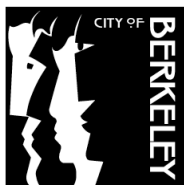


AGENDA



BERKELEY CITY COUNCIL MEETING

Tuesday, May 10, 2022

6:00 PM

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

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI

DISTRICT 2 – TERRY TAPLIN

DISTRICT 3 – BEN BARTLETT

DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN

DISTRICT 6 – SUSAN WENGRAF

DISTRICT 7 – RIGEL ROBINSON

DISTRICT 8 – LORI DROSTE

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION

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

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/87240656157>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free) and enter Meeting ID: 872 4065 6157. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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

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

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

Preliminary Matters

Roll Call:

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

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

Public Comment on Non-Agenda Matters: *Persons will be selected to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons attending the meeting in-person and wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

Consent Calendar

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

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

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

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

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

Consent Calendar

- 1. Commission Reorganization for Post-COVID-19 Budget Recovery: Community Health Commission; Revising Berkeley Municipal Code Chapter 3.76**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,808-N.S. revising Berkeley Municipal Code Sections 3.76.010 to 3.76.040 which establishes the Community Health Commission in order to change Commission membership to include nine (9) people and consolidate the functions of the Commission from ten overlapping and redundant functions to a more concise 4 functions.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 2. Lease Amendment: Options Recovery Lease of City Property 1835 Allston Way**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,809-N.S. authorizing the City Manager to execute an Amendment to the Lease Agreement with Options Recovery Services for the Old City Hall Annex Building located at 1835 Allston Way. The lease provides for a total of two options to renew for five (5) year terms. This first option period shall commence (retroactively) on January 1, 2020, and end on December 31, 2024.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
- 3. Zoning Ordinance Amendments that Address Technical Edits and Corrections to Berkeley Municipal Code (BMC) Title 23**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,810-N.S. containing technical edits, corrections and other non-substantive amendments to the following sections of the new Zoning Ordinance: BMC Section 23.326.030 (Eliminating Dwelling Units through Demolition)
BMC Section 23.204.020 (Allowed Land Uses)
BMC Section 23.204.100 (C-SA Zoning District)
BMC Section 23.204.110 (C-T Zoning District)
BMC Section 23.204.130 (C-DMU District)
BMC Section 23.204.140 (C-W Zoning District)
BMC Section 23.206 (Manufacturing Districts)
BMC Section 23.302.040 (Home Occupations)
BMC Section 23.304.060 (Accessory Buildings and Enclosed Accessory Structures)
BMC Section 23.322.030 (Required Parking Spaces)
BMC Section 23.502.020 (Glossary)
First Reading Vote: All Ayes.
Financial Implications: None
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Consent Calendar

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

From: City Manager

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

Financial Implications: To be determined.

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

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

From: City Manager

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

Financial Implications: None

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

6. Calling for a Consolidated General Municipal Election for November 8, 2022

From: City Manager

Recommendation:

1. Adopt a Resolution: a. Calling for a General Municipal Election to be consolidated with the Statewide General Election to be held in Berkeley on November 8, 2022; b. Requesting that the Alameda County Board of Supervisors consolidate the City of Berkeley General Municipal Election with the Statewide General Election; c. Authorizing certain procedural and contractual actions; and d. Establishing policies for the filing of candidate statements of qualification.

2. Adopt a Resolution establishing policies and timelines for filing ballot measure arguments.

Financial Implications: See report

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

Consent Calendar

- 7. Amendment: FY 2022 Annual Appropriations Ordinance**
From: City Manager
Recommendation: Adopt first reading of an Ordinance amending the FY 2022 Annual Appropriations Ordinance No. 7,795–N.S. for fiscal year 2022 based upon recommended re-appropriation of committed FY 2021 funding and other adjustments in the amount of \$53,155,906 (gross) and \$43,380,083 (net).
Financial Implications:
Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000
- 8. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on May 10, 2022**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager’s threshold will be returned to Council for final approval.
Financial Implications: Various Funds - \$964,022
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 9. Purchase Order: ZOLL Medical Corporation for ECG Monitor/Defibrillators**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a Purchase Order and any amendments with ZOLL Medical Corporation for the purchase of five Advanced Life Support (ALS) ECG Monitor/Defibrillators, associated equipment and a maintenance contract for emergency response vehicles in an amount not to exceed \$250,000.
Financial Implications: Measure FF - \$250,000
Contact: Abe Roman, Fire, (510) 981-3473
- 10. Contract: Shaw Industries, Inc. for 1900 6th Street Building Carpet Replacement Project**
From: City Manager
Recommendation: Adopt a Resolution: 1. Pursuant to City Charter Article XI Section 67.2 requirements, accepting the California Multiple Award Schedule bid procedures; 2. Approving the California Multiple Award Schedule Contract with Shaw Industries, Inc. for Carpet Replacements at the 1900 6th Street building. 3. Authorizing the City Manager or her designee to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the terms and conditions of the agreements with Shaw Industries, Inc. in an amount not to exceed \$121,133, which includes a contingency of \$14,552.
Financial Implications: Measure GG Fire Prevention Fund - \$121,133
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

Consent Calendar

11. Contract No. 321001100 Amendment: JotForm, Inc. for a HIPAA Compliant Platform to Support Clinical Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32100110 and any subsequent amendments or extensions with the JotForm, Inc. by adding \$17,808, bringing the contract total to an amount not to exceed \$55,794 and extending the end date from May 12, 2022 to May 12, 2023.

Financial Implications: General Fund - \$17,808

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

12. Meals on Wheels of Alameda County Agency Donations for the Berkeley Meals on Wheels Program

From: City Manager

Recommendation: Adopt a Resolution accepting a \$54,167 donation for the Berkeley Meals on Wheels Program from the Meals on Wheels of Alameda County (MOWAC) agency and authorizing acceptance of all subsequent donations received in FY 2022, to be appropriated as part of the Second Amendment to the Annual Appropriations Ordinance.

Financial Implications: Fund Raising Activities Fund - \$54,167 (donation)

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

13. 2022 Local Housing Trust Fund Application

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to apply for and accept funds from the State of California's Local Housing Trust Fund program in an amount not to exceed \$5,000,000, and to apply such funds to the City's existing funding reservations for Supportive Housing in People's Park (2556 Haste Street) via the City's Housing Trust Fund program.

Financial Implications: See report

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

14. Contract No. 32200074 Amendment: Murray Building, Inc. for Cazadero Camp Jensen Dormitory Construction Project

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32200074 with Murray Building, Inc. for the Cazadero Camp Jensen Dormitory Construction Project by adding \$66,450 for a total not-to-exceed contract amount of \$1,528,350.

Financial Implications: Camps Fund - \$66,450

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

Consent Calendar

- 15. Contract No. 32000230 Amendment: Robert E. Boyer Construction, Inc. for Berkeley Tuolumne Camp Construction Project**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32000230 with Robert E. Boyer Construction, Inc. for the Berkeley Tuolumne Camp Project by adding \$530,832 for a total not-to-exceed contract amount of \$39,350,473.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 16. Amendments to On-Call Landscape Architectural Services Contract No. 32000284 with BASE Landscape Architecture, Contract No. 32100002 with PGA Design, Inc., and Contract No. 32000285 with RRM Design Group**
From: City Manager
Recommendation: Adopt three Resolutions authorizing the City Manager to execute amendments to Contract No. 32000284 with BASE Landscape Architecture, Contract No. 32100002 with PGA Design, Inc., and Contract No. 32000285 with RRM Design Group, for on-call landscape architectural services by increasing the contract amount by \$600,000 and duration by fourteen months each, from April 30, 2023 through June 30, 2024, to a total NTE amount of \$900,000 each.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 17. Contract No. 100692-2 Amendment: Serological Research Institute for DNA Testing Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 100692-2 and any necessary future amendments with Serological Research Institute (SERI) for the Police Department, increasing the contract amount by \$500,000 for a total not to exceed amount of \$1,500,000 while the contract term expiration will remain until June 30, 2025.
Financial Implications: State Proposition 172 Fund - \$500,000
Contact: Jennifer Louis, Police, (510) 981-5900
- 18. Public Art Funding for Municipal Capital Improvement Projects Ordinance; Adding Berkeley Municipal Code Chapter 6.13**
From: Civic Arts Commission
Recommendation: Adopt first reading of an Ordinance adding Chapter 6.13 Public Art Funding for Municipal Capital Improvement Projects of the Berkeley Municipal Code to provide for the allocation of one and three quarters percent (1.75%) of the estimated cost of construction associated with eligible municipal capital improvement projects, which shall be used for art and cultural enrichment of public buildings, parks, streets, and other public spaces in the City of Berkeley
Financial Implications: See report
Contact: Jennifer Lovvorn, Commission Secretary, (510) 981-7530

Consent Calendar

**19. Recommendation that Vision 2050 Infrastructure Bond Prioritize Clean Mobility
From: Energy Commission**

Recommendation: The Energy Commission recommends that the Vision 2050 infrastructure bond contemplated for the 2022 ballot prioritize transportation, with an emphasis on building the clean mobility network of the future.

Financial Implications: None

Contact: Billi Romain, Commission Secretary, (510) 981-7400

**20. Budget Referral: City-wide Historic Context Statement
From: Landmarks Preservation Commission**

Recommendation: Refer to the FY 2023 June budget process an amount between \$250,000 to \$275,000 from the General Fund for Berkeley's first City-wide Historic Context Statement.

Financial Implications: See report

Contact: Fatema Crane, Commission Secretary, (510) 981-7400

Council Consent Items

**21. Support SB 1173 – Divestment from Fossil Fuels
From: Mayor Arreguin (Author), Councilmember Bartlett (Co-Sponsor),
Councilmember Hahn (Co-Sponsor), Councilmember Harrison (Co-Sponsor)**

Recommendation: Adopt a Resolution in support of SB 1173 (Gonzalez), which would require the California Public Employees Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS) to divest from fossil fuel companies. Send a copy of the Resolution to Governor Gavin Newsom, State Senators Nancy Skinner and Lena Gonzalez, and Assemblymember Buffy Wicks.

Financial Implications: None

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

**22. Healthy Black Families: Relinquishment of Council Office Budget Funds to
General Fund and Grant of Such Fund
From: Mayor Arreguin (Author), Councilmember Bartlett (Co-Sponsor),
Councilmember Hahn (Co-Sponsor)**

Recommendation: Adopt a Resolution approving the expenditure of \$20,000 from the Mayor's Office Budget to Healthy Black Families (HBF) for the purposes of covering costs, from February – May 2022, associated with supporting the Ideation of financing for greater affordable housing at BART station developments. This time period coincides with the end (January 2022) and beginning (June 2022) of grants from the Partnership for the Bay's Future awarded to the City of Berkeley in partnership with HBF.

Financial Implications: Mayor's Discretionary Funds - \$20,000

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

Council Consent Items

- 23. Budget Referral: Continuing Anti-Displacement Programs**
From: Mayor Arreguin (Author), Councilmember Hahn (Co-Sponsor), Councilmember Harrison (Co-Sponsor), Councilmember Bartlett (Co-Sponsor)
Recommendation: Refer \$1,800,000 (\$900,000 annually) to the FY 2023-2024 Budget Process for continued funding of the following anti-displacement programs (launched in 2017) with the proposed funding source from General Fund tax revenues: 1. Housing Retention Program (administered by the Eviction Defense Center EDC): \$250,000 per fiscal year. This funding will supplement the current COVID-19 emergency rental assistance program to provide funding after the emergency expires; 2. Legal Counseling, Services and Problem Solving for Extremely-Low, Very-Low, Low and Moderate Income Tenants (\$275,000 each to the East Bay Community Law Center and EDC): \$550,000 per fiscal year; 3. Flexible Housing Subsidies for Homelessness Prevention: \$100,000 per fiscal year
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 24. Berkeley Housing Authority Loan Forgiveness**
From: Mayor Arreguin (Author)
Recommendation: Adopt a Resolution forgiving a \$300,000 Housing Trust Loan to the Berkeley Housing Authority. Forgiving this outstanding loan will enable BHA to provide additional housing to families in Berkeley.
Financial Implications: Housing Trust Fund - \$300,000
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 25. Addition of Semi-diverter Traffic Bollards at the intersection of Newbury Street and Ashby Avenue**
From: Councilmember Bartlett (Author)
Recommendation: Refer to the Fiscal Year 2022/2023 Budget Process, an allocation of \$50,000 to install semi-diverter traffic bollards at the east corner of the intersection at Newbury Street and Ashby Avenue.
Financial Implications: To be determined
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130
- 26. Dwight Way Traffic Calming Budget Referral**
From: Councilmember Harrison (Author), Councilmember Bartlett (Co-Sponsor)
Recommendation: Refer a one-time allocation of \$50,000 to the June budget process for traffic calming intersection improvements on Dwight Way between Grant Street and California Street.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Council Consent Items

- 27. Resolution Declaring May as Jewish American Heritage Month**
From: Councilmember Wengraf (Author), Councilmember Taplin (Co-Sponsor), Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt a Resolution declaring the month of May as Jewish American Heritage Month in appreciation of the achievements and contributions made by members of the Jewish Community.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
- 28. Budget Referral for Charter Officer Performance Review**
From: Councilmember Droste (Author), Mayor Arreguin (Author), Councilmember Wengraf (Co-Sponsor), Councilmember Harrison (Co-Sponsor)
Recommendation: Refer \$120,000 to the budget process to procure professional services from a qualified consultant to assist the City Council in establishing a collaborative review process for performing regular evaluations of the City Attorney and Police Accountability Board Director's performance and direct the City Manager to issue a Request for Proposal (RFP) to contract with an experienced firm that will engage the City Council and the City Attorney and Police Accountability Board Director in performance evaluation similar to the City Manager's evaluation process. The RFP shall be reviewed by the City Council Agenda and Rules Committee prior to issuance. The Agenda and Rules will make a recommendation to the entire City Council, for approval, prior to entering into any contract.
The performance evaluation process should begin following the scheduled approval of the Biennial Budget in June of 2022 and establish an annual evaluation schedule that includes interim updates on a quarterly basis—similar to the City Manager's evaluation process described in the May 14, 2019 Council referral for performance evaluations.
Financial Implications: \$120,000
Contact: Lori Droste, Councilmember, District 8, (510) 981-7180

Action Calendar

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

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

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

Action Calendar – Public Hearings

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

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

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

- 29. ***Item Removed by City Manager*** FY 2023 and FY 2024 Proposed Budget and Proposed Budget Public Hearing #1
From: City Manager
Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000**

Action Calendar – New Business

- 30. Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report
From: City Manager
Recommendation: Adopt a Resolution approving the Controlled Equipment Impact Statements, Associated Equipment Use Policies and Equipment.
Financial Implications: See report
Contact: Jennifer Louis, Police, (510) 981-5900**
- 31. Vision 2050: Strategic Asset Management Plan and Asset Management Policy
From: City Manager
Recommendation: Adopt a Resolution accepting the Strategic Asset Management Plan (SAMP) and approving the Asset Management (AM) policy.
Financial Implications: See report
Contact: Paul Buddenhagen, City Manager's Office, (510) 981-7000; Liam Garland, Public Works, (510) 981-6300**

Action Calendar – Old Business

32. **Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code** *(Continued from April 26, 2022. Item contains supplemental materials.)*
From: City Manager
Recommendation: Adopt a Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code.
Financial Implications: None
Contact: Jennifer Louis, Police, (510) 981-5900, LaTanya Bellow, City Manager's Office, (510) 981-7000
33. **Hopkins Corridor Project Conceptual Design** *(Continued from April 26, 2022)*
From: City Manager
Recommendation: Adopt a Resolution approving the conceptual design for the Hopkins Corridor Project on Hopkins Street between Sutter Street and Gilman Street, and directing the City Manager to direct staff to proceed with the detailed engineering design of the project.
Financial Implications: None
Contact: Liam Garland, Public Works, (510) 981-6300

Information Reports

34. **Fiscal Year 2022 Mid-Year Budget Update**
From: City Manager
Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000
35. **LPO NOD: 1940 Hearst Avenue/#LMIN2021-0003**
From: City Manager
Contact: Alene Pearson, Planning and Development, (510) 981-7400
36. **LPO NOD: 2523 Piedmont Avenue/#LMIN2021-0004**
From: City Manager
Contact: Alene Pearson, Planning and Development, (510) 981-7400
37. **LPO NOD: 2580 Bancroft Way – Application LMSAP2022-0003**
From: City Manager
Contact: Alene Pearson, Planning and Development, (510) 981-7400
38. **Mental Health Commission Work Plan 2022-2023**
From: Mental Health Commission
Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400

Public Comment – Items Not Listed on the Agenda

Adjournment

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

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

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

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

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

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

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

COMMUNICATION ACCESS INFORMATION:

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.



Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.

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*I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on April 28, 2022.*



Mark Numainville, City Clerk

## Communications

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

### **Item #31: Vision 2050: Strategic Asset Management Plan and Asset Management Policy**

1. Claudia Kawczynska
2. Anna Gazdowicz and Jeffrey Faden
3. Juliette Tinnus
4. Lisa Woo
5. Rachel Zisook
6. Sandra Reisman
7. Kris Jones
8. Mira Stein
9. Kester Allen
10. Elliott Schwimmer
11. Kelly Zito
12. Minda Berbeco
13. Claire Heinzelman
14. Arabelle Malinis
15. Naoimi Marks
16. Jennifer Shanoski
17. Eric Wiesner
18. Cameron Woo
19. Rena Fischer

### **Berkeley Marina Area Specific Plan (BMASP)**

20. Peter Kuhn
21. Rachel Bradely
22. Loren Chuse
23. Mary Foley
24. Mary Law
25. Merrill Gillaspy
26. Debra Golata and Jon Harris
27. Janet Cole
28. John Haptas
29. Daven Gee

- 30. Jan Ruchlis
- 31. Sue Sheftel
- 32. Judith Thomas
- 33. Carol Cohen
- 34. Joyce Kwok
- 35. Deborah Abraham

**Smart Spaces**

- 37. Sabina McMurty
- 38. Janet Perlman
- 39. Felice Botts
- 40. Jane Hunter
- 41. Vivian Warkentin

**Building Electrification**

- 42. Leah Louis-Prescott, on behalf of Carbon-Free Building
- 43. Andrea Mullarkey, on behalf of SEIU 1021

**Public Safety/Police**

- 44. Robin Kibby
- 45. Shmuel
- 46. Stephanie Gonye
- 47. Steve Martinot
- 48. Moni Law
- 49. Eric Friedman

**Earth Day**

- 50. David Lerman
- 51. Jeanine Sidran

**Housing at Ashby and/or North Berkeley BART**

- 52. Tom Luce
- 53. Richard Laden
- 54. Million Skoda
- 55. Vicki Sommer
- 56. Avram Gur Arye
- 57. Robin Andrae
- 58. Lynn Cooper
- 59. Kevin James
- 60. Miranda Ewell
- 61. T. Anne Richards
- 62. Eileen Hughes
- 63. William Goldsmith

**Paving Berkeley Roads**

- 64. John Rea

65. Linda Franklin

**California Theater Landmark Status**

66. Brooke Bortner

67. Michael Fullerton (2)

68. Keith Cowling

**Eviction Moratorium**

69. Harry Pollack

**Berkeley Housing Element**

70. Sid Kapur

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

71. Ira Serkes

72. Aman Mengis

**Fair Housing**

73. Annya Maksey

**Bus Service**

74. D. Resek

**Fire Danger and ADU's**

75. Steven Wolan

**Downtown Berkeley Budget Request**

76. Rodd Lee, on behalf of BART

**Peace & Justice Commission Reorganization**

77. Tom Luce

**Yassir Chadly Lifetime Pool Pass**

78. Donna Mickleson

**Supplemental Communications and Reports**

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

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



## ORDINANCE NO. 7,808-N.S.

AMENDING BERKELEY MUNICIPAL CODE (BMC) SECTION 3.76.010 AND SECTION 3.73.040 ESTABLISHMENT OF COMMUNITY HEALTH COMMISSION

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

Section 1. That Berkeley Municipal Code Section 3.76.010 is hereby rescinded and replaced in its entirety as follows:

**3.76.010 Establishment of Community Health Commission.**

There is hereby established a Community Health Commission. The commission shall consist of members selected by the City Council in accordance with the Fair Representation Ordinance, Berkeley Municipal Code Sections 2.04.030 through 2.04.130. Appointments to the commission shall honor the mission of achieving health equity by appointing members who have a deep understanding of the social determinants of health equity, through lived experience and/or through professional expertise.

A. Commissioners should include representatives of as many of the following as possible:

1. Communities most affected by health inequities;
2. Community organizers;
3. Community agency representatives;
4. Health care providers;
  - a) Licensed clinicians such as nurses, physicians, etc.;
  - b) Non-licensed providers (community health workers, health navigators, etc.);
5. Behavioral health care providers;
6. Educators;
7. College Students;
8. Youth serving organizations.

B. Diversity: Commissioners should include people of varying race/ethnicity, gender, age, income, class and ability. (Ord. 7520-NS § 1 (part), 2016: Ord. 6236-NS § 1, 1994: Ord. 6147-NS § 1, 1992: Ord. 6010-NS § 1, 1990)

Section 2. That Berkeley Municipal Code section 3.76.040 is amended to read as follows:

**3.76.040 Functions of the commission.**

A. The function of the commission shall be as follows:

1. Advising, reviewing, analyzing, and reporting back to City Council on matters pertaining to achieving health equity in Berkeley, including policies or proposals under consideration by Council;
2. Advise Council of potential health equity impacts of policies or proposals under consideration by Council;
3. Contribute to priority-setting and strategic planning efforts in the City as they relate to health equity;

4. Hear presentations, at regularly scheduled commission meetings, by appropriate experts, including community residents and community groups, to provide pertinent information on matters affecting the health and safety of Berkeley residents, including from community groups concerned with health equity;

5. Perform such other functions and duties as may be directed by the City Council or prescribed or authorized by any ordinance of the City, and such other functions and duties not prohibited by City Council which the commission should decide are consistent with its overall function of promoting health equity.

B. In prescribing the above duties and functions of the commission, it is not the intent of the council to duplicate or overlap the functions, duties, or responsibilities heretofore or hereafter assigned to any other City board or commission or to a City department. As to such functions or responsibilities above set forth which are partially or wholly the responsibilities of another board or commission or of a department of the City, the commission will render such assistance and advice to such board, commission or department as may be requested. (Ord. 7520-NS § 1 (part), 2016: Ord. 6010-NS § 4, 1990)

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

At a regular meeting of the Council of the City of Berkeley held on April 26, 2022, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.

ORDINANCE NO. 7,809-N.S.

AUTHORIZING LEASE AMENDMENT FOR OPTIONS RECOVER SERVICES AT 1835 ALLSTON WAY

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

Section 1. FINDINGS:

- A. The City adopted Ordinance No. 7,328-N.S. authorizing a Lease Agreement with Options Recovery Services (Lessee) executed April 23, 2014 with an initial term that ended December 31, 2019 for the Old City Hall Annex located at 1835 Allston Way, Berkeley, California.
- B. In the Lease, the City and Lessee agreed to two additional five (5) year option terms. The Lessee exercised its right to an option term to begin (retroactively) January 1, 2020 and expire December 31, 2024. The revenue projection to the City for the term of this lease option is \$500.00 (Five Hundred Dollars). Receipts will be entered in the General Fund ERMA Revenue Account: 011-54-624-697-0000-000-000-461110.

Section 2. AUTHORIZATION FOR CITY MANAGER TO AMEND THE LEASE AGREEMENT WITH OPTIONS RECOVERY SERVICES AT 1835 ALLSTON WAY.

The City Manager is hereby authorized to amend the lease agreement with Options Recovery Services for improved real property at 1835 Allston Way, Berkeley, CA, and to make any amendments thereto. Such lease amendment shall be on substantially the terms set forth in Exhibit A.

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

At a regular meeting of the Council of the City of Berkeley held on April 26, 2022, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.

**LEASE AMENDMENT FOR CITY OF BERKELEY  
PROPERTY AT 1835 ALLSTON WAY**

This lease amendment (“**Amendment**”) is made on \_\_\_\_\_ between the CITY OF BERKELEY ("**Landlord**"), a Charter City organized and existing under the laws of the State of California and Options Recovery Services ("**Tenant**"), a nonprofit organization, who agree as follows:

This lease amendment is made with reference to the following facts and objectives:

A. Landlord is the owner of the real property at 1835 Allston Way, Berkeley, California, ("**Premises**") commonly referred to as the “Old City Hall Annex” as further described in Exhibit A, attached to and made a part of this lease.

B. Tenant entered into a lease (“**Lease**”) with Landlord on April 23, 2014. Tenant is occupying and conducting business in the total square footage of the building measuring 6,400 square feet of the premises and identified in Exhibit A, attached to and made part of this lease.

C. Tenant has exercised its right under the Lease to renew the Lease for another five (5) years per Section 2., Term. The Lease provides for a total of two options to renew for 5-year terms. This first option period shall commence (retroactively) on January 1, 2020, and end on December 31, 2024.

D. Tenant wishes to lease the premises for the purpose of continuing to operate a nonprofit organization that delivers substance abuse disorders treatment programs including intensive outpatient day treatment, and evening treatment program, case management services, associated mental health treatment, and physical health screening and drug testing in Berkeley and throughout Alameda County. \_\_\_\_\_.

E. Landlord and Tenant have agreed that the monthly base rent from January 1, 2020 to December 31, 2024, shall be ONE HUNDRED DOLLARS (\$100.00) for each year of the Lease per Section 3. Rent.

1. **Section 3. RENT**, subsection B., is amended to read as follows:

**B. Manner of Payment** All rent and other payments due from Tenant shall be made to Landlord in lawful money of the United States of America at Landlord's address for notice hereunder, or to such other person or at such other place as Landlord may from time to time designate in writing. At Tenant’s option, rent may be paid annually and due January 1st of the year being paid or pay the entire term (\$500) due within 30 days following approval and execution of this Lease Amendment. Any other payments from the Tenant (utilities, etc.,) and any other payments will be billed separately.

2. Section 6. SERVICES, subsection A., is deleted in its entirety and replaced by the following:

6. SERVICES

A. Tenant shall make all arrangements for and pay for all utilities and services, including electricity, gas, garbage, water, sewer and telephone, and all fees and periodic charges related thereto. Where direct payment of utilities and services by Tenant is not feasible, Tenant shall reimburse Landlord, without deduction, setoff, prior notice, or demand, the sum billed for the previous year’s utilities and services. The bill is due upon receipt and shall be paid to Landlord at the address to which notices to Landlord are given.

3. Section 29. NOTICES, is deleted in its entirety and replaced by the following:

29. NOTICES

A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this lease and deposits it with the U.S. Postal Service, registered mail, postage prepaid. For purposes of this lease, notices shall be addressed as follows, as appropriate:

To the Landlord: City of Berkeley  
Department of Public Works - Real Property  
1947 Center Street, Fifth Floor Suite 521  
Berkeley, CA 94704

With a Copy to: City of Berkeley  
Department of Public Works  
2180 Milvia Street, 3<sup>rd</sup> Floor  
Berkeley, CA 94704

To the Tenant: Executive Director  
Options Recovery Services  
1835 Allston Way  
Berkeley, CA 94704

4. This Lease is amended to include the following language regarding the Required Accessibility Disclosure:

**REQUIRED ACCESSIBILITY DISCLOSURE**

- a. Landlord hereby advises Tenant that the Premises and Improvements have not undergone an inspection by a certified access specialist, and except to the extent expressly set forth in this Lease, Landlord shall have no liability or responsibility to make any repairs or modifications to the Premises or the Building in order to comply with accessibility standards. The following disclosure is hereby made pursuant to applicable California law:
  - b. “A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or landlord may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.” [Cal. Civ. Code Section 1938€]. Any CASp inspection shall be conducted in compliance with reasonable rules in effect at the Premises with regard to such inspections and shall be subject to Landlord’s prior written consent.
5. Further, this Contract is amended to include the following language regarding the City’s Sanctuary Contracting Ordinance:

**SANCTUARY CITY CONTRACTING**

Contractor hereby agrees to comply with the provisions of the Sanctuary City Contracting Ordinance, B.M.C. Chapter 13.105. In accordance with this Chapter, Contractor agrees not to provide the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security with any Data Broker or Extreme Vetting Services as defined herein:

- a. “Data Broker” means either of the following:

- i. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies;
  - ii. The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- b. “Extreme Vetting” means data mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting does not include:
  - i. The City’s computer-network health and performance tools;
  - ii. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer-based activity.

In all other respects, the Lease executed on April 23, 2014, shall remain in full force and effect.

IN WITNESS WHEREOF, Landlord and Tenant have executed this lease amendment as of the date written on the first paragraph of this lease.

LANDLORD  
CITY OF BERKELEY

By: \_\_\_\_\_  
City Manager

THIS LEASE HAS BEEN  
APPROVED AS TO FORM  
BY THE CITY ATTORNEY  
OF THE CITY OF BERKELEY  
6/2004

REGISTERED BY:  
\_\_\_\_\_  
City Auditor

ATTEST:  
\_\_\_\_\_  
Deputy City Clerk

TENANT:

Signature: \_\_\_\_\_  
Title: \_\_\_\_\_

City of Berkeley Business License No.



ORDINANCE NO. 7,328-N.S.

LEASE: OLD CITY HALL ANNEX TO OPTIONS RECOVERY SERVICES

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

Section 1. FINDINGS:

The Old City Hall Annex is located at 1835 Allston Way, to the south of the Maudelle Shirek Building (Old City Hall). The front door is on Allston Way; and the other entrance is from the adjacent parking lot. The Annex is approximately 6,400SF with interior divisions into office and meeting room spaces of different sizes, and non-ADA accessible men's and women's restrooms. Options Recovery Services is a non-profit organization currently doing business at the Veterans Memorial Building at 1931 Center Street in Berkeley. The organization will expand its operations to provide more services for men and women, including: substance abuse disorders treatment programs including intensive outpatient day treatment, an evening treatment program for people working or going to school, case management services, associated mental health treatment, physical health screening and drug testing. The Old City Hall Annex is currently vacant and requires a significant amount of repairs and improvements. Options Recovery Services will be responsible for all upgrades and renovations in the Annex, as required by the terms of the lease. Repairs and improvements are expected to be completed in August 2014.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO A LEASE for property at 1835 Allston Way, Berkeley, California.

The City Manager is hereby authorized to execute a 5-year lease agreement with two 5-year options, and any amendments thereto, with Options Recovery Services for real property located at 1835 Allston Way, Berkeley, California. Such lease shall be on substantially the terms set forth in Exhibit A.

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

At a regular meeting of the Council of the City of Berkeley held on February 11, 2014 this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

\* \* \* \* \*

At a regular meeting of the Council of the City of Berkeley held on February 25, 2014, this Ordinance was adopted by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

ATTEST:   
Mark Numainville, CMC, City Clerk

  
Tom Bates, Mayor

Date signed: February 27, 2014

**CITY OF BERKELEY**  
**IMPROVED PROPERTY LEASE**

Between

**THE CITY OF BERKELEY, A CHARTER CITY  
ORGANIZED AND EXISTING UNDER THE LAWS  
OF THE STATE OF CALIFORNIA**

as Landlord,

and

**OPTIONS RECOVERY SERVICES**

as Tenant.

For the Property at  
1835 Allston Way (Old City Hall Annex)  
Berkeley, CA

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**LEASE**

THIS LEASE is made by and between the CITY OF BERKELEY, a Charter City organized and existing under the laws of the State of California ("Landlord" or "City") and OPTIONS RECOVERY SERVICES, a non-profit organization doing business at 1931 Center Street, in Berkeley, CA ("Tenant").

WITNESSETH:

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises for the term and subject to the terms, covenants, agreements and conditions set forth below, to each and all of which Landlord and Tenant hereby mutually agree.

**1. DEFINITIONS**

A. Unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

B. "Affiliate," as to any person, shall mean such person's partners, members, commissioners, officers, employees, volunteers and agents.

C. "Building" shall mean the building(s) on the Premises as shown on Exhibit A.

D. "Lease Year" shall mean each twelve-month period during the term of the Lease commencing upon the effective date of the Lease.

E. "Premises" shall mean the building located at 1835 Allston Way, commonly known as "Old City Hall Annex," including the exterior perimeter out to the edge of the sidewalks as further described on Exhibit "A", the total square footage of the building measuring approximately 6,400 sq. ft. with interior divisions into offices and meeting room spaces. (See Exhibit B).

F. "Renewal Term" shall mean the 5-year period after either option to renew the Lease is exercised.

**2. TERM**

A. Initial Term and Term of Renewal. This Lease shall take effect once duly approved by the Berkeley City Council and executed by both Landlord and Tenant ("the Effective Date"). The Initial Lease Term will expire at midnight December 31, 2019 ("the Termination Date"). Tenant shall have an option to renew this lease for two (2) additional 5-year terms upon the conditions set forth in subparagraph B, below.

B. Procedure for Renewal. If Tenant wishes to renew the Lease beyond the Initial Lease Term, Tenant must provide written notice of such intent to Landlord at least one hundred and twenty (120) days prior to the expiration of the Initial Term. If Tenant exercises the first option and wishes to renew the Lease beyond the first Renewal Term, Tenant must provide

written notice of such intent to Landlord at least one hundred and twenty (120) days prior to the expiration of the first Renewal Term. If Landlord, at its sole discretion, determines that Tenant has complied with all terms and conditions of the Lease, at least sixty (60) days prior to expiration of the Lease, Landlord shall provide written notice to Tenant of any additional improvements that will be required to be completed by Tenant during either of the 5-year renewal terms and notice of its determination to grant renewal of the lease upon condition that Tenant agrees to the additional improvements, if any, at least thirty (30) days prior to the expiration of the Lease.

C. If, after Landlord's initial determination that Tenant has complied with the terms and conditions of the Lease but prior to its actual expiration, Landlord determines, at its sole discretion, that Tenant has failed to comply with any term or condition of the Lease, Landlord may revoke the granting of any additional term and seek applicable remedies under the Lease, including, but not limited to Paragraph 19.

D. After the Initial Lease Term, Landlord may, at its sole discretion and without cause, provide 18 months notice to Tenant of the termination of lease, after the expiration of which the Lease shall terminate. In the event of termination under this subparagraph, Landlord shall: (i) reimburse Tenant for the depreciated costs, amortized over a 10 year period from year one of original lease, of any improvements it has made that are set forth in Exhibit C; and (ii) make its best efforts to assist Tenant with relocation.

E. At the expiration of the Initial Term, or either Renewal Term, or any sooner termination of this lease due to default, Tenant agrees to quit and surrender possession of the premises and its appurtenances to Landlord in good order and condition. Tenant agrees to reimburse the Landlord for any damage done to the property caused by Tenant's occupation or tenancy excepting reasonable wear and tear and damage by the elements. Tenant shall not leave or allow to remain on the property any garbage, refuse, debris, or personal property. Tenant will pay Landlord any removal costs incurred by Landlord. At the end of the tenancy, Tenant agrees to deliver the property keys to the Landlord in person or by mail to the Landlord's designated agent.

### 3. RENT

A. Minimum Rent Tenant shall pay to Landlord as a minimum rental for its use and occupancy of the Premises an annual rent of **ONE HUNDRED DOLLARS (\$100.00)** for each year of the Lease. For purposes of determining Minimum Rent for the first year of the Lease, ending on December 31, 2014 the amount will be pro-rated for a partial year. In each subsequent Lease Year during the Initial Term, and during any Renewal Term, the Minimum Rent shall be **ONE HUNDRED DOLLARS (\$100.00)** per year. See also Exhibit "D" – Payment.

B. Manner of Payment All rent and other payments due from Tenant shall be made to Landlord in lawful money of the United States of America at Landlord's address for notice hereunder, or to such other person or at such other place as Landlord may from time to time designate in writing.

C. Delinquency And Late Charges; Interest



1. Tenant hereby acknowledges that its late payment of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult or impracticable to ascertain. Such costs include, without limitation, processing and accounting charges and overtime wages. Accordingly, any payment of rent or other sum due hereunder that remains due and unpaid for a period of ten (10) days after it becomes due and payable shall be subject to a delinquency charge of ten percent (10%) of the delinquent amount. The parties agree that such charge represents a fair and reasonable estimate of the costs Landlord shall incur by reason of Tenant's late payment. Landlord shall apply any monies received from Tenant first to any accrued delinquency charges and then to any rent then due. Acceptance of such delinquency charges by Landlord shall not constitute a waiver of Tenant's default with respect to such overdue amount. The delinquency charge is in addition to all other remedies that Landlord may have under this Lease or at law.

2. Any amount due to Landlord, if not paid when due, shall bear interest from the date due until paid at the rate of the twelve percent (12%) per annum. Interest shall not be payable on delinquency or late charges nor on any amounts upon which such charges are paid by Tenant, to the extent such interest would cause the total interest to exceed that legally permitted. Payment of interest shall not excuse nor cure any default hereunder by Tenant.

**D. Accord and Satisfaction.** Landlord's acceptance of a lesser amount of rent or other sum due hereunder shall not be deemed to be other than on account of the earliest rent or payment due and shall be applied by Landlord as provided in subparagraph E. 1. No endorsement or statement on any check or letter accompanying any such check or payment shall be deemed an accord and satisfaction, and Landlord may accept such check or payment and pursue any other remedy available under this Lease or at law. Landlord may accept any partial payment from Tenant without invalidation of any contractual notice required hereunder (if required) and without invalidation of any notice required pursuant to California Code of Civil Procedure Section 1161, et seq., or any successor statute.

**4. PROPERTY AND OTHER TAXES**

**A. Possessory Interest Taxes.** The property interests created by this Lease may be subject to property taxation and Tenant, in whom the possessory interest is vested, will be responsible for the timely payment of any property taxes levied on such possessory interest. Tenant agrees to pay before delinquency all lawful taxes, assessments, fees or charges which at any time may be levied by the state, county, city or any tax or assessment levying body against the transfer of the leasehold interest hereunder upon recordation or otherwise, or upon any activity carried on under this Lease, any interest in this Lease or any possessory right which Tenant may have in or to the Property or the Property by reason of its use or occupancy thereof or otherwise.

**B. City of Berkeley Assessments.** Tenant also shall be responsible for and shall pay prior to delinquency all assessments imposed against the Property and/or the Property by Landlord. Tenant acknowledges that Landlord has established certain assessment districts within the City of Berkeley and that all properties within the assessment districts are subject to annual assessments. Landlord reserves the right to create additional districts and to terminate any such district(s). Landlord shall provide Tenant with written notice of each such assessment not later than sixty (60) days before such assessment is due and payable.

C. Personal Property and Other Taxes. In addition to all other sums to be paid by Tenant hereunder, Tenant shall pay, before delinquency, any and all taxes levied or assessed during the term of the Lease on Tenant's equipment, furniture, fixtures, merchandise, and other personal property located in the Property, and shall pay, or shall reimburse Landlord for, any and all assessments (including, without limitation, all assessments for public improvements, services or benefits, irrespective of when commenced or completed), excises, levies, business taxes, Lease, permit, inspection and other authorization fees, transit fees, service payments in lieu of taxes and any other fees or charges of any kind, which are levied, assessed, or imposed by any public authority: (i) upon or measured by rental payable hereunder, including without limitation, any gross income tax or excise tax levied by the City of Berkeley, Alameda County, the State of California, the Federal Government or any other government body with respect to the receipt of such rental; (ii) upon or with respect to the development, possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the or any portion thereof; (iii) upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures, merchandise, and other personal property located at or in the Premises or by the cost or value of any improvements made by Tenant to the Property, regardless of whether title to such improvements shall be in Tenant or Landlord; or (iv) upon this Lease or any document to which Tenant is a party creating or transferring an interest in the Property.

D. Tenant's Right to Contest. Tenant may, at no cost to Landlord, reasonably contest the legal validity or amount of any taxes, assessments, or charges for which Tenant is responsible under this Lease, and institute such proceedings as Tenant considers necessary; provided, however, that Tenant shall at all times protect Landlord from foreclosure of any lien, and that Landlord shall not be required to join in any proceeding or contest brought by Tenant.

## 5. USE OF PREMISES: OPERATION

A. The Premises shall be used by Tenant to deliver to men and women with substance abuse disorders treatment programs including intensive outpatient day treatment, an evening treatment program for people working or going to school, case management services, associated mental health treatment, physical health screening and drug testing. Tenant may add new program activities with written approval from the City 30 days prior to commencement and such permission will not be unreasonably withheld so long as the majority of the programs held on the Premises focus on providing primary and ancillary services for men and women with substance abuse disorders.

B. Business may be conducted with the public on the Premises Monday through Friday, 8:00 a.m. – 8:00 p.m. provided that Tenant shall have obtained all required permits.

C. Tenant shall operate its business on and about the Premises in a manner consistent with the use permitted herein and the standards promulgated by Landlord. Tenant shall not allow participants to congregate, smoke or make unreasonable noise on the sidewalk or any areas adjacent to the property.

D. With the exception of persons requiring ADA access, Tenant shall ensure that members of the public, including its program participants, use only the front entrance and not the rear entrance to enter the building, and shall ensure that none of its employees, volunteers,

guests, program participants or members of the public visiting the Premises, shall congregate or smoke in the Common Area or adjacent parking lot at the rear of the Premises.

**E.** Tenant will comply with all applicable safety standards in effect at any given time, and take all necessary steps to ensure that its participants are properly supervised to prevent injury to participants and others. Tenant will provide adequate supervision of the participants at all times while using the Premises.

**F.** Landlord shall have no responsibility for Tenant's equipment that may be lost, stolen, or damaged.

**G.** Tenant agrees to cooperate with the City in promoting community participation in Tenant's programs and activities held on the Premises.

**H.** Tenant shall not, without the written consent of Landlord:

1. Place, construct or maintain in, on, or about the Premises any advertisement media, including without limitation, searchlights, flashing lights, loudspeakers, or other similar media or device;

2. Place or permit the use in or on the Premises of any video games, pinball machines or other devices or equipment for amusement or recreation, or any vending machines, newspaper racks or other coin operated devices (excepting pay telephones).

3. Warehouse or stock on the Premises any goods, wares or merchandise other than that which is directly related to the Tenant's use of the Premises;

4. Store, display or sell goods or merchandise on the Property or place or permit portable signs or other devices to be stored or to remain on the Property;

5. Use or permit any portion of the Premises, inside or outside the building, to be used as living or sleeping quarters or for sleeping; and

6. Sell, distribute, display, or offer for sale any item, which, in Landlord's good faith judgment, may tend to detract from the image of the Annex.

**I.** Tenant shall not do or permit to be done in, on, or about the Premises anything which is prohibited by or may conflict with any law, statute, ordinance or governmental rule or regulation now in force or hereafter enacted or promulgated, which is prohibited by the standard forms of special form or commercial general liability insurance or which may cause a cancellation of any insurance policy covering the Premises or any of its contents, or (except with the prior written consent of Landlord) which may increase the existing rate of or affect any special form or commercial general liability insurance or other insurance upon the Premises, or any of its contents. In the event Tenant does or permits to be done anything or keeps or permits to be kept anything on or about the Premises which increases the existing rate of such insurance upon the Premises or any of its contents, Tenant shall pay the amount of any such increase

promptly upon Landlord's demand. Tenant shall not do or permit anything to be done which will in any way obstruct or interfere with the rights of other lawful users of the Premises, including, without limitation, tenants, their employees or invitees, disturb or annoy them, or use or allow the Premises to be used for any improper, unlawful or objectionable purpose. Tenant shall not maintain or permit any nuisance in or about the Premises or commit or suffer to be committed any waste in or upon the Premises.

**J.** No auction, fire, bankruptcy, distress, clearance, or going-out-of-business sale shall be conducted on the Premises nor shall any sign or advertisement regarding such activity be posted in or about the Premises.

**K.** Tenant shall not use or permit the Premises to be used in any manner or permit anything to be brought into or kept therein which would (i) violate the certificate of occupancy for the Premises; (ii) make it impossible or extraordinarily difficult to obtain special form coverage, commercial general liability or other insurance required to be furnished by Tenant under this Lease; (iii) cause structural injury to any part of the Premises or the Building; (iv) impair or interfere with the proper operation and maintenance of the Premises; or (v) violate any of Tenant's other obligations under this Lease.

**L.** If any governmental license or permit, other than a certificate of occupancy, shall be required for the proper and lawful conduct of Tenant's business, Tenant shall procure and maintain such license or permit and submit the same for inspection by Landlord. Tenant at all times shall comply with the terms and conditions of each such license or permit.

**M.** Nothing shall be done in or about the Premises by Tenant or anyone having a contractual relationship with Tenant that will result in substantial interference, by themselves or third parties, with normal operation and use of the Premises or the means of ingress and egress thereto ("Substantial Interference"). Tenant shall use every effort to eliminate Substantial Interference, including legal action. If Tenant fails to bring an immediate halt to any Substantial Interference, Landlord shall have the right (i) to take action and require Tenant to undertake and eliminate such Substantial Interference and (ii) to commence any legal action to eliminate such Substantial Interference. Any agreement entered into by Tenant with regard to use of the Premises shall contain a provision reserving to Tenant all of the necessary rights and remedies to permit Tenant to comply with its obligations under this provision and authorizing Landlord to enforce the terms of such provision if Tenant fails to do so.

**N.** The Tenant acknowledges that the Annex is a City of Berkeley Designated Landmark and that all construction, alterations and/or modifications to the building must comply with Chapter 3.24 of the Berkeley Municipal Code, including obtaining permits and approval of the Landmarks Preservation Commission.

## **6. SERVICES**

**A.** Tenant shall make all arrangements for and pay for all utilities and services, including electricity, gas, garbage, water, sewer and telephone, and all fees and periodic charges

related thereto.

**B.** Landlord makes no representation or warranty that the supply of any utility or service to the Premises and/or the Building will not be interrupted, delayed or reduced.

**C.** Landlord shall not be liable for damages to either person or property; nor shall Landlord be deemed to have evicted Tenant; nor shall there be any abatement of any rent; nor shall Tenant be relieved from performance of any covenant on its part to be performed hereunder by reason of any (i) breakdown of equipment or machinery utilized in supplying utilities or services; (ii) interruption of or failure to supply or delay in supplying any such utilities or services; (iii) the limitation or restriction on use of water, electricity gas, or telecommunications service serving the Premises; or (iv) failure to repair or cure any of the foregoing, except in the case of Landlord's gross negligence or willful misconduct.

**D. PARKING** – Tenant acknowledges that this lease does not include any parking spaces.

**7. OBLIGATION OF TENANT TO REMOVE PERSONAL PROPERTY.**

Upon the expiration of this Agreement, Tenant is obligated to remove any personal property placed in the Premises by the Tenant. If any personal property does remain on the Premises upon the expiration of the Agreement it will be considered abandoned personal property, which will be removed, by the City and the Tenant will be responsible for all costs associated with removing the personal property from the Premises.

**8. ALTERATIONS AND IMPROVEMENTS**

**A.** Tenant acknowledges that Landlord owns the Premises. Tenant accepts the Premises from Landlord in its "as is" condition, the conditions that exist as of the Effective Date of this Lease. Tenant acknowledges that Landlord makes no representation or warranty concerning (i) the physical condition of the Premises; (ii) the Premises suitability for Tenant's proposed use; or (iii) the presence of any Hazardous Substance in or about the Property or the Premises, except as otherwise expressly set forth in this Lease. Landlord has encouraged Tenant to make its own physical inspection of all aspects of the Property and the Premises and to conduct its own investigation as to the suitability of the Property and the Premises for Tenant's use.

**B.** Upon the execution of this Lease, Landlord approves and requires that Tenant complete all of the improvements to the Premises listed on Exhibit "C" and that Tenant shall complete the improvements within the timeframe as stated in Exhibit "C" (Tenant's Work). Tenant shall not make any alterations, additions or improvements to the Premises (i) costing in excess of \$5,000 for any single instance or \$15,000 in the aggregate for any twelve (12) consecutive months or (ii) affecting the Building structure or utility systems, or attach any fixture or item of equipment thereto without Landlord's prior written consent except for the improvements listed in Exhibit "C". All such alterations, additions, or improvements shall be made at Tenant's sole expense in accordance with Landlord's General Design Requirements (if any) and the plans and specifications (including specifications for materials to be used in connection therewith) and a statement of the estimated cost of such work submitted to and

approved by Landlord (collectively the "Plans and Specifications"). If the cost thereof exceeds \$5,000 for any single instance, or if such Tenant's Work involves the Building structure or utility systems, any contractor or person employed or used by Tenant must be a licensed contractor. Landlord, in its sole discretion, shall approve or disapprove Tenant's request and may disapprove Tenant's use of any materials or substances, including but not limited to asbestos and fiber glass, which Landlord, in its sole discretion, deems potentially hazardous, toxic or threatening to health. To the extent that Tenant's Work shall require a building permit or other permits from the City of Berkeley and/or any other governmental agency, Tenant shall not perform any of Tenant's Work until Tenant has obtained all requisite permits. Tenant further shall comply with all prevailing wage requirements of California Labor Code Sections 1720 et seq., to the extent such requirements are applicable to Tenant's work.

C. Except as otherwise expressly provided in this Lease, Tenant shall not repair, replace or modify any utility system located within the Building without the Landlord's prior written consent. Tenant is responsible for the repair of any damage to any utility system, structural element of the Building(s), facilities of Landlord or any other facilities arising out of Tenant's construction activities or Tenant's negligence or willful misconduct; provided, however, such provision is not intended to and shall not be interpreted to make any other person or entity a third party beneficiary thereof.

D. This Lease specifically prohibits Tenant, or any other party, from expanding uses or structures allowed on the Premises beyond those designated in use permits approved by the City of Berkeley. Notwithstanding approval of any new Use Permit allowing expansion, or any future expansion of the uses in existing buildings, or additions to existing buildings, or construction of any new buildings, or moving existing buildings onto the Premises, are all subject to the prior written approval of the Landlord (with the exception of Exhibit "C") and all improvements (including Exhibit C Improvements) are subject to the environmental review and permit regulations and approvals of same by all applicable local, state, and federal agencies.

E. If Tenant proposes to make or construct any alterations, improvements, additions or fixtures (other than Exhibit C Improvements) that affect any portion of the Premises or any structures located on the Premises that are allowed under an existing use permit, Tenant shall first provide the Landlord with thirty (30) days prior written notice. If Landlord raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed, provided Tenant obtains all required permits.

F. Except for Exhibit C Improvements, Tenant shall not substantially deface or change any floors, walls, ceilings, roofs, or partition any of the structures or improvements on the Premises without first providing thirty (30) days written notice to Landlord. If Landlord raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed, provided Tenant obtains all required permits. Except as may be specifically approved in writing by Landlord, Tenant shall require all contractors to provide a labor and materials bond for the full amount of any contract for improvements that exceed \$50,000, including any applicable Exhibit C Improvements. Tenant shall pay, when due, all sums of money that may be due or become due for any labor, services, materials, supplies or equipment furnished to or for Tenant in, at, upon or about the Premises and which may be secured by any mechanic's, material men's or other lien against the Premises or Landlord's interest therein.

G. All alterations, improvements or additions that are now or in the future attached permanently to the Premises shall be the Property of Landlord and shall remain with the Property at the termination of this Lease, except that Landlord can elect within thirty (30) days of the termination of the Lease to require Tenant, at its cost, to remove any equipment that Tenant has affixed to the Premises.

1. Tenant agrees that to the extent it is required to comply with the prevailing wage requirements, Tenant shall assure that all workers are paid the prevailing rate of per diem wages, and travel and subsistence payments (defined in applicable collective bargaining agreements filed in accordance with Section 1773.8 of the California Labor Code), in effect on the date of Landlord's first approval of a building permit or other approval of the work. Copies of the applicable prevailing rate of per diem wages are on file at Landlord's principal office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the Property. Tenant, as a penalty to Landlord, shall forfeit Twenty-Five Dollars (\$25) for each calendar day, or portion thereof (or such other sum as specified from time to time by Section 1775 of the California Labor Code), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Tenant.

2. Tenant agrees to keep or cause to be kept by each contractor and subcontractor an accurate payroll record for each worker employed on Tenant's Work covered by this subparagraph G showing all of the information specified in subsection (a) of Section 1776 of the California Labor Code. All such payroll records shall be certified, available for inspection and filed in accordance with the procedures specified in subsections (b)-(e) inclusive of Section 1776 of the California Labor Code. In the event of noncompliance with the foregoing requirements concerning payroll records which continues for more than ten (10) days after Landlord gives Tenant written notice specifying in what respects Tenant must comply, Tenant shall forfeit, as a penalty to Landlord, for each worker Twenty-Five Dollars (\$25) for each calendar day, or portion thereof, until strict compliance is effectuated. Tenant shall be responsible for complying with Section 1777.5 of the California Labor Code concerning apprenticeable occupations, with respect to all work covered by that section. For purposes of the prevailing wage requirements of this subparagraph, Tenant shall be deemed to be a "contractor" as that term is used in Sections 1720 et seq., of the California Labor Code. Except where the context otherwise requires, the definitions of terms and phrases contained in the State prevailing wage law, Sections 1720 et seq., of the California Labor Code, and in the implementing administrative regulations, shall apply to the same terms and phrases which are used in the prevailing wage requirements of this subparagraph G.

## 9. LIENS

A. Tenant shall keep the Premises and the Building free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant. In the event that Tenant shall not cause any such liens to be released of record, Landlord shall have, in addition to all other remedies provided herein or by law, the right (but not the obligation) to cause the same

to be released by such means as Landlord shall deem proper, including payment of the claim giving rise to such lien. All sums paid and all expenses incurred by Landlord in connection therewith shall be reimbursed by Tenant promptly on demand. Landlord shall have the right to post and keep posted on the Premises any notices (including, without limitation, notices of non-responsibility pursuant to California Civil Code Section 3094) that Landlord may deem proper for protection of Landlord and the Premises. Tenant shall give Landlord at least ten (10) business days' prior notice of the date of commencement of any Tenant's work on or in the Premises to allow Landlord to post such notices.

**10. TENANT AND LANDLORD MAINTENANCE OBLIGATIONS**

**A.** Except as provided for in subparagraph F below, Tenant agrees that during the entire term of this Lease, at its own cost and expense, it shall keep and maintain the Premises, and all leasehold improvements, fixtures, furniture, and other improvements located on the Premises, in good-quality order, repair and condition. Except as otherwise provided in this Lease, Tenant shall perform, at its own cost and expense, any and all maintenance, removal of graffiti, repairs, or rehabilitation to the Building(s), whether required by deterioration or by operations of Tenant or otherwise. This obligation includes any repairs to the roof. Tenant shall ensure that any graffiti on or about the Premises is abated within 72-hours of being discovered by Tenant, or within 48-hours of notification by City.

**B.** To the extent applicable, Tenant hereby waives the provisions of Civil Code Sections 1941 and 1942, and any other provision of law now or hereafter in effect, with regard to the habitability of the Property and the Premises.

**C.** "Good-quality order, repair and condition", as used herein, shall mean the maintenance, repair, or renovation of the Building, equipment, furniture, fixtures, outdoor lighting, signage, and appurtenances necessary to keep and maintain the Building in efficient and attractive condition, given the nature and age of the Building, at any time during the term of this Lease.

**D.** Prior to trimming any trees on the property, Tenant must obtain Landlord's permission.

**E.** Tenant shall provide its own janitorial service for the Premises, and all of Tenant's rubbish shall be removed by Tenant to such location(s) on the Premises as may be designated by Landlord for pick-up and disposal.

**F.** In the event of a dispute that Landlord and Tenant cannot informally resolve, Tenant's only remedy against Landlord shall be the right to terminate this Lease, effective thirty (30) days from the delivery of written notice to Landlord.

**G.** Nothing in this Paragraph 10 shall be deemed to affect or impair Landlord's rights under Paragraph 9 of this Lease. Tenant acknowledges that Landlord has no obligation and has made no promises to alter, remodel, improve, repair, decorate or paint the Building or to improve the Premises, or any part thereof. Landlord has made no representations respecting the condition of the Building, or the Premises, except as specifically set forth in this Lease.



**11. ENVIRONMENTAL**

**A.** Lessee shall follow all environmental rules and regulations as they apply to City agencies. Specifically, Lessee shall minimize waste and recycle and compost, as per Recycling and Composting Guidelines for City Buildings. Guidelines for creating a recycling program are attached as Attachment 2. Lessee must participate in a recycling service provided by the City or provide an acceptable alternative with the approval of the City's Recycling Supervisor. To that end, Lessee shall:

Assign someone to be in charge of its recycling programs, and to communicate needs and questions to the City's Solid Waste Management Division.

- i. Recycle corrugated cardboard, office papers and beverage containers (glass bottles, plastic bottles, and cans).
- ii. Place collection containers for paper at desk sides and copy rooms, and break rooms. (See Attachment 2 for details.)
- iii. Provide a location for custodians to pick up flattened empty cardboard boxes. A central paper container is acceptable.
- iv. Educate employees, volunteers and participants about recycling procedures.
- v. Cooperate with the custodial service to make recyclables available for collection.
- vi. Recycle batteries and office equipment (contact the City's Solid Waste Management Division for information about vendors).
- vii. Cafeterias and commercial kitchens may participate in the City's organics recycling program, with the approval of the City's Solid Waste Supervisor. City provides containers and training.
- viii. Lessee shall recycle construction waste from tenant improvements.
- ix. Lessee shall conserve energy as specified in the City Manager's January 11, 2001 memorandum as shown in Attachment 3.

**12. DAMAGE OR DESTRUCTION**

**A.** In the event the Premises are damaged by fire, flood, earthquake, act of God, the elements, or other casualty, then (unless this Lease is terminated pursuant to this Paragraph 12) Tenant shall forthwith repair the same, at its sole expense. In this event, Tenant shall be solely responsible for the loss, repair, and replacement of its all equipment and leasehold improvements.

**B.** Anything in subparagraph A to the contrary notwithstanding, neither Tenant nor Landlord shall have any obligation to repair or rebuild the Premises or the Buildings following damage or destruction thereto if the damage or destruction is due to any cause or casualty other than one against which the responsible party is required to carry insurance or actually does carry insurance and such party reasonably estimates that the cost of repair or rebuilding exceeds ten percent (10%) of the then replacement cost of the Premises or Buildings, as the case may be. If the responsible party elects not to repair any damage or destruction pursuant to this provision, such party shall give the other party notice of such election within sixty (60) days after the date of such damage or destruction; and this Lease shall terminate as of the date of such damage or destruction.

C. Tenant hereby waives the provisions of California Civil Code Sections 1932 and 1933 and any other statutes now or hereafter in effect which relate to termination of a lease when leased Premises is damaged or destroyed and agrees that such event shall be governed by the terms of this Lease.

**13. INDEMNIFICATION**

A. To the fullest extent permitted by law, Tenant shall (1) immediately defend and (2) indemnify Landlord, and its directors, officers, and employees from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with the Lease. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Tenant's obligation to indemnify applies regardless of whether a liability is a result of the negligence of any other person, unless it is adjudicated that the liability is caused by the sole active negligence or sole willful misconduct of an indemnified party.

B. The duty to defend is a separate and distinct obligation from the Tenant's duty to indemnify. The Tenant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the Landlord, the Landlord and its directors, officers, and employees, immediately upon submittal to the Tenant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. A determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the Tenant from its separate and distinct obligation to defend Landlord. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Tenant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Tenant may submit a claim to the Landlord for reimbursement of reasonable attorneys' fees and defense costs.

C. The review, acceptance or approval of any of Tenant's work or work product by any indemnified party shall not affect, relieve or reduce the Tenant's indemnification or defense obligations. This Section survives the termination of this Lease. The provisions of this Section are not limited by and do not affect the provisions of this Lease relating to insurance.

D. Liabilities subject to this Section include any claim of discrimination or harassment, including but not limited to sexual harassment, arising from the conduct of the Tenant or any of the Tenant's officers, employees, agents, licensees, or subcontractors. In the event of a discrimination or harassment complaint against any employee, agent, licensee or subcontractor of the Tenant or its subcontractors, the Tenant shall take immediate and appropriate action in response to such complaint, including, but not limited to termination or appropriate discipline of any responsible employee, agent, licensee or subcontractor.

E. TENANT ACKNOWLEDGES THAT THE PREMISES MAY BE UNSAFE

AND SUBJECT TO SEVERE DAMAGE DURING ANY MAJOR EARTHQUAKE. TENANT OCCUPIES THE BUILDING AT ITS OWN RISK. TENANT HEREBY RELEASES AND DISCHARGES THE CITY OF BERKELEY AND ITS EMPLOYEES, AGENTS, AND CONTRACTORS, FROM ALL ACTIONS, CLAIMS OR DEMANDS THAT TENANT, ITS HEIRS, GUARDIANS, AND LEGAL REPRESENTATIVES NOW HAVE OR MAY HAVE IN THE FUTURE FOR DAMAGE OR INJURY RESULTING FROM AN EARTHQUAKE.

**14. INSURANCE**

A. Tenant, at its sole expense, shall procure and maintain the following insurance:

1. Commercial general liability insurance insuring Tenant against any liability arising out of its use, occupancy, repair or maintenance of the Premises, , with a combined single limit of not less than \$1,000,000 for injury to or death of one or more persons in any one accident or occurrence and Property damage in any one accident or occurrence. Such comprehensive general liability insurance shall include fire liability coverage and public liability and Property damage insurance, including personal injury, broad form Property damage, blanket contractual, and other coverage as may be reasonably required by Landlord. Landlord shall have the right, from time to time, to require Tenant to increase the amount of its comprehensive general liability insurance coverage if, in Landlord's reasonable opinion, the amount of such coverage is not sufficient in light of the risks insured and Tenant's use of the Premises.

2. Special form Property insurance for cost of damage to the Premises, including, without limitation, alterations, Tenant's Work, trade fixtures, , and, during any term of construction of Tenant's Work, builders' All-Risk Insurance. Such insurance shall include coverage for vandalism and malicious mischief and cost of demolition and increased cost of construction by reason of changes in applicable ordinances/laws and shall not contain a co-insurance clause.

B. All policies of insurance and all renewals thereof shall be approved as to form and sufficiency by Landlord's Risk Manager and shall be issued by good and responsible companies qualified to do and doing business in California and rated A+: XIII or better in the most recent version of Best's Insurance Guide. Each of the required insurance coverages except for workers compensation (i) shall name Landlord and each of its Affiliates as additional insureds and, with respect to casualty insurance, as their respective interests may appear and (ii) shall provide that it may not be canceled or altered by the insurer in such manner as to adversely affect the coverage unless sixty (60) days' prior notice is given by certified mail to Landlord at the address set forth in Paragraph 34 below, or to such place as Landlord may from time to time designate in a notice to Tenant.

C. An original certificate of each policy of insurance shall be delivered to Landlord prior to the date the Premises is delivered to Tenant and from time to time during the Term. If Tenant shall fail to procure or maintain any insurance required hereunder or shall fail to furnish to Landlord any duplicate policy or certificate, Landlord may obtain such insurance; and any premium or cost paid by Landlord for such insurance shall be reimbursed by Tenant promptly upon Landlord's demand. Tenant shall make good faith efforts to ensure that at least sixty (60) days prior to the expiration of any such policy, an extension endorsement showing that such

insurance coverage has been or will be renewed or extended shall be delivered to Landlord and if, despite such good faith efforts, such extension endorsement cannot be timely delivered, Tenant shall cause to be delivered to Landlord within said time other reasonable documentary evidence of renewal of coverage and shall continue exercising diligent efforts to deliver to Landlord the required extension endorsement. If such coverage is canceled or reduced, Tenant, within ten (10) days after receipt of written notice of such cancellation or reduction in coverage but in no event later than the effective date of cancellation or reduction, shall deliver to Landlord a certificate showing that the required insurance has been reinstated or provided through another insurance company(ies). Upon Tenant's failure to so deliver such certificate, Landlord may, without further notice and at its option, (1) exercise Landlord's rights as provided in this Lease or (2) procure such insurance coverage at Tenant's expense and Tenant shall promptly reimburse Landlord for such expense.

**D.** If any of the insurance required in this Paragraph 13 is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term and without lapse for a period of not less than five (5) years beyond the termination of this Lease, to the effect that should occurrences during the Term give rise to claims made after termination of this Lease, such claims shall be covered by such claims-made policies.

**E.** Each of Tenant's Property insurance policies insuring the Premises and Tenant's Property in the Premises shall include a waiver of the insurer's right of subrogation against Landlord, or, if such waiver should be unobtainable or unenforceable, (i) an express agreement that such policy shall not be invalidated if the assured waives, before the casualty, the right of recovery against any party responsible for a casualty covered by the policy or (ii) any other form of permission concerning the assured's right to waive its right of recovery. If such waiver, agreement or permission shall not be, or shall cease to be, obtainable, Tenant shall so notify Landlord promptly after learning thereof.

**F.** Tenant hereby releases Landlord with respect to any claim (including a claim for negligence) which Tenant might otherwise have against Landlord for loss, damage or destruction of Tenant's Property occurring during the Term to the extent to which Tenant is insured under a policy (ies) containing a waiver of subrogation or agreement or permission to release liability, as provided in E. above. If, notwithstanding the recovery of insurance proceeds by Tenant for such loss, damage or destruction, Landlord is liable to Tenant with respect thereto or is obligated under this Lease to make replacement, repair, restoration or payment, then (provided Tenant's right of full recovery under its insurance policies is not thereby prejudiced or otherwise adversely affected) the amount of the net proceeds of the Tenant's insurance against such loss, damage or destruction shall be offset against Landlord's liability to Tenant therefore or shall be made available to Landlord to pay for replacement, repair or restoration, as the case may be. Nothing contained herein shall relieve either party of any duty to repair, restore or rebuild imposed elsewhere in this Lease or shall nullify any abatement of rent provided for elsewhere in this Lease.

**G.** If a death, serious personal injury, or substantial Property damage occurs in connection with the performance of this Lease, Tenant shall immediately notify the Landlord's Risk Manager. If any accident occurs in connection with this Lease, Tenant shall promptly submit a written report to Landlord, in such form as the Landlord may require. This report shall

include the following information: 1) name and address of the injured or deceased person(s); 2) name and address of Tenant's subtenant, if any; 3) name and address of Tenant's liability insurance carrier; and 4) a detailed description of the accident, including whether any of Landlord's equipment, tools or materials were involved.

H. If Tenant employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the Landlord. The workers' compensation insurance shall: provide that the insurance carrier shall not cancel, terminate, or otherwise modify the terms and conditions of said insurance except upon thirty (30) days prior written notice to the Landlord; provide for a waiver of any right of subrogation against Landlord to the extent permitted by law; and be approved as to form and sufficiency by the Landlord's Risk Manager.

I. Tenant shall forward all insurance documents to:

City of Berkeley  
Real Property Administrator  
1947 Center Street, 4<sup>th</sup> Floor  
Berkeley, CA 94704

## 15. COMPLIANCE WITH LAWS

A. Tenant, at its sole expense, shall promptly comply with all applicable laws, ordinances, rules, regulations, permits or requirements now or hereafter in effect (whether foreseen or unforeseen by Landlord or Tenant), with the requirements of any board of fire underwriters or similar body now or hereafter constituted; with any occupancy certificate issued by any public officer and with the provisions of all recorded documents affecting the Premises, insofar as any of the foregoing relate to or affect the condition, use or occupancy of the Premises or the Building. Such compliance by Tenant shall include, without limitation, compliance with all obligations to alter, maintain, or restore the Premises (and, as applicable, the Building), or construct improvements in or to the Premises, regardless of cost and regardless of when during the term of the Lease the work is required.

B. Tenant acknowledges that conducting its operations at the Premises and making certain alterations and improvements may require an authorization, approval or permit (collectively, "Regulatory Approval") from a governmental authority having jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any such Regulatory Approval, and Tenant shall not seek any Regulatory Approval without first obtaining the approval of Landlord, except for items listed on Exhibit "C". All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Tenant. Tenant shall be solely responsible for complying with any and all conditions imposed by regulatory agencies as part of a Regulatory Approval; however, Landlord shall not take any action that would materially interfere or prevent Tenant from complying with all such conditions. Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval shall be paid and discharged by Tenant, and Landlord shall have no liability, monetary or otherwise, for said fines and penalties, except to the extent that such fines or penalties were caused by the willful acts or omissions of Landlord. To the fullest extent permitted by law, Tenant agrees to indemnify and hold Landlord and its officers, agents and employees harmless from and against

any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which Landlord may incur as a result of Tenant's failure to timely obtain or comply with the terms and conditions of any Regulatory Approval. Landlord agrees to cooperate (but only to the same extent and in the same manner as a non-public entity could so cooperate, and not as an exercise of Landlord's police or regulatory power) with Tenant in filing, processing and obtaining all Regulatory Approvals, and upon request of Tenant, to join with Tenant as co-applicant in filing, processing and obtaining all Regulatory Approvals; provided, however, that Landlord may refuse to file, process or obtain Regulatory Approvals or to join Tenant as a co-applicant if Landlord determines in its sole and absolute discretion that it is not in Landlord's best interest to do so. Nothing contained herein shall be deemed to limit or otherwise constrain Landlord's discretion, powers, and duties as a regulatory agency with certain police powers.

C. Tenant understands and agrees that Landlord is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a regulatory agency of the City of Berkeley with certain police powers. Landlord's legal status shall in no way limit the obligation of Tenant to obtain any required approvals from Landlord's departments, boards, or commissions that have jurisdiction over the Premises. By Landlord's entering into this Lease, neither Landlord nor any of City Council, boards, commissions, agencies, departments, or Affiliates obligates itself to any other governmental agent, board, commission or agency, or to Tenant, or to any other individual or entity, with regard to any discretionary action relating to development or operation of the Premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required or desirable for the improvement, alteration, or operation of the Premises. By entering into this Lease, Landlord is in no way modifying or limiting the obligation of Tenant to cause the Premises to be used and occupied in accordance with all laws.

