sidewalk Seating components shall be stored in a secure location on private property when not in use.

c. The permittee shall regularly inspect and clean the Sidewalk Seating and that portion of the public sidewalk adjacent to the establishment. A waste receptacle shall be provided.

4. All benches and planters shall be subject to the following additional standards and requirements:

a. All proposals shall comply to the greatest extent possible with any design requirements adopted by the City for benches, planters and/or plant material.

D. All permits issued under this Section shall be subject to the following conditions:

1. The permittee shall be responsible for, and exercise reasonable care in the inspection, maintenance, and cleanliness of the area affected by any object(s) permitted by this Section, including any design requirements hereafter enacted, from the building frontage to the curb, parking lane, or street area.

2. The permittee shall restrict any objects permitted under this Section to the approved location(s) and configuration, and ensure compliance with all applicable laws, and the number of tables and chairs shall not be increased without prior approval of the Public Works or Public Health Department.

3. When any objects permitted under this Section are found to be in conflict with existing or proposed facilities or improvements owned, maintained, or operated by the City, or any existing or proposed City design plans, those objects shall, upon written demand of the City Manager or their designee, be removed or relocated in such a way as to eliminate the conflict. Should the permittee fail to comply with said written demand within a reasonable period of time, the City may cause such relocation of the placement at the expense of the permittee. Any such non-compliance shall also be a violation of this Section.

4. Permits issued under this Section shall be posted in plain view within the commercial establishment for which the permit has been issued along with any other relevant permits that support health and safety of patrons and the general public.

5. By accepting a permit under this Section, the permittee explicitly agrees to hold the City, its officers and employees harmless from any liability, claims, suits or actions for any and all damages alleged to have been suffered by any person or property by reason of the permittee's installation, operation, maintenance or removal of Sidewalk Seating, Furniture, Benches and/or Planters.

6. Prior to permit approval, the permittee shall demonstrate possession of liability insurance in the amount of \$1,000,000 for Benches and Planters, and related Sidewalk Seating furniture. Said insurance shall name the City of Berkeley as additionally insured and shall be in a form acceptable to the City Attorney.

7. The permittee shall monitor and control the use of the Sidewalk Seating so as to prevent disturbance of the surrounding neighborhood.

8. A food service establishment that proposes to serve alcoholic beverages within an outdoor dining area shall comply with the standards established by the State of California Department of Alcoholic Beverage Control. The dining area shall be:

a. Physically defined and clearly part of the restaurant it serves; and

b. Supervised by a restaurant employee to ensure compliance with laws regarding the on-site consumption of alcoholic beverages.

E. Permits under this Section are not transferable, and must be renewed annually.

F. Sidewalk Seating, Benches, Furniture, and/or Planters that are not permitted under this Section are prohibited encroachments under Chapter 16.18, and shall constitute public nuisances subject to the remedies in Chapter 1.26.

G. The City Council may by resolution establish or waive fees for the implementation and administration of this Section. (Ord. 7707-NS § 1, 2020; Ord. 7632-NS § 1 (part), 2018; Ord. 7468-NS § 1, 2016; Ord. 7401-NS § 1, 2015; Ord. 7203-NS § 2, 2011; Ord. 6281-NS § 5, 1995. Formerly 14.48.200)

**14.48.160 Removal of obstructions on streets and sidewalks.**

Anything placed or permitted to remain upon any sidewalk or roadway in violation of this Chapter, is declared to constitute a nuisance and the City is authorized and empowered to abate such nuisance by removing the same to the custodian of lost property in the Police Department or the Corporation Yard of the City, or other location designated by the City. (Ord. 7632-NS § 1 (part), 2018; Ord. 3262-NS § 12.2, 1952. Formerly 14.48.210)

**14.48.170 Use of streets and sidewalks by vendors.**

Any properly licensed vendor may use the public streets of the City in commercial or industrial zones for the sale of goods, wares, merchandise, or food when conducted under the conditions stated in this section.

A. Sidewalk vending is permitted as regulated by Chapter 9.48 of the Berkeley Municipal Code.

B. Other street vending is permitted from vehicles which are lawfully parked upon streets which are not regulated by parking meters or other posted parking time limits.

C. It is unlawful for any person to vend in violation of this section. (Ord. 7632-NS § 1 (part), 2018: Ord. 5483-NS § 1 (part), 1982: Ord. 4587-NS § 1, 1972: Ord. 4569-NS § 1, 1972: Ord. 3262-NS § 12.3, 1952. Formerly 14.48.220)

**14.48.180 Trap doors in sidewalks.**

A. Trap doors in sidewalks used to cover an opening for an elevator, stairway or chute must be kept in such a condition that they will not endanger persons or property, and it is unlawful for any person owning or being in charge or control of any such doors in sidewalks used for covering entrances to elevators, stairways or chutes, or other openings in the sidewalk leading to the basement, to allow said doors to remain open, except when such elevator, stairway or chute is being used and monitored for pedestrian safety while loading or unloading or transferring of merchandise or material.

B. The requirements of this section shall be in addition to and not in lieu of any other ordinance of the City having to do with doors or other openings in sidewalks. (Ord. 7632-NS § 1 (part), 2018: Ord. 3262-NS § 12.6, 1952. Formerly 14.48.250)

**14.48.190 Parklets.**

A. Notwithstanding anything to the contrary in this Chapter, the City of Berkeley Engineering Division of the Department of Public Works, or its successor, may approve Parklets, Benches and/or Planters in the public right-of-way (excluding Sidewalks alone, which are subject to and governed by Section 14.48.150) as set forth in, and in compliance with, this Section.

1. No permit may be issued under this Section for any right-of-way area in front of a single parcel if there are any current violations of this Chapter in that right-of-way area.
2. A permit for a Parklet may not be issued unless the parklet Host is in full compliance with all applicable requirements of Title 23 and any Permit issued thereunder.

3. A permit for a Parklet may only be issued adjacent to parcels in the following zoning districts: all Commercial (C-prefixed districts), Mixed-Use Light Industrial (MU-LI), Mixed-Use Residential (MU-R), and Mixed Manufacturing (MM).

B. For purposes of this Chapter, the following terms shall be defined as follows:

1. "Bench" means a seat designed for two or more persons.
2. "Bike Parking" means a location with bike racks intended for the secure parking of bicycles.
3. "Furniture" means amenities such as but not limited to tables, chairs, benches, and other equipment that facilitates the stationary use of public space.
4. "Parklet" means a platform or similar level surface extending into the public right-of-way with amenities such as but not limited to tables and/or chairs (including Benches), Bike Parking, and umbrellas, designated as public space, located in or on the public right-of-way or resting on, or projecting into, the sidewalk and parking area, which are not physically or structurally attached to a building, retaining wall or fence.
5. "Planter" means a container that is designed or used for growing plants.
6. "Sidewalk" has the same meaning as set forth in Section 1.04.010(18).
7. "Sponsoring Business," "Host," "Permit Holder" or "Permittee" means, and is limited to, any establishment engaged in insuring and caring for the Parklet as set forth in the Parklet maintenance agreement.
8. "Transit Stop" means an AC Transit bus stop, UC Berkeley bus stop, a paratransit bus stop, Bay Area Rapid Transit station entrance, or another public transit provider.

