



**BERKELEY CITY COUNCIL HEALTH, LIFE ENRICHMENT, EQUITY &  
COMMUNITY COMMITTEE  
SPECIAL MEETING**

**Thursday, May 16, 2024  
10:00 AM**

2180 Milvia Street, 6th Floor - Redwood Room

Committee Members:

Councilmembers Rashi Kesarwani and Ben Bartlett  
Alternate: Councilmember Sophie Hahn

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. If you are feeling sick, please do not attend the meeting in person.

Remote participation by the public is available through Zoom. To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL – <https://cityofberkeley-info.zoomgov.com/j/1608402725>. To request to speak, use the “raise hand” icon on the screen. To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and Enter Meeting ID: **160 840 2725**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized by the Chair. Please be mindful that the meeting will be recorded.

To submit a written communication for the Committee’s consideration and inclusion in the public record, email [policycommittee@berkeleyca.gov](mailto:policycommittee@berkeleyca.gov).

Written communications submitted by mail or e-mail to the Health, Life Enrichment, Equity, & Community Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.

# AGENDA

**Roll Call**

**Public Comment – Items on This Agenda Only**

**Election of Chairperson**

## **Minutes for Approval**

*Draft minutes for the Committee's consideration and approval.*

### **1. Minutes – December 11, 2023**

#### **Committee Action Items**

*The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker.*

*Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.*

### **2. Referral for Development of Request for Proposal (RFP) to Support Berkeley-Based Non-Profit Food Assistance Providers Serving Food Insecure Households**

**From: Councilmember Kesarwani (Author), Councilmember Humbert (Co-Sponsor), Councilmember Wengraf (Co-Sponsor), Councilmember Taplin (Co-Sponsor)**

**Referred: November 13, 2023**

**Due: July 26, 2024**

**Recommendation:** Refer to the City Manager to develop and fund a Request for Proposal (RFP) process to support Berkeley-based non-profit food assistance providers serving food insecure households. Funds are intended for (but not limited to) the following needs:

- Expansion of capacity to serve more people experiencing food insecurity, such as one-time purchase of equipment;
- Hiring of additional staff to serve more people; and/or
- Other emerging needs to be determined.

Refer \$200,000 annually in funding to the biennial FY 2024-25 to FY 2025-26 budget process to fund qualified proposals resulting from the RFP.

**Financial Implications:** See report

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

## Committee Action Items

- 3. Healthy Checkout Amendment**  
**From: Councilmember Bartlett (Author), Councilmember Harrison (Co-Sponsor)**  
**Referred: November 13, 2023**  
**Due: July 26, 2024**  
**Recommendation:** 1. Adopt an amendment to the Healthy Checkout Ordinance (9.82) requiring stores 2,500 square feet and under in size to sell more nutritious food and beverage options in their checkout areas.  
2. Refer to the City Manager to determine funding and staffing needs to implement and enforce the expansion of the ordinance and sources of funding to support this program.  
**Financial Implications:** See report  
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130
- 4. Small Business Support Act**  
**From: Councilmember Bartlett (Author)**  
**Recommendation:** That the City Manager and Finance Department amend the City of Berkeley business license process and requirements to promote transparency between the City and small business owners and lower burdensome barriers to entry for new business owners. Such amendments shall include the following: 1. Establish a business license amnesty program; 2. Establish a Small Business Support and Retention Emergency Grant; 3. Create a Small Business Ombudsman; 4. Promote greater transparency about the business licensing process.  
These actions will support small business creation and retention. The close relationship between the people of Berkeley, our small businesses, and the City is essential to making our community thrive.  
**Financial Implications:** See report  
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130
- 5. Re-Adoption of the Berkeley Building Codes, including Local Amendments to the 2022 California Building Standards Code**  
**From: City Manager**  
**Referred: May 7, 2024**  
**Due: October 14, 2024**  
**Recommendation:** *\*\*\*On May 7, 2024 the City Council referred the NOX provisions of this item to the Health, Life Enrichment, Equity & Community Committee for review and a recommendation to Council.\*\*\**  
**Financial Implications:** See report  
Contact: Jordan Klein, Planning and Development, (510) 981-7400

## Unscheduled Items

*These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.*

- None

## Items for Future Agendas

- **Requests by Committee Members to add items to the next agenda**
- **Discussion of future hearings and open forums**

## Adjournment

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*Written communications addressed to the Health, Life Enrichment, Equity & Community Committee and submitted to the City Clerk Department will be distributed to the Committee prior to the meeting.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding public participation may be addressed to the City Clerk Department (510) 981-6900.*



### COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location. 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. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