## 16. ASSIGNMENT AND SUBLEASE

A. Any provision of this Lease to the contrary notwithstanding, Tenant shall not directly or indirectly, by operation of law or otherwise, transfer, assign, pledge, encumber or hypothecate this Lease or all or any portion of the Premises or Tenant's interest in and to the Premises (collectively, an "Assignment") or sublet the Premises or any portion thereof or permit the Premises or any portion thereof to be used, occupied or managed by anyone other than Tenant pursuant to any Lease, use or concession agreement or otherwise (collectively, a "Sublease") without first obtaining Landlord's written consent. Any assignment, encumbrance, or sublease without Landlord's written consent shall be voidable and, at Landlord's election, shall constitute a default. City has the sole discretion to determine whether to agree to any sublease or assignment. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph.

B. Neither this Lease nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Tenant, in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Tenant or by any process of law. Possession of the Premises shall not be divested from Tenant in such proceedings or by any process of law without the prior written consent of Landlord.

C. Tenant expressly waives any rights that it might otherwise be deemed to possess

pursuant to applicable law, including without limitation, Section 1997.040 of the California Civil Code, to limit any remedy of Landlord pursuant to Section 1951.2 or 1951.4 of the Code by means of proof that enforcement of a restriction on use of the Premises would be unreasonable.

**17. INSPECTION**

Landlord may enter the Premises at all reasonable times (with reasonable advance notice except in case of emergency) (i) to inspect the same; (ii) to exhibit the same to prospective purchasers, mortgagees or tenants; (iii) to conduct tests, inspections and surveys to determine whether Tenant is complying with all of its obligations hereunder; (iv) to post notices of nonresponsibility or other notices that may be permitted hereunder; (v) to post "to Lease" signs of reasonable size upon the Premises during the last ninety (90) days of the Term; and (vi) to make repairs required or permitted to be made by Landlord or repairs to any adjoining space or any utility systems or to make repairs, alterations or additions to any other portion of the Building; provided, however, that all such work shall be done as promptly and with as little interference to Tenant as reasonably possible. Tenant hereby waives all claims against Landlord for any injury or inconvenience to or interference with Tenant's business or any loss of occupancy or quiet enjoyment of the Premises resulting from Landlord's entry into the Premises or any work performed therein by Landlord. Landlord shall at all times have a key to all doors in and about the Premises (excluding Tenant's vaults, safes and similar areas designated by Tenant in writing in advance), and Landlord shall have the right to use any and all means which Landlord may deem proper in an emergency to obtain entry to the Premises. Tenant also shall provide Landlord with written notice of the name, address, telephone number, and Tenant's account number of the burglar alarm company (if any) utilized by Tenant for the Premises. Any entry to the Premises by any of said means or otherwise shall not under any circumstances be deemed a forcible or unlawful entry into or a detainer of the Premises or an eviction (actual or constructive) of Tenant from the Premises.

**18. DEFAULT**

The occurrence of any one of the following shall constitute an event of default on the part of Tenant:

A. Failure To Use Premises. Failure to use the Premises as specified in Paragraphs 5 and 6.

B. Nonpayment of Rent. Failure to pay any installment of rent or any other sum due and payable hereunder upon the date when such payment is due, such failure continuing for a period of five (5) days after written notice of such failure; provided, however, that Landlord shall not be required to provide such notice more than twice during any consecutive twelve (12) months with respect to non-payment of any portion of rent, the third such non-payment during any consecutive twelve (12) months constituting an event of default without requirement of notice.

C. Other Obligations. Failure to perform any obligation, agreement or covenant under this Lease, such failure having continued for thirty (30) days after notice of such failure from Landlord or such longer period as is reasonably necessary to remedy such default, provided that Tenant has commenced to remedy the default within such thirty (30) day period and shall

continuously and diligently pursue such remedy until such default is cured.

**D. General Assignment.** A general assignment by Tenant for the benefit of creditors.

**E. Bankruptcy.** The filing of a voluntary petition in bankruptcy by Tenant, or the filing of an involuntary petition by Tenant's creditors, which involuntary petition remains undischarged for a period of thirty (30) days. In the event that under applicable law the trustee in bankruptcy or Tenant has the right to affirm this Lease and to continue to perform the obligations of Tenant hereunder, such trustee or Tenant, in such time period as may be permitted by the bankruptcy court having jurisdiction, shall cure all defaults of Tenant hereunder outstanding as of the date of affirmance and shall provide to Landlord such adequate assurances as may be necessary to ensure Landlord of the continued performance of Tenant's obligations hereunder. Any transferee (by operation of law or otherwise) must provide Landlord with adequate assurance of its future performance under this Lease. In the event of Tenant's bankruptcy, insolvency or reorganization, the parties specifically intend that the actions of the trustee or Tenant in assuming and/or assigning this Lease shall be governed by Section 365 of Title 11 of the United States Code applicable to shopping center leases.

**F. Receivership.** The employment of a receiver to take possession of all or substantially all of Tenant's assets in the Premises.

**G. Insolvency.** The attachment, execution or other judicial seizure of all or substantially all of Tenant's assets in or on the Premises; the admission by Tenant in writing of its inability to pay its debts as they become due; the filing by Tenant of a petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future law or regulation; the filing by Tenant of an answer admitting or failing timely to contest a material allegation of a petition filed against Tenant in any such proceeding or if, within thirty (30) days after the commencement of any proceeding against Tenant seeking reorganization or arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future law or regulation, such proceeding shall not have been dismissed.

**H. Release of Hazardous or Toxic Substances or Materials and Other Environmental Impacts.** Any release or discharge in, on, under, around, or from the Premises and/or by Tenant, its agents or employees of Hazardous Substances which has not been fully remediated within ten (10) days after such release or discharge.

**I. Illegal Drugs.** Any use, sale, release or discharge of any illegal drug or controlled substances on the Premises.

**J. Non-compliance of with lease term.** Failure to perform any of the obligations and improvements listed on Exhibit C, such failure continuing for 30 days after notice from the landlord of said default.

**K. Failure to Comply with Council requirements.** Failure to comply with subparagraph 5.C of the Lease and failure to provide the "Additional Required Improvements" set forth in Exhibit C.



**19. REMEDIES UPON DEFAULT**

**A. Termination.** In the event of the occurrence of any event of default, Landlord shall have the right immediately to terminate this Lease by written notice and at any time thereafter to recover possession of the Premises or any part thereof and to expel and remove Tenant, any other person or party occupying the same and all Premises located therein, by any lawful means and to reenter the Premises without prejudice to any of the remedies that Landlord may have under this Lease or under law or equity.

**B. Continuation After Default.** In the event of any default, this Lease shall continue in effect for so long as Landlord does not terminate this Lease under subparagraph A above. In such case, Landlord may enforce all its rights and remedies under this Lease, including without limitation, the right to recover rent as it becomes due, and all of its rights and remedies under law. Acts of maintenance, preservation, efforts to relet the Premises for Tenant's account or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease shall not constitute an election to terminate this Lease or Tenant's right to possession.

**C. Damages Upon Termination.** Should Landlord terminate this Lease pursuant to subparagraph A above, in addition to any other rights and remedies to which it may be entitled under applicable law, Landlord shall be entitled to recover from Tenant: (i) the worth at the time of the award of the unpaid rent and other amounts which had been earned at the time of termination; plus (ii) the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rent loss that Tenant proves reasonably could have been avoided; plus (iii) the worth at the time of the award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rent loss that Tenant proves reasonably could be avoided; plus (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would likely result therefrom, including without limitation, the costs and expenses (including brokerage commissions and advertising costs) incurred by Landlord, with or without terminating the Lease, (1) in retaking possession of the Premises; (2) in cleaning and making repairs and alterations to the Premises reasonably necessary to return the Premises to good condition for the use permitted by this Lease and otherwise to prepare the Premises for reletting; (3) in removing all persons and personal property from the Premises and transporting and storing any of Tenant's personal property left at the Premises, although Landlord shall have no obligation to remove, transport, or store any of such personal property; and (4) in reletting the Premises for such term, at such rent and upon such other terms and conditions as Landlord in its sole discretion may deem advisable; plus (v) such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under California law. The "worth at the time of award" of the amounts referred to in (i) and (ii) shall be computed with interest at the maximum rate allowed by law. The "worth at the time of award" of the amount referred to in (iii) shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%).

**D. Computation of Rent For Purposes of Default.** For purposes of computing unpaid rent which would have accrued and become payable pursuant to subparagraph C above, unpaid

rent shall include the total rent for the balance of the term of the Lease.

**E. Remedies Cumulative.** All rights, privileges and elections or remedies of the parties are cumulative and not alternative to the extent permitted by law and except as otherwise specifically provided herein.

**F. No Waiver.** Landlord's waiver of any breach of a covenant or condition hereof, or Landlord's failure to declare any default immediately upon occurrence thereof or a delay in taking any action in connection therewith shall not waive such breach or such covenant or condition or any subsequent breach thereof. The subsequent acceptance of rent or other monies by Landlord shall not be deemed a waiver of any preceding default by Tenant, other than the failure of Tenant to pay the particular rent or other sum so accepted, regardless of Landlord's knowledge of such default at the time of its acceptance of rent.

**G. No Right of Redemption.** Tenant waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179 or any other present or future law in the event Tenant is evicted or Landlord takes possession of the Premises by reason of Tenant's default.

## **20. ENVIRONMENTAL OBLIGATIONS**

**A.** Tenant shall not, without Landlord's prior written consent (which consent may be granted or denied in Landlord's sole discretion), install, bring into or release or discharge in, on, under, around, or from the Premises any (i) asbestos-containing materials, (ii) electrical transformers, fluorescent light fixtures with ballasts or other equipment containing PCB's or (iii) materials which constitute hazardous, extremely hazardous or toxic materials under the Resource Conservation and Recovery Act, the California Hazardous Waste Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the California Safe Drinking Water and Toxic Enforcement Act of 1986 or any other applicable law or regulation concerning hazardous or toxic materials, (collectively "Hazardous Substances") and has not done so prior to the effective date of this Lease. Any Hazardous Substances which are used, stored, treated, disposed of or released from the Premises by Tenant or its representatives, agents, employees or invitees, shall be used, stored, treated, released and disposed of in accordance with all applicable laws and regulations.

**B.** If Tenant knows or has reasonable cause to believe that any Hazardous Substance has been released on or beneath the Premises, Tenant shall immediately notify the Berkeley Police Department and the Toxic Management Office and promptly give written notice of same to Landlord. If Tenant knows or has reasonable cause to believe that such substance is an imminent and material danger to public health or safety, Tenant shall take all actions necessary to alleviate such danger. Tenant shall provide to Landlord as promptly as possible, and in any event within five business days after Tenant first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Tenant's use thereof and concerning Hazardous Substances. Tenant shall not negotiate or enter into any settlement agreement, consent decree or other compromise in respect of Hazardous Substances affecting the Premises or the Premises without first giving Landlord prior written notice and full opportunity to appear, intervene or otherwise protect Landlord's rights and

interests.

C. Without limitation of the provisions of Paragraph 13 hereof, Tenant shall indemnify, defend and hold Landlord and its affiliates harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses which arise during or after the term of this Lease as a result of the handling of Hazardous Substances on the Premises, or by Tenant, its agents or invitees, including without limitation, all costs of monitoring, investigating, and remediation of the same, damages for diminution in the value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of any such space and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees. This indemnification by Tenant includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal or restoration work requested by Landlord or required by any federal, state or local governmental agency or political subdivision because of Hazardous Substance present in the soil or groundwater in, on or under the Premises or in any improvements. Without limiting the foregoing, if the presence of any Hazardous Substance in, on, under or about the Premises caused or permitted by Tenant results in any contamination of the Premises or, Tenant, at its sole expense, promptly shall take all action that is necessary to return the Premises to the condition existing prior to the introduction of such Hazardous Substance in, on, under or about the Premises; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions could not potentially have any material adverse effect upon the Premises. Tenant's obligations under this Paragraph 20.C. shall survive the expiration or termination of this Lease.

**21. LANDLORD'S RIGHT TO CURE**

All covenants to be performed by Tenant shall be performed at Tenant's sole cost and expense and without abatement of rent. Without limiting Landlord's rights under any other provision of this Lease, if Tenant shall fail to pay any sum of money or shall fail to perform any other act and such failure shall have become an event of default under Paragraph 18, Landlord, without waiving or releasing Tenant from any of its obligations, may make (but shall not be obligated to make) any such payment or perform any such other act. All sums so paid by Landlord and all necessary incidental costs shall be deemed additional rent and shall be payable to Landlord immediately upon Landlord's written demand.

**22. EMINENT DOMAIN**

A. If all or any part of the Premises shall be taken as a result of the exercise of the power of eminent domain, this Lease shall terminate as to the part so taken on the earlier of the dates that title vests in the condemning authority or such authority takes possession of the Premises. In the case of a partial taking, either Landlord or Tenant shall have the right to terminate this Lease as to the balance of the Premises by written notice to the other party within thirty (30) days after such date of taking; provided, however, that Tenant shall have no right to terminate this Lease unless the portion of the Premises taken shall be of such extent and nature as substantially to impede or impair Tenant's use of the balance of the Premises. In the event of any such taking, Landlord shall be entitled to all compensation, damages, income, rent, awards and interest that may be paid or made in connection with such taking. Tenant shall have no claim

against Landlord for the value of any unexpired Term; however, Landlord shall cooperate with Tenant if Tenant seeks to recover, at its sole expense, proceeds or awards paid to compensate for damage to the "goodwill" associated with Tenant's business. Any such amounts recovered shall belong to Tenant.

**B.** If any part of the Premises shall be so taken and this Lease shall not be terminated, then this Lease shall continue in full force and effect, except that the Rent shall be reduced in the same proportion that the rentable area of the Premises taken bears to the original rentable area of the Premises. Landlord, upon receipt of the award, shall make all necessary repairs and alterations (exclusive of Tenant's trade fixtures, furniture, furnishings, personal Premises, decorations, signs and contents) to restore the portion of the Premises remaining to as near its former condition as the circumstances will permit and to restore the Building to the extent necessary to constitute the portion of the Building not so taken a complete architectural unit. Landlord, in any event, shall not be required to spend for such repairs and alterations an amount in excess of the amount received by Landlord as damages for the taking of such part of the Premises and/or Building; and Tenant, at its sole cost and expense, shall make all necessary repairs and alterations to Tenant's trade and lighting fixtures, furniture, furnishings, personal Premises, decorations, signs and contents.

**C.** As used herein, the "amount received by Landlord" shall mean that portion of the award received by Landlord as damages from the condemning authority which is free and clear of all prior claims or collections by Landlord and less reasonable attorneys' and appraisers' fees and expenses.

**23. SUBORDINATION**

**A.** This Lease shall be subject and subordinated to (i) all ground or underlying leases which have been or may hereafter be executed affecting the Premises, (ii) any Declaration of Covenants, Conditions and Restrictions now or hereafter recorded affecting , all without the necessity of having further instruments executed on behalf of Tenant to effectuate such subordination.

**B.** Tenant agrees to execute and deliver upon demand such further instruments or documents as may reasonably be required by Landlord to evidence any such subordination of this Lease. Tenant hereby constitutes and appoints Landlord, as Tenant's attorney-in-fact, coupled with an interest, to execute and deliver any such instrument(s) on behalf of Tenant.

**24. NO MERGER**

The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Landlord, terminate all or any existing subleases or subtenancies or operate as an assignment to it of any or all such subleases or subtenancies.

**25. TRANSFER BY LANDLORD**

In the event the original Landlord or any successor owner of the Premises shall sell or convey the Premises or the Building, or any portion thereof that includes the Premises, all liabilities and obligations on the part of the original Landlord or such successor owner shall terminate. All

such liabilities and obligations thereupon shall be binding only upon the new owner. Tenant agrees to attorn to such new owner.

**26. ESTOPPEL CERTIFICATES**

From time to time, Tenant shall execute and deliver to Landlord promptly upon request a certificate certifying (i) that this Lease is unmodified and in full force and effect or, if there has been any modification, that this Lease is in full force and effect as modified, and stating the date and nature of each such modification; (ii) the date to which rent and other sums payable hereunder have been paid; (iii) that no notice has been received by Tenant of any default which has not been cured, except as to defaults specified in such certificate; (iv) that Landlord is not in default under this Lease and that Tenant has no claims, charges, offsets or defenses against Landlord, or specifying the nature of any such default or claim, charges, offsets or defense; and (v) such other matters as may be reasonably requested by Landlord. Any such certificate may be relied upon by any prospective purchaser, vendee, or other party. If Tenant fails to execute and deliver any such certificate within ten (10) business days after Landlord's written request, such failure, at Landlord's election, shall be conclusive against Tenant that this Lease is in full force and effect, without modification (except as may be represented by Landlord), that there are no uncured defaults in Landlord's performance, and that not more than one month's rent has been paid in advance.

**27. HOLDING OVER**

If, after the expiration of the Term of the Lease, Tenant remains in possession of the Premises with Landlord's consent all provisions of this Lease shall remain in effect with the following exceptions: (1) Tenant shall become a tenant from month-to-month, such tenancy terminable on thirty (30) days' notice given at any time by either party; and (2) the Rent shall increase to 120% of the amount of the rent when the Lease expired.

**28. CHANGES BY LANDLORD**

**A.** The description of the Premises and the location of any Premises utility system(s), including without limitation electrical, plumbing, shall be subject to such minor changes as Landlord determines to be necessary or desirable in the course of any construction performed by or under the authorization of Landlord. No such changes shall invalidate or affect this Lease. Landlord shall effect such changes using reasonable efforts not to disturb Tenant's business. Tenant shall have no claim against Landlord for abatement of rent or loss of business as a result of any such disturbance.

**B.** Landlord shall have the right in its sole discretion to, among other things, change permitted land uses, install, maintain and remove public improvements, change the arrangement, character, use or location of entrances or passageways, walkways, streets, sidewalks, parking areas, stairs, landscaping, toilets, and other facilities and portions of the Premises, and to change the name, number or designation by which the Building is commonly known. None of the foregoing shall be deemed an actual or constructive eviction of Tenant, nor shall it entitle Tenant to any reduction of rent hereunder or result in any liability of Landlord to Tenant; provided,

however, Landlord shall not unreasonably obstruct or interfere with access to or the lines of sight toward the Premises.

**29. GOVERNING LAW**

This Lease shall be governed by the laws of the State of California.

**30. SECURITY DEPOSIT**

As security for the faithful performance by Tenant of the terms, provisions, and condition of this Lease, Tenant shall deposit with Landlord an amount of **TWO HUNDRED DOLLARS (\$200)**, unless waived in whole or in part by Landlord. Such security shall be deposited on or before the Effective Date of this Lease.

If Tenant defaults in respect to any of the terms, provisions, covenants and conditions of this Lease, including but not limited to the payment of rent, Landlord may use the security deposit or any portion of it to cure the default or compensate the Landlord for all damage sustained by Landlord resulting from Tenant's default. If Landlord so uses any portion of the security deposit, Tenant will restore the security deposit to its original amount within ten (10) days after written demand from Landlord.

Landlord will not be required to keep the security deposit separate from its own funds and Tenant shall not be entitled to interest on the security deposit. The security deposit will not be a limitation on Landlord's damages or other rights under this Lease, or a payment of liquidated damages or an advance payment of the rent. If Tenant pays the rent and performs all of its other obligations under this Lease, Landlord shall return the unused portion of the security deposit to Tenant within sixty (60) days after the end of the term. Landlord may deliver the security deposit to a purchaser of the Premises and be discharged from further liability with respect to it.

**31. SIGNAGE**

The size, design, material and location of any sign, marquee, awning, decoration or other attachment, advertising material or lettering on the Premises or on the exterior of the Building (collectively "signage") shall be subject to Landlord's prior written approval. All such signage shall comply with the criteria outlined in Landlord's General Design Requirements (if any) and shall be subject to the following provisions:

**A.** Tenant, at its sole expense, shall submit to Landlord a written description of all proposed signage, including dimensions, color, proposed location and other pertinent information ("Signage Proposal"). Landlord shall review the Signage Proposal and shall notify Tenant in writing of its approval, or reason(s) for its disapproval, within thirty (30) business days after Landlord's receipt of the Signage Proposal. If disapproved, Tenant shall make all required modifications to the Signage Proposal and shall resubmit the same to Landlord within seven (7) days after its receipt of Landlord's disapproval.

**B.** Within ten (10) days after Landlord's approval of the Signage Proposal, Tenant, at its sole expense, shall cause to be prepared and submitted to Landlord two (2) sets of plans

("Sign Plans") reflecting in detail the information contained in the approved Signage Proposal. Landlord shall review the Sign Plans within thirty (30) days after Landlord's receipt of the same.

C. Upon Tenant's receipt of its sign permit from Landlord, Tenant shall construct and/or install all signage shown on the Sign Plans; in any event, however, Tenant shall complete such construction and/or installation not later than thirty (30) days after the sign permit is issued, unless otherwise agreed to by the City in writing.

D. Upon Landlord's request, Tenant immediately shall remove any signage that Tenant has placed or permitted to be placed in, on or about the Premises or Building contrary to the terms of this Paragraph 30. If Tenant fails to do so, Landlord may enter upon the Premises and remove the same at Tenant's expense. Tenant, at its sole expense, shall maintain and replace all approved signage and shall repair, at its sole expense, any damage to the Building caused by the erection, maintenance or removal of any signage, including any damage caused by Tenant's removal of its signage at the expiration or earlier termination of the Lease. Tenant also shall comply with such regulations as may from time to time be promulgated by Landlord governing the signage of all tenants in .

**32. NO PARTNERSHIP**

It is expressly understood and agreed that Landlord shall not be deemed in any way or for any purpose a partner, agent or principal of Tenant, in the conduct of its business or otherwise, or a joint venture or member of a joint enterprise with Tenant.

**33. NO WAIVER**

Landlord's waiver of Tenant's breach of any covenant or condition shall not be deemed a waiver of any subsequent breach of the same or any other covenant or condition, nor shall any custom or practice which may develop between the parties in the administration of the terms hereof be construed to waive or to lessen the right of Landlord to insist upon Tenant's performance in strict accordance with the terms of this Lease.

**34. NOTICES**

All notices, demands, consents or approvals which may or are required to be given by either party shall be in writing and shall be deemed to have been received when delivered personally or on the earlier of the date of actual receipt or two (2) business days following deposit in the United States mail, registered or certified, postage prepaid, addressed as follows:

**To Tenant:** Davida Coady, M.D.  
Options Recovery Services  
1931 Center Street  
Berkeley, CA 94704

**To Landlord:** Property Management Office

City of Berkeley  
1947 Center Street, 4<sup>th</sup> floor  
Berkeley, CA 94704

**With copies to:** City Manager  
City of Berkeley  
2180 Milvia Street, 5<sup>th</sup> floor  
Berkeley, CA 94704

Notices to Landlord regarding Hazardous Substances required by Paragraph 19 hereof shall be sent both to the above addresses and to such other place as either party may from time to time designate in a written notice to the other party, or in the case of Tenant, delivered to the Premises.

Tenant will appoint an agent to receive the service of all proceedings, demands, and notices hereunder the person in charge of or occupying the Premises at the time. If no person shall be in charge of or occupying the same, then such service may be made by attaching the same on the main entrance of the Premises

**35. COMPLETE AGREEMENT**

This Lease is intended by the parties as the final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Lease constitutes the complete and exclusive statement of its terms, and no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding involving this Lease. The language and all parts of this Lease shall be construed as a whole and in accordance with its fair meaning and not restricted for or against either party. This Lease may be modified or amended only by a written instrument signed by both parties.

**36. REQUESTS FOR CONSENT; WAIVER OF CLAIM**

Tenant hereby waives any claim for damages against Landlord that it may have based upon any assertion that Landlord unreasonably has withheld or has delayed any consent or approval, and Tenant's sole remedy shall be an action for specific performance of such provision, injunction or declaratory judgment. In the event of a final determination in Tenant's favor, the requested consent or approval shall be deemed to have been granted.

**37. INTERPRETATION**

The use of masculine, feminine, or neuter genders shall include the other genders, and the singular shall include the plural and vice-versa. Headings are intended for convenience only and shall not be referred to in construing any provision. If there is more than one party as Tenant, the obligations imposed upon Tenant shall be joint and several. If any provision(s) of this Lease shall be found, to any extent, to be invalid or unenforceable the remainder of the Lease shall not be affected thereby.



**38. SUCCESSORS AND ASSIGNS**

This Lease shall be binding upon and shall inure to the benefit of Landlord, its successors and assigns, and shall be binding upon and shall inure to the benefit of Tenant, its heirs, successors and (to the extent assignment may be permitted hereunder) assigns.

**39. AUTHORITY**

If Tenant is a corporation or partnership, each of the persons executing this Lease on behalf of Tenant covenants and warrants that Tenant is a duly authorized and existing corporation or partnership, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease and that each person signing on behalf of Tenant is authorized to do so.

**40. UNAVOIDABLE DELAYS**

**A.** In the event that Tenant or Landlord is delayed, directly or indirectly, from the performance of any act or thing required to be done or performed under the terms or conditions hereof by acts of the other party to this Lease, acts of God, fire, floods, inclement weather, unavoidable governmental action, strikes or labor difficulties of any and all kinds, shortages of or delay in the delivery of materials, acts of war, riot and civil commotion, or by any other cause beyond the reasonable control of Tenant or Landlord, as the case may be, such failure shall not be deemed to be a breach of this Lease or a violation of any such covenants or conditions and the time within which Tenant or Landlord must perform any such act shall be extended by a period of time equal to the period of delay arising from any of such causes.

**B.** Notwithstanding any provision of this Paragraph 39 or any other provision of this Lease to the contrary, it is understood and agreed that there shall be no abatement of, or delay in the commencement of, or payment of any sum due to Landlord under this Lease.

**41. TIME OF THE ESSENCE**

Time is of the essence of each and every covenant and condition of this Lease.

**42. BROKERAGE**

Landlord and Tenant hereby represent and warrant, each to the other, that they have not disclosed this Lease or the subject matter hereof to, and have not otherwise dealt with, any broker, finder or any other person, firm, corporation or other legal entity so as to create any legal right or claim of whatsoever kind or nature for a commission or similar fee or compensation with respect to the Premises or this Lease. Landlord and Tenant hereby indemnify each other against, and agree to hold each other harmless from, any liability or claim (and all expenses, including attorneys' fees, incurred in defending any such claim or in enforcing this indemnity) for a real estate brokerage commission or similar fee or compensation arising out of or in any way connected with any claimed dealings with the indemnitor and relating to the Premises or this Lease.

**43. CITY NON-DISCRIMINATION ORDINANCE**

A. Tenant hereby agrees to comply with the provisions of the Berkeley Municipal Code ("B.M.C."), including without limitation Chapter 13.26, as amended from time to time. In the performance of its obligations under this Lease, Tenant agrees as follows:

1. Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

2. Tenant shall permit Landlord access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the reasonable opinion of Landlord, are necessary to monitor compliance with this non-discrimination provision. In addition, Tenant shall fill out, in a timely fashion, forms supplied by Landlord to monitor this non-discrimination provision.

B. Tenant understands that this Lease is governed by City Council Resolution No. 58,664 – N.S.. This resolution, as may be amended from time, stipulates that Tenant's memberships policies may be reviewed by the City for compliance therewith at any time, and that unsatisfactory membership policies may result in non-renewal of this Lease or termination by the City.

**44. NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES.**

A. If Tenant provides any aid, service or benefit to others on the Landlord's behalf, Tenant shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Tenant shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the Landlord.

B. If Tenant is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Tenant shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Tenant. All of Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations, and Tenant shall be solely responsible for complying therewith.

**45. CONFLICT OF INTEREST PROHIBITED**

A. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Tenant nor any employee, officer, director,

partner or member of Tenant, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a board, a committee or commission member of Landlord, who has directly or indirectly influenced the making of this Lease.

**B.** In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 *et seq.*) no person who is a director, officer, partner, trustee, employee or consultant of Tenant, or immediate family member of any of the preceding, shall make or participate in a decision made by Landlord or any of its boards, commissions or committees, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Tenant, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).

**C.** Interpretation of this paragraph shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section 87100 *et seq.*, its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, as amended from time to time.

**46. NUCLEAR FREE BERKELEY.**

Tenant agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

**47. OPPRESSIVE STATES.**

**A.** In accordance with Resolution No. 59,853 – N.S., Tenant certifies that it has no contractual relations with, and agrees during the term of this Lease to forego contractual relations, to provide personal services to, the following entities:

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of this Lease) for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

**B.** For purposes of this Lease, the Tibet Autonomous Region and the provinces of Adu, Kham, and U-Tsang shall be deemed oppressive states.

**C.** Tenant's failure to comply with this paragraph shall constitute a default of this Lease and Landlord may terminate this Lease pursuant to Paragraph 18. In the event that Landlord terminates this Lease due to a default under this provision, Landlord may deem Tenant a non-responsible bidder for five (5) years from the date this Lease is terminated.

**48. BERKELEY LIVING WAGE ORDINANCE (LWO)**

A. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance (LWO). If Tenant employs six (6) or more part-time or full-time employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the term of this lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

B. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance. If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased Premises, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Paragraph shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in Paragraph 18 herein.

C. If Tenant is subject to the LWO, Tenant shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject premises. Subtenants shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the leased Premises.

D. If Tenant fails to comply with the requirements of this the LWO and this lease, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Paragraph 18.

In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay all of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

**49. BERKELEY EQUAL BENEFITS ORDINANCE (EBO)**

A. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City

mandated equal benefits during the term of this lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

**B.** If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be considered a default, subject to the provisions of Paragraph 17 of this lease.

**C.** If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Tenant's failure to comply with this Paragraph shall constitute default of the lease, upon which City may terminate this lease pursuant to Paragraph 18.

In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach.

**50. AUDIT**

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office, or its designee, may conduct an audit of Tenant's financial, performance and compliance records maintained in connection with the operations and services performed under this Lease, and with the payments made under this Lease. In the event of such audit, Tenant agrees to make all such financial, performance and compliance records available to the Auditor's Office, or to its designee. City agrees to provide Tenant an opportunity to discuss and respond to any findings before a final audit report is filed.

**51. CITY BUSINESS LEASE, PAYMENT OF TAXES, TAX I.D. NUMBER.**

Tenant has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Tenant is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Tenant shall pay all state and federal income taxes and any other taxes lawfully assessed and due. Tenant certifies under penalty of perjury that the taxpayer identification number written below is correct.

**52. SURVIVAL**

The provisions of Paragraphs 8, 9, 10, 12, 13, 14, 19, and 40 and any other obligation of Tenant that, by its terms or nature, is to be performed after or is to survive termination of this Lease shall survive such termination.

**53. EXHIBITS**

Exhibits A, B, C, and D and any other exhibit, addendum or schedule referenced in this Lease are made a part hereof by this reference.

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease at Berkeley, California effective as of the Effective Date.

TENANT:

LANDLORD:

OPTIONS RECOVERY SERVICES  
A non-profit organization

CITY OF BERKELEY  
a municipal corporation

By: \_\_\_\_\_  
Davida Coady, M.D.,                      Date  
Executive Director

By: \_\_\_\_\_  
Christine Daniel, City Manager    Date

Approved as to form:

Registered by:

\_\_\_\_\_  
City Attorney                              Date

\_\_\_\_\_  
City Auditor                                Date

Attest:

\_\_\_\_\_  
City Clerk                                    Date

**TENANT INFORMATION**

Tax Identification No.

Incorporated: Yes    No

Certified Woman Business Enterprise: Yes \_\_\_\_ No X

Certified Minority Business Enterprise: Yes \_\_\_\_ No X

Certified Disadvantaged Business Enterprise: Yes    No

City Business License No. \_\_\_\_\_, or Exempt pursuant to B.M.C. Section

\_\_\_\_\_



Exhibit "B"

Common Area

The walkway that leads to the rear entrance of the building including sidewalks, which may be shared by users of the parking lot. See attached aerial photograph for view of the property.

1835 Allston Way, Berkeley, CA - Google Maps

Google

To see all the details that are visible on the screen, use the "Print" link next to the map.





**Exhibit "C"**  
List of Improvements  
"Tenant's Work"

| REQUIRED IMPROVEMENTS                                                                                                                                                                                     | COMPLETION DATE        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| <b>ALL IMPROVEMENTS MUST BE COMPLETED WITHIN 18 MONTHS (1.5 YEARS) OF LEASE EXECUTION.</b>                                                                                                                |                        |
| <b>1. ROOF (\$52,250)</b>                                                                                                                                                                                 |                        |
| <b>Demolition</b>                                                                                                                                                                                         |                        |
| <ul style="list-style-type: none"> <li>• Tear off old composition shingle roof to wood sheathing</li> </ul>                                                                                               | <b>August 15, 2014</b> |
| <ul style="list-style-type: none"> <li>• Tear off old BUR/gravel roof to wood sheathing</li> </ul>                                                                                                        |                        |
| <ul style="list-style-type: none"> <li>• Remove all existing gutters and downspouts</li> </ul>                                                                                                            |                        |
| <ul style="list-style-type: none"> <li>• Remove all existing metal flashings at pipes, vents and curb flashings</li> </ul>                                                                                |                        |
| <ul style="list-style-type: none"> <li>• Break any stucco as needed to allow for new metal flashing</li> </ul>                                                                                            |                        |
| <ul style="list-style-type: none"> <li>• Remove all debris from Premises</li> </ul>                                                                                                                       |                        |
| <b>Installation</b>                                                                                                                                                                                       |                        |
| <ul style="list-style-type: none"> <li>• Install new 30 lb underlayment felt</li> </ul>                                                                                                                   | <b>August 15, 2014</b> |
| <ul style="list-style-type: none"> <li>• Install new 30 year type with Limited Lifetime Warranty</li> </ul>                                                                                               |                        |
| <ul style="list-style-type: none"> <li>• Install new Standard Ridge and Hip shingle caps</li> </ul>                                                                                                       |                        |
| <ul style="list-style-type: none"> <li>• Install new sheet metal Step flashings at confined rake locations</li> </ul>                                                                                     |                        |
| <ul style="list-style-type: none"> <li>• Install new galvanized metal vent collars to pipes, and vents</li> </ul>                                                                                         |                        |
| <ul style="list-style-type: none"> <li>• On flat roofs install new Heat weld 4 Ply 20-year Class A Fire rated APP Modified Bitumen roof system</li> </ul>                                                 |                        |
| <ul style="list-style-type: none"> <li>• Install new OG seamless gutters</li> </ul>                                                                                                                       |                        |
| <ul style="list-style-type: none"> <li>• Repair stucco broken for roof replacement work</li> </ul>                                                                                                        |                        |
| <ul style="list-style-type: none"> <li>• Replace dry rot damaged wood where found, including window frames</li> </ul>                                                                                     |                        |
| <b>2. FLOORS (\$22,490)</b>                                                                                                                                                                               |                        |
| <b>Demolition</b>                                                                                                                                                                                         |                        |
| <ul style="list-style-type: none"> <li>• Remove and properly dispose of all existing carpets, pads and damaged or loose tack strips in all rooms and hallways excluding the existing bathrooms</li> </ul> | <b>August 15, 2014</b> |

| REQUIRED IMPROVEMENTS                                                                                                                                                        | COMPLETION DATE        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| <b>Installation</b>                                                                                                                                                          | <b>August 15, 2104</b> |
| <ul style="list-style-type: none"> <li>• Install new tack strips as needed</li> </ul>                                                                                        |                        |
| <ul style="list-style-type: none"> <li>• Install new 20 oz commercial loop net carpet</li> </ul>                                                                             |                        |
| <ul style="list-style-type: none"> <li>• Install new 32 oz commercial pad</li> </ul>                                                                                         |                        |
| <ul style="list-style-type: none"> <li>• Clean existing tile floors and grout in bathrooms and re-grout as necessary</li> </ul>                                              |                        |
| <ul style="list-style-type: none"> <li>• Polish existing vinyl flooring in main hallway area</li> </ul>                                                                      |                        |
|                                                                                                                                                                              |                        |
| <b>3. INTERIOR PAINTING (\$24,450)</b>                                                                                                                                       | <b>August 15, 2014</b> |
| <b>Dust Control</b>                                                                                                                                                          |                        |
| <ul style="list-style-type: none"> <li>• Mask and tape all existing light fixtures, switches, data and telephone system, cabinets, and glass on windows and doors</li> </ul> |                        |
| <ul style="list-style-type: none"> <li>• Install utility paper to main hallway (to be saved)</li> </ul>                                                                      |                        |
| <ul style="list-style-type: none"> <li>• Install utility paper to protect existing bathroom tile</li> </ul>                                                                  |                        |
| <ul style="list-style-type: none"> <li>• Set up plastic perimeter to meet all Lead Safety Requirements</li> </ul>                                                            |                        |
| <b>BUILDING MUST REMAIN VACANT DURING PREPARATION AND PAINTING PROCESS</b>                                                                                                   |                        |
| <b>Preparation and Painting</b>                                                                                                                                              | <b>August 15, 2014</b> |
| <ul style="list-style-type: none"> <li>• Sand all woodwork as needed, including all doors, windows casings, and baseboards</li> </ul>                                        |                        |
| <ul style="list-style-type: none"> <li>• Fill all nail holes with spackle</li> </ul>                                                                                         |                        |
| <ul style="list-style-type: none"> <li>• Remove and replace damaged drywall/sheetrock</li> </ul>                                                                             |                        |
| <ul style="list-style-type: none"> <li>• Inspect for any damaged wood</li> </ul>                                                                                             |                        |
| <ul style="list-style-type: none"> <li>• Clean all walls and ceilings</li> </ul>                                                                                             |                        |
| <ul style="list-style-type: none"> <li>• Prime and seal all water stains</li> </ul>                                                                                          |                        |
| <ul style="list-style-type: none"> <li>• Paint all wood trim doors and windows Bone White color in semi-gloss finish</li> </ul>                                              |                        |
| <ul style="list-style-type: none"> <li>• Paint all walls and ceilings Bone White color in eggshell finish</li> </ul>                                                         |                        |
|                                                                                                                                                                              |                        |
| <b>4. ELECTRICAL (\$10,550)</b>                                                                                                                                              | <b>August 15, 2014</b> |
| <ul style="list-style-type: none"> <li>• Remove all existing light bulbs and upgrade with new T8s</li> </ul>                                                                 |                        |
| <ul style="list-style-type: none"> <li>• Clean up fixtures and repair/replace lenses as needed</li> </ul>                                                                    |                        |
| <ul style="list-style-type: none"> <li>• Change existing incandescent fixtures with new fluorescent fixtures</li> </ul>                                                      |                        |
| <ul style="list-style-type: none"> <li>• Install new *SMART Dimmer plus system to all existing rooms and hallways</li> </ul>                                                 |                        |

| REQUIRED IMPROVEMENTS                                                                                                                                  | COMPLETION DATE                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| ***SMART Dimmer System consists of upgrading the existing fixtures with new dimmable ballast, a Smart dimmer, and a Smart Motion Sensor.               |                                        |
| <b>5. CARPENTRY (in-kind/volunteer – value \$6,500)</b>                                                                                                | <b>August 15, 2014</b>                 |
| <ul style="list-style-type: none"> <li>• Repair windows and doors as needed to make them operable and remove any dry rot damage</li> </ul>             |                                        |
| <b>6. CLEAN UP (in-kind/volunteer- value \$2,300)</b>                                                                                                  | <b>August 15, 2014</b>                 |
| <ul style="list-style-type: none"> <li>• Clean up all windows inside and outside</li> </ul>                                                            |                                        |
| <ul style="list-style-type: none"> <li>• Trim back trees and bushes away from building</li> </ul>                                                      |                                        |
| <ul style="list-style-type: none"> <li>• Clean landscape area of weeds and garbage</li> </ul>                                                          |                                        |
| <b>7. ADA-COMPLIANT DOORS AND HARDWARE (\$5,300)</b>                                                                                                   | <b>Prior to move-in or August 2014</b> |
| <ul style="list-style-type: none"> <li>• Remove all existing doors and locks</li> </ul>                                                                |                                        |
| <ul style="list-style-type: none"> <li>• Prep all doors to receive ADA compliant locks</li> </ul>                                                      |                                        |
| <ul style="list-style-type: none"> <li>• Install new S Series Saturn ADA compliant lock by Schlage</li> </ul>                                          |                                        |
| <ul style="list-style-type: none"> <li>• Install new interconnected S Series ADA compliant lock</li> </ul>                                             |                                        |
| <ul style="list-style-type: none"> <li>• Install new Basic auto closer and strike with 2 pads, one exterior and one interior for ADA access</li> </ul> |                                        |
| <ul style="list-style-type: none"> <li>• Build new word ramp and railing to meet ADA requirements</li> </ul>                                           |                                        |
| <ul style="list-style-type: none"> <li>• Pressure treated wood to be used for the structural frame of ramp</li> </ul>                                  |                                        |
| <ul style="list-style-type: none"> <li>• Ramp surface and railing to be built of wood composite material</li> </ul>                                    |                                        |
| <b>8. NEW ADA RESTROOM (\$11,900)</b>                                                                                                                  | <b>Prior to move-in or August 2014</b> |
| <ul style="list-style-type: none"> <li>• Frame new partition wall to create space for new ADA compliant bath</li> </ul>                                |                                        |
| <ul style="list-style-type: none"> <li>• Install new wood blocking to support new bathroom fixtures and accessories</li> </ul>                         |                                        |
| <ul style="list-style-type: none"> <li>• Install new drywall/sheetrock and patch walls as needed</li> </ul>                                            |                                        |
| <ul style="list-style-type: none"> <li>• Install new ADA compliant door and lock system</li> </ul>                                                     |                                        |
| <ul style="list-style-type: none"> <li>• Paint new bathroom</li> </ul>                                                                                 |                                        |
| <ul style="list-style-type: none"> <li>• Run all rough plumbing for new toilet and sink</li> </ul>                                                     |                                        |

| REQUIRED IMPROVEMENTS                                                                                                                                                                    | COMPLETION DATE                                 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Install new smart light system in new bathroom on its own dedicated circuit</li> </ul>                                                          |                                                 |
| <ul style="list-style-type: none"> <li>• Install new hardibacker and tile floor</li> </ul>                                                                                               |                                                 |
| <ul style="list-style-type: none"> <li>• Install new ADA compliant toilet and sink</li> </ul>                                                                                            |                                                 |
| <ul style="list-style-type: none"> <li>• Install new safety grab bars as needed for ADA compliance</li> </ul>                                                                            |                                                 |
| <ul style="list-style-type: none"> <li>• Install new mirror</li> </ul>                                                                                                                   |                                                 |
| <ul style="list-style-type: none"> <li>• Install new towel dispenser</li> </ul>                                                                                                          |                                                 |
| <ul style="list-style-type: none"> <li>• Install new toilet paper dispenser</li> </ul>                                                                                                   |                                                 |
|                                                                                                                                                                                          |                                                 |
| <p><b>TOTAL ESTIMATED RENOVATION COST:<br/>\$135,740</b></p>                                                                                                                             |                                                 |
|                                                                                                                                                                                          |                                                 |
| <p><b>ADDITIONAL REQUIRED IMPROVEMENTS</b></p>                                                                                                                                           | <p>Note: no cost estimates established</p>      |
| <ul style="list-style-type: none"> <li>• Provide lighting in the Alcove Area and lighting above the front door sufficient to illuminate the sidewalk in front of the building</li> </ul> | <p><b>Prior to move-in or August 2014</b></p>   |
| <ul style="list-style-type: none"> <li>• Replace dry rot damaged wood where found</li> </ul>                                                                                             | <p><b>Over the course of the lease term</b></p> |

Tenant shall make every effort to use environmental construction techniques and materials such as rain collection systems, natural light, and potential solar wind power depending on ability to fundraise and obtain donated materials.

**Exhibit "D"**

**PAYMENT**

1. Annual payment of rental fees, as set forth in Item 3 of the Lease Agreement, shall be paid no later than January 15<sup>th</sup> of each calendar year for the forthcoming term year.
2. Payments shall be made payable to the "City of Berkeley" and paid at the Finance Department, 2180 Milvia Street, 3<sup>rd</sup> floor, Berkeley, California 94704.
3. Failure to make full payments on time is grounds for termination of this Lease by the City.



## ORDINANCE NO. 7,810-N.S.

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

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

Section 1. That Berkeley Municipal Code Section 23.326.030 is amended to read as follows:

**23.326.030 Eliminating Dwelling Units through Demolition**

*A. Buildings with Two or More Units Constructed Before June 1980.*

1. *Applicability.* This subsection only applies to building with two or more units constructed before June 1980.

2. *Limitation.*

(a) Demolition is not allowed if:

- i. The building was removed from the rental market under the Ellis Act during the preceding five years; or
- ii. There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.

(b) Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the ZAB. The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred.

3. *Findings.* The ZAB may approve a Use Permit to demolish a building constructed before June 1980 on a property containing two or more dwelling units if any of the following are true:

- (a) The building containing the units is hazardous or unusable and is infeasible to repair.
- (b) The building containing the units will be moved to a different location within Berkeley with no net loss of units and no change in the affordability levels of the units.
- (c) The demolition is necessary to permit construction of special housing needs facilities such as, but not limited to, childcare centers and affordable

housing developments that serve the greater good of the entire community.

(d) The demolition is necessary to permit construction approved pursuant to this chapter of at least the same number of dwelling units.

4. *Fee Required.*

(a) The applicant shall pay a fee for each unit demolished to mitigate the impact of the loss of affordable housing in Berkeley.

(b) The amount of the fee shall be set by resolution of the City Council.

(c) *In Lieu of a Fee.*

i. In lieu of paying the impact fee, the applicant may provide a designated unit in the new project at a below market rate to a qualifying household in perpetuity.

ii. The affordability level of the below market rent and the income level of the qualifying household shall be set by resolution of the City Council.

iii. The applicant shall enter into a regulatory agreement with the City of Berkeley to provide the in lieu units.

5. *Occupied Units.*

(a) *Applicability.*

i. The requirements in this subsection apply if units to be demolished are occupied.

ii. These requirements do not apply to tenants who move in after the application for demolition is submitted to the City if the owner informs each prospective tenant about the proposed demolition and that demolition constitutes good cause for eviction.

(b) *Notice.* The applicant shall provide all sitting tenants notice of the application to demolish the building no later than the date it is submitted to the City, including notice of their rights under Municipal Code Section 13.76 (Rent Stabilization and Eviction for Good Cause Program).

(c) *General Requirements.*

i. The applicant shall provide assistance with moving expenses equivalent to in Chapter 13.84 (Relocation Services and Payments for Residential Tenant Households).



ii. The applicant shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Funding for the rent differential shall be guaranteed in a manner approved by the City.

iii. *Exception.* An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with this subsection but must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the California Relocation Act (Government Code sections 7260 et seq.).

(d) *Sitting Tenants Rights.*

i. Sitting tenants who are displaced as a result of demolition shall be provided the right of first refusal to move into the new building.

ii. Tenants of units that are demolished shall have the right of first refusal to rent new below-market rate units designated to replace the units that were demolished, at the rent that would have applied if they had remained in place, as long as their tenancy continues.

iii. Income restrictions do not apply to displaced tenants.

iv. *Exception.*

(1) An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with 23.326.030.A.4.a, b, and c, but must comply with the following requirement.

(2) Sitting tenants who are displaced as a result of demolition and who desire to return to the newly constructed building will be granted a right of first refusal subject to their ability to meet income qualifications and other applicable eligibility requirements when the new units are ready for occupancy.

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

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

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

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP, see<br>23.204.020(B)<br>[#] = Table Note Permit<br>Requirement<br>* Use-Specific Regulations Apply | COMMERCIAL DISTRICTS |         |         |         |         |         |         |         |         |         |         | USE-SPECIFIC REGULATIONS                                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|------------------------------------------------------------------------|
|                                                                                                                                                                                                                                        | C-C                  | C-U     | C-N     | C-E     | C-NS    | C-SA    | C-T     | C-SO    | C-DMU   | C-W     | C-AC    |                                                                        |
| Cannabis Retailer, Delivery Only                                                                                                                                                                                                       | ZC*                  | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | --      | 23.320; 12.21; and 12.22                                               |
| Firearm/Munitions Business                                                                                                                                                                                                             | UP(PH)*              | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | NP      | UP(PH)  | UP(PH)* | 23.302.070.D                                                           |
| Industrial and Mining Products                                                                                                                                                                                                         | --                   | --      | --      | --      | --      | --      | --      | --      | --      | --      | --      |                                                                        |
| Pawn Shop/Auction House                                                                                                                                                                                                                | UP(PH)               | --      | NP      | NP      | NP      | NP      | NP      | NP      | UP(PH)  | UP(PH)  | NP      |                                                                        |
| Pet Store                                                                                                                                                                                                                              | UP(PH)               | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | ZC [3]  | UP(PH)  |                                                                        |
| Retail, General                                                                                                                                                                                                                        | ZC [1]               | ZC [1]  | ZC* [2] | ZC* [2] | ZC* [2] | ZC [1]  | ZC      | ZC* [2] | ZC      | ZC* [3] | ZC*     | 23.204.040.E (for department stores)<br>23.204.040.F (for drug stores) |
| Smoke Shop                                                                                                                                                                                                                             | UP(PH)*              | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | NP      | UP(PH)* | UP(PH)* | 23.302.070.I                                                           |
| <b>Personal and Household Service Uses</b>                                                                                                                                                                                             |                      |         |         |         |         |         |         |         |         |         |         |                                                                        |
| Personal and Household Services, General                                                                                                                                                                                               | ZC [1]               | ZC [1]  | ZC [2]  | ZC [2]  | ZC [2]  | ZC [1]  | ZC      | ZC [2]  | ZC      | ZC [5]  | ZC      |                                                                        |
| Kennels and Pet Boarding                                                                                                                                                                                                               | NP                   | NP      | NP      | NP      | NP      | NP      | NP      | NP      | NP      | UP(PH)  | NP      |                                                                        |
| Laundromats and Cleaners                                                                                                                                                                                                               | AUP                  | AUP     | UP(PH)  | UP(PH)  | UP(PH)  | AUP     | AUP     | UP(PH)  | UP(PH)  | AUP [4] | AUP     |                                                                        |
| Veterinary Clinic                                                                                                                                                                                                                      | UP(PH)               | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  |                                                                        |
| Video Tape/Disk Rental                                                                                                                                                                                                                 | ZC [1]               | ZC [1]  | ZC [2]  | AUP     | ZC [2]  | --      | ZC      | ZC [2]  | ZC      | ZC [5]  | NP      |                                                                        |
| <b>Office Uses</b>                                                                                                                                                                                                                     |                      |         |         |         |         |         |         |         |         |         |         |                                                                        |
| Business Support Services                                                                                                                                                                                                              | ZC [1]               | ZC [1]  | ZC [2]  | ZC [2]  | ZC [2]  | ZC [1]  | ZC*     | ZC [2]  | ZC      | ZC [5]  | ZC [6]  | 23.204.110.B.6                                                         |
| Banks and Financial Services, Retail                                                                                                                                                                                                   | AUP                  | AUP     | UP(PH)  | UP(PH)  | UP(PH)  | ZC [1]  | AUP*    | UP(PH)  | ZC*     | AUP     | ZC      | 23.204.110.B.6;<br>23.204.130.B.3;<br>23.204.130.D.3                   |
| Insurance Agents, Title Companies, Real Estate Agents, Travel Agents                                                                                                                                                                   | ZC [1]               | ZC [1]  | ZC* [2] | ZC* [2] | ZC* [2] | ZC [1]  | ZC*     | ZC* [2] | ZC*     | ZC [5]  | ZC [6]  | 23.204.040.D; 23.204.110.B.6;<br>23.204.130.D.3                        |
| Medical Practitioners                                                                                                                                                                                                                  | ZC [1]               | ZC [1]  | AUP     | NP      | UP(PH)  | ZC [1]  | AUP*    | UP(PH)  | ZC*     | ZC [5]  | ZC [6]  | 23.204.040.D;<br>23.204.110.B.6;<br>23.204.130.D.3                     |
| Non-Chartered Financial Institutions                                                                                                                                                                                                   | UP(PH)*              | UP(PH)* | NP      | NP      | NP      | UP(PH)* | UP(PH)* | NP      | NP      | UP(PH)* | UP(PH)  | 23.302.070.F<br>23.204.110.B.6                                         |
| Office, Business and Professional                                                                                                                                                                                                      | ZC [1]               | ZC [1]  | AUP*    | AUP*    | AUP*    | ZC [1]  | AUP*    | AUP*    | ZC*     | ZC [5]  | ZC [6]  | 23.204.040.B;<br>23.204.110.B.6;<br>23.204.130.D.3                     |
| <b>Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses</b>                                                                                                                                                             |                      |         |         |         |         |         |         |         |         |         |         |                                                                        |
| Adult-oriented Business                                                                                                                                                                                                                | UP(PH)*              | UP(PH)* | NP      | NP      | NP      | NP      | NP      | NP      | UP(PH)* | UP(PH)* | NP      | 23.302.070.A                                                           |
| Amusement Device Arcade                                                                                                                                                                                                                | UP(PH)*              | UP(PH)* | NP      | NP      | NP      | UP(PH)* | NP      | NP      | UP(PH)* | UP(PH)* | UP(PH)  | 23.302.070.B                                                           |
| Bar/Cocktail Lounge/Tavern                                                                                                                                                                                                             | UP(PH)*              | UP(PH)* | UP(PH)* | --      | NP      | UP(PH)* | UP(PH)* | NP      | UP(PH)* | UP(PH)* | UP(PH)  | 23.204.100.B.3;<br>23.204.110.B.2;<br>23.310                           |
| Commercial Recreation Center                                                                                                                                                                                                           | See 23.204.040.A     |         |         |         |         |         |         |         |         |         |         |                                                                        |
| Dance/Exercise/Martial Arts/Music Studio                                                                                                                                                                                               | ZC [1]               | ZC [1]  | ZC [2]  | AUP     | AUP [4] | ZC [1]  | ZC      | AUP     | ZC      | ZC [7]  | ZC      |                                                                        |
| Entertainment Establishment                                                                                                                                                                                                            | UP(PH)               | UP(PH)  | UP(PH)  | NP      | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  |                                                                        |
| Food Service Establishment                                                                                                                                                                                                             | See 23.204.040.E     |         |         |         |         |         |         |         |         |         |         |                                                                        |
| Group Class Instruction                                                                                                                                                                                                                | ZC [1]               | ZC [1]  | AUP     | AUP     | AUP*    | ZC [1]  | ZC*     | AUP     | ZC*     | ZC      | ZC      | 23.204.040.B                                                           |
| Gym/Health Club                                                                                                                                                                                                                        | See 23.204.040.C     |         |         |         |         |         |         |         |         |         |         |                                                                        |
| Hotels, Tourist                                                                                                                                                                                                                        | UP(PH)               | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  |                                                                        |
| Motels, Tourist                                                                                                                                                                                                                        | UP(PH)               | UP(PH)  | NP      | NP      | NP      | NP      | NP      | NP      | UP(PH)  | UP(PH)  | NP      |                                                                        |
| Theater                                                                                                                                                                                                                                | UP(PH)               | UP(PH)  | UP(PH)  | UP(PH)  | NP      | UP(PH)  | UP(PH)  | NP      | AUP     | UP(PH)  | UP(PH)  |                                                                        |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP, see 23.204.020(B)<br>[#] = Table Note Permit Requirement<br>* Use-Specific Regulations Apply | COMMERCIAL DISTRICTS |        |        |        |        |         |        |        |         |          |        | USE-SPECIFIC REGULATIONS                             |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------|--------|--------|--------|---------|--------|--------|---------|----------|--------|------------------------------------------------------|
|                                                                                                                                                                                                                                  | C-C                  | C-U    | C-N    | C-E    | C-NS   | C-SA    | C-T    | C-SO   | C-DMU   | C-W      | C-AC   |                                                      |
| <b>Vehicle Service and Sales Uses</b>                                                                                                                                                                                            |                      |        |        |        |        |         |        |        |         |          |        |                                                      |
| Alternative Fuel Station                                                                                                                                                                                                         | UP(PH)               | UP(PH) | UP(PH) | NP     | UP(PH) | UP(PH)  | NP*    | UP(PH) | NP      | AUP*     | UP(PH) | 23.204.110.B.4;<br>23.204.140.B.3                    |
| Electric Vehicle Charging Station                                                                                                                                                                                                | AUP                  | AUP    | AUP    | AUP    | AUP    | AUP     | AUP    | AUP    | AUP     | AUP*     | AUP    |                                                      |
| Gasoline Fuel Stations                                                                                                                                                                                                           | UP(PH)               | UP(PH) | UP(PH) | NP     | UP(PH) | UP(PH)  | NP*    | UP(PH) | NP      | UP(PH)*  | UP(PH) | 23.204.140.B.3                                       |
| Large Vehicle Sales and Rental                                                                                                                                                                                                   | AUP                  | NP     | NP     | NP     | NP     | NP      | NP     | NP     | NP      | AUP* [8] | NP     | 23.204.140.B.3                                       |
| Small Vehicle Sales and Service                                                                                                                                                                                                  | AUP                  | NP     | NP     | NP     | NP     | UP(PH)* | NP     | NP     | UP(PH)  | UP(PH)*  | NP     | 23.204.100.B.5;<br>23.204.140.B.3                    |
| Tire Sales and Service                                                                                                                                                                                                           | UP(PH)               | NP     | NP     | NP     | NP     | NP      | NP     | NP     | NP      | UP(PH)*  | NP     | 23.204.140.B.3                                       |
| Vehicle Parts Store                                                                                                                                                                                                              | ZC [1]               | NP     | ZC [2] | ZC [2] | ZC [2] | ZC [1]  | ZC     | ZC [2] | NP      | AUP* [8] | ZC     |                                                      |
| Vehicle Rentals                                                                                                                                                                                                                  | AUP                  | NP     | NP     | NP     | NP     | NP      | NP     | NP     | UP(PH)  | AUP* [8] | NP     | 23.204.140.B.3                                       |
| Vehicle Repair and Service                                                                                                                                                                                                       | AUP                  | NP     | NP     | NP     | NP     | NP      | NP     | NP     | NP      | AUP* [8] | NP     |                                                      |
| Vehicle Sales, New                                                                                                                                                                                                               | AUP                  | NP     | NP     | NP     | NP     | UP(PH)* | NP     | NP     | UP(PH)  | AUP* [8] | NP     | 23.204.100.B.5<br>23.204.140.B.3                     |
| Vehicle Sales, Used                                                                                                                                                                                                              | AUP                  | NP     | NP     | NP     | NP     | UP(PH)* | NP     | NP     | UP(PH)  | UP(PH)*  | NP     | 23.204.100.B.5;<br>23.204.140.B.3;<br>23.204.140.D.4 |
| Vehicle Wash                                                                                                                                                                                                                     | UP(PH)               | NP     | NP     | NP     | NP     | NP      | NP     | NP     | NP      | UP(PH)*  | NP     | 23.204.140.B.3                                       |
| Vehicle Wrecking                                                                                                                                                                                                                 | NP                   | NP     | NP     | NP     | NP     | NP      | NP     | NP     | NP      | NP       | NP     |                                                      |
| <b>Industrial and Heavy Commercial Uses</b>                                                                                                                                                                                      |                      |        |        |        |        |         |        |        |         |          |        |                                                      |
| Bus/Cab/Truck/Public Utility Depot                                                                                                                                                                                               | --                   | --     | --     | --     | --     | --      | --     | --     | --      | --       | --     |                                                      |
| Commercial Excavation                                                                                                                                                                                                            | UP(PH)               | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH)  | UP(PH) | UP(PH) | --      | NP       | UP(PH) |                                                      |
| Contractors Yard                                                                                                                                                                                                                 | --                   | --     | --     | --     | --     | --      | --     | --     | --      | AUP      | --     |                                                      |
| Dry Cleaning and Laundry Plant                                                                                                                                                                                                   | UP(PH)               | UP(PH) | NP     | --     | UP(PH) | NP      | NP     | NP     | UP(PH)  | NP       | NP     |                                                      |
| Laboratory                                                                                                                                                                                                                       |                      |        |        |        |        |         |        |        |         |          |        |                                                      |
| Commercial Physical or Biological                                                                                                                                                                                                | AUP                  | AUP    | NP     | NP     | NP     | NP      | NP     | NP     | AUP     | NP       | NP     |                                                      |
| Cannabis Testing                                                                                                                                                                                                                 | AUP                  | AUP    | NP     | NP     | NP     | NP      | NP     | NP     | AUP     | AUP [9]  | NP     |                                                      |
| <b>Manufacturing</b>                                                                                                                                                                                                             |                      |        |        |        |        |         |        |        |         |          |        |                                                      |
| Construction Products                                                                                                                                                                                                            | --                   | --     | --     | --     | --     | --      | --     | --     | --      | UP(PH)   | --     |                                                      |
| Light Manufacturing                                                                                                                                                                                                              | --                   | --     | --     | --     | --     | --      | --     | --     | --      | AUP [8]  | --     |                                                      |
| Pesticides/Herbicides/Fertilizers                                                                                                                                                                                                | --                   | --     | --     | --     | --     | --      | --     | --     | --      | UP(PH)   | --     |                                                      |
| Petroleum Refining and Products                                                                                                                                                                                                  | --                   | --     | --     | --     | --     | --      | --     | --     | --      | UP(PH)   | --     |                                                      |
| Pharmaceuticals                                                                                                                                                                                                                  | --                   | --     | --     | --     | --     | --      | --     | --     | --      | UP(PH)   | --     |                                                      |
| Primary Production Manufacturing                                                                                                                                                                                                 | --                   | --     | --     | --     | NP     | --      | --     | --     | --      | UP(PH)   | --     |                                                      |
| Semiconductors                                                                                                                                                                                                                   | --                   | --     | --     | --     | NP     | --      | --     | --     | --      | UP(PH)   | --     |                                                      |
| Material Recovery Enterprise                                                                                                                                                                                                     | --                   | --     | --     | --     | --     | --      | --     | --     | --      | --       | --     |                                                      |
| Media Production                                                                                                                                                                                                                 | UP(PH)               | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH)  | UP(PH) | UP(PH) | UP(PH)* | AUP      | UP(PH) | 23.204.130.B.4                                       |
| Mini-storage                                                                                                                                                                                                                     | UP(PH)               | NP     | NP     | NP     | NP     | NP      | NP     | --     | UP(PH)  | NP       | NP     |                                                      |
| Recycled Materials Processing                                                                                                                                                                                                    | --                   | --     | --     | --     | --     | --      | --     | --     | --      | --       | --     |                                                      |
| Recycling Redemption Center                                                                                                                                                                                                      | AUP                  | AUP    | AUP    | AUP    | AUP    | AUP     | AUP    | AUP    | AUP     | AUP      | AUP    |                                                      |
| Repair Service, Non-Vehicle                                                                                                                                                                                                      | --                   | --     | --     | --     | --     | --      | --     | --     | --      | AUP      | --     |                                                      |
| Research and Development                                                                                                                                                                                                         | --                   | --     | --     | --     | --     | --      | --     | --     | --      | AUP      | --     |                                                      |

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

Section 3. That Berkeley Municipal Code 23.204.100.B.5 is hereby amended to read:

5. Vehicle Sales.

a. **Applicability.**

- i.* In the C-SA district, small vehicle service is not permitted. Small vehicle sales that are exclusively indoor operations are permitted with a Zoning Certificate. Otherwise, a Use Permit is required.
- ii.* All new or relocated vehicle sales uses in the C-SA district shall be exclusively indoor operations with no outdoor activities and shall comply with the requirements of this subsection.
- iii.* Expansions or modifications of existing vehicle sales are:
  1. Encouraged to comply with standards in Paragraph b (Standards) below where feasible; and
  2. Shall not increase or exacerbate a non-conformity standards in Paragraph b (Standards).

b. **Standards.**

- i.* **Street Frontage.** Outdoor vehicle display is permitted only along Shattuck Avenue and Adeline Street and is limited to 30 percent of the lot frontage on those streets.
- ii.* **Area for Outdoor Uses.** A maximum of 40 percent of the lot area may be used for outdoor uses, including but not limited to vehicle display and storage. Adequate landscaping and/or fencing shall be used to filter the view of outdoor uses from the adjacent right-of-way and abutting properties, with the exception of outdoor vehicle display;
- iii.* **Service Entries.** Vehicle and repair service entries may not exceed 20 percent of the primary lot frontage, no entrance may exceed a width of 20 feet. The primary street frontage is the frontage towards which the primary building entrance is oriented.
- iv.* **Transparency.** At least 60 percent of any new building shall be within 10 feet of the right-of-way along the primary street frontage and 60 percent of the street-facing facade shall be comprised of clear glass.
- v.* **Repair Activities.** All vehicle repair activities shall be conducted indoors.
- vi.* **Noise.** All noise-generating equipment and activities, such as vehicle repair, shall be shielded by noise-attenuating materials. Outdoor amplification is not permitted.

*vii. Lighting.* Exterior light standards and fixtures shall not be taller than 20 feet, shall achieve uniform light coverage and minimize glare, shall use light cutoffs to control light spillover onto adjacent properties and urban sky glow, and shall use low energy light fixtures consistent with the City’s goals for energy efficiency.

*viii. Vehicle Storage.* No vehicles shall be stored in the public right-of-way.

- c. **Modification of Standards.** The Zoning Officer may allow modification to standards in Paragraph c (Standards) above with an AUP upon finding that the modification:
  - i. Is necessary to facilitate incorporation of an existing structure;
  - ii. Achieve greater consistency with the surrounding street pattern;
  - iii. Buffers impacts to an adjacent residential district; or
  - iv. Is needed to accommodate dealership operations.