C. Parklets, Benches and Planters shall fully conform to the following requirements of this subdivision:

1. Any object permitted under this Section shall leave a minimum of clear space as the Engineering Division finds necessary to protect and enhance pedestrian or vehicle traffic for public use in and around the Parklet area, as that space is determined by the City of Berkeley Engineering Division of the Department of Public Works, or its successor.
2. Parklets shall comply with applicable Americans with Disabilities Act (ADA) accessibility standards.
3. Objects permitted under this Section shall not:
  - a. Unduly interfere with access by public employees and utility workers to meters, fire hydrants or other objects (street hardware) in the right-of-way;
  - b. Block or obstruct the view of necessary authorized traffic devices;
  - c. Unduly interfere with pedestrian traffic in the right-of-way, including the Sidewalk, pedestrian safety, traffic circulation, and/or vehicular safety;
  - d. Be closer than 25 feet to any curb return or fire hydrant; except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, a parklet, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshal as appropriate;
  - e. Be affixed to any City or utility company-owned poles or appurtenances;
  - f. The width of the Parklet must not extend beyond six feet from the curb line, except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, a Parklet, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshal as appropriate.
4. All Parklets shall be subject to the following additional standards and requirements:
  - a. Parklets must remain publicly accessible and must include signage posted on site to this effect;

- b. Parklet construction materials must be of high quality, durable, and suitable for public use;
  - c. A visible edge to the Parklet is required, which may consist of Planters, railing, or cabling. The edges should be visually permeable;
  - d. The Permittee shall regularly inspect and clean the Parklet and that portion of the public sidewalk adjacent to the Parklet;
  - e. Access panels must be included in order to maintain the gutter and area underneath the Parklet and the design must allow for drainage along the gutter to pass underneath the Parklet;
  - f. Safe hit posts and wheel stops, or approved equivalents, may be required. If Bike Parking is provided, the bike racks can be at street grade.
5. All Benches, Furniture, and Planters within the Parklet shall be subject to the following additional standards and requirements:
- a. All proposals shall comply with any design requirements adopted by the City for Benches, Planters and/or plant material;
  - b. All non-secured Parklet components shall be stored in a secure location on private property when not in use;
  - c. Any unsecured Furniture must be clearly different from the Furniture used by a Parklet Host in order to emphasize that the Parklet is public space, as determined by City staff.
- D. All permits issued under this Section shall be subject to the following conditions:
- 1. The Permittee shall be responsible for, and exercise reasonable care in the inspection, maintenance, and cleanliness of the area affected by any object(s) permitted by this Section, including any design requirements hereafter enacted, from the building frontage to the right-of-way, including the Parklet area.

2. The Permittee shall restrict any objects permitted under this Section to the approved location(s) and configuration, ensure compliance with all applicable laws, and the number and configuration of Benches, Furniture and Planters and overall square footage of the Parklet shall not be modified without prior approval of the Public Works Department.
3. When any objects permitted under this Section are found to be in conflict with existing or proposed facilities or improvements owned, maintained, or operated by the City, or any existing or proposed City design plans, those objects shall, upon written demand of the City Manager or their designee, be removed or relocated in such a way as to eliminate the conflict, at the sole expense of the Permittee. Should the Permittee fail to comply with said written demand within a reasonable period of time, the City may cause such relocation of the placement at the expense of the Permittee. Any such non-compliance shall also be a violation of this Section.
4. Permits issued under this Section, when under review prior to issuance, shall be posted in plain view within the sponsoring establishment(s) for which the permit has been issued. Public notice, permitting, and appeal for Parklets are set forth in BMC Section 16.18.060 (Permit procedure for minor encroachment) of the Berkeley Municipal Code. Section D(4) is not applicable in cases of declared local emergency due to disease outbreak.
5. By accepting a permit under this Section, the Permittee explicitly agrees to hold the City, its officers and employees harmless from any liability, claims, suits or actions for any and all damages alleged to have been suffered by any person or property by reason of the Permittee's installation, operation, maintenance or removal of the Parklet, Benches and/or Planters.
6. Prior to permit approval, the Permittee shall demonstrate possession of liability insurance, in the amount not less than \$1,000,000, for the Parklet including any



associated Benches, Planters and Furniture. Said insurance shall name the City of Berkeley as an additional insured and shall be in a form acceptable to the City Attorney.

7. The City Manager or their designee may require a performance bond to ensure Parklet removal in the event of a permit cancellation.

8. The Permittee shall monitor and control the use of the Parklet to prevent disturbance of the surrounding neighborhood.

9. A Sponsoring Business or other business is not permitted to perform table service at a Parklet or otherwise incorporate a Parklet into its business operations. Section D(9) is not applicable in cases of declared local emergency due to disease outbreak.

10. Commercial signage, smoking, and advertising are prohibited at Parklets.

E. Parklets, Benches and/or Planters that are not permitted under this Section are prohibited encroachments under Chapter 16.18, and shall constitute public nuisances subject to the remedies in Chapter 1.26.

F. The City Council may by resolution establish or waive fees and guidelines for the implementation and administration of this Section. (Ord. 7706-NS § 1, 2020: Ord. 7632-NS § 1 (part), 2018: Ord. 7598-NS § 1, 2018. Formerly 14.48.300)





Office of the City Manager

INFORMATION CALENDAR

January 19, 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: Condominium Conversion Program – Annual Report

INTRODUCTION

This report provides the regular annual assessment of condominium conversion program activities as required by Berkeley Municipal Code (BMC) 21.28.020.D. This report focuses on the period starting with calendar year 2008, when the current program went into effect, through October 20, 2020 (the date that data were compiled for this report).

CURRENT SITUATION AND ITS EFFECTS

The Condominium Conversion Ordinance (CCO) requires an annual report to the City Council which includes an assessment of the program and any recommendations for changes to the ordinance. The ordinance allows property owners to convert rental units to ownership units subject to certain requirements and payment of an Affordable Housing Mitigation Fee (AHMF). (This fee shares a name with—but is different from—the Affordable Housing Mitigation Fee for new construction market-rate housing in BMC 22.20.065.)

Attachment 1 has a summary of submitted and approved applications since 2008 and a breakdown of revenue the City has received to date. The ordinance gives owners a 25 percent reduction if they have paid the AHMF when the City approves their applications, an option that was added in 2009 with other revisions. To date, 52 units have selected this option. The other 58 units have selected to pay the fee based on the appraised value or sales price of the unit. The fee is 4% for properties with two units and 8% for properties with three or more units. The City has received a total of \$3,081,003 in mitigation fee payments from 110 converted units (see Table 3 of Attachment 1). Eighty percent of these funds are deposited into the Housing Trust Fund (HTF). Ten percent of the funds are used for HTF administration and 10% are used for monitoring HTF projects.

BACKGROUND

Condominium conversion is the process of subdividing a multi-unit property into separately owned housing units with individual mortgages. Subdivisions are regulated under the California Subdivision Map Act and Subdivided Lands Act. State law also

allows local governments to impose additional requirements. In Berkeley, these additional requirements are in the CCO (BMC Chapter 21.28 *et seq.*) and include an annual limit on the number of approved units, compliance with local laws, payment of an AHMF, and various tenant protections. The City's current ordinance has been in place since 2009.

In 1992, the City imposed a housing mitigation fee for condominium conversions and banned the creation of Tenancy-in-Common (TIC) properties. Council found TIC ownership problematic and the conversion of rental units to condominiums and TICs reduced the stock of affordable rental units in Berkeley. In a TIC, people share ownership and financing of multi-unit properties and agree among themselves on each part-owners' rights to occupy one unit, often expressed as pro rata shares of property ownership. Some owners of these TIC properties developed legal and financial difficulties among their partners. They sought help from the City Council and Council banned the creation of TICs as a result of those issues.