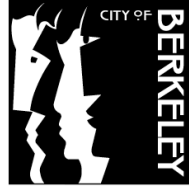
~~~~~  
I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on May 9, 2024.

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

Mark Numainville, City Clerk

## Communications

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**BERKELEY CITY COUNCIL HEALTH, LIFE ENRICHMENT, EQUITY &  
COMMUNITY COMMITTEE  
REGULAR MEETING MINUTES**

**Monday, December 11, 2023  
10:00 AM**

2180 Milvia Street, 6th Floor - Redwood Room

**Committee Members:**

Councilmembers Ben Bartlett, Sophie Hahn, and Mark Humbert  
Alternate: Councilmember Terry Taplin

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## MINUTES

**Roll Call:** 10:04 a.m.

**Present:** Hahn, Humbert

**Absent:** Bartlett

Councilmember Bartlett present at 10:11 a.m.

**Public Comment on Non-Agenda Matters:** 2 speakers

### Minutes for Approval

*Draft minutes for the Committee's consideration and approval.*

**1. Minutes – November 13, 2023**

**Action:** M/S/C (Humbert/Bartlett) to approve the November 13, 2023 minutes.

**Vote:** All Ayes.

### Committee Action Items

*The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker.*

*Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.*

**2. Referral: Use of Sidewalks for Recreation, Such as Chess**

**From:** Councilmember Robinson (Author), Councilmember Harrison (Author)

**Referred:** November 27, 2023

**Due:** May 27, 2024

**Recommendation:** Refer to the City Manager to evaluate and return to City Council with recommendations and legislative alternatives for making use of tables, chairs, and other relevant objects that can be easily moved to be allowed without a permit application for non-disruptive recreational uses in the public right-of-way. Such recreational uses may include activities such as playing chess at movable tables and chairs. Consideration should be given to ensure that such use of tables and chairs does not unduly obstruct public sidewalks.

**Financial Implications:** See report

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

**Action:** See action for Item 3.

## Committee Action Items

**3. Supporting the Installation of Permanent Chess/Games Tables on Telegraph Avenue and Proposing Resolution of Concerns at 2454 Telegraph Avenue  
From: Councilmember Hahn (Author)**

**Referred: November 27, 2023**

**Due: May 27, 2024**

**Recommendation:** 1. Refer to the Budget Process \$50,000 to support the installation of public chess/game tables on Telegraph Avenue, including at or near the intersection of Telegraph and Haste Streets.

2. Refer to the City Manager to explore the potential development of a parklet at or near the Telegraph/Haste intersection, potentially near the South/West corner (beyond the yellow loading area on Haste Street) and other potential locations for a parklet that could accommodate chess/game tables and the volume of community participation this activity generates.

3. Refer to the City Manager the development of a city-wide chess and game facilities program to integrate permanent chess/game nodes into park, curtilage, and/or sidewalk areas throughout Berkeley in a manner that encourages broad participation in and enjoyment of games and supports the building of community around these activities. Consider appropriate locations for nodes, installation of City-owned facilities, rules and regulations for use, and maintenance.

4. Direct the City Manager to pause imposition of additional fees, if any, and enter into negotiations with the property owner at 2454 Telegraph Avenue to achieve an agreement that would result in upgrades and improvements to the building exterior/facade, create a landscaped perimeter around the exposed entry area, improve maintenance, and/or similar terms, in exchange for a reduction/waiver of accumulated fees.

**Financial Implications:** See report

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

**Action:** 4 speakers. M/S/C (Hahn/Bartlett) to send Item 2 and Item 3 to the City Council as revised with a positive recommendation. Proposed revisions include consideration of: financing of improvements; negotiations with property owner(s); rules relating to the public right-of-way; and support of city-wide program(s).

**Vote:** All Ayes.

## Unscheduled Items

*These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.*

**4. Referral for Development of Request for Proposal (RFP) to Support Berkeley-Based Non-Profit Food Assistance Providers Serving Food Insecure Households**

**From: Councilmember Kesarwani (Author), Councilmember Humbert (Co-Sponsor), Councilmember Wengraf (Co-Sponsor), Councilmember Taplin (Co-Sponsor)**

**Referred: November 13, 2023**

**Due: May 13, 2024**

**Recommendation:** Refer to the City Manager to develop and fund a Request for Proposal (RFP) process to support Berkeley-based non-profit food assistance providers serving food insecure households. Funds are intended for (but not limited to) the following needs:

- Expansion of capacity to serve more people experiencing food insecurity, such as one-time purchase of equipment;
- Hiring of additional staff to serve more people; and/or
- Other emerging needs to be determined.

Refer \$200,000 annually in funding to the biennial FY 2024-25 to FY 2025-26 budget process to fund qualified proposals resulting from the RFP.

**Financial Implications:** See report

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

**5. Healthy Checkout Amendment**

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

**Referred: November 13, 2023**

**Due: May 13, 2024**

**Recommendation:** 1. Adopt an amendment to the Healthy Checkout Ordinance (9.82) requiring stores 2,500 square feet and under in size to sell more nutritious food and beverage options in their checkout areas.

2. Refer to the City Manager to determine funding and staffing needs to implement and enforce the expansion of the ordinance and sources of funding to support this program.

**Financial Implications:** See report

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

## Items for Future Agendas

- None



## Adjournment

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

**Vote:** All Ayes.

Adjourned at 11:35 a.m.

I hereby certify that the foregoing is a true and correct record of the Health, Life Enrichment, Equity, & Community Committee meeting held on December 11, 2023.

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Wendy Sorensen, Assistant City Clerk

## Communications

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Rashi Kesarwani  
Councilmember, District 1

CONSENT CALENDAR  
NOVEMBER 28, 2023

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author) and Councilmembers Mark Humbert, Susan Wengraf, and Terry Taplin (Co-Sponsors)

SUBJECT: Referral for Development of Request for Proposal (RFP) to Support Berkeley-Based Non-Profit Food Assistance Providers Serving Food Insecure Households

RECOMMENDATION

Refer to the City Manager to develop and fund a Request for Proposal (RFP) process to support Berkeley-based non-profit food assistance providers serving food insecure households. Funds are intended for (but not limited to) the following needs:

- Expansion of capacity to serve more people experiencing food insecurity, such as one-time purchase of equipment;
- Hiring of additional staff to serve more people; and/or
- Other emerging needs to be determined.

Refer \$200,000 annually in funding to the biennial FY 2024-25 to FY 2025-26 budget process to fund qualified proposals resulting from the RFP.

CURRENT SITUATION AND ITS EFFECTS

**Community Agency RFP Does Not Directly Address Food Insecurity . . .** The RFP process for community agency funding is one of the City's mechanisms to ensure City funds are allocated to agencies addressing key priorities, such as housing, education, and job training. However, the RFP does not directly address food insecurity.

**. . . But Food Prices Are On the Rise and Federal Pandemic-Related Food Aid Ended Earlier This Year.** From August 2022 through August 2023, food prices in the San Francisco area increased by 4.5 percent.<sup>1</sup> At the same time, federal food assistance associated with the pandemic ended earlier this year in March 2023. When the pandemic began in 2020, recipients of CalFresh (California's food stamps program) were allotted the maximum benefit available for their household size, likely contributing to rising enrollment

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<sup>1</sup> U.S. Bureau of Labor Statistics, Consumer Price Index, San Francisco Area - August 2023: [https://docs.google.com/document/d/11ri1T7alsDOPOnwV3Ob\\_OmQXFxKgF36dwIviZbvXvTI/edit](https://docs.google.com/document/d/11ri1T7alsDOPOnwV3Ob_OmQXFxKgF36dwIviZbvXvTI/edit)

over the last several years. When the emergency allotments ended, CalFresh benefits were reduced, sometimes dramatically. For some single-person households, CalFresh benefits dropped from \$281 to as little as \$23 per month.<sup>2</sup> As a result, food banks throughout the state are seeing increasing numbers of people served.

***Berkeley-Based Non-Profit Food Assistance Providers Report Increasing Demand.***

The Berkeley Food Pantry is a non-profit organization providing emergency groceries to Berkeley and Albany residents four days per week, two hours each day.<sup>3</sup> The Berkeley Food Network (BFN) provides an on-site pantry in addition to mobile pantries throughout the city and distribution to other local pantries like the Berkeley Food Pantry.<sup>4</sup> Both organizations have reported significant increases in the number of households they are serving in recent years, as shown in Exhibit 1.

**Exhibit 1: Growth in Number of Households Served (2021-2023)**

	<b>Berkeley Food Pantry Number of Households Served</b>	<b>Berkeley Food Network Number of Households Served</b>
<b>Sept. 2021</b>	<b>766</b>	<b>1,518</b>
<b>Sept. 2022</b>	<b>1,047</b>	<b>2,601</b>
<b>Sept. 2023</b>	<b>1,290</b>	<b>3,182</b>
<b>Overall Percent Growth (Sept. 2021-Sept. 2023)</b>	<b>68.4%</b>	<b>109.6%</b>

Sources: Berkeley Food Pantry and Berkeley Food Network

***Alameda County Community Food Bank Reports a 52 Percent Increase in Food***

***Distribution.*** The Oakland-based Alameda County Community Food Bank (ACCFB), which partners with more than 400 institutions to provide food assistance to Alameda County families and individuals, reports an increase in demand throughout the county. The ACCFB has gone from distributing 38 million pounds of food during pre-COVID years to 58 million pounds of food most recently.<sup>5</sup> As of October 2, 2023, 11.4 percent of Alameda County residents are experiencing food insecurity—up three percent from just April 10, 2023, shortly after the federal pandemic-related food assistance ended.<sup>6</sup>

**BACKGROUND**

<sup>2</sup> Cal Matters August 8, 2023 article: “How Hungry is California? Millions Struggle to Eat Well in an Abundant State” <https://calmatters.org/explainers/california-hunger-crisis/#2b5159b1-a710-41cb-839b-aac1ea2791e4>

<sup>3</sup> Berkeley Food Pantry’s website for a full description of services provided: <https://www.berkeleyfoodpantry.org/>

<sup>4</sup> Berkeley Food Network’s website for a full description of services and programs provided: <https://www.berkeleyfoodnetwork.org/who-we-are/about/>

<sup>5</sup> Alameda County Community Food Bank website: <https://www.accfb.org/about-us/what-we-do/>

<sup>6</sup> California Pulse Website for Alameda County: <https://stanford-datalab.github.io/covid-19-ca/alameda/#food-insufficiency>

***Food Insecurity Impacts One in Five Californians.*** Limited or uncertain access to adequate food and nutrition can have long-term physical and mental health effects on adults and children alike.<sup>7</sup> The number of food insecure individuals and families is steadily climbing and food banks throughout the state are struggling to keep up.

***Increasing Demand for Food Assistance Is Impacting the Wider Bay Area.*** The Food Bank of Contra Costa and Solano, for instance, is now serving 350,000 people across the two counties monthly, which is double their pre-pandemic levels of service. The San Francisco-Marin food bank went from serving 32,000 households weekly to more recently serving 56,000 households weekly. Food banks throughout the state are functioning more like supermarkets in terms of peoples' regular food procurement venue rather than sources of emergency aid.<sup>8</sup>

#### FISCAL IMPACT

\$200,000 annually to fund the RFP, and staff time to develop the RFP and review and select qualified proposals.

#### ENVIRONMENTAL IMPACT

There is no significant environmental impact associated with this referral.

#### CONTACT PERSON

Councilmember Rashi Kesarwani, District 1

(510) 981-7110

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<sup>7</sup> California Association of Food Banks website: <https://www.cafoodbanks.org/hunger-data-reports/>

<sup>8</sup> Cal Matters June 12, 2023 article: "A Catastrophic Hunger Crisis? California Food Banks are Being Flooded by Families Seeking Help:" <https://calmatters.org/california-divide/2023/06/california-food-banks/>





# BEN BARTLETT

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## VICE MAYOR

03

CONSENT  
November 28, 2023

To: Honorable Mayor and Members of the City Council  
 From: Vice Mayor Ben Bartlett  
 Subject: Healthy Checkout Amendment

### **RECOMMENDATION**

1. Adopt an amendment to the Healthy Checkout Ordinance (9.82) requiring stores 2,500 square feet and under in size to sell more nutritious food and beverage options in their checkout areas.
2. Refer to the City Manager to determine funding and staffing needs to implement and enforce the expansion of the ordinance and sources of funding to support this program.

### **CURRENT SITUATION**

On October 13th, 2020, the Berkeley City Council adopted the Healthy Checkout Ordinance, setting minimum nutrition standards for products stocked in store checkouts. This ordinance took effect on January 1, 2021. Enforcement pursuant to 9.82.040 began on July 1, 2021.

### **BACKGROUND**

Today's food landscape plays a large role in determining what people purchase and consume. Unhealthy food and beverages are promoted and placed repeatedly throughout retail stores. Cheap, ready-to-eat foods high in salt, saturated fat, and added sugars dominate checkout aisles, where shoppers are more likely to make impulse purchases and where parents struggle with their children over demands to buy treats at the end of a shopping trip.

This ordinance would require all stores 2,500 square feet and smaller in size that sell at least 25 linear feet of food to follow the requirements for Healthy Checkout, as written in the ordinance. This would impact approximately 55 stores in Berkeley, including Middle East Market, 7-Eleven, Mi Ranchito, Berkeley Natural Grocery, Alcatraz Market, and more.

### **Health Impacts of Sugar and Sodium Consumption and Related Disease Disparities**

Impulse buying at checkout contributes to the high levels of sugar consumption in American diets. Excessive added sugar intake is directly linked to adverse health impacts including elevated risk of tooth decay, heart disease, and Type 2 diabetes.<sup>1,2,3</sup> The adverse health effects of added sugar consumption further entrench health disparities, burdening people of color more than white populations. Currently, Type 2 diabetes is on the rise across the country; one in three children and one of two children of color will be diagnosed in their lifetime.<sup>4</sup> Diets that are high in sodium are linked to high blood pressure, heart disease, and stroke,<sup>5</sup> all of which disproportionately affect African Americans and communities of color.<sup>6</sup>

### **Health Equity and Inequity**

In California, over 10% of adults have diagnosed Type 2 Diabetes (T2D), a disease which drastically affects the quality of life of those affected.<sup>7</sup> It is estimated that nearly one million additional adults throughout the state live with undiagnosed Type 2 Diabetes. People living with T2D have, on average, medical bills that are 2.5 times higher than individuals without T2D.<sup>7</sup> It is estimated that the total cost of T2D in California is \$39.5 billion.<sup>7</sup> These costs inequitably burden Black Californians as 17.5% live with T2D, compared with 13.2% of Latinos, 10.5% of Asians, and 9.2% of Whites in California.<sup>8</sup>

Berkeley also has health disparities in diet-related disease. In 2014, African American residents were four times more likely than White residents to be diagnosed with diabetes and 14 times more likely to be hospitalized due to its effects.<sup>9</sup> This gap has decreased since 2014, but the disparity continues to exist.<sup>10</sup> Rates of hospitalization for heart disease and high blood pressure are also significantly higher among African American residents than White and Latino residents.<sup>6</sup> On a national scale, racial and ethnic minorities experience diet-related disparities – diets high in fat and salt and low in fruits, vegetables, and whole grains.<sup>11</sup> These diet related disparities lead to additional health disparities including heart disease and diabetes, as discussed above. Providing more nutritious options will benefit people of all backgrounds, but it will equitably benefit low-income communities and communities of color who are most affected by nutrition-related health issues.

### **Checkout Areas of Small Stores Contribute to the Problem**

Consumers are trying to make healthier purchases. A 2019 report found that 73 percent of shoppers are concerned about the nutritional content of their food.<sup>12,13</sup> Despite consumer desire to select healthier foods, unhealthy foods are prevalent in checkout areas in a wide variety of retail stores. A national study of 8,600 stores – including supermarkets, convenience stores, drug stores, and dollar stores – found that 88 percent display candy at checkout and one-third (34 percent) sell sugar-sweetened beverages.<sup>14</sup> Only 24 percent of stores sell water at checkout, and only 13 percent sell fresh fruits or vegetables at checkout.<sup>11</sup>

In a national study, led by Jennifer Fable of UC Davis, one in three adults reported purchasing foods from the checkout aisle during their last shopping trip, with lower-income shoppers more likely to purchase from checkout than higher-income shoppers.<sup>15</sup> Falbe's research indicates that healthy checkout policies have the potential to impact both nutrition and health equity.

In 2022, a Berkeley-based youth group assessed a sample of 15 small Berkeley stores including 7-Eleven, Derby Food Center, Shattuck Market, Mi Ranchito, South Berkeley Produce Market, and others. Data was collected from 1800 facings, which are the display of a single product on the shelf (not including the items stacked behind it). With 35 percent of food items consisting only of gum and mints, another 52 percent of foods offered at checkout were unhealthy, leaving only 13% of food items as nutritional options. 83 percent of beverages sold in the checkout area were considered unhealthy using the National Alliance for Nutrition and Activity Model Nutrition Standards for Checkout.<sup>16</sup> Research shows that food choices are strongly affected by the environments in which they are made.<sup>17</sup> The aim of placing food and beverages at checkout is to induce unplanned purchases; thus, unhealthy checkout options undermine consumers' efforts to purchase healthier foods.<sup>18</sup> The placement of snacks near the register increases the likelihood that people purchase those foods.<sup>19</sup> In addition, most of the candy, soda, and chips in checkout aisles are placed at eye-level and within reach of children, undermining parents' efforts to feed their children well.<sup>20</sup> Three-quarters of parents report that it is hard to shop at grocery stores because unhealthy food is so prevalent.<sup>21</sup> Healthy checkout aisles provide all families more opportunities to say yes to their kids.



### **Small Stores are a Prime Place for Policy Change**

After grocery stores, Americans' greatest source of weekly calories is convenience, dollar, and other small stores.<sup>22</sup> Grocery and convenience stores combined are the largest contributors of unhealthy food and beverages to the diet. Seventy percent of the sugary beverages children consume come from food retail.<sup>23</sup>

While convenience and small stores stock a range of options (hot and cold prepared foods, packaged items, beverages), their inventories tend to feature high-calorie, low-nutrient items, such as fried foods, snacks, and packaged baked goods.<sup>24</sup> A study across California convenience stores found that soda and unhealthy foods took up 20 to 30 times more shelf space than did produce.<sup>25</sup> Similar to supermarkets, food manufacturers pay slotting fees for prominent placement inside some convenience stores, including at checkout.<sup>26</sup>

The USDA Economic Research Services research notes that individuals who rely on these smaller establishments have difficulty obtaining the quality and quantity of healthy food they need to meet dietary guidelines.<sup>27</sup> Families who receive SNAP benefits purchase almost twice their weekly food intake from convenience stores, dollar stores, and pharmacies than their higher-income counterparts.<sup>28</sup> With this there is a need to ensure access to healthier snacks at these stores.

Healthy Checkout also provides an opportunity for stores. When United Kingdom grocery stores provided healthier options at checkout, consumers responded positively and provided a "responsible" branding opportunity for those stores.<sup>29</sup> Consumers want healthier choices, and stores can use this fact to their advantage. Setting minimum nutrition standards for items stocked at checkout areas in convenience and other small stores is ideal for progressing and changing norms around healthy snacks and drinks.

### **Strategies to Reduce Sugar Consumption in Berkeley**

In 2014, Berkeley became the first city in the country to tax the distribution of sugar sweetened beverages. In the last five years, the City created the Healthy Berkeley program which supports the Berkeley Unified School District garden education program as well as community programs that educate residents about nutrition and are changing norms around beverage choice.

Then, in 2020, Berkeley became the first city in the country to pass a Healthy Checkout Ordinance. This ordinance was another effort to create a healthy food environment that would support families by providing them the ability to avoid high-calorie, low-nutrient food and beverages when they do their grocery and other shopping. However, the policy only affects large stores, and should be amended to create a healthier food environment in convenience and other small stores which are especially prevalent in low income communities in Berkeley. Individuals and families who want to purchase sugary drinks, candy, chips, and other sweet and salty snacks will be able to find them in their respective aisles in the center of stores. By changing checkout norms, shoppers and their children face less temptation to consume sugary foods.

### **Berkeley Residents are Demanding Checkout Changes**

The Center for Science in the Public Interest performed four focus group studies in 2019 regarding the proposed Healthy Checkout Ordinance. The focus groups were intentionally diverse but focused on youth and health advocates. The four focus groups were 1) Berkeley High School students 2) Latinx women in South Berkeley, conducted in Spanish 3) African-American women, hosted by Healthy Black Families and 4) North and Northwest Berkeley residents, hosted by Urban Adamah. From the focus groups, advocates learned that half

reported feeling stress at checkout, there was unanimous support for healthy checkout options in grocery stores, and parents and children are susceptible to impulse purchases.

In 2022, Berkeley-based youth advocates conducted focus groups and surveys with 37 Berkleyans who shop at convenience and corner stores. Adults and adolescents surveyed unanimously supported removing unhealthy food and beverages from small store checkout lanes and requiring stores to have healthy checkout aisles. With the addition of healthier items at checkout, many residents felt that overall community health will be positively impacted since, for many, convenience stores are a regularly tracked location and play a large role in what these residents consume. Interviewees especially cited concern over the disparity between accessible processed foods relative to healthier snacks for youth coming to small stores after school and for community members who have health conditions that require dietary restrictions.

### **Healthy Checkout Reduces Impulse Buying of Sugary Snacks and Drinks**

A recent study by the University of Cambridge analyzed purchasing data for common unhealthy checkout foods from 2013-2017 in nine U.K. supermarket chains. They found that consumers purchased 17 percent fewer sweets, chocolate and potato chips in stores without unhealthy items at checkout. One year later the decline in unhealthy purchases remained steady at 16 percent.<sup>2</sup>

The Healthy Checkout Ordinance will create a level playing field for customers and retailers and support consistent, healthy snacking norms for shoppers and families.

### **Providing Alternatives at Checkout in Berkeley: Amendment Elements**

The amended ordinance (Attachment 1):

- limits food and beverage products sold at the checkout area;
- applies to approximately 55 stores in Berkeley that are 2,500 square feet and under and have more than 25 linear feet of food for sale; and
- allows only beverages with no added sugars and no artificial sweeteners and food items with 5 grams or less of added sugars and 200 milligrams or less of sodium per serving to be sold in the checkout area;
- allows only food items which fall under the following categories: chewing gum and mints with no added sugars, fruit, vegetables, nuts, seeds, legumes, yogurt or cheese, and whole grains.

These limitations allow for healthy alternatives to proliferate in checkout areas.

### **REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS**

In March 2015, the City of Berkeley implemented a Sugar-Sweetened Beverage (SSB) tax, often referred to as a soda tax. The tax imposes a fee on distributors of sugary drinks, including sodas, energy drinks, and certain fruit-flavored beverages. The goal of this tax is to reduce the consumption of sugary beverages, which are linked to health issues like diabetes and cardiovascular disease, while generating revenue for public health initiatives. Between 2015 and 2021, the tax generated \$9 million in revenue and within one year of implementation SSB purchasing dropped 10%.<sup>30,31</sup>

Revenue generated from the SSB tax funds projects throughout the city that work to educate the community about the harmful impacts of SSBs, and implement systems and policy changes

that reduce consumption of SSBs over time, and decrease the health risks among residents of Berkeley.

The City of Berkeley has an existing Healthy Checkout Ordinance that sets minimum nutrition standards for foods, beverages, gum and mints stocked at checkout. This ordinance currently applies only to stores greater than 2500 sq. ft.

### **ACTIONS/ALTERNATIVES CONSIDERED**

In February 2019, Assemblymember Buffy Wicks introduced AB 765, a bill which would implement Healthy Checkout statewide. However, the bill did not advance from committee.<sup>32</sup>

Following Berkeley's lead, in February 2023, the City of Perris passed a healthy checkout policy which similarly sets minimum nutrition standards for foods and beverages stocked at checkout.<sup>33</sup>

Prior to 2022, in the United Kingdom (UK), many grocery stores had voluntarily undertaken healthy checkout initiatives.<sup>29</sup> A study of this initiative showed that the policies implemented between stores varied widely in their level of specificity and implementation. Among stores with clear, consistent policies, there were 20% fewer snacks at checkout that were considered less healthy than at stores without policies or with vague policies in place.<sup>34</sup> Without clear standards for what constitutes "healthy" or enforcement, the voluntary model is too modest to draw conclusions about long-term health impacts. In addition, the interviews with retailers indicated that voluntary compliance without straightforward guidelines would be more difficult to follow. As of October 1, 2022, the United Kingdom has a healthy retail policy in place that restricts unhealthy food placement near store entrances, at endcaps, or checkout aisles.<sup>35</sup>

In 2022, Richmond youth proposed a healthy retail policy that included healthy checkout and advocated for an initiative to keep soda in the soda aisle. A study conducted across grocery stores in D.C. found that sodas are placed, on average, in 29 locations in one store.<sup>36</sup> A nationwide survey demonstrated that 58% of SNAP recipients will buy less sugary drinks if they are only located in the drink aisle, especially parents who shop with their children. 36% of respondents said they would even shop at a new store regularly if it kept soda in the soda aisle. Again, this number more than doubled for parents who shop with their kids. The same youth met with the Contra Costa County Board of Supervisors to advocate for healthy retail initiatives, including healthy checkout and a proposal to make condoms available in stores without clerk assistance.

### **CONSULTATION/OUTREACH OVERVIEW AND RESULTS**

The Berkeley youth group interviewed three retailers in the community including two corner store managers and a food retailer/community kitchen owner, as well as a nutrition counselor. Retailers expressed that they could successfully implement the policy as long as they can stock a variety of perishable and non-perishable items at checkout, and set affordable price points, both of which are accounted for in the ordinance. Two retailers cited that because they already sell a substantial amount of healthy items at checkout and in the store, it won't require a big change to meet the proposed new standards.

### **RATIONALE FOR RECOMMENDATION**

Expanding Healthy Checkout to stores under 2500 sq. ft. will greatly increase access to healthy snacks at checkout throughout Berkeley. Requiring the approximately 55 additional stores to follow the requirements for Healthy Checkout would eliminate the encouragement of unplanned purchases of unhealthy foods and beverages at smaller stores, many of which serve largely lower income communities and neighborhoods of color. In a USDA study, low income families got twice as many calories from corner and convenience stores than did their higher income counterparts.<sup>28</sup> Such a change would thus contribute to healthy norms and reduce the consumption of sugary drinks and unhealthy foods in the City of Berkeley.

### **IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT**

Bay Area Community Resources is funded for FY23 and FY24 to provide technical assistance to stores 2500 square feet and under, including in-store education and penalty-free monitoring. Community partners could assist with implementation.

Enforcement should be focused primarily on positive education and secondarily on traditional enforcement. Enforcement of the amended ordinance may be conducted by the Environmental Health Division (EHD) and follow the same protocol as established in the Healthy Checkout Ordinance. This protocol currently states that EHD will inspect for compliance during routine inspections, and as needed in response to complaints. In instances where violations are present and cannot be corrected immediately, EHD can conduct a chargeable follow up inspection. For repeated violations after multiple follow up visits, retailers may be fined accordingly:

- \$100 for the first violation
- \$200 for the second violation
- \$500 for the third and subsequent violations.

### **ENVIRONMENTAL SUSTAINABILITY**

There are no identifiable environmental impacts or opportunities associated with the action recommended in this report.

### **EVALUATION**

Currently there are researchers from universities around the world looking at outcomes related to healthy retail, including the impacts of Berkeley's existing Healthy Checkout Ordinance.

### **FISCAL IMPACTS**

Implementation of the amendment would require staff time to educate the approximately 55 stores about what is required of them to comply with the ordinance. The Center for Science in the Public Interest has created a suggested list of products that meet the criteria of the ordinance.