Section 4. That the Berkeley Municipal Code 23.204.100 Table 23.204-28 is hereby amended to read:

**Table 23.204-28: C-SA Maximum Building Heights**

| Building Land Use                                                                                     | Maximum Height             |                            |
|-------------------------------------------------------------------------------------------------------|----------------------------|----------------------------|
|                                                                                                       | Subarea 1                  | Subarea 2                  |
| Non-Residential Uses                                                                                  | 36 ft and 3 stories        | 24 ft and 2 stories        |
| Mixed Use and Residential Only                                                                        | 60 ft and 5 stories<br>[1] | 36 ft and 3 stories<br>[1] |
| [1] In mixed-use buildings, the third story and above must be used for residential purposes entirely. |                            |                            |

Section 5. That Berkeley Municipal Code 23.204.100 Figure 23.204-3 is hereby amended to read:





Section 6. That Berkeley Municipal Code Section 23.204.110 Table 23.204-33 is amended to read as follows:

**Table 23.204-33: C-T Allowed Heights and FAR Increases**

| Project Location    | Allowed Increase     |                     |
|---------------------|----------------------|---------------------|
|                     | Height               | FAR                 |
| South of Dwight Way | 65 ft. and 5 stories | No increase allowed |
| North of Dwight Way | 75 ft.               | 6.0                 |

Section 7. That Berkeley Municipal Code Section 23.204.130 Table 23.204-39 is amended to read as follows:

**Table 23.204-39: C-DMU Setback Standards**

| PORTION OF BUILDING AT HEIGHT OF: | FRONT                     | MINIMUM INTERIOR SIDE          |                            | MINIMUM REAR |
|-----------------------------------|---------------------------|--------------------------------|----------------------------|--------------|
|                                   |                           | 65' AND LESS FROM LOT FRONTAGE | OVER 65' FROM LOT FRONTAGE |              |
| Zero to 20 feet                   | No minimum.<br>5 ft. max. | No minimum                     |                            |              |
| 21 feet to 75 feet                | No minimum.               | No minimum                     |                            | 5 ft.        |
| 76 feet to 120 feet               | 15 ft. min.               | 5 ft.                          |                            | 15 ft.       |
| Over 120 feet                     | 15 ft. min.               |                                |                            | 15 ft.       |

Section 8. That Berkeley Municipal Code Section 23.204.140 Table 23.204-42 is amended to read as follows:

**Table 23.204-42: C-W Development Standards**

| BASIC STANDARDS                         |            | SUPPLEMENTAL STANDARDS        |
|-----------------------------------------|------------|-------------------------------|
| Lot Area Minimum                        |            | 23.304.020– Lot Requirements  |
| New Lots                                | No minimum |                               |
| Per Group Living Accommodation Resident |            | 23.304.090– Usable Open Space |
| Usable Open Space, Minimum              |            |                               |
| Per Dwelling Unit or Live/Work Unit     | 40 sq. ft. |                               |
| Per Group Living Accommodation Resident | No minimum |                               |
| Floor Area Ratio, Maximum               | 3.0        |                               |

|                                                                                                                                                                                                                                                                                            |                            |                             |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|-----------------------------|
| Main Building Height, Minimum                                                                                                                                                                                                                                                              | No minimum                 |                             |
| Main Building Height, Maximum                                                                                                                                                                                                                                                              | 40 ft. and 3 stories [1,2] | 23.304.050– Building Height |
| Lot Line Setbacks, Minimum                                                                                                                                                                                                                                                                 |                            | 23.304.030– Setbacks        |
| Abutting/Confronting a Non-residential District                                                                                                                                                                                                                                            | No minimum                 |                             |
| Abutting/Confronting a Residential District                                                                                                                                                                                                                                                | See 23.304.030.C.2         |                             |
| Building Separation, Minimum                                                                                                                                                                                                                                                               | No minimum                 |                             |
| Lot Coverage, Maximum                                                                                                                                                                                                                                                                      | 100%                       | 23.304.120– Lot Coverage    |
| <p>Notes:</p> <p>[1] 50 ft. and 4 stories allowed for mixed-use projects. The fourth floor must be used for residential or live/work purposes.</p> <p>[2] On Assessor Parcel Numbers 054-1763-001-03, 054-1763-010-00 and 054-1763-003-03 the maximum height is 50 feet and 4 stories.</p> |                            |                             |

Section 9. That Berkeley Municipal Code Section 23.206.020 Table 23.206-1 is amended to read:

**Table 23.206-1 Allowed Uses in Manufacturing Districts**

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>-- = Permitted with an AUP, see 23.206.020(B)<br>NP = Not Permitted<br>[#] = Floor Area Permit Requirement<br>* Use-Specific Standards Apply | MANUFACTURING DISTRICTS |         |         |                  | Use-Specific Standards<br>Applies to uses with an asterisk following the permit requirement (e.g., ZC*) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|---------|---------|------------------|---------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                   | M                       | MM      | MU-LI   | MU-R             |                                                                                                         |
| <b>Residential Uses</b>                                                                                                                                                                                                           |                         |         |         |                  |                                                                                                         |
| Accessory Dwelling Unit                                                                                                                                                                                                           | NP                      | NP      | NP      | See 23.306       |                                                                                                         |
| Dwellings                                                                                                                                                                                                                         |                         |         |         |                  |                                                                                                         |
| Single-Family                                                                                                                                                                                                                     | NP                      | NP      | NP      | AUP*             | 23.206.090.B.8                                                                                          |
| Two Family                                                                                                                                                                                                                        | NP                      | NP      | NP      | AUP*             | 23.206.090.B.8                                                                                          |
| Multi-Family                                                                                                                                                                                                                      | NP                      | NP      | NP      | UP(PH)*          | 23.206.090.B.7&8                                                                                        |
| Group Living Accommodation                                                                                                                                                                                                        | NP                      | NP      | NP      | UP(PH)*          | 23.206.090.B.8                                                                                          |
| Hotel, Residential                                                                                                                                                                                                                | NP                      | NP      | NP      | NP               |                                                                                                         |
| Mixed-Use Residential                                                                                                                                                                                                             | NP                      | NP      | NP      | UP(PH)*          | 23.206.090.B.8&9                                                                                        |
| Senior Congregate Housing                                                                                                                                                                                                         | NP                      | NP      | NP      | See 23.302.040.H |                                                                                                         |
| <b>Public and Quasi-Public Uses</b>                                                                                                                                                                                               |                         |         |         |                  |                                                                                                         |
| Child Care Center                                                                                                                                                                                                                 | NP                      | NP      | AUP*    | UP(PH)*          | 23.206.040.B&C                                                                                          |
| Cemetery/Crematory/Mausoleum                                                                                                                                                                                                      | NP                      | NP      | NP      | NP               |                                                                                                         |
| Club/Lodge                                                                                                                                                                                                                        | UP(PH)*                 | UP(PH)* | UP(PH)* | UP(PH)           | 23.206.040.E                                                                                            |
| Columbaria                                                                                                                                                                                                                        | NP                      | NP      | NP      | –                |                                                                                                         |
| Community Care Facility                                                                                                                                                                                                           | NP                      | NP      | NP      | ZC*              | 23.206.090.B.3                                                                                          |
| Community Center                                                                                                                                                                                                                  | NP                      | NP      | NP      | UP(PH)           |                                                                                                         |
| Emergency Shelter                                                                                                                                                                                                                 | NP                      | NP      | NP      | –                |                                                                                                         |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>-- = Permitted with an AUP, see<br>23.206.020(B)<br>NP = Not Permitted<br>[#] = Floor Area Permit Requirement<br>* Use-Specific Standards Apply | MANUFACTURING DISTRICTS |         |             |          | Use-Specific Standards<br>Applies to uses with an<br>asterisk following the permit<br>requirement (e.g., ZC*) |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|---------|-------------|----------|---------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                      | M                       | MM      | MU-LI       | MU-R     |                                                                                                               |
| Family Day Care Home, Large                                                                                                                                                                                                          | NP                      | NP      | ZC*         | AUP*     | 23.206.040.C                                                                                                  |
| Family Day Care Home, Small                                                                                                                                                                                                          | NP                      | NP      | ZC*         | ZC*      | 23.206.040.C                                                                                                  |
| Hospital                                                                                                                                                                                                                             | NP                      | NP      | NP          | NP       |                                                                                                               |
| Library                                                                                                                                                                                                                              | NP                      | NP      | NP          | UP(PH)   |                                                                                                               |
| Mortuaries and Crematories                                                                                                                                                                                                           | NP                      | NP      | NP          | UP(PH)*  | 23.206.090.B.6                                                                                                |
| Municipal Animal Shelter                                                                                                                                                                                                             | UP(PH)                  | UP(PH)  | UP(PH)      | –        |                                                                                                               |
| Nursing Home                                                                                                                                                                                                                         | NP                      | NP      | NP          | UP(PH)   |                                                                                                               |
| Park/Playground                                                                                                                                                                                                                      | NP                      | NP      | NP          | UP(PH)*  | 23.206.040.C                                                                                                  |
| Public Safety and Emergency Service                                                                                                                                                                                                  | UP(PH)                  | UP(PH)  | UP(PH)      | UP(PH)   |                                                                                                               |
| Public Utility Substation/Tank                                                                                                                                                                                                       | UP(PH)                  | UP(PH)  | UP(PH)      | UP(PH)   |                                                                                                               |
| Religious Assembly                                                                                                                                                                                                                   | NP                      | NP      | NP          | UP(PH)   |                                                                                                               |
| School                                                                                                                                                                                                                               | NP                      | NP      | NP          | UP(PH)*  | 23.206.040.C                                                                                                  |
| School, Vocational                                                                                                                                                                                                                   | NP                      | NP      | ZC* [1]     | UP(PH)   | 23.206.080.B.12                                                                                               |
| <b>Retail Uses</b>                                                                                                                                                                                                                   |                         |         |             |          |                                                                                                               |
| Alcoholic Beverage Retail Sale                                                                                                                                                                                                       | NP                      | NP      | UP(PH)* [2] | NP *     | 23.206.080.B.3;<br>23.206.090.B.2; 23.310                                                                     |
| Firearm/Munitions Business                                                                                                                                                                                                           | NP                      | NP      | NP          | NP       |                                                                                                               |
| Industrial and Mining Products                                                                                                                                                                                                       | AUP [2]                 | AUP [2] | AUP [4]     | NP       |                                                                                                               |
| Pawn Shop/Auction House                                                                                                                                                                                                              | NP                      | NP      | NP          | NP       |                                                                                                               |
| Pet Store                                                                                                                                                                                                                            | NP                      | NP –    | NP          | NP       |                                                                                                               |
| Retail, General                                                                                                                                                                                                                      | NP                      | NP      | AUP* [5]    | AUP* [3] | 23.206.080.B.6;<br>23.206.090.B.4                                                                             |
| Smoke Shop                                                                                                                                                                                                                           | NP                      | NP      | NP          | NP       |                                                                                                               |
| <b>Personal and Household Service Uses</b>                                                                                                                                                                                           |                         |         |             |          |                                                                                                               |
| Personal and Household Services,<br>General                                                                                                                                                                                          | NP                      | NP      | NP          | AUP      |                                                                                                               |
| Kennels and Pet Boarding                                                                                                                                                                                                             | NP                      | NP      | NP          | UP(PH)   |                                                                                                               |
| Laundromats and Cleaners                                                                                                                                                                                                             | NP                      | NP      | NP          | AUP      |                                                                                                               |
| Veterinary Clinic                                                                                                                                                                                                                    | NP                      | NP      | NP          | UP(PH)   |                                                                                                               |
| Video Tape/Disk Rental                                                                                                                                                                                                               | NP                      | NP      | NP          | NP       |                                                                                                               |
| <b>Office Uses</b>                                                                                                                                                                                                                   |                         |         |             |          |                                                                                                               |
| Business Support Services                                                                                                                                                                                                            | NP                      | NP      | AUP [6]     | AUP [3]  |                                                                                                               |
| Banks and Financial Services, Retail                                                                                                                                                                                                 | NP                      | NP      | –           | NP       |                                                                                                               |
| Insurance Agents, Title Companies, Real<br>Estate Agents, Travel Agents                                                                                                                                                              | NP                      | NP      | –           | –        |                                                                                                               |
| Medical Practitioners                                                                                                                                                                                                                | NP                      | NP      | NP          | AUP [3]  |                                                                                                               |
| Non-Chartered Financial Institutions                                                                                                                                                                                                 | NP                      | NP      | –           | –        |                                                                                                               |
| Office, Business and Professional                                                                                                                                                                                                    | NP                      | ZC* [4] | AUP [4]     | AUP [3]  | 23.206.070.B.2                                                                                                |
| <b>Food and Alcohol Service, Lodging,<br/>Entertainment, and Assembly Uses</b>                                                                                                                                                       |                         |         |             |          |                                                                                                               |
| Adult-oriented Business                                                                                                                                                                                                              | -                       | -       | NP          | NP       |                                                                                                               |
| Amusement Device Arcade                                                                                                                                                                                                              | NP                      | NP      | –           | NP       |                                                                                                               |

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|---------|----------|----------|---------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                      | M                       | MM      | MU-LI    | MU-R     |                                                                                                               |
| Bar/Cocktail Lounge/Tavern                                                                                                                                                                                                           | NP                      | NP      | -        | -        |                                                                                                               |
| Commercial Recreation Center                                                                                                                                                                                                         | NP                      | NP      | -        | NP       |                                                                                                               |
| Dance/Exercise/Martial Arts/Music Studio                                                                                                                                                                                             | NP                      | NP      | -        | UP(PH)   |                                                                                                               |
| Entertainment Establishment                                                                                                                                                                                                          | NP                      | NP      | -        | UP(PH)   |                                                                                                               |
| Food Service Establishment                                                                                                                                                                                                           | See 23.302.040.E        |         |          |          |                                                                                                               |
| Group Class Instruction                                                                                                                                                                                                              | NP                      | NP      | -        | UP(PH)   |                                                                                                               |
| Gym/Health Club                                                                                                                                                                                                                      | NP                      | NP      | -        | NP       |                                                                                                               |
| Hotel, Tourist                                                                                                                                                                                                                       | NP                      | NP      | NP       | NP       |                                                                                                               |
| Motel, Tourist                                                                                                                                                                                                                       | NP                      | NP      | NP       | NP       |                                                                                                               |
| Theater                                                                                                                                                                                                                              | NP                      | NP      | UP(PH)*  | NP       | 23.206.080.B.10                                                                                               |
| <b>Vehicle Service and Sale Uses</b>                                                                                                                                                                                                 |                         |         |          |          |                                                                                                               |
| Alternative Fuel Station                                                                                                                                                                                                             | AUP [4]                 | AUP [4] | AUP [4]  | AUP      |                                                                                                               |
| Gasoline/Vehicle Fuel Station                                                                                                                                                                                                        | NP                      | NP      | NP       | NP       |                                                                                                               |
| Large Vehicle Sales and Rental                                                                                                                                                                                                       | -                       | NP      | AUP [4]  | NP       |                                                                                                               |
| Small Vehicle Sales and Rental                                                                                                                                                                                                       | -                       | NP      | NP       | NP       |                                                                                                               |
| Tire Sales and Service                                                                                                                                                                                                               | -                       | -       | -        | NP       |                                                                                                               |
| Vehicle Parts Store                                                                                                                                                                                                                  | NP                      | NP      | NP       | UP(PH)   |                                                                                                               |
| Vehicle Repair and Service                                                                                                                                                                                                           | UP(PH)                  | UP(PH)  | UP(PH)   | UP(PH)   |                                                                                                               |
| Vehicle Rentals                                                                                                                                                                                                                      | NP                      | -       | -        | NP       |                                                                                                               |
| Vehicle Sales, New                                                                                                                                                                                                                   | AUP* [7]                | NP      | NP       | NP       | 23.206.060.B.3                                                                                                |
| Vehicle Sales, Used                                                                                                                                                                                                                  | AUP* [7]                | NP      | NP       | NP       | 23.206.060.B.3                                                                                                |
| Vehicle Wash                                                                                                                                                                                                                         | NP                      | NP      | NP       | NP       |                                                                                                               |
| Vehicle Wrecking                                                                                                                                                                                                                     | AUP [7]                 | AUP [4] | AUP* [4] | NP       | 23.206.080.B.11                                                                                               |
| <b>Industrial and Heavy Commercial Uses</b>                                                                                                                                                                                          |                         |         |          |          |                                                                                                               |
| Bus/Cab/Truck/Public Utility Depot                                                                                                                                                                                                   | AUP [8]                 | AUP [8] | AUP* [4] | UP(PH)   | 23.206.080.B.4                                                                                                |
| Commercial Excavation                                                                                                                                                                                                                | UP(PH)                  | UP(PH)  | UP(PH)   | NP       |                                                                                                               |
| Contractors Yard                                                                                                                                                                                                                     | AUP [7]                 | AUP [7] | AUP [4]  | UP(PH)   |                                                                                                               |
| Dry Cleaning and Laundry Plant                                                                                                                                                                                                       | ZC* [9]                 | ZC [9]  | ZC [1]   | UP(PH)   | 23.206.060.B.2                                                                                                |
| Laboratory                                                                                                                                                                                                                           |                         |         |          |          |                                                                                                               |
| Commercial Physical or Biological                                                                                                                                                                                                    | NP                      | AUP [4] | UP(PH)*  | NP       | 23.206.080.B.5                                                                                                |
| Cannabis Testing                                                                                                                                                                                                                     | NP                      | AUP [4] | UP(PH)   | NP       |                                                                                                               |
| <b>Manufacturing</b>                                                                                                                                                                                                                 |                         |         |          |          |                                                                                                               |
| Construction Products                                                                                                                                                                                                                | ZC* [9]                 | ZC* [9] | UP(PH)*  | NP       |                                                                                                               |
| Light Manufacturing                                                                                                                                                                                                                  | ZC* [7]                 | ZC* [7] | ZC* [1]  | AUP* [3] | 23.206.090.B.5                                                                                                |
| Pesticides/Herbicides/Fertilizers                                                                                                                                                                                                    | NP                      | NP      | NP       | -        |                                                                                                               |
| Petroleum Refining and Products                                                                                                                                                                                                      | NP                      | NP      | NP       | -        |                                                                                                               |
| Pharmaceuticals                                                                                                                                                                                                                      | AUP [4]                 | AUP [4] | AUP* [4] | -        | 23.206.080.B.7                                                                                                |
| Primary Production Manufacturing                                                                                                                                                                                                     | AUP [4]                 | AUP [4] | NP       | NP       |                                                                                                               |
| Semiconductors                                                                                                                                                                                                                       | UP(PH)                  | UP(PH)  | NP       | -        |                                                                                                               |
| Material Recovery Enterprise                                                                                                                                                                                                         | -                       | -       | UP(PH)   | -        |                                                                                                               |
| Media Production                                                                                                                                                                                                                     | ZC [10]                 | ZC [10] | ZC [10]  | AUP [11] |                                                                                                               |

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|-----------|------------------|----------------|---------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                        | M                       | MM        | MU-LI            | MU-R           |                                                                                                               |
| Mini-storage                                                                                                                                                                                                                                                                                           | NP                      | NP        | NP               | NP             |                                                                                                               |
| Recycled Materials Processing                                                                                                                                                                                                                                                                          | ZC* [9]                 | ZC* [9]   | UP(PH)*          | –              | 23.206.040.H;<br>23.206.080.B.9                                                                               |
| Recycling Redemption Center                                                                                                                                                                                                                                                                            | AUP [7]                 | ZC [9]    | UP(PH)*          | AUP            | 23.206.080.B.9                                                                                                |
| Repair Service, Non-Vehicle                                                                                                                                                                                                                                                                            | ZC* [9]                 | ZC* [9]   | ZC* [1]          | AUP            | 23.206.040.G                                                                                                  |
| Research and Development                                                                                                                                                                                                                                                                               | -                       | ZC [12]   | ZC [12]          | –              |                                                                                                               |
| Services to Buildings and Dwellings                                                                                                                                                                                                                                                                    | AUP                     | AUP       | AUP              | AUP            |                                                                                                               |
| Warehouse                                                                                                                                                                                                                                                                                              | ZC [9]                  | ZC [9]    | ZC [1]           | UP(PH)         |                                                                                                               |
| Warehouse-Based Non-Store Retailer                                                                                                                                                                                                                                                                     | ZC [9]                  | ZC [9]    | ZC [1]           | –              |                                                                                                               |
| Wholesale Trade                                                                                                                                                                                                                                                                                        | ZC [9]                  | ZC [9]    | ZC* [1]          | AUP [3]        | 23.206.080.B.13                                                                                               |
| <b>Incidental Uses</b>                                                                                                                                                                                                                                                                                 |                         |           |                  |                |                                                                                                               |
| Amusement Devices                                                                                                                                                                                                                                                                                      | NP                      | NP        | AUP              | AUP            |                                                                                                               |
| Alcoholic Beverage Service                                                                                                                                                                                                                                                                             | See 23.310              |           |                  |                |                                                                                                               |
| Cafeteria, On-Site                                                                                                                                                                                                                                                                                     | ZC [2]                  | AUP [2]   | ZC [2]           | AUP            |                                                                                                               |
| Child Care Center                                                                                                                                                                                                                                                                                      | NP                      | NP        | See 23.206.040.B |                |                                                                                                               |
| Columbaria                                                                                                                                                                                                                                                                                             | –                       | –         | –                | –              |                                                                                                               |
| Food and Beverage for Immediate Consumption                                                                                                                                                                                                                                                            | –                       | AUP [2]   | –                | –              |                                                                                                               |
| Food Service Establishment                                                                                                                                                                                                                                                                             | AUP [2]                 | -         | AUP [2]          | AUP            |                                                                                                               |
| Home Occupations                                                                                                                                                                                                                                                                                       | NP                      | NP        | NP               | See 23.206.040 |                                                                                                               |
| Live Entertainment                                                                                                                                                                                                                                                                                     | NP                      | NP        | UP(PH)*          | UP(PH)*        | 23.302.020.D                                                                                                  |
| Retail Sales of Goods Manufactured On-Site                                                                                                                                                                                                                                                             | AUP* [13]               | AUP* [14] | AUP* [14]        | AUP*           | 23.206.040.I                                                                                                  |
| Storage of Goods Manufactured On-Site (>25% gross floor area)                                                                                                                                                                                                                                          | ZC                      | ZC        | ZC               | AUP            |                                                                                                               |
| Wholesale Activities                                                                                                                                                                                                                                                                                   | ZC                      | ZC        | ZC               | AUP            |                                                                                                               |
| <b>Other Miscellaneous Uses</b>                                                                                                                                                                                                                                                                        |                         |           |                  |                |                                                                                                               |
| Art/Craft Studio                                                                                                                                                                                                                                                                                       | ZC* [10]                | ZC [10]   | ZC* [10]         | AUP [11]       | 23.206.040.A                                                                                                  |
| ATM, Exterior and Attached to Bank                                                                                                                                                                                                                                                                     | AUP                     | AUP       | -                | AUP            |                                                                                                               |
| ATM, Interior or Exterior and Not With Bank                                                                                                                                                                                                                                                            | AUP                     | AUP       | AUP              | AUP            |                                                                                                               |
| Circus/Carnival                                                                                                                                                                                                                                                                                        | NP                      | NP        | UP(PH)*          | UP(PH)         | 23.206.040.D                                                                                                  |
| Drive-in Uses                                                                                                                                                                                                                                                                                          | NP                      | NP        | NP               | NP             |                                                                                                               |
| Live/Work                                                                                                                                                                                                                                                                                              | NP                      | NP        | See 23.312       |                |                                                                                                               |
| Parking Lot/Structure                                                                                                                                                                                                                                                                                  | See 23.302.070.G        |           |                  |                |                                                                                                               |
| Public Market, Open Air                                                                                                                                                                                                                                                                                | –                       | –         | UP(PH)* [15]     | –              | 23.206.080.B.8                                                                                                |
| Public Market, Enclosed                                                                                                                                                                                                                                                                                | –                       | –         | AUP [5]          | –              |                                                                                                               |
| Short-Term Rental                                                                                                                                                                                                                                                                                      | -                       | -         | -                | ZC*            | 23.314                                                                                                        |
| Urban Agriculture, Low-Impact                                                                                                                                                                                                                                                                          | ZC                      | ZC        | ZC               | ZC             |                                                                                                               |
| Urban Agriculture, High-Impact                                                                                                                                                                                                                                                                         | AUP                     | AUP       | AUP              | AUP            |                                                                                                               |
| Notes:<br>[1] Requires an AUP for uses 20,000 sq. ft. to 30,000 square feet. Requires a Use Permit for uses more than 30,000 sq. ft.<br>[2] Not permitted 20,000 sq. ft. or more.<br>[3] Requires a Use Permit if 5,000 sq. ft. or more<br>[4] Requires a Use Permit for uses more than 20,000 sq. ft. |                         |           |                  |                |                                                                                                               |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                |           |              |             |                                                                                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|-----------|--------------|-------------|----------------------------------------------------------------------------------------------------------------|
| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>-- = Permitted with an AUP, see 23.206.020(B)<br>NP = Not Permitted<br>[#] = Floor Area Permit Requirement<br>* Use-Specific Standards Apply                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <b>MANUFACTURING DISTRICTS</b> |           |              |             | <b>Use-Specific Standards</b><br>Applies to uses with an asterisk following the permit requirement (e.g., ZC*) |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <b>M</b>                       | <b>MM</b> | <b>MU-LI</b> | <b>MU-R</b> |                                                                                                                |
| [5] Not permitted over 2,000 sq. ft.<br>[6] Not permitted over 3,000 sq. ft.<br>[7] Requires a Use Permit for uses more than 40,000 sq. ft.<br>[8] Requires a Use Permit for uses 20,000 sq. ft. to 40,000 square feet.<br>[9] Requires an AUP for uses 20,000 sq. ft. to 40,000 square feet. Requires a Use Permit for uses more than 40,000 sq. ft.<br>[10] Requires an AUP for uses 10,000 sq. ft. to 20,000 square feet. Requires a Use Permit for uses more than 20,000 sq. ft.<br>[11] Allowed with Zoning Certificate if under 1,000 sq. ft.. Requires Use Permit if over 20,000 sq. ft.<br>[12] Requires an AUP for uses more than 20,000 sq. ft.<br>[13] Not permitted 1,500 sq. ft. or more.<br>[14] Requires a Use Permit for sales area 1,501 to 3,000 sq. ft. Not permitted over 3,000 sq. ft.<br>[15] Requires Use Permit for markets over 5,000 sq. ft. |                                |           |              |             |                                                                                                                |

Section 10. That Berkeley Municipal Code Section 23.302.040.A is hereby amended to read as follows:

**23.302.040 – Home Occupations**

A. **Permits Required.** Table 23.302-4 shows permits required for home occupations.

**TABLE 23.302-4: PERMIT REQUIREMENTS FOR HOME OCCUPATIONS**

| HOME OCCUPATION                                  | PERMIT REQUIRED |
|--------------------------------------------------|-----------------|
| Class I                                          | ZC              |
| Class II                                         | AUP             |
| In the Hillside Overlay                          | Not Permitted   |
| ES-R District                                    | Not Permitted   |
| Class III                                        |                 |
| All Commercial Districts and MU-R District       | UP (PH)         |
| All other Districts, and in the Hillside Overlay | Not Permitted   |

1. **Additional Findings -- Class II and Class III Home Occupations.** To approve an AUP for a Class II home occupation or a Use Permit for a Class III home occupation, the Zoning Officer or the ZAB must make the permit findings in Section 23.406 (Specific Permit Requirements) and find that, based on the circumstances of the specific use and property:
  - a. The degree of customer visits will not cause a significant detrimental impact on the availability of parking spaces in the immediate vicinity of the home occupation; and

- b. The degree of shipping and delivery activity to and from the subject residence will be compatible with surrounding residential uses and will not cause a significant detrimental impact on pedestrian and bicyclist safety or the availability of parking spaces in the immediate vicinity of the home occupation; and
- c. If the proposed home occupation will require a loading space on a regular basis, such loading space will be available on the subject property or the use of an on-street loading space will not cause a significant detrimental impact on pedestrian and bicyclist safety or the availability of parking spaces in the immediate vicinity of the home occupation; and
- d. The degree of customer visits and shipping and delivery activities shall not cause a detrimental impact to public safety, as determined by the Fire Marshall.

Section 11. That Berkeley Municipal Code Section 23.304.060 is amended to read as follows:

**23.304.060 – Accessory Buildings and Enclosed Accessory Structures**

- A. **Applicability.** This section applies to accessory buildings and enclosed accessory structures as defined in 23.502 (Glossary). See Section 23.304.070 (Unenclosed Accessory Structures in Residential Districts) and Section 23.304.080 (Fences) and for requirements that apply to other unenclosed accessory structures and fences.
- B. **All Districts.**
  - 1. **Attached or Close to Main Building.** An accessory building or enclosed accessory structure, other than a subterranean structure, that is attached to or within 3 feet of a wall of a main building, is considered a part of the main building for the purposes of setback requirements.
  - 2. **Demolition.** See 23.326.030.C (Accessory Buildings) and 23.326.070.B (Accessory Buildings) for permits required to demolish accessory buildings.
- C. **Residential Districts.**
  - 1. **Permits Required.** Table 23.304-6 shows permits required for accessory buildings and accessory structures in Residential Districts.

**TABLE 23.304-6: PERMIT REQUIREMENTS FOR ACCESSORY BUILDINGS AND ENCLOSED ACCESSORY STRUCTURES**

| District Location and Building/Structure Type | Permit Required |
|-----------------------------------------------|-----------------|
| All Residential Districts Except ES-R         |                 |

|                                                                       |         |
|-----------------------------------------------------------------------|---------|
| New accessory buildings                                               | AUP     |
| Alterations to existing accessory buildings                           | ZC      |
| Enclosed accessory structures on a lot with a main building           | ZC      |
| Enclosed accessory structures on a vacant lot without a main building | AUP     |
| Horse stables                                                         | AUP [1] |
| Accessory buildings and structures with Urban Agriculture             | ZC      |
| <b>ES-R District</b>                                                  |         |
| Under 100 sq. ft.                                                     | ZC      |
| 100 sq. ft. or more                                                   | UP(PH)  |
| On a vacant lot without a main building                               | UP(PH)  |
| <b>Notes:</b>                                                         |         |
| [1] Horse stables are not permitted in the R-S and R-SMU districts    |         |

**2. Development and Use Standards.**

- a. Development Standards.** Table 23.304-7 shows development standards for accessory buildings and enclosed accessory structures in Residential Districts.

**TABLE 23.304-7: ACCESSORY BUILDING AND ENCLOSED ACCESSORY STRUCTURE STANDARDS IN RESIDENTIAL DISTRICTS**

| <b>Building/Structure Feature</b>       | <b>Standards</b>                                                                                                                                                   |
|-----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Average Height, Maximum</b>          |                                                                                                                                                                    |
| Less than 4 ft. from lot line           | 10 ft.                                                                                                                                                             |
| 4 ft. to less than 10 ft. from lot line | 12 ft.                                                                                                                                                             |
| 10 ft. or more from lot line            | 24 ft.                                                                                                                                                             |
| <b>Setbacks, Minimum</b>                |                                                                                                                                                                    |
| Front of Interior Lot                   | 50% of lot dept                                                                                                                                                    |
| Front of Through Lot                    | 25% of lot dept                                                                                                                                                    |
| Front of Corner Lot                     | The setback existing or required on the adjacent lot, whichever is smaller, and the existing setback of main building on the lot                                   |
| Street Side, Corner Lot                 | The existing setback of main building on the lot                                                                                                                   |
| Interior Side                           | 4 ft. for building/structures within 75 feet of front lot line; as required by Berkeley Building Code for buildings/structures 75 feet or more from front lot line |



|                                                                                       |        |
|---------------------------------------------------------------------------------------|--------|
| Edge of Alley                                                                         | 5 ft.  |
| Building Length [1]                                                                   | 24 ft. |
| <u>Notes:</u><br>[1] Applies to building walls generally parallel to a side lot line. |        |

**b. Deviation from Standards.**

- i.* In all Residential Districts except for the ES-R district, the Zoning Officer may approve an AUP to allow an accessory building or enclosed accessory structure to deviate from the standards in Table 23.304-7. In the ES-R district, deviations require ZAB approval of a Use Permit.
  - ii.* To approve the deviation, the review authority must find that the proposed building or structure will not be detrimental to the light, air, privacy, and view of adjacent properties.
- c. Bathroom and Kitchen Facilities.** An accessory building may contain a full bathroom, including handwashing sink, toilet, and tub or shower, as well as cooking facilities, as long as the cooking facilities do not constitute a kitchen.
- d. Rentals.** An accessory building may be rented only as a short-term rental as allowed in Section 23.314—Short-Term Rentals.

**3. Rebuilding and Replacement.**

- a.** Notwithstanding the setback standards in this section and the coverage area standards in Chapter 23.202—Residential Districts, an accessory building or enclosed accessory structure may be constructed to replace a pre-existing lawful accessory building or enclosed accessory structure, if the replacement building or structure is in the same location and has the same or smaller footprint as the previous structure. However, any such replacement structure may not exceed the average height as the previous building or structure; otherwise an AUP is required.
- b.** Such replacement buildings and structures are permitted as of right only if an application for a building permit for their construction is submitted at the same time as an application for a building permit for the demolition of the pre-existing building or structure.
- c.** The demolition of any accessory building proposed for replacement under this section is subject to Municipal Code Chapter 3.24 (Landmark Preservation Commission

Section 12. That Berkeley Municipal Code Section 23.322.030 Table 23.322-1 is amended to read as follows:

**Table 23.322-1 Required Off-Street Parking in Residential Districts**

| Land Use                                                                                          | Number of Required Off-street Parking Spaces                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|---------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Residential Uses</b>                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Accessory Dwelling Unit                                                                           | See Chapter 23.306                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Dwellings, including Group Living Accommodations                                                  | <p>R-3, R-4, and R-5 Districts (1-9 units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit.</p> <p>R-3, R-4, and R-5 District (10 or more units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per 1,000 sq ft of gross floor area.</p> <p>ES-R: 1 per 1,000 sq ft of gross floor area or one per bedroom, whichever is greater.</p> <p>All Other Districts: If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit</p> <p>All Other Locations: None required</p> |
| Dormitories, Fraternity and Sorority Houses, Rooming & Boarding Houses, Senior Congregate Housing | <p>If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each 5 residents, plus 1 for manager.</p> <p>All Other Locations: None required.</p>                                                                                                                                                                                                                                                                                                                                                                                                  |
| Rental of Rooms                                                                                   | <p>ES-R: 1 per each roomer or boarder, in addition to any required parking for Dwellings.</p> <p>All Other Districts: If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each two roomers.</p> <p>All Other Locations: None required</p>                                                                                                                                                                                                                                                                                                    |
| <b>Non-Residential Uses</b>                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| All non-residential uses except uses listed below                                                 | <p>R-SMU District: 1 per 1,000 sq. ft.</p> <p>All Other Residential Districts: See 23.322.030.A.2</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Community Care Facility                                                                           | One per two non-resident employees                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Food Service Establishment                                                                        | 1 per 300 sq. ft.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Hospital                                                                                          | <p>R-SMU District: 1 per 1,000 sq. ft.</p> <p>All Other Residential Districts: 1 per each 4 beds plus 1 per each 3 employees</p>                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Library                                                                                           | 1 per 500 sq. ft. of publicly accessible floor area                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Nursing Home                                                                                      | 1 per 3 employees                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Medical Practitioners                                                                             | 1 per 300 sq. ft.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Non-Medical Offices                                                                               | <p>R-SMU District: 1 per 1,000 sq. ft.</p> <p>All Other Residential Districts: 1 per 400 sq. ft.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Hotels, Tourist                                                                                   | 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

Section 13. That Berkeley Municipal Code Section 23.502.020.F is amended to read as follows:

**F. "F" Terms.**

1. **Facade.** Those portions of a building, including exterior walls, porches, chimneys, balconies, parapets and roof portions, which are visible from a public right-of-way or an adjacent building.
2. **Family.** See Household.
3. **Family Day Care Home.** An establishment providing day care for 14 or fewer children in a dwelling unit as licensed by the California Department of Social Services. A family day care homes must be incidental to a residential use. The day care operator must live in the primary dwelling on the lot.
  - a. **Small Family Day Care Home.** A family day care home for eight or fewer children, including children who live at the home.
  - b. **Large Family Day Care Home.** A family day care home for nine to fourteen children, including children who live at the home.
4. **Fence.** A structure made of wood, metal, masonry or other material forming a physical barrier which supports no load other than its own weight, or a hedge, which is designed to delineate, screen or enclose a lot, yard, open space area or other land area.
5. **Firearm/Munitions Businesses.** Any establishment which sells, transfers, leases or offers for sale, transfer or lease any gun, ammunition, munitions, gun powder, bullets, ordnance, or other firearm or firearm parts or supplies.
6. **Floor Area, Gross.** See 23.106.030– Floor Area, Gross.
7. **Floor Area, Leasable.** See 23.106.040– Floor Area, Leasable.
8. **Floor Area Ratio (FAR).** See 23.106.050– Floor Area Ratio.
9. **Food Product Store.** A retail products store selling foods primarily intended to be taken to another location to be prepared and consumed, and the incidental preparation of food or beverages for immediate consumption off the premises.
10. **Food and Beverage for Immediate Consumption.** The sale of food or non-alcoholic beverages for immediate consumption not on the premises.
11. **Food Service Establishments.** An establishment which in whole or in part prepares food or beverages for immediate consumption on or off the premises.
  - a. **Carry Out Food Store:** A store which serves food or non-alcoholic beverages for immediate consumption not on the premises, but usually in the vicinity of the store. This use is usually characterized as an establishment which serves food altered in texture and/or temperature on a customer-

demand basis, puts such food in non-sealed packages or edible containers, requires payment for such food before consumption, and provides no seating or other physical accommodations for on- premises dining. Examples of this use include delicatessens and other stores without seating which sell doughnuts, croissants, ice cream, frozen yogurt, cookies, whole pizzas and sandwiches. This use excludes bakeries and food products stores.

- b. **Quick Service Restaurant:** An establishment which serves food or beverages for immediate consumption either on the premises, or to be taken out for consumption elsewhere. This use is usually characterized as an establishment in which food is cooked on a customer-demand basis, payment is required before consumption, limited or no able service is provided (no waiters), and seating or other physical accommodations for on- premises customer dining is provided. Examples of this use include establishments selling primarily hamburgers or other hot or cold sandwiches, hot dogs, tacos and burritos, pizza slices, fried chicken, or fish and chips.
- c. **Full-Service Restaurant:** An establishment which serves food or beverages for immediate consumption primarily on the premises, with only a minor portion, if any, of the food being taken out of the establishment. This use is characterized as an establishment in which food is cooked or prepared on the premises on a customer-demand basis, which requires payment after consumption, and provides seating and tables for on-premises customer dining with table service (waiters).

12. **Fraternity House.** A building used for group living accommodations by an organization recognized by the University of California at Berkeley or other institution of higher learning.

13. **Front Wall.** The wall of the building nearest the front lot line.

Section 14. That Berkeley Municipal Code Section 23.502.020.R is amended to read as follows:

**R. "R" Terms.**

- 1. **Rear Main Building.** A main building situated behind another main building existing or proposed on a parcel located in the R-1A district.
- 2. **Receiving Lot.** See Lot, Receiving.
- 3. **Recycled Materials Processing.** A facility that receives and processes recyclable materials. Processing means preparation of material for efficient shipment, or to an end-user's specifications, by such means as baling, briquetting, compacting, flattening, grinding, crushing, mechanical sorting, shredding, cleaning, and remanufacturing.

4. **Recycling Redemption Center.** A facility, use, or structure for the collection of recyclable goods, including beverage containers and newspapers.
5. **Related Equipment.** All equipment necessary for or related to the provision of personal wireless services. Such equipment may include, but is not limited to, cable, conduit and connectors, equipment pads, equipment shelters, cabinets, buildings and access ladders.
6. **Religious Assembly.** A building or space primarily used for an assembly of persons to conduct worship or other religious ceremonies, including, but not limited to, churches, synagogues, temples, mosques or shrines.
7. **Repair Service, Non-Vehicle.** An establishment that provides repair and maintenance services for household appliance, home electronics, office equipment, furniture and other similar items. Excludes vehicle repair.
8. **Research and Development.** An establishment comprised of laboratory or other non-office space, which is engaged in one or more of the following activities: industrial, biological or scientific research; product design; development and testing; and limited manufacturing necessary for the production of prototypes.
9. **Resident.** A person whose primary residence is in Berkeley.
10. **Residential Care Facility.** See Community Care Facility.
11. **Residential Hotel.** See Hotel, Residential.
12. **Residential Addition.** See Addition, Residential.
13. **Residential Districts.** The districts listed under the Residential Districts heading in Table 23.108-1: Zoning Districts.
14. **Residential Hotel Room.** A room which is:
  - a. Used, designed, or intended to be used for sleeping for a period of 14 consecutive days or more;
  - b. Not a complete dwelling unit, as defined in this chapter; and
  - c. Not a Tourist Hotel Room, as defined in this chapter.
15. **Residential Use.** Any legal use of a property as a place of residence, including but not limited to dwelling units, group living accommodations, and residential hotels.
16. **Retail, General.** A retail establishment engaged in the sales of personal, consumer, or household items to the customers who will use such items. This use includes antique stores, art galleries, arts and crafts supply stores, bicycle shops, building materials and garden supplies stores, clothing stores, computer stores, cosmetic/personal care items, department stores, drug paraphernalia stores, drug stores, fabric, textile and sewing supply shops, flower and plant

stores, food product stores, furniture stores, garden supply stores, nurseries, gift/novelty shops, household hardware and housewares stores, household electronics/electrical stores, jewelry/watch shops, linen shops includes bedding, musical instruments and materials stores, office supply stores, paint stores, photography equipment supply stores, secondhand stores, sporting goods stores, stationery, cards and paper goods stores toy stores and variety stores. This use excludes video rental stores, service of vehicle parts, and firearm/munition sales.

17. **Retaining Wall.** A wall designed to contain and resist the lateral displacement of soil and of which such soil is at a higher elevation on one side of the wall.
18. **Review Authority.** The City official or body responsible for approving or denying a permit application or other form of requested approval under the Zoning Ordinance.
19. **Rooming House.** A building used for residential purposes, other than a hotel, where lodging for 5 or more persons, who are not living as a single household, is provided for compensation, whether direct or indirect. In determining the number of persons lodging in a rooming house, all residents shall be counted, including those acting as manager, landlord, landlady or building superintendent. See also Boarding House.

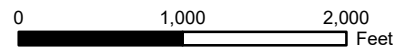
Section 15: Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley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

At a regular meeting of the Council of the City of Berkeley held on April 26, 2022, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.









Office of the City Attorney

CONSENT CALENDAR  
May 10, 2022

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

From: Farimah Faiz Brown, City Attorney

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

RECOMMENDATION

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

FISCAL IMPACT OF RECOMMENDATION

To be determined.

CURRENT SITUATION AND ITS EFFECTS

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

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

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

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

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

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

Assembly Bill 361 (Rivas), signed into law by Governor Newsom on September 16, 2021, amended a portion of the Brown Act (Government Code Section 54953) to authorize the City Council, during the state of emergency, to determine that, due to the spread of COVID-19, holding in-person public meetings would present an imminent risk to the health or safety of attendees, and therefore City legislative bodies must continue to meet via videoconference and teleconference. Assembly Bill 361 requires that the City Council must review and ratify such a determination every thirty (30) days. Therefore, if the Council passes this resolution on March 22, 2022, the Council will need to review and ratify the resolution by April 21, 2022.

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

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

#### BACKGROUND

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

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

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

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

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

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Not applicable.

#### RATIONALE FOR RECOMMENDATION

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

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

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

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

RESOLUTION NO. –N.S.

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, the City Council will need to again review the need for the continuing necessity of holding City legislative body meetings via videoconference and teleconference by June 9, 2022.

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

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

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





Office of the City Attorney

CONSENT CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Farimah Faiz Brown, City Attorney

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

RECOMMENDATION

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

FISCAL IMPACT OF RECOMMENDATION

To be determined.

CURRENT SITUATION AND ITS EFFECTS

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

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

Pursuant to Government Code section 8630(c), the City Council must review the need for continuing the local emergency at least once every sixty (60) days. The Council last reviewed and ratified the Proclamation of Local Emergency on September 14, 2021. The Council therefore must review the continuing need for the local emergency by November 13, 2021.

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

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

#### BACKGROUND

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

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

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

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

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



ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Not applicable.

RATIONALE FOR RECOMMENDATION

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

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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

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

Attachments:

1: Resolution

RESOLUTION NO. –N.S.

RESOLUTION REVIEWING AND RATIFYING THE  
PROCLAMATION OF LOCAL EMERGENCY

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

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

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

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

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

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

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

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

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

WHEREAS, the City Council will need to again review the need for continuing the local emergency and ratify the Proclamation of Local Emergency by July 9, 2022;

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

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

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

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

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

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

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

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

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

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

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



Office of the City Manager

CONSENT CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Mark Numainville, City Clerk  
 Subject: Calling for a Consolidated General Municipal Election for November 8, 2022

RECOMMENDATION

1) Adopt a Resolution: a) Calling for a General Municipal Election to be consolidated with the Statewide General Election to be held in Berkeley on November 8, 2022; b) Requesting that the Alameda County Board of Supervisors consolidate the City of Berkeley General Municipal Election with the Statewide General Election; c) Authorizing certain procedural and contractual actions; and d) Establishing policies for the filing of candidate statements of qualification.

2) Adopt a Resolution establishing policies and timelines for filing ballot measure arguments.

FISCAL IMPACTS OF RECOMMENDATION

No direct fiscal impacts related to the recommended action. Election services have seen a steep increase since 2018, with the City's first million-dollar election in 2020. It is uncertain at this time how recent state mandates and the pandemic will affect election costs in an ongoing basis. In addition, the number of measures placed on the ballot, and the length of the measures, are the primary driving factors in the fluctuation of election costs.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley is required under the City's Charter to conduct its general municipal elections in November of each even-numbered year. Adopting these resolutions is the first official step toward holding the election.

The resolution in Attachment 1: a) calls for a General Municipal Election and requests the Alameda County Board of Supervisors accept consolidation of the City's General Municipal Election with the Statewide General Election on November 8, 2022; b) provides authority for the City Clerk to enter into contracts necessary for election supplies and services for the general election; c) provides authority for the City Clerk to hire temporary staff as needed to assist with the conduct of this election; d) adopts certain administrative policies for the filing of candidate statements; and e) authorizes

Calling for a Consolidated General Municipal Election  
for November 8, 2022

CONSENT CALENDAR  
May 10, 2022

the filing of rebuttal arguments for City ballot measures pursuant to Elections Code  
Section 9285.

The resolution in Attachment 2 establishes policies and timelines for filing ballot  
measure arguments on City measures.

#### BACKGROUND

Since 2010, voters have selected candidates for Mayor, Auditor, and City Council using  
Ranked-Choice Voting (RCV). In 2022 voters will continue to use RCV, thus eliminating  
the need for runoff elections. The use of RCV does not affect any of the actions stated  
in the resolution calling the election.

The City Charter, State Elections, and Government Codes require adoption of a  
resolution requesting consolidation, and authorizing procedural, contractual and  
organizational actions in connection with the General Municipal Election to be held on  
November 8, 2022.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

#### RATIONALE FOR RECOMMENDATION

The proposed action is mandated by state code in order to carry out the provisions of  
the City Charter.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

#### Attachments:

- 1: Resolution Calling the November 8, 2022 General Municipal Election
- 2: Resolution Establishing Policies and Timelines for Filing Ballot Measure Arguments
  - Exhibit A: Selection Procedure for Multiple Ballot Measure Arguments
  - Exhibit B: Ballot Measure Argument Consent Form
  - Exhibit C: Signature Form for Proponents

RESOLUTION NO.

CALLING FOR A GENERAL MUNICIPAL ELECTION TO BE CONSOLIDATED WITH  
THE STATEWIDE GENERAL ELECTION ON NOVEMBER 8, 2022

WHEREAS, a General Municipal Election is to be held on Tuesday, November 8, 2022, in and for the City of Berkeley; and

WHEREAS, certain actions are required in connection with said election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the General Municipal Election to be held in the City of Berkeley on November 8, 2022, is hereby called.

BE IT FURTHER RESOLVED as follows:

1. In accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Statewide General Election to be held November 8, 2022, and to authorize the county elections official to render services specified.
2. The Registrar of Voters of Alameda County is requested to perform services in connection with said election at the request of the City Clerk. These services include all necessary services related to signature checking for nomination petitions and signatures-in-lieu of filing fee, official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election.
3. The City hereby requests that the Registrar of Voters conduct the election for City Council and Auditor using ranked choice voting in accordance with the executed Memorandum of Understanding between the City and the Registrar as well as Berkeley Municipal Code Section 2.14.010 et seq.
4. The Board of Supervisors of Alameda County is requested to include on the ballots and sample ballots, all qualified measures submitted by the City Council to be ratified by the qualified electors of the City of Berkeley.
5. That the City of Berkeley acknowledges that the consolidated election will be held and conducted in the manner prescribed in Elections Code Section 10418.
6. The City Clerk is hereby directed to cause the posting, publication, and printing of all notices or other election materials pursuant to the requirements of the Charter of the City of Berkeley and the Elections and Government Codes of the State of California.
7. The City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of

the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

8. The offices to be voted upon at the General Municipal Election shall be:
  - a) One council member seat, District 1, term ending November 30, 2026
  - b) One council member seat, District 4, term ending November 30, 2026
  - c) One council member seat, District 7, term ending November 30, 2026
  - d) One council member seat, District 8, term ending November 30, 2026
  - e) One seat for auditor, term ending November 30, 2026
  - f) Three school board director seats, terms ending November 30, 2026
  - g) Five rent stabilization board commissioner seats, terms ending November 30, 2026;
9. The offices of auditor and council member require a 50%+1 majority in the ranked choice voting system to be elected. The offices of school board director and rent stabilization board commissioner require a plurality of the votes cast.
10. Candidates may file a statement of qualification pursuant to the regulations in the Elections Code, the City Charter, the Municipal Code, and the policies set forth below:
  - a. Candidate statements must be filed no later than the last day to file nomination papers.
  - b. Candidate statements must be filed at the same time as completed nomination papers are filed.
  - c. Statements may not be changed once they are submitted. Statements may be withdrawn until 5:00 p.m. on the next business day after the close for the nomination period.
  - d. Statements are confidential until the close of the nomination period. The statements are subject to public review and contest.
  - e. There shall be no fee charged by the City for the submission of a candidate statement of qualifications.
  - f. Statements must be typed or printed from a computer. If prepared on a computer, submit the statement in electronic format in addition to the required hard copy.
  - g. Statements shall be submitted in plain text formatting, single paragraph, without any formatting such as underline, bold, italics, or all caps.
  - h. Candidate statements must be attached to the form provided by the City Clerk when filed.
  - i. Statements are limited to 200 words. The word counting guidelines in Elections Code Section 9 shall govern the counting of words.
  - j. The candidate statement will be translated into Spanish, Chinese, Vietnamese, and Tagalog pursuant to the requirements of the Federal Voting Rights Act.
  - k. Signed and completed consent forms are required for each Berkeley resident referenced as an endorser (no less than 5, no more than 20) and for any person and any organization mentioned in the text of the statement as an endorser or supporter.
  - l. For any discrepancy between the information listed on the hard copy of a candidate statement or candidate statement form and the consent form, the signed consent form will take precedence.



- m. The name and title of an endorser will be printed exactly as it is written on the consent form.
  - n. The total word count for all title(s) of a single endorser shall not exceed 20 words. In the case that there are more than 20 words, the title will be truncated at the 20<sup>th</sup> word. Words will be counted in accordance with Elections Code Section 9.
  - o. Any mention of partisan activity or membership is prohibited.
  - p. Any mention of any opponent or other candidate for the same office is prohibited.
  - q. Candidates may submit a photograph of themselves to be printed with their statement. Hard copy or electronic photo must be submitted at the same time the candidate statement is filed in order to be included in the voter pamphlet.
11. The City of Berkeley agrees to reimburse the County of Alameda in full for the cost of election services performed.
12. Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

## RESOLUTION NO –N.S.

## ESTABLISHING THE SCHEDULE AND POLICY PROVIDING FOR THE FILING OF BALLOT ARGUMENTS FOR CITY MEASURES SUBMITTED AT MUNICIPAL ELECTIONS

WHEREAS, the City Council will likely submit ballot measures to the voters at the November 8, 2022, election; and

WHEREAS, it is necessary to establish a schedule and policy for the filing of ballot arguments.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following policy is hereby adopted for the November 8, 2022, General Municipal Election:

Section 1. The Primary Argument filing period opens at 8:00 a.m. on Monday, August 15, 2022, and closes at 12:00 p.m. on Friday, August 19, 2022. The Rebuttal Argument filing period opens at 4:00 p.m. on Friday, August 19, 2022, and closes at 12:00 p.m. on Friday, August 26, 2022.

Section 2. The 10-day public review period for all ballot materials opens at 4:00 p.m. on Friday, August 26, 2022, and closes at 5:00 p.m. on Tuesday, September 6, 2022.

Section 3. Primary Arguments for or against ballot measures shall not exceed 300 words in length. Rebuttal Arguments for or against ballot measures shall not exceed 250 words in length (*EC 9282, 9285*). Word count will be determined using the standards set forth in Elections Code Section 9.

Section 4. If more than one argument is submitted on a measure, the City Clerk shall select the argument and shall give preference, in the order named, to arguments of the following: (*EC 9287*)

- a) The legislative body, or member or members of the legislative body authorized by that body.
- b) The individual voter or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure.
- c) Bona fide associations of citizens.
- d) Individual voters who are eligible to vote on the measure.

If more than one argument from the same level of standing is submitted, the argument to be printed will be determined by the procedure in Exhibit A.

Section 5. Each ballot argument must be accompanied by the printed name(s) and signature(s) of the person or persons submitting it or, if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers who is the author of the argument. (*EC 9283*)

a. The consent form in Exhibit B must be submitted in order to use an organization name for the title of a signor or as an endorser in the argument text.

b. If the argument is filed by: 1) the legislative body or authorized members of the legislative body; or 2) individual voters eligible to vote on the measure, then, pursuant to Elections Code Sections 9282 and 9283, all signors to the argument must be eligible to vote on the measure.

Section 6. No more than five signatures shall appear with any argument. In case any argument is signed by more than five persons, the signatures of the first five shall be printed. (EC 9283) Authors must list the signors names on the argument in the order they are to be printed.

Section 7. The certification of the author(s) and proponent(s) in Exhibit C must be submitted at the time the respective primary argument or rebuttal argument is filed. A separate signature form is required for the rebuttal argument even if the same signor completed a form for the primary argument. (EC 9600)

Section 8. For proponents of ballot arguments whose name and title shall appear with the argument in the voter pamphlet, the title of said proponent is limited to 20 words. In the case that there are more than 20 words, the title will be truncated at the 20<sup>th</sup> word. Words will be counted in accordance with Elections Code Section 9.

Section 9. The names and titles of proponents will be printed exactly as they appear on the "Printed Name" and "Title" lines on the Signature Form for Proponents in Exhibit C.

Section 10. The Consent Form for Use of Organization Name for Ballot Argument/Rebuttal Statements shown in Exhibit B is required for any proponent and/or signatory that uses the name of any organization in their title. If using more than one organization name in the full title(s), a separate consent form is required for each organization.

a. Consent forms are required for persons and/or organizations listed as supporters in the text of the argument.

b. Offices held with public agencies (including city boards and commissions) do not require a consent form from the jurisdiction.

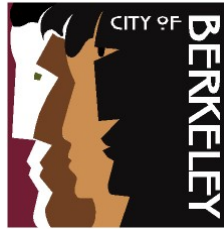
Section 11. The City Clerk, upon receipt of arguments and after the filing deadline, will immediately transmit copies of the arguments to the authors of the opposing arguments (both for and against the measure) who may then submit rebuttals within the time period shown above. (EC 9285)

Section 12. Primary arguments may be changed or withdrawn up to 12:00 p.m., Friday, August 19, 2022. Rebuttal arguments may be changed or withdrawn up to 12:00 p.m., Friday, August 26, 2022. Arguments received prior to the deadline are confidential until the deadline.

Section 13. Only the author whose primary argument has been selected by the City Clerk in accordance with Elections Code Section 9287 may file a rebuttal argument or may authorize in writing another person or persons to prepare, submit, or sign the rebuttal argument. (EC 9285)

Section 14. Primary and rebuttal arguments must be typed or printed from a computer. Hand written arguments will not be accepted. If prepared on a computer, the primary/rebuttal argument shall be submitted in electronic format in addition to the required hard copy.

BE IT FURTHER RESOLVED that these provisions, excluding date specific deadlines, shall remain in effect for all future elections until superseded.



**CITY OF BERKELEY  
CITY CLERK DEPARTMENT**

**Selection Procedure for  
Multiple Ballot Measure Arguments**

When multiple ballot measure arguments are submitted for or against a measure, Elections Code Section 9287 provides guidelines for determining which argument will be published in the Voter Information Guide.

**9287. City elections official to select if more than one argument.**

(a) If more than one argument for or more than one argument against any city measure is submitted to the city elections official within the time prescribed, he or she shall select one of the arguments in favor and one of the arguments against the measure for printing and distribution to the voters. In selecting the argument, the city elections official shall give preference and priority, in the order named, to the arguments of the following:

- (1) The legislative body, or member or members of the legislative body authorized by that body.
- (2) The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure.
- (3) Bona fide associations of citizens.
- (4) Individual voters who are eligible to vote on the measure.

(b) In order to enable the city elections official to determine whether it qualifies as a bona fide association of citizens, an organization or association submitting an argument for or against a city measure shall submit with its argument a copy of one of the following:

- (1) Its articles of incorporation, articles of association, partnership documents, bylaws, or similar documents.
- (2) Letterhead containing the name of the organization and its principal officers.

(3) If the organization or association is a primarily formed committee established to support or oppose the measure, its statement of organization filed pursuant to Section 84101 of the Government Code.

(c) In selecting an argument from among bona fide associations of citizens, the city elections official shall not consider the type of documentation submitted pursuant to subdivision (b) or the form of the association.

*Amended by Stats. 2018, Ch. 92, Sec. 63. (SB 1289) Effective January 1, 2019.)*

The Elections Code does not require that the signors of the argument, when filed by a bona fide association of citizens, must reside or be registered to vote in the jurisdiction that is voting on the measure.

If the argument is being filed by a bona fide association, Elections Code Section 9283 requires that “the name of the organization and the printed name and signature of at least one of its principal officers who is the author of the argument” must accompany the argument.

The Elections Code does not contain any provision for selecting an argument based on which argument was filed first, or earliest in relation to any arguments filed later, but before the deadline. All arguments filed before the deadline are considered equal in priority.

The Elections Code clearly states that only one argument for and one argument against may be printed (**EC Sec. 9287**). If two or more parties filing an argument for or against a measure fall under the same classification, then the Elections Official shall select one argument to print. The Elections Official will determine the most appropriate procedure to select the argument to be printed.

The Berkeley Municipal Code and the City Charter do not stipulate a method for selecting arguments if multiple arguments of equal standing are filed. Therefore, state law is followed to make the determination.

The procedure to determine the winning candidate in the case of a tie vote is by drawing of lots (**EC Sec. 15651**). The Elections Official may determine that the drawing of lots, as outlined below, is the most appropriate means to select the argument to be printed.

### **Procedure for Drawing of Lots**

The names of the authors of each argument shall be written on a piece of paper, folded, and placed in a container so that each argument is represented by one paper. The container will be agitated to mix the papers, and then one paper shall be drawn at a time. As each piece of paper is removed, it will be opened and the names recorded in the order removed.

The order in which the names are removed from the container shall be the order of priority for printing the argument, i.e., the first name chosen shall be the author whose argument shall be printed.

Arguments for a measure and arguments against a measure will each have their own drawing process.

The results of the drawing will then be posted in the City Clerk Department.

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**BALLOT MEASURE ARGUMENT CONSENT FORM**  
**▶ PRIMARY ARGUMENT ◀**

**CONSENT FOR USE OF ORGANIZATION NAME**

I hereby consent that my organization's name may be referred to as an endorser either within the text of the primary argument or in the title of the signatory listed below for city ballot measure \_\_\_\_\_ at the City of Berkeley  
(subject or measure letter)

General Municipal Election to be held on November 8, 2022.

**To be completed by  
Organization Principal:**

\_\_\_\_\_  
Printed Name of Principal

\_\_\_\_\_  
Signature of Principal

\_\_\_\_\_  
Title

\_\_\_\_\_  
Organization Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Signatory

-----  
**CONSENT FOR USE OF ENDORSER NAME**

I hereby consent that my name may be referred to as an endorser within the text of the primary argument for City Ballot Measure \_\_\_\_\_  
(subject or measure letter)  
at the City of Berkeley General Municipal Election to be held on November 8, 2022.

**To be completed by  
Endorser:**

\_\_\_\_\_  
Printed Name of Endorser

\_\_\_\_\_  
Signature of Endorser

\_\_\_\_\_  
Title

**BALLOT MEASURE ARGUMENT CONSENT FORM**  
**▶ REBUTTAL ARGUMENT ◀**

**CONSENT FOR USE OF ORGANIZATION NAME**

I hereby consent that my organization's name may be referred to as an endorser either within the text of the rebuttal argument or in the title of the signatory listed below for city ballot measure \_\_\_\_\_ at the City of Berkeley  
(subject or measure letter)

General Municipal Election to be held on November 8, 2022.

**To be completed by  
Organization Principal:**

\_\_\_\_\_  
Printed Name of Principal

\_\_\_\_\_  
Signature of Principal

\_\_\_\_\_  
Title

\_\_\_\_\_  
Organization Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Signatory

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**CONSENT FOR USE OF ENDORSER NAME**

I hereby consent that my name may be referred to as an endorser within the text of the rebuttal argument for City Ballot Measure \_\_\_\_\_  
(subject or measure letter)

at the City of Berkeley General Municipal Election to be held on November 8, 2022.

**To be completed by  
Endorser:**

\_\_\_\_\_  
Printed Name of Endorser

\_\_\_\_\_  
Signature of Endorser

\_\_\_\_\_  
Title



**SIGNATURE FORM FOR PROPONENTS**  
**▶ PRIMARY ARGUMENT ◀**

**EC 9600:** "All arguments concerning measures filed pursuant to this division shall be accompanied by the following form statement, to be signed by each proponent and by each author, if different, of the argument:"

The undersigned proponent or author of the ballot argument  *in favor of* or  *against* ballot measure \_\_\_\_\_ at the \_\_\_\_\_  
(subject or measure letter)

General Municipal Election for the City of Berkeley to be held on November 8, 2022, hereby states that this argument is true and correct to the best of his/her/their knowledge and belief:

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_  
(Name will be printed exactly as written on this line)

Full Title: \_\_\_\_\_  
(Title will be printed exactly as written on this line – limit 20 words)

Residence Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

For the City of Berkeley General Municipal Election to be held on November 8, 2022, I hereby consent that my name may be referred to as an endorser within the text of the primary argument for City Ballot Measure \_\_\_\_\_.  
(subject or measure letter)

- For any argument filed by the City Council or an individual voter, all signors must be eligible to vote on the measure (i.e. Berkeley resident, at least 18 years old on Election Day, U.S. citizen, not incarcerated in a state or federal prison or on parole for the conviction of a felony, and not currently found mentally incompetent to vote by a court).
- For any signor on a city ballot measure, a consent form is required for the use of any organization name in the signor’s title(s). The organization must consent to the use of its name for all signors.
- Offices held with public agencies (including city boards and commissions) do not require a consent form from the jurisdiction.
- If using more than one organization name in the full title(s), a separate consent form is required for each organization.

**SIGNATURE FORM FOR PROPONENTS**  
**▶ REBUTTAL ARGUMENT ◀**

**EC 9600:** "All arguments concerning measures filed pursuant to this division shall be accompanied by the following form statement, to be signed by each proponent and by each author, if different, of the argument:"

The undersigned proponent or author of the ballot argument  *in favor of* or  
 *against* ballot measure \_\_\_\_\_ at the  
(subject or measure letter)

*General Municipal Election for the City of Berkeley to be held on November 8, 2022, hereby states that such argument is true and correct to the best of his/her/their knowledge and belief:*

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_  
(Name will be printed exactly as written on this line)

Full Title: \_\_\_\_\_  
(Title will be printed exactly as written on this line – limit 20 words)

Residence Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

For the City of Berkeley General Municipal Election to be held on November 8, 2022, I hereby consent that my name may be referred to as an endorser within the text of the rebuttal argument for City Ballot Measure \_\_\_\_\_.  
(subject or measure letter)

- *For any argument filed by the City Council or an individual voter, all signors must be eligible to vote on the measure (i.e. Berkeley resident, at least 18 years old on Election Day, U.S. citizen, not incarcerated in a state or federal prison or on parole for the conviction of a felony, and not currently found mentally incompetent to vote by a court).*
- *For any signor on a city ballot measure, a consent form is required for the use of any organization name in the signor's title(s). The organization must consent to the use of its name for all signors.*
- *Offices held with public agencies (including city boards and commissions) do not require a consent form from the jurisdiction.*
- *If using more than one organization name in the full title(s), a separate consent form is required for each organization.*



Office of the City Manager

CONSENT CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Sharon Friedrichsen, Budget Manager  
 Subject: Amendment: FY 2022 Annual Appropriations Ordinance

RECOMMENDATION

Adopt the first reading of an Ordinance amending the FY 2022 Annual Appropriations Ordinance No. 7,795–N.S. for fiscal year 2022 based upon recommended re-appropriation of committed FY 2021 funding and other adjustments in the amount of \$53,155,906 (gross) and \$43,380,083 (net).

FISCAL IMPACTS OF RECOMMENDATION

On June 29, 2021 the City Council adopted the Fiscal Year (“FY”) 2022 Budget, authorizing gross appropriations of \$673,601,287 and net appropriations of \$552,265,708 (net of dual appropriations).

This First Amendment to the FY 2022 Annual Appropriations Ordinance approved by Council on January 18, 2022 increased the gross appropriations to \$852,116,502 and net appropriations to \$716,547,594 and represents the re-authorization of funding previously committed in FY 2021 and some new expenditures including new grant fund appropriations.<sup>1</sup>

This Second Amendment to the FY 2022 Annual Appropriations Ordinance totals \$53,155,906 (gross) and \$43,380,083 (net) and increases gross appropriations to \$905,272,407 and net appropriations to \$759,927,677. The changes in this report are primarily unencumbered carryover and adjustments to continue and start capital projects and other City initiatives.

BACKGROUND

The Annual Appropriations Ordinance (AAO) establishes the expenditure limits by fund for FY 2022. Throughout the year, the City takes actions that amend the adopted budget. These may include, but are not limited to, the acceptance of new grants,

<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2022/01\\_Jan/Documents/2022-01-18\\_Item\\_01\\_Amendment\\_FY\\_2022\\_AAO.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2022/01_Jan/Documents/2022-01-18_Item_01_Amendment_FY_2022_AAO.aspx)

revisions to existing grants, adjustments to adopted expenditure authority due to emergency needs, and transfers in accordance with Council’s fiscal policies.

The adopted budget is also amended annually to reflect the re-appropriation of prior year funds for contractual commitments (i.e. encumbrances) as well as unencumbered carryover of unexpended funds previously authorized for one-time, non-recurring purposes. These budget modifications are periodically presented to the Council in the form of an Ordinance amending the Annual Appropriations Ordinance, which formally requires a two-thirds vote of the City Council. This report addresses re-appropriating FY 2021 spending authority to FY 2022 of available cash for commitments entered into in prior years and is the second amendment to the FY 2022 AAO.

When Council adopts an appropriations ordinance (budget), it is based on projected revenues and expenditures. If fund balances do not support the requested level of expenditures, no carryover is recommended.

The proposed changes, presented in their entirety in Exhibit A, are summarized as follows:

|                                | Recommended Carryover | Recommended Adjustments | Total                |
|--------------------------------|-----------------------|-------------------------|----------------------|
| General Fund (011)             | \$ -                  | \$ 6,956,452            | \$ 6,956,452         |
| Capital Improvement Fund (501) | \$ 267,707            | \$ 231,148              | \$ 498,855           |
| All Other Funds                | \$ 4,499,576          | \$ 41,201,023           | \$ 45,700,599        |
| <b>Total</b>                   | <b>\$ 4,767,283</b>   | <b>\$ 48,388,623</b>    | <b>\$ 53,155,906</b> |

Below is a summary of the FY 2021 Unencumbered Carryover and the FY 2022 Adjustments for the City’s General Fund and Other Funds.

**General Fund**

The General Fund includes recommended adjustments of \$6,956,452 for the following items:

*Recommended Adjustments*

- \$1,500,000 for a Council Budget Referral and Resolution by Vice Mayor Harrison and Councilmember Bartlett for Establishing a Pilot Existing Building Electrification Installation Incentives and Just Transition Program with Pre-Qualified Contractors Meeting Minimum Labor Standards to Assist New Property Owners, Renters and Existing Property Owners with Transition to Zero-Carbon Buildings. In December 2021, as part of the Mayor’s December 2021 General Fund Budget Recommendation, this item was referred to be first priority to be funded in the AAO#2 process in May 2022.
- \$39,085 in funds from the East Bay Community Foundation raised by the Berkeley Relief Fund and authorize the City Manager to allocate these funds to the following: \$10,000 each to the Starry Plough Pub and Music Venue and

- \$18,142.38 to the Eviction Defense Center for the Housing Retention Program. Approved by Council on 12/14/21 through Resolution 70,167-N.S.
- ❑ \$80,000 in the City Manager's Office -for professional executive recruitment services to fill the vacant Director of Human Resources and Director of Information Technology positions.
  - ❑ \$445,129 in additional funds for the Visit Berkeley contract based on additional Transient Occupancy Tax revenues received in FY 2022.
  - ❑ \$37,260 for an emergency generator for the Animal Shelter
  - ❑ \$73,068 in the Fire Department for a payment to the State of California for overpayments for the Ground Emergency Medical Transport program in FY 2011 & FY 2014
  - ❑ \$250,000 in the Fire Department for the Fire Department Training Academy to help fill vacant positions
  - ❑ \$250,000 in Health, Housing & Community Services for the Health Equity & Innovation District Consultant Council Referral after staff learned this item cannot be funded through the American Rescue Plan
  - ❑ \$4,110,918 in Non-Departmental for the FY 2021 Allocation to Stability Reserve Fund (\$2,261,005) and to Catastrophic Reserve Fund (\$1,849,913). Approved by Council on 12/14/21 with Mayor's Budget Recommendations.
  - ❑ \$150,000 in Parks, Recreation & Waterfront for additional funding for the West Campus Pool and King Pool projects as bids came out higher than the estimate
  - ❑ \$20,000 in Public Works for the coordination of the Shared Electric Micromobility Permit Program

All of the General Fund items listed above are being funded from the projected additional \$22 million dollars in General Fund Revenues that the City is anticipating to receive in FY 2022. The information about the additional revenues is being presented to the City Council in the FY 2022 Mid-Year Report in tonight's agenda.