In 2004, California's Court of Appeals held that cities could not prohibit the conversion of rental units to TICs.<sup>1</sup> The City Council found that while condominium conversions were not ideal, a condominium conversion ordinance was preferred over unregulated TIC conversions. Council changed the ordinance to encourage condominiums over TICs, and completely overhauled the ordinance in 2008 and 2009.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### POSSIBLE FUTURE ACTION

Staff are reviewing the Condominium Conversion Ordinance along with other housing fee ordinances and may recommend a revised ordinance.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Fiscal impacts will depend on specific changes recommended in the future, if any.

#### CONTACT PERSON

Asavari Devadiga, Community Development Project Coordinator, HHCS 510-981-5422

#### Attachments:

1: Summary Tables for the Condominium Conversion Program

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<sup>1</sup> *Tom v. City and County of San Francisco*, 2004, 120 Cal. App. 4<sup>th</sup> 674.



Office of the City Manager

### Attachment 1 Summary Tables for the Condominium Conversion Program

The tables below provide data on calendar years 2008-2020 (up to October 20, 2020). Data prior to 2008 are difficult to compile and analyze due to changes in the process and definitions. Therefore the total number of approved applications may not match up with the total number of submitted applications due to discrepancy from prior years. Also, applications may take more than one year to obtain approval or may not complete the process under the Condominium Conversion Program.

**Table 1: General Summary**

| Year         | Number of Submitted Applications | Number of Units in Submitted Applications | Number of Approved Applications | Number of Units in Approved Applications |
|--------------|----------------------------------|-------------------------------------------|---------------------------------|------------------------------------------|
| 2008         | 10                               | 35                                        | 8                               | 26                                       |
| 2009         | 5                                | 24                                        | 13                              | 66                                       |
| 2010         | 7                                | 20                                        | 4                               | 19                                       |
| 2011         | 5                                | 22                                        | 3                               | 11                                       |
| 2012         | 5                                | 15                                        | 6                               | 20                                       |
| 2013         | 6                                | 15                                        | 7                               | 15                                       |
| 2014         | 2                                | 7                                         | 3                               | 11                                       |
| 2015         | 1                                | 2                                         | 2                               | 7                                        |
| 2016         | 7                                | 17                                        | 1                               | 2                                        |
| 2017         | 1                                | 3                                         | 4                               | 9                                        |
| 2018         | 1                                | 2                                         | 1                               | 4                                        |
| 2019         | 3                                | 9                                         | 5                               | 12                                       |
| 2020         | 1                                | 4                                         | 2                               | 8                                        |
| <b>Total</b> | <b>54</b>                        | <b>175</b>                                | <b>59</b>                       | <b>210</b>                               |

**Table 2: Applications Currently in the Process**

|                      | Applications | Units |
|----------------------|--------------|-------|
| Pending Applications | 5            | 16    |

**Table 3: Revenue Received from Affordable Housing Mitigation Fee**

Of the approved units required to pay the fee, the owners of 110 units have paid the fee up front at the time of application approval, at refinance, or at time of sale. The owners of the remaining units will pay the fee when they sell or refinance their units. Linking the fee payment with sales means that fee revenue trends follow the real estate market, which is why revenue varies from year to year.

| Year         | Amount Received    | Total Number of Units | Number of Units Paid at Time of Application Approval | Number of Units Paid at Refinance | Number of Units Paid at Time of Sale |
|--------------|--------------------|-----------------------|------------------------------------------------------|-----------------------------------|--------------------------------------|
| 2008         | \$47,072           | 3                     | 0                                                    | 0                                 | 3                                    |
| 2009         | \$0                | 0                     | 0                                                    | 0                                 | 0                                    |
| 2010         | \$116,200          | 2                     | 0                                                    | 1                                 | 1                                    |
| 2011         | \$76,280           | 4                     | 3                                                    | 0                                 | 1                                    |
| 2012         | \$269,145          | 13                    | 9                                                    | 1                                 | 3                                    |
| 2013         | \$237,795          | 14                    | 9                                                    | 0                                 | 5                                    |
| 2014         | \$820,529          | 28                    | 5                                                    | 13                                | 10                                   |
| 2015         | \$249,708          | 8                     | 3                                                    | 0                                 | 5                                    |
| 2016         | \$64,600           | 2                     | 0                                                    | 0                                 | 2                                    |
| 2017         | \$495,888          | 14                    | 9                                                    | 2                                 | 3                                    |
| 2018         | \$386,346          | 11                    | 6                                                    | 0                                 | 5                                    |
| 2019         | \$60,200           | 1                     | 0                                                    | 0                                 | 1                                    |
| 2020         | \$334,640          | 10                    | 8                                                    | 0                                 | 2                                    |
| <b>Total</b> | <b>\$3,158,403</b> | <b>110</b>            | <b>52</b>                                            | <b>17</b>                         | <b>41</b>                            |



Office of the City Manager

INFORMATION CALENDAR

January 19, 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: Referral Response: Housing and Homeless Uses for City-Owned, Former  
Redevelopment Agency Property at 1631 Fifth Street

INTRODUCTION

The City received a 5,525 sq. ft. vacant lot from the former Berkeley Redevelopment Agency (BRA) in 2014 due to the State's dissolution of redevelopment activities. This report outlines potential options for the future of the property, including selling it and applying the proceeds to the Housing Trust Fund (HTF) program, hosting homeless housing recreation vehicles (RVs), and a Tiny Homes pilot. This report also provides requested information about the site's remediation needs.

SUMMARY

Staff continue to recommend selling the property and using the proceeds to benefit the HTF program because the size and constraints of the property do not support new affordable housing development, and applying proceeds for the sale will support the City's affordable housing activities. This option was approved in the BRA's dissolution plan by its Oversight Board and has subsequently been supported by the Housing Advisory Commission (HAC) and the Council's Land Use, Housing & Economic Development Committee. Staff estimate a sale could net between \$300,000 and \$500,000 for the HTF, although the sale price would be set based on an appraisal. Staff confirmed that environmental remediation has already been completed.

Alternatively, the Council could consider establishing pilot programs comprised of either tiny homes or recreational vehicles (RVs). Staff estimate that a one-year pilot project of 14 tiny homes could cost between \$400,000 and \$1,500,000 and that a pilot program of 10 RVs could cost between \$531,286 and \$1,291,286. The base cost includes one-time costs, utilities, sanitation, and security. Additional costs necessary to move participants to permanent housing include services and rental assistance. The RV base cost may be less if sewer lines can be installed eliminating the need for trailer waste pump-outs. The services component is an estimate based on similar programs. Staff would issue a Request for Proposals to finalize the costs. The above base cost estimates do not include the costs to prepare the site (i.e., grading). A pilot program could be operational by April 1, 2021 if tiny homes or RVs are available.

### CURRENT SITUATION AND ITS EFFECTS

This report responds to referral #PRJ0024121 that originally appeared on the agenda of the March 10, 2020 Council meeting. The City Council referred an item from the City Manager back to staff.

On March 10, 2020, staff recommended selling the City-owned, former BRA property at 1631 Fifth Street, a vacant, single-family home sized lot, and depositing the proceeds in the HTF to support the new construction and rehabilitation of affordable housing. The City Council referred the item back to the City Manager to explore City uses of the property for housing and homelessness services and needs, or other uses, and review the remediation needs of the property.

The possibility of using 1631 Fifth Street for affordable housing development was discussed at the July 11, 2018 HAC meeting. An NCLT representative provided input on NCLT's past attempt to develop 1631 Fifth Street and the inability to identify a feasible project given the site's constraints. The Housing Advisory Commission voted to support the staff recommendation to sell the property and deposit the proceeds in the Housing Trust Fund to support affordable housing development.