Bay Area Community Resources is funded for FY 23 and FY 24 to work with stores 2500 sq. ft. and under, including with store education and monitoring.

### **CONTACT PERSON**

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**ATTACHMENTS AND MATERIALS**

1. Draft of Amended Healthy Checkout Ordinance
  2. Environmental Health's Healthy Checkout Enforcement Protocol
  3. Retail Environment in Small Stores Fact Sheet
- 
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[DRAFT] CONSENT CALENDAR

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Ben Bartlett  
 Subject: Small Business Support Act

**RECOMMENDATION**

That the City Manager and Finance Department amend the City of Berkeley business license process and requirements to promote transparency between the City and small business owners and lower burdensome barriers to entry for new business owners. Such amendments shall include the following:

1. Establish a business license amnesty program
2. Establish a Small Business Support and Retention Emergency Grant
3. Create a Small Business Ombudsman
4. Promote greater transparency about the business licensing process.

These actions will support small business creation and retention. The close relationship between the people of Berkeley, our small businesses, and the City is essential to making our community thrive.

**BACKGROUND**

Small businesses are the foundation of a thriving city economy, given the importance of local businesses and community engagement. By empowering local businesses, jobs become more meaningful and there is greater opportunity for innovative ideas by aspiring entrepreneurs. The City of Berkeley has been supportive of local businesses, but since the COVID-19 pandemic, it is now more important for Berkeley to lend a helping hand to these stores. These businesses, especially those owned by underrepresented groups, are what enrich the Berkeley community and create this welcoming and open space for each member of the community. Berkeley has recognized the importance of small businesses in the past, establishing the Berkeley Relief Fund, modifying zoning ordinances, and increasing support for the permitting process. However, there is still more to be done regarding compliance with license requirements and improved transparency during the permit process. Some of the main barriers of entry for new business owners include a lack of capital, inability to file for a permit, and absence of support throughout the process. These issues can be addressed through the implementation of improved transparency with the business license amnesty program, transparency about the licensing process, establishment of a small business support and retention emergency grant, and a small business ombudsman. We want to support small businesses who have less than \$50,000 and rename the OED's loan fund. There is a Green Business and Zero Emission incentive as well which may be supported by California Green Business Network (CAGBN) Alameda County dollars.

1. Business license amnesty program

In 2019, the City of Santa Monica launched a six-week amnesty program in order for

unlicensed businesses to comply with the city's business license taxes. With this action, unlicensed businesses that voluntarily register for a business license during the six-week period were forgiven and did not have to pay for any penalties that were previously identified. This type of program was a great opportunity for all businesses to comply with the City of Santa Monica tax law. It was estimated that businesses with penalties received a 90% reduction in penalties regardless of the reason for non-compliance<sup>1</sup>. If implemented in other cities, this form of amnesty program can benefit both businesses and the City as it is a way of generating revenue and also helping out taxpayers. When the City of Santa Monica conducted this program, it was estimated that the city collected approximately \$200,000.<sup>2</sup>

Similarly, in East Palo Alto, a compliance program was implemented this year that included an amnesty period where all penalties that were accompanying unpaid taxes were waived or reduced<sup>3</sup>. This program still had the underlying taxes, but gave business owners 90 days of relief. These amnesty programs for business owners have been implemented across the state, including cities such as South Pasadena —where “enforcement of violations related to unpermitted ADUs may be delayed for five years if correcting the violations is not necessary to protect health and safety”<sup>4</sup>—and Los Angeles in which “by creating a process that provides some amnesty for individuals to get their properties into compliance, we're actually creating a safer housing supply than what we currently have in the city of Los Angeles,” Council member Monica Rodriguez said<sup>5</sup>.

For the City of Berkeley, a proposal of a one year amnesty program, where business owners have a one year grace period of fees related to overdue, expired, and new business licenses. There will be no late fees collected and everyone will have access to a current business license regardless of any late or renewal fees that would have been due prior to SBSA.

## 2. Implementation of an ombudsman

The implementation of an ombudsman will assist community members and potential business owners in resolving conflicts or concerns with the City. As a potential mitigator, this position is necessary to provide a fair and equal environment for both parties. Specifically, a business ombudsman can help small businesses deal with excessive regulation that can be deemed unfair.

Such a case where the implementation of an ombudsman was demanded by community members was when the Harriet Tubman Terrace (HTT) reported violations made against low-

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<sup>1</sup> Lirtsman, T. (2020, February 27). *City of Santa Monica, CA Six-Week tax amnesty program*. Marcum LLP. Retrieved February 4, 2023, from <https://www.marcumllp.com/insights/city-of-santa-monica-ca-six-week-tax-amnesty-program>

<sup>2</sup> Walrack, J. (2021, October 2). *Tax amnesty programs: The complete guide*. SuperMoney. Retrieved February 4, 2023, from <https://www.supermoney.com/tax-amnesty-programs/>

<sup>3</sup> “Business Licenses.” *City of East Palo Alto*, <https://www.cityofepa.org/manager/page/business-licenses>. Accessed 6 June 2023.

<sup>4</sup> “City of South Pasadena Revised Draft 2021-2029 Housing Element”. Department of Housing and Community Development. 2022. <https://www.hcd.ca.gov/housing-elements/docs/south-pasadena-6th-draft051122.pdf>

<sup>5</sup> Albaryan, Anna. “LA City Council approves ADU amnesty program”. Spectrum News 1. 17 May 2023. <https://spectrumnews1.com/ca/la-west/politics/2023/05/17/la-city-council-approves-adu-amnesty-program>



responsible for obtaining all necessary approvals, permits, licenses, and to pay all taxes and fees associated with the business. Payment of the business license tax does not constitute zoning, building, fire, health, or toxic review/approval.

The process for new businesses to obtain licensure could take days, even weeks, in order to complete both the review and the approval processes. Firstly, a business license application must be filled out. As a requirement, business owners must ensure they meet address, zoning, and safety regulations. Meeting these regulatory requirements entails specific criteria in order for approval to be given. If the business location is not in the City's database, then the business owner must apply for an Address Assignment Request and submit it to the Building and Safety Division with a \$200 fee. Additionally, the business must be in the zoning area and be prepared to potentially apply for zoning permits. This may present itself as a barrier if the business owner does not know which zoning area their business belongs to. For safety regulations, the owner must ensure that health codes are met, verify building and safety regulations, and any other supplementary items that ensure the nature of the business is in good condition.

All business licenses expire on December 31st of every year. This requires that all renewals for business licenses be submitted by March 1st of every year. Contractors can be approved for building permits, but only if they hold active business licenses. Any business that fails to meet the deadline will be penalized according to the following:

- Penalty 1: a 10% increase on March 1st with a 1% monthly interest accrue on outstanding business license tax starting March 1st
- Penalty 2: An additional 40% on April 1st with a 1% monthly interest accrue starting April 1st

The penalty for failing to meet the March 1st deadline may be a barrier for certain businesses due to the increased cost. Renewal fees may have a greater impact on businesses that experience uncertainty in their clientele. Said businesses may benefit from filing extensions to their business license renewal. The business license amnesty program would help address this by including a time sensitivity between March 1st and December 31st.

The following businesses can renew their license through an online platform:

Business Type	Tax Code
Administrative Headquarters	Q
Motor Vehicle Sales	V
Business Personal Repair	B
Non-Profit	N
Cannabis(Medical and Adult Use)	CC
Professional-Semi-Professional	P
Entertainment	E

Business Type	Tax Code
Retail	R
Grocery	G
Rental of Real Property	L
Manufacturing	M
Wholesale	W

Initiating a business license renewal requires the completion of a Business License Renewal Form. With the exception of non-profits, street vendors, and owners of rental property, most businesses will fill out a General Business License Renewal Form. The General Business License Renewal Form can be submitted online or in-person. Nonprofits must fill in the Flat Fee Business Renewal Form and they have the option to submit it online or in person. For rental properties, submission via the Rental of Real Property Business License Renewal Form is the same as the latter.

A Business License Change Form must be turned in electronically upon any updates made to the ownership, location, or name of the rental property. A General Closing Business Declaration Form submission applies to any closing of a business, a business location, or the transfer of ownership. This also applies to the closing of any rental property.

The Business License Classifications and Tax Rates site under the City of Berkeley lists out the amount of tax for each \$1000 income depending on the type of business<sup>12</sup>. It is important to note for these taxes that small businesses may end up applying for waiver requests.

**CURRENT SITUATION: AN OVERVIEW OF WHAT WE ARE DOING**

Improved transparency in the Business License Application and Process entails identifying the most troublesome parts of Berkeley’s business permitting process.

- Application process{ new, renewal, penalty(what’s annoying... detail specifically- have enlisted small business to collect data via focus group for this information) Calculations for penalties
- Categorization (tax bracket... clarification)
- Clarity between State, Berkeley, Incorporated... licensing (What’s easy to fix vs. what requires council)
- Outline Permit fees and process
- Current revenue vs. projected revenue (24 months)
- new businesses opened vs. businesses closed in the last 5 yrs
- Number of shuttered/vacant commercial buildings; for lease 2022
- Number of businesses sole proprietors over 60 yrs old (Project Equity stats)
- Major redevelopment programs mean major opportunity
- How many new biz applications does the City of Berkeley process annually - 13,000 existing...
- The city celebrates and serves licensed businesses but this cannot be possible

Commented [1]: Ask Liz for doc of pain points

Commented [2]: is this still true?

<sup>12</sup> “Business License Classifications & Tax Rates”. City of Berkeley. <https://berkeleyca.gov/doing-business/operating-berkeley/business-licenses/business-license-classifications-tax-rates>

without an active business license.

**What are the barriers of local business owners to licensing?**

Several factors contribute to the barriers of local business owners to licensing, such as complex zoning laws, neighborhood business quotas, a 60's desire to give neighborhoods description into what kinds of businesses can move into commercial districts, and the hardships on each step of creating the business itself<sup>13</sup>.

A business might not have a license for multiple complex reasons. YaVette Holts, the founder of Bay area Org of Black Owned Businesses<sup>14</sup>, shared her testimonial experience in her licensure procedure and her expertise with local business issues in the bay area. In her personal anecdote, Holt shares she was levied three charges during her licensure application procedure, and after three months has yet to receive her license renewal. This, along with her difficulty navigating the finance department or understanding recent zoning amendments, highlights expense and information disbursement barriers for local businesses.

**What is amnesty?**

For the City of Berkeley, business owners have a one year grace period of fees related to overdue, expired, and new business licenses. There will be no late fees collected, and everyone will have access to a current business license regardless of any late or renewal fees that would have been due prior to SBSA.

An example within the City of Berkeley where fines were reduced and eliminated to better serve the lowest income communities was in 2018 when the Berkeley Public Library decided to discontinue the late fees for teen and adult materials<sup>15</sup>.

**IMPLEMENTATION:**

We believe this is important and effective because we need to take care of our small businesses, which make Berkeley such a desirable and charming community. As a City, we have not brought in many large retailers because we don't need them. Instead, we have mom-and-pop shops that support the needs of our community, and we've been able to retain our small businesses without large corporate stores pushing them out. Ensuring our small businesses are supported increases our tax base and builds equity for families who own these businesses.

Referring back to YaVette Holts and her shared expertise, amnesty implemented in the licensure application procedure would address the barriers in fees that several small businesses face, especially for newly opened ones. In her own words, businesses must be in operation in order to remain open, but that comes with immediate taxation upon starting a business, which makes it difficult to generate revenue and remain open. Furthermore, the implementation of an ombudsman program would also facilitate the disbursement of important information small businesses find relevant, such as zoning requirements and taxing information. By addressing these pain points and

<sup>13</sup> Dinkelspiel, Frances. "Is it hard to do business in Berkeley?". 20 January 2011.

<https://www.berkeleyside.org/2011/01/20/is-it-hard-to-do-business-in-berkeley>

<sup>14</sup> <https://baobobdirectory.com/>

<sup>15</sup> "Berkeley Public Library to End Charging of Daily Late Fees for Teen and Adult Materials". Berkeley Public Library. 7 June 2018. <https://www.berkeleypubliclibrary.org/about/news/berkeley-public-library-end-charging-daily-late-fees-teen-and-adult-materials>

fostering a more supportive environment for small businesses, Berkeley can strengthen its economic base, empower local entrepreneurs, and cultivate a thriving community where businesses can flourish.

Small businesses need support from the city to thrive, and through this initiative, we can increase community engagement by connecting business owners to the proper city services, allowing them every opportunity to succeed. When our businesses thrive, our community benefits and Berkeley's economic vitality increases as a result. Inspiring others to establish small businesses in our city helps foster the vision of Berkeley that previous generations worked so hard to create. It is our duty to protect that vision now and build relationships with small businesses through incentives and cooperation that reflect our values.

- Increase tax base
- Business Retention
- Community Engagement - business owner connection to city services - Economic vitality increases
- Enforcement relationship w/ business vs. incentives and cooperation

#### **FINANCIAL IMPLICATIONS**

The referral policy aspect requires staff time from the Finance Department Office. The implemented policy cost and benefits are to be determined.

#### **CONTACT PERSONS**

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Office of the City Manager

On May 7, 2024 the City Council referred the NOX provisions of this item to the Health, Life Enrichment, Equity & Community Committee for review and a recommendation to Council.

ACTION CALENDAR

May 7, 2024

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Director, Planning and Development Department

Subject: Re-Adoption of the Berkeley Building Codes, including Local Amendments to the 2022 California Building Standards Code

RECOMMENDATION

1. Adopt first reading of an Ordinance repealing and reenacting the Berkeley Building, Residential, Electrical, Mechanical, Plumbing, Energy, and Green Building Standards Codes in BMC Chapters 19.28, 19.29, 19.30, 19.32, 19.34, 19.36 and 19.37, and adopting related procedural and stricter provisions; and
2. Adopt a Resolution setting forth findings of local conditions that justify more stringent regulations than those provided by the 2022 California Building Standards Code Supplements, and rescinding Resolution No. 70,585-N.S.

SUMMARY

The proposed legislation would incorporate updates to California's Building Standards Code (known as "Mid-Cycle Supplements") effective July 1, 2024, while preserving certain more stringent local amendments Berkeley has previously adopted. Proposed actions include:

- Retain Berkeley's more stringent, previously adopted requirements for Wildland-Urban Interface area, repairs to existing buildings, structural standards, Exterior Elevated Elements (E3) technical amendments, Emergency Housing and various appendices supporting sustainable construction such as Light Straw-Clay Construction.
- Retain previously adopted local amendments to the 2022 California Plumbing Code to require installation of motion activated gas shut-off valves in new construction, and alterations or additions to existing buildings containing fuel gas piping.

- Adopt modified amendments to the 2022 California Green Buildings Standards Code (CALGreen) to retain Berkeley's more stringent electric vehicle charging requirements in all building types; and
- Introduce new amendments to the 2022 California Green Buildings Standards Code (CALGreen) to require Zero NO<sub>x</sub> Buildings for newly constructed buildings.

The State updates its Building Standards Code every three years. Cities may adopt the State codes as written, or they may adopt those codes with local amendments, if justified by their specific local climatic, geological or topographical conditions. The City of Berkeley most recently adopted the State code with its local amendments in November 2022.

Additionally, the State publishes intervening code amendments known as the "Mid-Cycle Supplements" 18 months after the triennial code publication. The State codes with Mid-Cycle Supplements will automatically become effective July 1, 2024 as published unless the City adopts its local amendments and makes findings to that effect. Since the State's proposed Mid-Cycle Supplements impact several important Berkeley priorities, the proposed Ordinance would retain the previously adopted amendments, and would introduce other new and modified amendments.

#### FISCAL IMPACTS OF RECOMMENDATION

The California Green Building Standards Code Supplement (CALGreen) with City amendments will increase plan check and inspection workload due to increased EV requirements, the deconstruction and reuse of existing non-residential structure provisions and the Zero NO<sub>x</sub> Building standard. Those costs would be covered by fees paid by applicants. There are no other new fiscal impacts from the adoption of updated State codes and local amendments.

#### CURRENT SITUATION AND ITS EFFECTS

The current three-year code cycle is effective through December 31, 2025. The State's Mid-Cycle Supplements will supersede and conflict with the City's previously adopted local amendments adopted under Ordinance 7891-N.S., unless Berkeley re-adopts them. The local amendments proposed with this Ordinance include the previously adopted amendments, and introduce new or modified amendments to the 2022 Building Code, Residential Code and Green Building Code. If adopted, the new Ordinance would also ensure that the City amendments to the Mechanical and Plumbing Codes are retained. Under state law, local jurisdictions may adopt other administrative provisions appropriate to the locality, and may adopt stricter code provisions, if justified by findings of local climatic, geological or topographical conditions.

The proposed Ordinance supports City Council directives and policies including fire and life safety, resilience, and climate protection, and is supported by the Resolution

adopting findings of local conditions. The Ordinance also provides for the adoption of the referenced California Building Standards Codes including local amendments, before the California Building Standards Code Mid-Cycle Supplements automatically become effective July 1, 2024. The last day to file for a building permit to be reviewed under the current Berkeley Building Code Title 19 will be Friday, June 28, 2024. Staff will inform future applicants and other community members that all permit applications submitted on or before June 28, 2024, will be reviewed under the current Berkeley Building Codes. Outreach will include notifications on the City's website, announcements on the online Permit Service Center webpage, notification flyers distributed at the Permit Service Center, and email notifications.

Codes recommended for adoption are the Berkeley Building Code (Chapter 19.28), which also includes the Historical Building Code and the Existing Building Code, the Berkeley Residential Code (Chapter 19.29), the Berkeley Electrical Code (Chapter 19.30), the Berkeley Mechanical Code (Chapter 19.32), the Berkeley Plumbing Code (Chapter 34), the Berkeley Energy Code (Chapter 19.36) and the Berkeley Green Code (Chapter 19.37). In all cases, the changes are designed to provide enhanced protection of public health, safety and general welfare as they relate to the construction and occupancy of buildings and structures.

#### Berkeley Building Code (Chapter 19.28)

The 2022 California Building Code adopted in BMC Chapter 19.28 included numerous model code changes impacting use and occupancies, allowable building heights and areas, fire protection features, means of egress, structural modifications, etc. Of major importance were the introduction of three additional construction types for larger and taller mass timber buildings, new provisions for small and large family care facilities in apartment buildings, and the introduction of the minimum safety requirements for shipping containers when repurposed for use as buildings and structures. The revisions in the Mid-Cycle Supplements with incorporated local amendments include changes to the Wildland-Urban Interface (WUI) terminology and WUI roofing requirements. Other state revisions that do not impact local amendments include modified definitions, clarifications and minor changes to the occupancy classifications, accessible parking requirements, etc. All other local amendments will be readopted.

#### Berkeley Residential Code (Chapter 19.29)

The 2022 California Residential Code adopted in BMC Chapter 19.29 included numerous model code changes further refining prescriptive provisions for the construction of dwellings. Of major importance were the updated local climatic criteria required for designing structural, heating and cooling systems for buildings, introduction of the minimum safety requirements for shipping containers when repurposed for use as residential or accessory buildings and structures, and Appendix AU Cob Construction, which provides requirements for clay, sand and straw to be used as the primary building material. The revisions in the Mid-Cycle Supplements with incorporated local amendments include changes to the Wildland-Urban Interface (WUI) terminology and

WUI roofing requirements. Other state revisions that do not impact Berkeley amendments include clarification on the emergency escape and rescue openings, ESS energy rating limits, structural anchorage changes, and roof covering limits that trigger full reroof. All other local amendments will be readopted.

*Berkeley Electrical Code (Chapter 19.30)*

The 2022 California Electrical Code initially adopted in BMC Chapter 19.30 will be readopted without local amendments.

*Berkeley Mechanical Code (Chapter 19.32)*

The 2022 California Mechanical Code adopted in BMC Chapter 19.32 incorporated the prior local amendment to require installation of residential kitchen range hoods with a minimum air flow of 100 cfm and maximum sound rating not exceeding 3 sones over residential stoves and cooktops. This local amendment will be readopted.

*Berkeley Plumbing Code (Chapter 19.34)*

The 2022 California Plumbing Code, adopted in BMC Chapter 19.34, incorporated the prior local amendment in response to a referral from the Disaster and Fire Safety Commission, adopted by the City Council on June 1, 2021. This amendment requires mandatory installation of motion activated gas shut off valves whenever a plumbing or mechanical permit is issued for buildings containing fuel gas piping, regardless of permit valuation. This amendment is intended to reduce or prevent serious gas-related fires or explosions in the event of a major seismic event. This local amendment will be readopted.

*Berkeley Energy Code (Chapter 19.36)*

The 2022 California Energy Code initially adopted in BMC Chapter 19.36 will be adopted with State Mid-Cycle Supplement without local amendments.

*Berkeley Green Code (Chapter 19.37)*

The 2022 California Green Building Standards Code adopted in BMC Chapter 19.37 included model code changes primarily concentrated on electric vehicle (EV) charging readiness, including charging provisions for medium and heavy-duty commercial vehicles. In the Mid-Cycle Supplement, the EV charging infrastructure requirements for new construction have quantitatively increased, but are still less restrictive than Berkeley's local requirements and exceptions as adopted in Ordinance 7891-N.S. All of the previously adopted more restrictive local amendments will be retained for EV charging infrastructure, for low-carbon concrete, and for increased construction and demolition (C&D) waste diversion. The State's Mid-Cycle Supplement includes new code provisions for deconstruction and reuse of existing non-residential structures.

In addition, a new local amendment is proposed to require all newly constructed buildings of all covered types to meet the definition of a Zero NO<sub>x</sub> Emission Building. Nitrogen Oxides (NO<sub>x</sub>) are defined as the sum of nitrogen oxide (NO) and nitrogen

dioxide (NO<sub>2</sub>), collectively expressed as NO<sub>x</sub>. NO<sub>x</sub> is a harmful air pollutant; short-term exposure can aggravate asthma and other respiratory illnesses, and exposure can lead to hospital admissions and emergency room visits.<sup>1</sup> Long term exposure can cause asthma.<sup>2</sup> Further, NO<sub>x</sub> contributes to acid rain and is one of the building-blocks of ozone, an air pollutant, a greenhouse gas, and a major component of smog.<sup>3</sup>

A Zero NO<sub>x</sub> Emission Building is defined as a newly constructed building that exclusively uses Zero NO<sub>x</sub> Emission Appliances. This new provision sets a higher standard for health and environmental protection of new building occupants by improving air quality. This is consistent with the published purpose of the California Green Building Standards Code “to improve the health, safety and general welfare by enhancing the design and construction of buildings through the use of concepts having a reduced negative impact.”

The City of Berkeley proposed Zero NO<sub>x</sub> Emission Building amendment to CALGreen builds upon the first such local ordinance, from the City of Los Altos Hills, by requiring Zero NO<sub>x</sub> Emission Buildings for new nonresidential occupancies, and requiring Zero NO<sub>x</sub> cooking equipment. Current non-electric ovens and ranges constitute the greatest risk to building occupants, because of the intermixing of unvented NO<sub>x</sub> emissions with respiration air. This proposed Berkeley local amendment would become effective in advance of the first Zero NO<sub>x</sub> appliance regulation provision of Bay Area Air Quality Management District (BAAQMD) Regulation 9 Rule 4, which becomes effective Jan 1, 2027 for tanked water heaters <75kBtu.<sup>4</sup>

This CALGreen amendment addresses immediate health concern for Berkeley residents of growing importance. BAAQMD notes that: “In 2019, emissions from residential natural gas combustion accounted for roughly the same amount of NO<sub>x</sub> emissions as passenger vehicles.”<sup>5</sup> However, shifts in remote work practices since 2019 have likely increased that percentage, due to increased work hours from home and also reduced work commutes. BAAQMD further notes that: “Through the reduction of NO<sub>x</sub> and particulate matter emissions, the proposed amendments are projected annually to prevent up to 85 premature deaths and save up to \$890 million in health impacts.”<sup>6</sup> In summary, the proposed amendment for Zero NO<sub>x</sub> Emission Buildings leads the critical path to a built environment consistent with current understanding of human disease prevention and environmental health.

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<sup>1</sup> <https://www.epa.gov/no2-pollution/basic-information-about-no2>

<sup>2</sup> *ibid*

<sup>3</sup> <https://www3.epa.gov/airnow/mediakits/ozone/facts.pdf>

<sup>4</sup> [FAQ-Appliance Rules rev 12-18-23 \(baaqmd.gov\)](#)

<sup>5</sup> *ibid*

<sup>6</sup> *ibid*

The readopted local amendments would require increased EV charging readiness and installation in new buildings, to help facilitate EV adoption in keeping with Berkeley's Electric Mobility Roadmap. Specifically, where parking spaces are provided, the retained EV amendments require:

- Single-family homes, duplexes, and townhouses must have at least one parking space equipped with a listed raceway, wiring, and power to support a future Level 2 EV charging station. By contrast, the State's "Mid-Cycle Supplement" requires only a raceway and panel space.
- Multifamily and Hotel/Motel buildings designed with parking lifts must provide the code-required EV charging infrastructure elsewhere within the parcel.
- Nonresidential buildings must have at least 20% of spaces as EV capable to support future Level 2 EV charging stations, and at least 10% of spaces with EV charging stations installed. By contrast, the State model code requires 20% EV capable spaces, 25% of which will be EV charging stations or EVCS.

The combination of requiring EV charging stations and EV charging readiness in all new multifamily, nonresidential, and hotel/motel buildings will reduce the long-term costs of EV infrastructure installation by eliminating future required retrofits, will help increase EV adoption and ultimately help decrease greenhouse gas emissions associated with transportation.

These proposed amendments to the Berkeley Green Code were shared with the Environment and Climate Commission (ECC) on April 24, 2024.

#### Previous Local Amendments to Re-adopt

Previous local amendments, with some revisions and updates in code language and code sections, that are recommended for continuance in the reenacted Berkeley Building Code with Mid-Cycle Supplement (BMC Chapter 19.28) include:

- Article 1. Scope and Administrative Provisions – local amendments concerning permits, applications, fees, undocumented units, appeals, violations, unsafe buildings, and safety assessment placards.
- Article 2. Restrictions in Fire Zones – adding additional local requirements applicable to additions, alterations, repairs and re-roofs, and enacting fire protection areas not covered by the state-mandated areas.