### ***Other Funds***

Other City funds (including capital improvement project funds) total recommended carryover of \$4,767,283 and recommended adjustments of \$41,432,171 includes the following allocations:

#### ***Recommended Carryover***

- ❑ \$150,000 in Measure B Local Streets & Roads funds for the Ravo Narrow Street Sweeper
- ❑ \$22,253 in Parks Tax for hourly staffing cost for the Parks Strategic Plan
- ❑ \$46,371 in Tobacco Control Trust to support the Tobacco Prevention program
- ❑ \$678,819 in Emergency Solutions Grant Funding for housing services to be provided by community agencies
- ❑ \$465,152 in CalTrans Grant Funding for the North Berkeley BART/Sacramento Street Complete Streets project
- ❑ \$267,707 in the CIP Fund for various Public Works on-going capital projects

- ❑ \$853,735 in Measure T1 funds for various projects in Public Works that are listed as Item Numbers 131-137 in Attachment 2
- ❑ \$2,269,671 in Sanitary Sewer funds in Public Works for two sewer rehabilitation projects at Martin Luther King, Jr. Way and other locations and San Pablo Avenue

#### *Recommended Adjustments*

- ❑ \$250,000 in Measure U1 fund for the Eviction Defense Center Housing Retention Program
- ❑ \$600,000 in Climate Equity Action Fund to assist low-income residents with the transition to zero-carbon transportation and buildings
- ❑ \$2,700,000 in Catastrophic Reserve Funds to transfer to the Playground Camp Fund for the Berkeley Tuolumne Camp Rebuild project. The allocation of these funds has already been included in the reserve calculations presented in the FY 2021 Year-End and FY 2022 First Quarter Report<sup>2</sup>
- ❑ \$100,000 in Special Tax for the Disabled (Measure E) Funds for a consultant and enter into any agreements to provide Easy Does It (EDI) with operational, management, and organizational culture consulting services for an amount not to exceed \$100,000 to ensure initial and sustained implementation of audit findings. Approved by Council on 9/10/19 through Resolution 69,077-N.S.
- ❑ \$54,167 in Fund Raising Activities Fund for a donation to support the operations of the Berkeley Meals on Wheels program
- ❑ \$753,055 in Playground Camps Funds for the Cazadero Camp Landslide project, Berkeley Tuolumne Camp Rebuild project, and for the Echo Lake Camp Youth Scholarship
- ❑ \$500,000 in State-Prop 172 Pub.Safety Fund to add funding for the DNA forensic services contract
- ❑ \$439,397 in State Transportation Tax Funds for the FY 2020 Street Rehab project and for a contract with BSK Associates to on-call site assessment work
- ❑ \$1,232,491 in CDBG Funds for the Rosewood Manor Multi-Family Housing Rehab project. Approved by Council through Resolutions 69,719-N.S. on 2/9/21 and 69,830-N.S. on 4/27/21
- ❑ \$50,000 in Measure F – VRF for the local match to Alameda CTC grant for the Bicycle Parking project
- ❑ \$2,729,527 in Measure BB – Local Streets & Roads Funds in Public Works for various projects that are listed as Item Numbers 30-43 in Attachment 2
- ❑ \$332,834 in Measure BB – Bike & Pedestrian Funds in Public Works for various projects that are listed as Item Numbers 44-48 in Attachment 2
- ❑ \$43,000 in Measure BB – Paratransit for the Paratransit Program funding
- ❑ \$298,986 in Parks Tax Funds for park projects, bench donation, and increased water and refuse costs
- ❑ \$600,000 in Measure GG Funds for Fire Overtime costs

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<sup>2</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/12\\_Dec/Documents/2021-12-14\\_Supp\\_2\\_Reports\\_Item\\_44\\_Rev\\_City\\_Manager\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/12_Dec/Documents/2021-12-14_Supp_2_Reports_Item_44_Rev_City_Manager_pdf.aspx)

- ❑ \$5,000,000 in Operating Grants – State Funds from State of California Department of Housing & Community Services Local Housing Trust Fund for Blake Street (2527 San Pablo) and Maudelle Miller Shirek (2001 Ashby) projects. Both projects will receive \$2.5 million. Approved by Council on 7/14/20 through Resolution No. 69,494-N.S.
- ❑ \$615,130 in Capital Grants – State Funds for various Public Works capital projects that are listed as Item Numbers 59-61 in Attachment 2
- ❑ \$841,000 in Capital Grants – Local Funds for various Public Works capital projects listed as Item Numbers 62-65 in Attachment 2
- ❑ \$53,394 in Health (General) Funds for Public Health grant budget adjustments
- ❑ \$5,034,428 in Mental Health Services Act Funds for the MHSA Wellness Center Operations contract, a contract amendment with Berkeley Food & Housing Project for Berkeley Mental Health Flexible Funding Programs and Russell Street Residence, and various HHCS approved Mental Health Plans in FY 2022 (listed as Item Numbers 71-89 in Attachment 2)
- ❑ \$50,000 in C.F.P. Title X Fund for reproductive health and education program
- ❑ \$8,112,046 in One-Time Grant Funds for projects in the City Manager’s Office, Health, Housing & Community Services, and Parks Recreation & Waterfront that are listed as Item Numbers 98-109 in Attachment 2
- ❑ \$117,000 in Bay Area Air Quality Management District Fund for the Bicycle Parking project
- ❑ \$349,000 in MTC Funds for the Bicycle Plan Project, West Berkeley Quick Build Project, and goBerkeley program
- ❑ \$168,272 in FEMA Grant Funds for a Regional Fire Leadership Development Academy
- ❑ \$60,710 in State Dept Conservation/Recycling Fund for the residential recycling curbside collection program
- ❑ \$75,138 in Caltrans Grant Fund for the North Berkeley BART/Sacramento Complete Streets project
- ❑ \$209,784 in Bio-Terrorism Grant Fund for the Public Health Emergency Preparedness
- ❑ \$231,148 in Capital Improvement Funds for various projects listed as Item Numbers 122-130 in Attachment 2
- ❑ \$585,000 in Measure T1 for various projects listed as Item Numbers 132, 134, and 137 in Attachment 2
- ❑ \$5,452,871 in Measure O Funds for the Maudelle Miller Shirek Community project (2001 Ashby) project
- ❑ \$2,129,991 in Zero Waste Funds for the new Ecology Center contract for residential curbside recycling and funding for the shortfall to the vehicle replacement payments
- ❑ \$62,000 in Marina – Dept of Boating and Waterway Fund for DBW 2021 SAVE grant program and purchase and replacement of equipment related to boating safety at the Berkeley Marina
- ❑ \$440,579 in Marina Funds for various projects listed as Item Numbers 148-154 in Attachment 2

- ❑ \$214,643 in Sanitary Sewer Funds for two sewer rehabilitation projects at Martin Luther King, Jr. Way and other locations and San Pablo Avenue
- ❑ \$50,000 in Unified Program (CUPA) Fund for the Toxics Replacement software
- ❑ \$345,188 in Equipment Replacement Fund for a Wheel Loader
- ❑ \$456,165 in Tourism BID Funds for Visit Berkeley Contract based on additional revenues received in FY 2022

This report has been discussed with the Budget & Finance Policy Committee at their April 14, 2022 and April 19, 2022 meetings.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the act of adopting the budget/appropriations ordinance/amendments. Actions included in the budget will be developed and implemented in a manner that is consistent with the City's environmental sustainability goals and requirements.

#### RATIONALE FOR RECOMMENDATION

The recommendation allows the City to amend the current FY 2022 Revised Budget, re-appropriating funds from FY 2021 to FY 2022 for contractual commitments that need to be paid. It revises the budget to reflect approved carryover requests and adjustments in both discretionary and non-discretionary funds.

Staff has conducted a detailed analysis of the individual carryover and other adjustment requests submitted by departments and is presenting carryover and other adjustment recommendations for projects that are either currently under contract, represent Council priorities, and/or are considered critical.

#### CONTACT PERSON

Sharon Friedrichsen, Budget Manager, City Manager's Office, 981-7000  
Rama Murty, Senior Management Analyst, City Manager's Office, 981-7000

#### Attachments:

1: Ordinance

Exhibit A: Annual Appropriation Ordinance Summary of Appropriations by Fund  
2: FY 2022 Annual Appropriations Ordinance Amendment #2 Recommendations



ORDINANCE NO. -N.S.

AMENDING THE ANNUAL APPROPRIATIONS ORDINANCE NO. 7,795–N.S. FOR  
FISCAL YEAR 2022

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

Section 1. That the Annual Appropriations Ordinance based on the budget for FY 2022 submitted by the City Manager and passed by the City Council be amended as follows and as summarized in Exhibit A:

|                                                |                    |
|------------------------------------------------|--------------------|
| A. General Fund (Funds 001-099)                | 279,359,429        |
| B. Special Funds (Funds 100-199)               | 171,752,899        |
| C. Grant Funds (Funds 300-399)                 | 129,219,649        |
| D. Capital Projects Funds (Funds 500-550)      | 73,632,076         |
| E. Debt Service Fund (Funds 551-599)           | 9,804,404          |
| F. Enterprise Funds (Funds 600-669)            | 164,992,055        |
| G. Internal Service Funds (Funds 146, 670-699) | 60,739,124         |
| H. Successor Agency (Funds 760-769)            | 57,120             |
| I. Agency Funds (Funds 771-799)                | 8,852,933          |
| J. Other Funds (Funds 800-899)                 | 6,862,718          |
| <b>K. Total</b>                                |                    |
| Total General Fund                             | 279,359,429        |
| Add: Total Other Than General Fund             | 625,912,979        |
| <b>Gross Revenue Appropriated</b>              | <b>905,272,407</b> |
| Less: Dual Appropriations                      | -84,605,606        |
| Less: Revolving/Internal Service Funds         | -60,739,124        |
| <b>Net Revenue Appropriated</b>                | <b>759,927,677</b> |

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

- a. From the General Fund to the General Fund – Stability Reserve Fund; Catastrophic Reserve Fund; Paramedic Tax Fund; Health State Aid Realignment; Fair Election Fund; Capital Improvement Fund; Phone System Replacement; Equipment Replacement Fund; Public Liability Fund; Catastrophic Loss Fund; Police Employee Retiree Health Assistance Plan; Safety Members Pension Fund; and Sick Leave Entitlement Fund.

- b. To the General Fund from the General Fund – Stability Reserves Fund; Catastrophic Reserves Fund; Community Development Block Grant Fund; Street Lighting Assessment District Fund; Zero Waste Fund; Marina Operations and Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Parking Meter Fund; Unified Program (CUPA); IT Cost Allocation Fund; and Health State Aid Realignment Fund.
- c. To the First Source Fund from the Parks Tax Fund; Capital Improvement Fund; and the Marina Fund.
- d. From the Measure U1 Fund to the Workers’ Compensation Fund
- e. From the Catastrophic Reserve Fund to the Playground Camp Fund
- f. From Gilman Sports Field Fund to Gilman Field Reserve Fund
- g. From Measure FF Fund to Paramedic Tax Fund.
- h. From the American Rescue Plan Fund to the General Fund; Sports Field Fund; Playground Camp Fund; Marina Fund; Off-Street Parking Fund; and Parking Meter Fund.
- i. From Capital Improvement Fund to PERS Savings Fund; Berkeley Repertory Theater Fund; and 2010 COP (Animal Shelter) Fund.
- j. To the Public Art Fund from the Parks Tax Fund; Capital Improvement Fund; and the Marina Fund.
- k. To CFD#1 District Fire Protection Bond (Measure Q) from Special Tax Bonds CFD#1 ML-ROOS.
- l. To Private Sewer Lateral Fund from Sanitary Sewer Operation Fund.
- m. To Catastrophic Loss Fund from Permit Service Center Fund.
- n. To Catastrophic Loss Fund from Unified Program (CUPA) Fund.
- o. To the Building Purchases and Management Fund from General Fund; Health (General) Fund; Rental Housing Safety Program Fund; Measure B Local Streets & Road Fund; Employee Training Fund; Zero Waste Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Off Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Building Purchases & Management Fund; Building Maintenance Fund; Central Services Fund; and Health State Aide Realignment Trust Fund.
- p. To Equipment Replacement Fund from General Fund; Mental Health Services Act Fund; Health (Short/Doyle) Fund; Vector Control Fund; Paramedic Tax Fund; Playground Camp Fund; State Transportation Tax Fund; Rental Housing Safety Program Fund; Parks Tax Fund; Street Light Assessment District Fund; Zero

Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Parking Meter Fund; Equipment Maintenance Fund; Building Maintenance Fund; and Central Services Fund.

- q. To the Equipment Maintenance Fund from General Fund; Health (General) Fund; Mental Health Services Act Fund; Health (Short/Doyle) Fund; Vector Control Fund; Paramedic Tax Fund; Library - Discretionary Fund; Playground Camp Fund; State Transportation Tax Fund; Rental Housing Safety Program Fund; Rent Stabilization Board Fund; Parks Tax Fund; Street Light Assessment District Fund; FEMA Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Off Street Parking Fund; Parking Meter Fund; Equipment Maintenance Fund; Building Maintenance Fund; and Central Services Fund.
- r. To the Building Maintenance Fund from the General Fund; Health (General) Fund; Health (Short/Doyle) Fund; Measure B Local Street & Road Fund; Parks Tax Fund; Street Light Assessment District Fund; Zero Waste Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Off Street Parking Fund; Parking Meter Fund; Equipment Maintenance Fund; Building Maintenance Fund; and Mental Health State Aid Realignment Fund.
- s. To the Central Services Fund from the General Fund; First Source Fund; Health (Short/Doyle) Fund; Library-Discretionary Fund; Playground Camp Fund; Rent Stabilization Board Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation; Building Purchases & Management Fund; Building Maintenance Fund; Central Services Fund; and Mental Health State Aid Realignment Fund.
- t. To Information Technology Cost Allocation Plan Fund from General Fund; Target Case Management/Linkages Fund; Health (Short/Doyle); Library Fund; Playground Camp Fund; State Transportation Tax Fund; CDBG Fund; Rental Housing Safety Program; Rent Stabilization Board Fund; Parks Tax Fund; Street Light Assessment District Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation; Clean Storm Water Fund; Permit Service Center Fund; Off Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Equipment Maintenance Fund; Building Maintenance Fund; Information Technology Cost Allocation Plan Fund; Health State Aid Realignment Trust Fund; and Mental Health State Aid Realignment Fund.
- u. To the Workers' Compensation Self-Insurance Fund from General Fund; Special Tax for Severely Disabled Measure E Fund; First Source Fund; HUD Fund; ESGP Fund; Health (General) Fund; Target Case Management/Linkages Fund; Mental Health Service Act Fund; Health (Short/Doyle) Fund; EPSDT Expansion Proposal Fund; Senior Nutrition (Title III) Fund; C.F.P. Title X Fund; Fund Raising Activities Fund; Berkeley Unified School District Grant; Vector Control Fund; Paramedic Tax Fund; Alameda County Grants Fund; Senior Supportive Social Services Fund; Family Care Support Program Fund; Domestic Violence Prevention – Vital

Statistics Fund; Affordable Housing Mitigation; Inclusionary Housing Program; Library – Discretionary Fund; Playground Camp Fund; Community Action Program Fund; State Proposition 172 Public Safety Fund; State Transportation Tax Fund; CDBG Fund; Rental Housing Safety Program; Measure B Local State & Road Fund; Measure B Bike & Pedestrian Fund; Measure B – Paratransit Fund; Measure F Alameda County Vehicle Registration Fee Streets & Roads Fund; Measure BB – Paratransit Fund; Fair Election Fund; Measure U1 Fund; One-Time Grant: No Cap Expense Fund; Rent Stabilization Board Fund; Parks Tax Fund; Measure GG – Fire Prep Tax Fund; Street Lighting Assessment District Fund; Employee Training Fund; Private Percent – Art Fund; Measure T1 – Infrastructure & Facilities Fund; FUND\$ Replacement Fund; Capital Improvement Fund; FEMA Fund; CFD #1 District Fire Protect Bond Fund; Special Tax Bonds CFD#1 ML-ROOS Fund; Shelter+Care HUD Fund; Shelter+Care County Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Private Sewer Lateral Fund; Permit Service Center Fund; Off-Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Building Purchases & Management Fund; Equipment Replacement Fund; Equipment Maintenance Fund; Building Maintenance Fund; Central Services Fund; Workers' Compensation Fund; Public Liability Fund; Information Technology Cost Allocation Plan Fund; Health State Aid Realignment Trust Fund; Tobacco Control Trust Fund; Mental Health State Aid Realignment Fund; Alameda Abandoned Vehicle Abatement Authority; and Bio-Terrorism Grant Fund.

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

Compensation Fund; Public Liability Fund; Information Technology Cost Allocation Plan Fund; Health State Aid Realignment Trust Fund; Tobacco Control Trust Fund; Mental Health State Aid Realignment Fund; Alameda Abandoned Vehicle Abatement Authority; and Bio-Terrorism Grant Fund.

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

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

**Attachment for Annual Appropriations Ordinance - Fiscal Year 2022****REVOLVING FUNDS/INTERNAL SERVICE FUNDS**

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

|                                           |               |
|-------------------------------------------|---------------|
| Employee Training Fund                    | 961,840       |
| Equipment Replacement Fund                | 16,855,573    |
| Equipment Maintenance Fund                | 9,990,781     |
| Building Maintenance Fund                 | 4,686,074     |
| Central Services Fund                     | 388,107       |
| Workers' Compensation Fund                | 6,706,769     |
| Public Liability Fund                     | 4,212,789     |
| Information Technology Fund               | 16,937,191    |
| Subtotal Revolving/Internal Service Funds | \$ 60,739,124 |

**DUAL APPROPRIATIONS - WORKING BUDGET**

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

|                                       |              |
|---------------------------------------|--------------|
| Transfers to the General Fund         |              |
| <u>Indirect Cost Reimbursement</u>    |              |
| CDBG Fund                             | 138,719      |
| One-Time Grant: No Cap Exp            | 225,000      |
| Street Light Assessment District Fund | 97,951       |
| Zero Waste Fund                       | 2,001,399    |
| Marina Enterprise Fund                | 411,719      |
| Sanitary Sewer Fund                   | 1,043,318    |
| Clean Storm Water Fund                | 228,728      |
| Permit Service Center Fund            | 1,615,758    |
| Unified Program (CUPA) Fund           | 72,517       |
| Subtotal Transfers to General Fund:   | \$ 5,835,109 |

|                                                                                               |                    |
|-----------------------------------------------------------------------------------------------|--------------------|
| Transfer to Safety Members Pension Fund from General Fund                                     | 551,804            |
| Tansfert to Climate Equity Action Fund from General Fund                                      | 600,000            |
| Transfer to Measure U1 Fund from General Fund                                                 | 6,094,045          |
| Transfer to Stability Reserve Fund from General Fund                                          | 3,636,005          |
| Transfer to Catastrophic Reserve Fund from General Fund                                       | 2,974,913          |
| Transfer to PERS Savings Fund from General Fund                                               | 2,000,000          |
| Transfer to Health State Aid Realignment from General Fund                                    | 1,953,018          |
| Transfer to Fair Election Fund from General Fund                                              | 505,002            |
| Transfer to Capital Improvement Fund (CIP) from General Fund                                  | 4,950,905          |
| Transfer to Phone System Replacement - VOIP from General Fund                                 | 449,408            |
| Transfer to Equipment Replacement Fund from General Fund                                      | 1,081,699          |
| Transfer to Public Liability Fund from General Fund                                           | 3,895,888          |
| Transfer to Catastrophic Loss Fund from General Fund                                          | 3,129,119          |
| Transfer to IT Cost Allocation Fund from General Fund                                         | 145,640            |
| Transfer to Police Employee Retiree Health Assistance Plan from General Fund                  | 400,136            |
| Transfer to Workers' Compnesation Fund from Measure U1 Fund                                   | 946,163            |
| Transfer to Playground Camp Fund from Catastrophic Reserve Fund                               | 2,700,000          |
| Transfer to Sick Leave Entitlement Fund from General Fund                                     | 201,501            |
| Transfer to Gilman Field Reserve Fund from Sports Field Fund                                  | 175,000            |
| Transfer to General Fund from Health State Aid Realignment Fund                               | 2,643,280          |
| Transfer to Paramedic Tax Fund from Measure FF - Public Safety Fund                           | 757,925            |
| Transfer to General Fund from American Rescue Plan Fund                                       | 22,969,355         |
| Transfer to Sports Field Fund from American Rescue Plan Fund                                  | 196,000            |
| Transfer to Playground Camp Fund from American Rescue Plan Fund                               | 1,035,000          |
| Transfer to Marina Fund from American Rescue Plan Fund                                        | 1,400,000          |
| Transfer to Off-Street Parking Fund from American Rescue Plan Fund                            | 3,940,000          |
| Transfer to Parking Meter Fund from American Rescue Plan Fund                                 | 4,340,000          |
| Transfer from CIP Fund to PERS Savings Fund                                                   | 151,632            |
| Transfer to Berkeley Repertory Theater Debt Service Fund from CIP Fund                        | 499,802            |
| Transfer from CIP Fund to 2010 COP (Animal Shelter) Fund                                      | 402,613            |
| Transfer to Private Sewer Lateral Fund from Sewer Fund                                        | 90,501             |
| Transfer to Catastrophic Loss Fund from Permit Service Center Fund                            | 50,555             |
| Transfer to Catastrophic Loss Fund from Unified Program (CUPA) Fund                           | 5,082              |
| Transfer to General Fund from Parking Meter Fund                                              | 1,742,288          |
| Transfer from Special Tax Bonds CFD#1 ML-ROOS to CFD#1 District Fire Protect Bond (Measure Q) | 2,048,940          |
| Transfer to First Source Fund from Parks Tax Fund                                             | 14,093             |
| Transfer to First Source Fund from Capital Improvement Fund                                   | 26,943             |
| Transfer to First Source Fund from Marina Fund                                                | 1,875              |
| Transfer to Public Art Fund from Parks Tax Fund                                               | 21,140             |
| Transfer to Public Art Fund from Capital Improvement Fund                                     | 40,414             |
| Transfer to Public Art Fund from Marina Fund                                                  | 2,813              |
| Subtotal Transfers to Other Funds:                                                            | <u>78,770,497</u>  |
| Sub-Total Dual Appropriations                                                                 | <u>84,605,606</u>  |
| <b>Grand Total Dual Appropriations</b>                                                        | <b>145,344,730</b> |

SUMMARY OF APPROPRIATIONS BY FUND

| ERMA<br>Fund # Fund                         | FY 2022<br>Revised #1 | 2nd AAO          |                      |                 | FY 2022<br>Revised #2 |
|---------------------------------------------|-----------------------|------------------|----------------------|-----------------|-----------------------|
|                                             |                       | Reappropriations | Other<br>Adjustments | Total<br>Amend. |                       |
| 11 General Fund Discretionary               | 259,763,888           | -                | 6,956,452            | 6,956,452       | 266,720,340           |
| 16 Measure U1 - Housing                     | 9,089,089             | -                | 250,000              | 250,000         | 9,339,089             |
| 17 Climate Equity Action                    | 0                     | -                | 600,000              | 600,000         | 600,000               |
| 99 Catastrophic Reserve Fund                | 0                     | -                | 2,700,000            | 2,700,000       | 2,700,000             |
| 101 Library - Tax                           | 25,152,140            | -                | -                    | -               | 25,152,140            |
| 103 Library - Grants                        | 64,889                | -                | -                    | -               | 64,889                |
| 104 Library - Friends & Gift                | 150,197               | -                | -                    | -               | 150,197               |
| 105 Library - Foundation                    | 350,046               | -                | -                    | -               | 350,046               |
| 106 Asset Forfeiture                        | 364,165               | -                | -                    | -               | 364,165               |
| 107 Special Tax Measure E                   | 1,451,853             | -                | 100,000              | 100,000         | 1,551,853             |
| 108 First Source Fund                       | 46,675                | -                | -                    | -               | 46,675                |
| 110 Sec 108 Loan Gty Asst.                  | 553,108               | -                | -                    | -               | 553,108               |
| 111 Fund Raising Activities                 | 74,875                | -                | 54,167               | 54,167          | 129,042               |
| 113 Sports Field (Vendor Oper)              | 625,781               | -                | 25,000               | 25,000          | 650,781               |
| 114 Gilman Fields Reserve                   | 2,694                 | -                | -                    | -               | 2,694                 |
| 115 Animal Shelter                          | 57,920                | -                | -                    | -               | 57,920                |
| 116 Paramedic Tax                           | 4,916,665             | -                | -                    | -               | 4,916,665             |
| 117 CA Energy Commission                    | 44,249                | -                | -                    | -               | 44,249                |
| 119 Domestic Violence Prev - Vit Stat       | 22,587                | -                | -                    | -               | 22,587                |
| 120 Affordable Housing Mitigation           | 5,373,924             | -                | -                    | -               | 5,373,924             |
| 121 Affordable Child Care                   | 13,275                | -                | -                    | -               | 13,275                |
| 122 Inclusionary Housing Program            | 550,501               | -                | -                    | -               | 550,501               |
| 123 Condo Conversion                        | 1,107,597             | -                | -                    | -               | 1,107,597             |
| 124 Parking In-Lieu Fee                     | 82,010                | -                | -                    | -               | 82,010                |
| 125 Playground Camp                         | 29,823,415            | -                | 753,055              | 753,055         | 30,576,470            |
| 126 State-Prop 172 Pub.Safety               | 942,880               | -                | 500,000              | 500,000         | 1,442,880             |
| 127 State Transportation Tax                | 9,201,033             | -                | 439,397              | 439,397         | 9,640,430             |
| 128 CDBG                                    | 4,854,839             | -                | 1,232,491            | 1,232,491       | 6,087,330             |
| 129 Rental Housing Safety Program           | 2,231,853             | -                | 25,000               | 25,000          | 2,256,853             |
| 130 Measure B - Local St & Road             | 5,632,887             | 150,000          | -                    | 150,000         | 5,782,887             |
| 131 Measure B - Bike and Pedestrian         | 317,541               | -                | -                    | -               | 317,541               |
| 132 Measure B - Paratransit                 | 543,039               | -                | -                    | -               | 543,039               |
| 133 Measure F Alameda County VRF St & Rd    | 956,556               | -                | 50,000               | 50,000          | 1,006,556             |
| 134 Measure BB - Local St & Road            | 10,873,305            | -                | 2,729,527            | 2,729,527       | 13,602,832            |
| 135 Measure BB - Bike & Pedestrian          | 1,253,739             | -                | 332,834              | 332,834         | 1,586,573             |
| 136 Measure BB - Paratransit                | 476,161               | -                | 43,000               | 43,000          | 519,161               |
| 137 One Time Funding                        | 19,080                | -                | -                    | -               | 19,080                |
| 138 Parks Tax                               | 18,779,226            | 22,253           | 298,986              | 321,239         | 19,100,465            |
| 139 Street and Open Space Improvement       | 1,702                 | -                | -                    | -               | 1,702                 |
| 140 Measure GG - Fire Prep Tax              | 5,407,799             | -                | 600,000              | 600,000         | 6,007,799             |
| 142 Streetlight Assessment District         | 3,195,968             | -                | -                    | -               | 3,195,968             |
| 143 Berkeley Bus Ec Dev                     | 680,937               | -                | -                    | -               | 680,937               |
| 145 Bayer (Miles Lab)                       | 9,452                 | -                | -                    | -               | 9,452                 |
| 146 Employee Training                       | 961,840               | -                | -                    | -               | 961,840               |
| 147 UC Settlement                           | 5,044,285             | -                | -                    | -               | 5,044,285             |
| 148 Private Percent - Art Fund              | 850,618               | -                | -                    | -               | 850,618               |
| 149 Private Party Sidewalks                 | 350,000               | -                | -                    | -               | 350,000               |
| 150 Public Art Fund                         | 155,161               | -                | -                    | -               | 155,161               |
| 152 Vital & Health Statistics Trust Fund    | 29,813                | -                | -                    | -               | 29,813                |
| 156 Hlth State Aid Realign Trust            | 3,806,205             | -                | -                    | -               | 3,806,205             |
| 157 Tobacco Cont.Trust                      | 398,017               | 46,371           | -                    | 46,371          | 444,388               |
| 158 Mental Health State Aid Realign         | 3,451,968             | -                | -                    | -               | 3,451,968             |
| 159 Citizens Option Public Safety Trust     | 531,636               | -                | -                    | -               | 531,636               |
| 161 Alameda Cty Abandoned Vehicle Abatement | 100,597               | -                | -                    | -               | 100,597               |
| 162 Shelter Operations                      | 170,953               | -                | -                    | -               | 170,953               |
| 164 Measure FF                              | 12,750,000            | -                | -                    | -               | 12,750,000            |
| 165 Fair Elections                          | 505,002               | -                | -                    | -               | 505,002               |
| 302 Operating Grants - State                | 292,181               | -                | 5,000,000            | 5,000,000       | 5,292,181             |
| 305 Capital Grants - Federal                | 7,062,518             | -                | -                    | -               | 7,062,518             |
| 306 Capital Grants - State                  | 2,836,204             | -                | 615,130              | 615,130         | 3,451,334             |
| 307 Capital Grants - Local                  | 639,254               | -                | 841,000              | 841,000         | 1,480,254             |
| 309 OTS DUI Enforcement Education Prg.      | 311,245               | -                | -                    | -               | 311,245               |
| 310 HUD/Home                                | 835,218               | -                | -                    | -               | 835,218               |
| 311 ESGP                                    | 4,117,298             | 678,819          | -                    | 678,819         | 4,796,117             |
| 312 Health (General)                        | 4,001,104             | 4,382            | 53,394               | 57,777          | 4,058,880             |
| 313 Target Case Management Linkages         | 919,016               | -                | 4,000                | 4,000           | 923,016               |
| 314 Alameda County Tay Tip                  | 35,812                | -                | -                    | -               | 35,812                |



## SUMMARY OF APPROPRIATIONS BY FUND

| ERMA<br>Fund # Fund                        | FY 2022<br>Revised #1 | 2nd AAO          |                      |                 | FY 2022<br>Revised #2 |
|--------------------------------------------|-----------------------|------------------|----------------------|-----------------|-----------------------|
|                                            |                       | Reappropriations | Other<br>Adjustments | Total<br>Amend. |                       |
| 315 Mental Health Service Act              | 12,074,902            | -                | 5,034,428            | 5,034,428       | 17,109,330            |
| 316 Health (Short/Doyle)                   | 5,043,891             | -                | -                    | -               | 5,043,891             |
| 317 EPSDT Expansion Proposal               | 389,139               | -                | -                    | -               | 389,139               |
| 318 Alcoholic Bev Ctr OTS/UC               | 125,244               | -                | -                    | -               | 125,244               |
| 319 Youth Lunch                            | 354,536               | -                | -                    | -               | 354,536               |
| 320 Sr. Nutrition Title III                | 107,003               | -                | 10,799               | 10,799          | 117,802               |
| 321 CFP Title X                            | 180,790               | -                | 50,000               | 50,000          | 230,790               |
| 324 BUSD Grant                             | 362,343               | -                | -                    | -               | 362,343               |
| 325 Vector Control                         | 348,745               | -                | -                    | -               | 348,745               |
| 326 Alameda County Grants                  | 631,318               | -                | 13,600               | 13,600          | 644,918               |
| 327 Senior Supportive Social Services      | 64,339                | -                | 6,000                | 6,000           | 70,339                |
| 328 Family Care Support Program            | 75,212                | -                | 10,828               | 10,828          | 86,040                |
| 329 CA Integrated Waste Management         | 20,640                | -                | -                    | -               | 20,640                |
| 331 Housing Mitigation                     | 1,126,763             | -                | -                    | -               | 1,126,763             |
| 333 CALHOME                                | 363,100               | -                | -                    | -               | 363,100               |
| 334 Community Action                       | 533,722               | -                | -                    | -               | 533,722               |
| 336 One-Time Grant: No Cap Exp             | 7,883,266             | -                | 8,112,046            | 8,112,046       | 15,995,312            |
| 338 Bay Area Air Quality Management        | 60,000                | -                | 117,000              | 117,000         | 177,000               |
| 339 MTC                                    | 540,134               | -                | 349,000              | 349,000         | 889,134               |
| 340 FEMA                                   | 804,697               | -                | 168,272              | 168,272         | 972,969               |
| 341 Alameda Cty Waste Mgt.                 | 285,000               | -                | -                    | -               | 285,000               |
| 343 State Dept Conserv/Recylg              | 28,000                | -                | 60,710               | 60,710          | 88,710                |
| 344 Caltrans Grant                         | 752,612               | 465,152          | 75,138               | 540,290         | 1,292,902             |
| 345 Meas WW - Park Bond - Grant            | 1,220                 | -                | -                    | -               | 1,220                 |
| 346 Caltrans Safe Routes 2 Schools         | 9,757                 | -                | -                    | -               | 9,757                 |
| 347 Shelter+Care HUD                       | 6,271,483             | -                | -                    | -               | 6,271,483             |
| 348 Shelter+Care County                    | 855,792               | -                | -                    | -               | 855,792               |
| 349 JAG Grant                              | 52,500                | -                | -                    | -               | 52,500                |
| 350 Bioterrorism Grant                     | 598,920               | -                | 209,784              | 209,784         | 808,704               |
| 351 UASI Regional Fund                     | 35,703                | 9,192            | -                    | 9,192           | 44,895                |
| 354 ARPA - Local Fiscal Recovery Fund      | 46,300,355            | -                | -                    | -               | 46,300,355            |
| 501 Capital Improvement Fund               | 17,500,834            | 267,707          | 231,148              | 498,855         | 17,999,689            |
| 502 Phone System Replacement               | 452,916               | -                | -                    | -               | 452,916               |
| 503 FUND\$ Replacement                     | 5,608,470             | -                | -                    | -               | 5,608,470             |
| 504 PEG-Public, Education & Government     | 100,000               | -                | -                    | -               | 100,000               |
| 506 Meas M - Street and Watershed Imprv    | 30,335                | -                | -                    | -               | 30,335                |
| 511 Measure T1 - Infra & Facil.            | 20,433,950            | 853,735          | 585,000              | 1,438,735       | 21,872,685            |
| 512 Measure O                              | 22,115,110            | -                | 5,452,871            | 5,452,871       | 27,567,981            |
| 552 09 Measure FF Debt Service             | 1,343,638             | -                | -                    | -               | 1,343,638             |
| 553 2015 GORBS                             | 2,051,966             | -                | -                    | -               | 2,051,966             |
| 554 2012 Lease Revenue Bonds BJPFA         | 502,238               | -                | -                    | -               | 502,238               |
| 555 2015 GORBS - 2002 G.O. Refunding Bonds | 379,561               | -                | -                    | -               | 379,561               |
| 556 2015 GORBS (2007, Series A)            | 142,865               | -                | -                    | -               | 142,865               |
| 557 2015 GORBS (2008 Measure I)            | 481,286               | -                | -                    | -               | 481,286               |
| 558 2010 COP (Animal Shelter)              | 406,991               | -                | -                    | -               | 406,991               |
| 559 Measure M GO Street & Water Imps       | 740,738               | -                | -                    | -               | 740,738               |
| 560 Infrastructure & Facilities Measure T1 | 1,731,181             | -                | -                    | -               | 1,731,181             |
| 561 Measure O - Housing Bonds              | 2,023,940             | -                | -                    | -               | 2,023,940             |
| 601 Zero Waste                             | 51,371,398            | -                | 2,129,991            | 2,129,991       | 53,501,389            |
| 606 Mar -Coastal Conservancy               | 7,868                 | -                | -                    | -               | 7,868                 |
| 607 Mar - Dept of Boating & Waterway       | 93,460                | -                | 62,000               | 62,000          | 155,460               |
| 608 Marina Operation                       | 12,151,035            | -                | 440,579              | 440,579         | 12,591,614            |
| 611 Sewer                                  | 44,890,262            | 2,269,671        | 214,643              | 2,484,314       | 47,374,576            |
| 612 Private Sewer Lateral FD               | 193,658               | -                | -                    | -               | 193,658               |
| 616 Clean Storm Water                      | 5,895,328             | -                | -                    | -               | 5,895,328             |
| 621 Permit Service Center                  | 22,961,785            | -                | -                    | -               | 22,961,785            |
| 622 Unified Program (CUPA)                 | 828,769               | -                | 50,000               | 50,000          | 878,769               |
| 627 Off Street Parking                     | 7,304,672             | -                | -                    | -               | 7,304,672             |
| 631 Parking Meter                          | 10,645,212            | -                | -                    | -               | 10,645,212            |
| 636 Building Purchases and Management      | 3,481,724             | -                | -                    | -               | 3,481,724             |
| 671 Equipment Replacement                  | 16,510,385            | -                | 345,188              | 345,188         | 16,855,573            |
| 672 Equipment Maintenance                  | 9,990,781             | -                | -                    | -               | 9,990,781             |
| 673 Building Maintenance Fund              | 4,686,074             | -                | -                    | -               | 4,686,074             |
| 674 Central Services                       | 388,107               | -                | -                    | -               | 388,107               |
| 676 Workers Compensation                   | 6,706,769             | -                | -                    | -               | 6,706,769             |
| 678 Public Liability                       | 4,212,789             | -                | -                    | -               | 4,212,789             |
| 680 Information Technology                 | 16,937,191            | -                | -                    | -               | 16,937,191            |

SUMMARY OF APPROPRIATIONS BY FUND

| ERMA<br>Fund # Fund                           | FY 2022<br>Revised #1 | 2nd AAO          |                      |                 | FY 2022<br>Revised #2 |
|-----------------------------------------------|-----------------------|------------------|----------------------|-----------------|-----------------------|
|                                               |                       | Reappropriations | Other<br>Adjustments | Total<br>Amend. |                       |
| 762 Successor Agency - Savo DSF               | 57,120                | -                | -                    | -               | 57,120                |
| 776 Thousand Oaks Underground                 | 98,448                | -                | -                    | -               | 98,448                |
| 777 Measure H - School Tax                    | 500,002               | -                | -                    | -               | 500,002               |
| 778 Measure Q - CFD#1 Dis. Fire Protect Bond  | 2,078,385             | -                | -                    | -               | 2,078,385             |
| 779 Spl Tax Bds. CFD#1 ML-ROOS                | 2,823,820             | -                | -                    | -               | 2,823,820             |
| 781 Berkeley Tourism BID                      | 208,771               | -                | 456,165              | 456,165         | 664,936               |
| 782 Elmwood Business Improvement District     | 62,389                | -                | -                    | -               | 62,389                |
| 783 Solano Ave BID                            | 32,809                | -                | -                    | -               | 32,809                |
| 784 Telegraph Avenue Bus. Imp. District       | 761,808               | -                | -                    | -               | 761,808               |
| 785 North Shattuck BID                        | 321,335               | -                | -                    | -               | 321,335               |
| 786 Downtown Berkeley Prop & Improv. District | 1,509,001             | -                | -                    | -               | 1,509,001             |
| 801 Rent Board                                | 6,862,718             | -                | -                    | -               | 6,862,718             |
| GROSS EXPENDITURE:                            | 852,116,502           | 4,767,283        | 48,388,623           | 53,155,906      | 905,272,407           |
| Dual Appropriations                           | (75,174,972)          | -                | (9,430,634)          | (9,430,634)     | (84,605,606)          |
| Revolving & Internal Service Funds            | (60,393,936)          | -                | (345,188)            | (345,188)       | (60,739,124)          |
| NET EXPENDITURE:                              | 716,547,594           | 4,767,283        | 38,612,801           | 43,380,083      | 759,927,677           |

## FY 2022 Annual Appropriations Ordinance Amendment #2 Recommendations

Attachment 2

| Item # | Fund # | Fund Name    | Department                 | Recommended Carryover | Recommended Adjustment | Project Number | Description/Project name                     | Mandated by Law | Authorized by Council | City Manager Request | Comments/Justification                                                                                                                                                                                                                                                                                                                                                                                                         |
|--------|--------|--------------|----------------------------|-----------------------|------------------------|----------------|----------------------------------------------|-----------------|-----------------------|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1      | 011    | General Fund | City Manager's Office      |                       | \$37,260               |                | Shelter Generator                            |                 |                       | X                    | The division has pursued the purchase and installation of an emergency generator for the past couple years, but was unable to procure alternate funding. The generator is crucial for maintaining electricity in the event of a public safety power shutoff, and will allow the shelter to maintain refrigeration for deceased animals, veterinary medicine, and other crucial electrical functions for the essential service. |
| 2      | 011    | General Fund | City Manager's Office      |                       | \$445,129              |                | Visit Berkeley Contract                      |                 |                       | X                    | Appropriate additional funds for the Visit Berkeley contract based on additional Transient Occupancy Tax revenues received in FY 2022.                                                                                                                                                                                                                                                                                         |
| 3      | 011    | General Fund | City Manager's Office      |                       | \$80,000               |                | Recruitments for HR Director and IT Director |                 |                       | X                    | Appropriate funds for professional executive recruitment services to fill the vacant Director of Human Resources and Director of Information Technology positions                                                                                                                                                                                                                                                              |
| 4      | 011    | General Fund | City Manager's Office/HHCS |                       | \$39,085               |                | Berkeley Relief Fund                         |                 | X                     |                      | Accept a \$39,085 payment from the East Bay Community Foundation of funds raised by the Berkeley Relief Fund and authorize the City Manager to allocate these funds to the following: \$10,000 to the Starry Plough Pub and Music Venue and \$18,142.38 to the Eviction Defense Center for the Housing Retention Program. Approved by Council on 12/14/21 through Resolution 70,167-N.S.                                       |
| 5      | 011    | General Fund | Fire                       |                       | \$73,068               |                | Ground Emergency Medical Transport Program   | X               |                       |                      | Appropriate funding to the State of California for overpayments for the Ground Emergency Medical Transport program in FY 2011 & FY 2014                                                                                                                                                                                                                                                                                        |
| 6      | 011    | General Fund | Fire                       |                       | \$250,000              |                | Fire Department Training Academy             |                 |                       | X                    | Appropriate funding for the Fire Department Training Academy                                                                                                                                                                                                                                                                                                                                                                   |
| 7      | 011    | General Fund | HHCS                       |                       | \$992                  | HHPGHB2201     | Healthy Berkeley                             |                 | X                     |                      | Appropriate fund from the Sugar Sweetened Beverage Grant to support environmental strategies. Approved by Council on 5/25/2021 through Resolution No. 69,904-N.S.                                                                                                                                                                                                                                                              |
| 8      | 011    | General Fund | HHCS                       |                       | \$250,000              |                | Health Equity Consultant                     |                 |                       | X                    | Approve funding for Health Equity Consultant Council Referral after staff learned this item cannot be funded through the American Rescue Plan                                                                                                                                                                                                                                                                                  |

FY 2022 Annual Appropriations Ordinance Amendment #2 Recommendations

| Item # | Fund #           | Fund Name               | Department                        | Recommended Carryover | Recommended Adjustment | Project Number            | Description/Project name                                                                    | Mandated by Law | Authorized by Council | City Manager Request | Comments/Justification                                                                                                                                                                                                                                                                                                                                                                                        |
|--------|------------------|-------------------------|-----------------------------------|-----------------------|------------------------|---------------------------|---------------------------------------------------------------------------------------------|-----------------|-----------------------|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9      | 011              | General Fund            | Mayor & Council                   |                       | \$1,500,000            |                           | Pilot Existing Building Electrification Installation Incentives and Just Transition Program |                 | X                     |                      | Appropriate funding for a Council Budget Referral and Resolution by Vice Mayor Harrison and Councilmember Bartlett for Establishing a Pilot Existing Building Electrification Installation Incentives and Just Transition Program with Pre-Qualified Contractors Meeting Minimum Labor Standards to Assist New Property Owners, Renters and Existing Property Owners with Transition to Zero-Carbon Buildings |
| 10     | 011              | General Fund            | Non-Departmental                  |                       | \$4,110,918            |                           | Allocation to Reserves                                                                      |                 | X                     |                      | FY 2021 Allocation to Stability Reserve Fund (\$2,261,005) and to Catastrophic Reserve Fund (\$1,849,913). Approved by Council on 12-14-21 with Mayor's Budget Recommendations                                                                                                                                                                                                                                |
| 11     | 011              | General Fund            | Parks, Recreation, and Waterfront |                       | \$150,000              | PRWPK22005 and PRWPK22011 | West Campus Pool Project and King Pool Project                                              |                 |                       | X                    | Appropriate additional funding for the West Campus Pool and King Pool projects as bids came out higher than estimate.                                                                                                                                                                                                                                                                                         |
| 12     | 011              | General Fund            | Public Works                      |                       | \$20,000               |                           | Staff Augmentation for the Shared Electric Mobility Program                                 |                 |                       | X                    | Staff augmentation to coordinate Shared Electric Micromobility Permit Program and handle public outreach and engagement using revenue deposited in the General Fund from Shared Electric Micromobility Permit Program payments                                                                                                                                                                                |
|        | <b>011 Total</b> |                         |                                   | \$0                   | \$6,956,452            |                           |                                                                                             |                 |                       |                      |                                                                                                                                                                                                                                                                                                                                                                                                               |
| 13     | 016              | Measure U1              | HHCS                              |                       | \$250,000              |                           | Eviction Defense Center                                                                     |                 | X                     |                      | FY 2022 funding for Eviction Defense Center Housing Retention Program. Approved by Council on 6/29/21 through Resolution 69,945-N.S.                                                                                                                                                                                                                                                                          |
|        | <b>016 Total</b> |                         |                                   | \$0                   | \$250,000              |                           |                                                                                             |                 |                       |                      |                                                                                                                                                                                                                                                                                                                                                                                                               |
| 14     | 017              | Climate Equity Action   | Planning                          |                       | \$600,000              |                           | Pilot Climate Equity Action program                                                         |                 | X                     |                      | Establish a Pilot Climate Equity Action Fund to Assist Low-Income Residents with Transition to Zero-Carbon Transportation and Buildings                                                                                                                                                                                                                                                                       |
|        | <b>017 Total</b> |                         |                                   | \$0                   | \$600,000              |                           |                                                                                             |                 |                       |                      |                                                                                                                                                                                                                                                                                                                                                                                                               |
| 15     | 099              | Catastrophic Reserve    | Non-Departmental                  |                       | \$2,700,000            |                           | Transfer to Playground Camp Fund                                                            |                 | X                     |                      | Transfer to Playground Camp Fund for Berkeley Tuolumne Camp Rebuild. Approved by Council on 4/4/17 through Resolution No. 67,889 - N.S.                                                                                                                                                                                                                                                                       |
|        | <b>099 Total</b> |                         |                                   | \$0                   | \$2,700,000            |                           |                                                                                             |                 |                       |                      |                                                                                                                                                                                                                                                                                                                                                                                                               |
| 16     | 107              | Special Tax (Measure E) | HHCS                              |                       | \$100,000              |                           | Consulting Services for Easy Does It                                                        |                 | X                     |                      | Use Measure E reserve funds to procure a consultant and enter into any agreements to provide Easy Does It (EDI) with operational, management, and organizational culture consulting services for an amount not to exceed \$100,000 to ensure initial and sustained implementation of audit findings. Approved by Council on 9/10/19 through Resolution 69,077-N.S.                                            |
|        | <b>107 Total</b> |                         |                                   | \$0                   | \$100,000              |                           |                                                                                             |                 |                       |                      |                                                                                                                                                                                                                                                                                                                                                                                                               |
| 17     | 111              | Fund Raising Activities | HHCS                              |                       | \$54,167               |                           | Meals on Wheels Agency Donations                                                            |                 |                       | X                    | Donation for the Berkeley Meals on Wheels program to support the operations of the program                                                                                                                                                                                                                                                                                                                    |
|        | <b>111 Total</b> |                         |                                   | \$0                   | \$54,167               |                           |                                                                                             |                 |                       |                      |                                                                                                                                                                                                                                                                                                                                                                                                               |

## FY 2022 Annual Appropriations Ordinance Amendment #2 Recommendations

Attachment 2

| Item # | Fund #           | Fund Name                           | Department                        | Recommended Carryover | Recommended Adjustment | Project Number            | Description/Project name                           | Mandated by Law | Authorized by Council | City Manager Request | Comments/Justification                                                                                                                                                                    |
|--------|------------------|-------------------------------------|-----------------------------------|-----------------------|------------------------|---------------------------|----------------------------------------------------|-----------------|-----------------------|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 18     | 113              | Gilman Sports Field                 | Non-Departmental                  |                       | \$25,000               |                           | Gilman Sports Fund                                 |                 |                       | X                    | Transfer to Turf Replacement Fund from the Sports field operating fund.                                                                                                                   |
|        | <b>113 Total</b> |                                     |                                   | \$0                   | \$25,000               |                           |                                                    |                 |                       |                      |                                                                                                                                                                                           |
| 19     | 125              | Playground Camp                     | Parks, Recreation, and Waterfront |                       | \$728,300              | PRWCP19001 and PRWCP22001 | BTC Construction Management and BTC Start-up Costs |                 |                       | X                    | Appropriate funding for continuation of the Berkeley Tuolumne Camp project                                                                                                                |
| 20     | 125              | Playground Camp                     | Parks, Recreation, and Waterfront |                       | \$10,000               | PRWEM16004                | Cazadero Camp Landslide                            |                 |                       | X                    | Funds for City of Berkeley permit fees for Cazadero Camp                                                                                                                                  |
| 21     | 125              | Playground Camp                     | Parks, Recreation, and Waterfront |                       | \$4,755                | PRWEM16004                | Cazadero Camp Landslide                            |                 |                       | X                    | Appropriate fund for Cazadero Camp Jensen Dorm Project need for Hazard Testing at the Pool Dormitory.                                                                                     |
| 22     | 125              | Playground Camp                     | Parks, Recreation, and Waterfront |                       | \$10,000               |                           | Donation for Echo Lake Camp Youth Scholarships     |                 |                       | X                    | Appropriate donation funding from the Berkeley Echo Lake Camp Association for the Echo Lake Camp youth scholarships                                                                       |
|        | <b>125 Total</b> |                                     |                                   | \$0                   | \$753,055              |                           |                                                    |                 |                       |                      |                                                                                                                                                                                           |
| 23     | 126              | Prop 172                            | Police                            |                       | \$500,000              |                           | DNA forensic services                              |                 |                       | X                    | Add funding to the SERI contract for DNA forensic services                                                                                                                                |
|        | <b>126 Total</b> |                                     |                                   | \$0                   | \$500,000              |                           |                                                    |                 |                       |                      |                                                                                                                                                                                           |
| 24     | 127              | State Transportation Tax            | Public Works                      |                       | \$389,397              | PWENST2001                | Street Rehab FY2020                                |                 |                       | X                    | Appropriate fund to pay for outstanding invoices for FY 2020 Street Rehab project                                                                                                         |
| 25     | 127              | State Transportation Tax            | Public Works                      |                       | \$50,000               |                           | BSK On-Call Site Assmt/Consult                     |                 |                       | X                    | Appropriate funding to pay for the BSK On-call Site Assessment consultant                                                                                                                 |
|        | <b>127 Total</b> |                                     |                                   | \$0                   | \$439,397              |                           |                                                    |                 |                       |                      |                                                                                                                                                                                           |
| 26     | 128              | CDBG                                | HHCS                              |                       | \$1,232,491            |                           | CDBG Multi-Family Housing Rehab Allocations        |                 | X                     |                      | Funding for the Rosewood Manor Multi-Family Housing Rehab project. Approved by Council through Resolutions 69,719-N.S. on 2/9/21 and 69,830-N.S. on 4/27/21                               |
|        | <b>128 Total</b> |                                     |                                   | \$0                   | \$1,232,491            |                           |                                                    |                 |                       |                      |                                                                                                                                                                                           |
| 27     | 129              | RHSP                                | Planning                          |                       | \$25,000               |                           | Insurance Deduction for Vehicle #9127              |                 |                       | X                    | Appropriate funding to pay for the insurance deduction of vehicle #9127                                                                                                                   |
|        | <b>129 Total</b> |                                     |                                   | \$0                   | \$25,000               |                           |                                                    |                 |                       |                      |                                                                                                                                                                                           |
| 28     | 130              | Measure B - Local Streets and Roads | Public Works                      | \$150,000             |                        |                           | Ravo Sweeper                                       |                 |                       | X                    | Carryover of fund for the Ravo Narrow Sweeper                                                                                                                                             |
|        | <b>130 Total</b> |                                     |                                   | \$150,000             | \$0                    |                           |                                                    |                 |                       |                      |                                                                                                                                                                                           |
| 29     | 133              | Meas F-Vehicle Registration Fees    | Public Works                      |                       | \$50,000               | PWTRBP2208                | Bicycle Parking Project                            |                 | X                     |                      | Reso #69,709-N.S. Local match to Alameda CTC Agreement #A21-0028 fully executed on 07/23/21.                                                                                              |
|        | <b>133 Total</b> |                                     |                                   | \$0                   | \$50,000               |                           |                                                    |                 |                       |                      |                                                                                                                                                                                           |
| 30     | 134              | Measure BB - Local Streets and Road | Public Works                      |                       | \$337,163              | PWENSW2002                | Sidewalk Shaving                                   |                 | X                     |                      | Appropriate fund for Trip Stop Sidewalk Repair contract amendment for FY20 Sidewalk Inspection and Shaving Services. Approved by Council on 04/27/2021 through Resolution No. 69,822-N.S. |
| 31     | 134              | Measure BB - Local Streets and Road | Public Works                      |                       | \$53,285               | PWTRBP2203                | Parker Street to Addison Bikeway                   |                 |                       | X                    | Appropriate funds for the Parker Street to Addison Bikeways project                                                                                                                       |
| 32     | 134              | Measure BB - Local Streets and Road | Public Works                      |                       | \$53,285               | PWTRBP2203                | Parker St to Addison Bikeway                       |                 |                       | X                    | Appropriate funds for the Parker Street to Addison Bikeways project                                                                                                                       |
| 33     | 134              | Measure BB - Local Streets and Road | Public Works                      |                       | \$550,000              | PWTRCS2001                | Southside Complete Streets                         |                 |                       | X                    | Budget increase to cover more complex design for Telegraph curbless street concept approved by City Council in Feb 2022                                                                   |

FY 2022 Annual Appropriations Ordinance Amendment #2 Recommendations

| Item # | Fund #           | Fund Name                           | Department   | Recommended Carryover | Recommended Adjustment | Project Number | Description/Project name                                                       | Mandated by Law | Authorized by Council | City Manager Request | Comments/Justification                                                                                                                                                                           |
|--------|------------------|-------------------------------------|--------------|-----------------------|------------------------|----------------|--------------------------------------------------------------------------------|-----------------|-----------------------|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 34     | 134              | Measure BB - Local Streets and Road | Public Works |                       | \$165,000              | PWTRCS2002     | Adeline Street Transportation Improvements (preliminary engineering phase)     |                 | X                     |                      | Reso #69,709-N.S. Local match to Alameda CTC Agreement #A22-0025 fully executed on 12/13/21.                                                                                                     |
| 35     | 134              | Measure BB - Local Streets and Road | Public Works |                       | \$53,285               | PWTRCS2203     | University West Bus Stops                                                      |                 |                       | X                    | Appropriate funds for the University West Bus Stops project                                                                                                                                      |
| 36     | 134              | Measure BB - Local Streets and Road | Public Works |                       | \$139,374              | PWTRCS2203     | University West Bus Stops                                                      |                 | X                     |                      | Reso #69,709-N.S. Alameda CTC Agreement #A21-0028 fully executed on 07/23/21.                                                                                                                    |
| 37     | 134              | Measure BB - Local Streets and Road | Public Works |                       | \$110,000              | PWTRCS2204     | Telegraph Avenue Multimodal Corridor (planning, preliminary engineering phase) |                 | X                     |                      | Reso #69,709-N.S. Local match to Alameda CTC Agreement #A22-0025 fully executed on 12/13/21.                                                                                                     |
| 38     | 134              | Measure BB - Local Streets and Road | Public Works |                       | \$28,551               | PWTRCT0918     | Ashby/San Pablo Traffic Improvement                                            |                 |                       | X                    | Appropriate fund for EBMUD hydrant relocation so project can continue                                                                                                                            |
| 39     | 134              | Measure BB - Local Streets and Road | Public Works |                       | \$610,871              | PWTRCT0918     | Ashby/San Pablo Traffic Improvement                                            |                 |                       | X                    | Budget increase of detail project cost estimate increasing engineers, design and construction contingencies, updated staff labor hours and consultant costs, and permit and outside agency fees. |
| 40     | 134              | Measure BB - Local Streets and Road | Public Works |                       | \$300,000              | PWTRCT1605     | 7TH/ANTHONY TRAFFIC SIGNAL                                                     |                 |                       | X                    | Appropriate funding for the construction of the 7th/Anthony Traffic Signal project                                                                                                               |
| 41     | 134              | Measure BB - Local Streets and Road | Public Works |                       | \$250,000              | PWTRPL2202     | BeST Plan Update                                                               |                 |                       | X                    | Appropriate funds for the Berkeley Strategic Transportation Plan Update project                                                                                                                  |
| 42     | 134              | Measure BB - Local Streets and Road | Public Works |                       | \$56,713               | PWTRTC1902     | Dwight & CA Intersection Improvements                                          |                 |                       | X                    | Appropriate funding for the continuation of the Dwight & California Intersection Improvements                                                                                                    |
| 43     | 134              | Measure BB - Local Streets and Road | Public Works |                       | \$22,000               | PWTRTC2201     | Washington Elementary Safe Routes to School (mini-grant project; design phase) |                 | X                     |                      | Reso #69,709-N.S. Local match to Alameda CTC Agreement #A22-0009 fully executed on 12/13/21.                                                                                                     |
|        | <b>134 Total</b> |                                     |              | \$0                   | \$2,729,527            |                |                                                                                |                 |                       |                      |                                                                                                                                                                                                  |
| 44     | 135              | Measure BB - Bike & Pedestrian      | Public Works |                       | \$35,765               | PWTRBP1802     | Milvia Bikeway Project                                                         |                 |                       | X                    | Appropriate funding for the continuation of the Milvia Bikeway Project                                                                                                                           |
| 45     | 135              | Measure BB - Bike & Pedestrian      | Public Works |                       | \$61,909               | PWTRBP2201     | Martin Luther King Jr. Way Vision Zero Quick Build                             |                 |                       | X                    | Appropriate funds for the design and install quick-build pedestrian and bicycle crossing safety improvements between Dwight Way and Russell Street                                               |
| 46     | 135              | Measure BB - Bike & Pedestrian      | Public Works |                       | \$166,210              | PWTRBP2202     | South Sacramento Street Pedestrian Improvements                                |                 |                       | X                    | Appropriate funds for the South Sacramento Street Pedestrian Improvements project                                                                                                                |
| 47     | 135              | Measure BB - Bike & Pedestrian      | Public Works |                       | \$48,950               | PWTRBP2204     | Ohlone Greenway Modernization & Safety                                         |                 |                       | X                    | Appropriate funds for the Ohlone Greenway Modernization & Safety Project (Santa Fe Ave. to Franklin St.)                                                                                         |
| 48     | 135              | Measure BB - Bike & Pedestrian      | Public Works |                       | \$20,000               |                | Active Transportation Program Grant Applications                               |                 |                       | X                    | Consultant support to complete complex grant applications under this very competitive program                                                                                                    |
|        | <b>135 Total</b> |                                     |              | \$0                   | \$332,834              |                |                                                                                |                 |                       |                      |                                                                                                                                                                                                  |

FY 2022 Annual Appropriations Ordinance Amendment #2 Recommendations

| Item # | Fund #           | Fund Name                | Department                        | Recommended Carryover | Recommended Adjustment | Project Number | Description/Project name                                                       | Mandated by Law | Authorized by Council | City Manager Request | Comments/Justification                                                                                                                                                                                                                                                                                       |
|--------|------------------|--------------------------|-----------------------------------|-----------------------|------------------------|----------------|--------------------------------------------------------------------------------|-----------------|-----------------------|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 49     | 136              | Measure BB - Paratransit | HHCS                              |                       | \$43,000               | HHAMBB2201     | AG Paratransit Measure BB                                                      |                 |                       | X                    | Increase Paratransit Program Measure BB funding due to sunseting of Measure B Paratransit Program funding                                                                                                                                                                                                    |
|        | <b>136 Total</b> |                          |                                   | \$0                   | \$43,000               |                |                                                                                |                 |                       |                      |                                                                                                                                                                                                                                                                                                              |
| 50     | 138              | Parks Tax                | Parks, Recreation, and Waterfront | \$22,253              |                        | PRWPK21002     | PARKS STRATEGIC PLAN FUNDING                                                   |                 |                       | X                    | Carryover FY 2021 project funding for project hourly staffing cost in FY 2022.                                                                                                                                                                                                                               |
| 51     | 138              | Parks Tax                | Parks, Recreation, and Waterfront |                       | \$16,720               | PRWPK22004     | PY 2022 Parks Minor Maintenance                                                |                 |                       | X                    | Appropriate fund for picnic table and tree planting at Strawberry Creek Park. Funding comes from Rorick Trust for this project.                                                                                                                                                                              |
| 52     | 138              | Parks Tax                | Parks, Recreation, and Waterfront |                       | \$5,700                |                | Parks and Marina Memorial Benches                                              |                 |                       | X                    | Appropriate fund for Parks and Marina Memorial benches                                                                                                                                                                                                                                                       |
| 53     | 138              | Parks Tax                | Parks, Recreation, and Waterfront |                       | \$26,566               |                | FY 2022 Parks Minor MTC                                                        |                 |                       | X                    | Appropriate fund for the FY 2022 JPA contribution/payment                                                                                                                                                                                                                                                    |
| 54     | 138              | Parks Tax                | Parks, Recreation, and Waterfront |                       | \$15,000               |                | FY 2022 JPA contribution                                                       |                 |                       | X                    | Appropriate fund for the FY 2022 AP dog run fence                                                                                                                                                                                                                                                            |
| 55     | 138              | Parks Tax                | Parks, Recreation, and Waterfront |                       | \$235,000              |                | Increase in EBMUD and Refuse cost                                              |                 |                       | X                    | Appropriate funding to increase cost in utilities (water and refuse)                                                                                                                                                                                                                                         |
|        | <b>138 Total</b> |                          |                                   | \$22,253              | \$298,986              |                |                                                                                |                 |                       |                      |                                                                                                                                                                                                                                                                                                              |
| 56     | 140              | Measure GG               | Fire                              |                       | \$600,000              |                | Fire Overtime                                                                  |                 |                       | X                    | Appropriate additional funds for projected Fire overtime costs in FY 2022                                                                                                                                                                                                                                    |
|        | <b>140 Total</b> |                          |                                   | \$0                   | \$600,000              |                |                                                                                |                 |                       |                      |                                                                                                                                                                                                                                                                                                              |
| 57     | 157              | Tobacco Control          | HHCS                              | \$46,371              |                        | HHPLLA2101     | Tobacco Prevention                                                             |                 |                       | X                    | Carryover of fund to support the Tobacco Prevention program                                                                                                                                                                                                                                                  |
|        | <b>157 Total</b> |                          |                                   | \$46,371              | \$0                    |                |                                                                                |                 |                       |                      |                                                                                                                                                                                                                                                                                                              |
| 58     | 302              | Operating Grants - State | HHCS                              |                       | \$5,000,000            |                | Local Housing Trust Fund Grant                                                 |                 | X                     |                      | Approve funding from State of California Department of Housing & Community Services Local Housing Trust Fund for Blake Street (2527 San Pablo) and Maudelle Miller Shirek (2001 Ashby) projects. Both projects will receive \$2.5 million. Approved by Council on 7/14/20 through Resolution No. 69,494-N.S. |
|        | <b>302 Total</b> |                          |                                   | \$0                   | \$5,000,000            |                |                                                                                |                 |                       |                      |                                                                                                                                                                                                                                                                                                              |
| 59     | 306              | Capital Grants - State   | Public Works                      |                       | \$351,700              | PWTRBP2201     | Martin Luther King Jr. Way Vision Zero Quick Build                             |                 |                       | X                    | Appropriate funds for the design and install quick-build pedestrian and bicycle crossing safety improvements between Dwight Way and Russell Street                                                                                                                                                           |
| 60     | 306              | Capital Grants - State   | Public Works                      |                       | \$131,715              | PWTRBP2203     | Parker Street to Addison Bikeway                                               |                 |                       | X                    | Appropriate funds for the Parker Street to Addison Bikeways project                                                                                                                                                                                                                                          |
| 61     | 306              | Capital Grants - State   | Public Works                      |                       | \$131,715              | PWTRCS2203     | University West Bus Stops                                                      |                 |                       | X                    | Appropriate funds for the University West Bus Stops project                                                                                                                                                                                                                                                  |
|        | <b>306 Total</b> |                          |                                   | \$0                   | \$615,130              |                |                                                                                |                 |                       |                      |                                                                                                                                                                                                                                                                                                              |
| 62     | 307              | Capital Grants - Local   | Public Works                      |                       | \$214,000              | PWTRBP2204     | Ohlone Greenway Modernization & Safety                                         |                 |                       | X                    | Appropriate funds for the Ohlone Greenway Modernization & Safety Project (Santa Fe Ave. to Franklin St.)                                                                                                                                                                                                     |
| 63     | 307              | Capital Grants - Local   | Public Works                      |                       | \$110,000              | PWTRCS2204     | Telegraph Avenue Multimodal Corridor (planning, preliminary engineering phase) |                 | X                     |                      | Reso #69,709-N.S. Alameda CTC Agreement #A22-0023 fully executed on 12/13/21.                                                                                                                                                                                                                                |
| 64     | 307              | Capital Grants - Local   | Public Works                      |                       | \$495,000              | PWTRCT2201     | Adeline Street Transportation Improvements (preliminary engineering phase)     |                 | X                     |                      | Reso #69,709-N.S. Alameda CTC Agreement #A22-0025 fully executed on 12/13/21.                                                                                                                                                                                                                                |

FY 2022 Annual Appropriations Ordinance Amendment #2 Recommendations

| Item # | Fund #           | Fund Name                         | Department   | Recommended Carryover | Recommended Adjustment | Project Number | Description/Project name                                                       | Mandated by Law | Authorized by Council | City Manager Request | Comments/Justification                                                                                                                              |
|--------|------------------|-----------------------------------|--------------|-----------------------|------------------------|----------------|--------------------------------------------------------------------------------|-----------------|-----------------------|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| 65     | 307              | Capital Grants - Local            | Public Works |                       | \$22,000               | PWTRTC2201     | Washington Elementary Safe Routes to School (mini-grant project; design phase) |                 | X                     |                      | Reso #69,709-N.S. Alameda CTC Agreement #A22-0009 fully executed on 12/13/21.                                                                       |
|        | <b>307 Total</b> |                                   |              | \$0                   | \$841,000              |                |                                                                                |                 |                       |                      |                                                                                                                                                     |
| 66     | 311              | ESG                               | HHCS         | \$678,819             |                        |                | C-ESG-CARES FY21/GRANT BALANCE                                                 |                 | X                     |                      | Appropriate fund from the Emergency Solutions Grant for housing services. Approved by Council on 9/15/2020 through Resolution No. 69,563-N.S.       |
|        | <b>311 Total</b> |                                   |              | \$678,819             | \$0                    |                |                                                                                |                 |                       |                      |                                                                                                                                                     |
| 67     | 312              | Health (General)                  | HHCS         |                       | \$6,413                | HHPLPP2201     | CHDP Lead Prevention Program                                                   |                 |                       | X                    | Revise grant budget to match approved amount                                                                                                        |
| 68     | 312              | Health (General)                  | HHCS         |                       | \$46,981               | HHPMCA2201     | Maternal Child And Adolescent Health                                           |                 |                       | X                    | Revise grant budget to match approved amount                                                                                                        |
| 69     | 312              | Health (General)                  | HHCS         | \$4,382               |                        | HHPORL2201     | Oral Health Program                                                            |                 |                       | X                    | Carryover of fund for continuance of the Oral Health program                                                                                        |
|        | <b>312 Total</b> |                                   |              | \$4,382               | \$53,394               |                |                                                                                |                 |                       |                      |                                                                                                                                                     |
| 70     | 313              | Targeted Case Management/Linkages | HHCS         |                       | \$4,000                | HHPTCM2201     | TCM Grant                                                                      |                 |                       | X                    | Appropriate TCM grant balance to provide Public Health Services                                                                                     |
|        | <b>313 Total</b> |                                   |              | \$0                   | \$4,000                |                |                                                                                |                 |                       |                      |                                                                                                                                                     |
| 71     | 315              | Mental Health Service Act         | HHCS         |                       | \$150,000              | HHMAAS2201     | MHSA-African American Success Program                                          |                 |                       | X                    | FY22 MHSA Approved Plan                                                                                                                             |
| 72     | 315              | Mental Health Service Act         | HHCS         |                       | \$582,000              | HHMCD2201      | MHSA- COMMUNITY SERVICES AND SUPPORTS (CSS) DEVELOPMENT                        |                 |                       | X                    | FY22 MHSA Approved Plan                                                                                                                             |
| 73     | 315              | Mental Health Service Act         | HHCS         |                       | \$61,428               | HHMCMC2201     | MHSA-Covenant House Contract                                                   |                 |                       | X                    | FY22 MHSA Approved Plan                                                                                                                             |
| 74     | 315              | Mental Health Service Act         | HHCS         |                       | \$916,731              | HHMCSA2201     | MHSA-CSS Admin                                                                 |                 |                       | X                    | Funds for contract amendment with Berkeley Food & Housing Project for Berkeley Mental Health Flexible Funding Programs and Russell Street Residence |
| 75     | 315              | Mental Health Service Act         | HHCS         |                       | \$15,149               | HHMCSA2201     | MHSA-CSS Admin                                                                 |                 |                       | X                    | FY22 MHSA Approved Plan                                                                                                                             |
| 76     | 315              | Mental Health Service Act         | HHCS         |                       | \$554,494              | HHMCSA2201     | MHSA CSS Development-General                                                   |                 |                       | X                    | FY22 MHSA Approved Plan                                                                                                                             |
| 77     | 315              | Mental Health Service Act         | HHCS         |                       | \$63,050               | HHMCSA2201     | MHSA CSS Development-General                                                   |                 |                       | X                    | FY22 MHSA Approved Plan                                                                                                                             |
| 78     | 315              | Mental Health Service Act         | HHCS         |                       | \$349,400              | HHMHFP2201     | MHSA Homeless Full Service Partnership                                         |                 |                       | X                    | FY22 MHSA Approved Plan                                                                                                                             |
| 79     | 315              | Mental Health Service Act         | HHCS         |                       | \$220,800              | HHMINN2201     | MHSA Innovation-Results Based Accountability Contract                          |                 |                       | X                    | FY22 MHSA Approved Plan                                                                                                                             |
| 80     | 315              | Mental Health Service Act         | HHCS         |                       | \$50,000               | HHMITC2201     | MHSA Technology Suite                                                          |                 |                       | X                    | FY22 MHSA Approved Plan                                                                                                                             |
| 81     | 315              | Mental Health Service Act         | HHCS         |                       | \$215,800              | HHMMCM2201     | Medi-Cal CALMHSA Help@Hand and Claremont EAP Contracts/PEI Statewide Contract  |                 |                       | X                    | FY22 Medi-Cal Unbudgeted Contracts                                                                                                                  |