On November 21, 2019, the Land Use, Housing & Economic Development Committee unanimously adopted a motion to move the item with a positive recommendation authorizing the sale of 1631 Fifth Street.

Staff continues to recommend selling the property as the most effective strategy to support affordable housing. The site's size and zoning constraints, as well as the surrounding neighborhood, are not conducive to new construction for affordable housing or siting long-term tiny homes or trailers for people experiencing homelessness. At the time of this report, staff has identified nine potential projects in the HTF pipeline, including North Berkeley and Ashby BART stations, West Berkeley Service Center and a BUSD Educator housing project, as well as projects already in the HTF portfolio with unfunded rehabilitation needs. Depositing the proceeds of the sale in the HTF program will directly support the City's ability to provide affordable housing financing.

The site could be used in the short-term for non-congregate shelter. As discussed below, 1631 Fifth Street could hold up to 10 RVs or 14 individual shelter structures. An emergency homeless program could be operated on the property under the current Declaration of a Homeless Shelter Crisis. Longer-term use of the site for a homeless program would need to go through a review under BMC 23C.10.

### Remediation History

The BRA conducted four environmental assessments (including Phase I and Phase II assessments) between 1993 and 2003, and lead was the only chemical identified as an area of concern. The BRA entered into a Voluntary Cleanup Agreement with the State Department of Toxic Substances Control (DTSC) in 2004 to remediate the site. DTSC



certified all onsite contamination was removed according to the plan in 2004. Additional environmental studies may be required depending on the eventual use of the property, but there are no outstanding concerns at this time.

### Alternative Uses

The City currently hosts eight (Recreational Vehicles) RV vehicles at the City-owned vacant lot at 1281 University Avenue, an approximately 3500 sq ft lot. The City also hosts ten RVs at 701 Harrison Street. This program is currently used to house homeless individuals at high-risk of contracting COVID-19.

The first 18 months of this program's operating costs are being supported through federal grants (Emergency Solutions Grant) allocated to the City through the CARES Act. City funding would be required to continue providing these services in addition to any new pilots outlined below.

Both pilot programs below are designed as shelter programs with the goal of moving households to permanent housing as rapidly as possible.

### RV Pilot Program

Given the size and constraints of the lot, staff estimate 1631 Fifth Street could accommodate up to 10 RVs. An RV is estimated to cost \$17,900. The estimated cost to operate the RV program on an annual basis is \$342,100 or \$34,210 per RV. This includes utilities, security and sanitation. Staff would need to procure RVs and negotiate an expanded contract with the City's current service provider or issue an RFP for a new service provider.

### Tiny Homes Pilot Program

Given the size and constraints of the lot, staff estimate 1631 Fifth Street could accommodate up to 14 Pallet homes, a type of tiny home created for people experiencing homelessness<sup>1</sup>. The tiny homes are estimated to cost \$7,700 each. The estimated cost to operate the tiny homes program on an annual basis is \$281,400 or \$20,100 per household. This includes utilities, security, and sanitation. Staff would need to procure the Pallet homes and issue an RFP for a new service provider.

### Services and Rental Assistance

Based on similar programs, staff estimate the cost for services at \$28,000 per year per household. This includes facility maintenance staff (including repair and maintenance costs), housing navigation services, bed bug treatment, and three meals per day. In most cases, program participants need some rental assistance to transition to permanent housing. Similar programs have allocated up to \$24,000 annually for up to two years, or \$48,000 per household. The below table represents estimated annual costs for all three activities:

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<sup>1</sup> <https://www.palletshelter.com/about>

|                           | <b>RV Program (10)</b> | <b>Pallet Homes (14)</b> |
|---------------------------|------------------------|--------------------------|
| <b>Operating Services</b> | \$342,100              | \$281,400,               |
|                           | \$280,000              | \$392,000                |
| <b>Rapid Rehousing</b>    | \$480,000              | \$672,000                |
| <b>Total</b>              | \$1,102,100            | \$1,345,000              |

Leveraging City-owned property to support affordable housing and homeless 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**

Following the dissolution of all California redevelopment agencies, the BRA prepared a state-mandated Long Range Development Management Plan (LRDMP) which the City Council, acting as the Successor Agency, adopted in 2014. The LRDMP included the recommendation to sell both sites at market rate. In 2015, for reasons related to redevelopment law and the dissolution process, and acting at the direction of the State Department of Finance, the BRA’s Oversight Board removed these two properties from the LRDMP and listed them as housing assets to facilitate their disposition on the market.

The BRA acquired this site with other acquisitions in this neighborhood between 1969 and 1971 as part of a larger "Neighborhood Development Program". The characteristics of the property are provided in *Figure 1*.

**Figure 1. Property Characteristics**

|                 | <b>1631 Fifth Street</b> |
|-----------------|--------------------------|
| <b>Land Use</b> | Vacant Lot               |
| <b>Lot Area</b> | 5,525 sq ft              |
| <b>Acres</b>    | 0.13                     |
| <b>Zoning</b>   | MU-R                     |

In 1983, the BRA demolished a residential building at 1631 Fifth Street to build new affordable housing, but abandoned the plans after discovering lead contamination. The lot has remained vacant since this time. In 1997, the BRA approved the remediation and development of the site, but the selected developer was unable to execute an

agreement and the sale was never completed. Remediation of the site was completed in 2004 with the certification of DTSC.

The BRA conducted an RFP for housing at the site in 2008, but the only response was Northern California Land Trust's (NCLT) proposal to move the Kenney Cottage to the site. This proposal did not come to fruition, but NCLT did manage a small community garden at the site from 2009 to 2011. The use of 1631 Fifth Street as a community garden does not make it subject to the limitations of Measure L related to parks and open space.

### ENVIRONMENTAL SUSTAINABILITY

There are no sustainability effects associated with the information in this report.

### POSSIBLE FUTURE ACTION

This report outlines three potential options for Council:

1. Sell the property on the market and deposit the proceeds in the Housing Trust Fund to support affordable housing construction and rehabilitation (Staff recommendation and BRA dissolution plan recommendation).
2. Initiate an RV Pilot Program. Staff estimate 1631 Fifth Street could accommodate up to 10 RVs.
3. Initiate a Tiny Homes Pilot Program. Staff estimate 1631 Fifth Street could accommodate up to 14 Tiny Homes.

### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Staff estimate the sale may yield \$300,000 to \$500,000, and that a broker's fee for selling them may be 3% of the sale price, or \$9,000 to \$15,000. The properties have not yet been appraised but would be during the sale process.

The property was acquired with CDBG funds, which restricts revenue from their sales to CDBG-eligible uses. Staff recommend depositing the proceeds in the HTF so they can be used for CDBG-eligible housing activities including acquisition and rehabilitation.

Alternatively, staff estimate an RV program hosting 10 RVs would cost \$189,300 for acquisition and one-time costs, not including site preparation, such as grading. The cost for annual operations would range from \$342,100 to for annual operations to \$1,102,100 if services and rental assistance were included. A one-year pilot would cost up to \$1,291,400.

Staff estimate Tiny Homes program would require \$118,300 to purchase 14 tiny homes and one-time costs, not including site preparation, such as grading. The cost for annual operations would range from \$281,400 for annual operations to \$1,345,400 if services and rental assistance were included. A one-year pilot would cost up to \$1,463,700.