- Article 3. Wood Burning Appliances – local amendment reducing the health risks caused by wood smoke based upon Berkeley's climatic conditions.
- Article 4. Projection into Public Right of Way – an administrative amendment concerning revocation, removal and indemnification regarding construction in the

## Right of Way.

- Article 5. Existing Buildings – adopting 2022 California Existing Building Code and certain chapters of the 2021 International Existing Building Code to reduce the risk from earthquakes.
- Article 6. Repairs to Existing Buildings and Structures – establishing updated regulations for the repairs of damaged structures to comply with the Stafford Act, which authorizes the Federal Emergency Management Agency (FEMA) to fund the repair and restoration of eligible facilities damaged in a declared disaster, and requires that the repair and restoration be "on the basis of the design of such facility as it existed immediately prior to the major disaster and in conformity with current applicable codes, specifications and standards."
- Article 7. Amendments to Structural Standards – addressing Berkeley's close proximity to major earthquake faults. The Berkeley Building Official has participated in meetings of the Tri-chapter Uniform Code Committee (TUCC), which is part of the International Code Council East Bay Chapter. The TUCC recommended several structural amendments to the 2022 California Building and Residential Codes, which are included in the proposed local amendments for Berkeley.
- Article 8. Construction of Exterior Appurtenances – establishing more stringent construction standards for exterior elevated elements and continuing the amendments adopted in July 2015 following the balcony collapse at 2020 Kittredge Street.
- Article 9. Emergency Housing Appendix P (formally Appendix O) – establishing local amendments reflecting the particular characteristics and needs of Berkeley's emergency shelter responses.

Previous local amendments, with some revisions and updates in code language and code sections, that are recommended for continuance in the reenacted Berkeley Residential Code with Mid-Cycle Supplement (BMC Chapter 19.29) include:

- Appendix AH for Patio Covers which relaxes certain provisions contained in the body of the code as related to patio covers, including permitted uses; exterior wall insect screens; glazing and translucent or transparent plastic; light, ventilation and emergency egress.
- Appendix AQ for tiny homes used as dwelling units, relaxing various code requirements as they apply to smaller homes in response to the California housing crisis.
- Appendices AR, AS and AU for light straw-clay, strawbale and COB construction respectively in support of sustainable construction practices which reduce environmental impact and provide increased thermal efficiencies.
- Appendix AX for Swimming Pool Safety Act that contain mandatory provisions to

comply with State Law.

- Section 19.29.050 Materials and Construction Methods for Exterior Wildlife Exposure – adding additional local requirements applicable to additions, alterations, repairs and re-roofs, and enacting fire protection areas not covered by the state-mandated areas.
- Section 19.29.060 Technical Amendments to Structural Standards – addressing Berkeley’s close proximity to major earthquake faults.

Previous local amendments, with some revisions in code language and code sections, that are recommended for continuance in the reenacted Berkeley Green Code with Mid-Cycle Amendments (BMC Chapter 19.37) include:

- Section 19.37.040 Requirements increased EV charging readiness and installation in new buildings.
- Section 19.37.040 Construction and Demolition debris amendments to require that 100% asphalt, concrete, excavated soil and land-clearing debris be diverted from disposal by recycling, reuse, and salvage, in addition to the general 65% diversion requirement.
- Section 19.37.040 Low-carbon concrete requirement, which requires that cement used in concrete mix design be reduced by not less than 25 percent.

The proposed Ordinance, with the local amendments, supports the City’s Strategic Plan Goals to create a resilient, safe, connected, and prepared city, and to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment. The proposed actions also support emergency housing provisions to assist in the declared homeless shelter crisis.

### BACKGROUND

The Council last adopted the California Building Standards Code with local amendments in November 2022, which became effective on January 1, 2023. That adoption was supported by and consistent with the goals and feedback received from the Environment and Climate Commission and the Disaster and Fire Safety Commission, and other interested stakeholders.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Adoption of the 2022 Berkeley Building Codes with Mid-cycle Supplements including the Berkeley local amendments is important to meet Berkeley’s Climate Action Plan, Zero Waste, and Fossil Fuel Free Berkeley goals. The Berkeley Green Code supports the goals of these three initiatives by:



- 1) Providing expanded EV charging facilitates electric mobility and supports the diminished greenhouse gas emissions associated with transportation, currently about 60% of Berkeley's total emissions.
- 2) Providing for Zero NO<sub>x</sub> Emission Buildings which limit the human health, environmental, and climate impacts of emissions associated with building occupancy.
- 3) Addressing the growing concern that the use of concrete, a common building product contributes to an estimated 8% of global carbon emissions. Low-carbon concrete requirements will limit the greenhouse gas emissions associated with building construction.
- 4) Increasing diversion requirements for construction and demolition materials keeps waste out of landfills.

RATIONALE FOR RECOMMENDATION

Local building standard codes must be adopted by the City every three years or State Model Codes will go into effect without local amendments. Since the State's Mid-Cycle Supplements conflict with adopted local amendments, re-adoption of local amendments and findings is needed to preserve previously adopted policies designed for Berkeley's local conditions. Such local policies provide a higher level of safety than would be achieved through the State's Model Codes. Fire risk, seismic danger, and other local conditions, as described in detail in the attached Resolution, justify adoption of Berkeley code amendments that are stricter than the California Building Standards Code.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered establishing an exception to the proposed Zero NO<sub>x</sub> amendment for commercial cooking appliances. However, due to known health risks to kitchen staff, the negative impacts to the environment, and the increased availability of Zero NO<sub>x</sub> cooking equipment, this exception was not included in staff's recommendation.

Staff considered establishing a Single Margin Source Energy Code amendment as an alternative to the Zero NO<sub>x</sub> CALGreen amendment. This alternative would allow projects to include NO<sub>x</sub> emitting equipment if they also included increased building energy efficiency measures to offset the environmental impacts. This alternative would require approval by the State Energy Commission before the City could enforce the amendment and therefore could not become by effective July 5, 2024.

City Council could also adopt the California Buildings Standards Code with Mid-Cycle Supplements with fewer, or no, local amendments; or take no action, and let the state mandated codes take effect without local amendments specifically adopted by the City of Berkeley.

CONTACT PERSON

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Kurt Hurley, Green Building Program Manager, Building and Safety Division, Planning and Development Department, 510-981-7501

Sarah Moore, Interim Manager, Office of Energy and Sustainable Development, Planning and Development Department, 510-981-7494

Attachments:

- 1: Code Adoption Ordinance
- 2: Resolution Adopting Findings of Local Conditions

ORDINANCE NO. –N.S.

REPEALING AND REENACTING BERKELEY MUNICIPAL CODE CHAPTERS 19.28 (BERKELEY BUILDING CODE), 19.29 (BERKELEY RESIDENTIAL CODE), 19.30 (BERKELEY ELECTRICAL CODE), 19.32 (BERKELEY MECHANICAL CODE), 19.34 (BERKELEY PLUMBING CODE), 19.36 (BERKELEY ENERGY CODE), AND 19.37 (BERKELEY GREEN CODE)

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

**Section 1.** That Berkeley Municipal Code Chapter 19.28 is hereby repealed and reenacted to read as follows:

**Chapter 19.28**

**BERKELEY BUILDING CODE\***

**Sections:**

**19.28.010 Adoption of the California Building Code**

**Article 1. Scope and Administrative Provisions**

**19.28.020 Adoption of Chapter 1 Scope and Administration**

**Article 2. Restrictions in Fire Zones**

**19.28.030 Chapter 7A Materials and Construction Methods for Exterior Wildlife Exposure**

**Article 3. Wood Burning Appliances**

**19.28.040 Wood Burning Appliances**

**Article 4. Projection into Public Right of Way**

**19.28.050 Encroachment into the Public Right of Way - Revocation and Removal Indemnification and Hold Harmless**

**Article 5. Existing Buildings**

**19.28.060 Adoption of 2022 California Existing Building Code with Mid-Cycle Supplement and certain Chapters of the 2021 International Existing Building Code by Reference**

**Article 6. Repairs to Existing Buildings and Structures**

**19.28.070 Adoption of Regulations for the Repairs of Existing Structures**

**Article 7. Amendments to Structural Standards**

**19.28.080 Technical Amendments to Structural Standards**

**Article 8. Construction of Exterior Appurtenances**

**19.28.090 Technical Amendments for Construction of Exterior Projecting Elements and Appurtenances**

**Article 9. Emergency Housing**

**19.28.100 Emergency Housing and Emergency Housing Facilities**

**Notes:**

\* See Chapter 1.24 for abatement of nuisances by City.

**19.28.010 Adoption of the California Building Code.**

A. The California Building Code with Mid-Cycle Supplement, 2022 edition, as adopted in Title 24 Part 2 of the California Code of Regulations, including Appendices I, J and P, is hereby adopted and made a part of this Chapter as though fully set forth herein, subject to the modifications thereto which are set forth in this Chapter. One copy of this Code is on file in the office of the City Clerk of the City of Berkeley.

B. The California Historical Building Code, 2022 edition, as adopted in Title 24 Part 8 of the California Code of Regulations, is hereby adopted and made a part of this Chapter as though fully set forth herein, subject to the modifications thereto which are set forth in this Chapter. One copy of this Code is on file in the office of the City Clerk of the City of Berkeley.

C. The California Existing Building Code with Mid-Cycle Supplement, 2022 edition, as adopted in Title 24 Part 10 of the California Code of Regulations, including Appendix A, is hereby adopted and made a part of this Chapter as though fully set forth herein, subject to the modifications thereto which are set forth in this Chapter. One copy of this Code is on file in the office of the City Clerk of the City of Berkeley.

D. This Chapter shall be known as the "Berkeley Building Code" and shall be referred to in this Chapter as "this Code."

E. This Chapter will become effective on July 5, 2024, and shall not apply to any building permit submitted by June 30, 2024.

**Article 1. Scope and Administrative Provisions**

**19.28.020 Adoption of Chapter 1 Scope and Administration**

Chapter 1 of the 2022 California Building Code with Mid-Cycle Supplement is adopted in its entirety subject to the modifications thereto which are set forth below.

**CHAPTER 1 SCOPE AND ADMINISTRATION**

**SECTION 101 – GENERAL**

**101.1 Title.** These regulations shall be known as the Berkeley Building Code, hereinafter referred to as "this Code".

**101.4 Referenced codes.** The other codes specified in Sections 101.4.1 through 101.4.9, and referenced elsewhere in this Code, shall be considered part of the requirements of this Code to the extent prescribed in each such reference.

**101.4.1 Gas.** The provisions of the Berkeley Mechanical Code, based on the 2022 California Mechanical Code with Mid-Cycle Supplement, and the Berkeley Plumbing Code, based on the 2022 California Plumbing Code with Mid-Cycle Supplement, as amended herein, shall apply to the installation of gas piping from the point of delivery, gas appliances and related accessories as covered in this Code. These requirements apply to gas piping systems extending from the point of delivery to the inlet connections of appliances and the installation and operation of residential and commercial gas appliances and related accessories.

**101.4.2 Mechanical.** The provisions of the Berkeley Mechanical Code, based on the 2022 California Mechanical Code with Mid-Cycle Supplement, as amended herein, shall apply to the installation, alterations, repairs and replacement of mechanical systems, including equipment, appliances, fixtures, fittings and/or appurtenances, including ventilating, heating, cooling, air-conditioning and refrigeration systems, incinerators and other energy-related systems.

**101.4.3 Plumbing.** The provisions of the Berkeley Plumbing Code, based on the 2022 California Plumbing Code with Mid-Cycle Supplement, as amended herein, shall apply to the installation, alteration, repair and replacement of plumbing systems, including equipment, appliances, fixtures, fittings and appurtenances, and where connected to a water or sewage system and all aspects of a medical gas system. The provisions of the Berkeley Plumbing Code shall apply to private sewage disposal systems.

**101.4.4 Residential property maintenance.** The provisions of the Berkeley Housing Code, as adopted in Chapter 19.40, shall apply to existing residential buildings and premises; equipment and facilities; light, ventilation, space heating, sanitation, life and fire safety hazards; responsibilities of owners, operators and occupants; and occupancy of existing premises and structures.

Notwithstanding any provisions contrary in this Chapter, any building or portion thereof constructed in compliance with the Berkeley Building Code shall not be deemed to be in violation of the Housing Code provisions that may conflict.

**101.4.5 Fire prevention.** The provisions of the Berkeley Fire Code based on the 2022 California Fire Code with Mid-Cycle Supplement, as adopted in Chapter 19.48, shall apply to matters affecting or relating to structures, processes and premises from the hazard of fire and explosion arising from the storage, handling or use of structures, materials or devices; from conditions hazardous to life, property or public welfare in the occupancy of structures or premises; and from the construction, extension, repair, alteration or removal of fire suppression and alarm systems or fire hazards in the structure or on the premises from occupancy or operation.

**101.4.6 Energy.** The provisions of the Berkeley Energy Code, based on the 2022 California Energy Code with Mid-Cycle Supplement, as amended herein, shall

apply to all matters governing the design and construction of buildings for energy efficiency.

**101.4.7 Existing buildings.** The provisions of the Berkeley Existing Building Code, based on the 2022 California Existing Building Code with Mid-Cycle Supplement, as amended herein, shall apply to matters governing the repair, alteration, change of occupancy, addition to and relocation of existing buildings.

**101.4.8 Electrical.** The provisions of the Berkeley Electrical Code, based on the 2022 California Electrical Code, as amended herein, shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto.

**101.4.9 Green.** The provisions of the Berkeley Green Code, based on the 2022 California Green Building Standards Code with Mid-Cycle Supplement, as amended herein, shall apply to enhanced design and construction of buildings through the use building concepts having a reduced negative impact or the positive environmental impact and encouraging sustainable construction practices.

**101.5 References to prior codes.** Unless superseded and expressly repealed, references in City forms, documents and regulations to the chapters and sections of former Berkeley Building Code editions, shall be construed to apply to the corresponding provisions contained within the 2022 Berkeley Building Code Ordinance No. X,XXX–N.S. and all ordinances amendatory thereof. Any ordinances or parts of ordinances in conflict herewith are hereby superseded and expressly repealed.

## SECTION 103 – DIVISION OF BUILDING AND SAFETY

**103.1 Creation of enforcement agency.** The Division of Building and Safety is hereby created and the official in charge thereof shall be known as the building official. The function of the agency shall be the implementation, administration and enforcement of the provisions of this code.

**103.2 Appointment.** The building official shall be appointed by the City Manager.

**103.3 Deputies.** The building official shall have the authority to appoint an assistant building official, building inspectors, plans examiners, housing inspectors, other technical officers and employees. Such employees shall have powers as delegated by the building official.

## SECTION 104 – DUTIES AND POWERS OF BUILDING OFFICIAL

**104.7 Division records.** The building official shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, notices of violations, and notices and orders issued. Such records shall be retained in the official records for the period required for retention of public records.

Add a new Subsection 104.12 to read:

**104.12 Unpermitted dwelling units.** When a building permit record for a residential unit does not exist, the building official is authorized to make a determination of when the residential unit was constructed and then apply the building standards in effect when the residential unit was determined to be constructed or the current building standards, whichever is the least restrictive, provided the building or portion thereof does not become or continue to be a substandard or unsafe building. The Building Official is authorized to accept reasonable alternatives to the requirements of the prior or current code editions when dealing with unpermitted dwelling units.

## SECTION 105 – PERMITS

**105.3.2 Expiration of application.** An application for a permit for any proposed work shall expire one year after the date of filing, unless it can be demonstrated by the applicant that such application has been pursued in good faith or a permit has been issued. The building official or the permit service center coordinator are authorized to grant one or more extensions of time for additional periods not exceeding a 180 days per extension. The extension shall be requested in writing and justifiable cause demonstrated. Requests for time extensions shall be accompanied by the payment of a fee set by resolution of the City Council.

If a project is associated with a code enforcement case, the dates specified in the code enforcement notices take precedence over the timelines specified in this section.

**105.5 Expiration of permit.** Permits issued by the building official shall expire one year from the date of issuance. The building official or the supervising building inspector are authorized to grant one or more extensions of time to complete the work for additional periods not exceeding one year per extension. The extension shall be requested in writing and justifiable cause demonstrated. Requests for time extensions shall be accompanied by the payment of a fee set by resolution of the City Council.

The issuance of a building permit shall not excuse the permittee or any other person from compliance with any notice and/or order to correct a code violation issued by the City.

When a permit is expired and a new permit is required to complete the work, a new permit application and plans shall be filed describing the remaining work to be done. If a site visit or other review is required to determine the extent of the remaining work, a fee may be charged to make such determination.

## SECTION 109 – FEES

**109.1 Payment of fees.** Except when fees are deferred, a permit shall not be valid until the fees as set forth by resolution of City Council have been paid, nor shall an amendment to a permit be released until the additional fee, if any, has been paid.

**109.2 Schedule of permit fees.** On buildings, structures, electrical, gas, mechanical, and plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as required, in accordance with the fee as set forth by resolution of the City Council. Fees for permits and inspections and other related services under this Code shall be assessed and paid as set forth by resolution of the City Council. Unless waived or deferred as provided by local regulations, a plan review fee and other fees as specified in the resolution shall be paid at the time of submitting any documents for review and additional fees as specified in the resolution shall be paid at issuance of the permit.

**109.4 Work commencing before permit issuance.** Any person who commences any work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permit shall be subject to a fee as set forth by resolution of the City Council equal to and in addition to the permit fees for the portion of the scope of work performed without the permit.

**109.7 Re-inspection fees.** A re-inspection fee, as set forth by resolution of the City Council, may be assessed for each re-inspection when such portion of work for which an inspection is scheduled is not complete or when corrections previously called for are not made.

Re-inspection fees shall not be required each time a job is disapproved for failure to comply with the requirements of this Code. Rather this section shall be used to control the practice of calling for inspections before the job is ready for such inspection, or when the approved plans are not readily available to the inspector, or for failure to provide access on the date for which the inspection is requested, or when work deviates from the approved plans but no revision is submitted to the City.

To obtain a re-inspection, the applicant shall pay the re-inspection fee as set forth by resolution of the City Council. In instances where re-inspection fees have been assessed, no additional inspection of the work will be performed until the required fees have been paid.

## SECTION 112 – SERVICE UTILITIES

**112.4 Authority to connect utilities.** Clearance for connection of one utility, either gas or electrical, will be withheld until final building, electrical, plumbing, and/or mechanical inspections are made and approval has been given for any new building or change in occupancy classification to an existing building for which connection to such utilities is sought, unless approval has been first obtained from the building official, as provided by a Temporary Certificate of Occupancy or Final Certificate of Occupancy.

**112.5 Unsafe service utilities.** Unsafe service utilities are hereby declared to be public nuisances and shall be abated, repaired, rehabilitated, demolished or removed in accordance with the procedures set forth in Chapter 19.40 of the Berkeley Municipal Code (BMC) for residential buildings and Berkeley Building Code for all other buildings, or any alternate procedure that may be adopted by the City of Berkeley. In addition, the City



Attorney may pursue other appropriate action to prevent, restrain, correct or abate the violation as provided for in the BMC. Remedies under this section are cumulative. When service utilities are maintained in violation of this Code and in violation of a notice issued pursuant to the provisions of this section, the building official shall institute appropriate action to prevent, restrain, correct or abate the violation.

**112.6 Authority to disconnect utilities in emergencies.** The building official or building official's authorized representative shall have the authority to disconnect electrical power or other energy service supplied to the building, structure or building service equipment therein regulated by this Code in case of emergency where necessary to eliminate an immediate hazard to life or property. The building official or building official's authorized representative shall, whenever possible, notify the serving utility, and the owner of the building, structure or electrical system or equipment and any building occupants of the decision to disconnect prior to taking such action and shall notify them, in writing, of the disconnection as soon as possible thereafter.

**112.7 Authority to condemn electrical system and equipment.** Whenever the building official determines that an electrical system or electrical equipment regulated by this Code is hazardous to life, health or property, the building official may order in writing that such electrical system or equipment either be removed or restored to a safe condition. The written notice shall fix a reasonable time limit for compliance with such order. Persons shall not use or maintain defective electrical systems or equipment after receiving such notice except as may be provided therein.

When equipment or an installation is to be disconnected, a written notice of such disconnection and the reasons therefore shall be given within 24-hours of the order to disconnect to the serving utility, the owner and occupants of the building, structure or premises.

When equipment or an installation is maintained in violation of this Code and in violation of a notice issued pursuant to the provisions of this section, the building official shall institute appropriate action to prevent, restrain, correct or abate the violation.

Unsafe electrical systems or equipment are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures set forth in Chapter 19.40 of the BMC for residential buildings and Berkeley Building Code for all other buildings, or any alternate procedure that may be adopted by the City of Berkeley. In addition, the City Attorney may pursue other appropriate action to prevent, restrain, correct or abate the violation as provided for in the BMC. Remedies under this section are cumulative.

**112.8 Connection after order to disconnect.** Persons shall not make connections to a service utility system or equipment that has been disconnected or ordered to be disconnected by the building official, or the use of which has been ordered to be discontinued by the building official, until the building official authorizes the reconnection and use of the electrical system or equipment.

## SECTION 113 – BOARD OF APPEALS

**113.1 General.** In order to hear and decide appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of this Code, there shall be and is hereby created a board of appeals consisting of the Housing Advisory Commission pursuant to Section 19.44.020 of the Berkeley Municipal Code. The building official may convene and consult with an advisory panel of qualified individuals. This advisory panel is intended to help the building official in formulating and making staff recommendations to the Housing Advisory Commission. The advisory panel may provide written and/or oral presentations to the Housing Advisory Commission as needed.

**113.3 Qualifications.** The board of appeals shall consist of members meeting the qualifications required for the Housing Advisory Commission. The advisory panel shall consist of individuals found by the building official to be qualified by experience and training in the specific area of the appeal who are not employees of the jurisdiction.

## SECTION 114 – VIOLATIONS

**114.4 Violation penalties.** Any person who violates a provision of this Code or fails to comply with any of the requirements thereof or who erects, constructs, alters or repairs a building or structure in violation of the approved construction documents or directive of the building official, or of a permit or certificate issued under the provisions of this Code, shall be subject to penalties as prescribed by law. Violations of this Code are misdemeanors, but may be cited or charged, at the election of the enforcing officer, building official, or City Attorney, as infractions, subject to an election by the defendant under Penal Code Subsection 17(d). Nothing in this Section shall prevent any other remedy afforded by law.

## SECTION 116 - UNSAFE STRUCTURES AND EQUIPMENT

**116.1 Conditions.** Structures or existing equipment that are or hereafter become structurally unsafe, insanitary or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance shall be deemed an unsafe condition. Unsafe structures shall be taken down and removed or made safe, as the building official deems necessary and as provided for in this section. A vacant structure that is not secured against entry shall be deemed unsafe.

All such unsafe buildings, equipment, structures or appendages are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures set forth in Chapters 1.24, 19.28, 19.40 and/or 19.44 of the BMC as applicable. As an alternative, the building official, or other employee or official of this jurisdiction as designated by the City Council, may institute any other appropriate action to prevent, restrain, correct or abate the violation.

## **116.6 Safety Assessment Placards.**

**116.6.1 Intent.** This section establishes standard placards to be used to indicate the condition of a structure for occupancy after a natural or human-caused disaster and a rapid evaluation by authorized personnel. The building official or authorized representatives shall post the appropriate placard at each entry point to a building or structure upon completion of a safety assessment.

**116.6.2 Application of provisions.** The provisions of this section are applicable to all buildings and structures of all occupancies regulated by the City of Berkeley. The City Council may extend the provisions as necessary.

### **116.6.3 Definitions.**

**116.6.3.1** "Safety Assessment" is a visual, non-destructive examination of a building or structure for the purpose of determining the condition for continued occupancy.

**116.6.3.2** Placards. Following are titles and descriptions of the official jurisdiction placards to be used to designate the condition of a building structure for continued occupancy, partial or conditional occupancy, or unsafe to enter. Copies of placards are on file in the Building and Safety Division of the Planning and Development Department.

INSPECTED – Lawful Occupancy Permitted is to be posted on any building or structure wherein no apparent hazard has been found. This placard is not intended to mean there is no damage to the building or structure, but that any damage that occurred does not present a hazard to occupants.

RESTRICTED USE is to be posted on each building or structure that has been damaged wherein the damage has resulted in some form of restriction to the continued occupancy. The individual who posts this placard will note in general terms the type of damage encountered and will clearly and concisely note the restrictions on continued occupancy.

UNSAFE – Do Not Enter or Occupy is to be posted on each building or structure that has been damaged such that continued occupancy poses a threat to life safety. Building or structures posted with this placard shall not be entered under any circumstances except as authorized in writing by the building official, or the building official's authorized representative. Safety assessment teams shall be authorized to enter these building at any time. This placard is not to be used or considered as a demolition order. The individual who posts this placard will note in general terms the type of damage encountered.

**116.6.4 Content of placard.** The BMC Section number and the words "City of Berkeley" shall be permanently affixed to each placard.

**116.6.5 Unlawful to remove.** Once a placard has been attached to a building or structure, it is not to be removed, altered or covered until done so by an authorized representative

of the Building Official. It shall be unlawful for any person, firm or corporation to alter, remove, cover or deface a placard unless authorized pursuant to this section.