## FY 2022 Annual Appropriations Ordinance Amendment #2 Recommendations

Attachment 2

| Item # | Fund #           | Fund Name                   | Department            | Recommended Carryover | Recommended Adjustment | Project Number | Description/Project name                                | Mandated by Law | Authorized by Council | City Manager Request | Comments/Justification                                                                                                                                                         |
|--------|------------------|-----------------------------|-----------------------|-----------------------|------------------------|----------------|---------------------------------------------------------|-----------------|-----------------------|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 82     | 315              | Mental Health Service Act   | HHCS                  |                       | \$103,956              | HHMPAD2201     | MHSA PEI Admin-Mental Heal Promotion Campaign           |                 |                       | X                    | FY22 MHSA Approved Plan                                                                                                                                                        |
| 83     | 315              | Mental Health Service Act   | HHCS                  |                       | \$388,156              | HHMPCE2201     | MHSA PEI Community Education and Supports               |                 |                       | X                    | FY22 MHSA Approved Plan                                                                                                                                                        |
| 84     | 315              | Mental Health Service Act   | HHCS                  |                       | \$95,000               | HHMPDM2201     | MHSA PEI Dynamic Mindfulness                            |                 |                       | X                    | FY22 Approved Plan                                                                                                                                                             |
| 85     | 315              | Mental Health Service Act   | HHCS                  |                       | \$35,230               | HHMPHO2101     | MHSA PEI Homeless Outreach                              |                 |                       | X                    | FY22 Approved Plan                                                                                                                                                             |
| 86     | 315              | Mental Health Service Act   | HHCS                  |                       | \$110,000              | HHMPSS2201     | MHSA PEI Supportive School Program                      |                 |                       | X                    | FY22 MHSA Approved Plan                                                                                                                                                        |
| 87     | 315              | Mental Health Service Act   | HHCS                  |                       | \$550,987              | HHMROM2201     | Mental Health State Aid Realignment-MH Project Needs    |                 |                       | X                    | FY22 Unbudgeted Projects-Realignment Fund Balance                                                                                                                              |
| 88     | 315              | Mental Health Service Act   | HHCS                  |                       | \$491,933              | HHMWEL2201     | MHSA-CSS Development Wellness                           |                 | X                     |                      | Appropriate Fund for the MHSA Wellness Center Operations Contract with Alameda County Behavioral Services approved by Council on 09/28/2021 through Resolution No. 70,038-N.S. |
| 89     | 315              | Mental Health Service Act   | HHCS                  |                       | \$80,314               | HHMWET2201     | MHSA WET-CalMHSA Bay Area Regional Partnership Contract |                 |                       | X                    | FY22 Approved Plan                                                                                                                                                             |
|        | <b>315 Total</b> |                             |                       | \$0                   | \$5,034,428            |                |                                                         |                 |                       |                      |                                                                                                                                                                                |
| 90     | 320              | SR. NUTRITION (TITLE III)   | HHCS                  |                       | \$723                  | HHACON2201     | AG C1 CONGREGATE                                        |                 |                       | X                    | Appropriate additional grant funding for Congregate Nutrition program                                                                                                          |
| 91     | 320              | SR. NUTRITION (TITLE III)   | HHCS                  |                       | \$10,076               | HHAMOW2201     | AG Meals on Wheels                                      |                 |                       | X                    | Appropriate additional grant funding for Home Delivered Nutrition program                                                                                                      |
|        | <b>320 Total</b> |                             |                       | \$0                   | \$10,799               |                |                                                         |                 |                       |                      |                                                                                                                                                                                |
| 92     | 321              | C.F.P. Title X              | HHCS                  |                       | \$20,000               |                | Clinical Reproductive Health Services and Education     |                 | X                     |                      | Appropriate funding for the Title X grant fund (awarded \$20k) for reproductive health services and education program                                                          |
| 93     | 321              | C.F.P. Title X              | HHCS                  |                       | \$30,000               |                | Supplemental Title X Funding                            |                 | X                     |                      | Appropriate fund for supplemental Title X funding for the program period 10/1/2021 to 03/31/2022. Approved by Council on 05/11/2021 through Resolution No. 69,842-N.S.         |
|        | <b>321 Total</b> |                             |                       | \$0                   | \$50,000               |                |                                                         |                 |                       |                      |                                                                                                                                                                                |
| 94     | 326              | Alameda County Grants       | HHCS                  |                       | \$13,600               |                | BHSHC-ALCO Alameda Count Grant Increase                 |                 |                       | X                    | Revise grant budget to match approved amount                                                                                                                                   |
|        | <b>326 Total</b> |                             |                       | \$0                   | \$13,600               |                |                                                         |                 |                       |                      |                                                                                                                                                                                |
| 95     | 327              | SR SUPPORTIVE SOCIAL SERV   | HHCS                  |                       | \$6,000                | HHAINA2201     | INFORMATION & ASSISTANCE                                |                 |                       | X                    | ONE-TIME-ONLY INCREASE PROJECTION                                                                                                                                              |
|        | <b>327 Total</b> |                             |                       | \$0                   | \$6,000                |                |                                                         |                 |                       |                      |                                                                                                                                                                                |
| 96     | 328              | Family Care Support Program | HHCS                  |                       | \$3,828                | HHACAR2201     | AG Family Caregiver                                     |                 |                       | X                    | Revise grant budget to match approved amount                                                                                                                                   |
| 97     | 328              | Family Care Support Program | HHCS                  |                       | \$7,000                | HHACAR2201     | FAMILY CAREGIVER                                        |                 |                       | X                    | ONE-TIME-ONLY INCREASE PROJECTION                                                                                                                                              |
|        | <b>328 Total</b> |                             |                       | \$0                   | \$10,828               |                |                                                         |                 |                       |                      |                                                                                                                                                                                |
| 98     | 336              | One Time Grant              | City Manager's Office |                       | \$10,525               |                | Grant from the William and Flora Hewlett Foundation     |                 | X                     |                      | Appropriate funding to receive a grant award from William and Flora Hewlett Foundation. Authorized by Council on 09/28/2021 through Resolution No. 70,033-N.S.                 |

FY 2022 Annual Appropriations Ordinance Amendment #2 Recommendations

| Item # | Fund #           | Fund Name                                | Department                        | Recommended Carryover | Recommended Adjustment | Project Number | Description/Project name                                              | Mandated by Law | Authorized by Council | City Manager Request | Comments/Justification                                                                                                                                                                                                                                                                                                                                          |
|--------|------------------|------------------------------------------|-----------------------------------|-----------------------|------------------------|----------------|-----------------------------------------------------------------------|-----------------|-----------------------|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 99     | 336              | One Time Grant                           | City Manager's Office             |                       | \$3,993,397            |                | Interim Housing Program at Rodeway Inn                                |                 | X                     |                      | Appropriate grant funds from the Encampment Resolution Grant Fund (\$1,793,397) and a donation from the University of California, Berkeley (\$2,200,000) for a contract with Abode Services to operate an interim housing program at the Rodeway Inn at 1461 University Avenue. Approved by Council on 4/26/22                                                  |
| 100    | 336              | One Time Grant                           | City Manager's Office             |                       | \$3,005,270            |                | 1461 University Avenue Lease                                          |                 | X                     |                      | Appropriate grant funds from the Encampment Resolution Grant Fund and a donation from the University of California, Berkeley to lease the property at 1461 University Avenue to , to operate noncongregate interim housing at the Rodeway Inn for the cohort of individuals currently living in the encampment at People's Park. Approved by Council on 4/26/22 |
| 101    | 336              | One Time Grant                           | HHCS                              |                       | \$35,103               | HHMSSA2201     | Mental Health Student Services Act (MHSSA) GRANT- Program Development |                 |                       |                      | FY22 Program Development Award                                                                                                                                                                                                                                                                                                                                  |
| 102    | 336              | One Time Grant                           | HHCS                              |                       | \$91,000               | HHMTEP2201     | TeleHealth Expansion Project                                          |                 | X                     |                      | Appropriate grant funding for information technology equipment, telehealth licenses, and PPE for the Mental Health program                                                                                                                                                                                                                                      |
| 103    | 336              | One Time Grant                           | HHCS                              |                       | \$20,000               | HHMTRI2201     | Adult Triage Grant-                                                   |                 |                       | X                    | FY22 Balance of Award                                                                                                                                                                                                                                                                                                                                           |
| 104    | 336              | One Time Grant                           | HHCS                              |                       | \$472,500              | HHOCCM2201     | Crisis Care Mobile Unit                                               |                 |                       | X                    | FY22 Submitted Budget                                                                                                                                                                                                                                                                                                                                           |
| 105    | 336              | One Time Grant                           | HHCS                              |                       | \$60,795               | HHODIS2201     | Disease Intervention Specialist Grant                                 |                 |                       | X                    | Revise grant budget to match approved amount                                                                                                                                                                                                                                                                                                                    |
| 106    | 336              | One Time Grant                           | HHCS                              |                       | \$19,000               | HHPHBY2201     | YOUTH BEVERAGE CONSUMER ED & RESEARCH                                 |                 |                       | X                    | One-time funding from the DOJ                                                                                                                                                                                                                                                                                                                                   |
| 107    | 336              | One Time Grant                           | HHCS                              |                       | \$55,463               |                | Provider Relief CARES Act Funding                                     |                 | X                     |                      | Appropriate Federal COVID-19 Funding from HHS Cares Act Provider Relief Fund. Approved by Council on 12-15-20 through Resolution No. 69,653-N.S.                                                                                                                                                                                                                |
| 108    | 336              | One Time Grant                           | HHCS                              |                       | \$48,994               |                | Kitchen Electrification - Aging Services                              |                 | X                     |                      | Appropriate Fund for the Eastbay Community Energy Grant for the period of 2/1/21 - 12/31/21.                                                                                                                                                                                                                                                                    |
| 109    | 336              | One Time Grant                           | Parks, Recreation, and Waterfront |                       | \$300,000              | PRWPK21012     | Santa Fe Right of Way                                                 |                 |                       | X                    | Appropriate Proposition 68 Funds for Santa Fe Right-of-Way project                                                                                                                                                                                                                                                                                              |
|        | <b>336 Total</b> |                                          |                                   | \$0                   | \$8,112,046            |                |                                                                       |                 |                       |                      |                                                                                                                                                                                                                                                                                                                                                                 |
| 110    | 338              | Bay Area Air Quality Management District | Public Works                      |                       | \$117,000              | PWTRBP2208     | Bicycle Parking Project                                               |                 | X                     |                      | Reso #69,709-N.S. Alameda CTC Agreement #A21-0028 fully executed on 07/23/21.                                                                                                                                                                                                                                                                                   |
|        | <b>338 Total</b> |                                          |                                   | \$0                   | \$117,000              |                |                                                                       |                 |                       |                      |                                                                                                                                                                                                                                                                                                                                                                 |
| 111    | 339              | MTC                                      | Public Works                      |                       | \$250,000              | PWTRBP2206     | West Berkeley Quick Build                                             |                 |                       | X                    | Allocate MTC Funds for the West Berkeley Quick Build project.                                                                                                                                                                                                                                                                                                   |
| 112    | 339              | MTC                                      | Public Works                      |                       | \$75,000               | PWTRBP2207     | Bicycle Plan                                                          |                 |                       | X                    | Allocate MTC Funds for the Bicycle Plan project.                                                                                                                                                                                                                                                                                                                |
| 113    | 339              | MTC                                      | Public Works                      |                       | \$24,000               | PWTRPK1401     | Intern for goBerkeley                                                 |                 |                       | X                    | Appropriate funding for an intern for the goBerkeley program                                                                                                                                                                                                                                                                                                    |

## FY 2022 Annual Appropriations Ordinance Amendment #2 Recommendations

Attachment 2

| Item # | Fund #           | Fund Name                 | Department            | Recommended Carryover | Recommended Adjustment | Project Number | Description/Project name                    | Mandated by Law | Authorized by Council | City Manager Request | Comments/Justification                                                                                                                                                                    |
|--------|------------------|---------------------------|-----------------------|-----------------------|------------------------|----------------|---------------------------------------------|-----------------|-----------------------|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|        | <b>339 Total</b> |                           |                       | \$0                   | \$349,000              |                |                                             |                 |                       |                      |                                                                                                                                                                                           |
| 114    | 340              | FEMA                      | Fire                  |                       | \$168,272              |                | FEMA Grant                                  |                 | X                     |                      | Appropriate grant funding from FEMA for Regional Fire Leadership Development Academy. Authorized by Council on 9/28/21 through Resolution No. 70,035-N.S.                                 |
|        | <b>340 Total</b> |                           |                       | \$0                   | \$168,272              |                |                                             |                 |                       |                      |                                                                                                                                                                                           |
| 115    | 343              | State Dept Conserv/Recy/g | Public Works          |                       | \$60,710               |                | Residential Recycling Curbside Collections  |                 |                       | X                    | Appropriate funding for the residential recycling curbside collection program                                                                                                             |
|        | <b>343 Total</b> |                           |                       | \$0                   | \$60,710               |                |                                             |                 |                       |                      |                                                                                                                                                                                           |
| 116    | 344              | Caltrans Grant            | Public Works          | \$465,152             | \$75,138               | PWTRCT1803     | NB BART/Sacramento Street Complete Streets  |                 |                       | X                    | Funding needed to finish construction phase of project and spend down grant fund                                                                                                          |
|        | <b>344 Total</b> |                           |                       | \$465,152             | \$75,138               |                |                                             |                 |                       |                      |                                                                                                                                                                                           |
| 117    | 350              | Bio-Terrorism Grant       | HHCS                  |                       | \$173,537              | HHPHEP2201     | Public Health Emergency Preparedness        |                 |                       | X                    | Revise grant budget to match approved amount                                                                                                                                              |
| 118    | 350              | Bio-Terrorism Grant       | HHCS                  |                       | \$8,000                | HHPHEP2201     | PHEP Base FY22 Budget                       |                 |                       | X                    | FY22 Approved Budget Increase                                                                                                                                                             |
| 119    | 350              | Bio-Terrorism Grant       | HHCS                  |                       | \$25,674               |                | PHEP CRI FY22 Budget                        |                 |                       | X                    | FY22 Amended Budget                                                                                                                                                                       |
| 120    | 350              | Bio-Terrorism Grant       | HHCS                  |                       | \$2,573                |                | PHEP Pan Flu FY22 Budget                    |                 |                       | X                    | FY22 Amended Budget                                                                                                                                                                       |
|        | <b>350 Total</b> |                           |                       | \$0                   | \$209,784              |                |                                             |                 |                       |                      |                                                                                                                                                                                           |
| 121    | 351              | UASI Regional Fund        | Fire & Emergency Svcs | \$9,192               |                        |                | Fire BACM                                   |                 |                       | X                    | Carryover of UASI grant funding                                                                                                                                                           |
|        | <b>351 Total</b> |                           |                       | \$9,192               | \$0                    |                |                                             |                 |                       |                      |                                                                                                                                                                                           |
| 122    | 501              | Capital Improvement       | HHCS                  |                       | \$1,885                |                | Housing Trust Fund - General Fund           |                 | X                     |                      | Appropriate Housing Trust Fund - GF for remaining RCD Contract#32100084, and Satellite Affordable Housing Contract#32100085. Approved by Council on 07/28/20 through Res. No. 69,513-N.S. |
| 123    | 501              | Capital Improvement       | Public Works          |                       | \$4,643                | PWENBM2004     | MHS Wall Repair - 2636-2640 MLK             |                 |                       | X                    | Appropriate fund to repair wall at MHS 2636 MLK (substantial damage)                                                                                                                      |
| 124    | 501              | Capital Improvement       | Public Works          | \$27,237              |                        | PWENBM2103     | FS #7 Fire Alarm Control Panel Replacement  |                 |                       | X                    | Carryover funding for Fire Station#7 Fire Alarm Control Panel Replacement project.                                                                                                        |
| 125    | 501              | Capital Improvement       | Public Works          | \$13,070              |                        | PWENCB2104     | Corp Yard Mezzanine                         |                 |                       | X                    | Carryover funding to continue the Corp yard electrical warehouse mezzanine seismic upgrade project                                                                                        |
| 126    | 501              | Capital Improvement       | Public Works          |                       | \$132,311              | PWENSR1542     | Sewer Laterals & CCTV                       |                 |                       | X                    | On-going rehabilitation of city-owned sewer laterals                                                                                                                                      |
| 127    | 501              | Capital Improvement       | Public Works          | \$32,400              |                        | PWENSW2004     | Pathways FY 2020                            |                 |                       | X                    | Carryover funding to continue the Pathways FY 2020 project                                                                                                                                |
| 128    | 501              | Capital Improvement       | Public Works          |                       | \$42,309               | PWTRCT0918     | Ashby/San Pablo Traffic Improvement         |                 |                       | X                    | Appropriate fund for Ashby/San Pablo Traffic improvement project (widening the WB Approach)                                                                                               |
| 129    | 501              | Capital Improvement       | Public Works          |                       | \$50,000               |                | FY 2022 Annual Sidewalk Grinding allocation |                 |                       | X                    | Appropriate the annual CIP fund sidewalk program allocation for grinding                                                                                                                  |
| 130    | 501              | Capital Improvement       | Public Works          | \$195,000             |                        |                | ADA Curb Ramp maintenance & replacement     |                 |                       | X                    | To carryover the FY 2021 Annual ADA curb ramp maintenance/ replacement budget                                                                                                             |
|        | <b>501 Total</b> |                           |                       | \$267,707             | \$231,148              |                |                                             |                 |                       |                      |                                                                                                                                                                                           |

## FY 2022 Annual Appropriations Ordinance Amendment #2 Recommendations

Attachment 2

| Item # | Fund #           | Fund Name                         | Department                        | Recommended Carryover | Recommended Adjustment | Project Number | Description/Project name                                  | Mandated by Law | Authorized by Council | City Manager Request | Comments/Justification                                                                                                                                                                                                                |
|--------|------------------|-----------------------------------|-----------------------------------|-----------------------|------------------------|----------------|-----------------------------------------------------------|-----------------|-----------------------|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 131    | 511              | Measure T1                        | Public Works                      | \$1,811               |                        | PWENCB1405     | Mental Health Renovation                                  |                 |                       | X                    | Carryover of fund to continue the Mental Health renovation project                                                                                                                                                                    |
| 132    | 511              | Measure T1                        | Public Works                      |                       | \$150,000              | PWENSD2103     | Storm Drain Improvement FY 2021                           |                 |                       | X                    | Appropriate Meas T1 Fund for FY21 Storm Drain Improvement Project. This additional funding request is for the Construction Phase (bids higher than anticipated) including 15% contingency                                             |
| 133    | 511              | Measure T1                        | Public Works                      | \$651,924             |                        | PWT1CB1901     | NBSC SEISMIC RETROFIT - T1                                |                 |                       | X                    | Carryover of T1 fund for the continuation of the construction phase of the NBSC Seismic Retrofit project                                                                                                                              |
| 134    | 511              | Measure T1                        | Public Works                      |                       | \$350,000              | PWT1CB1901     | NBSC SEISMIC RETROFIT - T1                                |                 |                       | X                    | Appropriate funding for the continuation of the construction phase of the NBSC Seismic Retrofit project                                                                                                                               |
| 135    | 511              | Measure T1                        | Public Works                      | \$100,000             |                        | PWT1CB2207     | OXFORD & TELEGRAPH/CHANNING GRGE&RI                       |                 |                       | X                    | Carryover of fund to continue the garage project                                                                                                                                                                                      |
| 136    | 511              | Measure T1                        | Public Works                      | \$100,000             |                        | PWT1CB2208     | EMERG POWER SUPPLY SOLAR BATTERIES                        |                 |                       | X                    | Carryover of fund to continue the Emergency Power Supply Solar Batteries project                                                                                                                                                      |
| 137    | 511              | Measure T1                        | Public Works                      |                       | \$85,000               | PWT1CB2209     | PW CY IMPROV GREEN BLDG                                   |                 |                       | X                    | Appropriate funding for the PW CorpYard Improvement Green Building project                                                                                                                                                            |
|        | <b>511 Total</b> |                                   |                                   | <b>\$853,735</b>      | <b>\$585,000</b>       |                |                                                           |                 |                       |                      |                                                                                                                                                                                                                                       |
| 138    | 512              | Measure O HSG                     | HHCS                              |                       | \$5,452,871            |                | Ashby Maudelle Miller Shirek Community (2001 Ashby)       |                 | X                     |                      | Appropriate balance of Measure O funding for the Maudelle Miller Shirek Community project (2001 Ashby)                                                                                                                                |
|        | <b>512 Total</b> |                                   |                                   | <b>\$0</b>            | <b>\$5,452,871</b>     |                |                                                           |                 |                       |                      |                                                                                                                                                                                                                                       |
| 139    | 601              | Zero Waste                        | Public Works                      |                       | \$1,346,627            |                | Ecology Center Contract                                   |                 | X                     |                      | Appropriate funding for the new Ecology Center contract for residential curbside recycling                                                                                                                                            |
| 140    | 601              | Zero Waste                        | Public Works                      |                       | \$34,158               |                | Vehicle Replacement Shortfall                             |                 |                       | X                    | Appropriate funding for the shortfall to the vehicle replacement payments                                                                                                                                                             |
| 141    | 601              | Zero Waste                        | Public Works                      |                       | \$281,857              |                | Vehicle Replacement Shortfall                             |                 |                       | X                    | Appropriate funding for the shortfall to the vehicle replacement payments                                                                                                                                                             |
| 142    | 601              | Zero Waste                        | Public Works                      |                       | \$202,391              |                | Vehicle Replacement Shortfall                             |                 |                       | X                    | Appropriate funding for the shortfall to the vehicle replacement payments                                                                                                                                                             |
| 143    | 601              | Zero Waste                        | Public Works                      |                       | \$73,128               |                | Vehicle Replacement Shortfall                             |                 |                       | X                    | Appropriate funding for the shortfall to the vehicle replacement payments                                                                                                                                                             |
| 144    | 601              | Zero Waste                        | Public Works                      |                       | \$139,379              |                | Vehicle Replacement Shortfall                             |                 |                       | X                    | Appropriate funding for the shortfall to the vehicle replacement payments                                                                                                                                                             |
| 145    | 601              | Zero Waste                        | Public Works                      |                       | \$52,451               |                | Vehicle Replacement Shortfall                             |                 |                       | X                    | Appropriate funding for the shortfall to the vehicle replacement payments                                                                                                                                                             |
|        | <b>601 Total</b> |                                   |                                   | <b>\$0</b>            | <b>\$2,129,991</b>     |                |                                                           |                 |                       |                      |                                                                                                                                                                                                                                       |
| 146    | 607              | Mar - Dept. of Boating & Waterway | Parks, Recreation, and Waterfront |                       | \$42,000               | PRWWF22005     | DBW 2021 SAVE Grant                                       |                 | X                     |                      | Appropriate funding for DBW 2021 SAVE grant program. Approved by Council on 05/21/2021 through Res. No. 69,876-N.S.                                                                                                                   |
| 147    | 607              | Mar - Dept. of Boating & Waterway | Parks, Recreation, and Waterfront |                       | \$20,000               | PRWWF22010     | DBW Boating Safety and Enforcement Equipment (BSEE) Grant |                 | X                     |                      | This is for the purchase and replacement of equipment related to boating safety located at the Berkeley Marina. There is no cost share requirement for this grant. Approved by Council on 10-26-21 through Resolution No. 70,087-N.S. |
|        | <b>607 Total</b> |                                   |                                   | <b>\$0</b>            | <b>\$62,000</b>        |                |                                                           |                 |                       |                      |                                                                                                                                                                                                                                       |
| 148    | 608              | Marina Operations/Maint           | Parks, Recreation, and Waterfront |                       | \$4,200                | PRWWF22005     | DBW 2021 SAVE Grant                                       |                 | X                     |                      | Appropriate funding for DBW 2021 SAVE grant program. Approved by Council on 05/21/2021 through Res. No. 69,876-N.S.                                                                                                                   |

FY 2022 Annual Appropriations Ordinance Amendment #2 Recommendations

| Item # | Fund #             | Fund Name               | Department                        | Recommended Carryover | Recommended Adjustment | Project Number           | Description/Project name                        | Mandated by Law | Authorized by Council | City Manager Request | Comments/Justification                                                                                                                                                                                  |
|--------|--------------------|-------------------------|-----------------------------------|-----------------------|------------------------|--------------------------|-------------------------------------------------|-----------------|-----------------------|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 149    | 608                | Marina Operations/Maint | Parks, Recreation, and Waterfront |                       | \$315,000              | PRWWF22006<br>PRWWF22007 | D & E Bathroom Fence<br>FY22 Waterfront Pilings |                 |                       | X                    | Appropriate funding for the D&E Bathroom fence project and the FY 2022 Waterfront Pilings project                                                                                                       |
| 150    | 608                | Marina Operations/Maint | Parks, Recreation, and Waterfront |                       | \$39,500               | PRWWF22009               | Hana Japan Fire Suppression                     |                 |                       | X                    | Appropriate funding for Hana Japan Fire Suppression project.                                                                                                                                            |
| 151    | 608                | Marina Operations/Maint | Parks, Recreation, and Waterfront |                       | \$20,479               | PRWWF22009               | Hana Japan Fire Suppression                     |                 |                       | X                    | This contract is for emergency work to fix the standpipe outside Hana Japan at the Waterfront, after a car hit and damaged the standpipe and comprised fire suppression capabilities to the restaurant. |
| 152    | 608                | Marina Operations/Maint | Parks, Recreation, and Waterfront |                       | \$9,500                |                          | Parks and Marina Memorial Benches               |                 |                       | X                    | Appropriate funding for Parks and Marina Memorial benches                                                                                                                                               |
| 153    | 608                | Marina Operations/Maint | Parks, Recreation, and Waterfront |                       | \$50,000               |                          | Increase in EBMUD cost                          |                 |                       | X                    | Appropriate funding for increased EBMUD cost                                                                                                                                                            |
| 154    | 608                | Marina Operations/Maint | Parks, Recreation, and Waterfront |                       | \$1,900                |                          | Donation fund for memorial benches              |                 | X                     |                      | Appropriate donation funds for a memorial bench at Shorebird Park at the Berkeley Marina in memory of Shay M. Finnegan. Approved by Council on 9/28/21 through Resolution No. 70,042 - N.S.             |
|        | <b>608 Total</b>   |                         |                                   | \$0                   | \$440,579              |                          |                                                 |                 |                       |                      |                                                                                                                                                                                                         |
| 155    | 611                | Sanitary Sewer          | Public Works                      | \$204,202             | \$33,870               | PWENSR2001               | SS REHAB - SAN PABLO AVE                        |                 |                       | X                    | Carryover and appropriate new funding for the continuation of the Sanitary Sewer Rehabilitation San Pablo Ave                                                                                           |
| 156    | 611                | Sanitary Sewer          | Public Works                      | \$2,065,469           | \$180,773              | PWENSR2102               | SS REHAB MLK JR WAY CEDAR ET AL                 |                 |                       | X                    | Carryover and appropriate new funding for the continuation of the Sanitary Sewer Rehabilitation MLK Jr Way Et Al project                                                                                |
|        | <b>611 Total</b>   |                         |                                   | \$2,269,671           | \$214,643              |                          |                                                 |                 |                       |                      |                                                                                                                                                                                                         |
| 157    | 622                | Unified Program (CUPA)  | Planning                          |                       | \$50,000               |                          | CUPA Software                                   |                 |                       | X                    | Toxics Replacement Software                                                                                                                                                                             |
|        | <b>622 Total</b>   |                         |                                   | \$0                   | \$50,000               |                          |                                                 |                 |                       |                      |                                                                                                                                                                                                         |
| 158    | 671                | Equipment Replacement   | Public Works                      |                       | \$345,188              |                          | Overhaul of #6505 Wheel Loader                  |                 |                       | X                    | Overhaul was paid out of Equipment Maintenance Fund and needs to be reimbursed                                                                                                                          |
|        | <b>671 Total</b>   |                         |                                   | \$0                   | \$345,188              |                          |                                                 |                 |                       |                      |                                                                                                                                                                                                         |
| 159    | 781                | Tourism BID             | City Manager's Office             |                       | \$456,165              |                          | Tourism BID Visit Berkeley Contract             |                 |                       | X                    | Appropriate additional funds for the Tourism BID Visit Berkeley Contract based on additional revenues received in FY 2022.                                                                              |
|        | <b>781 Total</b>   |                         |                                   | \$0                   | \$456,165              |                          |                                                 |                 |                       |                      |                                                                                                                                                                                                         |
|        | <b>Grand Total</b> |                         |                                   | <b>\$4,767,283</b>    | <b>\$48,388,623</b>    |                          |                                                 |                 |                       |                      |                                                                                                                                                                                                         |





Office of the City Manager

CONSENT CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance

Subject: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on May 10, 2022

RECOMMENDATION

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

Total estimated cost of items included in this report is **\$964,022.34**.

| <u>PROJECT</u>                                                        | <u>Fund</u> | <u>Source</u>                                                   | <u>Amount</u>       |
|-----------------------------------------------------------------------|-------------|-----------------------------------------------------------------|---------------------|
| PW Engineering On-Call Arborist Services                              | 511<br>501  | Measure T1 – Infrastructure and Facilities Capital Improvements | \$250,000           |
| Landfill Post- Closure Monitoring and Maintenance Services (FY 23-25) | 601         | Zero Waste                                                      | \$714,022.34        |
| <b>Total:</b>                                                         |             |                                                                 | <b>\$964,022.34</b> |

CURRENT SITUATION AND ITS EFFECTS

On May, 6, 2008, Council adopted Ordinance No. 7,035-N.S. effective June 6, 2008, which increased the City Manager's purchasing authority for services to \$50,000. As a result, this required report submitted by the City Manager to Council is now for those purchases in excess of \$100,000 for goods; and \$200,000 for playgrounds and

Formal Bid Solicitations and Request for Proposals  
Scheduled for Possible Issuance After Council  
Approval on May 10, 2022

CONSENT CALENDAR  
May 10, 2022

construction; and \$50,000 for services. If Council does not object to these items being sent out for bid or proposal within one week of them appearing on the agenda, and upon final notice to proceed from the requesting department, the IFB (Invitation for Bid) or RFP (Request for Proposal) may be released to the public and notices sent to the potential bidder/respondent list.

#### BACKGROUND

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

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

#### RATIONALE FOR RECOMMENDATION

Need for the services.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

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

#### Attachments:

1: Formal Bid Solicitations and Request for Proposals Scheduled For Possible Issuance After Council Approval on May 10, 2022

- a. PW Engineering On-Call Arborist Services
- b. Landfill Post-Closure Monitoring and Maintenance Services (FY 23-25)

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



| SPECIFICATI<br>ON NO. | DESCRIPTION<br>OF GOODS /<br>SERVICES<br>BEING<br>PURCHASED                          | APPROX.<br>RELEASE<br>DATE | APPROX.<br>BID<br>OPENING<br>DATE | INTENDED USE                                                                                                                                                              | ESTIMATED COST                                                                                                                             | BUDGET CODE TO BE<br>CHARGED                                                                                                   | DEPT. /<br>DIVISION           | CONTACT<br>NAME &<br>PHONE                                     |
|-----------------------|--------------------------------------------------------------------------------------|----------------------------|-----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|-------------------------------|----------------------------------------------------------------|
| 22-11520-C            | PW Engineering<br>On-Call Arborist<br>Services                                       | 5/11/2022                  | 6/12/2022                         | On-call services to<br>evaluate tree conditions<br>related to sidewalk and<br>roadway excavation work.                                                                    | \$250,000 over 3 years                                                                                                                     | 511-54-623-674-0000-000-<br>431-612990- PWT1SW2201<br>and<br>501-54-623-674-0000-000-<br>431-612990 as needed and<br>available | Public Works -<br>Engineering | Joe Enke<br>981-6411<br><br>Terrence<br>Salonga<br>981-6447    |
| 22-11521-C            | Landfill Post-<br>Closure<br>Monitoring and<br>Maintenance<br>Services<br>(FY 23-25) | 5/11/2022                  | 6/12/2022                         | Provide engineering,<br>maintenance, and<br>monitoring services for the<br>landfill post-closure at<br>Cesar Chavez Park to<br>meet mandatory<br>compliance requirements. | \$714,022.34<br><br>Not to exceed:<br>\$714,022.34<br>(\$226,494 from FY 2023;<br>\$237,818.70 from FY 2024;<br>\$249,709.64 from FY 2025) | 601-54-623-672-3011-472-<br>000-612310-                                                                                        | Public Works -<br>Engineering | Samantha<br>Kinstrey,<br>981-6337<br><br>Joe Enke,<br>981-6411 |
| <b>Dept TOTAL</b>     |                                                                                      |                            |                                   |                                                                                                                                                                           | \$964,022.34                                                                                                                               |                                                                                                                                |                               |                                                                |
| <b>TOTAL</b>          |                                                                                      |                            |                                   |                                                                                                                                                                           | <b>\$964,022.34</b>                                                                                                                        |                                                                                                                                |                               |                                                                |





Office of the City Manager

CONSENT CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Abraham Roman, Fire Chief  
 Subject: Purchase Order: ZOLL Medical Corporation for ECG Monitor/Defibrillators

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a Purchase Order and any amendments with ZOLL Medical Corporation for the purchase of five Advanced Life Support (ALS) ECG Monitor/Defibrillators, associated equipment and a maintenance contract for emergency response vehicles in an amount not to exceed \$250,000.

FISCAL IMPACTS OF RECOMMENDATION

This is a one-time cost and is funded by Measure FF, budget code 164-72-742-837-0000-000-423-612990.

CURRENT SITUATION AND ITS EFFECTS

The Fire Department is adding ambulances to its fleet during the Department re-design and implementation of the single function transport service. Each ambulance is required by the Alameda County Local EMS Authority (LEMSA) to carry an ECG Monitor / Defibrillator. The Department already carries ZOLL ECG's on every piece of suppression and transport apparatus. The Department needs additional ECGs to adequately supply these new ambulances and increase the number of reserve ECGs it maintains. It is operationally necessary to have the same ECG's on all apparatus due to the complexity and proprietary design and features of this type of specialized equipment. Having's dissimilar ECGs would lead to increased risk of error during high-stress emergency medical incidents.

The League of Oregon Cities (LOC) opened RFP #1935 on November 12, 2020 to procure Public Safety Medical Supplies, Equipment, and Monitors using a secure competitive RFP process evaluated based on "best value" rather than sealed bidding. LOC works in cooperation with National Purchasing Partners "NPP" and its Government Division dba NPPGov, dba Public Safety GPO (collectively hereinafter "NPPGov"), to service the LOC and NPPGov membership. The published Request for Proposal (RFP) contained provisions that permitted all members of LOC and NPPGov throughout the nation to "piggy-back" off the resulting Master Price Agreement. A contract was

awarded to ZOLL on March 5, 2020. The City will piggyback on the League of Oregon Cities/NPPGov contract with ZOLL Medical for ECG Monitor/Defibrillators.

BACKGROUND

In 2017 the Fire Department (Department) conducted a comprehensive Request for Proposal (RFP) process and selected ZOLL Medical Corporation. On May 2, 2017 the City Council approved resolution #69-933-N.S. to execute a Purchase Order and any amendments with ZOLL Medical Corporation for the purchase and maintenance of twenty-six Advanced Life Support (ALS) ECG Monitor/Defibrillators for emergency response vehicles in an amount not to exceed \$780,491.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the action requested in this report.

RATIONALE FOR RECOMMENDATION

A competitive process was conducted by the League of Oregon Cities in cooperation with National Purchasing Partners "NPP".

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Abraham Roman, Fire Chief, (510) 981-3473

Attachments:

1. Resolution

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

PURCHASE ORDER: ZOLL MEDICAL CORPORATION FOR ECG  
MONITOR/DEFIBRILLATORS

WHEREAS, in 2017 the Fire Department (Department) conducted a comprehensive Request for Proposal (RFP) process and selected ZOLL Medical Corporation, and

WHEREAS, on May 2, 2017 the City Council approved resolution #69-933-N.S. to execute a Purchase Order and any amendments with ZOLL Medical Corporation for the purchase and maintenance of twenty-six Advanced Life Support (ALS) ECG Monitor/Defibrillators for emergency response vehicles, and

WHEREAS, the Fire Department is adding ambulances to its fleet during the Department re-design and implementation of the single function transport service, and

WHEREAS, each ambulance is required by the Alameda County Local EMS Authority (LEMSA) to carry an ECG Monitor / Defibrillator, and

WHEREAS, the League of Oregon Cities (LOC) opened RFP #1935 on November 12, 2020 to procure Public Safety Medical Supplies, Equipment, and Monitors using a secure competitive RFP process evaluated based on “best value” rather than sealed bidding, and

WHEREAS, the LOC works in cooperation with National Purchasing Partners “NPP” and its Government Division dba NPPGov, dba Public Safety GPO (collectively hereinafter “NPPGov”), to service the LOC and NPPGov membership, and

WHEREAS, the published Request for Proposal (RFP) contained provisions that permitted all members of LOC and NPPGov throughout the nation to “piggy-back” off the resulting Master Price Agreement, and

WHEREAS, a contract was awarded to ZOLL on March 5, 2020.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a Purchase Order and any amendments with ZOLL Medical Corporation for the purchase of five Advanced Life Support (ALS) ECG Monitor/Defibrillators, associated equipment and a maintenance contract for emergency response vehicles in an amount not to exceed \$250,000.





Office of the City Manager

CONSENT CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Lisa Warhuus, Director, Health, Housing, and Community Services.

Subject: Contract: Shaw Industries, Inc. for 1900 6<sup>th</sup> Street Building  
Carpet Replacement Project

RECOMMENDATION

Adopt a Resolution:

1. Pursuant to City Charter Article XI Section 67.2 requirements, accepting the California Multiple Award Schedule bid procedures;
2. Approving the California Multiple Award Schedule Contract with Shaw Industries, Inc. for Carpet Replacements at the 1900 6<sup>th</sup> Street building.
3. Authorizing the City Manager or her designee to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the terms and conditions of the agreements with Shaw Industries, Inc. in an amount not to exceed \$121,133, which includes a contingency of \$14,552.

FISCAL IMPACTS OF RECOMMENDATION

Funding for this carpet replacement project is available in the Fiscal Year 2022 Public Health's Measure GG program in the following Measure GG Fire Prevention Fund GL:

| FY 2022 Funding GL Code                    | Amount    |
|--------------------------------------------|-----------|
| 140-51-506-557-2049-000-451-612990- (FY22) | \$121,133 |

The costs for this project will enable the replacement of 9,087 square feet of flooring, which is approximately 92% of the building's total flooring. This includes not only the material and installation, but also the demolition, disposal, adhesive, skim coat, wall base, base cove, furniture moving, moisture testing, freight, and taxes associated with installation.

CURRENT SITUATION AND ITS EFFECTS

The 1900 6<sup>th</sup> Street building carpet replacement project is a Strategic Plan Priority Project, advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

The carpets at the 1900 6<sup>th</sup> Street building, also known as the West Berkeley Service Center, need to be replaced. The carpets are very old and have surpassed their typical life expectancy of twenty years. Most of these carpets are so damaged that they may pose trip and fall hazards. There are numerous locations throughout the building where carpets are heavily damaged, with crushed padding, seam failures, water damage, and heavy staining throughout. Though the building is being considered for affordable senior housing in the future, it is currently the alternate Senior Center location for the soon to be finished North Berkeley Senior Center. Shortly after that, the West Berkeley Service Center will be a community-centered, family friendly facility providing Maternal, Child, Adolescent, and Family services through the Berkeley Public Health Division. Replacement of the old carpets will greatly contribute to a safer, more welcoming environment for the community. The Public Health Division will also be designating the West Berkeley Service Center as the back-up Department Operations Center (DOC) for emergency response activities. This facility will also be used to host public presentations and events that promote emergency preparedness in the community.

Shaw Industries, Inc. was selected through the California Multiple Award Schedule (CMAS) bid procedure. This allows the City to procure a contractor that was previously selected through the State of California bidding process. All pricing, products and/or services offered to the State of California through this system are made available to the City. Making use of this process results in costs savings and expedites contractor selection. By utilizing the California Multiple Award Schedule (CMAS), the cost on this project has been substantially reduced and is less than half of previous carpet projects. The City has also recently used CMAS and Shaw on a carpet replacement project at 2180 Milvia St. for these exact reasons.

#### BACKGROUND

The existing carpets in the 1900 6<sup>th</sup> Street building are over twenty years old and need replacement. This facility was used for many years as the West Berkeley Senior Center, before becoming the West Berkeley Service Center from which the Black Infant Health program and Meals on Wheels was operated. In 2019 the North Berkeley Senior Center closed for major renovations and services were relocated to the WBSC before closing because of the Covid-19 shutdown.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The proposed product meets criteria established in the specifications, which is in accordance with the sustainable resolutions and ordinance administered by the City's Office of Energy and Sustainable Development, the City of Berkeley Revised General Plan, the City's Climate Action Plan, and CalGreen. For example, the project will replace the existing carpet with PVC free carpet that is 100% recyclable.

#### RATIONALE FOR RECOMMENDATION

The carpets at 1900 6<sup>th</sup> Street are past their lifespan and due for replacement. Contracted services are required for this project as the City does not have the in-house



Expenditure Contract: Shaw Industries, Inc. for 1900 6<sup>th</sup> Street Building  
Carpet Replacement Project

CONSENT CALENDAR  
May 10, 2022

expertise to complete this specialized work. Shaw Industries, Inc. provided a cost-effective price, complying with the City's carpet specifications.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered waiting even longer to replace the carpet but given the unknown timeline for alternate uses at this building staff do not recommend that approach.

CONTACT PERSON

Janice Chin, Public Health Division Manager, HHCS, 510-981-5121  
Elmar Kapfer, Supervising Civil Engineer, Public Works, 510-981-6435

Attachments:  
1: Resolution

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

EXPENDITURE CONTRACT: SHAW INDUSTRIES, INC FOR THE 1900 6<sup>th</sup> STREET  
CARPET REPLACEMENT PROJECT

WHEREAS, the existing carpeting in the 1900 6<sup>th</sup> Street building needs replacement; and

WHEREAS, The City has neither the labor nor the equipment necessary to undertake this renovation project; and

WHEREAS, City Charter Article XI Section 67.2 allows the City to purchase goods without undergoing a competitive bid process when using pricing obtained by other governmental entities and agencies, including the State of California, through a competitive process; and

WHEREAS, the California Multiple Award Schedule (CMAS) is available to state and local governments; and

WHEREAS, the California Department of General Services Procurement Division determined Shaw Industries, Inc.'s bid pricing to be fair and reasonable and awarded CMS Contract No. 4-134-72-0008C.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council of the City of Berkeley authorizes the City Manager or her designee to execute a contract and any amendments, extensions, or change orders until completion of the project in accordance with the terms and conditions of the agreement with Shaw Industries, Inc. for the carpet replacement project at the 1900 6<sup>th</sup> Street building in an amount not to exceed \$121,133 which includes a contingency of \$14,552. A record signature copy of the agreement and any amendments to be on file in the office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Lisa Warhuus, Director, Health, Housing, and Community Services  
 Subject: Contract No. 321001100 Amendment: JotForm, Inc. for a HIPAA Compliant Platform to Support Clinical Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32100110 and any subsequent amendments or extensions with the JotForm, Inc. by adding \$17,808, bringing the contract total to an amount not to exceed \$55,794 and extending the end date from May 12, 2022 to May 12, 2023.

FISCAL IMPACTS OF RECOMMENDATION

The FY 2022 adopted budget includes \$17,808 that can support this purchase using the following budget codes: \$7,123.20 from Mental Health Realignment funds in the Mental Health Division budget and \$10,684.80 from General Fund in the Public Health Division’s budget to support clinical services.

| ERMA GL                             | Amount      |
|-------------------------------------|-------------|
| 158-51-503-520-0000-000-451-651120- | \$7,123.20  |
| 011-51-506-560-0000-000-451-612990- | \$10,684.80 |
| Total                               | \$17,808.00 |

CURRENT SITUATION AND ITS EFFECTS

Technology services provided through this contract provide support to clinical services for clients at the Berkeley High School & Berkeley Technology Academy Health Centers. Clients use this platform to independently request confidential services for mental health, reproductive health, and sexual health services. The current proposed amendment for \$17,808 will ensure that clinicians and the clinical care teams have continued access to appointment requests and data on previous requests during the next year. New clients who have used JotForm thus far say that they appreciate having an easy way to request services and are surprised how quickly the health centers are able to respond to their request and make an appointment.

JotForm is a temporary solution until the City’s Electronic Health Record (EHR) system can be updated to provide the same services. Due to resource limitations, an upgrade

for the Electronic Health Record (EHR) system and the module that would enhance the service model in the same way as JotForm has been delayed for a year; necessitating this contract extension recommendation.

**BACKGROUND**

JotForm provides a HIPAA compliant server that increases clients' access to the Health Center by providing a confidential link to request services. Service areas that clients can request an appointment for include: first aid, counseling, reproductive, and sexual health services. JotForm has been readily adopted by the adolescent population served by the Health Center.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

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

**RATIONALE FOR RECOMMENDATION**

JotForm removes barriers for access to care for adolescent clients. Clients can request services from this platform anywhere they can access a smart device and internet. The high school health centers continue to be a resource for students who need reproductive and sexual health, first aid, and counseling services. Increasing accessibility to these services supports public health goals of improving the health and well-being of the community.

**ALTERNATIVE ACTIONS CONSIDERED**

Ceasing to use JotForm at this point would reduce access to health care for the high school health center population. While there would be a cost savings, reducing access to health care is not consistent with the Public Health Division's mission to increase access, and therefore not recommended.

**CONTACT PERSON**

Janice Chin, Public Health Division Manager, HHCS, (510) 981-5212

**Attachments:**

- 1: Resolution

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

CONTRACT NO. 32100110 AMENDMENT: JOTFORM, INC FOR A HIPAA  
COMPLIANT PLATFORM TO SUPPORT CLINICAL SERVICES

WHEREAS, Berkeley Public Health Division originally contracted with JotForm, Inc, in May 2020 for a HIPAA compliant platform for clinical support of clients at the Berkeley High School and Berkeley Technology Academy Health Centers; and

WHEREAS, the Public Health Division originally identified JotForm, Inc early in the COVID-19 pandemic to fill an immediate need for a HIPAA compliant online software for COVID testing/vaccination consents, Vital Statistics appointments, and referrals for Mental Health services at the Berkeley High School Health Center; and

WHEREAS, JotForm, Inc provides a HIPAA-compliant server that increases client's accessibility to the health centers by providing a confidential link to request services pertaining to first aid needs, counseling, reproductive, and sexual health services; and

WHEREAS, JotForm, Inc's services complement those provided by the City and other community health care providers, and support public health goals of improving the health and well- being of the community; and

WHEREAS, these services are still required due to the delay in Electronic Health Record (EHR) system updates and enhancements due to resource limitations; and

WHEREAS, funds are available in the Fiscal Year 2022 budget in ERMA Discretionary General Fund Accounts: 158-51-503-520-0000-000-451-651120-; 011-51-506-560-0000-000-45-612990-.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute an amendment to Contract No. 32100110 and any subsequent amendments or extensions with JotForm, Inc. in an amount not to exceed \$55,794 for the period May 12, 2022 through May 12, 2023 for the purpose of funding continued usage of a HIPAA compliant platform to support the clinical services for clients at the Berkeley High School & Berkeley Technology Academy Health Centers within the City of Berkeley. A record signature copy of said contract to be on file in the office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Lisa Warhuus, Director, Health, Housing, and Community Services  
 Subject: Meals on Wheels of Alameda County Agency Donations for the Berkeley Meals on Wheels Program

RECOMMENDATION

Adopt a Resolution accepting a \$54,166.67 donation for the Berkeley Meals on Wheels Program from the Meals on Wheels of Alameda County (MOWAC) agency and authorizing acceptance of all subsequent donations received in FY 2022, to be appropriated as part of the Second Amendment to the Annual Appropriations Ordinance.

FISCAL IMPACTS OF RECOMMENDATION

The \$54,166.67 donation will be deposited into the Fund Raising Activities Fund (ERMA Budget Code 111-51-505-549-2044-000-444-612990-) and will be appropriated as part of the Second Amendment to the FY 2022 Annual Appropriations Ordinance for supporting the operations of the Meals on Wheels Program (ERMA Project). This donation will support the cost of hourly personnel and operating expenses needed to provide meals to home-bound seniors by the City of Berkeley Meals on Wheels program. Subsequent donations received in FY 2022 will be deposited into the Fund Raising Activities Fund (ERMA Budget Code 111-51-505-549-2044-000-444-612990-) and will be appropriated as part of the Second Amendment to the Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

The Berkeley Meals on Wheels program contributes to the City's Strategic Plan goal to be a customer-focused organization that provides excellent, timely, easily-accessible service to the community; particularly the older adult, homebound community. The Berkeley Meals on Wheels program provides over 60,000 nutritious meals to over 250 seniors each year.

MOWAC is a private, non-profit agency that raises funds for the six Meals on Wheels programs in Alameda County. MOWAC provides special grant funding and donations to programs to support the delivery of meals to home-bound seniors.

BACKGROUND

The City of Berkeley Meals on Wheels program is funded by an annual grant contract with the Alameda County Area Agency on Aging, as well as by client and community donations and the City's General Fund. While each Meals on Wheels program in the County is expected to support unfunded costs of the program to meet community needs, MOWAC helps programs meet additional needs by conducting its own fundraising efforts for the benefit of all programs countywide.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The Berkeley Meals on Wheels program packages its meals in compostable containers to reduce landfill waste. The program also offers volunteer bicycle delivery routes.

RATIONALE FOR RECOMMENDATION

Donations received from MOWAC will provide the Berkeley Meals on Wheels program with significant financial support that can be directly applied to both personnel and operating expenses for the program.

ALTERNATIVE ACTIONS CONSIDERED

Refusing donations from MOWAC would not be consistent with the City's Strategic Plan goals or its efforts to sustain an Age-Friendly Berkeley, and is not recommended.

CONTACT PERSON

Dina Quan, Nutrition Manager, HHCS, (510) 981-7778

Attachments:  
1: Resolution



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

MEALS ON WHEELS OF ALAMEDA COUNTY DONATIONS FOR THE  
BERKELEY MEALS ON WHEELS PROGRAM

WHEREAS, the Meals on Wheels of Alameda County Agency's mission is to raise funds for the six Meals on Wheels programs in Alameda County, including Berkeley Meals on Wheels; and

WHEREAS, Alameda County distributes these funds on a proportional basis to Meals on Wheels programs and special grant requests throughout Alameda County; and

WHEREAS, Berkeley Meals on Wheels provides over 60,000 nutritious meals to over 250 seniors each year; and

WHEREAS, the current MOWAC donation of \$54,166.67 will assist in covering personnel costs or providing meals to homebound seniors; and

WHEREAS, this and all future donations received in FY 2022 will be deposited into the Fund Raising Activities Fund (ERMA Budget Code 111-51-505-549-2044-000-444-612990-) and will be appropriated as part of the Second Amendment to the FY 2022 Annual Appropriations Ordinance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that donations to the Berkeley Meals on Wheels program received in FY 2022 from the Meals on Wheels of Alameda County Agency are accepted to support personnel and operational costs of meal provision to home-bound seniors by the City of Berkeley Meals on Wheels program.





Office of the City Manager

CONSENT CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services  
 Subject: 2022 Local Housing Trust Fund Application

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to apply for and accept funds from the State of California's Local Housing Trust Fund program in an amount not to exceed \$5,000,000, and to apply such funds to the City's existing funding reservations for Supportive Housing in People's Park (2556 Haste Street) via the City's Housing Trust Fund program.

FISCAL IMPACTS OF RECOMMENDATION

The City of Berkeley is eligible to apply for up to \$5,000,000 from the State's competitive Local Housing Trust Fund (LHTF) program. The final award will be decided as part of the competitive application. This funding would be applied to the City's Housing Trust Fund program to fund the City's existing funding reservation for the pipeline project Supportive Housing in People's Park (SHiPP) at 2556 Haste Street, reducing the amount of Measure O and/or other local funds that would be required for the project, and would become available for other housing priority projects if the City receives an award.

CURRENT SITUATION AND ITS EFFECTS

Approving the City's LHTF application supports the Council's Strategic Plan Priority to create affordable housing and support services for our most vulnerable community members. The LHTF was established by the State as a funding source to finance new affordable housing construction. The program is administered by the State's Department of Housing and Community Development (HCD). The program is funded by a \$4 billion bond approved by voters in 2018.

The City is eligible to apply for between \$1 million and \$5 million with a one-to-one matching funds requirement. Applications will be scored on several criteria including the source of matching funds (prioritizing sources that do not come from residential projects like the Affordable Housing Mitigation fee), existing local funding commitments, project readiness, and affordability.

Based on eligibility criteria, the City can currently apply to support one project in the City's HTF development pipeline: SHiPP, located at 2556 Haste Street.

On December 14, 2021, Council reserved Housing Trust Funds for this project. The City's funding commitment alongside the project's unit mix, depth of affordability, and development timeline will allow the application to score competitively. The City's current local commitments in this project would potentially be partially offset by the LHTF award. Using LHTF funds for SHiPP would free up Measure O or other local funds for other affordable housing projects in the City's current pipeline.

### BACKGROUND

The LHTF was created by the Veterans and Affordable Housing Bond Act of 2018 (Proposition 1). HCD is awarding a total of \$57M to the LHTF program for the 2022 funding round.

Program funds awarded must be designated to provide construction loans and/or permanent financing loans to pay for construction or rehabilitation of affordable rental housing projects, emergency shelters, permanent supportive housing, transitional housing and affordable homeowner projects.

Program funds may also be used to assist income-eligible first-time homebuyers to purchase homes and to rehabilitate houses owned by income-eligible occupants. Accessory Dwelling Units (ADUs) or Junior Accessory Dwelling Units (JADUs) construction and conversion programs are also eligible.

The City is eligible to apply as it maintains an existing Housing Trust Fund. The City of Berkeley's Housing Trust Fund program was established in 1990 to support affordable housing development and rehabilitation. It is funded by several sources including Affordable Housing Mitigation Fees (AHMF), Condominium Conversion fees and federal HOME funds. Measure O was approved by voters in 2018 to provide \$135 million in additional bond funding for affordable housing development. Any LHTF funding the City receives will compliment these funding sources.

In 2020, the City of Berkeley successfully applied for and received LHTF awards for two projects, Blake Apartments (2527 San Pablo Ave.) and Maudelle Miller Shirek Community (2001 Ashby Ave.), with each project receiving \$2.5M for a total award of \$5M. Both projects begin construction in 2022.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

### RATIONALE FOR RECOMMENDATION

Measure O bond supported pipeline projects provide the City with the most competitive application. The LHTF application weighs the percentage of matching funds derived

from sources other than local impact fees (such as the AHMF). The Measure O bond provides this advantage. SHiPP will include units for formerly homeless households, and will provide units at a deeper affordability. This is another key factor to submitting a competitive application.

Competitive applications must also demonstrate project readiness and a projected construction start. This also provides better security that the funds will be expended in line with the NOFA requirements.

ALTERNATIVE ACTIONS CONSIDERED

Staff do not recommend applying the funds to a first-time home buyer, ADU or JADU program as the application scoring criteria is designed to favor new construction affordable housing.

CONTACT PERSON

Amanda Montez, Community Development Project Coordinator, HHCS, (510) 981-5426  
Jenny Wyant, Senior Community Development Project Coordinator, HHCS, (510) 981-5228

Attachments:

- 1: Resolution with Attachment

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

CITY OF BERKELEY HOUSING TRUST FUND APPLICATION TO LOCAL HOUSING TRUST FUND AUTHORIZING RESOLUTION

A Necessary Quorum or majority of the Council Members of the City of Berkeley (“Applicant”) hereby consents to, adopts and ratifies the following resolution:

WHEREAS, the Department is authorized to provide up to \$57 million under the Local Housing Trust Fund (“LHTF”) Program from the Veterans and Affordable Housing Bond Act of 2018 (Proposition 1) (as described in Health and Safety Code section 50842.2 et seq. (Chapter 365, Statutes of 2017 (SB 3)) (“Program”); and

WHEREAS, the State of California (the “State”), Department of Housing and Community Development (“Department”) issued a Notice of Funding Availability (“NOFA”) dated 4/5/2022 under the LHTF Program; and

WHEREAS, Applicant is an eligible Local or Regional Housing Trust Fund applying to the Program to administer one or more eligible activities using Program Funds; and

WHEREAS, the Department may approve funding allocations for the LHTF Program, subject to the terms and conditions of H&S Code Section 50842.2, the LHTF Program Guidelines, NOFA, Program requirements, the Standard Agreement and other related contracts between the Department and LHTF award recipients;

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

1. If Applicant receives an award of LHTF funds from the Department pursuant to the above referenced LHTF NOFA, it represents and certifies that it will use all such funds on Eligible Projects in a manner consistent and in compliance with all applicable state and federal statutes, rules, regulations, and laws, including, without limitation, all rules and laws regarding the LHTF Program, as well as any and all contracts Applicant may have with the Department (“Eligible Project”).
2. NOW, THEREFORE, IT IS RESOLVED: That the City of Berkeley Housing Trust Fund is hereby authorized to act as the Manager in connection with the Department’s funds to Eligible Projects pursuant to the above described Notice of Funding Availability in an amount not to exceed \$5 Million (the “LHTF Award”).
3. Applicant hereby agrees to match on a dollar for dollar basis the LHTF Award pursuant to Guidelines Section 104. Applicant hereby agrees to utilize matching finds on a dollar-for-dollar basis for the same Eligible Project for which Program Funds are used, as required by HSC Section 50843.5(c).
4. Pursuant to Attachment 1 and the Applicant’s certification in this resolution, the LHTF funds will be expended only for Eligible Projects and consistent with all program requirements.
5. Applicant shall be subject to the terms and conditions as specified in the Standard Agreement, H&S Section 50842.2 and LHTF Program Guidelines.

- 6. The City Manager or their designee is/are authorized to execute the LHTF Program Application, the LHTF Standard Agreement and any subsequent amendments or modifications thereto, as well as any other documents which are related to the Program or the LHTF Award to Applicant, as the Department may deem appropriate.

PASSED AND ADOPTED at a regular meeting of the Berkeley City Council this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by the following vote:

AYES: \_\_\_\_\_  
 ABSTENTIONS: \_\_\_\_\_  
 NOES: \_\_\_\_\_  
 ABSENT: \_\_\_\_\_

Approving Officer: \_\_\_\_\_

Signature of Approving Officer

\_\_\_\_\_

Exhibits

A: Attachment 1

CERTIFICATE OF THE ATTESTING OFFICER

The undersigned, Officer of \_\_\_\_\_ does hereby attest and certify that the foregoing Resolution is a true, full and correct copy of a resolution duly adopted at a meeting of the Berkeley City Council, which was duly convened and held on the date stated thereon, and that said document has not been amended, modified, repealed or rescinded since its date of adoption and is in full force and effect as of the date hereof.

ATTEST: \_\_\_\_\_

Signature of Attesting Officer

\_\_\_\_\_

**Attachment 1**

City of Berkeley Housing Trust Fund Pipeline Project Eligible for the California Local Housing Trust Fund

1. **Percentage of funds requested used per project:** 95% of LHTF funds used for construction of Supportive Housing in People's Park (2556 Haste Street) with 5% of funds used for administration.
2. **Jurisdiction Served:** City of Berkeley
3. **Funding Request Summary:**  
The City of Berkeley will apply any Local Housing Trust Fund (LHTF) award to the City's Housing Trust Fund program. The LHTF award will fund the City's existing funding reservation for the pipeline project Supportive Housing in People's Park (2556 Haste Street). The City will match the LHTF funding with money from its affordable housing trust fund. This project is planned to provide 119 permanent, safe, sustainable, affordable apartments for low-income households, and formerly unhoused households earning between 10%-50% of the Area Median Income. Supportive Housing in People's Park will provide 62 apartments reserved as permanent supportive homes for previously unhoused residents.





Office of the City Manager

MBNCONSENT  
CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
 Subject: Contract No. 32200074 Amendment: Murray Building, Inc. for Cazadero Camp Jensen Dormitory Construction Project

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 32200074 with Murray Building, Inc. for the Cazadero Camp Jensen Dormitory Construction Project by adding \$66,450 for a total not-to-exceed contract amount of \$1,528,350.

FISCAL IMPACTS OF RECOMMENDATION

Funds for the contract are currently available in the Camps Fund (125-52-543-581-0000-000-461-662110). The cost of this contract is anticipated to be covered by insurance payments (partially received to-date). No other funding is required, and no other projects will be delayed due to this expenditure.

CURRENT SITUATION AND ITS EFFECTS

On October 12, 2021, City Council authorized a construction contract with the Murray Building, Inc. for the Cazadero Camp Jensen Dormitory Project in the amount of \$1,461,900, which includes a 10% contingency (Resolution No. 70,053-N.S.). To-date, four contract amendments have been executed to address unanticipated existing conditions and conflicts, resulting in a current total contract value of \$1,357,074.88. In March, 2022, the need for additional site work related to fire sprinkler infrastructure was identified. Project construction is on a tight schedule and will continue through June, 2022. There is a need to increase the total expenditure authority for this contract by \$66,450 (5% of the original contract) to provide a contingency for the remainder of the Project.

BACKGROUND

For over 60 years, the 33-acre Cazadero Camp has been leased by the City to Cazadero Performing Arts Camps. The Camp provides a dynamic music education program for young musicians ages 10-18 including both summer camp music programs and JumpStart in Music, a low-cost weekend Camp for school district music programs. A landslide in 2016 destroyed Jensen Dormitory. The reconstruction of the Dormitory will restore the full

capacity of the Camp. The total cost estimate for the Cazadero Landslide Repair Project is \$3.3M. Project costs are anticipated to be covered by insurance.

On June 17, 2021, the City issued an Invitation For Bids (IFB) for the reconstruction of the Cazadero Camp Jensen Dormitory (Spec No. 21-11443-C). On July 8, 2021 the City received three bids. Murray Building, Inc. submitted a bid of \$1,329,000 as the lowest responsible bidder. Staff conducted reference checks and received satisfactory feedback and a construction contract was executed.

To-date, a total of four contract amendments have been executed, with a net total value of \$28,074.88. The amendments include revisions to plans due to permit requirements, additional on-site demolition, tree removal, and revised foundation, structural and architectural details to account for unanticipated existing conditions and conflicts.

In March, 2022, through the deferred submittal and review process, the need for additional fire sprinkler infrastructure was identified. This scope includes the construction of an underground pipe and fire department connection and sprinklers to protect exterior decks, and has been authorized by a Construction Change Directive in a not-to-exceed amount of \$53,900. The Project construction will continue through June, 2022, and City staff are tracking multiple additional amendments to address unanticipated existing conditions and permit requirements, and anticipate that the existing contingency balance may be exceeded prior to Project completion. Therefore, there is the need to increase the expenditure authority for this contract to increase the construction contingency.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE CHANGE

This Project replaces a destroyed building. The replacement building has been designed to meet modern code, representing a significant improvement in energy and water efficiency compared to the prior structure. The new Jensen Dormitory includes all-electric equipment, systems and appliances. Solar is not feasible in this heavily forested location; however, the design incorporates passive heating and cooling techniques and requires the use of low-carbon concrete. The Project does not include any irrigation systems, and ultra-low-flow fixtures are being installed throughout the building.

#### RATIONALE FOR RECOMMENDATION

This increase to the not-to-exceed contract authority is necessary to address unforeseen conditions, including revised foundation design and additional fire sprinkler infrastructure. The City does not have the in-house labor or equipment resources to complete these construction activities.

#### ALTERNATIVE ACTIONS CONSIDERED

None

#### CONTACT PERSON

Scott Ferris, Director, PRW, 981-6700

Contract No. 32200074 Amendment: Murray Building, Inc.  
CALENDAR  
for Cazadero Camp Jensen Dormitory Project

MBNCONSENT

May 10, 2022

Liza McNulty, Project Manager, PRW, 981-6437

Attachments:  
1: Resolution

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

CONTRACT NO. 32200074 AMENDMENT: MURRAY BUILDING, INC. FOR THE  
CAZADERO CAMP JENSEN DORMITORY PROJECT

WHEREAS, the City has owned the Cazadero Camp since 1927; and

WHEREAS, in April, 2016 a landslide destroyed the Jensen Dormitory; and

WHEREAS, an invitation for bids was duly advertised and three bids were opened on July 8, 2021 and Murray Building, Inc. was the lowest responsive and responsible bidder; and

WHEREAS, on October 12, 2021, City Council authorized execution of a contract and any amendments, extension, and/or change orders until completion of the Project with Murray Building, Inc. for the Cazadero Camp Jensen Dormitory Project in an amount not to exceed \$1,461,900 which included a 10% contingency (Resolution No. 70,053-N.S.); and

WHEREAS, based on executed and projected amendments due to unanticipated existing conditions and conflicts, there is a need to increase the total expenditure authority for this contract by \$66,450 (5% of the original contract) to provide a contingency for the remainder of the Project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32200074 with Murray Building, Inc. for the Cazadero Camp Jensen Dormitory Construction Project to amend it by adding \$66,450 for a total not-to-exceed contract amount of \$1,528,350. A record signature of said agreements and any amendments to be on file in the Office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
 Subject: Contract No. 32000230 Amendment: Robert E. Boyer Construction, Inc. for Berkeley Tuolumne Camp Construction Project

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 32000230 with Robert E. Boyer Construction, Inc. for the Berkeley Tuolumne Camp Project by adding \$530,832 for a total not-to-exceed contract amount of \$39,350,473.

FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts associated with this resolution. The increase in contract authority is fully covered by the donations made to the City by Friends of Berkeley Tuolumne Camp (FOBTC) to the City to support Project expenses (account code code 125-52-543-583-0000-000-000-481110). No other funding is required, and no other Project will be delayed due to this expenditure.

CURRENT SITUATION AND ITS EFFECTS

On January 24, 2020 the City issued an Invitation For Bids (IFB) for the reconstruction of Berkeley Tuolumne Camp (Spec No. 20-11362-C). The City received four bids. On April 14, 2020, City Council awarded the contract to the lowest responsible and responsive bidder, Robert E. Boyer Construction, Inc (“Boyer”), Contract No. 32000230, for a not to exceed amount of \$38,819,641 (Resolution No. 69,352).

On December 15, 2020, the Friends of Berkeley Tuolumne Camp (FOBTC) donated an additional \$530,832 to the City to fund the construction of shade structures, irrigation, and additional tree planting at Berkeley Tuolumne Camp, costs that are not eligible for insurance or FEMA funding (Resolution 69,655-N.S.). These funds were appropriated in the FY2022 adopted budget, and the scope of work was authorized via amendments to Contract No. 32000230. The project is on an extremely tight timeline for completion. In order to retain the original 10% contingency funding balance for unanticipated conditions during construction, the contract authority needs to be increased by \$530,832.

BACKGROUND

Berkeley Tuolumne Camp (BTC), established in 1922, is a 30-acre property operated under a Special Use Permit with the US Forest Service (USFS). The camp has served

primarily as a family camp, but also offered teen leadership programs, adult hiking camps, and private group rental opportunities. Prior to the fire, BTC had the capacity to host approximately 280 campers, 60 staff members, and 10 counselors-in-training at one time and served over 4,000 campers each year. The major facilities at the Camp included a Dining Hall; a Recreation Hall, 77 small single-story wood-frame camper tent cabins; staff cabins; maintenance and storage structures; a bridge across the river; parking and loading areas, and electric, water supply, and wastewater utilities.

In August of 2013, the Rim Fire destroyed Berkeley Tuolumne Camp and in December 2013 was declared a federal disaster. Most structures at BTC were destroyed by the fire. Since the fire, the City has been working closely with the USFS to complete an updated master plan in order to rebuild Camp. On June 11, 2019, USFS completed its environmental review and finding of no significant impact for the Berkeley Tuolumne Camp Project. On January 22, 2019, the City adopted the notice of determination of no significant impacts for the Project. On September 30, 2019, the USFS executed a Special Use Permit authorizing the City to reconstruct Berkeley Tuolumne Camp and to operate the Camp for a term of 30-years. The City has also received permits for the Project from the California Department of Fish and Wildlife, California Regional Water Quality Control Board, and the United States Army Corps of Engineers.

The property was covered by the City's insurance policy, and insurance proceeds will be the primary source of reconstruction funds. The City has also been awarded a Public Assistance Grant from the Federal Emergency Management Agency (FEMA) and California Office of Emergency Services (CalOES) to partially fund reconstruction. Friends of Berkeley Tuolumne Camp (FOBTC), a non-profit organization, has fundraised to support the re-construction efforts of Berkeley Tuolumne Camp, and in particular, to fund those Project expenses that are not eligible for insurance or FEMA cost recovery. FOBTC donated funds for the construction of shade structure, irrigation, and larger tree plantings; work that was authorized by amendments to Contract No. 32000230. In order to replenish the original contingency balance, the not to exceed authority needs to be increased by the value of the amendments that were funded by these donations.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The City approved the Project CEQA documents on January 22, 2019. The United States Forest Service issued its final NEPA documents on June 11, 2019. This Project will implement Best Management Practices (BMPs) to encourage biodiversity, preserve resources, and maintain riparian and other natural habitats while mitigating hazardous conditions.