CONTACT PERSON

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

Attachments:

- 1: Original Referral Report from March 10, 2020
- 2: Homeless and Affordable Housing Status Report (December 4, 2020)



Office of the City Manager

ACTION CALENDAR

March 10, 2020

*(Continued from February 11, 2020)*

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Kelly Wallace, Interim Director, Health, Housing & Community Services  
 Subject: Disposition of City-Owned, Former Redevelopment Agency Property at 1631 Fifth Street

RECOMMENDATION

Adopt a resolution authorizing the sale of the City-owned, former Redevelopment Agency property at 1631 Fifth Street at market rate and authorizing the City Manager to contract with a real estate broker to manage the sale.

POLICY COMMITTEE RECOMMENDATION

On November 21, 2019, the Land Use, Housing & Economic Development Committee adopted the following action: M/S/C (Hahn/Droste) to move the item with a positive recommendation authorizing the sale of 1631 Fifth Street. Vote: All Ayes.

SUMMARY

The City received 1631 Fifth Street from the Berkeley Redevelopment Agency (BRA) at its dissolution. BRA planned to sell prior to the statewide dissolution of redevelopment. The City Council previously approved the market rate sale of these properties as part of the state-mandated Long Range Development Management Plan adoption in 2014.

The site at 1631 Fifth Street is not large enough or zoned densely enough to support the cost-effective construction and operation of affordable housing. Developing this vacant lot would require investment of additional City funds before it could be used as housing. Selling the properties will yield a return on the City's Community Development Block Grant (CDBG) investment that will be applied to the City's priorities for permanent affordable housing via the Housing Trust Fund (HTF).

To maximize the number of interested buyers, staff are requesting Council authorization to select a real estate broker to manage the sale as staff do not typically manage market sales of single family home sites. City land disposition procedures require that the resulting contract for sale be approved by Council via ordinance.

FISCAL IMPACTS OF RECOMMENDATION

Staff estimate the sale may yield \$300,000 to \$500,000, and that a broker's fee for selling them may be 3% of the sale price, or \$9,000 to \$15,000. The properties have not yet been appraised but will be during the sale process.

The property was acquired with CDBG funds, which restricts revenue from their sales to CDBG-eligible uses. Staff recommend depositing the proceeds in the HTF so they can be used for CDBG-eligible housing activities including acquisition and rehabilitation. Staff will provide an information report following the sales to confirm the total contribution to the HTF.

CURRENT SITUATION AND ITS EFFECTS

The City owns two properties it received as the Successor Agency to Redevelopment: a 5,000 square foot vacant lot at 1631 Fifth Street and a vacant single family home at 1654 Fifth Street. The former Redevelopment Agency intended to sell both properties, but the process was halted due to redevelopment's dissolution statewide. Neither property has sufficient size or appropriate zoning to develop affordable housing efficiently, and any proposed affordable housing would be small scale and require additional City subsidies. The City also is incurring ongoing maintenance costs and liabilities while it holds the properties.

City staff consulted with legal counsel at Goldfarb & Lipman, LLP and the City Attorney's Office to review the applicability of the Surplus Lands Act to these former redevelopment agency properties. They concluded that process was not required and the properties could be sold at market rate. Staff confirmed the recent revisions to the Surplus Lands Act (AB 1486) do not apply.

Staff are recommending the City contract with a local real estate broker with experience selling small parcels. A private broker will have the expertise to manage sales (including marketing) and reach the broadest pool of Bay Area buyers.

At its July 11, 2018 meeting, the Housing Advisory Commission voted to support the staff recommendation:

Action: M/S/C (Owens/Amezcuca) to recommend to Council to approve the sale of two Successor Agency to Redevelopment properties at 1631 Fifth Street and 1654 Fifth Street at market value and deposit the proceeds in the Housing Trust Fund.

Vote: Ayes: Amezcua, Holman, Johnson, Kesarwani, Lewis, Owens, and Winters. Noes: Lord. Abstain: None. Absent: Tregub (excused), Wolfe (excused), and Wright (excused).

The possibility of using either of these properties in the Small Sites program was discussed at the July HAC meeting. An NCLT representative provided input on NCLT's past attempt to develop 1631 Fifth Street and the inability to identify a feasible project, and, considering the additional investment of City funds that would be required for

rehabilitation and development, it was determined that neither site is appropriate for this program.

Staff issued a Request for Proposals to sell the single family home at 1654 Fifth Street to operate as homeless housing, per Council direction on June 11, 2019. Staff is currently working with the Housing Advisory Commission to make a recommendation to Council regarding the proposals received.

1631 Fifth Street was not considered for an RFP as new construction of affordable housing would require significant investments and may not be feasible due to the size of the lot.

On November 21, 2019, the Land Use, Housing & Economic Development Committee recommended the City Council authorize the sale of 1631 Fifth Street.

**BACKGROUND**

Following the dissolution of all California redevelopment agencies, the Berkeley Redevelopment Agency prepared a state-mandated Long Range Development Management Plan (LRDMP) which the City Council, acting as the Successor Agency, adopted in 2014. The LRDMP included the recommendation to sell both sites at market rate. In 2015, for reasons related to redevelopment law and the dissolution process, and acting at the direction of the State Department of Finance, the Redevelopment Agency's Oversight Board removed these two properties from the LRDMP and listed them as housing assets to facilitate their disposition on the market.

**1631 Fifth Street**

The former Redevelopment Agency acquired this site with other acquisitions in this neighborhood between 1969 and 1971 as part of a larger "Neighborhood Development Program". The characteristics of the property are provided in *Figure 1*.

**Figure 1. Property Characteristics**

|                 | <b>1631 Fifth Street</b> |
|-----------------|--------------------------|
| <b>Land Use</b> | Vacant Lot               |
| <b>Lot Area</b> | 5,525 sq ft              |
| <b>Acres</b>    | 0.13                     |
| <b>Zoning</b>   | MU-R                     |

In 1983, the Redevelopment Agency demolished a residential building at 1631 Fifth Street to build new affordable housing, but abandoned the plans after discovering high levels of lead contamination. The lot has remained vacant since this time. In 1997, the Redevelopment Agency approved the remediation and development of the site, but the

selected developer was unable to execute an agreement and the sale was never completed.

The Redevelopment Agency conducted an RFP for housing at the site in 2008, but the only response was Northern California Land Trust's (NCLT) proposal to move the Kenney Cottage (now at 1281 University Avenue) to the site. This proposal did not come to fruition due to NCLT's bankruptcy, but NCLT did manage a small community garden at the site from 2009 to 2011. Staff confirmed the use of 1631 as a community garden does not make it subject to the limitations of Measure L related to parks and open space.

### **1654 Fifth Street**

In late 2019, staff issued a Request for Proposals to sell the single family home at 1654 Fifth Street to operate as homeless housing, per Council direction on June 11, 2019. Staff is currently working with the Housing Advisory Commission to make a recommendation to Council regarding the proposals received.

### **Administration**

When the Redevelopment Agency dissolved, the Department of Health, Housing and Community Services took over managing its housing assets and other remaining responsibilities on behalf of the Successor Agency, although no staffing was added to handle these responsibilities. Former Redevelopment Agency assets assumed include 13 homebuyer loans, two properties under long-term leases and the two sites designated for sale. HHCS pays the Public Works Department to provide periodic landscaping services for this property. The City will retain these ongoing costs and liabilities as long as it owns the site.

### **ENVIRONMENTAL SUSTAINABILITY**

There are no sustainability effects associated with the recommendation of this report.