## Article 2. Restrictions in Fire Zones

### 19.28.030 CBC Chapter 7A Materials and Construction Methods for Exterior Wildlife Exposure.

**Chapter 7A** of the 2022 California Building Code with Mid-Cycle Supplement is adopted in its entirety subject to the modifications thereto which are set forth below.

#### 701A – SCOPE, PURPOSE AND APPLICATION

**701A.1 Scope.** This chapter applies to building materials, systems and/or assemblies used in the exterior design and construction of new buildings and structures, additions, alterations, repairs and re-roofs located within a Wildland-Urban Interface (WUI) area as defined in Section 702A.

**701A.2 Purpose.** The purpose of this chapter is to establish minimum standards for the protection of life and property by increasing the ability of a building located in any Fire Hazard Severity Zone within a State Responsibility Area (SRA) or Local Responsibility Areas (LRA) or any building or structure in the Wildland-Urban Interface (WUI) areas as specified in Section 701A.3.1 to resist the intrusion of flames or burning embers projected by a vegetation fire and contributes to a systematic reduction in conflagration losses.

**701A.3 Application.** New buildings located in any Fire Hazard Severity Zone or new buildings and structures, additions, alterations, repairs and re-roofs located in any Wildland-Urban Interface (WUI) area designated by the enforcing agency constructed after the application date shall comply with the provisions of this chapter. This shall include all new buildings and structures, additions, alterations, repairs and re-roofs with residential, commercial, educational, institutional or similar occupancy type uses, which shall be referred to in this chapter as “applicable building(s)” (see definition in Section 702A), as well as new buildings and structures, additions, alterations, repairs and re-roofs accessory to those applicable buildings (see Exceptions 1 and 4).

#### Exceptions:

1. Group U occupancy accessory buildings or structures, of any size located at least 50 feet (15 240 mm) from an applicable building on the same lot.
2. Group U occupancy agricultural buildings or structures, as defined in Section 202 of this code of any size located at least 50 feet (15 240 mm) from an applicable building.
3. Group C occupancy special buildings or structures conforming to the limitations specified in Section 450.4.1.
4. New accessory buildings and miscellaneous structures specified in Section 710A shall comply only with the requirements of that section.

5. ~~Additions to and remodels of buildings originally constructed prior to July 1, 2008.~~

**701A.3.1 Application date and where required.** New buildings for which an application for a building permit is submitted on or after July 1, 2008, located in any Fire Hazard Severity Zone or buildings and structures, additions, alterations, repairs and re-roofs for which an application for a building permit is submitted on or after July 1, 2008 located in the Wildland-Urban Interface area shall comply with all sections of this chapter, ~~including all the following areas:~~

1. ~~All unincorporated lands designated by the State Board of Forestry and Fire Protection as State Responsibility Area (SRA) including:~~
  - 1.1. ~~Moderate Fire Hazard Severity Zones.~~
  - 1.2. ~~High Fire Hazard Severity Zones.~~
  - 1.3. ~~Very High Fire Hazard Severity Zones.~~
2. ~~Land designated as Very High Fire Hazard Severity Zone by cities and other local agencies.~~
3. ~~Land designated as Wildland Interface area by cities and other local agencies.~~

~~Exceptions:~~

1. ~~New buildings located in any Fire Hazard Severity Zone within State Responsibility Area, for which an application for a building permit is submitted on or after January 1, 2008, shall comply with all sections of this chapter.~~
2. ~~New buildings located in any Fire Hazard Severity Zone within State Responsibility Areas or any Wildland Interface area designated by cities and other local agencies for which an application for a building permit is submitted on or after December 1, 2005 but prior to July 1, 2008, shall only comply with the following sections of this chapter:~~
  - 2.1. ~~Section 705A — Roofing.~~
  - 2.2. ~~Section 706A — Attic Ventilation.~~

## 702A – DEFINITIONS

**APPLICABLE BUILDING.** A building or structure that has residential, commercial, educational, institutional or similar occupancy type use.

**FIRE ZONE ONE** shall encompass the entire City of Berkeley except for Fire Zones Two and Three.

**FIRE ZONE TWO** encompasses those areas designated as Combined Hillside District in the Official Zoning map of the City of Berkeley and those areas designated as Very High in the official Fire Hazard Severity Zones (FHSZ) map of The Department of Forestry and Fire Protection (CAL FIRE), as they may be amended from time to time. The following properties, not part of the Combined Hillside District, are included in Fire Zone Two under the Very High designation of the FHSZ map: the eastern section of the University of California, Berkeley main campus, block number 2042 (Alameda County Assessor's parcel numbering (APN) system), to the east city line; all of the Clark-Kerr campus, block number 7690, to the east city line; all of block number 7680 in the City of Berkeley; portions of block number 1702 in the City of Berkeley. See Exhibit A for the specific parcels by APN and address.

**FIRE ZONE 3** encompasses those areas designated as Environmental Safety – Residential Districts on the Official Zoning Map of the City of Berkeley, as it may be amended from time to time.

**LOCAL RESPONSIBILITY AREA (LRA)**. Areas of the state in which the financial responsibility of preventing and suppressing fires is the primary responsibility of a city, county, city and county, or district. Fire Zones 2 and 3 are designated as Local Responsibility Area.

**WILDLAND-URBAN INTERFACE (WUI)**. A geographical area identified by the state as a "Fire Hazard Severity Zone" in accordance with the Public Resources Code Sections 4201 through 4204 and Government Code Sections 51175 through 51189, or other areas designated by the enforcing agency to be at a significant risk from wildfires. Fire Zones 2 and 3 are designated as Wildland-Urban Interface (WUI) area.

## **705A – ROOFING**

**705A.1 General.** Roofs shall comply with the requirements of Chapter 7A and Chapter 15. Roof assemblies in Fire Hazard Severity Zones shall be tested in accordance with ASTM E108 or UL 790 and meet a Class A fire classification. For additional compliance see Chapter 15, Section 1505.2 for Class A roof assemblies. The roof assembly shall be installed in accordance with its listing and the manufacturer's installation instructions. The entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any 5-year period; the entire roof covering of every new structure; and any roof covering applied in the alteration, repair, or replacement of the roof of every existing structure shall be a fire-retardant roof covering that meets a Class A fire classification.

Wooden shakes and shingles are prohibited roof coverings regardless of the assembly rating of the roof system

**705A.5 Spark Arrestors.** All chimneys of fireplaces, stoves, barbecues or heating appliances using solid fuel shall be provided with an approved spark arrestor whenever modification has been made to any of these appliances, or whenever a structure is re-roofed. The net free area of the spark arrestor shall be not less than four times the net free area of the outlet of the chimney. The spark arrestor shall have heat and corrosion resistance equivalent to twelve-gauge wire, nineteen-gauge galvanized wire, or twenty-four-gauge stainless steel. Openings shall not permit the passage of spheres having a diameter larger than one-half inch and shall not block the passage of spheres having a diameter of less than three-eighths inch. The arrestor shall be securely attached to the chimney or stovepipe and shall be adequately supported. The use of bands, mollies, masonry anchors or mortar ties are recommended depending upon the individual need.

## **707A – EXTERIOR COVERING**

**707A.3.2 Replacement of Exterior Wall Covering.** Materials for replacement of existing exterior wall covering shall meet or exceed the standards set forth in this Chapter.

**Exception:** Where less than 50% of any wall surface is being replaced or repaired, and the matching of the new plane to the existing plane on that wall is not possible.

## **711A 712A – UNDERGROUND UTILITY CONNECTIONS**

**711A.1 712A.1 Underground utility connections.** For new construction, provisions shall be made for the undergrounding of all utilities serving the property, including but not limited to electrical, telephone and cable television, by the installation of appropriately sized underground conduits extending from the street property.

## **712A 713A – ADDITIONAL REQUIREMENTS IN FIRE ZONE THREE**

**712A.1 713A.1 General.** In addition to meeting the other requirements of this Chapter, buildings or structures hereinafter erected, constructed, moved, altered, added, or repaired within Fire Zone Three shall comply with the following requirements for buildings and structures.

**712A.2 713A.2 Fire warning system.** All residential units shall be equipped with a Fire Warning System as specified by the residential smoke detector requirements of the current edition of the California Building Code and with an audible exterior alarm. The exterior alarm must meet the requirements of NFPA 72 or equivalent and generate 45 decibels ten feet from the alarm, or more.

**712A.3 713A.3 Automatic fire sprinkler systems.** Automatic fire sprinkler system requirements shall be as set forth in Berkeley Fire Code Section 903.2.24.

**712A.4 713A.4 Utilities.** Utilities, pipes, furnaces, water heaters or other mechanical devices located in an exposed underfloor area of a building or structure shall be enclosed with material as required for exterior one hour fire resistive construction. Adequate covered access openings for servicing and ventilation of such facilities shall be provided as required by appropriate codes.

**712A.5 713A.5 Control of brush or vegetation.** Brush and vegetation shall be controlled as required in the Berkeley Fire Code.

**712A.6 713A.6 Special Conditions.** The following additional conditions must be met:

1. Public access roads and fire trails. No person(s) shall use any public access road or fire trail for the storage of any construction material, stationary construction equipment, construction office, portable refuse container, or earth from any grading or excavating.
2. Water Service. The water service to the site shall be installed with a ¾” hose bib connection prior to beginning any wood framing. The person responsible for the construction shall have at the site a 75 ft ¾” hose available.

**Exhibit A**  
**Parcels in Addition to the Combined Hillside District**

The following additional parcels by Assessor’s Parcel Number and address are included in Fire Zone Two:

Parcel Number (APN)	Address
048-7680-001-02	3 Tanglewood Road
048-7680-002-01	5 Tanglewood Road
048-7680-031-00	7 Tanglewood Road
048-7680-019-00	11 Tanglewood Road
048-7680-014-00	19 Tanglewood Road
048-7680-032-01	25 Tanglewood Road
048-7680-027-00	29 Tanglewood Road
054-1702-067-00	10 Tanglewood Road
054-1702-068-00	18 Tanglewood Road
054-1702-069-00	22 Tanglewood Road
054-1702-070-00	28 Tanglewood Road
054-1702-063-00	2701 Belrose Avenue
054-1702-076-00	2715 Belrose Avenue
054-1702-075-00	2721 Belrose Avenue
054-1702-074-00	2729 Belrose Avenue
054-1702-073-00	2737 Belrose Avenue
054-1702-112-00	2801 Claremont Boulevard
054-1702-123-01	2811 Claremont Boulevard
054-1702-122-00	2815 Claremont Boulevard
054-1702-120-01	2821 Claremont Boulevard



054-1702-114-01	2816 Claremont Avenue
054-1702-115-00	2820 Claremont Avenue
054-1702-072-00	3005 Garber Street
054-1702-071-00	3015 Garber Street
054-1702-113-00	3020 Garber Street
054-1702-116-00	3017 Avalon Avenue

**Article 3. Wood Burning Appliances**

**19.28.040 Wood Burning Appliances.**

**Chapter 31** of the 2022 California Building Code with Mid-Cycle Supplement is adopted in its entirety subject to the modifications thereto which are set forth below.

**3116 Wood Burning Appliances.**

A. The purpose of this section is to reduce the health risks caused by wood smoke under the climatic conditions applicable to Berkeley.

B. For purposes of this section the following terms shall be defined as set forth below.

1. "EPA" means the United States Environmental Protection Agency.
2. "EPA Certified" means any wood heater that is labeled "EPA Certified" in accordance with the standards in Title 40, Part 60, Subpart AAA, of the Code of Federal Regulations or equivalent, in effect at the time the wood heater is installed.
3. "Pellet heater" means wood heaters that burn pellet fuel exclusively and are either EPA-certified or exempted under EPA requirements set forth in Part 60 Title 40, Subpart AAA, of the Code of Federal Regulations, February 26, 1988.
4. "Wood-burning" means an appliance that burns wood or any wood-based solid fuel, including but not limited to wood pellets.
5. "Wood burning cooking device" means any wood-burning device that is designed or primarily used for cooking.
6. "Wood-burning fireplace" means any permanently-installed masonry or factory-built wood-burning appliance, either open or with doors in front of the combustion chamber, which is neither a wood heater as defined in 40 CFR 60.531 nor designed and used for cooking.

C. No wood-burning fireplace or wood heater as defined in 40 CFR 60.531, that is not EPA certified or exempted by under EPA requirements may be installed in any occupancy.

Exception: Existing masonry fireplaces may be repaired in accordance with the applicable codes in effect at the time of the proposed repair or reconstruction. For purposes of this exception, the term repair includes resurfacing the combustion chamber, but does not include replacing any other part of the combustion chamber.

D. Wood burning cooking devices are not prohibited by this section.

E. Any person planning to install a wood-burning fireplace or heating stove must submit verifiable documentation to the City showing that the appliance conforms to the requirements of this section.

#### **Article 4. Projection into Public Right of Way**

##### **19.28.050 Encroachments into the Public Right of Way – Revocation, Removal, Indemnification and Hold Harmless.**

**Chapter 32** of the 2022 California Building Code with Mid-Cycle Supplement is adopted in its entirety subject to the modifications thereto which are set forth below.

#### **3202 – ENCROACHMENTS**

##### **3202.5 Projection into the Public Right of Way – Revocation, Removal, Indemnification and Hold Harmless.**

Any permits granted pursuant to this Code which allow any projection upon, over, or under the public right of way may be revoked by the City at any time. Upon such revocation, the permittee or permittee's successor(s) or assignee(s) shall forthwith remove such projection at permittee's cost and expense and without any cost or expense whatsoever to the City.

Any person who is granted a permit pursuant to the provisions of this Code which allows a projection upon, over or under the public right of way shall by the issuance of such permit thereby indemnify and hold harmless the City of Berkeley, its officers and employees of and from any and all liabilities, claims, demands, actions or causes of action for injury or injuries to any person or persons or death or deaths of any person or persons or damage to property arising out of or occasioned in any way by the issuance of said permit, the work performed pursuant to such permit, or the existence of such projection. The obligation of such indemnification and hold harmless provision shall be applicable to the successor(s) and assignee(s) of the permittee.

#### **Article 5. Existing Buildings**

**19.28.060 Adoption of 2022 California Existing Building Code with Mid-Cycle Supplement and certain Chapters of the 2021 International Existing Building Code by reference.**

**2022 California Existing Building Code with Mid-Cycle Supplement (CEBC), including Appendix A**, is adopted in its entirety subject to the modifications thereto which are set forth below.

## **DIVISION II SCOPE AND ADMINISTRATION**

All of the administrative provisions contained in Article 1 of Chapter 19.28, the Berkeley Building Code, shall apply to this Code as well and take precedence over any CEBC administrative provisions that may conflict.

**101.9 Adoption of Certain Chapters of the 2021 International Existing Building Code by reference.**

When seismic retrofit is not otherwise required by this Code, the following Chapters of the 2021 International Existing Building Code (IEBC) published by the International Code Council contained in the IEBC Appendix A are hereby adopted by reference as applicable to the types of buildings as designated therein as though fully set forth herein:

Chapter A2, Earthquake Hazard Reduction in Existing Reinforced Concrete and Reinforced Masonry Wall Buildings with Flexible Diaphragms

### **Article 6. Repairs to Existing Buildings and Structures**

**19.28.070 Adoption of Regulations for the Repairs of Existing Structures.**

**Add a new Subsection 405.2.7 to Chapter 4 Section 405 of the California Existing Building Code with Mid-Cycle Supplement.**

**405.2.7 Seismic Evaluation and Design Procedures for Repairs.** The seismic evaluation and design shall be based on the procedures specified in the California Building Code or ASCE 41 *Seismic Evaluation and Retrofit of Existing Buildings*. The procedures contained in Appendix A Chapters A1, A3 and A4 of the California Existing Building Code and Appendix A Chapter A2 of the International Existing Building Code shall be permitted to be used as specified in Section 405.2.7.2.

**405.2.7.1 Compliance with CBC level seismic forces.** Where compliance requires the use of full seismic forces, the criteria shall be in accordance with one of the following:

1. One-hundred percent of the values in the California Building Code. Where the existing seismic force-resisting system is a type that can be designated as “Ordinary,” the values of  $R$ ,  $\Omega_o$ , and  $C_d$  used for analysis in accordance with Chapter 16 of the California Building Code shall be those specified for structural systems classified as “Ordinary” in accordance with Table 12.2-1 of ASCE 7, unless it is demonstrated that the structural

system will provide performance equivalent to that of a “Detailed,” “Intermediate” or “Special” system.

2. ASCE 41, using a Tier 3 procedure and the two-level performance objective in Table 405.2.7.1.

**Table 405.2.7.1  
PERFORMANCE OBJECTIVES FOR USE IN ASCE 41 FOR COMPLIANCE WITH  
FULL SEISMIC FORCES**

RISK CATEGORY (Based on CBC Table 1604.5)	STRUCTURAL PERFORMANCE LEVEL FOR USE WITH BSE-1N EARTHQUAKE HAZARD LEVEL	STRUCTURAL PERFORMANCE LEVEL FOR USE WITH BSE-2N EARTHQUAKE HAZARD LEVEL
I	Life Safety (S-3)	Collapse Prevention (CP)
II	Life Safety (S-3)	Collapse Prevention (CP)
III	Damage Control (S-2)	Limited Safety (S-4)
IV	Immediate Occupancy (S-1)	Life Safety (S-3)

**405.2.7.2 Compliance with reduced CBC level seismic forces.** Where seismic evaluation and design is permitted to meet reduced seismic forces, the criteria used shall be in accordance with one of the following:

1. The California Building Code using 75 percent of the prescribed forces. Values of  $R$ ,  $\Omega_o$ , and  $C_d$  used for analysis shall be as specified in Section 405.2.7.1 Item 1.

2. Structures or portions of structures that comply with the requirements of the applicable chapter in Appendix A of the California Existing Building Code (CEBC) or Appendix A of the International Existing Building Code (IEBC) as specified in Items 2.1 through 2.4 below shall be deemed to comply with this section.

2.1. The seismic evaluation and design of unreinforced masonry bearing wall buildings in Risk Category I or II are permitted to be based on the procedures specified in CEBC Appendix A Chapter A1, provided the design is no less stringent than required in Berkeley Municipal Code Section 19.38.130.

2.2. Seismic evaluation and design of the wall anchorage system in reinforced concrete and reinforced masonry wall buildings with flexible diaphragms in Risk Category I or II are permitted to be based on the procedures specified in IEBC Appendix A Chapter A2.

2.3. Seismic evaluation and design of cripple walls and sill plate anchorage in residential buildings of light-frame wood construction in Risk Category I or II are permitted to be based on the procedures specified in CEBC Appendix A Chapter A3.

2.4. Seismic evaluation and design of soft, weak, or open-front wall conditions in multiunit residential buildings of wood construction in Risk Category I or II are permitted to be based on the procedures specified in CEBC Appendix A Chapter A4.

3. ASCE 41, using the performance objective in Table 405.2.7.2 for the applicable risk category. The design spectral response acceleration parameters  $S_{xs}$  and  $S_{x1}$  specified in ASCE 41 shall not be taken less than 75 percent of the respective design spectral response acceleration parameters  $S_{DS}$  and  $S_{D1}$  defined by the *California Building Code* and its reference standards.

**Table 405.2.7.2  
PERFORMANCE OBJECTIVES FOR USE IN ACCE 41 FOR COMPLIANCE WITH  
REDUCED SEISMIC FORCES**

<b>RISK CATEGORY (Based on CBC Table 1604.5)</b>	<b>STRUCTURAL PERFORMANCE LEVEL FOR USE WITHBSE-1E EARTHQUAKE HAZARD LEVEL</b>	<b>STRUCTURAL PERFORMANCE LEVEL FOR USE WITH BSE-2E EARTHQUAKE HAZARD LEVEL</b>
I	Life Safety (S-3). See Note a	Collapse Prevention (S-5)
II	Life Safety (S-3). See Note a	Collapse Prevention (S-5)
III	Damage Control (S-2). See Note a	Limited Safety (S-4). See Note b
IV	Immediate Occupancy (S-1)	Life Safety (S-3). See Note c

- a. For Risk Categories I, II, and III, the Tier 1 and Tier 2 procedures need not be considered for the BSE-1E earthquake hazard level.
- b. For Risk Category III, the Tier 1 screening checklists shall be based on the Collapse Prevention, except that checklist statements using the Quick Check provisions shall be based on MS-factors that are the average of the values for Collapse Prevention and Life Safety.
- c. For Risk Category IV, the Tier 1 screening checklists shall be based on Collapse Prevention, except that checklist statements using the Quick Check provisions shall be based on MS-factors for Life Safety.

**Table 405.2.7.3  
REFERENCED STANDARDS**

<b>Standard Reference Number</b>	<b>Title</b>	<b>Referenced in Code Section Number</b>
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ASCE 41-17	Seismic Evaluation and Retrofit of Existing Buildings	405.2.7 Table 405.2.7.1 405.2.7.2 Table 405.2.7.2
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## Article 7. Technical Amendments to Structural Standards

### 19.28.080 Various Technical Amendments to Structural Standards.

**Chapter 17** of the 2022 California Building Code with Mid-Cycle Supplement is adopted in its entirety subject to the modifications thereto which are set forth below.

**1705.3 Concrete construction.** Special inspections and tests of concrete construction shall be performed in accordance with this section and Table 1705.3.

**Exception:** Special inspections and tests shall not be required for: 1. Isolated spread concrete footings of buildings three stories or less above grade plane that are fully supported on earth or rock, where the structural design of the footing is based on a specified compressive strength,  $f_c$ , no greater than 2,500 pounds per square inch (psi) (17.2 MPa).

**Chapter 19** of the 2022 California Building Code with Mid-Cycle Supplement is adopted in its entirety subject to the modifications thereto which are set forth below.

**1905.1.7 ACI 318, Section 14.1.4.** Delete ACI 318, Section 14.1.4, and replace with the following:

14.1.4 - Plain concrete in structures assigned to Seismic Design Category C, D, E or F.

14.1.4.1 - Structures assigned to Seismic Design Category C, D, E or F shall not have elements of structural plain concrete, except as follows:

- ~~Structural plain concrete basement, foundation or other walls below the base are permitted in detached one and two-family dwellings three stories or less in height constructed with stud bearing walls. In dwellings assigned to seismic design category D or E, the height of the wall shall not exceed 8 feet (2438 mm), the thickness shall not be less than  $7\frac{1}{2}$  inches (190 mm), and the wall shall retain no more than 4 feet (1219 mm) of unbalanced fill. Walls shall have reinforcement in accordance with 14.6.1.~~
- Isolated footings of plain concrete supporting pedestals or columns are permitted, provided the projection of the footing beyond the face of the supported member does not exceed the footing thickness.

**Exception:** ~~In detached one and two-family dwelling three stories or less in height, the projection of the footing beyond the face of the supported member is permitted to exceed the footing thickness.~~

- (Plain concrete footings supporting walls are permitted, provided the footings have at least two continuous longitudinal reinforcing bars. Bars shall not be smaller than No. 4 and shall have a total area of not less than 0.002 times the gross cross-sectional area of the footing. For footings that exceed 8" inches (203 mm) in thickness, A minimum of one bar shall be provided at the top and bottom of the footing. Continuity of reinforcement shall be provided at corners and intersections.

**Exceptions:**

1. ~~In seismic design categories A, B and C, detached one- and two-family dwellings three stories or less in height and constructed with stud bearing walls, are permitted to have plain concrete footings without longitudinal reinforcement.~~
2. ~~For foundation systems consisting of a plain concrete footing and a plain concrete stem wall, a minimum of one bar shall be provided at the top of the stem wall and at the bottom of the footing.~~
3. ~~Where a slab on ground is cast monolithically with the footing, one No. 5 bar is permitted to be located at either the top of the slab or bottom of the footing.~~

**Article 8. Construction of Exterior Appurtenances**

**19.28.090 Technical Amendments for Construction of Exterior Projecting Elements and Appurtenances.**

**Chapter 12** of the 2022 California Building Code with Mid-Cycle Supplement is adopted in its entirety subject to the modifications thereto which are set forth below:

**1202.7 Ventilation of weather exposed enclosed assemblies.** Balconies, landings, decks, stairs and similar exterior projecting elements and appurtenances exposed to the weather and sealed underneath shall have cross ventilation for each separate enclosed space by ventilation openings protected against the entrance of rain and snow and as set forth in Section 2304.12.2.5. Blocking and bridging shall be arranged so as not to interfere with the movement of air. The net free ventilating area shall not be less than 1/150th of the area of the space ventilated. Ventilation openings shall comply with Section 1202.2.2. An access panel of sufficient size shall be provided on the underside of the enclosed space to allow for periodic inspection.

**Exceptions:**

1. An access panel is not required where the exterior coverings applied to the underside of joists are easily removable using only common tools.
2. Removable soffit vents 4 inches minimum in width can be used to satisfy both ventilation and access panel requirements.

**Chapter 14** of the 2022 California Building Code with Mid-Cycle Supplement is adopted in its entirety subject to the modifications thereto which are set forth below:

**1403.15 Projections exposed to weather.** Balconies, landings, decks, stairs and similar floor projections exposed to the weather shall be constructed of naturally durable wood, preservative-treated wood, corrosion resistant (e.g., galvanized) steel, or similar approved materials.

**Chapter 23** of the 2022 California Building Code with Mid-Cycle Supplement is adopted in its entirety subject to the modifications thereto which are set forth below:

**2304.12.2.3 Supporting members for permanent appurtenances.** Naturally durable or preservative-treated wood shall be utilized for those portions of wood members that form the structural supports of buildings, balconies, porches or similar permanent building appurtenances ~~where such members are exposed to the weather without adequate protection from a roof, eave, overhang or other covering to prevent moisture or water accumulation on the surface or at joints between members.~~

**2304.12.2.4 Supporting members for permeable floors and roofs.** Wood structural members that support moisture-permeable floors or roofs that are exposed to the weather, such as concrete or masonry slabs, shall be of naturally durable or preservative-treated wood ~~unless and shall be separated from such floors or roofs by an impervious moisture barrier. The impervious moisture barrier system protecting the structure supporting floors shall provide positive drainage of water that infiltrates the moisture-permeable floor topping.~~

**Table 2308.6.1 WALL BRACING REQUIREMENTS<sup>a, f, g</sup>**

Add new footnotes “f” and “g” to the end of Table 2308.6.1 to read:

f. Methods GB, PBS, HPS and SFB are not permitted in Seismic Design Categories D or E. In Seismic Design Categories D, the use of Method PCP is limited to one-story dwellings and accessory structures.

g. Methods DWB and PCP are not permitted in Seismic Design Categories E.

**Article 9. Emergency Housing**

**19.28.100 Emergency Housing and Emergency Housing Facilities.**

**HCD Appendix P** of the 2022 California Building Code with Mid-Cycle Supplement is adopted on an emergency basis and reproduced in its entirety subject to the modifications thereto which are set forth below:

**APPENDIX P  
EMERGENCY HOUSING**

**SECTION P101**

**GENERAL**



**P101.1 Scope.** This appendix shall be applicable to emergency housing and emergency housing facilities, as defined in Section P102. The provisions and standards set forth in this appendix shall be applicable to emergency housing established pursuant to the declaration of a shelter crisis under Government Code section 8698 et seq. and located in new or existing buildings, structures, or facilities owned, operated, erected, or constructed by, for or on behalf of the City of Berkeley on land owned or leased by the City of Berkeley.

**P101.2 Application.** Notwithstanding any provisions of this Code to the contrary, the following requirements shall apply to emergency housing operated during a shelter crisis, as provided for in Government Code Section 8698 et seq. Other than the specific requirements set forth in this appendix, the facilities need not comply with the requirements of this Code for Group R occupancies unless otherwise specified in this Code.

## SECTION P102

### DEFINITIONS

**P102.1 General.** The following words and terms shall, for the purposes of this appendix, have the meanings shown herein. Refer to Chapter 2 of this code for general definitions.

**DECLARATION OF SHELTER CRISIS.** The duly proclaimed existence of a situation in which a significant number of persons are without the ability to obtain shelter, resulting in a threat to their health and safety. (See Government Code Section 8698)

**DEPENDENT UNIT.** Emergency housing not equipped with a kitchen area, toilet, and sewage disposal system. Recreational vehicles that are not self-contained and without utility service connections shall be considered dependent units.

**EMERGENCY HOUSING.** Housing in a permanent or temporary structure(s), occupied during a declaration of state of emergency, local emergency, or shelter crisis. Emergency housing may include, but is not limited to, buildings and structures constructed in accordance with the California Building Standards Code; and emergency sleeping cabins, emergency transportable housing units, and tents constructed in accordance with this appendix.

**EMERGENCY HOUSING FACILITIES.** On-site common use facilities supporting emergency housing. Emergency housing facilities include, but are not limited to, kitchen areas, toilets, showers and bathrooms with running water. The use of emergency housing facilities is limited exclusively to the occupants of the emergency housing, personnel involved in operating the housing, and other emergency personnel.

**EMERGENCY HOUSING SITE.** A site containing emergency housing and emergency housing facilities supporting the emergency housing.

**EMERGENCY SLEEPING CABIN.** Relocatable hard-sided structure constructed in accordance with this appendix, which may be occupied only for emergency housing if allowed by the enforcing agency.

**EMERGENCY TRANSPORTABLE HOUSING UNIT.** A single- or multiple-section prefabricated structure that is transportable by a vehicle and that can be installed on a permanent or temporary site in response to a need for emergency housing. Emergency transportable housing units include, but are not limited to, manufactured homes, mobilehomes, multifamily manufactured homes, recreational vehicles, and park trailers. For the purposes of this appendix, emergency transportable housing units may also include commercial modulares as defined in the Health and Safety Code Section 18001.8, if approved by the enforcing agency. Emergency transportable housing units do not include factory-built housing as defined in the Health and Safety Code Section 19971.

**LANDING PLATFORM.** A landing provided as the top step of a stairway accessing a loft.

**LOCAL EMERGENCY.** Local Emergency as defined in the Government Code, Section 8558.

**LOFT.** A floor level located more than 30 inches (762 mm) above the main floor and open to it on at least one side with a ceiling height of less than 6 feet 8 inches (2032 mm), used as a living or sleeping space.

**MANUFACTURED HOME.** A structure designed to be used as a single-family dwelling, as defined in the Health and Safety Code, Section 18007.

**MEMBRANE STRUCTURE.** An air-inflated, air-supported, cable or frame-covered structure, not otherwise defined as a tent. (See Chapter 31 of this code.)

**MOBILEHOME.** A structure designed to be used as a single-family dwelling, as defined in the Health and Safety Code, Section 18008.

**MULTIFAMILY MANUFACTURED HOME.** A structure designed to contain not less than two dwelling units, as defined in the Health and Safety Code, Section 18008.7.

**PARK TRAILER.** A trailer designed for human habitation that meets all requirements in the Health and Safety Code, Section 18009.3.

**RECREATIONAL VEHICLE.** A motor home, travel trailer, truck camper, or camping trailer, with or without motive power, designed for human habitation, that meets all requirements in the Health and Safety Code, Section 18010.

**STATE OF EMERGENCY.** State of Emergency as defined in the Government Code, Section 8558.

**TENT.** A structure, enclosure or shelter, with or without sidewalls or drops, constructed of fabric or pliable material supported by any manner except by air or the contents that it protects.

## **SECTION P103**

### **EMERGENCY HOUSING**

**P103.1 General.** Emergency sleeping cabins, emergency transportable housing units including commercial modulars, membrane structures and tents constructed and/or assembled in accordance with this appendix, shall be occupied only during declaration of state of emergency, local emergency, or shelter crisis.

Buildings and structures constructed in accordance with the California Building Standards Code, used as emergency housing, shall be permitted to be permanently occupied.