#### RATIONALE FOR RECOMMENDATION

The work that is being funded by the donation from Friends of Berkeley Tuolumne Camp (FOBTC) can be authorized under the current contract expenditure authority. However, with the extremely tight project schedule, it is necessary to increase the

contract authority by the value of the donation in order to maintain a 10% contingency through the completion of the project.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Scott Ferris, Director, PRW, 981-6700

Liza McNulty, Project Manager, PRW, 981-6437

Attachments:

1: Resolution

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

CONTRACT NO. 32000230 AMENDMENT: ROBERT E. BOYER CONSTRUCTION,  
INC. FOR BERKELEY TUOLUMNE CAMP CONSTRUCTION PROJECT

WHEREAS, an invitation for bids (IFB) was duly advertised and four bids were opened on March 12, 2020 and Robert E. Boyer Construction, Inc. was the apparent low bidder; and

WHEREAS, on April 14, 2020 the City of Berkeley authorized the City Manager to execute a contract and any amendments, extension, and/or change orders until completion of the Project in accordance with the approved plans and specifications with Robert E. Boyer Construction, Inc. for the Berkeley Tuolumne Camp Project (Contract No. 32000230), for a not-to-exceed amount of \$38,819,641 (Resolution No. 69,352).; and

WHEREAS, on December 15, 2020 the City Council authorized donations in the amount of \$530,832 to the City from the Friends of Berkeley Tuolumne Camp for the construction of shade and revegetation at Berkeley Tuolumne Camp, which is ineligible for funding from other sources (account code code 125-52-543-583-0000-000-000-481110); and

WHEREAS, it is necessary to increase the total contract authority by the value of the donation in order to maintain a 10% contingency through the completion of the project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend Contract No. 32000230 with Robert E. Boyer Construction, Inc. for the Berkeley Tuolumne Camp Project by adding \$530,832 for a total not-to-exceed contract amount of \$39,350,473. A record signature copy of said agreements and any amendments to be on file in the Office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront

Subject: Amendments to On-Call Landscape Architectural Services Contract No. 32000284 with BASE Landscape Architecture, Contract No. 32100002 with PGA Design, Inc., and Contract No. 32000285 with RRM Design Group

RECOMMENDATION

Adopt three Resolutions authorizing the City Manager to execute amendments to Contract No. 32000284 with BASE Landscape Architecture, Contract No. 32100002 with PGA Design, Inc., and Contract No. 32000285 with RRM Design Group, for on-call landscape architectural services by increasing the contract amount by \$600,000 and duration by fourteen months each, from April 30, 2023 through June 30, 2024, to a total NTE amount of \$900,000 each.

FISCAL IMPACTS OF RECOMMENDATION

The following funding source and amount is an estimate as funding for these on-call contracts will be identified and expended only for actual landscape architectural services required. \$1.8M in funding is available in the FY 2022 budget in Measure T1 Fund and additional funding is subject to appropriation in the FY 2023 budget in the T1, Parks Tax and General Funds.

CURRENT SITUATION AND ITS EFFECTS

The City has a current list of the following parks capital projects that need to be designed and constructed within the next three years per the requirements of the funding sources comprised of Measure T1, Parks Tax, and outside grants:

- Grove Park Field and Playground Renovations
- Santa Fe Right-of-Way (ROW) New Park Development
- MLK Jr., Civic Center Turtle Island Monument Garden
- Ohlone Park (East) Playground and Site Improvements
- Ohlone Park Restroom and Lighting Improvements
- University Avenue Bike Park
- James Kenney Skate Spot
- Cedar Rose Park Improvements

- Glendale La Loma Park Improvements

The current not-to-exceed contract amounts for the three current On Call design firms are projected to be depleted by June 30, 2022. In order to complete these projects in a timely manner, staff recommends increasing the length of time on all three existing on-call contracts by 14 months and increasing the spending authority of all three on-call landscape architecture firms by \$600,000 each to accommodate current workload and complete existing projects.

#### BACKGROUND

On January 24, 2020, the City issued a Request for Qualifications (RFQ) for On-Call Landscape Architectural Services (Specification No. 20-11378-C). The City received Statements of Qualifications (SOQs) from 12 firms. After evaluation of the SOQs by the review panel, the City selected three firms: BASE Landscape Architecture, PGA Design Inc., and RRM Design Group. On April 21, 2020, Council authorized a \$300,000 contract for On-call Landscape Architectural design services with BASE Landscape Architects, PGA Design Inc., and RRM Design Group, respectively, for the period May 1, 2020 through April 30, 2023 (Resolutions No. 69,366-N.S., 69,367-N.S., and 69,368-N.S.).

Every three to four years, the Department of Parks, Recreation, and Waterfront (PRW) conducts a competitive Request For Qualifications process (RFQ) for On-Call Landscape Architectural consultant services. This reduces the need for multiple RFQ processes and reduces the time it takes to complete a project, sometimes by up to two years. The next RFQ process will be conducted in FY2024.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Consultants and City staff evaluate water and energy efficiency upgrade opportunities during the design of improvement and renovation projects. Improving City facilities and reducing water and energy consumption is consistent with the City's Climate Action Plan goals.

#### RATIONALE FOR RECOMMENDATION

The three On-call firms – BASE Landscape Architecture, PGA Design Inc., RRM Design Group – have the required expertise in design, landscape architecture, project management, and support to meet the City's on-going capital program needs, and complement the personnel and capacity available in the Parks, Recreation and Waterfront Departments to complete existing projects. City staff does not have the expertise to provide landscape architectural services.

#### ALTERNATIVE ACTIONS CONSIDERED

None

#### CONTACT PERSON

Scott Ferris, Director, Parks Recreation & Waterfront, (510) 981-6700  
Evelyn Chan, Supervising Civil Engineer, PRW, (510) 981-6430

Amendment to Contract No. 32000284 (BASE Landscape Architecture)  
Contract No. 32100002 (PGA Design, Inc.)  
and Contract No. 32000285 (RRM Design Group)

CONSENT CALENDAR  
May 10, 2022

**Attachments:**

- 1: Resolution: BASE Landscape Architecture
- 2: Resolution: PGA Design, Inc.
- 3: Resolution: RRM Design Group

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

AMENDMENT TO CONTRACT NO. 32000284 FOR ON-CALL LANDSCAPE ARCHITECTURAL SERVICES WITH BASE LANDSCAPE ARCHITECTURE

WHEREAS, on April 21, 2020 by Resolution No. 69,366-N.S. the City Council authorized Contract No. 32000284 with BASE Landscape Architecture in an amount not-to-exceed \$300,000 for on-call landscape architectural design services for various Department of Parks, Recreation and Waterfront capital improvement projects through April 30, 2023; and

WHEREAS, City staff does not have the expertise to provide landscape architectural services; and

WHEREAS, the current contract not-to-exceed amount is projected to be depleted by June 30, 2022 and the City has need of BASE Landscape Architecture's continued landscape architectural services through June 30, 2024; and

WHEREAS, funds are available from Measure T1.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment for Contract No. 32000284 with BASE Landscape Architecture for landscape architectural services increasing the amount by \$600,000 for a revised contract amount not to exceed \$900,000, and extending the contract to June 30, 2024.

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

AMENDMENT TO CONTRACT NO. 32100002 FOR ON-CALL LANDSCAPE  
ARCHITECTURAL SERVICES BY PGA DESIGN INC.

WHEREAS, on April 21, 2020 by Resolution No. 69,367-N.S. the City Council authorized Contract No. 32100002 with PGA Design Inc. in an amount not-to-exceed \$300,000 for on-call landscape architectural design services for various Department of Parks, Recreation and Waterfront capital improvement projects through April 30, 2023; and

WHEREAS, City staff does not have the expertise to provide landscape architectural services; and

WHEREAS, the current contract not to exceed amount is projected to be depleted by June 30, 2022 and the City has need of PGA Design Inc.'s continued architectural services through June 30, 2024; and

WHEREAS, funds are available from Measure T1.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32100002 with PGA Design Inc. for landscape architectural services increasing the amount by \$600,000 for a revised contract amount not-to-exceed \$900,000, and extending the contract to June 30, 2024.

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

AMENDMENT TO CONTRACT NO. 32000285 FOR ON-CALL LANDSCAPE  
ARCHITECTURAL SERVICES BY RRM DESIGN GROUP

WHEREAS, on January 22, 2019 by Resolution No. 69,368-N.S. the City Council authorized Contract No. 32000285 with RRM Design Group in an amount not to exceed \$300,000 for on-call landscape architectural design services for various Department of Parks, Recreation and Waterfront capital improvement projects through April 30, 2022; and

WHEREAS, City staff does not have the expertise to provide landscape architectural services; and

WHEREAS, the current contract not to exceed amount is projected to be depleted by June 30, 2022 and the City has need of RRM Design Group's continued landscape architectural services through June 30, 2024; and

WHEREAS, funds are available from Measure T1.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32000285 with RRM Design Group for landscape architectural services increasing the amount by \$600,000 for a revised contract amount not to exceed \$900,000, and extending the contract to June 30, 2024.



Office of the City Manager

CONSENT CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jennifer Louis, Interim Chief of Police  
 Subject: Contract No. 100692-2 Amendment: Serological Research Institute for DNA Testing Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 100692-2 and any necessary future amendments with Serological Research Institute (SERI) for the Police Department, increasing the contract amount by \$500,000 for a total not to exceed amount of \$1,500,000 while the contract term expiration will remain until June 30, 2025.

FISCAL IMPACTS OF RECOMMENDATION

Approval of the recommendation would support an ongoing operational expense required for solving criminal cases in a timely manner. The funding for this contract is allocated from the State Proposition 172 Fund (budget code 126-71-702-805-0000-000-421-612990) subject to City's annual budget appropriation process.

CURRENT SITUATION AND ITS EFFECTS

The Berkeley Police Department currently contracts with the Serological Research Institute (SERI) for its forensic deoxyribonucleic acid (DNA) testing services. It can be difficult to estimate the dollar amount required annually as it can change significantly from year to year. For FY 2022, the Department will exceed the current \$1,000,000 contract limits set when this contract was amended in 2021. This dollar increase will allow the Department to continue to test DNA for criminal investigations. This enables the potential identification of a suspect based on DNA found at a crime scene and may result in the suspect being arrested and charged faster.

Due to the unpredictable nature of the contract usage, the BPD has expended nearly \$250,000 since the 2021 amendment and has only \$6,000 remaining of the \$1,000,000 contract with pending invoices nearing \$10,000. In order to continue processing DNA evidence to substantiate charges against suspects, the BPD is requesting this contract amendment.

BACKGROUND

In 2014, the Department entered into a service contract with SERI to obtain their forensic DNA services. SERI was added when two other providers, the Alameda County

Sheriff's Crime Laboratory and Forensic Analytical Sciences, Inc. were unable to keep up with increased caseload from the Berkeley Police Department. SERI is accredited through the American Society of Crime Laboratories Directors/Laboratory Accreditation Board. SERI is located in Richmond, CA and provides state of the art forensic services, laboratory analysis and expert testimony for its clients.

While maintaining compliance with the Federal Bureau of Investigations, Quality Assurance Standards for Forensic DNA Testing, SERI has consistently provided the fastest case turnaround times of our three contracted vendors. SERI has helped minimize DNA testing backlogs the department was experiencing with other vendors. Fast DNA testing turnaround times help the department identify serious violent offenders and helps solve criminal cases faster. SERI was originally intended to be an additional DNA Laboratory. However, due to the high level of service provided, they have become our primary provider. During this time, the investigative demand for their services has increased based on several factors including improved DNA recovery techniques and new legislative requirements.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Serological Research Institute provides and maintains an extensive online test request submission and products ordering option. These online forms reduce the amount of paper required to forward and process requests.

#### RATIONALE FOR RECOMMENDATION

The cost associated with DNA testing services is an operational expense for which the Berkeley Police Department is currently responsible. In an effort to solve criminal cases as fast as practical and potentially limit further victimization, the BPD continues to utilize these services. An amendment to increase funds for this contract will allow the Department to continue to meet the DNA testing requirements of its investigations.

#### CONTACT PERSON

Jennifer Louis, Interim Chief of Police, 981-5700

Attachment:

1. Resolution



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

CONTRACT NO. 100692-2 AMENDMENT: SEROLOGICAL RESEARCH INSTITUTE  
FOR DNA TESTING SERVICES

WHEREAS, the Berkeley Police Department is responsible for the investigation of criminal cases in Berkeley; and

WHEREAS, closure of criminal investigations will bring relief to the families of the victims and reduce fear in the community; and

WHEREAS, the use of forensic deoxyribonucleic acid (DNA) testing is essential to solving violent crimes; and

WHEREAS, the Department primarily enlists the services of Serological Research Institute for the timely processing of DNA testing; and

WHEREAS, it is essential to have an accredited laboratory in order to ensure the consistent processing of DNA evidence; and

WHEREAS, the Berkeley Police Department has identified DNA testing services as an operational expense for which the Department is responsible and funds from the State Proposition 172 Fund (budget code 126-71-702-805-0000-000-421-612990) will be the primary source of funding; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that, the City Manager is authorized to execute an amendment to Contract No. 100692-2 with Serological Research Institute to provide DNA testing and analysis services for an additional \$500,000 for an amount not to exceed \$1,500,000, subject to the City's annual budget appropriation process.





Civic Arts Commission

CONSENT CALENDAR

May 10, 2022

To: Honorable Mayor and Members of the City Council

From: Civic Arts Commission

Submitted by: Modesto Covarrubias, Chair

Subject: Public Art Funding for Municipal Capital Improvement Projects Ordinance;  
Adding Berkeley Municipal Code Chapter 6.13

RECOMMENDATION

Adopt first reading of an Ordinance adding Chapter 6.13 (Public Art Funding for Municipal Capital Improvement Projects, Attachment 1) of the Berkeley Municipal Code to provide for the allocation of one and three quarters percent (1.75%) of the estimated cost of construction associated with eligible municipal capital improvement projects, which shall be used for art and cultural enrichment of public buildings, parks, streets, and other public spaces in the City of Berkeley.

FISCAL IMPACTS OF RECOMMENDATION

The City of Berkeley's existing public art funding policy, which was established in 1999 (Attachment 2), stipulates that eligible municipal Capital Improvement Projects are to dedicate 1.5% of the cost of their construction for public art. The proposed Public Art Funding Ordinance for Municipal Capital Improvement Projects increases the percentage from 1.5% to 1.75% for public art. The fiscal impacts of the recommendation are as follows:

- The increased percentage may result in a change to the amount allocated for public art. For example, the annual baseline allocation to the Public Art Fund has been \$65,164, which has been calculated as 1.5% of the cost of eligible capital projects. By increasing the percentage to 1.75% the annual allocation would be \$76,025, an annual increase of \$10,861. However, with the proposed policy change the amount allocated for public art will be tied to the actual amounts appropriated by Council for eligible capital projects, and as such, the allocations for art will rise and fall with any increase or decrease to capital appropriations and the eligibility of those capital projects.
- The proposed Public Art Funding Ordinance also recommends that the City take "reasonable efforts to include funds for public art" in all eligible projects which may allow additional Capital Improvement Project appropriations to comply with the 1.75% for art requirement. This includes any new CIP appropriations (beyond the baseline CIP appropriations) for eligible capital projects on the biennial and

mid-cycle budget adoption (July 1) and any new eligible capital appropriations adopted in the Amendments to the Annual Appropriation Ordinance (November and May). These midyear capital project appropriations have historically not included a set-aside for public art because the policy and procedures developed in 1999 were based upon a once annual budgeting process and did not account for amendments to the annual appropriation ordinance (AAOs 1 & 2).

- The fiscal impacts will vary from year to year because the CIP appropriations which occur as part of the AAO1 and AAO2 always vary; and will depend on the eligibility of the projects. An analysis of the CIP appropriations in FY21 and FY22 for both Parks Recreation and Waterfront (PRW) Department and Public Works (PW) Department shows that there were some eligible projects included in the AAOs that would have generated funds for public art. However, the difference in total amount allocated annually to public art utilizing the current budgeting practice versus the proposed methodology was negligible for these two years.
- The Public Art Funding amount of 1.75% of the estimated cost of construction will be calculated during the budgeting process at all three times of the year when capital project appropriations are adopted by Council. As part of the budget planning process, City departments will use an accepted percentage of 75% of the total capital project budget amount as the accepted “estimated cost of construction.” This reflects an assumption for excluded “soft costs” of project design and staff time. The resulting estimated cost of construction will be the basis for the calculation of the 1.75% for art amount. This amount will not be revised should the department’s estimates be incorrect, unless there is a future new appropriation, at which time the percent for art calculation will be made based upon the “estimated cost of construction” for the new appropriation.
- The Civic Arts Commission shall recommend and the Council, by resolution, shall adopt guidelines for the administration and implementation of this chapter which will specifically describe the process for identifying the eligible capital projects during all three times annually when the City makes budget appropriations.

There will be no fiscal impacts to the majority of the CIP budget because the following types of capital projects are excluded from this policy: (i) ADA compliance projects (not including projects where ADA compliance is a portion of a larger project); (ii) Emergency repair projects; (iii) Cyclical replacement and repair of trails, outdoor furnishings, or fencing (not including projects where these are a portion of a larger project); (iv) Studies and environmental review; (v) Roof replacement (not including projects where roof replacement is a portion of a larger project); (vi) Mechanical, security, A/V equipment, and HVAC, upgrades and repairs (not including projects where these are a portion of a larger project); (vii) Utilities projects, except where the project includes construction or reconstruction of a building; (viii) Vehicle repair and replacement; (ix) IT purchases and installations; (x) Seismic upgrades and waterproofing (not including projects where

these are a portion of a larger project); (xi) Projects where the majority (more than 50%) of the cost is allocated to elements located underground; and (xii) Projects where prohibited by federal or state law, including projects or portions of projects funded by grants from non-city sources that prohibit expenditure of funds for art.

The Civic Arts Commission's Public Art Budgets will designate as separate any funds that are restricted by funding source for specific uses or locations. Appropriations for public art shall only be expended for acquisition of public art in a manner consistent with the specific restrictions established for each funding source.

### CURRENT SITUATION AND ITS EFFECTS

The Public Art Funding Ordinance is a Strategic Plan Priority Project, advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities. Throughout the City of Berkeley, creative works of public art breathe life into the built environment and reflect the unique character of our city. Public art engages artists to enhance Berkeley's public spaces, which in turn improves the quality of life for residents and visitors alike.

While the City of Berkeley has an existing "percent-for-art" policy, which was established by resolution in 1999, funding for public art has not kept pace as a proportion of the City's capital budget as the CIP budget has increased over the past two decades. In response to the Civic Arts Commission's request that staff provide clear and transparent information regarding the determination of the Public Art Fund budget, the Office of Economic Development worked in collaboration with staff from the Budget Division in the City Manager's Office, the Public Works Department, and the Parks, Recreation, and Waterfront Department, to analyze the City of Berkeley's funding for public art (Attachment 3). A key finding of this analysis was that the City of Berkeley's existing public art funding policy is no longer compatible with the City's current processes for budgeting and capital planning. The Civic Arts Commission recommends establishing this new public art funding policy to address the findings detailed in the staff analysis.

Additionally, the City of Berkeley established the Public Art in Private Development policy by Ordinance in 2017, which requires qualifying private development projects to either incorporate a public art element or pay an in-lieu fee to the Private Percent for Art fund. The Civic Arts Commission recommends establishing this new public art funding policy for municipal projects as an Ordinance so that the two public art policies have parity.

Lastly, the Civic Arts Commission recommends increasing the municipal public art percentage from 1.5% to 1.75% to align with the percentage for "On-Site" public art required for qualifying private development in Berkeley.

On February 23, 2022, Berkeley's Civic Arts Commission voted unanimously to

recommend that City Council adopt a City of Berkeley ordinance: Public Art Funding for Municipal Capital Improvement Projects. (M/S/C: Bullwinkel/Passmore. Ayes — Anno, Blecher, Bullwinkel, Covarrubias, Dhesi, Ozol, Passmore, Woo; Nays — None; Abstain — None; Absent — None.)

### BACKGROUND

The City has completed over 80 public art projects since its inception in 1967, with many of the early works commissioned through the City's own voluntary contributions, philanthropic donations, and grant funding. The City's longstanding Public Art Program includes a City collection valued at \$3 million dollars with numerous public artworks installed throughout the city.

On June 1, 1999, the Berkeley City Council adopted Resolution No. 60,048-N.S., thereby establishing the City's current public art funding policy and program. Under this policy and program, each of the City of Berkeley's eligible capital projects are to dedicate 1.5% of the project's construction costs for the commissioning of a public art element for incorporation into the project, or contribute an equivalent amount to the City's Public Art Fund for the creation of off-site works of public art.

The 1999 Resolution established that, as part of the development of the City's budget, City staff should engage with the Civic Arts Commission in a planning process to determine the list of eligible capital projects; the ultimate determination of the list is left to the discretion of the City Manager. The policy includes an exemption for "any improvement for which the source of funding, or any applicable law or regulation, prohibits or restricts the use of funds for [public art]." The policy also established that a project's 'soft costs'—including project management, architectural and engineering costs, planning costs, environmental review, legal fees, and feasibility studies—are exempt.

In practice, the Budget Office has determined an annual contribution to the Public Art Fund by applying the 1.5% calculation to the original budget figures for a limited number of baseline capital funding sources and project categories. The planning process as detailed by the 1999 public art funding resolution is no longer compatible with the City's current processes and procedures for capital project planning and related budget appropriations. Currently, due to the multiple sources of small allocations of funding received into the Public Art Fund, the vast majority of public art projects are implemented as off-site works of art. For some major capital projects, the determination of the public art contribution is determined at the project level, and the funding is used for an on-site public art element, a supplemental contribution to the Public Art Fund, or a combination of the two approaches. An example of public art integrated into a City capital improvement project includes the new public art at San Pablo Park, which was funded by Measure T-1.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

There are no identifiable California Environmental Quality Act effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The Civic Arts Commission recommends establishing a new Public Art Funding policy for municipal capital improvement projects in order to align public art funding determinations with the City's current processes for budgeting and capital planning. Furthermore, establishing the new Public Art Funding policy for municipal projects as an Ordinance will allow the two public art policies to have parity. Lastly, the Civic Arts Commission recommends increasing the municipal public art percentage from 1.5% to 1.75% to align with the percentage for "On-Site" public art required for qualifying private development in Berkeley. The additional one quarter of one percent (0.25%) is a small increase relative to the overall budgets of eligible capital improvement projects, but this percentage will provide more funding for public art which may be used to commission new work or to care for the artwork already in the City's public art collection.

ALTERNATIVE ACTIONS CONSIDERED

The Civic Arts Commission considered leaving the Public Art Funding policy as a resolution, however decided to recommend the policy be adopted as an Ordinance so that the requirement would be formally adopted into the City's municipal code in order to have legislative parity with the Public Art on Private Development requirement of the Berkeley Municipal Code, Chapter 23.316. The Civic Arts Commission also considered recommending that the percentage set aside from municipal capital improvement projects for public art be increased to two percent (2%), however there was an interest in aligning the municipal requirement with the Public Art on Private Development policy, which is one and three quarters percent (1.75%) for on-site public art projects.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report. The revised implementation plan for this process will result in no significant financial impacts to departmental operations as (1) the majority of capital projects will be considered to be exempt; (2) the proposed General Fund baseline allocation to the Public Arts Fund will be increased to offset the additional percentage charged to eligible capital projects.

CONTACT PERSON

Jennifer Lovvorn, Secretary, Civic Arts Commission, Office of Economic Development,  
981-7533

Attachments:

- 1: Ordinance: Public Art Funding on Municipal Capital Improvement Projects
- 2: Resolution No. 60,048-N.S. (1999 "1.5% for Art" Resolution)
- 3: Analysis of Public Art Funding from City of Berkeley Construction Projects



ORDINANCE NO. -N.S.

PUBLIC ART FUNDING FOR MUNICIPAL CAPITAL IMPROVEMENT PROJECTS;  
ADDING BERKELEY MUNICIPAL CODE CHAPTER 6.13

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

Section 1. That Berkeley Municipal Code Chapter 6.13 is added as follows:

**6.13 APPROPRIATION FOR PUBLIC ART FOR MUNICIPAL CAPITAL IMPROVEMENT PROJECTS**

**6.13.010 Purpose.**

The City of Berkeley believes that the cultivation and development of a livable city is enhanced by the presence of public art and creative expressions available for the enjoyment of all members of the community. Public art enhances community vitality, fosters a sense of belonging, and provides opportunities to meaningfully involve community members in the design of their environment. Furthermore, public art provides professional opportunities for artists, which contributes to the economic sustainability of the arts community. The City of Berkeley is committed to strengthening its municipal public art program by enhancing the funds available for public art and ensuring flexibility to provide equitable public art experiences in the City of Berkeley that are timely, meaningful, and relevant. Therefore, it is the purpose of this Chapter and the policy of this City to provide for the allocation of one and three quarters percent (1.75%) of the estimated cost of construction associated with municipal capital improvement projects to be paid into the Public Art Fund, which shall be used for art and cultural enrichment of public buildings, parks, streets, and other public spaces in the City of Berkeley.

**6.13.020 Public Art Fund Allocation.**

(a) It shall be City policy to set aside one and three quarters percent (1.75%) of its estimated capital improvement project (CIP) budgets, as defined in this section, for the purpose of providing public art. Except as provided in this section, all CIP projects shall be subject to this policy, including but not limited to buildings, shelters, parking garages and lots, restrooms, small structures, parks, medians, landscaping, plazas, gateways, bridges, walls, tunnels, street and road construction. CIP projects include new construction, as well as renovations and alterations. Salaries and benefits of public employees supporting CIP projects shall not be included in the CIP budget subject to this ordinance. This policy shall apply to all capital improvement projects included in the annual capital improvement program (CIP) budget, as well as capital improvement projects funded through any amendment to the annual appropriation ordinance.

(b) The following CIP projects are excluded from this policy:

- (i) ADA compliance projects (not including projects where ADA compliance is a portion of a larger project).
- (ii) Emergency repair projects.
- (iii) Cyclical replacement and repair of trails, outdoor furnishings, or fencing (not including projects where these are a portion of a larger project).
- (iv) Studies and environmental review.
- (v) Roof replacement (not including projects where roof replacement is a portion of a larger project).
- (vi) Mechanical, security, A/V equipment, and HVAC, upgrades and repairs (not including projects where these are a portion of a larger project).
- (vii) Utilities projects, except where the project includes construction or reconstruction of a building.
- (viii) Vehicle repair and replacement.
- (ix) IT purchases and installations.
- (x) Seismic upgrades and waterproofing (not including projects where these are a portion of a larger project).
- (xi) Projects where the majority (more than 50%) of the cost is allocated to elements located underground.
- (xii) Projects where prohibited by federal or state law, including projects or portions of projects funded by grants from non-city sources that prohibit expenditure of funds for art.

**6.13.030 Reasonable efforts to include funds for public art.**

(a) City staff shall use reasonable efforts to obtain appropriate approvals from any funding source for any capital improvement project, to allow use of one and three quarters percent (1.75%) of such funds for the acquisition of public art as provided in this title. Such efforts shall include, without limitation, identifying public art in grant applications for capital improvement projects, efforts to include expenditures for public art in developer funded infrastructure projects, and efforts to allocate for public art in developer-constructed infrastructure and public facilities.

(b) If the city enters into an agreement with another public entity, whereby city funds are transferred to such other public entity for the capital improvement project that

would otherwise be deemed subject to the public art requirements under this title, city staff shall use reasonable efforts to include in such agreement, whenever it is lawful to do so, a requirement that the recipient entity or its successor in interest shall take appropriate measures to insure that not less than one and three quarters percent (1.75%) of the city funds so transferred are expended for acquisition of public art.

(c) Before proposing a bond issue or making a request for an appropriation for the construction of any of the projects set forth in this Chapter, the officer, board or commission concerned shall add thereto for the Public Art allocation associated with the proposed CIP project, one and three quarters percent (1.75%) of the gross estimated construction cost. Where funding eligibility is limited by law or funding agency rules, the Public Art allocation shall be based upon one and three quarters percent (1.75%) of eligible construction costs. For any public bond raising funds for capital percentage, the designated Public Art allocation percentage will be stated in the bond language presented to voters.

(d) Nothing in this section is intended to prohibit the city council from adopting an ordinance or resolution establishing a public art contribution for any project otherwise excluded from this policy or setting the public art contribution for any project at greater than one and three quarters percent (1.75%) of the CIP budget.

(e) Aggregation of Funds. Funds shall be deposited into the Public Art Fund. Per BMC Chapter 6.14, the Civic Art Commission shall determine public or publicly-accessible sites for art funded by the one and three quarters percent (1.75%) for art policy. Funds may be expended on public art at any appropriate site within the city. Funds from two or more CIP projects may be pooled to fund a single work of art. Funds may be used for permanent or temporary public art.

(f) The Civic Arts Commission shall recommend and the Council, by resolution, shall adopt guidelines for the administration and implementation of this chapter.

**6.13.040 Definitions. For purposes of this Section:**

- "Alteration" of a building, aboveground structure, or transportation improvement project shall include substantial changes to elements such as walls, partitions, or ceilings on 2/3 or more of the total floor space, excluding basements. "Substantial changes" shall include additions to, renovation of, removal of, and modification of such elements.
- "Construction cost" shall mean the total estimated construction contract award amount, including the costs of all built-in fixtures, unless otherwise agreed to by the Civic Arts Commission. "Construction cost" shall not include movable or personal property or construction cost contingency.

- "Public Art" shall mean the acquisition and installation of original works of art (including limited editions), or temporary installation, display, or presentation of the same, on City property for aesthetic and cultural enhancement of public buildings and public spaces and engagement of the public with the creative work of artists, as approved by the Civic Arts Commission.
- "Public Art Collection" shall mean the various artworks owned by the City under the jurisdiction of the Civic Arts Commission that are accessioned by action of the Commission into the Public Art Collection.
- "Transportation improvement project" refers to Public Works projects which include both aboveground and below-ground transportation-related projects; boarding ramps; transit platforms; terminals and transportation systems with their attendant passenger amenities, such as shelters, seating, lighting, landscaping, and signage; transportation-related structures such as maintenance and operating facilities; power substations; and street/highway-related transit improvements such as bridges and overpasses.

**6.13.050 Administrative Fees.**

The Civic Arts Commission shall supervise and control the expenditure of all funds appropriated for public art and shall allocate up to twenty percent (20%) of said funds for all necessary and reasonable administrative costs incurred in connection therewith unless such administrative fee is limited or prohibited by the funding source.

**6.13.060 Maintenance and Conservation Funds.**

The Civic Arts Commission may set aside and expend up to ten percent (10%) of the total public art allocation for each project for maintenance and conservation of artworks in the Public Art Collection. When permitted by the funding source, funds set aside pursuant to this Section shall be invested in an interest-bearing account when the total of such funds set aside exceeds \$10,000.

**6.13.070 Miscellaneous Provisions.**

(a) Construction and installation of public art shall comply with the requirements of all applicable building codes, laws, ordinances, rules and regulations.

(b) Nothing in this Section shall be construed to limit or abridge the jurisdiction of the officer, board or commission of the participating City department to supervise and control the expenditure of project funds other than the one and three quarters percent (1.75%) allocation for public art.

(c) This ordinance shall not be applied retroactively to projects for which a public art allocation previously would not have been required, nor to those projects for which project funding has been approved by prior voter action but not yet appropriated or expended. Nor shall this ordinance be construed to allow for an increase in the total

public art allocation for a project that is already underway or for which the public art allocation has already been established.

(d) Ownership. All art acquired pursuant to this chapter shall be acquired in the name of the City of Berkeley as part of the Public Art Collection and title shall vest in the City of Berkeley.

**6.13.080 Superseding Effect.**

The ordinance codified in this chapter shall supersede and supplant Resolution No. 60,048-N.S. adopted by City Council on June 1, 1999.

Section 2. The provisions of this Ordinance apply to all municipal capital appropriations approved for Fiscal Year 2023 and beyond.

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

RESOLUTION NO. 60,048-N.S.

ESTABLISHING A PROGRAM TO FUND THE DEVELOPMENT OF VISUAL ART IN PUBLIC PLACES, INCLUDING ART DEVELOPED IN CONJUNCTION WITH CITY CONSTRUCTION PROJECTS

WHEREAS, the cultivation and development of a livable community is enhanced by the presence of works of art and creative expression available for the enjoyment of all citizens; and

WHEREAS, in 1985, the City Council adopted Ordinance No. 5603-N.S., Berkeley Municipal Code Chapter 6.14, to promote the cultivation and creation of works of visual art in public places; and

WHEREAS, in 1980, the City Council adopted Ordinance No. 5253-N.S., Berkeley Municipal Code Chapter 3.12, establishing the Civic Arts Commission, and charged it with a variety of duties related to fostering programs for the cultural enrichment of the City; and

WHEREAS, the development of the physical infrastructure of the City provides numerous opportunities for creative expression by integrating artistic features into said infrastructure; and

WHEREAS, developing works of art in conjunction with City construction projects can contribute elements of beauty and creativity to all neighborhoods of the City; and

WHEREAS, a successful City-wide program to foster the development of works of art requires the collaboration of various City departments which are commonly involved in the construction of public improvements, the City Manager, the Civic Arts Commission and members of the community; and

WHEREAS, in those circumstances in which it is not feasible to incorporate artistic features into a particular public improvement, the public interest will be served by allocating sufficient funding to develop works of art separate from the public improvement; and

WHEREAS, the terms of this Resolution should be applied in a manner consistent with the requirements of Chapters 3.12 and 6.14 of the Berkeley Municipal Code.

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

Section 1. DEFINITIONS

“Administrative Costs” shall mean the expenditures necessary for implementation of the requirements of this Resolution, including, but not limited to, project management, soliciting proposals, public education, promotion, maintenance and risk management.

“Annual City Public Art Plan” shall mean the annual planning document which sets forth goals and objectives for development of works of art, including, art developed in conjunction with City construction projects during that Fiscal Year and any expenditures from the City’s Public Art Fund.

“Artist” shall mean a person who has completed works of art which meet contemporary artistic standards prevailing in major metropolitan areas.

“City Manager” shall mean the City Manager or his, or her, designee.

“Eligible Capital Project” shall mean any improvement to public property which the City Manager has approved for application of the requirements of this Resolution. This term shall not be interpreted to include any improvement for which the source of funding, or any applicable law or regulation, prohibits or restricts the use of funds for the purposes of this Resolution.

“Public Art Element” shall mean that component, feature, characteristic, or portion of a public improvement incorporated for artistic purposes.

“Public Art Fund” shall mean the budget account established by the City for receipt of funds derived from Eligible Capital Projects which may be expended for the purpose of incorporating artistic elements into public improvements or acquiring, creating, installing, presenting or displaying Off-Site Works of Art.

“Project Budget” shall mean the costs attributable to constructing a public improvement subject to the terms of this Resolution, including, construction, hazardous materials abatement, and procurement of goods intended for incorporation into the improvement. Project Budget shall not be interpreted to include costs associated with land use planning consultants, feasibility studies, environmental review, land acquisition costs, legal fees, architecture/engineering costs, construction management, geotechnical surveys, and historical surveys.

“Off-Site Work of Art” shall mean Works of Art as defined in Chapter 6.14 of the Berkeley Municipal Code which are acquired, created, installed, presented or displayed at a location other than the site of the Eligible Capital Project from which funds were derived under Section III of this Resolution.

Section 2. ANNUAL PLANNING

A. As part of the City’s budget process, the City Manager shall submit to the Civic Arts Commission a report identifying all public improvements which satisfy both of the following criteria: 1) expenditures will be made from the Project Budget during the following budget cycle, and 2) designation as an Eligible Capital Project would not result in detriment to the project.

B. Pursuant to Chapter 6.14 of the Berkeley Municipal Code, the Civic Arts Commission shall thereafter assign a different rank to each public improvement identified pursuant to Section A above based on the potential benefits to the community of designating the improvement as an Eligible Capital Project.

C. Pursuant to Chapter 6.14 of the Berkeley Municipal Code, the Civic Art Commission shall issue to the City Manager an Annual City Public Art Plan presenting its recommendations: 1) for public improvement projects which should be designated as Eligible Capital Projects, and 2) any expenditures from the Public Art Fund for the acquisition, creation, installation, presentation or display of Off-Site Works of Art during that Fiscal Year. The Annual City Public Art Plan shall include an explanation of the benefits and detriments, if any, associated with each proposal.

D. The City Manager shall then identify which, if any, of the recommended public improvements shall be finally designated as Eligible Capital Projects for that Fiscal Year.

### Section 3. FUNDING

A. A sum equal to one percent (1%) of the Project Budget for each Eligible Capital Project shall be transferred to the Public Art Fund and utilized solely to develop and install a work of art integrated into the completed improvement, regardless of whether it contributes to the purpose and function of the improvement, including, but not limited to, color, shape, design, texture, general appearance, or decoration which is designed and constructed integrally with the public improvement itself.

B. In addition to the amount specified in Section III(A), above, a sum equal to one half percent (0.5%) of the Project Budget for each Eligible Capital Project shall be transferred to the Public Art Fund and utilized solely for Administrative Costs.

C. Funds designated for the Public Art Fund shall be transferred not later than the date on which funds for the Project Budget have been encumbered.

D. In the event that the final cost of designing and constructing the Public Art Element is less than one and one half percent (1.5%) of the Project Budget, the unused funds will be retained in the Public Art Fund and utilized for the creation of Off-Site Works of Art.

E. In the event that the Eligible Capital Project will result in a public improvement which is inaccessible to the public, such as an underground structure, or for which it is not feasible to incorporate the Public Art Element, the funds designated for the Public Art Element shall be transferred to the Public Art Fund and may be used for the creation of Off-Site Works of Art.



Section 4. MANAGEMENT OF PUBLIC ART ELEMENT

The City Manager is authorized to manage the development and implementation of the Public Art Element in accordance with Chapter 6.14 of the Berkeley Municipal Code governing Visual Art in Public Places. The City Manager may use any reasonably efficient means and methods to design a Public Art Element, including, but not limited to, the following:

- A. Retain an artist to design the Public Art Element independently of the architects/engineers who are responsible for designing the public improvement.
- B. Require as part of the selection process that the architects/engineers who are responsible for designing the public improvement retain an artist as a functioning member of the design team to design the Public Art Element concurrently with the design of the public improvement.
- C. Require as part of the competitive solicitation process that the contractor responsible for building the public improvement retain an artist to design the Public Art Element.

Section 5. PUBLIC ART FUND

- A. The City Manager shall establish budget accounts to receive funds transferred pursuant to Sections III(A) and (B), above. Monies in the Public Art Fund, if not expended in any particular Fiscal Year, shall be carried over to the next Fiscal Year, unless the source of the funds, or applicable laws or regulations, prohibit such action. Generally accepted accounting principles will be utilized to ensure that the funds are utilized in a manner consistent with this Resolution.
- B. Nothing herein shall be interpreted to prohibit the City from soliciting and receiving grants, donations, bequests, or gifts from any source, public or private, for deposit in the Public Art Fund to be expended in a manner consistent with this Resolution.
- C. Monies in the Public Art Fund shall not be expended for the purposes of awarding grants to artists or arts organizations under City Council Resolution No. 55,832-N.S.

Section 6. OFF-SITE WORKS OF ART

- A. Pursuant to Section 3.12.060(F) of the Berkeley Municipal Code, the Civic Arts Commission shall review and make recommendations for expenditures from the Public Art Fund for the acquisition, creation, installation, presentation or display of Off-Site Works of Art.
- B. The City Manager shall manage the acquisition, creation, installation, presentation and display of Off-Site Works of Art.

Section 7. GRANTS

All City departments shall include in any application for grant funds for an Eligible Capital Project an amount sufficient for the Public Art Element, unless said inclusion would be detrimental to the City.

Section 8. RULES AND REGULATIONS

It is the intent of the City Council to allow the City Manager flexibility in attaining the goals of this Resolution; therefore, the City Manager is authorized to establish rules and regulations consistent with the intent of this Resolution and the Berkeley Municipal Code for the purposes of implementing this Resolution.

Section 9. EFFECTIVE DATE

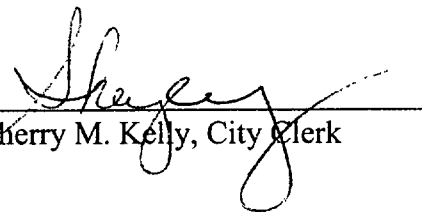
This resolution shall become effective June 1, 1999.


The foregoing Resolution was adopted by the Berkeley City Council on May 25, 1999 by the following vote:

Ayes: Councilmembers Armstrong, Breland, Maio, Olds, Shirek, Spring, Woolley, Worthington and Mayor Dean.

Noes: None.

Absent: None.

Attest:   
Sherry M. Kelly, City Clerk

  
Shirley Dean, Mayor



Office of Economic Development

December 26, 2019

To: David White, Deputy City Manager  
 From: Jordan Klein, Economic Development Manager  
 Subject: Public Art Funding from City of Berkeley Construction Projects

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### *Introduction*

Over the past five years, the annual contribution to the Public Art Fund has decreased, even as the City's Capital Improvement Program (CIP) budget has generally increased (see Table 1).

The Civic Arts Commission has requested that staff provide clear and transparent information regarding the determination of the Public Art Fund budget, and that the City Auditor audit the determination of the Public Art Fund budget. In response, the Office of Economic Development, working in collaboration with staff from the Budget Division in the City Manager's Office, the Public Works Department (PW) and the Parks, Recreation, and Waterfront Department (PRW), has prepared this memo to (1) summarize the current situation regarding funding for the City of Berkeley's public art program; (2) identify outstanding issues regarding the Public Art program budgeting; and (3) make recommendations for near-term and longer-term actions to address those issues.

Table 1: CIP and Public Art Budget, 2016-2021

| Fiscal Year | Capital Improvement Plan, Original Budget | Public Art Fund, Original Budget <sup>1</sup> |
|-------------|-------------------------------------------|-----------------------------------------------|
| 2021        | \$59,765,721                              | \$65,164                                      |
| 2020        | 111,962,162                               | 65,164                                        |
| 2019        | 39,926,908                                | 65,164                                        |
| 2018        | 81,571,653                                | 69,364                                        |
| 2017        | 32,908,296                                | 70,940                                        |
| 2016        | 36,151,639                                | 71,502                                        |

### *Background*

On June 1, 1999, the Berkeley City Council adopted Resolution No. 60,048-N.S. (Attachment 1, hereafter referenced as 'the 1999 Resolution'), thereby establishing the City's current public art policy and program, and the Public Art Fund.<sup>2</sup> Under this policy and program, each of the City of Berkeley's eligible capital projects must dedicate 1.5% of the project's construction costs for the commissioning of a public art element for incorporation into the project, or to contribute an equivalent amount to the City's Public Art Fund for the creation of off-site works of public art.

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1: This table does not include the public art contribution for the Center Street Garage, which comprised fund transfers to the Public Art Fund in FY2017 (\$222,860) and FY2019 (\$51,924), and design and construction of the Cube Gallery (\$106,060).

2: In 2017 the City of Berkeley established the Public Art in Private Development policy and program, which requires qualifying private development projects to either incorporate a public art element or pay an in lieu fee to the Private Percent for Art fund. That program is distinct from the program described in this memo.

The 1999 Resolution establishes that as part of the development of the City’s budget, City staff should engage with the Civic Arts Commission in a planning process to determine the list of eligible capital projects; the ultimate determination of the list is left to the discretion of the City Manager. It also notes that the policy should not be applied to “any improvement for which the source of funding, or any applicable law or regulation, prohibits or restricts the use of funds for [public art].” The Resolution also establishes that a project’s ‘soft costs’—including project management, architectural and engineering costs, planning costs, environmental review, legal fees, and feasibility studies—are not eligible for application of the policy.

In practice, the Budget Office has determined an annual contribution to the Public Art Fund by applying the 1.5% calculation to the original budget figures for a limited number of capital funding sources and project categories. For some (but not all) of those ‘off the top’ funding contributions, a deduction is made for soft costs. The vast majority of public art projects are implemented as off-site works of art. For some major capital projects (including Center Street Garage as the most recent example), the determination of the public art contribution is determined at the project level, and the funding is used for an on-site public art element, a supplemental contribution to the Public Art Fund, or a combination of the two approaches.

#### *Staff Review of 2020 CIP and Public Art Budget*

Office of Economic Development (OED) staff, in consultation with staff from the Budget Office, PW, and PRW, reviewed the Fiscal Year (FY) 2020 capital program by project, together with the FY 2020 Public Art Fund calculation spreadsheet provided by the Budget Office, to determine which projects had been identified as eligible capital projects for application of the public art requirement, and which projects had been excluded (see Attachment 2). Staff found the following:

- FY 2020 eligible capital projects. The following list includes those projects that were funded by expense accounts from which a contribution to the Public Art Fund was made.
  - ADA Building Improvements
  - FY 2020 Street Rehabilitation Projects
  - ADA Curb Ramp Repairs
  - Traffic Calming Program
  - Finger Dock & Piling Replacement
  - Rose Garden-Phase II
  - San Pablo Play Structure
  - West Campus Pool Filter
  - George Florence Play Equipment
  - King School Play Area
  - Ohlone Basketball Court
  - Parks Minor Maintenance Projects
  - Public Works Building Maintenance Projects

The total budget amount for these projects is \$4,894,278, or 4.4% of the total FY 2020 CIP budget. Capital Planning staff observed that the budgets for several of these projects include soft costs; thus if the guidelines established in the Resolution were more strictly enforced, it could result in a reduction of the Public Art Fund contribution.

- Staff identified the following capital projects that could be eligible for application of the public art policy, but to which the policy has not yet been applied.
  - EV Charging stations (\$600,000)
  - Police Parking Marina facility (\$481,570)

- Sacramento Street Complete Street Project (\$47,000)
- Telegraph Channing Elevator Replacement (\$300,000)

The total budget for these projects is \$1,428,570. Application of the public art policy would require a contribution of up to \$21,429 to the Public Art Fund.<sup>3</sup>

- Many of the funding streams that are used to finance CIP projects prohibit the use of funds for public art projects. These funding streams include state and regional gas taxes (e.g., Measure B, Measure BB, and Vehicle Registration Fees), special property assessments (e.g., Street Lighting Fee, Sanitary Sewer Fee, Storm Drain Fee), certain grant funds, development agreement proceeds, and insurance claims for camp repairs. In FY 2020, these funding streams accounted for \$79,730,929, or 71.2% of the total CIP budget.
- Sixteen CIP projects, totaling \$14,106,220 or 12.6% of the total CIP budget, are funded through Measure T1 Bond proceeds. One (1) percent of the total bond proceeds have been dedicated to public art projects; those funds are managed separately from the general Public Art Fund, and are being used to implement public art projects at North Berkeley Senior Center and San Pablo Park. The Civic Arts Commission has expressed frustration and disappointment that the public art contributed was calculated at 1% rather than 1.5% in accordance with the 1999 Resolution.

In staff's review of the CIP, we noted that some of the Measure T1 Bond proceeds are being used to fund non-construction projects (e.g., conceptual plans and studies) and project management costs. In addition, each of the construction projects has associated soft costs that are ineligible for application of the public art policy. Therefore, if staff used the 1999 Resolution methodology (1.5% of construction costs) rather than the current methodology (1% of total bond proceeds), the resulting contribution to public art might actually be less.

- The CIP includes non-construction projects and soft costs that are ineligible for application of the public art policy, including debt service, vehicle and other equipment replacement, software, and design and engineering costs. In FY 2020 the budget for these projects totaled \$10,116,148, or 9.0% of the total CIP budget.

### *Outstanding Issues*

- The process for calculation of the annual contribution to the Public Art Fund that is outlined in the 1999 Resolution is not compatible with the City's other regular processes for budgeting and capital planning. The consensus among staff—including staff from the Civic Arts program, PW and PRW capital planning, and Budget Office—is that except for major projects (e.g., projects greater than \$10 million) the Budget Office's current process (a flat application to qualifying funding streams and project categories) should be maintained.
- Staff also observes that budget appropriations that occur in November and spring typically exclude funds for the public art program. At least two of the FY 2020 projects noted above, where the public art requirement has not been applied but may warrant application, fall into this category – Police Parking Marina Facility, and Sacramento Street Complete Streets.

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3: The total budget for these projects (\$1,428,570) may include soft costs, or other costs that are ineligible for application of the public art calculation. Those costs would need to be excluded from the calculation, which could reduce the Public Art Fund contribution.

- Actual expenditures on major projects sometimes exceed budgeted amounts, and those additions are often excluded from the public art program. For example, actual expenditures on construction of the Center Street Garage increased by roughly \$5.4 million over the originally budgeted expenditures; however, the project's public art contribution was calculated based on the original budget. The project's compliance with the public art policy required an additional contribution of \$81,306 to the Public Art Fund, which was allocated by City Council on December 3, 2019.
- The public art policy was applied to the majority of, but not all, maintenance projects and expenditures from qualifying funding sources. Capital planning staff noted the vast deferred maintenance needs of the City's infrastructure and capital assets, and the urgent need to direct as much funding as possible towards the completion of those projects. Parks staff observed that the application of the policy to Measure F funds expended on 'Minor Maintenance' projects is incorrect and should be reversed for FY21.

Civic Arts program staff noted that the City's public art collection also suffers from deferred maintenance issues, and that there is a nexus for application of the public art policy to expenditures on maintenance projects in order to provide a reliable funding source for collection maintenance.

### *Recommendations*

The following near-term and mid-term activities could address and resolve the outstanding issues identified above.

#### Near-term actions:

- Include allocations to the Public Art Fund, for the purpose of bringing the projects referenced above into compliance with the public art policy, for inclusion in the mid-cycle budget update. This would include an allocation of \$21,429 to the Public Art Fund for the EV Charging Stations, Police Parking Marina facility, Sacramento Street Complete Street Project, and Telegraph Channing Elevator Replacement.
- Establish as a regular practice that staff from the Budget Office, Civic Arts Program, and PW and PRW capital planning teams engage twice per year to review and plan for public art policy implementation.
- Incorporate into any mid-year budget expenditures on capital projects a review by Budget Office staff for public art policy applicability.
- Consider whether and how the policy should be applied to minor maintenance projects (versus major projects and new improvements).

#### Longer-term actions:

- Amend the 1999 Resolution to update the public art policy, in collaboration with the City Manager's Office, Capital Planning staff from PW and PRW, and the Civic Arts Commission, and with careful consideration of the following:

- Update the process and timing for the determination of the annual contribution to the Public Art Fund to be better aligned with the City's budgeting and capital planning processes, and with consideration of staffing and budget constraints.
- Establish more clear criteria to determine which projects and capital funding sources are eligible for application of the public art policy, especially with regards to expenditures on maintenance and repairs.
  
- Establish as a regular practice that grant applications for capital projects include expenditures on public art in the proposed budget, whenever possible without jeopardizing the application.
  
- For future bond measures for public construction projects, ensure that the public art policy is appropriately incorporated into the final bond language.

Attachments:

- 1- Resolution No. 60,048-N.S. Establishing the Percent for Art Program
- 2- FY2020 Capital Improvement Plan Budgeted Expenditures By Project By Fund, with Percent for Art Applicability

Cc:

Paul Buddenhagen, Deputy City Manager  
Teresa Berkeley-Simmons, Budget Manager  
Scott Ferris, Director, Parks, Recreation & Waterfront  
Phil Harrington, Director, Public Works  
Civic Arts Commission

RESOLUTION NO. 60,048-N.S.

ESTABLISHING A PROGRAM TO FUND THE DEVELOPMENT OF VISUAL ART IN PUBLIC PLACES, INCLUDING ART DEVELOPED IN CONJUNCTION WITH CITY CONSTRUCTION PROJECTS

WHEREAS, the cultivation and development of a livable community is enhanced by the presence of works of art and creative expression available for the enjoyment of all citizens; and

WHEREAS, in 1985, the City Council adopted Ordinance No. 5603-N.S., Berkeley Municipal Code Chapter 6.14, to promote the cultivation and creation of works of visual art in public places; and

WHEREAS, in 1980, the City Council adopted Ordinance No. 5253-N.S., Berkeley Municipal Code Chapter 3.12, establishing the Civic Arts Commission, and charged it with a variety of duties related to fostering programs for the cultural enrichment of the City; and

WHEREAS, the development of the physical infrastructure of the City provides numerous opportunities for creative expression by integrating artistic features into said infrastructure; and

WHEREAS, developing works of art in conjunction with City construction projects can contribute elements of beauty and creativity to all neighborhoods of the City; and

WHEREAS, a successful City-wide program to foster the development of works of art requires the collaboration of various City departments which are commonly involved in the construction of public improvements, the City Manager, the Civic Arts Commission and members of the community; and

WHEREAS, in those circumstances in which it is not feasible to incorporate artistic features into a particular public improvement, the public interest will be served by allocating sufficient funding to develop works of art separate from the public improvement; and

WHEREAS, the terms of this Resolution should be applied in a manner consistent with the requirements of Chapters 3.12 and 6.14 of the Berkeley Municipal Code.

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

Section 1. DEFINITIONS

“Administrative Costs” shall mean the expenditures necessary for implementation of the requirements of this Resolution, including, but not limited to, project management, soliciting proposals, public education, promotion, maintenance and risk management.



“Annual City Public Art Plan” shall mean the annual planning document which sets forth goals and objectives for development of works of art, including, art developed in conjunction with City construction projects during that Fiscal Year and any expenditures from the City’s Public Art Fund.

“Artist” shall mean a person who has completed works of art which meet contemporary artistic standards prevailing in major metropolitan areas.

“City Manager” shall mean the City Manager or his, or her, designee.

“Eligible Capital Project” shall mean any improvement to public property which the City Manager has approved for application of the requirements of this Resolution. This term shall not be interpreted to include any improvement for which the source of funding, or any applicable law or regulation, prohibits or restricts the use of funds for the purposes of this Resolution.

“Public Art Element” shall mean that component, feature, characteristic, or portion of a public improvement incorporated for artistic purposes.

“Public Art Fund” shall mean the budget account established by the City for receipt of funds derived from Eligible Capital Projects which may be expended for the purpose of incorporating artistic elements into public improvements or acquiring, creating, installing, presenting or displaying Off-Site Works of Art.

“Project Budget” shall mean the costs attributable to constructing a public improvement subject to the terms of this Resolution, including, construction, hazardous materials abatement, and procurement of goods intended for incorporation into the improvement. Project Budget shall not be interpreted to include costs associated with land use planning consultants, feasibility studies, environmental review, land acquisition costs, legal fees, architecture/engineering costs, construction management, geotechnical surveys, and historical surveys.

“Off-Site Work of Art” shall mean Works of Art as defined in Chapter 6.14 of the Berkeley Municipal Code which are acquired, created, installed, presented or displayed at a location other than the site of the Eligible Capital Project from which funds were derived under Section III of this Resolution.

Section 2. ANNUAL PLANNING

A. As part of the City’s budget process, the City Manager shall submit to the Civic Arts Commission a report identifying all public improvements which satisfy both of the following criteria: 1) expenditures will be made from the Project Budget during the following budget cycle, and 2) designation as an Eligible Capital Project would not result in detriment to the project.

B. Pursuant to Chapter 6.14 of the Berkeley Municipal Code, the Civic Arts Commission shall thereafter assign a different rank to each public improvement identified pursuant to Section A above based on the potential benefits to the community of designating the improvement as an Eligible Capital Project.

C. Pursuant to Chapter 6.14 of the Berkeley Municipal Code, the Civic Art Commission shall issue to the City Manager an Annual City Public Art Plan presenting its recommendations: 1) for public improvement projects which should be designated as Eligible Capital Projects, and 2) any expenditures from the Public Art Fund for the acquisition, creation, installation, presentation or display of Off-Site Works of Art during that Fiscal Year. The Annual City Public Art Plan shall include an explanation of the benefits and detriments, if any, associated with each proposal.

D. The City Manager shall then identify which, if any, of the recommended public improvements shall be finally designated as Eligible Capital Projects for that Fiscal Year.

### Section 3. FUNDING

A. A sum equal to one percent (1%) of the Project Budget for each Eligible Capital Project shall be transferred to the Public Art Fund and utilized solely to develop and install a work of art integrated into the completed improvement, regardless of whether it contributes to the purpose and function of the improvement, including, but not limited to, color, shape, design, texture, general appearance, or decoration which is designed and constructed integrally with the public improvement itself.

B. In addition to the amount specified in Section III(A), above, a sum equal to one half percent (0.5%) of the Project Budget for each Eligible Capital Project shall be transferred to the Public Art Fund and utilized solely for Administrative Costs.

C. Funds designated for the Public Art Fund shall be transferred not later than the date on which funds for the Project Budget have been encumbered.

D. In the event that the final cost of designing and constructing the Public Art Element is less than one and one half percent (1.5%) of the Project Budget, the unused funds will be retained in the Public Art Fund and utilized for the creation of Off-Site Works of Art.

E. In the event that the Eligible Capital Project will result in a public improvement which is inaccessible to the public, such as an underground structure, or for which it is not feasible to incorporate the Public Art Element, the funds designated for the Public Art Element shall be transferred to the Public Art Fund and may be used for the creation of Off-Site Works of Art.

Section 4. MANAGEMENT OF PUBLIC ART ELEMENT

The City Manager is authorized to manage the development and implementation of the Public Art Element in accordance with Chapter 6.14 of the Berkeley Municipal Code governing Visual Art in Public Places. The City Manager may use any reasonably efficient means and methods to design a Public Art Element, including, but not limited to, the following:

- A. Retain an artist to design the Public Art Element independently of the architects/engineers who are responsible for designing the public improvement.
- B. Require as part of the selection process that the architects/engineers who are responsible for designing the public improvement retain an artist as a functioning member of the design team to design the Public Art Element concurrently with the design of the public improvement.
- C. Require as part of the competitive solicitation process that the contractor responsible for building the public improvement retain an artist to design the Public Art Element.

Section 5. PUBLIC ART FUND

- A. The City Manager shall establish budget accounts to receive funds transferred pursuant to Sections III(A) and (B), above. Monies in the Public Art Fund, if not expended in any particular Fiscal Year, shall be carried over to the next Fiscal Year, unless the source of the funds, or applicable laws or regulations, prohibit such action. Generally accepted accounting principles will be utilized to ensure that the funds are utilized in a manner consistent with this Resolution.
- B. Nothing herein shall be interpreted to prohibit the City from soliciting and receiving grants, donations, bequests, or gifts from any source, public or private, for deposit in the Public Art Fund to be expended in a manner consistent with this Resolution.
- C. Monies in the Public Art Fund shall not be expended for the purposes of awarding grants to artists or arts organizations under City Council Resolution No. 55,832-N.S.

Section 6. OFF-SITE WORKS OF ART

- A. Pursuant to Section 3.12.060(F) of the Berkeley Municipal Code, the Civic Arts Commission shall review and make recommendations for expenditures from the Public Art Fund for the acquisition, creation, installation, presentation or display of Off-Site Works of Art.
- B. The City Manager shall manage the acquisition, creation, installation, presentation and display of Off-Site Works of Art.

Section 7. GRANTS

All City departments shall include in any application for grant funds for an Eligible Capital Project an amount sufficient for the Public Art Element, unless said inclusion would be detrimental to the City.

Section 8. RULES AND REGULATIONS

It is the intent of the City Council to allow the City Manager flexibility in attaining the goals of this Resolution; therefore, the City Manager is authorized to establish rules and regulations consistent with the intent of this Resolution and the Berkeley Municipal Code for the purposes of implementing this Resolution.

Section 9. EFFECTIVE DATE

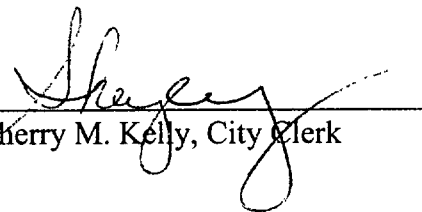
This resolution shall become effective June 1, 1999.


The foregoing Resolution was adopted by the Berkeley City Council on May 25, 1999 by the following vote:

Ayes: Councilmembers Armstrong, Breland, Maio, Olds, Shirek, Spring, Woolley, Worthington and Mayor Dean.

Noes: None.

Absent: None.