### **RATIONALE FOR RECOMMENDATION**

This site has been intended for sale since it was first acquired by the Redevelopment Agency in the late 1960s and early 1970s as part of a neighborhood development initiative. The City Council previously approved the market rate sale of 1631 Fifth Street as part of the LRDMP adoption in 2015.

This site is not large enough or zoned densely enough to support the cost-effective development and operation of affordable housing. Developing the site would require an investment of additional City funds. Selling the property will yield a return on the City's CDBG investment that will be applied to the City's affordable housing priorities via the Housing Trust Fund. In addition to the Berkeley Way development commitment, the HTF recently provided two other proposed developments predevelopment loans — Satellite Affordable Housing Associates' Oxford Apartments and Bay Area Community Land Trust's Stuart Street rehabilitation. The HTF program is also supporting three additional sites via Measure O bond funding: Staff also received HTF inquiries related to other development activities.



A small vacant lot is not a typical government real estate asset, and is better suited for sale by a real estate broker familiar with these types of properties and the local market. Private brokers have the resources and knowledge needed (including marketing) and are likely to reach the broadest pool of Bay Area buyers. The City opted to select a local real estate broker, Korman & Ng, for its most recent small asset sale of 2931 Shasta Road (a former Fire Department house) in 2012.

ALTERNATIVE ACTIONS CONSIDERED

The City could consider:

- Retaining the property for a future determination on its usefulness. Staff are not recommending this option due to the small size and location of 1631 Fifth Street as well as the costs and liabilities associated with holding vacant properties.
- Selling or leasing 1631 Fifth Street to a housing organization for development and operation as affordable housing. Staff are not recommending this option because it would require additional investment of City funds which are needed for developments currently in the pipeline. New construction and operating housing at this scale is not efficient and cannot leverage much (if any) non-City funds. The Redevelopment Agency did not receive viable proposals for previous attempts to develop affordable housing. HHCS received inquiries related to leasing the vacant site for the placement of tiny homes for the homeless or other populations but is recommending the market rate sale with proceeds going in to the Housing Trust Fund in order to expand permanent affordable housing opportunities.

CONTACT PERSON

Amy Davidson, Senior Community Development Project Coordinator, Health, Housing & Community Services, (510) 981-5406

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

Attachments:

1: Resolution

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

DISPOSITION OF CITY-OWNED, FORMER REDEVELOPMENT AGENCY  
PROPERTY AT 1631 FIFTH STREET

WHEREAS, the City acquired the property at 1631 Fifth Street via its role as the Successor Agency to the Redevelopment Agency of the City of Berkeley; and

WHEREAS, the Redevelopment Agency planned to sell the site prior to the redevelopment dissolution legislation; and

WHEREAS, The Successor Agency Oversight Board, acting at the direction of the State Department of Finance, designated 1631 Fifth Street as a housing asset to facilitate their market rate sale; and

WHEREAS, the site's status as a former Redevelopment property enables the City to follow redevelopment law's disposition requirements for market rate returns and exempts the City from the Surplus Land Act (AB 2135 & AB 1486); and

WHEREAS, the property was acquired with Community Development Block Grant (CDBG) funds, which restricts revenue from its sale to CDBG-eligible uses, including the Housing Trust Fund; and

WHEREAS, the General Plan's Housing Element Policy H-2 states the City should aggressively search out, advocate for, and develop additional sources of funds for permanently affordable housing, including housing for people with extremely low incomes and special needs; and

WHEREAS, selling the property at market rate will maximize Housing Trust Fund contributions and provide leverage for permanent affordable housing projects.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the property at 1631 Fifth Street be sold for a purchase price that shall be equal to or greater than the appraised market value of the property.

BE IT FURTHER RESOLVED that the City Manager contract with appropriate real estate professionals to market and sell the property.

**MEMORANDUM**

**To:** Mayor and Council  
**From:** Dee Williams-Ridley, City Manager  
**Date:** December 4, 2020  
**Subject:** **Homeless and Affordable Housing Status Report**

This memo provides a consolidated status report on the City’s affordable housing development and work to increase the supply of housing for those experiencing homelessness. Over the last few years significant progress has been made toward creating pathways to permanent housing and developing new housing units. This effort is a top priority for the City and has continued despite the COVID-19 pandemic and associated challenges.

Given the fiscal crisis that is a result of the pandemic and its unknown long-term impacts, this is a critical time to take a close look at all our current housing resources and potential allocations alongside all of our current and anticipated homeless and affordable projects under consideration. To date, the City has made funding commitments for 348 units of affordable housing and an additional 332 slots for people experiencing homelessness are in process; representing a total investment of over \$63 million. Additional projects, some with estimated costs and some with unknown costs, have surfaced recently that will require additional funding.

This memo shows all of these commitments and possibilities in one place and strives to improve our ability to support prudent financial and capacity-based planning and decision-making. Below is a summary of current available and projected resources for homeless and affordable housing and an analysis of cost factors; followed by all current and anticipated homeless and affordable projects. The intention is to maximize affordable housing and its long term sustainability as a priority. This means carefully assessing existing affordable housing stock, additional opportunities, and the funding required and available.

**Resources for Homeless and Affordable Housing**

Table 1 provides an overview of currently available and projected resources.

**Table 1 Current Available and Projected Resources**

| <b>Funding Source</b> | <b>\$ Available</b> | <b>Notes</b>                                                                                                                             |
|-----------------------|---------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| Measure O             | \$80 million        | Total Measure O Funds authorized by voters is \$135 million. 1 <sup>st</sup> issuance in 2020 was \$38 million. 2 <sup>nd</sup> issuance |

|                                                                         |                                    |                                                                                                                                                                                                      |
|-------------------------------------------------------------------------|------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                         |                                    | partially awarded to RCD's Maudelle Shirek project (2001 Ashby - \$17 million). Future potential development sites listed below.                                                                     |
| Measure P                                                               | \$2.5 million                      | Annual amount available.                                                                                                                                                                             |
| Measure U1                                                              | \$346,337                          | \$1 million in General Fund (U1) funds were allocated to Small Sites Program in FY21. \$653,663 has been allocated to the BACLT Stuart Street project.                                               |
| Permanent Local Housing Allocation Fund (PLHA)                          | \$1.2 million annually for 5 years | First 2 years will be used for homeless services <sup>1</sup> . Years 3-5 for projects supported by the Housing Trust Fund and for ten project-based subsidy units for homeless. Awarded in October. |
| Berkeley Housing Trust Fund (HTF)                                       | \$7.5 million <sup>2</sup>         | HTF funds are from a variety of sources and could be used for the Pipeline of Affordable Housing Rehab Projects listed below.                                                                        |
| CDBG regular entitlement and COVID Funding for Hotel Purchase and Rehab | \$574,642                          | Approved by City Council on 9/15/20; subject to HUD approval.                                                                                                                                        |

A variety of factors should be taken into consideration when looking at Table 1.

- The economic downturn will likely affect future U1, Measure P, and PLHA revenues.
- HTF funding is a moving target since it is funded mostly with mitigation fees from development projects. For this reason, the HTF is better suited to one-time requests (i.e., pre-development loans / grants or construction support) and is not a reliable source for long-term allocations of funding, such as an operating reserve or services.
- Measure O cannot be used for ongoing operating subsidies.
- PLHA funds are planned to be used for the HTF for rehabilitation and to fund ten units of Homeless housing.