**P103.2 Existing buildings.** Existing residential and nonresidential buildings or structures shall be permitted to be used as emergency housing and emergency housing facilities provided such buildings or structures comply with the building code provisions and/or other regulations in effect at the time of original construction and/or alteration. Existing buildings or structures used as emergency housing shall not become or continue to be substandard buildings, as determined by the enforcing agency.

**P103.2.1 New additions, alterations, and change of occupancy.** New additions, alterations, and change of occupancy to existing buildings shall comply with the requirements of the California Building Standards Code effective at the time of addition, alteration, or change of occupancy. The requirements shall apply only to and/or within the specific area of the addition, alteration, or change of occupancy.

#### **Exceptions:**

1. Existing buildings and structures used for emergency housing and emergency housing facilities may not be required to comply with the California Energy Code, as determined by the enforcing agency.
2. Change in occupancy shall not mandate conformance with new construction requirements set forth in the California Building Standards Code, provided such change in occupancy meets the minimum fire and life safety requirements set forth in Section P112 of this appendix.

**P103.3 Occupant load.** Except as otherwise stated in this appendix, the maximum occupant load allowed in buildings and structures used as emergency housing shall be determined by the enforcing agency, but the interior floor area shall not be less than 70 square feet (6.5 m<sup>2</sup>) for one occupant. Where more than one person occupies the building/structure, the required floor area shall be increased at the rate of 50 square feet (4.65 m<sup>2</sup>) for each occupant in excess of one.

#### **Exceptions:**

1. Tents.

2. Recreational vehicles and park trailers designed for human habitation that meet the requirements in the Health and Safety Code, Sections 18009.3 and 18010, as applicable
3. For emergency housing, including emergency sleeping cabins, the minimum interior floor area may be reduced to 53 square feet (4.9 m<sup>2</sup>) if the enforcing agency determines that 53 square feet (4.9 m<sup>2</sup>) is adequate space for a single-occupancy sleeping unit.

**P103.4 Fire and life safety requirements not addressed in this appendix.** If not otherwise addressed in this appendix, fire and life safety measures, including, but not limited to, means of egress, fire separation, fire sprinklers, smoke alarms, and carbon monoxide alarms, shall be determined and enforced by the enforcing agency.

**P103.5 Privacy.** Emergency housing shall be provided with a privacy lock on each entrance door and all windows for use by the occupants.

**P103.6 Heating.** All sleeping areas shall be provided with adequate heating as determined by the enforcing agency.

## **SECTION P104**

### **EMERGENCY SLEEPING CABINS**

**P104.1 General.** Emergency sleeping cabins shall have an interior floor area of not less than 70 square feet (6.5 m<sup>2</sup>) for one occupant. Where more than one person occupies the cabin, the required floor area shall be increased at the rate of 50 square feet (4.65 m<sup>2</sup>) for each occupant in excess of one. The interior floor area shall not exceed 400 square feet (37 m<sup>2</sup>), excluding lofts.

**P104.2 Live loads.** Emergency sleeping cabins shall be designed to resist intrusion of wind, rain, and to support the following live loads:

1. Floor live loads not less than 40 pounds per square foot (1.92 kPa) of floor area.
2. Horizontal live loads not less than 15 pounds per square foot (718 Pa) of vertical wall and roof area.
3. Roof live loads not less than 20 pounds per square foot (958 Pa) of horizontal roof area.
4. In areas where snow loads are greater than 20 pounds per square foot (958 Pa), the roof shall be designed and constructed to resist these additional loads.

**P104.3 Minimum ceiling height.** Habitable space and hallways in emergency sleeping cabins shall have a ceiling height of not less than 80 inches (2032 mm). Bathrooms, toilet rooms, and kitchens, if provided, shall have a ceiling height of not less than 76 inches (1930 mm). Obstructions shall not extend below these minimum ceiling heights including beams, girders, ducts, lighting and other obstructions.

**Exception:** Ceiling heights in lofts constructed in accordance with Section P108 are permitted to be less than 80 inches (2032 mm).

**P104.4 Means of egress.** Emergency sleeping cabins shall be provided with at least two forms of egress placed remotely from each other. One form of egress may be an egress window complying with Section P104.4.1. When a loft is provided, one form of egress shall be an egress window complying with Section P104.4.1, provided in the loft space.

**P104.4.1 Egress window.** The bottom of the clear opening of the egress window shall not be more than 44 inches (1118 mm) above the floor. The egress window shall have a minimum net clear opening height of 24 inches (610 mm), and a minimum net clear opening width of 20 inches (508 mm). The egress window shall have a minimum net clear opening area of 5 square feet (0.465 m<sup>2</sup>).

**P104.5 Plumbing and gas service.** If an emergency sleeping cabin contains plumbing or gas service, it shall comply with all applicable requirements of the California Plumbing Code and the California Mechanical Code.

**P104.6 Electrical.** Emergency sleeping cabins shall be provided with all of the following installed in compliance with the California Electrical Code:

1. Continuous source of electricity.

**Exception:** The source of electricity may be an emergency generator or renewable source of power such as solar or wind power.

2. At least one interior lighting fixture.
3. Electrical heating equipment listed for residential use and a dedicated receptacle outlet for the electrical heating equipment.

**Exception:** Electrical heating equipment and a dedicated receptacle outlet for the electrical heating equipment are not required if a nonelectrical source of heating is provided.

4. At least one GFCI-protected receptacle outlet for use by the occupant(s).

**P104.7 Ventilation.** Emergency sleeping cabins shall be provided with means of ventilation (natural and/or mechanical) allowing for adequate air replacement, as determined by the enforcing agency.

**P104.8 Smoke alarms.** Emergency sleeping cabins shall be provided with at least one smoke alarm installed in accordance with the California Residential Code, Section R314.

**P104.9 Carbon monoxide alarms.** If an emergency sleeping cabin contains a fuel-burning appliance(s) or a fireplace(s), a carbon monoxide alarm shall be installed in accordance with the California Residential Code, Section R315

## SECTION P105

### EMERGENCY TRANSPORTABLE HOUSING UNITS

**P105.1 General.** In addition to the requirements in this appendix, manufactured homes, mobilehomes, multifamily manufactured homes, commercial modulars, recreational vehicles, and park trailers used as emergency transportable housing shall comply with all applicable requirements in the Health and Safety Code, Division 13, Part 2; and Title 25, Division 1, Chapter 3, Subchapter 2.

No provisions of Sections P111 through P114 of this appendix shall be deemed to grant authorization for any additional work that may conflict with the standards specified in Section P105 applicable for emergency transportable housing units.

## SECTION P106

### TENTS AND MEMBRANE STRUCTURES

**P106.1 General.** Tents shall not be used to house occupants for more than 7 days unless such tents are maintained with tight wooden floors raised at least 4 inches (101.6 mm) above the ground level and are equipped with baseboards on all sides to a height of at least 6 inches (152.4 mm). Tents may be maintained with concrete slabs with the finished surface at least 4 inches (101.6 mm) above grade and equipped with curbs on all sides at least 6 inches (152.4 mm) high.

A tent shall not be considered a suitable sleeping place when it is found necessary to provide heating facilities in order to maintain a minimum temperature of 50 degrees Fahrenheit (10 degrees Celsius) within such tent during the period of occupancy.

Membrane structures installed and/or assembled in accordance with Chapter 31 of this code, may be permitted to be used as emergency housing and emergency housing facilities, as determined by the enforcing agency.

Tents and membrane structures shall comply with Chapter 31 of the California Fire Code and shall not be erected for a period of more than 180 days within a 12 month period. Tents and membrane structures shall be limited to one level located at the level of Fire Department vehicle access road or lane. Tents and membrane structures complying with Chapter 31 of the California Fire Code shall not be subject to additional provisions of Sections P111 and P112 of this appendix.

Tents and membrane structures used for sleeping purposes shall be equipped with single station battery powered smoke alarms installed in accordance with Section 907.2.11 of the California Fire Code.

## SECTION P107

### ACCESSIBILITY

**P107.1 General.** Emergency housing shall comply with the applicable requirements in Chapter 11B and/or the US Access Board Final Guidelines for Emergency Transportable Housing.

**Note:** The Architectural and Transportation Barriers Compliance Board (US Access Board) issued the Final Guidelines for Emergency Transportable Housing on May 7, 2014. The final guidelines amended the 2004 ADA Accessibility Guidelines (2004 ADAAG) and the 2004 Architectural Barriers Act (ABA) Accessibility Guidelines (2004 ABAAG) to specifically address emergency transportable housing units provided to disaster survivors by entities subject to the ADA or ABA. The final rule ensures that the emergency transportable housing units are readily accessible to and usable by disaster survivors with disabilities.

## **SECTION P108**

### **LOFTS IN EMERGENCY HOUSING**

**P108.1 Minimum loft area and dimensions.** Lofts used as a sleeping or living space shall meet the minimum area and dimension requirements of Sections P108.1.1 through P108.1.3.

**P108.1.1 Minimum area.** Lofts shall have a floor area of not less than 35 square feet (3.25 m<sup>2</sup>).

**P108.1.2 Minimum dimensions.** Lofts shall be not less than 5 feet (1524 mm) in any horizontal dimension.

**P108.1.3 Height effect on loft area.** Portions of a loft with a sloping ceiling measuring less than 3 feet (914 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required area for the loft.

**Exception:** Under gable roofs with a minimum slope of 6:12, portions of a loft with a sloping ceiling measuring less than 16 inches (406 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required area for the loft.

**P108.2 Loft access.** The access to and primary egress from lofts shall be any type described in Sections P108.2.1 through P108.2.4.

**P108.2.1 Stairways.** Stairways accessing lofts shall comply with the California Residential Code or with Sections P108.2.1.1 through P108.2.1.6.

**P108.2.1.1 Width.** Stairways accessing a loft shall not be less than 17 inches (432 mm) in clear width at or above the handrail. The minimum width below the handrail shall be not less than 20 inches (508 mm).

**P108.2.1.2 Headroom.** The headroom in stairways accessing a loft shall be not less than 74 inches (1880 mm), as measured vertically, from a sloped line connecting the tread or landing platform nosings in the middle of their width.

**P108.2.1.3 Treads and risers.** Risers for stairs accessing a loft shall be not less than 7 inches (178 mm) and not more than 12 inches (305 mm) in height. Tread depth and riser height shall be calculated in accordance with one of the following formulas:

1. The tread depth shall be 20 inches (508 mm) minus  $\frac{4}{3}$  of the riser height, or
2. The riser height shall be 15 inches (381 mm) minus  $\frac{3}{4}$  of the tread depth.

**P108.2.1.4 Landing platforms.** The top step of stairways accessing lofts shall be constructed as a landing platform where the loft ceiling height is less than 74 inches (1880 mm). The landing platform shall be 18 inches (457 mm) to 22 inches (559 mm) in depth measured from the nosing of the landing platform to the edge of the loft, and 16 inches (406 mm) to 18 inches (457 mm) in height measured from the landing platform to the loft floor.

**P108.2.1.5 Handrails.** Handrails shall comply with the California Residential Code, Section R311.7.8.

**P108.2.1.6 Stairway guards.** Guards at open sides of stairways shall comply with the California Residential Code, Section R312.1.

**P108.2.2 Ladders.** Ladders accessing lofts shall comply with Sections P108.2.2.1 and P108.2.2.2.

**P108.2.2.1 Size and capacity.** Ladders accessing lofts shall have a rung width of not less than 12 inches (305 mm), and 10 inches (254 mm) to 14 inches (356 mm) spacing between rungs. Ladders shall be capable of supporting a 200 pound (90.7 kg) load on any rung. Rung spacing shall be uniform within  $\frac{3}{8}$ -inch (9.5 mm).

**P108.2.2.2 Incline.** Ladders shall be installed at 70 to 80 degrees from horizontal.

**P108.2.3 Alternating tread devices.** Alternating tread devices are acceptable as allowed by the enforcing agency.

**P108.2.4 Loft guards.** Loft guards shall be located along the open side of lofts. Loft guards shall not be less than 36 inches (914 mm) in height or one-half of the clear height to the ceiling, whichever is less. Loft guards shall not have openings from the walking surface to the required guard height that allow passage of a sphere 4 inches (102mm) in diameter.

## SECTION P109



## LOCATION, MAINTENANCE AND IDENTIFICATION

**P109.1 Maintenance.** Emergency housing and emergency housing facilities shall be maintained in a safe and sanitary condition, and free from vermin, vectors and other matter of an infectious or contagious nature. The grounds within emergency housing sites shall be kept clean and free from accumulation of debris, filth, garbage and deleterious matter. Emergency housing and emergency housing facilities shall not be occupied if a substandard condition exists, as determined by the enforcing agency.

**P109.1.1 Fire hazards.** Dangerous materials or materials that create a fire hazard, as determined by the enforcing agency, shall not be allowed on the grounds within emergency housing sites.

**P109.3 Identification.** Emergency housing shall be designated by address numbers, letters, or other suitable means of identification. The identification shall be in a conspicuous location facing the street or driveway fronting the building or structure. Each identification character shall be not less than 4 inches (102 mm) in height and not less than 0.5 inch (12.7 mm) in width, installed/painted on a contrasting background.

## SECTION P110

### EMERGENCY HOUSING FACILITIES SANITATION REQUIREMENTS

**P110.1 Drinking water.** Potable drinking water shall be provided for all occupants of emergency housing.

**P110.2 Kitchens and food facilities.** Where provided, kitchens and food facilities, as defined in Section 113789 of the California Health and Safety Code, which support emergency housing sites, shall comply with applicable food safety provisions of Sections 113980 – 114094.5 of the California Health and Safety Code.

Where occupants of dependent units are permitted or required to cook for themselves, a separate area shall be equipped and maintained as a common use kitchen. Refrigerated storage shall be provided for safe storage of food.

**P110.3 Toilet and bathing facilities.** When dependent units are used as emergency housing, the emergency housing site shall be provided with one toilet and one bathing facility for every 15 occupants of each gender. The enforcing agency may permit different types and ratios of toilet and bathing facilities. The approval shall be based upon a finding that the type and ratio of toilet and bathing facilities are sufficient to process the anticipated volume of sewage and waste water, while maintaining sanitary conditions for the occupants of the emergency housing.

Bathing facilities shall be provided with heating equipment which shall be capable of maintaining a temperature of 70 degrees F (21.0 degrees Celsius) within such facilities.

Lavatories with running water shall be installed and maintained in the toilet facilities or adjacent to the toilet facilities.

**P110.4 Garbage, waste and rubbish disposal.** All garbage, kitchen waste and rubbish shall be deposited in approved covered receptacles, which shall be emptied when filled and the contents shall be disposed of in a sanitary manner acceptable to the enforcing agency.

## **SECTION P111**

### **EMERGENCY HOUSING LIGHTING AND VENTILATION REQUIREMENTS**

**P111.1 Lighting.** Buildings or structures used for emergency housing shall be provided with natural light by means of exterior glazed openings in accordance with Section 1204.2 of the California Building Code, or shall be provided with artificial light in accordance with Section 1204.3 of the California Building Code.

**P111.2 Ventilation.** Buildings or structures used for emergency housing shall be provided with natural ventilation in accordance with Section 1202.5 of the California Building Code, or mechanical ventilation in accordance with the California Mechanical Code.

## **SECTION P112**

### **EMERGENCY HOUSING FIRE AND LIFE SAFETY REQUIREMENTS**

**P112.1 Location on property.** Buildings or structures used for emergency housing, including sleeping cabins, shall be located in accordance with the requirements of Section 705 and Table 705.5 of the California Building Code, based on their type of construction and fire-resistance ratings of the exterior walls. During a shelter crisis, the fire separation distances are permitted to be measured to the existing buildings on the adjacent parcels rather than to the interior lot lines, provided the open spaces are to remain unobstructed for the duration of the shelter crisis.

**P112.2 Buildings on same lot.** Buildings or structures used for emergency housing, including sleeping cabins, shall be separated from each other and from other buildings on the same lot as set forth in Section 705.3 of the California Building Code. The Building Official and Fire Marshal may accept reasonable alternatives to these requirements provided reasonably equivalent fire and life safety is achieved.

**P112.3 Means of egress.** Buildings or structures used for emergency housing shall be provided with means of egress complying with Chapter 10 of the California Building Code, unless modified elsewhere in this appendix.

**P112.4 Emergency escape and rescue.** Each area of a building or structure used for sleeping purposes in emergency housing shall be provided with an emergency escape

and rescue opening in accordance with Section 1031 of the California Building Code, unless modified elsewhere in this appendix.

**P112.5 Smoke alarms.** Buildings or structures used for emergency housing, which provide sleeping accommodations, shall be equipped with single station battery powered smoke alarms installed in accordance with the location requirements of Section 907.2.11 of the California Fire Code, unless modified elsewhere in this appendix.

**P112.6 Carbon monoxide alarms.** Buildings or structures used for emergency housing, which provide sleeping accommodations, and equipped with fuel-burning appliances shall be provided with carbon monoxide detection in accordance with Section 915 of the California Fire Code, unless modified elsewhere in this appendix.

**P112.7 Fire alarm.** A manual fire alarm system capable of arousing sleeping occupants in accordance with Section 907.2.9.1 of the California Fire Code shall be installed in buildings, structures, or groups of buildings or structures used for emergency housing and having a gross floor area of more than 2,500 square feet or having more than 49 sleeping occupants.

**Exception:** Individual buildings or structures in a group of buildings or structures with sufficient separation distances to allow each building or structure to function independently in case of a fire, as approved by the Fire Marshal.

**P112.8 Automatic sprinkler systems.** Fire sprinklers shall be provided for new and existing buildings or structures used for emergency housing, including sleeping cabins, which provide sleeping facilities, as required by Section 903.3 of the California Fire Code. Strict compliance with the requirements of Section 903.3 may not be required when approved by the Fire Marshal. The Fire Marshal is authorized to accept reasonably equivalent alternatives to the installation provisions of Section 903.3 when dealing with buildings or structures used for emergency housing.

**P112.9 Fire extinguishers.** Portable fire extinguishers shall be provided in accordance with Section 906.1 of the California Fire Code.

**P112.10 Flammable or combustible liquids.** The possession or storage of any flammable or combustible liquids or gases shall not be permitted (intact cigarette lighters excepted). The use of any type of open flame indoors is prohibited unless conditionally approved by the Fire Chief.

**P112.11 Storage in attics, under-floor and concealed spaces.** Combustible materials, including but not limited to the possessions of occupants, users and staff shall not be stored in attics, under-floor spaces, or within other concealed spaces of buildings or structures used for emergency housing with sleeping accommodations.

**P112.12 Fire department access.** Fire Department access to building and premises used for emergency housing shall be in compliance with Section 503, Section 504 and Appendix D of the California Fire Code, as approved by the Fire Chief.

**P112.13 Water supply.** An approved fire protection water supply complying with Section 507 of the California Fire Code, or as approved by the Fire Chief, shall be provided for each structure, group of structures or premises used for emergency housing.

## **SECTION P113**

### **ADDITIONAL REQUIREMENTS**

**P113.1 Operating procedures.** Operating procedures including a security plan and service requirements shall be developed by the professional service provider and shown to be consistent with the shelter standards imposed by the Alameda County Social Services Agency. These procedures shall be designed to maintain order and safety within the buildings or structures used for emergency housing.

## **SECTION P114**

### **ALTERNATIVES AND MODIFICATIONS**

**P114.1 Alternatives and modifications.** Alternative compliance and/or modifications that are reasonably equivalent to the requirements in this appendix may be granted by the Local Administrative Authority in individual cases when dealing with buildings or structures used for emergency housing.

#### **NOTE:**

Authority Cited: Health and Safety Code Sections 17040, 17050, 17920.9, 17921, 17921.5, 17921.6, 17921.10, 17922, 17922.6, 17922.12, 17922.14, 17927, 17928, 18300, 18552, 18554, 18620, 18630, 18640, 18670, 18690, 18691, 18865, 18871.3, 18871.4, 18873, 18873.1 through 18873.5, 18938.3, 18944.11, and 19990; and Government Code Section 12955.1.

Reference: Health and Safety Code Sections 17000 through 17062.5, 17910 through 17995.5, 18200 through 18700, 18860 through 18874, and 19960 through 19997; Civil Code Sections 1101.4 and 1101.5; and Government Code Sections 12955.1 and 12955.1.1. (Ord. 7613-NS § 3, 2018)

**Section 2.** That Berkeley Municipal Code Chapter 19.29 is hereby repealed and reenacted to read as follows:

### **Chapter 19.29**

#### **BERKELEY RESIDENTIAL CODE**

**Sections:**

- 19.29.010 Adoption of California Residential Code.**
- 19.29.020 Title.**
- 19.29.030 Administrative Provisions.**
- 19.29.040 Subsection R301.2 Climatic and Geographic Design Criteria.**
- 19.29.050 Section R337 Materials and Construction Methods for Exterior Wildlife Exposure.**
- 19.29.060 Technical Amendments to Structural Standards.**

**19.29.010 Adoption of California Residential Code.**

The California Residential Code with Mid-Cycle Supplement, 2022 Edition, as adopted in Title 24 Part 2.5 of the California Code of Regulations, including Appendices AH, AQ, AR, AS, AU and AX is hereby adopted and made a part of this Chapter as though fully set forth herein, subject to the modifications thereto which are set forth in this Chapter. A copy of this Code is on file for use and examination by the public in the office of the City Clerk of the City of Berkeley.

**19.29.020 Title.**

This Code shall be known as the "Berkeley Residential Code" and may be cited as "this Code".

**19.29.030 Administrative provisions.**

All of the administrative provisions contained in Article 1 of Chapter 19.28, the Berkeley Building Code, shall apply to this Code as well and take precedence over any California Residential Code (CRC) administrative provisions that may conflict.

For regulations governing wood burning appliances see BMC 19.28.040.

**19.29.040 CRC Subsection R301.2 Climatic and geographic design criteria.**

**TABLE R301.2  
CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA**

GROUND SNOW LOAD <sup>o</sup>	WIND DESIGN				SEISMIC DESIGN CATEGORY <sup>f</sup>	SUBJECT TO DAMAGE FROM		
	Speed <sup>d</sup> (mph)	Topographic effects <sup>k</sup>	Special wind region <sup>l</sup>	Wind- borne debris zone <sup>m</sup>		Weathering <sup>a</sup>	Frost line depth <sup>b</sup>	Termite <sup>c</sup>
ZERO	85	NO	NO	NO	D <sub>2</sub> or E	NEGLIGIBLE	N/A	VERY HEAVY
<b>ICE BARRIER UNDERLAYMENT REQUIRED<sup>h</sup></b>		<b>FLOOD HAZARDS<sup>g</sup></b>		<b>AIR FREEZING INDEX<sup>i</sup></b>		<b>MEAN ANNUAL TEMP<sup>j</sup></b>		
NO		See Footnote 'p'		ZERO		57.2°F		

**MANUAL J DESIGN CRITERIA<sup>n</sup>**

Elevation	Altitude correction factor e	Coincident wet bulb	Indoor winter design <u>relative humidity</u>	Indoor winter design dry-bulb temperature	Outdoor winter design dry-bulb temperature	Heating temperature difference
345	N/A	63	N/A	70	40	30
Latitude	Daily range	Indoor summer design relative humidity	<u>Summer Design Grains</u>	Indoor summer design dry-bulb temperature	Outdoor summer design dry-bulb temperature	Cooling temperature difference
38	16	50	-6	75	80	5

For SI: 1 pound per square foot = 0.0479 kPa, 1 mile per hour = 0.447 m/s.

- a. Where weathering requires a higher strength concrete or grade of masonry than necessary to satisfy the structural requirements of this Code, the frost line depth strength required for weathering shall govern. The weathering column shall be filled in with the weathering index, “negligible,” “moderate” or “severe” for concrete as determined from Figure R301.2.(1). The grade of masonry units shall be determined from ASTM C34, ASTM C55, ASTM C62, ASTM C73, ASTM C90, ASTM C129, ASTM C145, ASTM C216 or ASTM C652.
- b. Where the frost line depth requires deeper footings than indicated in Figure R403.1(1), the frost line depth strength required for weathering shall govern. The jurisdiction shall fill in the frost line depth column with the minimum depth of footing below finish grade.
- c. The jurisdiction shall fill in this part of the table to indicate the need for protection depending on whether there has been a history of local subterranean termite damage.
- d. The jurisdiction shall fill in this part of the table with the wind speed from the basic wind speed map Figure R301.2(2). Wind exposure category shall be determined on a site-specific basis in accordance with Section R301.2.1.4.
- e. The jurisdiction shall fill in this section of the table to establish the design criteria using Table 10A from ACCA Manual J or established criteria determined by the jurisdiction.
- f. The jurisdiction shall fill in this part of the table with the seismic design category determined from Section R301.2.2.1.
- g. The jurisdiction shall fill in this part of the table with: the date of the jurisdiction’s entry into the National Flood Insurance Program (date of adoption of the first code or ordinance for management of flood hazard areas); and the title and date of the currently effective Flood Insurance Study or other flood hazard study and maps adopted by the authority having jurisdiction, as amended.
- h. In accordance with Sections R905.1.2, R905.4.3.1, R905.5.3.1, R905.6.3.1, R905.7.3.1 and R905.8.3.1, where there has been a history of local damage from the effects of ice damming, the jurisdiction shall fill in this part of the table with “YES.” Otherwise, the jurisdiction shall fill in this part of the table with “NO.”

- i. The jurisdiction shall fill in this part of the table with the 100-year return period air freezing index (BF-days) from Figure R403.3(2) or from the 100-year (99 percent) value on the National Climatic Data Center data table “Air Freezing Index-USA Method (Base 32°F).”
- j. The jurisdiction shall fill in this part of the table with the mean annual temperature from the National Climatic Data Center data table “Air Freezing Index-USA Method (Base 32°F).”
- k. In accordance with Section R301.2.1.5, where there is local historical data documenting structural damage to buildings due to topographic wind speed-up effects, the jurisdiction shall fill in this part of the table with “YES.” Otherwise, the jurisdiction shall indicate “NO” in this part of the table.
- l. In accordance with Figure R301.2(2), where there is local historical data documenting unusual wind conditions, the jurisdiction shall fill in this part of the table with “YES” and identify any specific requirements. Otherwise, the jurisdiction shall indicate “NO” in this part of the table.
- m. In accordance with Section R301.2.1.2 the jurisdiction shall indicate the wind-borne debris wind zone(s). Otherwise, the jurisdiction shall indicate “NO” in this part of the table.
- n. The jurisdiction shall fill in these sections of the table to establish the design criteria using Table 1a or 1b from ACCA Manual J or established criteria determined by the jurisdiction.