Attest:   
Sherry M. Kelly, City Clerk

  
Shirley Dean, Mayor

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**Citywide Capital Program By Project, with Public Art Requirement Applicability**

| Citywide Capital Program by Project, by Fund |                           |                                                  |                                                                                |                                                  |                      |                                                                        |                                     |      |
|----------------------------------------------|---------------------------|--------------------------------------------------|--------------------------------------------------------------------------------|--------------------------------------------------|----------------------|------------------------------------------------------------------------|-------------------------------------|------|
| Public Art Policy Applicability              |                           |                                                  |                                                                                |                                                  |                      |                                                                        |                                     |      |
| Fund                                         | Category                  | Project Name                                     | FY2020 Total                                                                   | Funds Eligible for Public Art Policy Application | Ineligible Funds     | Notes / Rationale for Ineligibility                                    | FY2020 Public Art Fund Contribution |      |
|                                              | Transportation            | Pavement Markings (incl. Roadway Thermo Marking) | \$ 50,000                                                                      | \$ -                                             | \$ 50,000            | Funded by Excess Property Transfer Tax                                 | \$ -                                |      |
|                                              |                           | EV Charging Stations @ Corp Yard and Marina      | \$ 600,000                                                                     | \$ -                                             | \$ 600,000           | Funded by Excess Property Transfer Tax; may warrant policy application | \$ -                                |      |
| <b>10 Total</b>                              | <b>General Fund</b>       |                                                  | <b>\$ 650,000</b>                                                              | <b>\$ -</b>                                      | <b>\$ 650,000</b>    |                                                                        | <b>\$ -</b>                         |      |
| 330                                          | PRW                       | Berkeley Tuolumne Camp (BTC)                     | \$ 49,795,822                                                                  | \$ -                                             | \$ 49,795,822        | Funding source prohibition                                             | \$ -                                |      |
|                                              |                           | Cazadero Camp - Landslide Repair                 | \$ 854,306                                                                     | \$ -                                             | \$ 854,306           | Funding source prohibition                                             | \$ -                                |      |
| <b>330 Total</b>                             | <b>Camp Fund</b>          |                                                  | <b>\$ 50,650,128</b>                                                           | <b>\$ -</b>                                      | <b>\$ 50,650,128</b> |                                                                        | <b>\$ -</b>                         |      |
| 369                                          | Unallocated               | Transportation                                   | Traffic Calming Devices Replacement & Maintenance                              | \$ 50,000                                        | \$ -                 | \$ 50,000                                                              | Funding source prohibition          | \$ - |
| 369                                          |                           | Streets                                          | Street Rehabilitation FY 2020 State Transportation Tax                         | \$ 445,303                                       | \$ -                 | \$ 445,303                                                             | Funding source prohibition          | \$ - |
|                                              |                           |                                                  | Street Rehabilitation FY 2020 SB1                                              | \$ 1,500,000                                     | \$ -                 | \$ 1,500,000                                                           | Funding source prohibition          | \$ - |
|                                              |                           |                                                  | Street Rehabilitation FY 2021 State Transportation Tax                         | \$ 50,000                                        | \$ -                 | \$ 50,000                                                              | Funding source prohibition          | \$ - |
| <b>369 Total</b>                             | <b>Gas Tax</b>            |                                                  | <b>\$ 2,045,303</b>                                                            | <b>\$ -</b>                                      | <b>\$ 2,045,303</b>  |                                                                        | <b>\$ -</b>                         |      |
|                                              |                           |                                                  | Pavement Marking Program                                                       | \$ 150,000                                       | \$ -                 | \$ 150,000                                                             | Funding source prohibition          | \$ - |
| 391                                          |                           | Streets                                          | Street Rehabilitation FY2020                                                   | \$ 700,000                                       | \$ -                 | \$ 700,000                                                             | Funding source prohibition          | \$ - |
| <b>391 Total</b>                             | <b>Measure B LS&amp;R</b> |                                                  | <b>\$ 850,000</b>                                                              | <b>\$ -</b>                                      | <b>\$ 850,000</b>    |                                                                        | <b>\$ -</b>                         |      |
| 392                                          |                           |                                                  | Milvia Bikeway Project                                                         | \$ 76,000                                        | \$ -                 | \$ 76,000                                                              | Funding source prohibition          | \$ - |
| 392                                          |                           |                                                  | Citywide Bicycle Parking                                                       | \$ 13,334                                        | \$ -                 | \$ 13,334                                                              | Funding source prohibition          | \$ - |
| 392                                          |                           |                                                  | Transportation Impact Fee Nexus Study & Transportation Impact Study Guidelines | \$ 28,183                                        | \$ -                 | \$ 28,183                                                              | Funding source prohibition          | \$ - |
|                                              |                           |                                                  | Bike & Ped CIP (Contingency)                                                   | \$ 75,000                                        | \$ -                 | \$ 75,000                                                              | Funding source prohibition          | \$ - |
| <b>392 Total</b>                             | <b>Measure B B&amp;P</b>  |                                                  | <b>\$ 192,517</b>                                                              | <b>\$ -</b>                                      | <b>\$ 192,517</b>    |                                                                        | <b>\$ -</b>                         |      |

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**Citywide Capital Program By Project, with Public Art Requirement Applicability**

| Fund             | Category                   | Project Name                                                                   | FY2020 Total        | Funds Eligible for Public Art Policy Application | Ineligible Funds    | Notes / Rationale for Ineligibility | FY2020 Public Art Fund Contribution |
|------------------|----------------------------|--------------------------------------------------------------------------------|---------------------|--------------------------------------------------|---------------------|-------------------------------------|-------------------------------------|
| 397              | Streets                    | Street Rehabilitation FY2020                                                   | \$ 155,000          | \$ -                                             | \$ 155,000          | Funding source prohibition          | \$ -                                |
| 397              | Sidewalks                  | Proactive and Responsive Sidewalk Repair Projects                              | \$ 200,000          |                                                  | \$ 200,000          | Funding source prohibition          | \$ -                                |
| <b>397 Total</b> | <b>Measure F</b>           |                                                                                | <b>\$ 355,000</b>   |                                                  | <b>\$ 355,000</b>   |                                     | <b>\$ -</b>                         |
| 406              | Transportation             | San Pablo/Ashby Intersection Traffice Signal Improvements                      | \$ 76,000           | \$ -                                             | \$ 76,000           | Funding source prohibition          | \$ -                                |
| 406              | Streets                    | Street Rehabilitation FY2020 - BB LSR Sales Tax                                | \$ 2,200,000        | \$ -                                             | \$ 2,200,000        | Funding source prohibition          | \$ -                                |
| 406              | Sidewalks                  | Proactive and Responsive Sidewalk Repair Projects                              | \$ 100,000          | \$ -                                             | \$ 100,000          | Funding source prohibition          | \$ -                                |
| 406              | Transportation             | Traffic Calming Program                                                        | \$ 50,000           | \$ -                                             | \$ 50,000           | Funding source prohibition          | \$ -                                |
| 406              | Transportation             | Traffic Signal Maintenance                                                     | \$ 250,000          | \$ -                                             | \$ 250,000          | Funding source prohibition          | \$ -                                |
| 406              | Transportation             | Transportation Impact Fee Nexus Study & Transportation Impact Study Guidelines | \$ 28,183           | \$ -                                             | \$ 28,183           | Funding source prohibition          | \$ -                                |
| <b>406 Total</b> | <b>Measure BB LS&amp;R</b> |                                                                                | <b>\$ 2,704,183</b> | <b>\$ -</b>                                      | <b>\$ 2,704,183</b> |                                     | <b>\$ -</b>                         |
| 407              | Transportation             | Shattuck Reconfiguration                                                       | \$ 118,354          | \$ -                                             | \$ 118,354          | Funding source prohibition          | \$ -                                |
| 407              | Transportation             | Ninth Street Pathway Phase II                                                  | \$ 83,557           | \$ -                                             | \$ 83,557           | Funding source prohibition          | \$ -                                |
| 407              |                            | San Pablo/Ashby Intersection Traffice Signal Improvements                      | \$ 110,000          | \$ -                                             | \$ 110,000          | Funding source prohibition          | \$ -                                |
| 407              |                            | Sacramento St./North Berkeley BART Complete Sts                                | \$ 273,253          | \$ -                                             | \$ 273,253          | Funding source prohibition          | \$ -                                |
| 407              |                            | Citywide Bicycle Parking                                                       | \$ 26,664           | \$ -                                             | \$ 26,664           | Funding source prohibition          | \$ -                                |
| <b>407 Total</b> | <b>Mesure BB B&amp;P</b>   |                                                                                | <b>\$ 611,828</b>   | <b>\$ -</b>                                      | <b>\$ 611,828</b>   |                                     | <b>\$ -</b>                         |
| 450              |                            | Minor Maintenance                                                              | \$ 550,000          | \$ 412,500                                       | \$ 137,500          | Soft costs excluded                 | \$ 6,188                            |
| 450              |                            | Gilman Reserve/ Facility Assmt./ Sewer-Laterals                                | \$ 100,000          | \$ 75,000                                        | \$ 25,000           | Soft costs excluded                 | \$ 1,125                            |
| 450              |                            | W. Campus Pool Filter                                                          | \$ 175,000          | \$ 131,250                                       | \$ 43,750           | Soft costs excluded                 | \$ 1,969                            |
| 450              |                            | Rose Garden-Phase II<br>(see Meas. T1 proj wksht)                              | \$ 50,000           | \$ 37,500                                        | \$ 12,500           | Soft costs excluded                 | \$ 563                              |
| 450              |                            | San Pablo Play Equipment<br>(see Meas. T1 proj wksht)                          | \$ 200,000          | \$ 150,000                                       | \$ 50,000           | Soft costs excluded                 | \$ 2,250                            |
| 450              |                            | George Florence Play Equipment<br>(see Meas. T1 proj wksht)                    | \$ 125,000          | \$ 93,750                                        | \$ 31,250           | Soft costs excluded                 | \$ 1,406                            |
| 450              |                            | King School Park Play Area                                                     | \$ 50,000           | \$ 37,500                                        | \$ 12,500           | Soft costs excluded                 | \$ 563                              |
| 450              |                            | Ohlone Basketball                                                              | \$ 300,000          | \$ 225,000                                       | \$ 75,000           | Soft costs excluded                 | \$ 3,375                            |
| <b>450 Total</b> | <b>Parks Tax</b>           |                                                                                | <b>\$ 1,550,000</b> | <b>\$ 1,162,500</b>                              | <b>\$ 387,500</b>   |                                     | <b>\$ 17,438</b>                    |

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**Citywide Capital Program By Project, with Public Art Requirement Applicability**

|                  |                        |              |                                              | FY2020 Total         | Funds Eligible for Public Art Policy Application | Ineligible Funds     | Notes / Rationale for Ineligibility    | FY2020 Public Art Fund Contribution |
|------------------|------------------------|--------------|----------------------------------------------|----------------------|--------------------------------------------------|----------------------|----------------------------------------|-------------------------------------|
| Fund             | Category               | Project Name |                                              |                      |                                                  |                      |                                        |                                     |
| 607              | T1                     | PRW          | AQUATIC PARK TIDE TUBES                      | \$ 220,835           | \$ -                                             | \$ 220,835           | 1% for Public Art Accounted Separately | \$ -                                |
| 607              |                        | PRW          | FRANCES ALBRIER COMMUNITY CENTER             | \$ 425,000           | \$ -                                             | \$ 425,000           | 1% for Public Art Accounted Separately | \$ -                                |
| 607              |                        | PRW          | GROVE PARK PHASE 2                           | \$ 880,325           | \$ -                                             | \$ 880,325           | 1% for Public Art Accounted Separately | \$ -                                |
| 607              |                        | PRW          | LIVE OAK COMMUNITY CENTER                    | \$ 4,232,106         | \$ -                                             | \$ 4,232,106         | 1% for Public Art Accounted Separately | \$ -                                |
| 607              |                        | PRW          | UNIVERSITY AVE,MARINA,SPINNAKER ST           | \$ 83,022            | \$ -                                             | \$ 83,022            | 1% for Public Art Accounted Separately | \$ -                                |
| 607              |                        | PRW          | MUNICIPAL PIER                               | \$ 2,056,908         | \$ -                                             | \$ 2,056,908         | 1% for Public Art Accounted Separately | \$ -                                |
| 607              |                        | PRW          | GEORGE FLORENCE PLAY STRUC                   | \$ 531,703           | \$ -                                             | \$ 531,703           | 1% for Public Art Accounted Separately | \$ -                                |
| 607              |                        | PRW          | SAN PABLO PLAY EQUIP                         | \$ 1,056,715         | \$ -                                             | \$ 1,056,715         | 1% for Public Art Accounted Separately | \$ -                                |
| 607              |                        | PRW          | STRAWBERRY CREEK PARK PH 2                   | \$ 1,131,389         | \$ -                                             | \$ 1,131,389         | 1% for Public Art Accounted Separately | \$ -                                |
| 607              |                        | PRW          | ROSE GRDN PTHWAYS,TENNIS CRT,PERG            | \$ 345,835           | \$ -                                             | \$ 345,835           | 1% for Public Art Accounted Separately | \$ -                                |
| 607              |                        | PRW          | GILMAN N. FLDHOSE/RSTRM                      | \$ 172,025           | \$ -                                             | \$ 172,025           | 1% for Public Art Accounted Separately | \$ -                                |
| 607              |                        | PRW          | WILLARD CLUBHOUSE RENO                       | \$ 197,025           | \$ -                                             | \$ 197,025           | 1% for Public Art Accounted Separately | \$ -                                |
| 607              |                        | Facilities   | Veteran's Building                           | \$ 148,215           | \$ -                                             | \$ 148,215           | 1% for Public Art Accounted Separately | \$ -                                |
| 607              |                        |              | Corporation Yard                             | \$ 50,467            | \$ -                                             | \$ 50,467            | 1% for Public Art Accounted Separately | \$ -                                |
| 607              |                        |              | Public Safety Building                       | \$ 19,762            | \$ -                                             | \$ 19,762            | 1% for Public Art Accounted Separately | \$ -                                |
| 607              |                        | Streets      | Street Rehabilitation FY 2020                | \$ 2,554,888         | \$ -                                             | \$ 2,554,888         | 1% for Public Art Accounted Separately | \$ -                                |
| <b>607 Total</b> | <b>T1 Bonds</b>        |              |                                              | <b>\$ 14,106,220</b> | <b>\$ -</b>                                      | <b>\$ 14,106,220</b> |                                        | <b>\$ -</b>                         |
| 609              |                        | IT           | ERP Replacement Fund                         | \$ 2,734,552         |                                                  | \$ 2,734,552         | Non-construction project               | \$ -                                |
| <b>609 Total</b> | <b>ERP Replacement</b> |              |                                              | <b>\$ 2,734,552</b>  |                                                  | <b>\$ 2,734,552</b>  |                                        | <b>\$ -</b>                         |
| 891              |                        | IT           | PC Replacement (PC-R) and Server Replacement | \$ 540,370           |                                                  | \$ 540,370           | Non-construction project               | \$ -                                |
| <b>891 Total</b> |                        |              |                                              | <b>\$ 540,370</b>    |                                                  | <b>\$ 540,370</b>    |                                        | <b>\$ -</b>                         |

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**Citywide Capital Program By Project, with Public Art Requirement Applicability**

| Fund | Category      | Project Name                                                        | FY2020 Total | Funds Eligible for Public Art Policy Application | Ineligible Funds | Notes / Rationale for Ineligibility                               | FY2020 Public Art Fund Contribution |
|------|---------------|---------------------------------------------------------------------|--------------|--------------------------------------------------|------------------|-------------------------------------------------------------------|-------------------------------------|
| 610  | Facilities    | Roof Replacement                                                    | \$ 290,000   | \$ 164,773                                       | \$ 125,227       | Emergency repairs and maintenance - included at approximately 58% | \$ 2,472                            |
| 610  |               | Building Assesment (Contingency)                                    | \$ 70,000    | \$ 39,773                                        | \$ 30,227        | Emergency repairs and maintenance - included at approximately 58% | \$ 597                              |
| 610  |               | Civic Center Carpet Replacement                                     | \$ 440,000   | \$ 250,000                                       | \$ 190,000       | Emergency repairs and maintenance - included at approximately 58% | \$ 3,750                            |
| 610  |               | Fire Station 6 Drill Tower                                          | \$ 45,000    | \$ 25,568                                        | \$ 19,432        | Emergency repairs and maintenance - included at approximately 58% | \$ 384                              |
| 610  |               | HazMat Storage Upgrade                                              | \$ 35,000    | \$ 19,886                                        | \$ 15,114        | Emergency repairs and maintenance - included at approximately 58% | \$ 298                              |
| 610  |               | Police Parking Enforcement Marina Facility and Parking Lot Improver | \$ 250,000   |                                                  | \$ 250,000       | May warrant policy application                                    | \$ -                                |
| 610  |               | ADA Building Improvements                                           | \$ 100,000   | \$ 100,000                                       | \$ -             |                                                                   | \$ 1,500                            |
| 610  | PRW           | Rose Garden-Phase II                                                | \$ 100,000   | \$ 75,000                                        | \$ 25,000        | Soft costs excluded                                               | \$ 1,125                            |
| 610  | PRW           | San Pablo Play Structure                                            | \$ 300,000   | \$ 225,000                                       | \$ 75,000        | Soft costs excluded                                               | \$ 3,375                            |
| 610  | Debt Svc      | Ball Fields Acquisition Debt Service                                | \$ 249,971   |                                                  | \$ 249,971       | Non-capital project                                               | \$ -                                |
| 610  | Debt Svc      | Animal Shelter Debt Service/2010 COP Animal Shelter                 | \$ 402,613   |                                                  | \$ 402,613       | Non-capital project                                               | \$ -                                |
| 610  | Debt Svc      | Theater Debt Service                                                | \$ 249,971   |                                                  | \$ 249,971       | Non-capital project                                               | \$ -                                |
| 610  | Debt Svc      | University Ave. W/C Debt Service                                    | \$ 406,952   |                                                  | \$ 406,952       | Non-capital project                                               | \$ -                                |
| 610  | Streets       | Street Rehabilitation FY2020                                        | \$ 1,825,050 | \$ 1,725,000                                     | \$ 100,050       | Soft costs excluded                                               | \$ 25,875                           |
| 610  |               | Street Rehabilitation FY2021                                        | \$ 99,950    | \$ -                                             | \$ 99,950        | Design costs                                                      | \$ -                                |
| 610  | 5302-431-6520 | Sidewalks                                                           | \$ 100,000   | \$ -                                             | \$ 100,000       | Project deemed ineligible (sidewalk repairs)                      | \$ -                                |
| 610  |               | Sidewalks                                                           | \$ 500,000   | \$ -                                             | \$ 500,000       | Project deemed ineligible (sidewalk repairs)                      | \$ -                                |
| 610  |               | Sidewalks                                                           | \$ 285,000   |                                                  | \$ 285,000       | Project deemed ineligible (sidewalk repairs)                      | \$ -                                |
| 610  |               | Sidewalks                                                           | \$ 50,000    |                                                  | \$ 50,000        | Project deemed ineligible (sidewalk repairs)                      | \$ -                                |
| 610  |               | Sidewalks                                                           | \$ 200,000   | \$ 200,000                                       | \$ -             |                                                                   | \$ 3,000                            |
| 610  |               | Transportation                                                      | \$ 119,278   | \$ 119,278                                       |                  |                                                                   | \$ 1,789                            |
| 610  |               | Transportation                                                      | \$ 606,662   |                                                  | \$ -             | Bayer Mitigation \$ - Funding source prohibition                  | \$ -                                |



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**Citywide Capital Program By Project, with Public Art Requirement Applicability**

| Fund             | Category                      | Project Name                                                                                 | FY2020 Total        | Funds Eligible for Public Art Policy Application | Ineligible Funds    | Notes / Rationale for Ineligibility                                                                                                                    | FY2020 Public Art Fund Contribution |
|------------------|-------------------------------|----------------------------------------------------------------------------------------------|---------------------|--------------------------------------------------|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| 610              | Transportation                | Sacramento St Complete Streets/North Berkeley BART                                           | \$ 47,000           |                                                  | \$ 47,000           | May warrant policy application                                                                                                                         | \$ -                                |
| 470              | 5307<br>Other Infrastructure  | Coucil Supp. - Funding for Street Lighting                                                   | \$ 416,608          |                                                  | \$ 416,608          | Property Fee - 218 Funding source prohibition                                                                                                          | \$ -                                |
|                  | Other Infrastructure          | Underground Utility Distrcit No. 48 Project                                                  | \$ 250,000          |                                                  | \$ 250,000          | Placeholder for fire safety project w/PG&E; monies gathered from unspent fund balances (where art funds have already been taken), salary savings, etc. | \$ -                                |
|                  | Transportation                | Traffic Calming Program                                                                      | \$ 50,000           | \$ 50,000                                        | \$ -                |                                                                                                                                                        | \$ 750                              |
| <b>610 Total</b> | <b>Capital Improvement</b>    |                                                                                              | <b>\$ 7,489,055</b> | <b>\$ 2,994,278</b>                              | <b>\$ 4,494,777</b> | <b>Rama's spreadsheet for Public Art calculation shows \$2,994,278 from this fund. Please indicate which additional projects were included.</b>        | <b>\$ 44,914</b>                    |
| 613              | Bay Area Air Quality          | Citywide Bicycle Parking                                                                     | \$ 60,000           |                                                  | \$ 60,000           | Funding source prohibition                                                                                                                             | \$ -                                |
| <b>613 Total</b> |                               |                                                                                              | <b>\$ 60,000</b>    |                                                  | <b>\$ 60,000</b>    |                                                                                                                                                        | <b>\$ -</b>                         |
| 642              | Sidewalks                     | 50/50 Program                                                                                | \$ 100,000          |                                                  | \$ 100,000          | Funding source prohibition (Money is from private property owners for sidewalk repairs)                                                                | \$ -                                |
| <b>642 Total</b> | <b>Private Party Sidewalk</b> |                                                                                              | <b>\$ 100,000</b>   |                                                  | <b>\$ 100,000</b>   |                                                                                                                                                        | <b>\$ -</b>                         |
|                  |                               | Milvia Bikeway Project                                                                       | \$ 273,000          |                                                  | \$ 273,000          | Funding source prohibition                                                                                                                             | \$ -                                |
|                  |                               | Sacramento St./North Berkeley BART Complete Sts                                              | \$ 1,364,202        |                                                  | \$ 1,364,202        | Funding source prohibition                                                                                                                             | \$ -                                |
|                  |                               | Southside Complete Streets                                                                   | \$ 506,640          |                                                  | \$ 506,640          | Funding source prohibition                                                                                                                             | \$ -                                |
| <b>674 Total</b> | <b>CALTRANS</b>               |                                                                                              | <b>\$ 2,143,842</b> |                                                  | <b>\$ 2,143,842</b> |                                                                                                                                                        | <b>\$ -</b>                         |
| 820              | Facilities                    | Transfer Station AirCo building upgrade for office use                                       | \$ 385,000          |                                                  | \$ 385,000          | Design, planning and other soft costs                                                                                                                  | \$ -                                |
| 820              | Facilities                    | Transfer Station Rebuild Final Geotechnical Site investigation to support engineering design | \$ 100,000          |                                                  | \$ 100,000          | Design, planning and other soft costs                                                                                                                  | \$ -                                |
|                  |                               | Solid Waste & Recycling Transfer Station Rebuild CEQA process                                | \$ 1,200,000        |                                                  | \$ 1,200,000        | Design, planning and other soft costs                                                                                                                  | \$ -                                |
| <b>820 Total</b> | <b>Zero Waste</b>             |                                                                                              | <b>\$ 1,685,000</b> |                                                  | <b>\$ 1,685,000</b> |                                                                                                                                                        | <b>\$ -</b>                         |

**Page 32 of 33**  
**Citywide Capital Program By Project, with Public Art Requirement Applicability**

| Fund             | Category                  | Project Name                                                           | FY2020 Total         | Funds Eligible for Public Art Policy Application | Ineligible Funds     | Notes / Rationale for Ineligibility              | FY2020 Public Art Fund Contribution |
|------------------|---------------------------|------------------------------------------------------------------------|----------------------|--------------------------------------------------|----------------------|--------------------------------------------------|-------------------------------------|
| 825              |                           | Finger Dock & Piling Replacement                                       | \$ 250,000           | \$ 187,500                                       | \$ 62,500            | Soft costs excluded                              | \$ 2,813                            |
| 825              |                           | Sewer Lateral Work                                                     | \$ 100,000           |                                                  | \$ 100,000           |                                                  | \$ -                                |
| 825              |                           | Marina Debt Service                                                    | \$ 485,719           |                                                  | \$ 485,719           | Non-capital project                              | \$ -                                |
| 825              | PRW                       | Minor Maintenance                                                      | \$ 150,000           |                                                  | \$ 150,000           |                                                  | \$ -                                |
| <b>825 Total</b> | <b>Marina Operations</b>  |                                                                        | <b>\$ 985,719</b>    | <b>\$ 187,500</b>                                | <b>\$ 798,219</b>    |                                                  | <b>\$ 2,813</b>                     |
| 830              | Sewers                    | Sewer Rehab - Sanitary Sewer Master Plan                               | \$ 623,106           |                                                  | \$ 623,106           | Enterprise Fund - 218 Funding source prohibition | \$ -                                |
| 830              | Sewers                    | San Pablo (City's Limit to Limit)                                      | \$ 3,256,112         |                                                  | \$ 3,256,112         | Enterprise Fund - 218 Funding source prohibition | \$ -                                |
| 830              |                           | Neilson, Berryman, et al                                               | \$ 4,515,649         |                                                  | \$ 4,515,649         | Enterprise Fund - 218 Funding source prohibition | \$ -                                |
| 830              |                           | Seawall Dr, Seventh St, et al                                          | \$ 5,099,864         |                                                  | \$ 5,099,864         | Enterprise Fund - 218 Funding source prohibition | \$ -                                |
| 830              |                           | West Frontage (Caltrans ROW)                                           | \$ 182,617           |                                                  | \$ 182,617           | Enterprise Fund - 218 Funding source prohibition | \$ -                                |
| 830              |                           | Urgent Repairs FY 2020                                                 | \$ 503,457           |                                                  | \$ 503,457           | Enterprise Fund - 218 Funding source prohibition | \$ -                                |
| 830              |                           | MH Rehab FY 2020                                                       | \$ 503,457           |                                                  | \$ 503,457           | Enterprise Fund - 218 Funding source prohibition | \$ -                                |
| 830              |                           | Parker St, MLK Wy, et al                                               | \$ 1,035,441         |                                                  | \$ 1,035,441         | Enterprise Fund - 218 Funding source prohibition | \$ -                                |
| 830              |                           | MLK Wy, Cedar St, et al                                                | \$ 782,526           |                                                  | \$ 782,526           | Enterprise Fund - 218 Funding source prohibition | \$ -                                |
| 830              |                           | Walnut St, The Alameda, et al                                          | \$ 593,927           |                                                  | \$ 593,927           | Enterprise Fund - 218 Funding source prohibition | \$ -                                |
| 830              |                           | Urgent Repairs FY 2021                                                 | \$ 84,731            |                                                  | \$ 84,731            | Enterprise Fund - 218 Funding source prohibition | \$ -                                |
| 830              |                           | MH Rehab FY 2021                                                       | \$ 84,731            |                                                  | \$ 84,731            | Enterprise Fund - 218 Funding source prohibition | \$ -                                |
| <b>830 Total</b> | <b>Sanitary Sewer</b>     |                                                                        | <b>\$ 17,265,619</b> |                                                  | <b>\$ 17,265,619</b> |                                                  | <b>\$ -</b>                         |
| 831              |                           | Berkeley Rose Garden Drainage                                          | \$ 679,239           |                                                  | \$ 679,239           | Property Fee - 218 Funding source prohibition    | \$ -                                |
| 831              |                           | GI Allston Way Permeable Paver Maintenance                             | \$ 200,000           |                                                  | \$ 200,000           | Property Fee - 218 Funding source prohibition    | \$ -                                |
| 831              |                           | Storm Drainage Repairs - Wildcat/Shelby Trail                          | \$ 75,000            |                                                  | \$ 75,000            | Property Fee - 218 Funding source prohibition    | \$ -                                |
| 831              |                           | Piedmont Avenue Green Infrastructure                                   | \$ 25,000            |                                                  | \$ 25,000            | Property Fee - 218 Funding source prohibition    | \$ -                                |
| 831              |                           | Storm Drain Planning & Studies                                         | \$ 750,000           |                                                  | \$ 750,000           | Property Fee - 218 Funding source prohibition    | \$ -                                |
| <b>831 Total</b> | <b>Clean Storm</b>        |                                                                        | <b>\$ 1,729,239</b>  |                                                  | <b>\$ 1,729,239</b>  |                                                  | <b>\$ -</b>                         |
|                  |                           | Telegraph Channing Elevator Replacement                                | \$ 300,000           |                                                  | \$ 300,000           | May warrant policy application                   | \$ -                                |
| <b>835 Total</b> | <b>Off Street Parking</b> |                                                                        | <b>\$ 300,000</b>    |                                                  | <b>\$ 300,000</b>    |                                                  | <b>\$ -</b>                         |
|                  |                           | Police Parking Enforcement Marina Facility and Parking Lot Improvement | \$ 231,570           |                                                  | \$ 231,570           | May warrant policy application                   | \$ -                                |
| <b>840 Total</b> | <b>Parking Meter Fund</b> |                                                                        | <b>\$ 231,570</b>    |                                                  | <b>\$ 231,570</b>    |                                                  | <b>\$ -</b>                         |
| 860              | Equipment                 | Vehicle Replacement                                                    | \$ 2,611,000         |                                                  | \$ 2,611,000         | Non-construction project                         | \$ -                                |

**Page 33 of 33**  
**Citywide Capital Program By Project, with Public Art Requirement Applicability**

| Fund               | Category           | Project Name | FY2020 Total          | Funds Eligible for Public Art Policy Application | Ineligible Funds      | Notes / Rationale for Ineligibility | FY2020 Public Art Fund Contribution |
|--------------------|--------------------|--------------|-----------------------|--------------------------------------------------|-----------------------|-------------------------------------|-------------------------------------|
| 860 Total          | Equip. Replacement |              | \$ 2,611,000          |                                                  | \$ 2,611,000          |                                     | \$ -                                |
| <b>Grand Total</b> |                    |              | <b>\$ 111,591,145</b> | <b>\$ 4,344,278</b>                              | <b>\$ 107,246,867</b> |                                     | <b>\$ 65,164</b>                    |





Energy Commission

## CONSENT CALENDAR

May 10, 2022

To: Honorable Mayor and Members of the City Council  
 From: Energy Commission  
 Submitted by: Bentham Paulos, Chairperson, Energy Commission  
 Subject: Recommendation that Vision 2050 Infrastructure Bond Prioritize Clean Mobility

### RECOMMENDATION

The Energy Commission recommends that the Vision 2050 infrastructure bond contemplated for the 2022 ballot prioritize transportation, with an emphasis on building the clean mobility network of the future.

### FISCAL IMPACTS OF RECOMMENDATION

No fiscal impacts are associated with this recommendation at this time.

### CURRENT SITUATION AND ITS EFFECTS

The Council will soon be considering a ballot measure to provide revenues for infrastructure improvements. There are three major reasons for those funds to focus on transportation. First, the majority of Berkeley's greenhouse gas emissions come from transportation, as do California's. Transportation is also the largest local contributor to conventional pollutants, such as particulates, nitrogen oxides, and smog, which impact public health. This is especially true along arterial roads, where a substantial amount of new housing is being built. There are two strategies to reduce global warming pollution from cars: we can get gasoline out of cars by encouraging electric vehicles, and we can get people out of cars by encouraging a suite of mobility options, such as transit, walking, biking, and other electric devices like scooters.

Second, Berkeley has been encouraging and is planning for a substantial increase in housing to meet growing population demand, lower the cost of living, and provide housing to the unhoused. Housing and transportation are two sides of the same coin. The Regional Housing Needs Assessment (RHNA) envisions almost 9000 new housing units this decade, in addition to plans UC Berkeley has to increase enrollment and housing.<sup>1</sup> This substantial increase in population will boost demands for transportation, putting a premium on non-car mobility. Expanding the population without improving transportation will quickly erode quality of life.

Third, the need to repair streets is an opportunity to follow through on the many plans formulated in recent years on safety, biking, walking, and safe routes to schools (collectively referred to as complete streets). It is a chance to build the diverse low-

<sup>1</sup> City of Berkeley Housing Element Update 2023-2031, <https://www.cityofberkeley.info/housingelement/>

carbon, low-stress, and low-danger transportation system for the Berkeley of tomorrow. Enabling more transportation options will lower the cost of living and increase the quality of life for all.

At its March 23, 2022 meeting, the Energy Commission voted to send this recommendation to City Council by a vote of 5-0-0-0 [(Zuckerman), Second (Guliasi), Ayes: (Paulos, Wolf, Tahara, Guliasi, Zuckerman). Noes: None. Abstain: None. Absent: None].

### BACKGROUND

The Commission was briefed on the concept of a ballot measure by Public Works Director Liam Garland on December 1, 2021. Mr. Garland laid out the many pressing needs Berkeley has for improvement, as reflected in the Vision 2050 plan. We think transportation is the most important thing to focus on, and think that voters will agree.

Specifically we would call attention to [Measure B](#), passed by voters in Austin, Texas in 2020. Proposition B raised \$460 million in general obligation bonds for transportation infrastructure including sidewalks, transportation-related bikeways, urban trails, transportation safety projects (Vision Zero), safe routes to school, and substandard streets.<sup>2</sup> We believe this structure is a good model for Berkeley to emulate. The Austin Council's resolution is included as Attachment 1 to this report.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

An infrastructure bond is an opportunity to make the capital investments that guide the future of the city in ways that address sustainability and climate priorities. No infrastructure is more important right now, and more of our City government's responsibility, than transportation.

### RATIONALE FOR RECOMMENDATION

The Energy Commission recommends that the City focus on transportation for this infrastructure bond, with specific allocations in the measure to ensure sufficient funding is available for the full range of complete streets measures.

### ALTERNATIVE ACTIONS CONSIDERED

We did not consider alternative actions.

### CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's report.

### CONTACT PERSON

Billi Romain, Energy Commission Secretary, 510-981-7432

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<sup>2</sup> City of Austin, 2020 Mobility Elections Proposition B, <https://www.austintexas.gov/2020PropB>.

**Attachments:**

1: Austin, Texas City Council, "Proposition B Contract with Voters," (Council Resolution No. 20200812-011), August 12, 2020.

**RESOLUTION NO. 20200812-011**

**WHEREAS**, equitable mobility and accessibility are vital to a functioning and prosperous society; and

**WHEREAS**, the average American family spends more on transportation-related expenses than all other types of expenses except housing; and

**WHEREAS**, transportation costs are regressive and lower-income residents spend a larger share of their resources on mobility; and

**WHEREAS**, Black, Latinx, lower-income, immigrant, and differently-abled residents have disproportionately lower access to car ownership; and

**WHEREAS**, transportation and mobility systems, at 35 percent, accounted for the largest share relative to any other category of greenhouse gas emissions in Travis County in 2010; and

**WHEREAS**, between 2012 and 2019, an average of 79 people died each year using Austin's transportation system, accounting for a total of 635 fatalities, 210 of whom were people walking; and

**WHEREAS**, the Imagine Austin Comprehensive Plan (2012) calls for a "complete-streets design that includes features such as traffic calming elements, street trees, wide sidewalks, and pedestrian, bicycle, and transit access throughout Austin, considering the safety needs of people of all ages and abilities"; and



**WHEREAS**, the Austin Strategic Mobility Plan (ASMP) (2019) calls for a 50/50 mode share whereby 50 percent of commutes are made in ways other than driving alone and envisions completing the Bicycle, Sidewalk, and Urban Trails Plans by 2039; and

**WHEREAS**, the ASMP directs transportation decisions to be centered on equity, including a policy to “partner with the public and private sectors to expand and improve mobility solutions for historically underserved communities”; and

**WHEREAS**, the Vision Zero Action Plan (2016) sets the goal of eliminating traffic deaths and serious injuries by 2025; and

**WHEREAS**, in June 2020, Council adopted Ordinance No. 20200611-045, approving specific changes to implement speed management; and

**WHEREAS**, the Austin Sidewalk Plan/ADA Transition Plan (2016) sets a target to “address all very high and high priority sidewalks within one-quarter mile of all identified schools, bus stops, and parks” by constructing sidewalks at a rate of 39 miles per year; and

**WHEREAS**, the Austin Bicycle Plan (2014) sets the goal of implementing, by 2025, 80 percent of an all-ages-and-abilities bicycling network to increase ridership, improve safety, and provide equitable access; and

**WHEREAS**, the Austin Community Climate Plan (2015) set the goal of reaching net-zero community-wide greenhouse gas emissions by 2050; and

**WHEREAS**, Council’s Strategic Direction 2023 has as one of its mobility goals to: “Provide equitable access to multimodal transportation choices to link people to

opportunities, such as education, healthcare, healthy food including community amenities such as grocery stores, open space, and jobs, especially in historically underserved and underrepresented communities”; and

**WHEREAS**, City Council is ordering a Special Election to be held on November 3, 2020 for the purpose of asking the voters to authorize \$460 million in general obligation bonds for transportation and mobility purposes; and

**WHEREAS**, City Council desires that the \$460 million bond program be completed within six years from the date Council approves the first project funded with these bond funds and in accordance with the guidance and procedures set forth in this resolution; and

**WHEREAS**, The Corridor Program Office (CPO) is strategically leveraging transportation improvement bond dollars to achieve comprehensive community outcomes and policy initiatives by partnering with other City departments, developers, non-profit organizations and agencies to extend the scope of the corridor transportation improvement projects so that together we can amplify the community, culture, and the mobility experience; and

**WHEREAS**, CPO has identified high impact opportunity areas that fall within districts, gateways or nodes along the nine Corridors in the Corridor Construction Program, including William Cannon, North and South Lamar, East MLK, East Riverside, Guadalupe, Burnet, Slaughter Lane, and Airport Boulevard; **NOW, THEREFORE,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

The Council, by this official action, reaffirms its commitment to the voters regarding the conditions and guidance contained in the ordinance calling the November 2020 Bond election. Further, Council, by this official action, clarifies and declares its intent and commitment to the voters to create a contract with the voters that specifies that the proceeds from the bonds and notes shall be used for the projects and programs identified in the ordinance calling the November 2020 Bond election.

**BE IT FURTHER RESOLVED:**

Council, by this official action declares its intent to contract with the voters as to the following permissible purposes for which bond proceeds must be expended and the processes that must be followed in determining and prioritizing those expenditures.

**BE IT FURTHER RESOLVED:**

City Council desires to allocate the \$460 million for transportation improvements identified in the Austin Strategic Mobility Plan as follows:

- \$80 Million for Sidewalks, including construction and rehabilitation of high- and very-high priority sidewalk segments and elimination of ADA barriers and gaps in the sidewalk system.
- \$80 Million for Urban Trails, including construction of transportation-related Tier I urban trails and identification of alignments and development of designs for transportation-related Tier II urban trails.

- \$40 Million for transportation-related Bikeways, including implementation of the All Ages and Abilities Bicycle Network.
- \$65 Million for Safety/Vision Zero, including projects that reduce conflicts and improve safety for all users by systematically implementing both major reconstruction and rapid implementation of low-cost, high-impact engineering countermeasures, including speed management.
- \$20 Million for implementation of Safe Routes to Schools Infrastructure Plans.
- \$19 Million for Local Transit Enhancement Program as described in the Austin Strategic Mobility Plan, including projects not being delivered by Project Connect that improve the speed and reliability of public transportation service.
- \$1 Million for Neighborhood Partnering Program, including active transportation mobility projects that leverage community-led partnerships.
- \$53 Million for Improvements to Substandard Streets, prioritizing fully funding Johnny Morris Drive and at a minimum \$35 million toward the full construction of Ross Road per the April 19th, 2019 engineer study both the north and south portions of Ross Road, Cooper Lane, Circle S Road, and including the 2016 list of substandard streets reflected in the contract with the voters for the 2016 bond election, as well as the Preliminary Engineering Reports (PER) for Nuckols Crossing Road and Bradshaw Road.

- \$102 Million for Major Capital Improvements to be used for the Longhorn Dam Bridge, Congress Avenue Urban Design Initiative, Barton Springs Road Improvements, and South Pleasant Valley Corridor Improvements, as well as, in an amount not to exceed \$5 million, Corridor Program Projects not funded through the Corridor Construction Program (Council Resolution 20180426-028) to build pedestrian and associated infrastructure included in the corridor programs for the following roads: Slaughter Lane, North Lamar Boulevard, South Lamar Boulevard, Guadalupe Street, Martin Luther King Jr. Boulevard, Burnet Road, and Riverside Drive.

**BE IT FURTHER RESOLVED:**

Funding for Barton Springs Road Improvements shall only be used for improvements between Barton Boulevard and Lou Neff Road after completion of the preliminary engineering study for a Barton Springs Bridge, which shall include a community engagement process, and after presentation of improvement options, a public hearing, and approval of options by City Council. Any improvements shall be aligned with the Zilker Park Vision Plan once approved by Council.

**BE IT FURTHER RESOLVED:**

The funding shall be used in a manner that provides equitable access to transportation choices that connect people to opportunities, such as education, healthcare, healthy food

and grocery stores, open space, and jobs, especially in historically underserved and underrepresented communities.

**BE IT FURTHER RESOLVED:**

The City Manager is directed to develop recommendations for implementation of these proposals in manner that prioritizes investments in traditionally underserved communities, low-income communities, and other vulnerable communities; and anticipates unintended consequences that may disproportionately affect historically underserved and underrepresented populations and proactively mitigates these effects. Existing project prioritization criteria for all programs identified in this resolution should be reevaluated and, where necessary, modified to further prioritize equitable outcomes.

**BE IT FURTHER RESOLVED:**

Council contracts with the voters to adopt guidelines for the implementation of this bond program in a manner that maximizes opportunities for local hiring, apprenticeships, and other workforce development activities in traditionally underserved communities, low-income communities, and other vulnerable communities.

**BE IT FURTHER RESOLVED:**

Council contracts with the voters to adopt guidelines for implementation of the projects funded with these bond funds that maximizes opportunities to integrate green infrastructure, increase the urban tree canopy, complete open space connections, and enhance water quality.

**BE IT FURTHER RESOLVED:**

The City Manager is directed to analyze existing capital project delivery systems and processes in order to recommend potential changes and resource requirements to accelerate project delivery and maximize the number of projects to be included in the \$460 Million Bond Program to be completed within six years of Council approval of the first project funded with these bond funds.

**BE IT FURTHER RESOLVED:**

Council has taken formal action to approve the reimbursement of expenditures of funds to construct certain streets that are part of the Quarter Cent program with the expectation to issue certificates of obligation to finance the street improvements, and council contracts with the voters that proceeds of the bonds will not be used to fund those streets for which council has previously issued the reimbursement resolutions.

**BE IT FURTHER RESOLVED:**

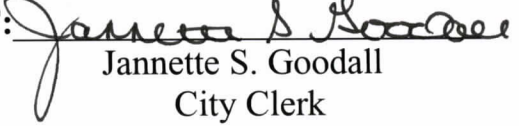
Council contracts with the voters that proceeds of the bonds will not be used to fund streets, sidewalks and related mobility infrastructure in connection with the redevelopment of properties at 7211 N. Interstate 35, Austin, Texas, and 7309 N. Interstate 35, Austin, Texas.

**BE IT FURTHER RESOLVED:**

The City may amend the funding levels and purposes established in this resolution, after a bond proposition passes, only to the extent that the amendments comply with the

law, comply with the ballot language passed by the voters, comply with the guidance in the preceding Be It Resolved Clauses in this resolution, and with an affirmative vote from the City Council.

ADOPTED: August 12, 2020

ATTEST:   
Jannette S. Goodall  
City Clerk





Landmarks Preservation Commission

CONSENT CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council  
 From: Landmarks Preservation Commission (LPC)  
 Submitted by: Charles Enchill, Chairperson, Landmarks Preservation Commission  
 Subject: Budget Referral: City-wide Historic Context Statement

RECOMMENDATION

Refer to the FY 2023 June budget process an amount between \$250,000 to \$275,000 from the General Fund for Berkeley's first City-wide Historic Context Statement.

BACKGROUND

At a regular meeting of the Landmarks Preservation Commission on March 3, 2022, the LPC took action to send to Council the attached Letter of Support (Vote: 7-0-0-2; Moved: Leuschner; Second: Schwartz; Yes: Adams, Crandall, Enchill, Finacom, Leuschner, Montgomery, Schwartz; No: none; Abstain: none; Absent: Johnson, Twu).

SUMMARY

The LPC recommends that City Council refer an amount between \$250,000-275,000 to the FY 2023 budget (in June 2022) for preparation of Berkeley's first City-wide Historic Context Statement (HCS). The HCS would respond to the increasing growth pressures facing the city and the resultant conflicts between growth and preservation of existing housing. It would create a centralized resource for developers and property owners in place of the piecemeal requirements which are costly to them and time-consuming for city staff. It would conform to the practice of the National Park Service and other California Certified Local Governments which have prepared such statements; and it could provide the framework for a City-wide historical survey in the future.

FISCAL IMPACTS OF RECOMMENDATION

This referral refers to the budget process the consideration of an amount between \$250,000-\$275,000 from the General Fund for a citywide Historic Context Statement.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Historic studies and surveys can help protect existing buildings which are associated with substantial embodied carbon.

ALTERNATIVE ACTIONS CONSIDERED

City Council may consider this item for a future budget cycle.

CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report.

CONTACT PERSON

Fatema Crane, Secretary, Landmarks Preservation Commission, 510-981-7413

Attachments:

1: Letter of Support – Landmarks Preservation Commission to City Council, dated March 3, 2022

Date: March 3, 2022

To: City Council

From: Landmarks Preservation Commission

Subject: Funding Request for Development of a City-wide Historic Context Statement

### Executive Summary

The Landmarks Preservation Commission is requesting that City Council refer \$250,000-275,000 to the FY 2023 budget (in June 2022) to fund a Historic Context Statement (HCS). We believe that this budget will realistically cover the cost of an HCS that addresses the chronological/neighborhood development of Berkeley, a selection of chapters on thematic/cultural histories in Berkeley, and an additional evaluative framework. It is difficult to estimate the costs of an HCS until the RFP period, and the costs of public hearings/input may inflate the budget, hence a range. The impacts of COVID-19 may also affect the HCS budget, which is another reason for this range.

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The City of Berkeley is facing enormous growth pressure which impacts its existing historical fabric. This growth comes from, but is not necessarily limited to: growth in enrollment of the UC campus; growth in the Bay Area job market for technical workers who desire to live in Berkeley; changes in State Law permitting greater density in a majority of neighborhoods; and lack of privately-owned undeveloped land. As a result, the City's jurisdictional bodies (Zoning Adjustments Board, Landmarks Preservation Commission, and City Council) face increasing conflicts between preservation of existing housing and construction of new housing. In addition, homeowners, housing developers and design professionals, must already work under the constraints of government regulation and financing implications, and even the uncertainty about historic preservation of individual properties.

Resolving these conflicts is extremely difficult. For a medium-sized city, the history of Berkeley is remarkably complex. A bayfront workers settlement, largely immigrant; farms and dairies; an academic community who commissioned a selection of impressive architects for their homes; development of blue-collar housing in the flats, including a significant population of African-Americans and Japanese immigrants; and development of the streetcar suburbs in the hills are just some of the large themes in Berkeley's history. Even a single block of the built environment is an expression of the people, movements,

and histories that have occupied it. A given block in Berkeley might contain a Bernard Maybeck, a nondescript building significant for Berkeley's pre-World War II Japanese American community, or a garage where revolutionaries planned a renowned protest. None of these sites, however, exist in a vacuum. They are the results of larger-scale forces, movements, ideas, and contexts. Berkeley's built environment — more than most — is the result of many pioneering ideas on living and architecture. The city's history is one of the most dimensional in California (if not the United States), and its built environment expresses that.

The history of Berkeley, its university, its residents, architects, politicians have been the subject of many studies and books, but never have they been centralized in any formal manner — or at least in a manner which seeks to make history central to city planning efforts. It is a standard preservation practice for cities as culturally and historically rich as Berkeley commission a citywide HCS, or ultimately, a Historic Resources Survey (HRS). Berkeley has only an outdated "windshield survey" from the 1970s and an HCS of Downtown Shattuck with a district survey from 2015. Because of this, historical information is fragmented, at times inaccessible, and difficult to reference.

A Historic Context Statement, the integral piece to a City-wide survey, would serve to not only resolve conflicts that are being accelerated from growth, but also centralize historical information, and further the policies within Berkeley's General Plan. An HCS would provide a more complete and robust picture of Berkeley's history and illuminate other areas to further document and survey. An HCS is a sizable document with many "chapters," but there are typically two sections. The first is a general historical overview of a city where each chapter addresses a chronological period of growth and development (e.g.: Founding of the College of California and Berkeley 1860-1870). (The Downtown Shattuck Avenue survey would essentially be under the umbrella of this section of a HCS.) The second part of an HCS, which is more flexible and subject to the ideas of the commission, explores significant themes. These chapters might address the history of ethnic community, a political movement, or other histories which aren't confined to a single period of growth.

A city-wide survey is a long-term goal for LPC, but staff's current workload only allows for an HCS. However, an HCS is the first step of a city-wide survey (a more quantitative, case-by-case evaluation of a City's built environment). Given more staff time, perhaps from a reduced workload because of the HCS, a city-wide survey could be commissioned in the future and the HCS could be its first piece. Regardless, the following are examples of Historic Context Statements completed by other cities:

- [Palm Springs: Historic Resources Inventory & Context Statement](#)
  - Note: the Historic Context Statement is the main piece of the city-wide survey. Palm Springs also has a good example of the general development/growth chapters, which are the first section as previously discussed.
- [San Francisco: Historic Context Statements](#)
  - San Francisco has completed numerous individual HCSs as well, but organizes them under categories: Cultural, Geographic, Thematic, and Architectural. They have very good examples of thematic chapters, the second section of a HCS as previously discussed.
- [San Diego: Historic Contexts and Surveys](#)
  - The City of San Diego does an excellent job organizing their HCSs with and without surveys (bottom of webpage).

In addition, we'd like to point out two documents which refine the scope of the HCS and a City-wide survey (a plausible future goal, but not a current goal):

- [The Los Angeles Historic Resource Survey Report: A Framework for a Citywide Historic Resource Survey](#) (see pages 19-30)
  - Perhaps the most complete and definitive guide to creating a city-wide survey in California, as well as the HCS.
- ["Writing Historic Context Statements" by the CA Office of Historic Preservation](#)

More than anything, however, the HCS creates a comprehensive understanding of a city's history and where it is expressed in the built environment. This serves a valuable function in the planning department, particularly for a city with such a stock of historic resources. In outlining these important sites, the HCS aids Planning in targeting development (or in other cases, aids developers in understanding properties are most likely to be historic resources). The different chapters of the HCS are easily paired with Specific and Neighborhood Plans, if not the General Plan.

Since the 1970s, the City has not invested money in primary historic resource research and documentation. Because of this, Berkeley has no centralized resource to reference, much of its preservation planning is reactive and discretionary. One example of this is the Historic Resource Evaluation (HRE), a requirement which is expensive for property-owners, time consuming for staff, and overwhelmingly does not result in identification of historic resources. When a structure >40 years old files a permit for "substantial" changes (which may include an ADU or a bedroom addition), an HRE is required to analyze whether the property could be a historic resource. HREs cost homeowners anywhere

between \$3,000 and \$10,000 which is yet another way project costs pile up, projects are prolonged for both staff and the property owner, and unpermitted work is galvanized.

The HCS could aim to reduce costs or the need of stand-alone studies. (The HRE would still be required for demolitions and projects which affect historic resources.) This would be accomplished by adding an "Evaluative Framework" to the HCS, an addendum which clarifies historic resource designation criteria, eligibility, and would further streamline staff time. The Evaluative Framework sets a guiding framework for staff and LPC decisions on historic resources in addition to saving countless homeowners thousands of dollars per project. Because an HCS is most effective as it stays updated or periodically captures additional themes, it provides guidance on properties *most likely* to be historic resources. The HCS, however, does not prohibit any property from being designated a Landmark/Structure of Merit based on new information that may have been unknown during the time of the HCS.

Berkeley is a city with an incredible history that is reflected in its built environment. A Historic Context Statement is a standardized preservation practice, not to mention an expected practice by the Certified Local Government program, of which Berkeley has been a member since 2000. As our city undergoes housing development, battles over preservation are only going to worsen. An HCS is integral to avoiding these conflicts, targeting sustainable development, and incentivizing preservation. It is a resource for historians and city planners alike, one that seeks to assemble the many histories which make Berkeley such a historic place.

To this effect, the Landmarks Preservation Commission is requesting that City Council refer \$250,000-275,000 to the FY 2023 budget (in June 2022) to fund a Historic Context Statement. We believe that this budget will realistically cover the cost of an HCS that addresses the chronological/neighborhood development of Berkeley, a selection of chapters on thematic/cultural histories in Berkeley, and an additional evaluative framework. It is difficult to estimate the costs of an HCS until the RFP period, and the costs of public hearings/input may inflate the budget, hence a range. The impacts of COVID-19 may also affect the HCS budget, which is another reason for this range.

Signed by Charles Enchill, LPC Chairperson

On behalf of the Landmarks Preservation Commission

Vote: 7-0-0-2

Yes: Adams, Crandall, Enchill, Finacom, Leuschner, Montgomery, Schwartz; No: none; Abstain: none;

Absent: Johnson, Twu.



Office of the Mayor

CONSENT CALENDAR  
May 10, 2022

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Ben Bartlett,  
Councilmember Sophie Hahn, Councilmember Kate Harrison

Subject: Support SB 1173 – Divestment from Fossil Fuels

RECOMMENDATION

Adopt a Resolution in support of SB 1173 (Gonzalez), which would require the California Public Employees Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS) to divest from fossil fuel companies. Send a copy of the Resolution to Governor Gavin Newsom, State Senators Nancy Skinner and Lena Gonzalez, and Assemblymember Buffy Wicks.

BACKGROUND

The impacts of human-caused climate change are becoming increasingly unavoidable. Without taking bold and immediate action to reduce our greenhouse gas emissions, the world will heat above 2C by 2100. Such an event would lead to vast ecological destruction and mass extinctions, in addition to increased drought and food crop failures that could destabilized human society, disproportionately impacting those living in poverty.

California has been a leader in addressing climate change. Under State law, California must procure 60% of all electricity from renewable resources by 2030, and be carbon-free by 2045. SB 32, approved in 2016, requires California's greenhouse gas emissions to be 40% below 1990 levels by 2030. State policies around climate change have been evolving based on the latest science, with an acceleration of these efforts necessary to address the projections in the latest report by the United Nations' Intergovernmental Panel on Climate Change (IPCC), which says that the only way to stay below 1.5C is to have carbon emissions peak in 2025, followed by a rapid decline and reaching net-zero by the middle of the century.

Locally, extensive work has been done to mitigate our impacts on the climate. There is a goal to reach net-zero carbon emissions by 2045 or earlier. Electrification policies and improvements to transportation infrastructure to encourage moving away from gasoline-powered vehicles have also been approved. Under the City of Berkeley's Investment Policy, there has been a divestment from publicly traded fossil fuel companies and banks that finance pipelines and fossil fuel infrastructure. The rationale for this is the cost of the impacts of climate change outweigh any return on investment from such companies.

SB 1173, introduced by State Senator Lena Gonzalez, will help meet the State’s climate action goals by prohibiting the California Public Employees Retirement System (CalPERS) and the California State Teachers’ Retirement System (CalSTRS) from investing in fossil fuel companies. Additionally, divestment from such companies must be done by 2027. Currently, CalPERS and CalSTRS have almost \$9 billion invested in fossil fuel companies. This bill builds upon the work we have done locally to divest from fossil fuels.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: Resolution
- 2: Text of SB 1173
- 3: SB 1173 Fact Sheet



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

IN SUPPORT OF SB 1173 – DIVESTMENT FROM FOSSIL FUELS

WHEREAS, California is susceptible to the consequences of climate change, with more drought, shrinking water supplies, rising sea levels, and larger and more frequent wildfires all likely to be experienced in the coming decades; and

WHEREAS, climate change is an issue of environmental justice, disproportionately impacting Indigenous communities, communities of color, and low-income communities due to historical oppression, inequity of power, and lack of access to resources for prevention and relief; and

WHEREAS, immediate action is need to keep the world from heating above 2C by 2100, which would result in to vast ecological destruction and mass extinctions, in addition to increased drought and food crop failures; and

WHEREAS, according to the latest report by the United Nations' Intergovernmental Panel on Climate Change (IPCC), the only way to stay below 1.5C is to have carbon emissions peak in 2025, followed by a rapid decline and reaching net-zero by the middle of the century; and

WHEREAS, California has several policies to address climate change, including reducing greenhouse gas emissions by 40% of 1990 levels by 2030 and becoming carbon free by 2045; and

WHEREAS, Berkeley has acted to mitigate our impacts on the climate, including a goal to reach net-zero carbon emissions by 2045 or earlier, and to encourage moving away from gasoline-powered vehicles, with transportation accounting for 60% of the city's greenhouse gas emissions; and

WHEREAS, under the City of Berkeley's Investment Policy, there has been a divestment from publicly traded fossil fuel companies and banks that finance pipelines and fossil fuel infrastructure; and

WHEREAS, currently, the California Public Employees Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS) have almost \$9 billion invested in fossil fuel companies; and

WHEREAS, a Corporate Knights study found if CalPERS and CalSTRS had divested in 2010 they would have gained \$11.9 and \$5.5 billion respectively by 2019; and

WHEREAS, SB 1173, introduced by State Senator Lena Gonzalez, will help meet the State's climate action goals by prohibiting CalPERS and CalSTRS from investing in fossil fuel companies and to divest from such companies by 2027.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports SB 1173.

BE IT FURTHER RESOLVED that copies of this Resolution be sent to Governor Gavin Newsom, State Senators Nancy Skinner and Lena Gonzalez, and Assemblymember Buffy Wicks.

AMENDED IN SENATE APRIL 6, 2022

**SENATE BILL**

**No. 1173**

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**Introduced by Senators Gonzalez and Wiener**

February 17, 2022

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An act to amend Section 16642 of, and to add Section 7513.76 to, the Government Code, relating to public retirement systems.

LEGISLATIVE COUNSEL'S DIGEST

SB 1173, as amended, Gonzalez. Public retirement systems: fossil fuels: divestment.

The California Constitution grants the retirement board of a public employee retirement system plenary authority and fiduciary responsibility for investment of moneys and administration of the retirement fund and system. These provisions qualify this grant of powers by reserving to the Legislature the authority to prohibit investments if it is in the public interest and the prohibition satisfies standards of fiduciary care and loyalty required of a retirement board.

Existing law prohibits the boards of the Public Employees' Retirement System and the State Teachers' Retirement System from making new investments or renewing existing investments of public employee retirement funds in a thermal coal company, as defined. Existing law requires the boards to liquidate investments in thermal coal companies on or before July 1, 2017, and requires the boards, in making a determination to liquidate investments, to constructively engage with thermal coal companies to establish whether the companies are transitioning their business models to adapt to clean energy generation. Existing law provides that it does not require a board to take any action unless the board determines in good faith that the action is consistent

SB 1173

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with the board’s fiduciary responsibilities established in the California Constitution.

This bill would prohibit the boards of the Public Employees’ Retirement System and the State Teachers’ Retirement System from making new investments or renewing existing investments of public employee retirement funds in a fossil fuel company, as defined. The bill would require the boards to liquidate investments in a fossil fuel company on or before July 1, 2027. *The bill would temporarily suspend the above-described liquidation provision upon a good faith determination by the board that certain conditions materially impact normal market mechanisms for pricing assets, as specified, and would make this suspension provision inoperative on January 1, 2035.* The bill would provide that it does not require a board to take any action unless the board determines in good faith that the action is consistent with the board’s fiduciary responsibilities established in the California Constitution.

This bill would require the boards, commencing February 1, 2024, and annually thereafter, to file a report with the Legislature and the Governor, containing specified information, including a list of fossil fuel companies of which the board has liquidated their investments. The bill would provide that board members and other officers and employees shall be held harmless and be eligible for indemnification in connection with actions taken pursuant to the bill’s requirements, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 7513.76 is added to the Government
- 2 Code, to read:
- 3 7513.76. (a) The Legislature finds and declares all of the
- 4 following:
- 5 (1) The combustion of coal, oil, and natural gas, known as fossil
- 6 fuels, is the single largest contributor to global climate change.
- 7 (2) Climate change affects all parts of the California economy
- 8 and environment, and the Legislature has adopted numerous laws
- 9 to mitigate greenhouse gas emissions and to adapt to a changing
- 10 climate.

1 (3) Fossil fuel companies' plans to expand production, public  
2 relations campaigns, and efforts to obstruct climate stabilization  
3 policies are incompatible with California's climate goals, and our  
4 obligation to current and future generations.

5 (4) The production of fossil fuels and the effects of climate  
6 change resulting from the use of fossil fuels all lead to  
7 disproportionate adverse impacts on low-income communities and  
8 communities of color.

9 (5) A transition away from fossil fuels to clean energy will  
10 create greater employment, support the economy, and improve  
11 public health.

12 (6) The purpose of this section is to require the Public  
13 Employees' Retirement System and the State Teachers' Retirement  
14 System, consistent with, and not in violation of, their fiduciary  
15 responsibilities, to divest their holdings of fossil fuel company  
16 investments as one part of the state's broader efforts to decarbonize  
17 the California economy and to transition to clean, pollution-free  
18 energy resources.

19 (b) As used in this section, the following definitions apply:

20 (1) "Board" means the Board of Administration of the Public  
21 Employees' Retirement System or the Teachers' Retirement Board  
22 of the State Teachers' Retirement System, as applicable.

23 (2) "Company" means a sole proprietorship, organization,  
24 association, corporation, partnership, venture, or other entity, or  
25 its subsidiary or affiliate, that exists for profitmaking purposes or  
26 to otherwise secure economic advantage.

27 (3) "Investment" means the purchase, ownership, or control of  
28 publicly issued stock, corporate bonds, or other debt instruments  
29 issued by a company. "Investments" also includes purchase,  
30 ownership, or control of mutual funds and exchange-traded funds,  
31 unless the board is satisfied on reasonable grounds that a mutual  
32 fund or exchange-traded fund is unlikely to have in excess of 2  
33 percent of its assets, averaged annually, directly or indirectly  
34 invested in fossil fuel companies.

35 (4) "Public employee retirement funds" means the Public  
36 Employees' Retirement Fund described in Section 20062 of this  
37 code, and the Teachers' Retirement Fund described in Section  
38 22167 of the Education Code.

39 (5) "Fossil fuel" means petroleum oil, natural gas, and thermal  
40 coal. Thermal coal is coal used to generate electricity, such as that

1 which is burned to create steam to run turbines. Thermal coal does  
2 not mean metallurgical coal or coking coal used to produce steel.

3 (6) “Fossil fuel company” means one of the 200 largest publicly  
4 traded fossil fuel companies, as established by carbon content in  
5 the companies’ proven oil, gas, and coal reserves.

6 (c) The board shall not make additional or new investments or  
7 renew existing investments of public employee retirement funds  
8 in a fossil fuel company.

9 (d) (1) The board shall liquidate investments in a fossil fuel  
10 company on or before July 1, 2027.

11 (2) *Notwithstanding paragraph (1), this subdivision shall be*  
12 *suspended upon a good faith determination by the board that an*  
13 *act of God, war, or other unforeseeable event creates conditions*  
14 *that materially impact normal market mechanisms for pricing*  
15 *assets and shall only be reinstated upon a subsequent good faith*  
16 *finding of the board that market conditions have substantially*  
17 *returned to normal ex-ante. Upon such a finding, the board shall*  
18 *have six months to liquidate any remaining investments in a fossil*  
19 *fuel company*

20 (3) *Paragraph (2) shall remain in effect only until January 1,*  
21 *2035, and as of that date is inoperative.*

22 (e) (1) Commencing February 1, 2024, and annually on  
23 February 1 thereafter, the board shall create a report that includes  
24 the following:

25 (A) A list of fossil fuel companies of which the board has  
26 liquidated its investments pursuant to subdivision (d).

27 (B) A list of fossil fuel companies with which the board still  
28 has not liquidated its investments.

29 (C) A list of fossil fuel companies of which the board has not  
30 liquidated its investments as a result of a determination made  
31 pursuant to subdivision (f) that a sale or transfer of investments is  
32 inconsistent with the fiduciary responsibilities of the board as  
33 described in Section 17 of Article XVI of the California  
34 Constitution and the board’s findings adopted in support of that  
35 determination.

36 (D) *An analysis of methods and opportunities to rapidly and*  
37 *effectively reduce dependence on fossil fuels and transition to*  
38 *alternative energy sources in a realistic timeframe that avoids*  
39 *negatively contributing to economic conditions particularly*

1 *damaging to public employee retirement funds and to overall net*  
2 *employment earnings of the state's workforce.*

3 (2) The board shall submit the report to the Legislature, in  
4 compliance with Section 9795, and to the Governor, and shall post  
5 the report on the board's internet website.

6 (f) Nothing in this section shall require a board to take action  
7 as described in this section unless the board determines in good  
8 faith that the action described in this section is consistent with the  
9 fiduciary responsibilities of the board described in Section 17 of  
10 Article XVI of the California Constitution.

11 SEC. 2. Section 16642 of the Government Code, as amended  
12 by Section 3 of Chapter 459 of the Statutes of 2019, is amended  
13 to read:

14 16642. (a) Present, future, and former board members of the  
15 Public Employees' Retirement System or the State Teachers'  
16 Retirement System, jointly and individually, state officers and  
17 employees, research firms described in subdivision (d) of Section  
18 7513.6, and investment managers under contract with the Public  
19 Employees' Retirement System or the State Teachers' Retirement  
20 System shall be indemnified from the General Fund and held  
21 harmless by the State of California from all claims, demands, suits,  
22 actions, damages, judgments, costs, charges, and expenses,  
23 including court costs and attorney's fees, and against all liability,  
24 losses, and damages of any nature whatsoever that these present,  
25 future, or former board members, officers, employees, research  
26 firms as described in subdivision (d) of Section 7513.6, or contract  
27 investment managers shall or may at any time sustain by reason  
28 of any decision to restrict, reduce, or eliminate investments  
29 pursuant to Sections 7513.6, 7513.7, 7513.74, 7513.75, and  
30 7513.76.

31 (b) This section shall remain in effect only until Section 7513.74  
32 is repealed, and as of that date is repealed.

33 SEC. 3. Section 16642 of the Government Code, as added by  
34 Section 4 of Chapter 459 of the Statutes of 2019, is amended to  
35 read:

36 16642. (a) Present, future, and former board members of the  
37 Public Employees' Retirement System or the State Teachers'  
38 Retirement System, jointly and individually, state officers and  
39 employees, research firms described in subdivision (d) of Section  
40 7513.6, and investment managers under contract with the Public

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1 Employees' Retirement System or the State Teachers' Retirement  
2 System shall be indemnified from the General Fund and held  
3 harmless by the State of California from all claims, demands, suits,  
4 actions, damages, judgments, costs, charges, and expenses,  
5 including court costs and attorney's fees, and against all liability,  
6 losses, and damages of any nature whatsoever that these present,  
7 future, or former board members, officers, employees, research  
8 firms as described in subdivision (d) of Section 7513.6, or contract  
9 investment managers shall or may at any time sustain by reason  
10 of any decision to restrict, reduce, or eliminate investments  
11 pursuant to Sections 7513.6, 7513.7, 7513.75, and 7513.76.

12 (b) This section shall become operative upon the repeal of  
13 Section 7513.74.

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## SB 1173 (Gonzalez) Fossil Fuel Divestment

### SUMMARY

Senate Bill (SB) 1173 will prohibit the California Public Employees Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS) from investing in fossil fuel companies, and require that they divest any current investments by 2027.

### BACKGROUND/PROBLEM

Californians, along with states and nations around the globe, are facing the real and immediate threats of climate change and its ever-growing impacts on our health, safety, environment, and our ability to pass on a livable planet to future generations.

California has been a world leader in taking steps to combat the causes of climate change, and have set historic carbon reduction goals and taken meaningful actions to help prevent environmental destruction and protect communities who bear the overwhelming brunt of carbon emissions.

Despite these forward-thinking actions, California's multi billion dollar retirement pension funds are actively investing billions of dollars in the very fossil fuel companies that are causing climate change.

CalPERS and CalSTRS, which invest the pension funds of state employees and teachers, have an investing power of \$469 billion and \$327 billion, respectively. A recent report estimates that out of these funds CalPERS invests \$5.5 billion in fossil fuel companies and CalSTRS invests \$3.4 billion.<sup>1</sup>

governmental regulation driving markets away from fossil fuels, it has become clear that the fossil fuel industry may be a risky and myopic financial investment. Major investment management firms, BlackRock and Meketa, have concluded that divestment from fossil fuels actually improves, not weakens, investment returns.<sup>2</sup> A further study has shown that if CalPERS and CalSTRS had divested from fossil fuels in 2010 they would have gained \$11.9 and \$5.5 billion in returns by 2019.<sup>3</sup>

Many of the beneficiaries and union members whose retirement futures are invested by CalPERS and CalSTRS have passed resolutions calling for the divestment of fossil fuels, including the United Teachers of Los Angeles, the California Federation of Teachers, and the California Faculty Association.

An estimated 1,500 institutions with over \$39 trillion in assets have already committed to divestment, including the University of California, the California State University, the State and City of New York, the State of Maine, the Vatican, and the province of

Quebec.

The Legislature already began the work of divesting from dangerous carbon emitting companies through the passage of SB 185 (De Leon, Chapter 605, Statutes of 2015), which required CalPERS and CalSTRS to liquidate their investments in thermal coal companies. Further, Governor Newsom also recently issued an Executive Order on Climate Change (EO N-19-19) which called on CalPERS and CalSTRS to "leverage the state's \$700 billion investment portfolio to advance California's climate leadership."

<sup>1</sup><https://climatesafepensions.org/wp-content/uploads/2021/12/CSPN-The-Quiet-Culprit.pdf>

carbon-free technologies, and consumer choice and

<sup>2</sup><https://ieefa.org/major-investment-advisors-blackrock-and-meketa-provide-a-fiduciary-path-through-the-energy-transition/>

<sup>3</sup><https://drive.google.com/file/d/1k27W2oTzaqueEZrvit4RLfve6pvakqMI/view>

**SOLUTION**

SB 1173 seizes the momentum of the worldwide divestment movement and continues the bold and progressive actions that California must take to address climate change. SB 1173 ends the contradictory and incongruous policies that position the state as a leader in the fight against climate, while simultaneously investing billions in the fossil fuel companies that are causing climate change.

Specifically, SB 1173 will prohibit CalPERS and CalSTRS from investing in the top 200 fossil fuel companies, and require that they divest any current investments in those fossil fuel companies by 2027. Additionally, SB 1173 will require CalPERS and CalSTRS to annually report, beginning in 2024 on their divestment progress

**SUPPORT**

California Faculty Association (Sponsor)  
Fossil Free California (Sponsor)

**CONTACT**

Trevor Taylor, Legislative Director  
(916) 651-4033  
Trevor.Taylor@sen.ca.gov





Office of the Mayor

CONSENT CALENDAR  
May 10, 2022

To: Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Ben Bartlett,  
Councilmember Sophie Hahn

Subject: Healthy Black Families: Relinquishment of Council Office Budget Funds to  
General Fund and Grant of Such Fund

RECOMMENDATION

Adopt a Resolution approving the expenditure of \$20,000 from the Mayor's Office Budget to Healthy Black Families (HBF) for the purposes of covering costs, from February – May 2022, associated with supporting the Ideation of financing for greater affordable housing at BART station developments. This time period coincides with the end (January 2022) and beginning (June 2022) of grants from the Partnership for the Bay's Future awarded to the City of Berkeley in partnership with HBF.

BACKGROUND

On November 30, 2021, City Council approved Resolution #70,117-N.S. for a grant from the San Francisco Foundation for Ideation Facilitation for funding affordable housing at the BART stations, North Berkeley and Ashby. The Mayor's Office, in partnership with Health Black Families (HBF), submitted the Breakthrough Grant application to Partnership for the Bay's Future and were successful in their efforts. The Breakthrough Grant will fund a fellow and also HBF for two (2) years in order to move forward the work of the Ideation Team. Funding for the Breakthrough Grant begins in June 2022.

HBF has been engaged as a participant in the Ideation Process and has also been engaging with the South Berkeley community in support of the Joint Vision Priorities document developed by the Community Advisory Group for the BART development projects, and also the local preference policy since February 1, 2022. This effort has required, and will continue to require, many hours of staff time without a source of payment.

Additionally, HBF has continued to move forward the work of the Local Preference Policy (also funded by a Breakthrough Grant for Protection and Preservation of Affordable Housing that began in February 2020 and ended January 2022) that was recommended in the Adeline Corridor Plan and is proposed to be incorporated into the Ashby BART project and EBB. A proposed Local Preference Policy was recommended by the HAC on April 7, 2022 and will be coming to the Council for future action. As the

policy will be coming to the Council, additional support is needed for community engagement on the draft proposal.

On March 16, 2022, HBF reached out to the Mayor's Office to inquire as to funding availability to support these efforts from February through May 2022. There is no other contract with HBF, incorporating a similar scope of work, that could be increased to reimburse HBF for the time that is being expended. The Mayor's Office budget has the resources to cover the HBF request due to the impact of COVID-19 on the timing of filling vacant staff positions.

FINANCIAL IMPLICATIONS

No General Fund impact; \$20,000 is available from Mayor Arreguín's Office Budget discretionary accounts.

ENVIRONMENTAL SUSTAINABILITY

There are no environmental impacts associated with the recommendations in this report.

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

1. Resolution

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

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Mayor Jesse Arreguin has surplus funds in his office expenditure account; and

WHEREAS, a California non-profit tax exempt corporation, Healthy Black Families seeks funds in the amount of \$20,000 to provide the following public services: to provide support and participation in the Equitable Black Berkeley Ideation Process from February – May 2022; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose: of paying personnel expenses associated with participation in ideating creative affordable housing financial support in a reparative framework for the BART development projects at North Berkeley and Ashby stations.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor from his Council Office Budget of \$20,000 shall be granted to Healthy Black Families to fund personnel expenses for their participation in Equitable Black Berkeley Ideation.





Office of the Mayor

CONSENT CALENDAR  
May 10, 2022

To: Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Sophie Hahn,  
Councilmember Kate Harrison, Councilmember Ben Bartlett

Subject: Budget Referral: Continuing Anti-Displacement Programs

RECOMMENDATION

Refer \$1,800,000 (\$900,000 annually) to the FY 2023-2024 Budget Process for continued funding of the following anti-displacement programs (launched in 2017) with the proposed funding source from General Fund tax revenues:

- 1) Housing Retention Program (administered by the Eviction Defense Center EDC): \$250,000 per fiscal year. This funding will supplement the current COVID-19 emergency rental assistance program to provide funding after the emergency expires
- 2) Legal Counseling, Services and Problem Solving for Extremely-Low, Very-Low, Low and Moderate Income Tenants (\$275,000 each to the East Bay Community Law Center and EDC): \$550,000 per fiscal year
- 3) Flexible Housing Subsidies for Homelessness Prevention: \$100,000 per fiscal year

BACKGROUND***Housing Retention Program/COVID Emergency Rental Assistance***

The Housing Retention Program is an essential tool in preventing tenant displacement and preserving Berkeley's racial, economic and cultural diversity. In 1993, the City of Berkeley began the Homeless Prevention Grants Program, which in 2008 became the Housing Retention Program (HRP).

The program was reconstituted and bolstered in 2017 with an increased allocation of \$250,000 annually which was continued in all budgets since FY 2019. The City Council's annual allocation of General Fund revenues was made possible due to the passage of Measure U1 in 2016 which increased the business license tax for large rental properties, generating between \$4-7 Million annually.

At the onset of the COVID-19 pandemic and resulting shelter in place order, the City Council launched the Berkeley Relief Fund and allocated \$3 Million to initially capitalize the fund, to be split three ways between rental assistance, grants for arts non-profits and grants to small businesses. Tenant rent assistance was funded \$1,000,000 to expand the Housing Retention Program during this emergency with an additional

\$900,000 added as private donations came in through the East Bay Community Foundation. Approved households were eligible to receive up to \$5,000 as a one-time grant, and an additional one-time grant of up to \$10,000 during the specified COVID-19 emergency. Additional funding was provided through a CBDG CARES grant from the Federal Government. A separate budget referral to continue funding of the COVID Emergency Rental Assistance Program with funds available through the American Rescue Plan Act (ARPA) was approved at the April 26, 2022 City Council meeting.

Funding for this program is needed as many low-income households remain in massive debt that has accrued over the course of the pandemic. Under Berkeley's eviction moratorium, people cannot be evicted for lack of payment of rent during the local state of emergency, but property owners can seek back payment of rent through the courts. Additionally, increased inflation and cost of living, which disproportionately impacts low-income households, could put some people in a position of falling behind on rent in the coming months.

The purpose of this additional \$250,000 annual allocation for rental assistance is to supplement the Housing Retention Program to support more eligible households who have outstanding rent debt due to the pandemic and to continue the Housing Retention Program after the expiration of the local state of emergency.

***Legal Counseling, Services and Problem Solving for Extremely-Low, Very-Low, Low and Moderate Income Tenants***

The unprecedented rental housing crisis has resulted in increased displacement and eviction of low-income residents in Berkeley. One of the priorities of the City Council is to provide services to low-income households to prevent displacement.

At the June 25, 2019 City Council Meeting, the FY 2020-21 Biennial Budget was approved, allocating \$900,000 each year for anti-displacement programs. Of this, \$550,000 was earmarked for eviction defense and housing counseling each year. Due to the adoption of Measure U1 at the 2016 election, and new additional General Fund revenues, the Council initially authorized an annual funding of \$300,000 for this purpose for both FY 2018 and 2019 at its July 25, 2017 meeting. Measure U1 also required the Housing Advisory Commission to advise the City Council on programs to prevent homelessness and expand affordable housing. As part of its charge, the HAC recommended that the Council allocate a portion of General Fund revenues derived from the Measure U1 tax for anti-displacement programs. To more expediently implement Council's action, these funds were transferred to the Rent Board whose staff administered, monitored, and reported to Council regarding the program funding during those years. This action also took place during FY 22.

When this item was initially considered in 2017, Council expressed interest in expanding the scope of services provided by Eviction Defense Center (EDC) and East Bay Community Law Center (EBCLC) to provide counseling and advocacy to tenants seeking to avoid displacement by exercise of rights afforded by other local laws. The funding provided by the Rent Board is not adequate to achieve the Council's objective



of fully preventing displacement during the current housing emergency, when low and middle-income tenants are particularly vulnerable to displacement if not provided with sufficient and competent legal defense. There is also a need for additional funding to provide counseling and representation to tenants relating to city ordinances such as the Tenant Protection Ordinance and Tenant Buyout Ordinance. Both EDC and EBCLC have once again requested \$275,000 to cover this expanded scope of work to serve the broadest number of Berkeley tenants.