Potentially available funding to support new homeless housing includes:

- Measure P – \$2.5 million<sup>3</sup>
- CDBG regular and COVID(CV) – \$535,998 (regular entitlement) and \$38,644 CDBG-CV (both are one-time allocations)

<sup>1</sup> See Council Action on July 14, 2020:

[https://www.cityofberkeley.info/Clerk/City\\_Council/2020/07\\_Jul/Documents/2020-07-14\\_Item\\_15\\_Permanent\\_Local\\_Housing\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-14_Item_15_Permanent_Local_Housing_pdf.aspx)

<sup>2</sup> This is the amount available after subtracting \$2.5 million for the Small Sites Program as per Council action on 12/15/2020.

<sup>3</sup> Approved for FY21 only and long-term commitment needs to be confirmed.

TOTAL: \$3.1 million (2021, future years to be confirmed)

Projects with known projected costs that will need some funding source other than Measure O:

- BOSS/Panoramic Interests Project (39 units) – \$900,000 - \$1,000,000 annually (assuming Alameda County also matches this funding)
  - No Place Like Home (NPLH) Services (defined more fully below) – \$190,000 per year to support various projects
- TOTAL: \$1.1 million to \$2.1million annually

Projects with unknown costs that will likely need funding in order to move forward:

- Supportive Services for *No Place Like Home* units at People's Park Development.
- Funding to continue services for *Berkeley Respite* RVs or 1654 5<sup>th</sup> Street. For the first 18 months, operating costs are being supported through federal grants (Emergency Solutions Grant) allocated to the City through the CARES Act, but city staff have not yet identified a funding source to support these trailers should a decision be made to continue the program.
- Russell Street Residence – purchase or assistance with relocation. This program is currently operated by Berkeley Food and Housing Project and houses Berkeley Mental Health clients. The property is for sale and BFHP's lease ends in December this year. Acquisition and rehab costs are projected to be \$6.1 million, and ongoing subsidies approximately \$900,000 per year.
- Quality Inn Motel (29 units) – Should this property become available at a reasonable price, acquisition and rehabilitation would require considerable one-time City investment plus an operating subsidy of \$600,000 to \$1.2M per year (or \$14M if established at the start)
- As reported at the September 15 City Council meeting, CARES Act funds have been allocated to the Respite Program and to Rapid Re-housing for unhoused residents staying at both the Respite Program and the Safer Ground program. The bulk of the funds can be used for 12-month subsidies after which clients are expected to pay rents on their own. Alameda County recently informed City staff that County funding for the Safer Ground hotels in Berkeley will end on December 31, 2020 unless the County Board of Supervisors allocates additional funding. City staff are working with County consultants to begin the process of rapidly rehousing Safer Ground residents. City staff expect that most of the residents will not be able to sustain their own housing once the rapid re-housing subsidies have expired. Therefore we are considering these subsidies to be a bridge to other permanent supportive housing subsidies or units. Approximately 90 people will require permanent housing placements in sometime in 2022 to avoid becoming homeless again.

## Affordable Housing to Support Individuals Experiencing Homelessness

Apart from funding for the Berkeley Way Project, which includes the Berkeley Food and Housing Project (BFHP) Hope Center, City staff have submitted applications to HUD and supported applications from affordable housing developers to the State of California. This will result in a pipeline of housing vouchers and rental units in Affordable Housing Developments that will be used for individuals experiencing homelessness. Placements in all the units and voucher programs shown in Table 2 will be made through the North County Berkeley/Albany/Emeryville Coordinated Entry System.

On January 29, 2019, Council authorized the City of Berkeley to participate in the State of California's *No Place Like Home* (NPLH) housing program and submit an application for funding the Berkeley Way Project. On December 10, 2019, Council again authorized an application to the NPLH Program for the 2001 Ashby Avenue project. Both projects were awarded funding under the NPLH program, which requires that the City commit to providing mental health services for residents of the funded units for at least 20 years. The NPLH program is a housing subsidy for people who are homeless and have a mental illness. Referrals to these units will be made through the Coordinated Entry System.

**Table 2 Affordable Housing for those Experiencing Homelessness**

| <b>Project</b>                                          | <b>Number of Units</b>                                                                                                                                                                          | <b>Status of Funding</b>                                                                                                                                         |
|---------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| BFHP Hope Center                                        | 53 Permanent Supportive Housing Units                                                                                                                                                           | City funded \$7,727,630 in Measure O (1 <sup>st</sup> issuance) for all units.                                                                                   |
| HUD Mainstream Vouchers – Non-Elderly Disabled program  | 91 vouchers                                                                                                                                                                                     | Provided by HUD. Services provided by Coordinated Entry System.                                                                                                  |
| HUD Veterans Affairs Supportive Housing (VASH) Vouchers | <ul style="list-style-type: none"> <li>40 vouchers</li> </ul>                                                                                                                                   | Funding provided by the VA. Services provided by Berkeley Food and Housing Project                                                                               |
| No Place Like Home Units                                | <ul style="list-style-type: none"> <li>16 in Berkeley Way (Affordable)</li> <li>12 in 2001 Ashby</li> <li>5 in Blake Apartments</li> <li>TBD in Future RCD People's Park Development</li> </ul> | The city committed to funding services for these units, estimated at \$190,000 annually. Additional funding will likely be needed for the People's Park project. |
| Shelter Plus Care Expansion                             | <ul style="list-style-type: none"> <li>53 new certificates in the new Shelter Plus Care COACH program</li> </ul>                                                                                | Funding provided by HUD for housing and services                                                                                                                 |

|                   |                                                                                                 |                                                                     |
|-------------------|-------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| Measure P Funding | If used for rental subsidies and services, can support approximately 72 households <sup>4</sup> | \$2.5 million committed for FY21; intended for long term investment |
| <b>Totals</b>     | <b>342 units</b>                                                                                |                                                                     |

### Affordable Housing<sup>5</sup> Status

See Tables 3 and 4 for current and possible affordable housing pipeline projects. In addition to the projects in the pipeline there are multiple existing projects funded in the past with Housing Trust Funds with significant (\$ millions) in identified rehab needs based on City staff monitoring. Finally there is a table of non-city sponsored projects that provide important low income housing with likely significant financial needs that is listed.

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<sup>4</sup> Funds would be used for Rental Assistance and flexible funding (75%), supportive services (10%), and administration (15%).

<sup>5</sup> The HTF provides funding to support housing for people living with incomes ranging from 20% of Area Median Income to 60% of AMI. Most homeless households in Berkeley have incomes below 20% of AMI. NPLH units are included in the total unit count.

Table 3 Affordable Housing New Construction

| Project                                  | Type                                       | Sponsor                                         | Projected Units | Total City Funds Reserved | Projected Sources of Funds                            | Status of Funds                                           | City Funded Operating and Services                                                                                  |
|------------------------------------------|--------------------------------------------|-------------------------------------------------|-----------------|---------------------------|-------------------------------------------------------|-----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|
| 1638 Stuart Street (Small Sites Program) | Community Land Trust / Limited Equity Coop | Bay Area Community Land Trust                   | 8               | \$1,653,663               | General Fund (U1)                                     | \$1,001,163 in contract<br>\$652,500 in pending amendment | \$0                                                                                                                 |
| 1740 San Pablo Avenue                    | Affordable Housing                         | BRIDGE Housing                                  | 60              | \$7,500,000               | Measure O (1 <sup>st</sup> )                          | Reserved – loan docs in process                           | \$0                                                                                                                 |
| 2321-2323 10 <sup>th</sup> Street        | Community Land Trust                       | Northern California Land Trust                  | 8               | \$1,620,640               | General Funds (U1)                                    | Reserved – loan docs in process                           | \$0                                                                                                                 |
| 2527 San Pablo Avenue                    | Affordable Housing                         | Satellite Affordable Housing Associates         | 62              | \$11,500,000              | HTF, Measure O (1 <sup>st</sup> ), LHFT if successful | Reserved                                                  | \$0                                                                                                                 |
| BFHP Hope Center (2012 Berkeley Way)     | Shelter and transitional Housing           | Berkeley Food & Housing Project/ BRIDGE Housing | 44              | \$16,964,507              | HTF, General Funds (U1), Measure O (1 <sup>st</sup> ) | In contract                                               | Reserve funded in permanent loan. Additional City funding would be needed for 24/7 operation – Estimate: \$190,000. |
| BFHP Hope Center PSH                     | Permanent Supportive Housing               | Berkeley Food & Housing Project/                | 53              | \$7,727,630               | Measure O (1 <sup>st</sup> )                          | In contract                                               | <i>No Place like Home</i> – 16 units                                                                                |