- o. The jurisdiction shall fill in this section of the table using the Ground Snow Loads in Figures R301.2(3) and R301.2(4).
- p. Flood Hazard Data for the City of Berkeley:
  - Date of Jurisdiction’s Entry into the NFIP: December 7, 1973;
  - Date of adoption of the first code or ordinance for management of flood hazards: Ordinance No. 5085-N.S., July 25, 1978;
  - Date of Flood Insurance study: Aug 3, 2009;
  - Panel numbers and dates of all currently effective maps adopted by the AHJ (Ordinance 7108-NS 9/29/09):
    - FEMA’s “Use of Digital Flood Hazard Data” establishes that paper and digital maps are equivalent. Policy and related information are available from FEMA. The policy implements section 107 of Public Law 108-264, 118 Stat. 724 (2004)
    - Panel 13 (not available in printed form)
    - Panel 14 of 725, Map Number 06001C0014G, August 3, 2009
    - Panel 18 of 725, Map Number 06001C0018G, August 3, 2009
    - Panel 19 of 725, Map Number 06001C0019G, August 3, 2009
    - Panel 38 (not available in printed form)
    - Panel 51 (not available in printed form)
    - Panel 52 of 725, Map Number 06001C0052G, August 3, 2009
    - Panel 53 (not available in printed form)
    - Panel 54 of 725, Map Number 06001C0054G, August 3, 2009
    - Panel 56 of 725, Map Number 06001C0056G, August 3, 2009
    - Panel 57 of 725, Map Number 06001C0057G, August 3, 2009
    - Panel 80 of 725, Map Number 06001C0080G, August 3, 2009

**19.29.050 CRC Section R337 Materials and Construction Methods for Exterior Wildlife Exposure.**

**Chapter 3** of the 2022 California Residential Code with Mid-Cycle Supplement is adopted in its entirety subject to the modifications thereto which are set forth below.

**R337.1 – SCOPE, PURPOSE AND APPLICATION**

**R337.1.1 Scope.** Section R337 and all subsections apply to building materials, systems and/or assemblies used in the exterior design and construction of new buildings and structures, additions, alterations, repairs and re-roofs located within a Wildland-Urban Interface (WUI) area as defined in Section R337.2.

**R337.1.2 Purpose.** The purpose of Section R337 is to establish minimum standards for the protection of life and property by increasing the ability of a building or structure located in any Fire Hazard Severity Zone within State Responsibility Area (SRA) or Local Responsibility Area (LRA) or any building or structure in the Wildland-Urban Interface (WUI) area as specified in Section R337.1.3.1 to resist the intrusion of flame or burning embers projected by a vegetation fire and contributes to a systematic reduction in conflagration losses.

**R337.1.3 Application.** New buildings and structures, additions, alterations, repairs and re-roofs located in any Fire Hazard Severity Zone or any new buildings and structures, additions, alterations, repairs and re-roofs located in Wildland-Urban Interface (WUI) area designated by the enforcing agency constructed after the application date shall comply with the provisions of this section. This shall include all ~~new~~ buildings and structures with residential, commercial, educational, institutional or similar occupancy type use, which shall be referred to in this section as “applicable building” (see definition in Section R337.2), as well as new buildings and structures accessory to those applicable buildings (see Exceptions 1 and 4).

**Exceptions:**

1. Group U occupancy accessory buildings or structures of any size located at least 50 feet (15 m) from an applicable building on the same lot.
2. Group U occupancy agricultural building or structure, as defined in Section 202 of the California Building Code, of any size located at least 50 feet (15 m) from an applicable building.
3. Group C occupancy special buildings conforming to the limitations specified in Section 450.4.1 of the California Building Code.
4. New accessory buildings and miscellaneous structures specified in Section R337.10 shall comply only with the requirements of that section.
5. ~~Additions to and remodels of building originally constructed prior to July 1, 2008.~~



**R337.1.3.1 Application date and where required.** New buildings and structures, additions, alterations, repairs and re-roofs for which an application for a building permit is submitted on or after July 1, 2008, located in any Fire Hazard Severity Zone or any buildings and structures, additions, alterations, repairs and re-roofs for which an application for a building permit is submitted on or after July 1, 2008 located in the Wildland-Urban Interface area shall comply with all sections of this chapter, including all the following areas:

- ~~1. All unincorporated lands designated by the State Board of Forestry and Fire Protection as State Responsibility Area (SRA) including:
 
  - ~~1.1. Moderate Fire Hazard Severity Zones.~~
  - ~~1.2. High Fire Hazard Severity Zones.~~
  - ~~1.3. Very High Fire Hazard Severity Zones.~~~~
- ~~2. Land designated as Very High Fire Hazard Severity Zone by cities and other local agencies.~~
- ~~3. Land designated as a Wildland Urban Interface area by cities and other local agencies.~~

**Exceptions:**

- ~~1. New buildings located in any Fire Hazard Severity Zone within a State Responsibility Area, for which an application for a building permit is submitted on or after January 1, 2008, shall comply with all sections of this chapter.~~
- ~~2. New buildings located in any Fire Hazard Severity Zone within a State Responsibility Area, or any Wildland Urban Interface area designated by cities and other local agencies for which an application for a building permit is submitted on or after December 1, 2005, but prior to July 1, 2008, shall only comply with the following sections of this chapter:
 
  - ~~2.1. Section R337.5 – Roofing.~~
  - ~~2.2. Section R337.6 – Vents.~~~~

**R337.2 – DEFINITIONS**

For the purposes of this Section R337, certain terms are defined below:

**FIRE ZONE ONE** shall encompass the entire City of Berkeley except for Fire Zones Two and Three.

**FIRE ZONE TWO** encompasses those areas designated as Combined Hillside District in the Official Zoning map of the City of Berkeley and those areas designated as Very High in the official Fire Hazard Severity Zones (FHSZ) map of The Department of Forestry and Fire Protection (CAL FIRE), as they may be amended from time to time. The following properties, not part of the Combined Hillside District, are included in Fire Zone Two under the Very High designation of the FHSZ map: the eastern section of the University of California, Berkeley main campus, block number 2042 (Alameda County Assessor's

parcel numbering (APN) system), to the east city line; all of the Clark-Kerr campus, block number 7690, to the east city line; all of block number 7680 in the City of Berkeley; portions of block number 1702 in the City of Berkeley. See Exhibit A for the specific parcels by APN and address.

**FIRE ZONE 3** encompasses those areas designated as Environmental Safety – Residential Districts on the Official Zoning Map of the City of Berkeley, as it may be amended from time to time.

**LOCAL RESPONSIBILITY AREA (LRA).** Areas of the state in which the financial responsibility of preventing and suppressing fires is the primary responsibility of a city, county, city and county, or district. Fire Zones 2 and 3 are designated as Local Responsibility Area.

**WILDLAND-URBAN INTERFACE (WUI)** is a geographical area identified by the state as a “Fire Hazard Severity Zone” in accordance with the Public Resources Code Sections 4201 through 4204 and Government Code Sections 51175 through 51189, or other areas designated by the enforcing agency to be at a significant risk from wildfires. Fire Zones 2 and 3 are designated as Wildland-Urban Interface (WUI) areas.

### **R337.5 – ROOFING**

**R337.5.1 General.** Roofs shall comply with the requirements of Sections R337 and R902. Roof assemblies in Fire Hazard Severity Zones shall be tested in accordance with ASTM E108 or UL790 and meet a Class A fire classification. For additional compliance see Section R902 for Class A roof assemblies. The roof assembly shall be installed in accordance with its listing and the manufacturer’s installation instructions. The entire roof covering shall be replaced of every existing structure where more than 50 percent of the total roof area is replaced within any 5-year period. The entire roof covering of every new structure, and any roof covering applied in the alteration, repair, or replacement of the roof of every existing structure shall be a fire-retardant roof covering that is at least Class A rating fire classification.

Wooden shakes and shingles are prohibited roof coverings regardless of the assembly rating of the roof system.

**R337.5.5 Spark Arrestors.** All chimneys of fireplaces, stoves, barbecues or heating appliances using solid fuel shall be provided with an approved spark arrestor whenever modification has been made to any of these appliances, or whenever a structure is re-roofed. The net free area of the spark arrestor shall be not less than four times the net free area of the outlet of the chimney. The spark arrestor shall have heat and corrosion resistance equivalent to twelve-gauge wire, nineteen-gauge galvanized wire, or twenty-four-gauge stainless steel. Openings shall not permit the passage of spheres having a diameter larger than one-half inch and shall not block the passage of spheres having a diameter of less than three-eighths inch. The arrestor shall be securely attached to the chimney or stovepipe and shall be adequately supported. The use of bands, mollies, masonry anchors or mortar ties are recommended depending upon the individual need.

## **R337.7 – EXTERIOR COVERING**

**R337.7.3.2 Replacement of Exterior Wall Covering.** Materials for replacement of existing exterior wall covering shall meet or exceed the standards set forth in this chapter.

**Exception:** Where less than 50% of any wall surface is being replaced or repaired, and the matching of the new plane to the existing plane on that wall is not possible.

## **~~R337.11~~ R337.12 – UNDERGROUND UTILITY CONNECTIONS**

**~~R337.11.1~~ R337.12.1 Underground utility connections.** For new construction, provisions shall be made for the undergrounding of all utilities serving the property, including but not limited to electrical, telephone and cable television, by the installation of appropriately sized underground conduits extending from the street property.

## **~~R337.12~~ R337.13 – ADDITIONAL REQUIREMENTS IN FIRE ZONE THREE**

**~~R337.12.1~~ R337.13.1 General.** In addition to meeting the other requirements of this Chapter, buildings or structures hereinafter erected, constructed, moved, altered, added, or repaired within Fire Zone Three shall comply with the following requirements for buildings and structures.

**~~R337.12.2~~ R337.13.2 Fire Warning System.** All residential units shall be equipped with a Fire Warning System as specified by the residential smoke detector requirements of the current edition of the California Building Code and with an audible exterior alarm. The exterior alarm must meet the requirements of NFPA 72 or equivalent and generate 45 decibels ten feet from the alarm, or more.

**~~R337.12.3~~ R337.13.3 Automatic fire sprinkler systems.** Automatic fire sprinkler system requirements shall be as set forth in Berkeley Fire Code Section 903.2.24.

**~~R337.12.4~~ R337.13.4 Utilities.** Utilities, pipes, furnaces, water heaters or other mechanical devices located in an exposed underfloor area of a building or structure shall be enclosed with material as required for exterior one hour fire resistive construction. Adequate covered access openings for servicing and ventilation of such facilities shall be provided as required by appropriate codes.

**~~R337.12.5~~ R337.13.5 Control of brush or vegetation.** Brush and vegetation shall be controlled as required in the Berkeley Fire Code.

**~~R337.12.6~~ R337.13.6 Special Conditions.** The following additional conditions must be met:

1. Public access roads and fire trails. No person(s) shall use any public access road or fire trail for the storage of any construction material, stationary construction equipment, construction office, portable refuse container, or earth from any grading or excavating.

2. Water Service. The water service to the site shall be installed with a ¾” hose bib connection prior to beginning any wood framing. The person responsible for the construction shall have at the site a 75 ft ¾” hose available.

**Exhibit A**  
**Parcels in Addition to the Combined Hillside District**

The following additional parcels by Assessor’s Parcel Number and address are included in Fire Zone Two:

<b>Parcel Number (APN)</b>	<b>Address</b>
048-7680-001-02	3 Tanglewood Road
048-7680-002-01	5 Tanglewood Road
048-7680-031-00	7 Tanglewood Road
048-7680-019-00	11 Tanglewood Road
048-7680-014-00	19 Tanglewood Road
048-7680-032-01	25 Tanglewood Road
048-7680-027-00	29 Tanglewood Road
054-1702-067-00	10 Tanglewood Road
054-1702-068-00	18 Tanglewood Road
054-1702-069-00	22 Tanglewood Road
054-1702-070-00	28 Tanglewood Road
054-1702-063-00	2701 Belrose Avenue
054-1702-076-00	2715 Belrose Avenue
054-1702-075-00	2721 Belrose Avenue
054-1702-074-00	2729 Belrose Avenue
054-1702-073-00	2737 Belrose Avenue
054-1702-112-00	2801 Claremont Boulevard
054-1702-123-01	2811 Claremont Boulevard
054-1702-122-00	2815 Claremont Boulevard
054-1702-120-01	2821 Claremont Boulevard
054-1702-114-01	2816 Claremont Avenue
054-1702-115-00	2820 Claremont Avenue
054-1702-072-00	3005 Garber Street
054-1702-071-00	3015 Garber Street
054-1702-113-00	3020 Garber Street
054-1702-116-00	3017 Avalon Avenue

**19.29.060 Technical Amendments to Structural Standards**

**Chapter 6** of the 2022 California Residential Code with Mid-Cycle Supplement is adopted in its entirety subject to the modifications thereto which are set forth below.

**Table R602.10.3(3) BRACING REQUIREMENTS BASED ON SEISMIC DESIGN CATEGORY<sup>1,2</sup>**

Add new footnotes “i” and “j” to the end of Table R602.10.3(3) to read:

i. Methods GB, PBS, HPS and SFB are not permitted in Seismic Design Categories D<sub>0</sub>, D<sub>1</sub>, and D<sub>2</sub>.

j. Method DWB are not permitted in Seismic Design Categories D<sub>0</sub>, D<sub>1</sub>, and D<sub>2</sub> where S<sub>1</sub> is greater than or equal to 0.75.

Add a new Subsection R602.10.4.5, to read:

**R602.10.4.5 Limits on methods GB and PCP.** In Seismic Design Categories D<sub>0</sub>, D<sub>1</sub>, and D<sub>2</sub>, Method GB is not permitted, but gypsum board is permitted to be placed on the opposite side of the studs from other types of braced wall panel sheathing. In Seismic Design Categories D<sub>0</sub>, D<sub>1</sub>, and D<sub>2</sub>, the use of Method PCP is limited to one-story dwellings and accessory structures.

**Section 3.** That Berkeley Municipal Code Chapter 19.30 is hereby repealed and reenacted to read as follows:

## Chapter 19.30

### BERKELEY ELECTRICAL CODE

#### Sections:

- |                  |  |
|------------------|--|
| <b>19.30.010</b> | <b>Adoption of California Electrical Code.</b> |
| <b>19.30.020</b> | <b>Title.</b>                                  |
| <b>19.30.030</b> | <b>Administrative provisions.</b>              |

#### **19.30.010 Adoption of California Electrical Code.**

The California Electrical Code, 2022 Edition, as adopted by the California Code of Regulations, Title 24, Part 3 is hereby adopted and made a part of this Chapter as though fully set forth herein subject to the modifications thereto which are set forth in this Chapter. A copy of this Code is on file for use and examination by the public in the office of the City Clerk of the City of Berkeley.

#### **19.30.020 Title.**

This Code shall be known as the "Berkeley Electrical Code" and may be cited as "this Code".

#### **19.30.030 Administrative provisions.**

All of the administrative provisions contained in Article 1 of Chapter 19.28, the Berkeley Building Code, shall apply to this Code as well and take precedence over any administrative provisions contained in Article 89 General Code Provisions that may conflict.

**Section 4.** That Berkeley Municipal Code Chapter 19.32 is hereby repealed and reenacted to read as follows:

## Chapter 19.32

### BERKELEY MECHANICAL CODE

#### Sections:

<b>19.32.010</b>	<b>Adoption of the California Mechanical Code.</b>
<b>19.32.020</b>	<b>Title.</b>
<b>19.32.030</b>	<b>Administrative provisions.</b>
<b>19.32.040</b>	<b>Amendments to the California Mechanical Code</b>

#### **19.32.010 Adoption of the California Mechanical Code.**

The California Mechanical Code with Mid-Cycle Supplement, 2022 Edition, as adopted in Title 24 Part 4 of the California Code of Regulations, is hereby adopted and made a part of this Chapter as though fully set forth herein, subject to the modifications thereto which are set forth in this Chapter. A copy of this Code is on file for use and examination by the public in the office of the City Clerk of the City of Berkeley.

#### **19.32.020 Title.**

This Code shall be known as the "Berkeley Mechanical Code" and may be cited as "this Code".

#### **19.32.030 Administrative provisions.**

All of the administrative provisions contained in Article 1 of Chapter 19.28, the Berkeley Building Code, shall apply to this Code as well and take precedence over any California Mechanical Code administrative provisions that may conflict.

#### **19.32.040 Amendments to the California Mechanical Code**

**Chapter 4** of the 2022 California Mechanical Code with Mid-Cycle Supplement is adopted in its entirety subject to the modifications thereto which are set forth below:

**405.4 Kitchen Exhaust.** A mechanical exhaust directly to the outdoors shall be provided in each kitchen. The fan shall run intermittently (on demand) or continuously. A readily accessible manual control designed to be operated as needed or an automatic control shall be provided for intermittent operations.

**405.4.1 Exhaust Rate.** For intermittent-controlled operations, the exhaust rate shall be not less than 100 ft<sup>3</sup>/min (0.047 m<sup>3</sup>/s) for range hoods or 300 ft<sup>3</sup>/min (0.141 m<sup>3</sup>/s) for mechanical exhaust fans including downdraft appliances; and shall be rated for sound at a maximum of 3 sone at greater than or equal to 100 cfm. For continuous operated ventilation, the exhaust rate shall be not less than 5 air changes per hour

based on kitchen volume for enclosed kitchens and shall be rated for sound at a maximum of 1.0 sone.

**Exception:** A vented range hood shall not be required in dwelling unit kitchens equipped with a local mechanical exhaust system installed in accordance with ASHRAE 62.2.

**Section 5.** That Berkeley Municipal Code Chapter 19.34 is hereby repealed and reenacted to read as follows:

### Chapter 19.34

#### BERKELEY PLUMBING CODE

##### Sections:

<b>19.34.010</b>	<b>Adoption of the California Plumbing Code.</b>
<b>19.34.020</b>	<b>Title.</b>
<b>19.34.030</b>	<b>Administrative provisions.</b>
<b>19.34.040</b>	<b>Gas Shut-Off Valves</b>

##### **19.34.010 Adoption of the California Plumbing Code.**

The California Plumbing Code with Mid-Cycle Supplement, 2022 Edition, as adopted in Title 24 Part 5 of the California Code of Regulations, including Appendices A, B and D, is hereby adopted and made a part of this Chapter as though fully set forth herein, subject to the modifications thereto which are set forth in this Chapter. A copy of this Code is on file for use and examination by the public in the office of the City Clerk of the City of Berkeley.

##### **19.34.020 Title.**

This Code shall be known as the "Berkeley Plumbing Code" and may be cited as "this Code."

##### **19.34.030 Administrative Provisions.**

All of the administrative provisions contained in Article 1 of Chapter 19.28, the Berkeley Building Code, shall apply to this Code as well and take precedence over any California Plumbing Code administrative provisions that may conflict.

##### **19.34.040 Gas Shut-Off Valves**

**Chapter 12** of the 2022 California Plumbing Code with Mid-Cycle Supplement is adopted in its entirety subject to the modifications thereto which are set forth below.

Retitle and amend Section 1209.0 Excess Flow Valves to read:

## **1209.0 Automatic Gas Shut-Off Valves**

**1209.1 General.** Where automatic excess flow valves are installed, they shall be listed to CSA Z21.93 and shall be sized and installed in accordance with the manufacturer's instructions. [NFPA 54:5.13]

**1209.2 General Requirements for Automatic Gas Shut-Off Valves.** Automatic gas shut-off valves shall:

1. Comply with all applicable requirements of the Berkeley Plumbing Code.
2. Be tested and listed by recognized testing agencies such as the Independent Laboratory of the International Approval Services (IAS), Underwriter's Laboratory (UL), International Association of Plumbing and Mechanical Officials (IAPMO) or any other agency approved by the State of California Office of the State Architect (OSA).
3. Be installed on downstream side of the gas utility meter.
4. Be installed in accordance with the manufacturer's instructions.
5. Provide a method for expedient and safe gas shut-off in an emergency.
6. Provide a capability for ease of consumer or owner resetting in a safe manner.

## **1209.3 Definitions**

For the purpose of this Section, terms shall be defined as follows:

**AUTOMATIC GAS SHUT- OFF VALVE** shall mean either a motion activated gas shut-off valve or device or an excess flow gas shut-off valve or device.

**DOWNSTREAM OF GAS UTILITY METER** shall mean all gas piping on the property owner's side of the gas meter and after the service tee.

**MOTION ACTIVATED GAS SHUT OFF VALVE** shall mean an approved gas valve activated by motion. Valves are set to activate in the event of a moderate or strong seismic event greater than 5.0 on the Richter scale.

**UPSTREAM OF GAS UTILITY METER** shall mean all gas piping installed by the utility up to and including the meter and the utility's service tee.

**1209.4 Motion Activated Gas Shut-off Valve, Required.** A listed motion activated gas shut-off valve shall be installed as follows:



**1209.4.1 New Construction.** In any newly constructed building or structure containing fuel gas piping.

**1209.4.2 Existing Buildings with a single meter.** In any existing building or structure containing fuel gas piping served by a single gas meter, when any addition, alteration or repair is made for which a mechanical or plumbing permit is issued.

**1209.4.3 Existing Buildings with separate meters serving individual units or tenant spaces.** In any existing building or structure containing fuel gas piping served by multiple gas meters, when any addition, alteration or repair is made to an individual unit or tenant space for which a mechanical or plumbing permit is issued. The requirement for a motion activated gas shut off valve shall apply to the gas meter serving the individual unit or tenant space and the gas meter serving common area(s).

**Exceptions:**

1. Existing automatic gas shut-off valves installed prior to the effective date of this Section, provided the valves are maintained in operational condition.
2. Automatic gas shut-off valves installed on a gas distribution system owned or operated by a public utility.

**Note:** For the purpose of the requirements of this Section, excess flow valves are not permitted to be installed as a substitute for motion activated gas shut-off valves.

**1209.5 Mounting.** Motion activated seismic gas shut-off valves shall be mounted rigidly to the building or structure containing the fuel gas piping, unless otherwise specified in the manufacturer's installation instructions.

**Section 6.** That Berkeley Municipal Code Chapter 19.36 is hereby repealed and reenacted to read as follows:

**Chapter 19.36**

**BERKELEY ENERGY CODE**

**Sections:**

- |                  |  |
|------------------|--|
| <b>19.36.010</b> | <b>Adoption of the California Energy Code.</b>   |
| <b>19.36.020</b> | <b>Title.</b>                                    |
| <b>19.36.030</b> | <b>Administrative provisions.</b>                |
| <b>19.36.040</b> | <b>Amendments to the California Energy Code.</b> |
| <b>19.36.050</b> | <b>CEQA</b>                                      |

**19.36.010 Adoption of the California Energy Code.**

The California Energy Code with Mid-Cycle Supplement, 2022 Edition, as adopted in Title 24 Part 6 of the California Code of Regulations, is hereby adopted and made a part of this Chapter as though fully set forth herein, subject to the modifications thereto which are set forth in this Chapter. A copy of this Code is on file for use and examination by the public in the office of the City Clerk of the City of Berkeley.

**19.36.020 Title.**

This Code shall be known as the “Berkeley Energy Code” and may be cited as “this Code”.

**19.36.030 Administrative provisions.**

All of the administrative provisions contained in Article 1 of Chapter 19.28, the Berkeley Building Code, shall apply to this Code as well and take precedence over any California Energy Code administrative provisions that may conflict.

**Section 7.** That Berkeley Municipal Code Chapter 19.37 is hereby repealed and reenacted to read as follows:

**Chapter 19.37**

**BERKELEY GREEN CODE**

**Sections:**

- 19.37.010 Adoption of the California Green Building Standards Code with Mid-Cycle Supplement.**
- 19.37.020 Title.**
- 19.37.030 Administrative provisions.**
- 19.37.040 Amendments to the California Green Building Standards Code.**

The California Green Building Standards Code (CALGreen), 2022 Edition with Mid-Cycle Supplement, as adopted in Title 24 Part 11 of the California Code of Regulations, is hereby adopted and made a part of this Chapter as though fully set forth herein, subject to the modifications thereto which are set forth in this Chapter. A copy of this Code is on file for use and examination by the public in the office of the City Clerk of the City of Berkeley.

**19.37.020 Title.**

This Code shall be known as the “Berkeley Green Code” and may be cited as “this Code”.

**19.37.030 Administrative provisions.**

All of the administrative provisions contained in Article 1 of Chapter 19.28, the Berkeley Building Code, shall apply to this Code as well and take precedence over any California Green Building Standards Code administrative provisions that may conflict.

**19.37.040 Amendments to the California Green Building Standards Code with Mid-Cycle Supplement.**

**Chapter 2 Definitions** of the California Green Building Standards Code with Mid-Cycle Supplement is adopted in its entirety subject to the modifications thereto which are set forth below:

Add new definitions to Section 202:

**NITROGEN OXIDES (NO<sub>x</sub>).** The sum of nitrogen oxide (NO) and nitrogen dioxide (NO<sub>2</sub>) collectively expressed as NO<sub>x</sub>.

**NO<sub>x</sub> EMITTING EQUIPMENT.** Any equipment or appliance primarily used for space heating, space ventilation, water heating, cooking, clothes drying and/or lighting that emits more than 0.0 nanograms of nitrogen oxides expressed as NO<sub>x</sub> per joule of heat and/or light output.

**ZERO NO<sub>x</sub> EMISSION BUILDING.** A building is considered a zero NO<sub>x</sub> emission building if it utilizes only zero NO<sub>x</sub> equipment or appliances to provide space heating, space ventilation, water heating, cooking, clothes drying, and lighting for the life of the building including future alterations and additions.

**ZERO NO<sub>x</sub> EMITTING EQUIPMENT.** Any equipment or appliance that emits no more than 0.0 nanograms of nitrogen oxides (NO<sub>x</sub>) per joule of heat and/or light output. Equipment and appliances primarily used for space heating, space ventilation, water heating, cooking, clothes drying, and lighting.

**Chapter 3 Green Building** of the California Green Building Standards Code with Mid-Cycle Supplement is adopted in its entirety subject to the modifications thereto which are set forth below:

Add a new Subsection 301.1.2 to read:

**301.1.2 Residential waste diversion.** The requirements of Section 4.408 shall be required for:

1. Any additions or alterations, which increase the building's conditioned area, volume or size
2. Any building alterations with a permit valuation over \$100,000
3. Any interior or exterior demolitions valued over \$3,000

Modify Subsection 301.3.2 to read:

**301.3.2 Nonresidential waste diversion.** The requirements of Section 5.408 shall be required for additions and, alterations and demolitions whenever a permit is required for work.

**Chapter 4 Residential Mandatory Measures** of the California Green Buildings Code with Mid-Cycle Supplement is adopted in its entirety subject to the modifications thereto which are set forth below:

Modify Subsection 4.106.4.1 to read:

**4.106.4.1 New one- and two-family dwellings and townhouses with attached or detached private garages, carports, or any other on-site parking.** For each dwelling unit, install a listed raceway to accommodate a dedicated 208/240-volt branch circuit. The raceway shall not be less than trade size 1 (nominal 1-inch inside diameter). The raceway shall originate at the main service or subpanel and shall terminate into a listed cabinet, box or other enclosure in close proximity to the proposed location of an EV charger. Raceways are required to be continuous at enclosed, inaccessible or concealed areas and spaces. The service panel and/or subpanel shall provide capacity to install a 40-ampere 208/240-volt minimum dedicated branch circuit and space(s) reserved to permit installation of a branch circuit overcurrent protective device minimum 40-ampere 208/240-volt dedicated EV branch circuit in close proximity to the proposed location of an EV charger at the time of original construction in accordance with the California Electrical Code.

**Exception:** A raceway is not required if a minimum 40-ampere 208/240-volt dedicated EV branch circuit is installed in close proximity to the proposed location of an EV charger at the time of original construction in accordance with the California Electrical Code.

**4.106.4.1.1 Identification.** The service panel or subpanel circuit directory shall identify the overcurrent protective device space(s) reserved for future EV charging as "EV CAPABLE READY". The raceway termination location shall be permanently and visibly marked as "EV CAPABLE READY".

Modify Subsection 4.106.4.2.2. to read:

**4.106.4.2.2 Multifamily dwellings, hotels and motels.**

**1. EV ready parking spaces with receptacles.**

a. **Hotels and motels.** Forty (40) percent of the total number of parking spaces shall be equipped with low power Level 2 EV charging receptacles.

b. **Multifamily parking facilities.** Forty (40) percent of the total number of parking spaces shall be equipped with low power Level 2 EV charging receptacles. EV charging receptacles required by this section shall be located in at least one assigned parking space per dwelling unit where

assigned parking is provided but need not exceed forty (40) percent of the total number of assigned parking spaces provided on the site.

~~Exception: Areas of parking facilities served by parking lifts, including but not limited to automated mechanical access open parking garages as defined in the California Building Code; or parking facilities otherwise incapable of supporting electric vehicle charging.~~ Areas of parking facilities served by parking lifts, provided the required percentage of EV Chargers spaces are installed elsewhere.

c. **Receptacle power source.** EV charging receptacles in multifamily parking facilities shall be provided with a dedicated branch circuit connected to the dwelling unit's electrical panel, unless determined as infeasible by the project builder or designer and subject to concurrence of the local enforcing agency.

~~Exception: Areas of parking facilities served by parking lifts, including but not limited to automated mechanical access open parking garages as defined in the California Building Code; or parking facilities otherwise incapable of supporting electric vehicle charging.~~ Areas of parking facilities served by parking lifts, provided the required percentage of EV Chargers spaces are installed elsewhere.

d. **Receptacle configurations.** 208/240V EV charging receptacles shall comply with one of the following configurations:

1. For 20-ampere receptacles, NEMA 6-20R
2. For 30-ampere receptacles, NEMA 14-30R
3. For 50-ampere receptacles, NEMA 14-50R

Add a new section 4.106.5 to read:

#### **4.106.5 ZERO NO<sub>x</sub> EMISSION BUILDINGS**

Add a new subsection 4.106.5.1 to read:

**4.106.5.1 Newly Constructed Buildings.** All newly constructed buildings and accessory structures shall be Zero NO<sub>x</sub> Emissions Buildings.

Add a new Subsection 4.405.1 to read:

**4.405.1 Reduction in cement use.** As allowed by the enforcing agency, cement used in concrete mix design shall be reduced not less than 25 percent. Products commonly used to replace cement in concrete mix designs include, but are not limited to:

1. Fly ash

2. Slag
3. Silica fume
4. Rice hull ash

**Exception:** Minimum cement reductions in concrete mix designs approved by the Engineer of Record may be lower where high early strength is needed for concrete products or to meet an accelerated project schedule.

Modify Subsection 4.408.1 to read:

**4.408.1 Construction waste management.** Recycle and/or salvage for reuse 100% of excavated soil and land-clearing debris, 100% of concrete, 100% of asphalt, and a minimum of 65 percent of the other nonhazardous construction and demolition waste in accordance with either Section 4.408.2, 4.408.3 or 4.408.4, or meet a more stringent local construction and demolition waste management ordinance.

**Exceptions:**

1. ~~Excavated soil and land-clearing debris.~~
2. Alternate waste reduction methods developed by working with local agencies if diversion or recycle facilities capable of compliance with this item do not exist or are not located reasonably close to the jobsite.
3. The enforcing agency may make exceptions to the requirements of this section when isolated jobsites are located in areas beyond the haul boundaries of the diversion facility.

**Chapter 5 Nonresidential Mandatory Measures** of the California Green Buildings Code with Mid-Cycle Supplement is adopted in its entirety subject to the modifications thereto which are set forth below:

Modify Subsection 5.106.5.3.1 to read:

**5.106.5.3.1 EV Capable Spaces.** [N] Twenty (20) percent of the total number of parking spaces shall be EV capable spaces. Calculation for EV capable spaces shall be rounded up to the nearest whole number. shall be provided in accordance with Table 5.106.5.3.1 and The spaces shall comply with the following requirements:

1. Raceways complying with the California Electrical Code and no less than 1-inch (25 mm) diameter shall be provided and shall originate at a service panel or a subpanel(s) serving the area, and shall terminate in close proximity to the proposed location of the EV capable space and into a suitable listed cabinet, box, enclosure or equivalent. A common raceway may be used to serve multiple EV capable spaces.

2. A service panel or subpanel(s) shall be provided with panel space and electrical load capacity for a dedicated 208/240 volt, 40-ampere minimum branch circuit for each EV capable space, with delivery of 30-ampere minimum to an installed EVSE at each EVCS.
3. The electrical system and any on-site distribution transformers shall have sufficient capacity to supply full rated amperage at each EV capable space.
4. The service panel or subpanel circuit directory shall identify the reserved overcurrent protective device space(s) as "EV CAPABLE". The raceway termination location shall be permanently and visibly marked as "EV CAPABLE."

**Note:** A parking space served by electric vehicle supply equipment or designed as a future EV charging space shall count as at least one standard automobile parking space only for the purpose of complying with any applicable minimum parking space requirements established by an enforcement agency. See Vehicle Code Section 22511.2 for further details.

Modify Subsection 5.106.5.3.2 to read:

**5.106.5.3.2 Electric vehicle charging stations (EVCS).** Ten (10) percent of the total number of parking spaces shall be EV capable spaces shall be provided with electric vehicle supply equipment (EVSE) to create EVCS in the number indicated in Table 5.106.5.3.1 separate and in addition to the requirements of Section 5.106.5.3.1. Calculation of required EVCS shall be rounded up to the nearest whole number. The EVCS required by Table 5.106.5.3.1 by this section shall be provided with Level 2 EVSE or DCFC as permitted in Section 5.106.5.3.2.1. At least one minimum 6.6 kVA Level 2 EVSE shall be provided.

One EV charger with multiple connectors capable of charging multiple EVs simultaneously shall be permitted if the electrical load capacity required by Section 5.106.5.3.1 for each EV capable space is accumulatively supplied to the EV charger.

Delete Table 5.106.5.3.1.

Modify Subsection 5.106.5.3.6 to read:

**5.106.5.3.6 Electric vehicle charging stations (EVCS)—power allocation method.** The power allocation method may be used as an alternative to the requirements in ~~Section 5.106.5.3.1, and Section 5.106.5.3.2 and associated Table 5.106.5.3.1.~~ Use Table 5.106.5.3.6 the product of the factor 0.66 kVA/parking space times the total number of parking spaces to determine the total power in kVA required based on the total number of actual parking spaces for EVSE charging infrastructure.

Power allocation method shall include the following:

- 1) Use any kVA combination of ~~EV-capable spaces~~, low power Level 2, Level 2 or DCFC EVSEs.
- 2) At least one Level 2 EVSE shall be provided.
- 3) Any remainder power allocation kVA from Section 5.106.3.6 Item (1) shall be converted to one additional low power Level 2 EVSE.

Delete Table 5.106.5.3.6.

Add a new section 5.106.13 to read:

### **5.106.13 ZERO NO<sub>x</sub> EMISSION BUILDINGS**

Add a new subsection 5.106.13.1 to read:

**5.106.13.1 New construction. [N] All newly constructed buildings shall be Zero NO<sub>x</sub> Emission Buildings.**

**Exception 1: F1 and F2 Occupancy Classifications as defined by California Building Code Section 306; and H1, H2, H3, H4, and H5 Occupancy Classifications as defined by California Building Code Section 307 for processes other than service water heating, space heating, space ventilation, cooking, clothes drying, and lighting as they relate to human occupancy.**

### **5.405 Material Sources**

Add a new Subsection 5.405.1 to read:

**5.405.1 Reduction in cement use. As allowed by the enforcing agency, cement used in concrete mix design shall be reduced not less than 25 percent. Products commonly used to replace cement in concrete mix designs include, but are not limited to:**

1. Fly ash.
2. Slag.
3. Silica fume.
4. Rice hull ash.

**Exception: Minimum cement reductions in concrete mix designs approved by the Engineer of Record may be lower where high early strength is needed for concrete products or to meet an accelerated project schedule.**

Modify Subsection 5.408.3 to read:



**5.408.3 Concrete, asphalt, excavated soil and land clearing debris.** 100 percent of concrete, asphalt, trees, stumps, rocks and associated vegetation and soils resulting primarily from land clearing shall be reused or recycled. For a phased project, such material may be stockpiled on site until the storage site is developed.

**Exception:** Reuse, either on-or off-site, of vegetation or soil contaminated by disease or pest infestation.

**Notes:**

1. If contamination by disease or pest infestation is suspected, contact the County Agricultural Commissioner and follow its direction for recycling or disposal of the material. ([www.cdfa.ca.gov/exec/county/county\\_contacts.html](http://www.cdfa.ca.gov/exec/county/county_contacts.html))
2. For a map of known pest and/or disease quarantine zones, consult with the California Department of Food and Agriculture. ([www.cdfa.ca.gov](http://www.cdfa.ca.gov))

**Section 8.** 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.

\* \* \* \* \*

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

ADOPTING FINDINGS AS TO LOCAL CLIMATIC, GEOLOGICAL, AND TOPOGRAPHICAL CONDITIONS, RENDERING REASONABLY NECESSARY ENUMERATED LOCAL BUILDING STANDARDS THAT ARE MORE STRINGENT THAN THOSE MANDATED BY THE CALIFORNIA BUILDING STANDARDS CODE

WHEREAS, the City is proposing to adopt various enumerated changes and modifications to the 2022 California Building Standards Code with Mid-Cycle Supplements, California Code of Regulations, Title 24, as set forth below; and

WHEREAS, the Federal Clean Air Act requires the Federal Environmental Protection Agency to establish federal air quality standards to protect public health and public welfare and regulate emissions of hazardous air pollutants; and

WHEREAS, Nitrogen Dioxide and ozone are two of the six criteria pollutants explicitly addressed in the Federal Clean Air Act; and

WHEREAS, Congress has found that air pollution prevention and control are the primary responsibility of state and local governments; and

WHEREAS, pursuant to the California Clean Air Act Law, the California Air Resources Board regulates mobile sources of pollution while local and regional authorities are responsible for controlling air pollution discharged, released, or otherwise produced from other sources; and

WHEREAS, Health & Safety Code § 39002 recognizes local authority to set stricter air quality standards for nonvehicular sources than those set forth by state or federal law or by the California Air Resources Board; and

WHEREAS, much of the Greater Bay Area, including the City, remains a nonattainment area that does not meet federal air quality standards for ozone and other harmful air pollutants established to protect public health; and

WHEREAS, Nitrogen Oxide and Nitrogen Dioxide (collectively NO<sub>x</sub>) emissions from building appliances contribute significantly to the formation of ozone and other harmful air pollutants that are present in the Greater Bay Area at levels that violate federal standards; and

WHEREAS, the Bay Area Air Quality Management District approved rules on June 21, 2023 that outlaw the sale of NO<sub>x</sub>-emitting water heaters and furnaces in 2027 and 2029, respectively, for installation in Bay Area buildings including in the City; and

WHEREAS, preparing structures in the City for the upcoming implementation of the Bay Area Air Quality Management District's rules will promote efficiency and cost savings that will benefit the City's residents as well as protect community health; and

WHEREAS, Health & Safety Code §17958 allows the City to make modifications or changes to the California Building Standards Code and other regulations adopted pursuant to Health & Safety Code §17921(a) which result in more stringent local requirements; and

WHEREAS, Health & Safety Code §17958, §17958.5 and §17958.7 require that such changes be supported by findings made by the governing body that such more stringent local requirements are necessary because of "local climatic, geological, or topographical conditions"; and

WHEREAS, such findings must be made available as a public record and a copy thereof with each such modification or change shall be filed with the California Building Standards Commission; and

WHEREAS, on November 3, 2022, the Berkeley City Council adopted Resolution No. 70,585-N.S. making findings in support of previous local code amendments.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it finds that each of the proposed changes or modifications to the California Building Standards Code which are enumerated below are reasonably necessary because of local conditions in the area encompassed by the City of Berkeley, as set forth below:

**A. LOCAL CONDITIONS**

**1. Climatic Conditions**

a. Discussion

The City of Berkeley is located at the geographic center of the Bay Area. The western limits are defined by the Bay at near sea level and the eastern limits by the abruptly rising Berkeley Hills to 1,200 feet. The eastern limit faces open parklands and open space (covered with vegetative fuel loading) to the east and is exposed to a unique danger from wild land fires during periods of hot, dry weather in the summer months. Many of the Berkeley homes in this area have wood shake and shingle roofs and are surrounded by brush type vegetation. The situation is made even worse by the negative effects of high wind conditions during the fire season. During May to October, critical climatic fire conditions occur where the temperature is greater than 80°F, the wind speed is greater than 15 mph, fuel moisture is less than or equal to 10.0 percent, wind direction is from north to the east-southeast and the ignition component is 65 or greater. These conditions occur more frequently during the fire season but this does not preclude the possibility that a serious fire could occur during other months of the year. The critical climate fire conditions create a situation conducive to rapidly moving, high

intensity fires. Fires starting in the wild land areas along the easterly border are likely to move rapidly westward into Berkeley's urban areas.

In September 1923, critical climatic fire conditions were in effect and Berkeley sustained one of the most devastating fires in California's history. A fire swept over the range of the hills to the northeast of Berkeley and within two hours was attacking houses within the City limits. A total of 130 acres of built-up territory burned. 584 Berkeley buildings were wholly destroyed and about 30 others seriously damaged. By far the greater portion were single-family dwellings, but among the number were 63 apartments, 13 fraternity, sorority and students' house clubs and 6 hotels and boarding houses.

In December of 1980, during critical climatic fire conditions, a small fire started at Berkeley's northeast limits and within minutes five homes were totally destroyed by fire.

On October 20, 1991, a disastrous firestorm swept down from the Oakland hills. Within the first few hours, thousands of people were evacuated. Ultimately over 3,000 dwelling units were destroyed, of which more than 70 were in Berkeley. This fire matched the pattern established by the fires of 1923 and 1980. Additionally, the conditions that led to it were the same as the conditions that led to a 1970 fire that destroyed 70 homes in Oakland.

Berkeley frequently experiences cold winter days with accompanying temperature inversions which trap wood smoke near the ground and increase air pollution. These stagnant air days are marked by increased acute respiratory disease, including asthma, and a small but consistent increase in deaths from heart and lung disease. During these periods the usual onshore flow of clean marine air ceases and wood smoke air pollution becomes an area-wide phenomena. Studies by the Bay Area Air Quality Management District suggest that between 20 and 50% of air polluting small particles come from residential wood burning.

In addition, local surface winds frequently transport moisture laden air from the surface of the Bay waters into the City. Larger scale prevailing weather patterns and winds created by the jet stream from the west also transport highly humid air and storms across the Pacific Ocean through the strait between the San Francisco peninsula and the Marin Headlands straddled by Golden Gate Bridge and into the City. The moderating effect of the Bay waters on local temperatures tends to reduce local temperature extremes, even during periods of high inland temperatures. The combination of moist air from adjacent waters and the associated mild temperatures means that it is common for local weather conditions to hover near the dew point. This can result in the formation of fog associated with local and regional marine weather layers, which commonly cover the City for hours or even days at a time with an average morning relative humidity of 82 percent.

Much of Northern California is considered to possess a predominantly Mediterranean climate. At times Berkeley does experience periods of high temperature and/or low humidity particularly between mid-July and mid-October, when the danger of hillside fires is greatest. Throughout the rest of the year, the marine weather environment is characterized by higher humidity and lower overall prevailing temperatures, resulting in a

higher overall moisture content in building construction materials and slower drying of building materials and assemblies once wet or humidified.

Scientific evidence has established that combustion, procurement and transportation produce significant greenhouse gas emissions that contribute to global warming and climate change. Human activities releasing greenhouse gases into the atmosphere cause increases in worldwide average temperature, which contribute to melting of glaciers and thermal expansion of ocean water, drought conditions, increase in vegetative fuel, and length of fire seasons. Alameda County, in which Berkeley is located, has significant levels of some greenhouse gases like ozone, which is also an air pollutant that impacts public health<sup>1</sup>. Ozone is formed when NO<sub>x</sub> and VOCs chemically react in the sun. As a coastal city located on the San Francisco Bay, Berkeley is experiencing the repercussions of climate change due excessive greenhouse gas emissions. Rising sea levels have caused significant coastal erosion and have increased impacts to infrastructure during extreme tides.

Scientific evidence also suggests storms are growing with higher intensity due to climate change and will be followed by an increased frequency of dry periods. By 2100, average temperatures in the San Francisco Bay Area are expected to increase up to 11°, bringing 6-10 additional heat waves to Berkeley each year. According to historical records, Bay Area sea level has risen 8 inches over the last century and the pace of sea level rise has increased since 2011. While regional variability exists, the median increase for the San Francisco Bay is expected to reach almost 1 ft by 2050<sup>2</sup> under a low risk model, while 2.7 ft is projected under an extreme risk scenario. Such climate change events are expected to increase the risk of flooding in low-lying areas of Berkeley, while hillside communities face increased risk of wildfires.

#### b. Summary

Local climatic conditions of periods of limited rainfall, high temperature and/or low humidity particularly between mid-July and mid-October, and high winds along with existing building construction create periodic extremely hazardous fire conditions that adversely affect the acceleration intensity and size of fires in the City. The same climatic conditions may result in the concurrent occurrence of one or more fires, which may spread in the more populated areas of the City without adequate fire department personnel to protect against and control such a situation. Throughout the rest of the year, the marine weather environment is characterized by higher humidity and lower overall prevailing temperatures, resulting in a higher overall moisture content in building construction

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<sup>1</sup> [California Nonattainment/Maintenance Status for Each County by Year for All Criteria Pollutants | Green Book | US EPA](#)

<sup>2</sup> Griggs, G., Cayan, D., Tebaldi, C., Fricker, H., & Árvai, J. (2017). Rising Seas in California. California Ocean Science Trust, (April), 71. Retrieved from <http://www.opc.ca.gov/webmaster/ftp/pdf/docs/rising-seas-in-california-an-update-on-sea-level-rise-science.pdf>

materials and slower drying of building materials and assemblies once wet or humidified. Berkeley is susceptible to the impacts of climate change, including sea level rise, increased average temperatures, and reduced air quality.

## **2. Geological Conditions**

### **a. Discussion**

The City of Berkeley is in a region of high seismic activity and is traversed by the Hayward fault. It has the San Andreas earthquake fault to the west and the Calaveras earthquake fault to the east. All three faults are known to be active as evidenced by the damaging earthquakes they have produced in the last 100 years and can, therefore, be expected to do the same in the future. Of primary concern to Berkeley is the Hayward Fault, which has been estimated to be capable of earthquakes exceeding a magnitude of 7.0 on the Richter scale. It extends through many residential areas and passes through a small business district and the University of California. A large number of underground utilities cross the fault, including major water supply and natural gas lines. Intensified damage during an earthquake may be expected in liquefaction zones along the Bay west of Interstate 80 and in known slide areas, as well as hillside areas (occupied mainly by dwellings) located within or near the fault zone; some areas are steep and have been subjected to slides.

The waterfront areas and areas in the Berkeley flatlands immediately adjacent to creeks and water streams present a major potential for soil liquefaction hazard. The Eastshore Freeway may liquefy and fail under heavy shaking or it may be inundated by a tsunami. The north hill area is most susceptible to landslides because of the presence of soft and unconsolidated sediments, extensive water content in the ground and the steepness of slopes.

Great potential damage can be related to the likely collapse of freeway overpasses. In the event of a major earthquake, Berkeley's firefighting capability could be significantly affected by loss of its main water supply. There is also the strong possibility of inundation due to failure of water reservoirs in the hill area. Summit Reservoir at the Kensington border in Berkeley and Berryman Reservoir North have recently been replaced by steel tanks. Berryman Reservoir South has received a seismic upgrade. Additional potential situations following an earthquake include broken natural gas mains and ensuing fire in the streets, building fires, as the result of broken service connections, the need for rescues for collapsed structures, and the rendering of first aid and other medical attention to a large number of people.

### **b. Summary**

Local geological conditions include high seismic activity and large concentrations of residential type buildings as well as a major freeway. Since the City of Berkeley is located in a densely populated area having buildings and structures constructed over and near a vast array of fault systems capable of producing major earthquakes, the modifications cited herein are intended to better limit property damage as a result of a

seismic activity and to establish criteria for repair of damaged properties following a local emergency.

### **3. Topographical Conditions**

#### **a. Discussion**

The City of Berkeley has many homes built throughout the urban portion of the Berkeley Hills that are reached by narrow and often winding paved streets which hamper access for fire apparatus and escape routes for residents. In addition, many of the hillside homes are on the extreme eastern edge of the City and require longer response times for the total required firefighting force. Panoramic Way and other hill areas with narrow and winding streets may face the problem of isolation from the rest of the City.

In the areas north and south of the University of California, there are large concentrations of apartments, rooming houses, and fraternity and sorority houses. A number of apartments in these areas are of wood frame construction and are up to five stories in height from grade level. The fire potential is moderately high due to building congestion, heights, and wood shingle roof coverings and siding. Fires can be expected to involve large groups of buildings in these areas. It is noted that Berkeley most probably has more physically impaired people per capita than any other community in the United States. It is estimated that 14% of the approximate population of 124,321 per the 2021 Census in Berkeley are physically impaired. Emergency egress and rescue for these people are more difficult during a fire or other life safety emergency.

The Eastshore Freeway, running along the western edge of Berkeley, is one of the most heavily used and congested freeway sections in the state. Noted impacts have included increased rates of asthma, particularly among children. The proximity of Berkeley to this freeway and its location downwind from prevailing patterns negatively affects air quality, thus increasing the impact of wood smoke in Berkeley.

Part of the Pacific Coast Range, the Berkeley Hills, define the eastern boundary of the City and form a natural obstruction to the movement of humidified, cooler air out of the San Francisco Bay basin and the City of Berkeley into the dryer adjacent inland valleys and the interior of the State. Although these hills do not form an absolute air barrier, they do play a significant role in the creation of local microclimates. This effect is evidenced by the disparity in temperatures and relative humidity commonly experienced during periods of warm weather between communities adjacent to the San Francisco Bay / Pacific Ocean and communities in the Bay Area inland valleys only a few miles inland.

The City of Berkeley is part of a densely populated metropolitan area with limited space for landfills. It is important to preserve the limited landfill space for materials which cannot be diverted and to keep land-clearing debris out of landfills, where decomposition of such organic material would result in methane.

#### **b. Summary**

Local topographical conditions include hillside housing with many narrow and winding streets with slide potential for blockage in the abruptly rising Berkeley hills. These conditions create an extremely serious problem for the Fire Department when a major fire or earthquake occurs. Many situations will result in limiting or total blockage of fire department emergency vehicular traffic, overtaxed fire department personnel and a total lack of resources for the suppression of fire in buildings and structures in the City of Berkeley. In addition, under these local conditions, the presence of wood smoke can cause increased disease, including asthma, and increased deaths from heart and lung disease. The built environment also provides little space for landfills.

## **B. REASONABLE NECESSITY**

The proposed changes and modifications to the California Building Standards Code are reasonably necessary due to the local conditions set forth above because they reduce the risks to life, public safety, health, welfare and property which result from the City's changing climate and location astride an active earthquake fault. They are further justified for the reasons set forth below.

In adopting the California Building Standards Code as the Berkeley Building Codes, the City proposes to make certain substantive modifications whose effect is to impose more stringent requirements locally than are mandated by the California Building Standards Code. These are:

- (1) Building standards relating to increased fire resistance in Fire Zones 2 and 3 (Berkeley Building Code Chapter 19.28 Article 2, Berkeley Residential Code Chapter 19.29 Section 19.29.050);
- (2) Standards to reduce the health risk caused by wood smoke under the climatic conditions of Berkeley (Berkeley Building Code Chapter 19.28 Article 3);
- (3) Building standards for retrofit of certain existing building types with seismic weaknesses (Berkeley Building Code Chapter 19.28 Article 5);
- (4) Standards for repair of existing buildings (Berkeley Building Code Chapter 19.28, Article 6);
- (5) Provisions requiring retrofitting of unreinforced masonry buildings (Berkeley Building Code Chapter 19.28 Article 6 and Berkeley Municipal Code Chapter 19.38);
- (6) Provisions requiring retrofitting of soft, weak, or open front buildings (Berkeley Building Code Chapter 19.28 Article 6 and Berkeley Municipal Code Chapter 19.39);
- (7) Various technical amendments to structural standards (Berkeley Building Code Chapter 19.28 Article 7, Berkeley Residential Code Chapter 19.29 Section 19.29.060);



- (8) Building standards for construction of exterior elevated elements (E3) to resist moisture intrusion (Berkeley Building Code Chapter 19.28 Article 8);
- (9) Building standards for emergency housing during the declaration of a shelter crisis (Berkeley Building Code Chapter 19.28 Article 9);
- (10) Provisions requiring range hood ventilation with sound ratings in residential dwelling units (Berkeley Mechanical Code Chapter 19.32 Section 19.32.040);
- (11) Provisions requiring installation of motion activated gas shut-off valves (Berkeley Plumbing Code Chapter 19.34 Section 19.34.040);
- (12) Provisions increasing and expanding the applicability of construction and demolition waste diversion requirements (Berkeley Green Code Chapter 19.37 Section 19.37.040);
- (13) Provisions to reduce the cement content in construction concrete mix designs (Berkeley Green Code Chapter 19.37 Section 19.37.040); and
- (14) Provisions for increasing electric vehicle charging requirements in new low-rise residential, multifamily, and nonresidential buildings supporting lower vehicle miles travelled (VMT) from internal combustion engine (ICE) vehicles. (Berkeley Green Code Chapter 19.37 Section 19.37.040).
- (15) Provisions for Zero NO<sub>x</sub> Emission Buildings to reduce indoor air pollution. (Berkeley Green Code Chapter 19.37 Section 19.37.040).

These more stringent local requirements are reasonably necessary to address risks created by local conditions set forth above for the following reasons:

- Construction in the fire zones, modifications made by Chapter 19.28 Article 2, and Chapter 19.29 Section 19.29.050 reduce the risk to life and property created by wildfires in the hillside areas of the City.
- The air pollution modifications made by Chapter 19.28 Article 3 Section 19.28.040, and Chapter 19.32 Section 19.32.040 reduce the risk to public safety created by air pollution throughout the City.
- The structural modifications made by Chapter 19.28 Article 5, Article 6, Article 7, Chapter 19.29 Section 19.29.060, Chapter 19.32 Section 19.32.40, Chapter 19.34 Section 19.34.040, Chapters 19.38 and 19.39 reduce the risk to life and property and hasten recovery from predictable future natural disasters.
- The E3 modifications made by Chapter 19.28, Article 8, reduce the risk to life and property resulting from the effect of the City's climate and topography on exterior building construction features and materials.
- The waste diversion modifications made by Chapter 19.37 Section 19.37.040 improve public health, safety and welfare by preserving the limited landfill space for materials which cannot be diverted resulting from the effect of local topography with limited space for landfills, and mitigating the impacts of climate change.

- The cement reduction modifications made by Chapter 19.37 Section 19.37.040 support the City's decarbonization efforts by reducing the embodied emissions associated with the production of concrete, thus mitigating the impacts of climate change.
- The EV infrastructure modifications made by Chapter 19.37 Section 19.37.040 support the City's decarbonization efforts by increasing electric vehicle charging infrastructure in both low-rise residential, multifamily, and nonresidential buildings, thus mitigating the impacts of climate change.
- The provisions for Zero NO<sub>x</sub> Emission Buildings made by Chapter 19.37 Section 19.37.040 will reduce known adverse human health impacts related to exposure to binary compounds of nitrogen and oxygen and will do so by guaranteeing all replacement building stock contain Zero NO<sub>x</sub> appliances and mechanically ventilated kitchens.
- The provisions for Zero NO<sub>x</sub> Zero Emission Buildings made by Chapter 19.37 will have the effect of reducing the emission of ozone, a greenhouse gas that contributes to climate change, because NO<sub>x</sub> reacts in sunlight with other volatile organic compounds to create ozone, a powerful GHG with a Global Warming Potential (GWP) of 520.

BE IT FURTHER RESOLVED that certain local amendments to the Codes are not more stringent than the provisions of the California Codes but rather cover matters not addressed by those Codes or are administrative in nature and do not modify building standards pursuant to Health & Safety Code §17958, §17958.5 and §17958.7. These amendments establish administrative regulations for the effective enforcement of building standards throughout the City of Berkeley as follows:

Chapter 19.28, Article 1 (Administrative provisions and definitions) and Article 4 (Construction in the Right of Way), and Administrative amendments to Chapter 19.29 (California Residential Code), and to Chapter 19.37 (California Green Building Standards Code), which are local amendments to the California Codes affecting administration provisions only.

BE IT FURTHER RESOLVED that this Resolution shall go into effect on July 1, 2024.

BE IT FURTHER RESOLVED that Resolution No. 70,585-N.S. is hereby rescinded effective July 1, 2024.