|                                               |                    |                                         |            |                     |                                          |             |                                                                                                    |
|-----------------------------------------------|--------------------|-----------------------------------------|------------|---------------------|------------------------------------------|-------------|----------------------------------------------------------------------------------------------------|
| (2012 Berkeley Way)                           |                    | BRIDGE Housing                          |            |                     |                                          |             | Additional City Funds needed for services projected at \$150,000 per year for 53 units             |
| BRIDGE Berkeley Way (2012 Berkeley Way)       | Affordable Housing | BRIDGE Housing                          | 89         | \$2,774,925         | Measure O (1 <sup>st</sup> )             | In contract | \$0                                                                                                |
| Jordan Court (1601 Oxford)                    | Affordable Housing | Satellite Affordable Housing Associates | 35         | \$6,026,927         | HTF (HOME), Measure O (1 <sup>st</sup> ) | In contract | \$0                                                                                                |
| Maudelle Miller Shirek Community (2001 Ashby) | Affordable Housing | Resources for Community Development     | 86         | \$17,000,000        | Measure O (2 <sup>nd</sup> round),       | Reserved    | <i>No Place like Home</i> – 12 units City Funds needed for services projected at \$40,000 per year |
| <b>Total</b>                                  |                    |                                         | <b>445</b> | <b>\$61,268,292</b> |                                          |             | <b>\$190,000+ Per year</b>                                                                         |

## Table 3 Notes:

- Typically, the funding sources for each loan are decided at the time the loan is made (contract execution, construction start). This table shows current projections.
- The HTF program pools multiple sources, mostly mitigation fee revenue and HOME. General Fund (U1) and Measure O were not added to the HTF program so are listed separately here.
- Measure O: 1<sup>st</sup> issuance in 2020, 2<sup>nd</sup> issuance planned for 2022.

**Table 4 Additional Possible Demands for Housing Funds**

| Pipeline Projects with Potential Additional Funding Needs                   |                              |                 |                                                                                                                                                                                |
|-----------------------------------------------------------------------------|------------------------------|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Project                                                                     | Sponsor                      | Projected Units | Notes                                                                                                                                                                          |
| 1740 San Pablo Avenue                                                       | BRIDGE Housing               | 60              | Received fewer Housing Choice Vouchers from BHA than requested. Expected to request up to \$4.5M in development loan.                                                          |
| Known New Construction Proposals (Not in Pipeline) – no pending application |                              |                 |                                                                                                                                                                                |
| Project                                                                     | Sponsor                      | Projected Units | Notes                                                                                                                                                                          |
| Ashby BART                                                                  | BART w/ developer            |                 | BART MOU requires City to commit funds by 12/20; possible Request For Qualifications in 2021                                                                                   |
| North Berkeley BART                                                         | BART w/ developer            |                 | BART MOU requires City to commit funds by 12/20; possible RFQ in 2021                                                                                                          |
| 1367 University/ Step Up Housing                                            | BOSS and Panoramic Interests | 39              | \$32,975 start-up costs + \$900 K to \$1M/yr for 10 years (\$9M total) - proposal submitted on 8/26/20                                                                         |
| BUSD Sponsored Project                                                      | BUSD w/ developer            |                 | Identified by Council as the #1 priority for Measure O 2 <sup>nd</sup> issuance                                                                                                |
| People's Park                                                               | RCD                          |                 | RCD expressed interest in the PLHA operating subsidies that the City applied to the state for on 8/2020. If 100% homeless project, will likely need City funding for services. |
| 1001-1011 University (former Premier Cru)                                   |                              |                 |                                                                                                                                                                                |
| West Berkeley Service Center                                                |                              |                 | Pending zoning study and Council identification of priority use (affordable senior housing, nursing care and assisted living were all mentioned).                              |

| Ephesians                                                                  |             |                 | Predevelopment application submitted in November for \$1.1 million.                                                                                                                                                                                                                                                                             |
|----------------------------------------------------------------------------|-------------|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| St Paul AME                                                                |             |                 | Predevelopment application submitted in November for \$1.2 million.                                                                                                                                                                                                                                                                             |
| Known Possible Rehab Requests (Not in Portfolio) – no pending applications |             |                 |                                                                                                                                                                                                                                                                                                                                                 |
| Project                                                                    | Sponsor     | Estimated Units | Notes                                                                                                                                                                                                                                                                                                                                           |
| Oregon Park                                                                | Oregon Park | 60              | <ul style="list-style-type: none"> <li>Multiple outstanding code issues. Professional asset and property management would help this property a lot.</li> </ul>                                                                                                                                                                                  |
| Rosewood Manor                                                             | SBNDC       | 35              | <ul style="list-style-type: none"> <li>Contacted City 7/20/20. Property managed by the Unity Council. Submitted letter requesting \$2.2 million in funding for this property and for Lorin Station. \$1.9 million in CDBG funds have been identified for this project. Remaining required funds to come from the Housing Trust Fund.</li> </ul> |
| 1685 Solano Ave.                                                           | BACLT       | 13              | <ul style="list-style-type: none"> <li>BACLT is in negotiations for purchase. Estimated City request of \$2.6M to \$3.9M.</li> </ul>                                                                                                                                                                                                            |
| EAH acquisition and rehab project                                          | EAH         |                 | <ul style="list-style-type: none"> <li>Contacted staff 7/20/20 with initial questions about housing grants.</li> </ul>                                                                                                                                                                                                                          |
| YMCA conversion                                                            | YMCA        |                 | <ul style="list-style-type: none"> <li>Contacted staff 7/20/20. Seemed more interested in grants for affordable housing than a loan or homeless housing.</li> </ul>                                                                                                                                                                             |
| 3404 King Street                                                           |             | 18              | <ul style="list-style-type: none"> <li>Additional funding needed for services and rehab.</li> </ul>                                                                                                                                                                                                                                             |
| Russell Street Residence                                                   | BFHP        | 21              | <ul style="list-style-type: none"> <li>Currently on the market for \$7M</li> </ul>                                                                                                                                                                                                                                                              |

**CC:** Paul Buddenhagen, Deputy City Manager  
David White, Deputy, City Manager  
Lisa Warhuus, HHCS Director





# Communications

All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

## **City Clerk Department**

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

## **Records Online**

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

To search for communications associated with a particular City Council meeting using Records Online:

1. Select Search Type = “Public – Communication Query (Keywords)”
2. From Date: Enter the date of the Council meeting
3. To Date: Enter the date of the Council meeting (this may match the From Date field)
4. Click the “Search” button
5. Communication packets matching the entered criteria will be returned
6. Click the desired file in the Results column to view the document as a PDF