***Flexible Housing Subsidy Pool***

In June 2017, the City Council established the Flexible Housing Subsidy Pool as a new anti-displacement tool. These funds can be used for a variety of purposes, including emergency rental subsidies for people who have been evicted or are experiencing homelessness. Since the fund was established it has helped tenants with emergency funding of up to \$1,500 per incident and \$5,000 maximum per household in grants.

FINANCIAL IMPLICATIONS

Total allocation of \$1,800,000 (\$900,000 annually) from General Fund revenues. Since 2017, the City has funded these three programs out of Measure U1 tax receipts, and it is recommended that the Council continue this funding for the next two fiscal years.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100





Office of the Mayor

CONSENT CALENDAR

May 10, 2022

To: Members of the City Council

From: Mayor Jesse Arreguín

Subject: Berkeley Housing Authority Loan Forgiveness

RECOMMENDATION

Adopt a Resolution forgiving a \$300,000 Housing Trust Loan to the Berkeley Housing Authority. Forgiving this outstanding loan will enable BHA to provide additional housing to families in Berkeley.

BACKGROUND

In April 2012 the Berkeley City Council adopted Resolution 65,672-N.S. approving fund reservation of General Funds from the Housing Trust Fund (HTF) to Berkeley Housing Authority in an amount not to exceed \$300,000 to pay for predevelopment costs associated with the disposition and rehabilitation of 75 units of rental housing owned by BHA.

On February 13, 2013, BHA entered into a Public Housing Disposition Predevelopment Loan with the City of Berkeley for \$300,000 at an annual interest rate of 3%, payable in five years. BHA used the loan proceeds to pay for relocation expenses of former low-income housing tenants and for fees associated with the disposition of the 75 low income housing units. The Berkeley City Council approved Resolution 66,076-N.S. on April 2, 2013, changing annual interest rate to 0% and extending the term for another five years. The loan will become due and payable in 2023.

BHA has requested that the City of Berkeley forgo repayment of the \$300,000 loan balance to cover short-falls in the Housing Choice Voucher Program that would have been covered through the Housing Assistance Payment (HAP) funding or disposition proceeds. Forgiveness of the loan will allow BHA to serve/assist up to fifteen low income families in Berkeley for one year, providing more affordable housing units in Berkeley.

FINANCIAL IMPLICATIONS

\$300,000 from the Housing Trust Fund

ENVIRONMENTAL SUSTAINABILITY

There are no environmental impacts associated with the recommendations in this report.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

RESOLUTION NO. \_\_\_\_\_

**FORGIVENESS OF THE CITY OF BERKELEY HOUSING TRUST FUND LOAN IN THE AMOUNT OF \$300,000 TO THE BERKELEY HOUSING AUTHORITY**

WHEREAS, in December 2009, the Berkeley Housing Authority (BHA) submitted an application to the federal Department of Housing and Urban Development (HUD) to transfer its public housing units to another entity to rehabilitate and manage the units more effectively; and

WHEREAS, in February 2010, HUD approved BHA's disposition application and selected Related Companies of California as the entity to serve as the developer, manager, and long-term owner of BHA's 75 rental housing units; and

WHEREAS, in April 2012 the Berkeley City Council adopted Resolution 65,672-N.S. approving fund reservation of General Funds from the Housing Trust Fund (HTF) to BHA in the amount not to exceed \$300,000 to pay for predevelopment costs associated with the disposition and rehabilitation of 75 units of rental housing owned by BHA; and

WHEREAS, on February 13, 2013 the Berkeley Housing Authority entered into a Public Housing Disposition Predevelopment Loan with the City of Berkeley for \$300,000 at an annual interest rate of 3%, payable in five years; and

WHEREAS, on April 2, 2013 the City of Berkeley Council approved Resolution 66,076-N.S. changing the annual interest rate of the loan to 0% and extending the term for another five years; and

WHEREAS, the Berkeley Housing Authority used the loan proceeds to pay for relocation expenses of former low-income housing tenants and fees associated with the disposition of the 75 low income housing units; and

WHEREAS, the loan is scheduled to mature on February 7, 2023; and

WHEREAS, BHA has requested that the City of Berkeley forgo repayment of the \$300,000 loan proceeds in order to cover administrative costs in the Housing Choice Voucher Program rather than using the Housing Assistance Payment (HAP) funding or disposition proceeds; and

WHEREAS, forgiveness of the loan would allow BHA to serve/assist up to fifteen low income families in Berkeley for one year and create more affordable housing units in Berkeley.

NOW THEREFORE BE IT RESOLVED that the Berkeley City Council forgives repayment of the \$300,000 loan made to the Berkeley Housing Authority (BHA) in February 2013.



CONSENT CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett (Author)

Subject: Addition of Semi-diverter Traffic Bollards at the intersection of Newbury Street and Ashby Avenue.

### RECOMMENDATION

Refer to the Fiscal Year 2022/2023 Budget Process, an allocation of \$50,000 to install semi-diverter traffic bollards at the east corner of the intersection at Newbury Street and Ashby Avenue.

### CURRENT SITUATION

Recently, Newbury Street has been plagued with dangerous driving behaviors that threaten pedestrians, cyclists, property, and other vehicles. The observed behaviors include speeding, substance-impaired awareness, not stopping at stop signs, and not yielding to pedestrians and bicyclists.

Within the past few years, dangerous driving behaviors along Newbury Street have resulted in numerous episodes of near-miss accidents for pedestrians and bicyclists, collision damage to parked vehicles, and residential property damage collisions from vehicles speeding into Newbury Street to escape police pursuits along Ashby Avenue. Of the greatest safety concern is that, within the past year, the intersection of Newbury Street and Ashby Avenue (Highway SR-13) has been the site of one fatal vehicle accident and two near-fatal vehicle accidents.

### BACKGROUND

Newbury Street is one block long, narrow, and extends from Russell Street to Ashby Avenue. The community it serves is residential, and it has an increasing number of families with infants and young children. Decades ago, the street was bordered by a coal yard at one end and a lightly used thoroughfare at the other end. Outside of use by residents, there was very little vehicle traffic. Over the recent decades, the coal yard, at one end of the street, was replaced by the Berkeley Bowl Market. At the other end of the street, the lightly used thoroughfare became Highway SR-13. In addition, the Ashby Bart Station (with its cross-bay commuters) was built only a block away. Individually, each of these changes had impacts on the vehicle traffic along Newbury Street. Combined, these changes have significantly contributed to Newbury Street being increasingly dangerous for both residents and non-residents. Now, with planned major housing projects in the immediate area, there may be further increases in vehicle traffic along Newbury Street and, with it, additional vehicle hazards.

The City must support infrastructure that promotes pedestrian and bicyclist safety and reduces traffic collisions in order to avoid further tragedies. Further work needs to be done in order to deter traffic violations and ensure pedestrian and bike safety. The

residents of the neighborhood that is plagued by dangerous and illegal driving want to see clear safe passage for pedestrians and bicyclists, as well as a reduction of vehicle collisions and property damage.

#### RATIONALE FOR RECOMMENDATION

In Berkeley, street safety is a priority. Based on consultations with constituents and reported vehicle incidents, action must be taken to substantially decrease traffic violations and prevent the potential for serious injury on this street. The urgency for this action is particularly high given the number of young children who live at or near this street as well as patrons of the Berkeley Bowl Market, BART commuters, and the increasing number of cyclists.

Based on consultation with community residents, there is a consensus of opinion that vehicle traffic along Newbury Street has become increasingly dangerous for pedestrians, cyclists, parked cars, and property. There is overwhelming support for measures that reduce the traffic dangers along Newbury Street, especially at the intersection of Newbury Street and Ashby Avenue (Highway SR-13).

At the intersection of Newbury Street, vehicles traveling along Ashby Avenue (Highway SR-13) are not controlled by traffic lights or stop signs. Vehicles that are speeding along Ashby Avenue tend to maintain an excess speed as they turn to enter Newbury Street. In addition, vehicles illegally parked in yellow zones at the east corner of the intersection create blind spots for west-bound vehicles that are speeding onto Newbury Street. These unsafe conditions significantly contribute to vehicle dangers on Newbury Street.

#### VEHICLE TRAFFIC BOLLARD DIVERTERS

Traffic bollard diverters are a recognized method for reducing vehicle traffic dangers in Berkeley. According to a 2015 study, *“Traffic diversion has been quite effective in many of the neighborhoods where the bollards have been installed. The Claremont neighborhood is a prime example of this success. Traffic that used to spill into the neighborhood during peak commuter hours is now unable to penetrate the interior. Children can safely walk from their homes to Monkey Island Park without encountering commuters slicing frantically through the back streets to get from Claremont Blvd. to Derby St. At the same time, cyclists and pedestrians are able to pass through the barriers and therefore have unrestricted access to any part of the neighborhood.”*

Berkeley is currently served by two types of traffic bollard diverter systems; Full-diverter bollards and Semi-diverter bollards. A full diverter bollard completely blocks access to, and exit from, one end of the street. The blocked end of the street creates a cul-de-sac. Although this method is effective at reducing vehicle traffic, it may contribute to other street problems such as impaired access for emergency and delivery vehicles, vehicle and property damage from drivers making a u-turn at the blocked end of the street, and illegal dumping of trash at the “dead end” cul-de-sac. This is especially true for full-diverter bollards that are installed on narrow streets.

Semi-diverter traffic bollards block only half of one end of the street. The bollard prevents entrance to the street on one side, while it maintains exit from the street on the other side. This allows for a smooth flow of traffic along the street. It avoids the potential bollard problems of impaired emergency and delivery vehicle access as well as the need for vehicle u-turns to exit the street. In addition, it reduces the motivation for illegal dumping.

Installation of a semi-diverter bollard system at the east corner of the Newbury Street and Ashby Avenue (Highway SR-13) intersection would significantly reduce the traffic vehicle dangers along Newbury Street. The bollard system would prevent access to Newbury Street from vehicles traveling along Ashby Avenue (Highway SR-13). This safety measure is especially important for west-bound vehicles that are speeding along Ashby Avenue and are partially blinded by illegally parked vehicles on the east corner of the intersection prior to turning into Newbury Street.

Vehicles can enter Newbury Street from Russell Street. Vehicles traveling along Ashby Avenue can turn onto Adeline Street and travel one block to Russell Street. Exit from Newbury Street can be by Russell Street, as well as by the non-barricaded section of Newbury Street at the Ashby Avenue intersection. Doing this would contain the traffic flow, make it easier for pedestrians, cyclists, and property along Newbury Street, and decrease the number of traffic violations. Although this item is not a silver bullet in addressing all of the problems, it is a needed step in order to bring much-needed safety to the area.

#### TRAFFIC BOLLARD DIVERTERS ALONG ASHBY AVENUE

Traffic bollard diverters are especially recognized as a preventive measure for vehicle traffic along Ashby Avenue (Highway SR-13). From Telegraph Avenue to Shattuck Avenue, all streets along the Ashby Avenue corridor are currently protected by bollard traffic diverters. Newbury Street is the only street between the major thoroughfares of Telegraph Avenue and Adeline Street that is not protected by a bollard traffic diverter system (see photos).

Both types of traffic bollard diverter systems are located along Ashby Avenue; Full-diverter bollards and Semi-diverter bollards. Newbury Street would best be served with a semi-diverter traffic bollard system.

#### ENVIRONMENTAL SUSTAINABILITY

No adverse effects on the environment are anticipated. A semi-diverter bollard conversion will help mitigate traffic, promote pedestrian safety, and create a safer intersection for families, pedestrians, and bicyclists. Drivers heading along Ashby Avenue can easily access Newbury Street by utilizing Russell Street, one block away.

#### FISCAL IMPACTS

Staff time and additional costs are to be determined by the Public Works Department.

#### CONTACT PERSON

|                            |              |
|----------------------------|--------------|
| Councilmember Ben Bartlett | 510-981-7130 |
| James Chang                | 510-981-7131 |
| Hillary Phan               | 510-981-7131 |





Kate Harrison  
Vice Mayor, District 4

CONSENT CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council Councilmember  
From: Vice Mayor Harrison, Councilmember Bartlett  
Subject: Dwight Way Traffic Calming Budget Referral

RECOMMENDATION

Refer a one-time allocation of \$50,000 to the June budget process for traffic calming intersection improvements on Dwight Way between Grant Street and California Street.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

With the City Council's adoption of Vision Zero goals in March 2018, Berkeley embarked on a mission to eliminate all traffic deaths and severe injuries by the year 2028.<sup>1</sup> Along with the Pedestrian Plan and the Bicycle Plan, the Vision Zero Action Plan outlines a broad path to accomplish this ambitious goal as well as specific infrastructural recommendations to make Berkeley's streets safer for all who use them. Despite the ambitious goals set by Vision Zero and the recent progress of improvements to infrastructure, motorists continue to strike pedestrians and cyclists at an alarming rate.

BACKGROUND

Berkeley Residents have identified the section of Dwight Way between Grant Street and California Street as an area of particular concern where drivers have routinely failed to adhere to posted speed limits creating an unsafe environment for pedestrians. Improvements at Dwight and California – including pedestrian bulb-outs, relocated crosswalks and a center median that serves to slow traffic and provide a safe stopping point for bicyclists and pedestrians have already made that intersection safer. However, there are 9 blocks on Dwight between Sacramento and Martin Luther King Boulevard and only California has enjoyed these improvements. Between 2016 and 2021 there were 13 motor vehicle collisions on Dwight between Grant and California, of which 8 occurred at the intersection between Dwight Way and Grant Street. Residents of the neighborhood have gathered signatures for a Neighborhood Request

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<sup>1</sup> [https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Transportation/Berkeley\\_Vision\\_Zero\\_Action\\_Plan\\_Approved\\_03102020.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley_Vision_Zero_Action_Plan_Approved_03102020.pdf)

for Traffic Calming Study which was submitted to the City of Berkeley's Public Works Department in December 2021.

FINANCIAL IMPLICATIONS

\$50,000 for design and materials for treatments such as bulb-outs, center medians, rectangular flashing beacons or other intersection improvement treatments recommended by the City of Berkeley Public Works Department.

ENVIRONMENTAL SUSTAINABILITY

By making intersections safer for bicyclists and pedestrians, we incentivize use of carbon-neutral modes of transportation. The City estimates that transportation-related emissions accounts for approximately 60% of our community's total annual greenhouse gas emissions.<sup>2</sup> By encouraging alternatives to car transportation by making pedestrian and cyclist infrastructure safer and more accessible, these improvements stand to lower the emissions from our community's dominant source of carbon emissions.

CONTACT PERSON

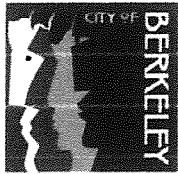
Vice Mayor Kate Harrison, Council District 4, 510-981-7140

ATTACHMENTS:

- 1: Neighborhood Request for Traffic Calming Study
2. Collision Statistics for Dwight Way

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<sup>2</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/12\\_Dec/Documents/2018-12-06\\_WS\\_Item\\_01\\_Climate\\_Action\\_Plan\\_Update\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/12_Dec/Documents/2018-12-06_WS_Item_01_Climate_Action_Plan_Update_pdf.aspx)

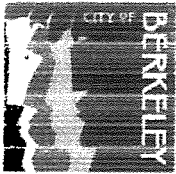


We, the residents of Dwight Way between <sup>Grant</sup> Sacramento and <sup>California</sup> MCK, Jr. Hwy, hereby request that our location be included in the City of Berkeley Traffic Calming Process in accordance with City Council Resolution No. 64,732-N.S. We have read a copy of the original Neighborhood Request for Traffic Calming Study circulated with this petition and agree with the contents.

| Name                 | Signature   | Address         | Telephone    |
|----------------------|-------------|-----------------|--------------|
| Jenn Guitart         | [Signature] | 1536 Dwight Way | 510-759-5090 |
| Kevin Boyd           | [Signature] | .. ..           | 510-350-6802 |
| Catherine Pearson    | [Signature] | 1716 Dwight Way | 631-379-3718 |
| <del>Mary Anne</del> |             |                 |              |
| Mary Anne            | [Signature] | 1726 Dwight Way | 510 486 8139 |
| JUSTIN FAHEY         | [Signature] | 1732 DWIGHT WAY | 415 608-8477 |
| Harry Oestreicher    | [Signature] | 2500 Grant St   | 415.407.6161 |
| Katherine McKenzie   | [Signature] | 1814 Dwight Way | 510 486-8039 |
| David Gliman         | [Signature] | 1850 Dwight     | 610 550 1533 |
| Alfred Williams      | [Signature] | 2448 Grant St   | 510 847-2016 |
| R. Del Bourgo        | [Signature] | 1729 Dwight     |              |
| Jacqueline Magallon  | [Signature] | 1721 Dwight way | no phone     |
| Shani Leonard        | [Signature] | 1703 Dwight Way | 510-439-6152 |
| Feather Foxworthy    | [Signature] | 1701 Dwight Way | 415-310-0081 |
| Gwendelyn Enderoglu  | [Signature] | 1718 Dwight Way | 215-896-6615 |
| NADEEM HAIDARY       | [Signature] | 1733 DWIGHT WAY | 203-512-7343 |
| JOSEF ABGTA          | [Signature] | 1643 Dwight Way | 415-283-8749 |
| EVAN LUKE            | [Signature] | 1635 Dwight Way | 510 3326776  |
| Bruce R              | [Signature] | 1637 Dwight Way | 510 847-0370 |
| Milo Beckett         | [Signature] | 1633 Dwight Way | 510.417-9454 |

Please submit completed forms to:

Jesse Peoples  
 City of Berkeley  
 Public Works Transportation Division  
 1947 Center Street, 4<sup>th</sup> Floor  
 Berkeley, CA 94704  
[ipeoples@cityofberkeley.info](mailto:ipeoples@cityofberkeley.info)

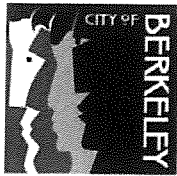


We, the residents of Dwight Way Between ~~San Francisco~~ <sup>Grant</sup> and ~~Market St~~ <sup>California</sup>, hereby request that our location be included in the City of Berkeley Traffic Calming Process in accordance with City Council Resolution No. 64,732-N.S. We have read a copy of the original Neighborhood Request for Traffic Calming Study circulated with this petition and agree with the contents.

| Name              | Signature          | Address                          | Telephone      |
|-------------------|--------------------|----------------------------------|----------------|
| THORSTEN Caus     | <i>[Signature]</i> | 1639 DWIGHT                      | 650-430-1088   |
| Ed Allen          | <i>[Signature]</i> | 1629 Dwight                      | 510-589-5544   |
| Sandra Chang      | <i>[Signature]</i> | 1619 Dwight                      | 281-857-3113   |
| JOANN BUNTING     | <i>[Signature]</i> | 1601 Dwight Way                  | 510-661-4862   |
| Stuart Gabriel    | <i>[Signature]</i> | 1595 Dwight Way                  | 510-761-2009   |
| Christian Hutchin | <i>[Signature]</i> | 1692 Dwight Way                  | 510-333-5206   |
| Paul Gojji        | <i>[Signature]</i> | 1709 Dwight Way Apt C            | 415-717-1968   |
| Paisa Joraj       | <i>[Signature]</i> | 1709 Dwight Way Apt A            | 947 415 9627   |
| Alexia Perez      | <i>[Signature]</i> | 1713 Dwight Way <sup>APT A</sup> | (831)444-1362  |
| Jackson Gillespie | <i>[Signature]</i> | 1713 Dwight Way (C)              | (209)986-3844  |
| REBECCA NASSAR    | <i>[Signature]</i> | 1713 DWIGHT WAY (D)              | 530 354 7910   |
| Andrea Pytkonen   | <i>[Signature]</i> | 1721-A DWIGHT                    | 510 685-6819   |
| Walker Spence     | <i>[Signature]</i> | 2444 Roosevelt Ave               | 831-252-1196   |
| Catsked Krause    | <i>[Signature]</i> | 2442 Roosevelt                   | 925. 915.3018  |
| Samantha Lukas    | <i>[Signature]</i> | 1730 Dwight Way                  | 415-350-3141   |
| Jane Maxwell      | <i>[Signature]</i> | 1803 Dwight Way                  | 510-548-2286   |
| ALEXSANDRA POLOVE | <i>[Signature]</i> | 1708 Dwight Way <sup>APT 2</sup> | 916-747-2335   |
| Cindy Ngu         | <i>[Signature]</i> | 1708 Dwight Way <sup>APT 1</sup> | (408) 870-0227 |
| Randall Baxter    | <i>[Signature]</i> | 1715 Dwight Way                  | 510 289 5144   |

Please submit completed forms to:

Jesse Peoples  
 City of Berkeley  
 Public Works Transportation Division  
 1047 Center Street 4th Floor  
 Berkeley, CA 94704  
 jpeoples@cityofberkeley.info

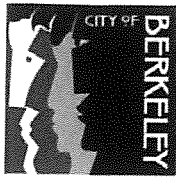


We, the residents of Dwight Way between Grant and Cal. Pomic, hereby request that our location be included in the City of Berkeley Traffic Calming Process in accordance with City Council Resolution No. 64,732-N.S. We have read a copy of the original Neighborhood Request for Traffic Calming Study circulated with this petition and agree with the contents.

| Name              | Signature | Address            | Telephone               |
|-------------------|-----------|--------------------|-------------------------|
| TARA KEMP         |           | 1670 DWIGHT        | 818/448-6105            |
| Bethany Henderson |           | 1600 Dwight        | 608-345-7708            |
| PHIL D MONROE     |           | 1700 DWIGHT        | 510-684-4884            |
| Mariana Valdez    |           | 2504 McGee Ave     | 760 693 2190            |
| Mohammad Rashid   |           | 1662 dwight way c  | 559-399-6213            |
| Alan Franco       |           | 1654 Dwight Way E  | 510-484-1675            |
| Thao Nguyen       |           | 1654 Dwight Way #G | 2093957233              |
| Malik Powell      |           | 1654 Dwight Way #H | <del>510-501-2572</del> |
| Maria Ruiz        |           | 1626 Dwight Way G  | 510-501-2572            |
| Mohammed Tufair   |           | 1626 Dwight way A  | 925-967-7231            |
| * Yvonne Schwartz |           | 1626 Dwight Way B  | 510-848-0441            |
| Ricardo Gonzalez  |           | 1626 Dwight way K  | 925 749-0876            |
| Abe Karplus       |           | 1626 Dwight way I  | 831-719-9358            |
| Soumya Gosukonda  |           | 1654 Dwight Way F  | 415-685-3810            |
| James Thomas      |           | 1620 Dwight way    | 612-814-0566            |
| 50445 Glenn Ippin |           | 1612 Dwight        | 510 643 8673            |
| Yoral Sheshori    |           | 1713 Dwight TF     | 415 741 7107            |
| Wendolyn Ojeda    |           | 1713 DWIGHT APTG4  | 424-293-9265            |
| La Donna Byers    |           | 1712 Dwight Way #3 | 510-981-1802            |

Please submit completed forms to:

Jesse Peoples  
 City of Berkeley  
 Public Works Transportation Division  
 1947 Center Street, 4<sup>th</sup> Floor  
 Berkeley, CA 94704  
[jpeoples@cityofberkeley.info](mailto:jpeoples@cityofberkeley.info)



We, the residents of Dwight Way between Grant and California, hereby request that our location be included in the City of Berkeley Traffic Calming Process in accordance with City Council Resolution No. 64,732-N.S. We have read a copy of the original Neighborhood Request for Traffic Calming Study circulated with this petition and agree with the contents.

| Name              | Signature | Address            | Telephone      |
|-------------------|-----------|--------------------|----------------|
| Edward Worley     |           | 2712 Dwight Way    | 341 233 8220   |
| Kristin Richerson |           | 2507 McGee Ave     | 510 684 0112   |
| Emiliana Kell     |           | 1682 DWIGHT WAY    | 510 841-2955   |
| Joseph Levinson   |           | 2512 McGee Ave     | 510 676-1137   |
| Davin Chang       |           | 1708 Dwight way    | (510) 386-6093 |
| Chris Goodman     |           | 1708 Dwight way #6 | (510) 678-1880 |
| Martin Jimenez    |           | 2400-JEFFERSON     | (510) 435-9494 |
| Steve Edlen       |           | 2442 McGee Ave     | 510-848-5990   |
| Helen Holt        |           | 1649 Dwight Way    | 510 841-1565   |
| Kassandra Myhre   |           | 1662 Dwight Way    | 510-908-1363   |
| Ornit Oppenheimer |           | 1678 Dwight Way    | (510) 207 6608 |
| Christian Marek   |           | 1546 Dwight Way    | (510) 841-2115 |
| Francesco Reyes   |           | 1706 Dwight Way    | 510 3060630    |
| Yungher Bai       |           | 2509 Dwight        | 415 2949341    |
| Richard Rothbard  |           | 2506 MCGEE         | 510-694 9179   |
| Mustafa Usibay    |           | 1645 Dwight Way    | 510 8836364    |
| Loc Huynh         |           | 1739 Dwight Way    | 510 2077162    |
|                   |           |                    |                |
|                   |           |                    |                |

Please submit completed forms to:

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 City of Berkeley  
 Public Works Transportation Division  
 1947 Center Street, 4<sup>th</sup> Floor  
 Berkeley, CA 94704  
[jpeoples@cityofberkeley.info](mailto:jpeoples@cityofberkeley.info)

## City of Berkeley

Traffic Collision History Report  
Midblock Collisions

3/17/2022

Page 1

Arterial: DWIGHT WAY  
Limit 1: CALIFORNIA ST  
Limit 2: GRANT ST

Total Number of Collisions: 13

Date Range Reported: 7/1/2016 - 6/30/2021

| Report No. | Date Time         | Dist/Dir       | Location                 | Type of Collision | Motor Veh. Involved With       | DOT1  | MPC 1               | DOT2       | MPC 2               | PCF                       | # Inj | # KId |
|------------|-------------------|----------------|--------------------------|-------------------|--------------------------------|-------|---------------------|------------|---------------------|---------------------------|-------|-------|
| 8293014    | 11/18/16<br>16:41 | 0'<br>In Int.  | Dwight Way/Mcgee Ave     | Broadside         | Other Motor Vehicle            | East  | Making Left Turn    | West       | Proceeding Straight | Auto R/W Violation        | 1     | 0     |
| 8398225    | 4/21/17<br>8:02   | 0'<br>In Int.  | Dwight Way/California St | Broadside         | Bicycle                        | North | Proceeding Straight | East       | Proceeding Straight | Traffic Signals and Signs | 1     | 0     |
| 8446878    | 5/17/17<br>13:00  | 60'<br>West of | Dwight Way/Grant St      | Sideswipe         | Parked Motor Vehicle           | East  | Proceeding Straight | East       | Parked              | Improper Turning          | 0     | 0     |
| 8501081    | 9/26/17<br>7:42   | 0'<br>In Int.  | Dwight Way/California St | Broadside         | Bicycle                        | North | Proceeding Straight | West       | Proceeding Straight | Auto R/W Violation        | 1     | 0     |
| 8543119    | 11/6/17<br>15:48  | 0'<br>In Int.  | Dwight Way/Grant St      | Broadside         | Bicycle                        | East  | Proceeding Straight | East       | Proceeding Straight | Traffic Signals and Signs | 1     | 0     |
| 8543059    | 11/27/17<br>17:45 | 3'<br>East of  | Dwight Way/Grant St      | Sideswipe         | Pedestrian                     | East  | Proceeding Straight | Not Stated | Proceeding Straight | Ped R/W Violation         | 1     | 0     |
| 8647226    | 3/16/18<br>16:41  | 0'<br>In Int.  | Dwight Way/Grant St      | Broadside         | Motor Vehicle on Other Roadway | East  | Proceeding Straight | Not Stated | Proceeding Straight | Auto R/W Violation        | 1     | 0     |
| 8653976    | 3/19/18<br>11:38  | 0'<br>In Int.  | Dwight Way/Grant St      | Broadside         | Other Motor Vehicle            | South | Proceeding Straight | East       | Proceeding Straight | Traffic Signals and Signs | 0     | 0     |
| 8841694    | 1/6/19<br>10:00   | 0'<br>In Int.  | Dwight Way/Grant St      | Rear-End          | Other Motor Vehicle            | West  | Slowing/Stopping    | West       | Stopped in Road     | Unsafe Speed              | 1     | 0     |
| 8835210    | 2/14/19<br>12:30  | 0'<br>In Int.  | Dwight Way/California St | Broadside         | Other Motor Vehicle            | North | Proceeding Straight | West       | Proceeding Straight | Auto R/W Violation        | 1     | 0     |

City of Berkeley

Traffic Collision History Report  
Midblock Collisions

3/17/2022  
Page 2

Arterial: DWIGHT WAY  
Limit 1: CALIFORNIA ST  
Limit 2: GRANT ST

Total Number of Collisions: 13  
Date Range Reported: 7/1/2016 - 6/30/2021

| Report No. | Date Time        | Dist/Dir      | Location            | Type of Collision | Motor Veh. Involved With | DOT1  | MPC 1               | DOT2  | MPC 2               | PCF                       | # Inj | # KId |
|------------|------------------|---------------|---------------------|-------------------|--------------------------|-------|---------------------|-------|---------------------|---------------------------|-------|-------|
| 8909488    | 5/7/19<br>8:45   | 0'<br>In Int. | Dwight Way/Grant St | Broadside         | Other Motor Vehicle      | North | Proceeding Straight | West  | Proceeding Straight | Traffic Signals and Signs | 0     | 0     |
| 9218807    | 12/7/20<br>19:28 | 0'<br>In Int. | Grant St/Dwight Way | Broadside         | Other Motor Vehicle      | West  | Proceeding Straight | South | Proceeding Straight | Auto R/W Violation        | 0     | 0     |
| 9254723    | 3/2/21<br>16:01  | 0'<br>In Int. | Dwight Way/Grant St | Rear-End          | Other Motor Vehicle      | East  | Proceeding Straight | East  | Stopped in Road     | Unsafe Speed              | 4     | 0     |



City of Berkeley

Traffic Collision History Report  
Midblock Collisions

3/17/2022  
Page 3

Arterial: DWIGHT WAY  
Limit 1: CALIFORNIA ST  
Limit 2: GRANT ST

Total Number of Collisions: 13  
Date Range Reported: 7/1/2016 - 6/30/2021

| Report No.                     | Date Time | Dist/Dir                            | Location | Type of Collision | Motor Veh. Involved With | DOT1 | MPC 1 | DOT2 | MPC 2 | PCF | # Inj | # KId |
|--------------------------------|-----------|-------------------------------------|----------|-------------------|--------------------------|------|-------|------|-------|-----|-------|-------|
| Total Number of Collisions: 13 |           | Segment Length: 0.25 miles (1,296') |          |                   |                          |      |       |      |       |     |       |       |

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Settings Used For Query

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Parameter

Setting

|                            |                              |
|----------------------------|------------------------------|
| Limit 1                    | Include Intersection Related |
| Limit 2                    | Include Intersection Related |
| Intermediate Intersections | Include Intersection Related |
| Sorted By                  | 'Date and Time'              |





Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council  
From: Councilmember Wengraf, Councilmember Taplin, Councilmember Hahn  
Subject: Resolution Declaring May as Jewish American Heritage Month

RECOMMENDATION

Adopt a Resolution declaring the month of May as Jewish American Heritage Month in appreciation of the achievements and contributions made by members of the Jewish Community.

FINANCIAL IMPLICATIONS

None

BACKGROUND

Jewish Americans are an important part of American history and have greatly contributed to all areas of American life and culture since our nation's earliest days. Generations of Jews have come to the United States in search of a better life for themselves and their families, and made invaluable contributions in support of equality and civil rights through their leadership and achievements.

Jewish Americans connect to their Jewish identity in a variety of ways; culturally, ethnically, religiously and by embracing Jewish ethics and values. Jewish Americans are racially, ethnically, socially, politically and economically diverse, with approximately 25 percent of Bay Area Jewish households including a person of color.

In recent years, Jewish Americans have increasingly experienced antisemitism, including but not limited to physical attacks, vandalism, verbal and physical harassment, and hateful comments posted on social media. There is a need for education and policies that are culturally competent when describing, discussing, or addressing the impacts of being Jewish in all aspects of American society, including discourse and policy.

The City of Berkeley condemns antisemitism wherever it exists, and stands with the Jewish American community against hatred or bigotry in our city and country. Berkeley calls upon all residents to celebrate Jewish Americans who have contributed to our country and community, and support opportunities to learn more about Jewish American history and culture.

Berkeley will continue its efforts to confront antisemitism and other forms of hate impacting the Jewish community, support local education about the diversity of our Jewish American community, and integrate Jewish American culture into future programs, activities, and ceremonies throughout the year. [Declaring the month of May](#) as Jewish American Heritage Month in the City of Berkeley supports that work.

ENVIRONMENTAL SUSTAINABILITY

This item does not address environmental sustainability.

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachment:

1: Resolution

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

JEWISH AMERICAN HERITAGE MONTH

WHEREAS, Jewish Americans are an important part of American history and have greatly contributed to all areas of American life and culture since our nation's earliest days; and

WHEREAS, generations of Jews have come to the United States in search of a better life for themselves and their families, and made invaluable contributions in support of equality and civil rights through their leadership and achievements; and

WHEREAS, Jewish Americans connect to their Jewish identity in a variety of ways; culturally, ethnically, religiously and by embracing Jewish ethics and values; and

WHEREAS, Jewish Americans are racially, ethnically, socially, politically and economically diverse, with approximately 25 percent of Bay Area Jewish households including a person of color; and

WHEREAS, in recent years, Jewish Americans have increasingly experienced antisemitism, including but not limited to physical attacks, vandalism, verbal and physical harassment, and hateful comments posted on social media; and

WHEREAS, the City of Berkeley condemns antisemitism wherever it exists, and stands with the Jewish American community against hatred or bigotry in our city and country; and

WHEREAS, there is a need for education and policies that are culturally competent when describing, discussing, or addressing the impacts of being Jewish in all aspects of American society, including discourse and policy.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley hereby declares the month of May as Jewish American Heritage Month in appreciation of the achievements and contributions made by members of the Jewish community. We call upon all residents to celebrate Jewish Americans who have contributed to our country and community, and support opportunities to learn more about Jewish American history and culture.

BE IT FURTHER RESOLVED that Berkeley will continue its efforts to confront antisemitism and other forms of hate impacting the Jewish community, support local education about the diversity of our Jewish American community, and integrate Jewish American culture into future programs, activities, and ceremonies throughout the year.





Lori Droste, District 8

**CONSENT CALENDAR**

May 10, 2022

**TO:** Members of the City Council

**FROM:** Councilmember Lori Droste, Mayor Jesse Arreguín, Councilmember Susan Wengraf, and Councilmember Kate Harrison

**SUBJECT:** Budget Referral for Charter Officer Performance Review

**RECOMMENDATION**

Refer \$120,000 to the budget process to procure professional services from a qualified consultant to assist the City Council in establishing a collaborative review process for performing regular evaluations of the City Attorney and Police Accountability Board Director's performance and direct the City Manager to issue a Request for Proposal (RFP) to contract with an experienced firm that will engage the City Council and the City Attorney and Police Accountability Board Director in performance evaluation similar to the City Manager's evaluation process. The RFP shall be reviewed by the City Council Agenda and Rules Committee prior to issuance. The Agenda and Rules will make a recommendation to the entire City Council, for approval, prior to entering into any contract.

The performance evaluation process should begin following the scheduled approval of the Biennial Budget in June of 2022 and establish an annual evaluation schedule that includes interim updates on a quarterly basis—similar to the City Manager's evaluation process described in the [May 14, 2019 Council referral](#) for performance evaluations.

**BACKGROUND**

In 2019, Mayor Jesse Arreguín and Councilmember Kate Harrison cited the various benefits for regular independent annual evaluations for charter officers, including opportunities to improve communications, establish goals and objectives, set expectations, and improve organizational function, resulting in a more effective City government.

The City Charter gives the City Council explicit authority to appoint and potentially remove charter officers who directly report to City Council; it also provides a basis for the Council conducting reviews of individuals serving in this position, and outlines a number of performance considerations that could be part of this process.

Article XVIII of the City Charter, which governs the Police Accountability Board and Director of Police Accountability, contains multiple provisions which reflect the City Council's authority over the Director of Police Accountability. Section 14(a) reads, in part: "*The City Council shall appoint the Director of Police Accountability at a noticed public meeting.*" Section 14(e) reads in part: "*The City Council may remove the Director of Police Accountability by a two-thirds vote either on its own motion or based on the recommendation of the Police Accountability Board.*" And Section 14(b) reads: "*The Director of Police Accountability shall carry out the work of the Board as described herein, which may include the day-to-day operations of the Board office and staff, and performance appraisals and discipline of all subordinate employees of the Board. All such individuals, to the extent that they are employees of the City of Berkeley, shall be subject to the personnel rules governing City of Berkeley employees.*"

Taken together, the sections referenced above make clear that the City Council bears authority and responsibility to appoint and remove the Director of Police Accountability, and that as an employee of the City of Berkeley under the authority of the Council, the Director of Police Accountability is subject to regular evaluation/review by the same.

In 2020, Berkeley voters approved Measure KK with 75 percent in support. Per the City Charter amendments adopted under Measure KK, Article XVI Section 113 now reads in part: "*The City Attorney shall be an officer of the City of Berkeley, appointed by a vote of five members of the Council, serving at the will of the Council for an indefinite period, and removed only by a vote of five members of the Council...*"

Additionally, the contract for the current City Attorney includes the following provisions:

*"Within three months of appointment, the City Council shall jointly establish objective, verifiable measures of her performance to be completed during the first year and the City Council shall provide Ms. Brown with a performance evaluation at the end of the first year. During the initial performance evaluation, Ms. Brown shall present to the City Council on her goals and priorities for the City Attorney Department. An assessment of salary increase shall be part of the evaluation process. For each subsequent year during the term of this Agreement, the parties shall endeavor to establish prospective objective, verifiable measures of performance for the ensuing year. As part of the annual performance evaluation, Ms. Brown shall present on goals and priorities for the City Attorney Department and key accomplishments over the past year."*

Therefore both the City Charter and the contract for the current City Attorney provide clear authority for the Council to evaluate the performance of the City Attorney and to make retention/hiring decisions based on these considerations.



Due to staffing demands and other exigencies of the COVID-19 pandemic, the City Council and City Attorney were unable to engage in the evaluation processes established in the City Attorney's contact. Abrupt shifts to remote work, a large and unexpected budget shortfall, maintenance of an Emergency Operations Center, and other factors converged to make an evaluation process impracticable at its originally anticipated time. It is now critical that the City Council resume evaluation procedures for the City Attorney and other Charter officers.

In collaboration with the City Attorney, the Police Accountability Board, and the selected consultant, the City Council can develop criteria for evaluation and recommendations for operational improvements using best practices from other municipalities, similar to approaches from the International City/County Management Association (ICMA) used for evaluation of the City Manager.

**FINANCIAL IMPLICATIONS**

\$120,000

**ENVIRONMENTAL SUSTAINABILITY**

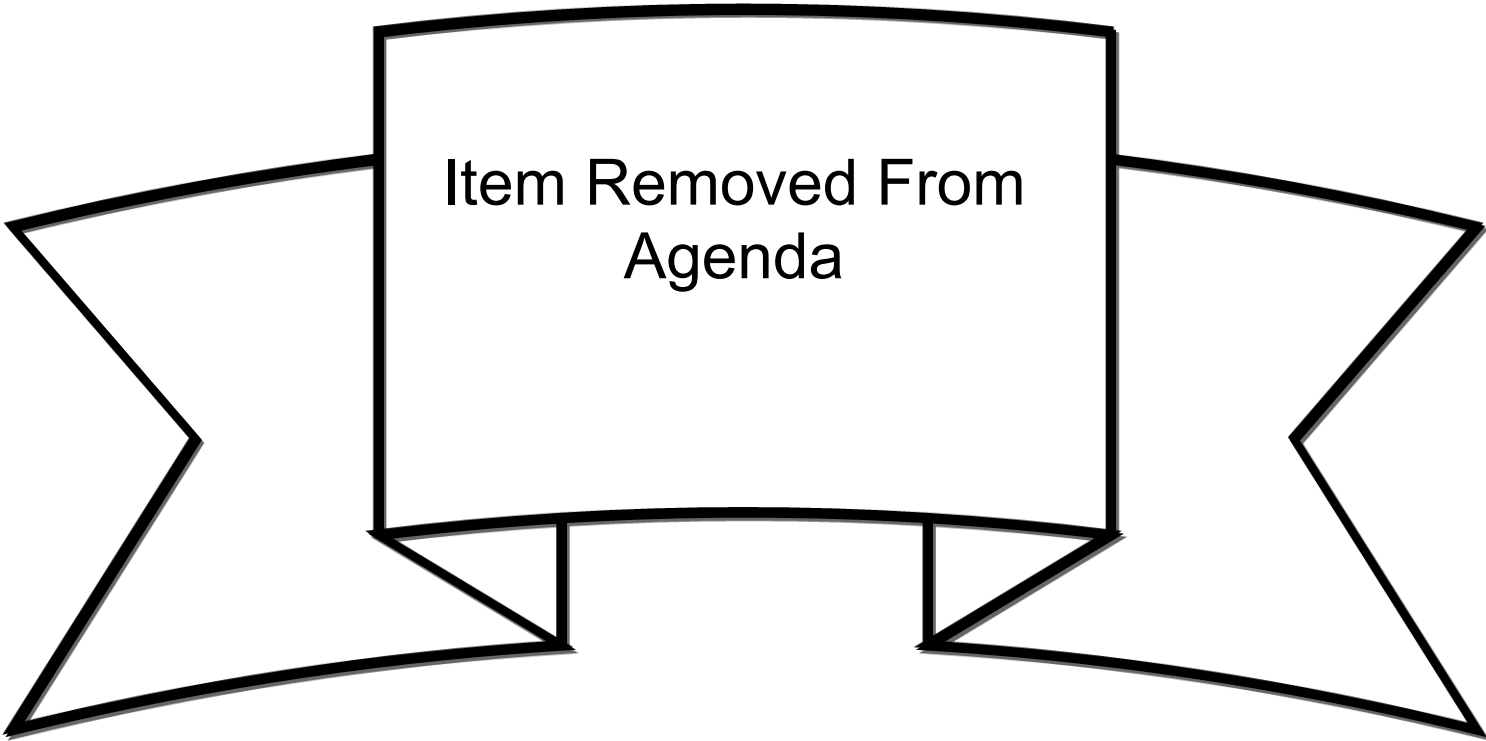
There are no environmental impacts associated with the recommendations in this report.

**CONTACT PERSON**

Councilmember Lori Droste

510-981-7180





Item Removed From  
Agenda

This item has been removed from the agenda by the City Manager.

If you have questions regarding this report, please contact the person noted on the agenda.

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

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





Office of the City Manager

ACTION CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jennifer Louis, Interim Chief of Police  
 Subject: Police Equipment & Community Safety Ordinance Impact Statements,  
 Associated Equipment Policies and Annual Equipment Use Report

RECOMMENDATION

Adopt a Resolution approving the Controlled Equipment Impact Statements, Associated Equipment Use Policies and equipment.

FISCAL IMPACTS OF RECOMMENDATION

The fiscal impacts are minimal as the Berkeley Police Department has possessed the equipment outlined in the impact statements for many years. The majority of the fiscal impacts are limited to staff time for reporting and continuous training.

CURRENT SITUATION AND ITS EFFECTS

The Police Equipment and Community Safety Ordinance and Assembly Bill No.481 require the Police Department to submit documents outlining details of specific equipment defined as “military equipment.” The definition of “military equipment” differs between the city ordinance and state law. The Berkeley Police Department impact statements and their associated policies are comprehensive and address equipment from both the ordinance and state law. All equipment outlined within the impact statements was previously acquired to the passage of this legislation and has been in the possession of the Berkeley Police Department and utilized for many years.

BACKGROUND

On May 11<sup>th</sup>, 2021 the city of Berkeley adopted the Police Equipment and Community Safety Ordinance, Ordinance NO. 7,760-N.S. This ordinance addresses military equipment funding, acquisition, and use. This ordinance requires the Berkeley Police Department to submit impact statements and associated equipment policies on certain equipment that the Berkeley Police Department already possesses to the Police Accountability Board and City Council for approval. An annual report is also mandated by the city ordinance for the usage of specified equipment.

On January 1<sup>st</sup>, 2022 Assembly Bill No.481 took effect. Similar to the city ordinance, this assembly bill also addresses military equipment funding, acquisition, and use. The

assembly bill and the Police Equipment and Community Safety Ordinance address similar equipment and have similar requirements. However, Assembly Bill No.481 addresses additional equipment that the city ordinance does not and requires addition impact statements and addition equipment policies.

The city ordinance provides the Police Accountability Board 90-days to review Impact Statements and their associated use policies before making recommendations and before City Council's consideration of approval. After reconciling the city ordinance and new state law mandates, the required documents were provided to the Police Accountability Board on February 24<sup>th</sup>, 2022. On April 6<sup>th</sup>, 2022 the Police Accountability Board provided the Berkeley Police Department with their recommendations on the Impact Statements and their associated use policies. The Police Accountability Board's recommendations are submitted as an attachment to this council item pursuant to section 2.100.040 (H)(1), which requires the Berkeley Police department provide City Council with the Police Accountability Board's recommendations 15 days prior to a public meeting.

It should be noted that Section 2.100.040 (H)(2) states "If the City Council does not approve such item within four (4) regular City Council meetings from when the item is first scheduled, the Police Department shall cease its use of the Controlled Equipment until such review and approval occurs."

The Impact Statements and their associated use policies and Annual Report have been submitted as attachments to this council item. The attached Impact Statements and their associated use policies were also posted onto the Berkeley Police Department's website thirty days prior to the May 10, 2022 Council Meeting, in line with the requirements of Assembly Bill No.481.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

#### RATIONALE FOR RECOMMENDATION

The Police Equipment and Community Safety Ordinance and Assembly Bill No.481 require the approval of "military equipment" by a "governing body."

#### ALTERNATIVE ACTIONS CONSIDERED

If the equipment outlined in the Impact Statements and their associated policies are not approved, the Berkeley Police Department is required to cease its use, per the city ordinance. Public safety and the safety of Berkeley Police Officers will be detrimentally impacted if the continued use of this equipment by the Berkeley Police Department is not approved. This equipment has been relied on for many years, assisting in keeping the Berkeley community safe.

Annual Reporting and Impact Statements:  
Police Equipment and Community  
Safety Ordinance

ACTION CALENDAR  
May 10, 2022

CONTACT PERSON

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

Attachments:

1. Resolution
2. Impact Statements and their associated use policies
3. 2021 Annual Equipment Use Report
4. Police Accountability Board Recommendation
5. Military Equipment Policy

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

ANNUAL REPORTING AND IMPACT STATEMENTS: POLICE EQUIPMENT AND  
COMMUNITY SAFETY ORDINANCE

WHEREAS, the Berkeley City Council adopted Ordinance NO. 7,760-N.S., the Police Equipment and Community Safety Ordinance on May 11, 2021; and

WHEREAS, Section 2.100.020 of the city ordinance mandates Impact Statements and their associated equipment policies for certain equipment that the Berkeley Police Department possesses; and

WHEREAS, Section 2.100.050 of the ordinance mandates an annual report for the deployment of certain equipment that the Berkeley Police Department possesses; and

WHEREAS, per city ordinance, the Impact Statements, associated equipment policies, and the first annual report shall be submitted within one year of approval; and

WHEREAS, Assembly Bill No.481 was passed September 30, 2021; and mandates similar requirements to the city ordinance including “use policies” and “annual use report;” and

WHEREAS, the equipment outlined between Assembly Bill No.481 and the Police Equipment and Community Safety Ordinance are similar.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it accepts the Berkeley Police Department Impact Statements, associated equipment policies, and Annual Report, and approve the equipment outlined in the Impact Statements.





**Police Equipment and  
Community Safety Ordinance  
Impact Statements**

## ACKNOWLEDGEMENTS

Thank you to the subject matter experts for helping author this report.

Officer Corey Bold –  
*Patrol Officer and chemical agent instructor*

Officer Semir Muratovic –  
*Patrol Officer and Bomb Squad Technician*

Officer Derek Radey –  
*Patrol Officer and less lethal coordinator/instructor*

Lieutenant Kevin Reece –  
*Special Response Team Commander*

Officer Scott Salas –  
*Patrol officer and Special Response Team high ground team leader*

Lieutenant Jennifer Tate –  
*Traffic Lieutenant and defensive tactics instructor*

Officer Jason Tillberg –  
*Department trainer and Department Armorer*

Officer Sean Tinney –  
*Department trainer and Special Response Team member*

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## INTRODUCTION

On May 11, 2021 the Berkeley City Council passed Ordinance NO. 7,760-N.S., the Police Equipment and Community Safety Ordinance. Section 2.100.020 of the ordinance mandates an impact statement for certain equipment that the Berkeley Police Department possesses. An impact statement is defined in section 2.100.020 (C) and is a publicly released written document that includes the following details for each equipment:

- 1) Description
- 2) Purpose
- 3) Fiscal cost
- 4) Impact
- 5) Mitigation
- 6) Alternatives
- 7) Third Party Dependence

An impact statement for each of the following equipment has been authored by subject matter experts in their respective fields:

- M4 rifle/Patrol Rifle
- Penn Arms 40MM launcher
- Milkor LTL multi-launcher
- FN 303 Launcher & FN Pava rounds
- Oleoresin capsicum (OC spray)
- Chlorobenzylidene Malononitrile and Oleoresin capsicum (tear gas)
- Remington 700 Rifle
- ReconRobotics Recon Scout XT Robots
- Andros Remotec HD-1 Hazardous Duty Robot
- Light/sound distraction device
- Long Range Acoustic Device (LRAD)
- 36" batons
- Mobile Command Vehicle
- Barret Model 99

The impact statements required by the City ordinance also fulfill the obligations set forth in Assembly Bill 481. Impact statements were compiled in this report in a

prioritized ranking for the Police Accountability Board to consider in determining the order in which to perform its review per the Police Equipment and Community Safety Ordinance.

### **M4 Rifle and Associated Ammunition**

#### **(1) Description:**

##### **A. Background:**

The “M4” was developed and produced for the United States government by Colt Firearms and was based off of the original Armalite Rifle (AR) patent purchased by Colt in 1959. Although Colt owned the trademarked name of “M4”, a number of other manufacturers offer M4-like firearms under various model names. The M4 and its variants fire 5.56×45mm NATO (and .223 Remington) ammunition, and are a gas-operated, magazine-fed firearm with a barrel length ranging from 11.5” to 16”.

The current Berkeley Police Department (BPD) rifle ammunition used is the .223 Remington, a rimless, bottlenecked rifle cartridge. The round was developed in 1957 by Remington Arms and Fairchild Industries. The .223 Remington is considered one of the most popular cartridges and is currently used by a wide range of semi-automatic and manual-action rifles as well as handguns. While the military uses the similar 5.56x45 NATO cartridge, BPD uses the more common and often regarded civilian cartridge of .223 Remington for all training and duty uses.

Currently, BPD uses two different kinds of .223 Remington ammunition: 55 grain FMJ (full metal jacket) for training purposes and 62 grain soft point for duty purposes. This is done for several reasons.

1. FMJ ammunition is cheaper to purchase. While many agencies use the same ammunition for training and duty use, the department saves a significant amount of money by using FMJ ammunition for training.
2. The observed performance between the two rounds is negligible for training purposes. Officers can use the FMJ ammunition in a training course and see no difference in operation and performance versus using 62 grain soft point duty ammunition.
3. The 62-grain soft point ammunition has been shown to have less over penetration and over travel compared to FMJ ammunition.

This means that rounds fired are less likely to hit unintended targets.

**B. Quantity:**

The Berkeley Department currently owns and maintains 96 rifles.

Quantity of rifle ammunition fluctuates significantly depending on training attended, including the standard basic police academy, officer assignments, and yearly mandate training cycles. For example, most police academy recruits are required to bring approximately 1,000 rounds to the basic POST approved academy. Most academies have a 16-24-hour rifle training course. The training is required for all officers who are issued a rifle and mandates between 800 and 1,200 rounds. As such, the inventory at the Berkeley Police Department fluctuates significantly depending on how many officers are attending state mandated training and can range from 10,000 round (our current inventory) to less than 1,000 rounds (our anticipated inventory at the end of December after scheduled department training in November.)

**C. Capability:**

The M4 pattern rifle is used only in situations when a potential life-threatening situation exists. While a pistol is the common firearm used by police in these dangerous situations, the M4 patterned rifle has numerous advantages over it. The ability to shoulder the rifle, coupled with the rifle's lengthened barrel and ammunition, result in higher accuracy and lessens the chance of officers missing the intended target. Additionally, due to the design of the rifle's bullet, the round is less likely to over penetrate commercial and residential walls should the officer miss the intended target. The rifle is also easier to use compared to a pistol because of the bullet's low recoil. Finally, as the rifle can be adjusted and customized, it can be configured to accommodate officers of any stature (hand size, strength, etc.).

The .223 Remington cartridge, depending on the weight of the bullet, 55 grain or 62 grain, travel at approximately 3,000 feet per second and 2,700 feet per second respectively. The round is highly regarded as having a high degree of consistency and accuracy, which is why it is the most common rifle round used in Law Enforcement around the world.

**D. Lifespan:**

Due to the rifle's ability to be maintained by department armorers, these rifles have a relatively long-life span if properly maintained. However, the design has

changed little in the last 60 years and we can expect new variations and designs to become the new industry standard in the coming years.

Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

**E. Use:**

Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

**F. How it Works:**

The M4 patterned rifle works the same as a majority of all modern firearms. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. As the bullet travels down the barrel, gas from the ignited powder also escapes from the muzzle. Some of that gas is recycled back into the chamber of the firearm which causes the firearm to cycle its action and load another bullet. From there the process repeats with each pull of the trigger.

The .223 Remington cartridge is made up of several parts, primarily the primer, casing, gunpowder, and bullet. The bullet is seated into the front or opening of the casing. Gunpowder is placed between the bullet and the interior of the casing and a primer is seated in the rear part of the casing. When the trigger of a firearm is pulled, it releases the hammer, which strikes the firing pin, driving it forward. The firing pin collides with the rear of the cartridge, where the primer is seated, which ignites the primer. The spark from the primer ignites the gunpowder. Gas converted from the burning powder rapidly expands in the cartridge. The expanding gas forces the bullet out of the cartridge and down the barrel with great speed. The rifling in the barrel causes the bullet to spin as it travels out of the barrel. The bullet's speed and escaping gases produce a "bang."

After the bullet exits the barrel, the spent casing which housed the bullet, gunpowder, and primer are ejected from the firearm.

**(2) Purpose:**

The M4 patterned rifle and associated ammunition is intended as a means to safely stop a lethal threat. While a pistol is the firearm that all officers are minimally

equipped with, the rifle is an ancillary firearm for situations where increased distance and accuracy are needed to safely resolve the situation.

**(3) Fiscal Cost:**

**A. Initial Cost:**

Rifle prices, like other firearms, will range depending on current market demand and availability. While M4 rifles purchased several years ago cost between \$1,000 and \$1,200 a piece, current rifles cost between \$1,400 and \$1,600. It should be expected that these prices will fluctuate and likely increase over time.

Ammunition costs fluctuate with the costs of components (brass, primers, gunpowder, and bullets) and supply/demand. Current costs for .223 Remington range from \$0.50 to \$0.75 a round for training ammunition (55 grain) and \$1.25 to \$1.50 a round for duty ammunition (62 grain).

**B. Cost of Use:**

Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on whether the rifle is issued to a patrol officer, a firearms instructor, or a Special Response Team member as each assignment has different training requirements.

**C. Cost of Potential Adverse Effects:**

Adverse effects of improper use of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

See section B. above, these costs are determined based on the rifle's assignment.

**E. Training Costs:**

Every officer that is authorized to carry a rifle on duty must attend a 16-hour CA POST approved rifle instruction course before being authorized to carry the rifle on duty. This course may be administered by Berkeley Police Firearm Instructors or by other POST approved agencies. Tuition for the CA POST approved class is dependent on the hosting agency. If conducted in house the cost only includes the officer's hourly wage, range fee, and ammunition costs (all vary). Outside agencies charge between \$25 to \$500 depending on the range location and duration (some classes are 32-hours while POST only requires 16-hours.)

Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by POST certified BPD firearm instructors.



Typical round count for such classes range between 800 rounds and 1200 rounds per student. Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by a BPD firearm instructor which constitutes an additional 500 or so rounds per officer.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use over time. Traditionally, various springs and pins need to be replaced every five years and may cost between \$3 and \$30 per rifle. Other parts such as the barrel and bolt need replaced around ten years and range between \$150 and \$300 per rifle.

There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

**G. Upgrade Costs:**

Upgrade costs and Maintenance cost are synonymous due to the consistent design and lack of changes of the rifle over the last 60 years. Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing, those upgrade costs are unknown at this time.

**(4) Impact:**

The Berkeley Police Department is committed to preserving and protecting human life and welfare. The M4 patterned rifle, which fires the .223 Remington cartridge, is a superior firearm to stop a lethal threat compared to the issued pistols to police officers, in that officers equipped with this firearm shoot less rounds, fire more accurately, and are less likely to fire errant rounds. Highly volatile and violent incidents, such as a hostage situation, can be more safely and efficiently resolved with a rifle.

The M4 patterned rifle, and the accompanying .223 Remington cartridge it fires, is intended as a tool to increase the safety and welfare of citizens and officers alike. The M4 patterned rifle and .223 Remington cartridge, both inanimate objects, have zero impact on things such as civil rights or civil liberties of the public. Any abuses of authority or power would be the result of an individual who violates the Berkeley Police Department's policies, including state and federal laws.

(5) **Mitigations:**

Per Policy 300, “Deadly force may only be used when it is objectively reasonable that such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm.

Officers shall not use deadly force if it is objectively reasonable that alternative techniques will eliminate the imminent danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons.”

(6) **Alternatives:**

There are no suitable alternatives to the M4 rifle for the intended purpose. The M4 rifle is a law enforcement standard across the US and other countries due to its reliability, ease of use, ease of maintenance, and increased accuracy over other options.

There are no suitable alternatives to the .223 Remington cartridge, as the current BPD M4 rifle is designed for that particular cartridge. The .223 Remington cartridge is a law enforcement standard across the US and other countries due to its reliability, availability, and increased accuracy over other options.

(7) **Third Party Dependence:**

Berkeley Police Department armorers are trained and capable to handle any and all issues related to the maintenance or repair of the M4 rifles. Additionally, BPD firearm instructors are fully certified by state and private training institutes to fully educate and train BPD officers. No third party is required for maintenance, repair, or instruction.

All ammunition purchased by BPD, like all equipment, is dependent on Third Party vendors. Vendor stock and availability is outside BPD control or management. Once ammunition is purchased and in BPD custody there is no additional need for Third Party assistance.

**Penn Arms 40mm Single Launcher**

(1) **Description:**

A. **Background:**

The 40mm impact projectile was developed as an alternative to the 12-gauge bean bag round and other more indiscriminate less lethal options. Early 12-gauge

bean bag round designs had somewhat unpredictable flight patterns and could cause significant unwanted injury. The 40mm foam baton round was developed as a direct fire projectile designed to minimize the risk of unintended injuries. Currently, the Berkeley Police Department utilizes the CTS 4557 foam baton projectile and the Penn Arms L-140 single shot launcher.

**B. Quantity:**

The Berkeley Police Department currently owns and maintains 20 Penn Arms less lethal launchers.

**C. Capability:**

The Penn Arms single launcher is capable of firing a single projectile out to a maximum manufacturer recommended range of 45 meters. The Penn Arms 40mm projectiles are direct fire with a pliable “sponge” tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

**D. Lifespan:**

The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

**E. Use:**

The Penn Arms 40mm single launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

**F. How it works:**

The Penn Arms 40mm single launcher is a double action, break open less lethal launcher. The launcher is capable of firing a single 40mm projectile. When fired, the hammer strikes the munition primer which ignites gun powder in the primer insert. Expelled gases propel the projectile through the rifled barrel. The projectile has a rear plastic portion called the ogive which catches the barrel rifling and provides spin. The spin provides a greater degree of accuracy and eliminates any potential the projectile will tumble when exiting the barrel.

The projectiles utilized by the Berkeley Police Department are the CTS 4557 40mm sponge baton round. The CTS 4557 has a maximum effective range of 45 meters. The tip of the projectile is a pliable rubber material which molds to the body upon impact. The projectile travels at an estimated 240 feet per second which is slower than the FN 303 projectile. However, the larger mass, about 60 grams, creates more kinetic energy upon impact which is similar to that of a baseball thrown by a pitcher. The additional kinetic energy becomes important when the suspect has on thick or layered clothing or demonstrates a high pain tolerance.

The Penn Arms single launcher is a basic design making it easy to operate and maintain.

(2) **Purpose:**

The purpose of kinetic energy impact projectiles, commonly referred to as “less lethal” is to preserve life, minimize the use of force and allow time for de-escalation. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent or armed confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer’s threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before certain weapons can be utilized. This fact may allow the Officer time to decide the most appropriate course of action, such as the use of a “less lethal” projectile.

The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the

potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Additionally, it has been our experience that a 40mm projectile impact will almost always resolve a violent confrontation with 1 or 2 applications. The larger projectile produces more kinetic energy than the FN 303, which may require several applications to gain compliance.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

**(3) Fiscal Cost:**

**A. Initial Cost:**

Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$815.00 each.

**B. Cost of Use:**

Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

**C. Cost of Potential Adverse Effects:**

Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death.

**D. Annual and Ongoing Costs:**

See section B above

**E. Training Costs:**

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use. Generally, various springs and pins need to be replaced every 5 years which can cost \$3 to \$30.

**G. Upgrade Costs:**

There are no foreseeable upgrade costs. The Penn Arms single launcher has few working parts and is of a simple design.

**(4) Impact:**

The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but hopefully the minimal amount of force needed to safely resolve the incident.

The Penn Arms single launcher, with its high level of accuracy can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent assault, overcome their resistance, and aid in the attempt to safely take them into custody. This tool does not require officers to overcome a hostile crowd to stop a violent assault.

**(5) Mitigation:**

Per Policy 300, "In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict." All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved

projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.”

The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer’s ability to target approved impact areas.

**(6) Alternative:**

This is the only piece of less lethal equipment (other than the FN 303) that allows officers to address a potentially deadly threat from a distance. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject’s clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the department.

**(7) Third Party Dependence:**

The Berkeley Police Department armorers are trained and capable of handling all issues related to the repair or maintenance of the Penn Arms single launcher. Additionally, Berkeley Police Department Less Lethal Instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for maintenance, repair, or instruction.

### **Milkor LTL Multi-launcher**

**(1) Description:**

**A. Background:**

The 40mm impact projectile was developed as an alternative to the 12-gauge bean bag round and other more indiscriminate less lethal options. Early 12-gauge

bean bag round designs had somewhat unpredictable flight patterns and could cause significant unwanted injury. The 40mm foam baton round was developed as a direct fire projectile designed to minimize the risk of unintended injuries. Currently, the Berkeley Police Department utilizes the CTS 4557 foam baton projectile and the Milkor LTL multi-shot launcher.

**B. Quantity:**

The Berkeley Police Department currently owns and maintains 2 Milkor LTL less lethal launchers. One Milkor launcher is assigned to the Berkeley Special Response Team.

**C. Capability:**

The Milkor LTL is capable of firing six 40mm projectiles before reloading is necessary. The Milkor LTL 40mm projectiles are direct fire with a pliable “sponge” tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

**D. Lifespan:**

The manufacturer expected lifespan is about 10 to 15 years depending on use and regular maintenance.

**E. Use:**

The Milkor LTL multi-shot launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

**F. How it works:**

The Milkor LTL multi-shot launcher utilizes a spring actuated cylinder allowing it to fire 6 individual 40mm projectiles. When fired, the hammer strikes the munition primer which ignites gun powder in the primer insert. Expelled gases propel the projectile through the rifled barrel. The projectile has a rear plastic portion called the ogive which catches the barrel rifling and provides spin. The spin provides a greater degree of accuracy and eliminates any potential the projectile will tumble when exiting the barrel. The spring assisted cylinder automatically turns and loads the next projectile.



The projectiles utilized by the Berkeley Police Department are the CTS 4557 40mm sponge baton round. The CTS 4557 has a maximum effective range of 45 meters. The tip of the projectile is a pliable rubber material which molds to the body upon impact. The projectile travels at an estimated 240 feet per second which is slower than FN 303 projectile. However, the larger mass, about 60 grams, creates more kinetic energy upon impact which is similar to that of a baseball thrown by a pitcher. The additional kinetic energy becomes important when the suspect has on thick or layered clothing or demonstrates a high pain tolerance.

The benefit to the Milkor LTL is its ability to provide a quick follow up less lethal application, if necessary. The Milkor holds 6 projectiles while the Penn Arms launcher only holds one. Reloading the Penn Arms single launcher can be time consuming and requires the officer to briefly change focus from the suspect to the reload procedure. The Milkor LTL on the other hand, allows the officer to maintain focus on the suspect and assess whether a follow up application is necessary. This ability is significant when the suspect is advancing, attempting to flee, or demonstrates a high pain compliance threshold.

(2) **Purpose:**

The purpose of kinetic energy impact projectiles, commonly referred to as “less lethal” is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer’s threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer

time to decide the most appropriate course of action, such as the use of a “less lethal” projectile.

The “less lethal” projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Additionally, it has been our experience that a 40mm projectile impact will generally resolve the violent confrontation with 1 or 2 applications. The larger projectile produces more kinetic energy than the FN 303, which may require several applications to gain compliance.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

(3) **Fiscal Cost:**

A. **Initial Cost:**

Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$3950.00 each.

B. **Cost of Use:**

Cost for the Milkor LTL launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

C. **Cost of Potential Adverse Effects:**

Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death.

D. **Annual and Ongoing Costs:**

See section B above

E. **Training Costs:**

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification

class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use.

**G. Upgrade Costs:**

There are no foreseeable upgrade costs.

**(4) Impact:**

The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but also the minimal amount of force needed to safely resolve the incident.

The Milkor LTL launcher, with its high level of accuracy and 6 projectile capacity, can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent assault, overcome their resistance, and aid in the attempt to safely take them into custody. It also allows officers to prevent a more indiscriminate use of force, such as entering the group or crowd, to take a subject into custody.

**(5) Mitigation:**

Per Policy 300, "In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict." All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these projectiles cannot be done safely. The safety of hostages, innocent persons

and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.”

The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer’s ability to target approved impact areas.

**(6) Alternative:**

This is the only piece of less lethal equipment (other than the FN 303) that allows officers to address a potentially deadly threat from a distance. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject’s clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the department.

**(7) Third Party Dependence:**

The Berkeley Police Department armorers are trained and capable of handling most issues related to the repair or maintenance of the Milkor LTL launcher. In the event of a catastrophic malfunction, the Milkor LTL will need to be sent to the manufacturer for repair. To date, there have been no significant repairs needed to the Milkor LTL. Additionally, Berkeley Police Department Less Lethal Instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for regular maintenance, repair, or instruction.

## FN 303 and FN Pava Impact Projectile

### (1) Description:

#### A. **Background:**

The FN 303 was developed in 2003 by Fabrique Nationale de Herstal as a less lethal option. The FN 303 is based on a concept developed by Monterey Bay Corporation. The development team consisted of designers and researchers from two paintball related companies. The FN 303 uses compressed air to propel a .68 caliber projectile similar to that of most manufactured paintball guns.

#### B. **Quantity:**

The Berkeley Police Department currently owns and maintains 8 FN 303 less lethal launchers.

#### C. **Capability:**

The FN 303 is capable of firing 15 projectiles out to a maximum manufacturer recommended range of 50 meters. The FN 303 projectiles are direct fire and designed to fragment upon impact to prevent penetration injury. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas. This level of force is considered to be similar to that of a baton strike.

#### D. **Lifespan:**

The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

#### E. **Use:**

The FN 303 is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

#### F. **How it works:**

An air reservoir attaches to the FN 303 through an air hose coupler and provides pressure through compressed air. When fired, the compressed air drives a piston that pushes the .68 caliber projectile through the barrel at approximately 280 feet per second. For comparison, the FN projectile is the size of a paintball and the velocity is the same as a commercially manufactured paintball gun.

The projectiles are 8.5 grams in weight and utilize a polystyrene fin stabilized body with a non-toxic forward payload to aid in stability and accuracy. The

projectile will deliver approximately 24-foot pounds of kinetic energy at the muzzle which is about double the kinetic energy of most paintball guns. Most paintballs have a mass of 3 grams while the FN 303 projectile has a mass of 8.5 grams which increases the kinetic energy produced.

Available projectiles are impact, impact + non-permanent marking, impact + permanent marking, and impact + PAVA (0.5% PAVA/Oleoresin Capsicum).

The impact + PAVA projectile is intended to be direct fired at an individual. In addition to delivering pain through kinetic energy upon impact, the PAVA projectile will deliver a secondary chemical irritant, which is the Oleoresin Capsicum (O.C.) payload. Oleoresin Capsicum generally causes irritation/burning at the application site, irritation to the eyes, and coughing. According to the National Institute of Health, the effects of O.C. power exposure tend to resolve on their own within 30 minutes.

Pain is highly subjective and other circumstances, such as heavy clothing, may render the impact ineffective. The application of a secondary chemical irritant may assist in gaining compliance and successfully resolving a potentially violent incident with the minimal amount of force necessary.

(2) **Purpose:**

The purpose of kinetic energy impact projectiles, commonly referred to as “less lethal” is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer’s threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a “less lethal” projectile.

The “less lethal” projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. Discriminate projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Since 2015, there have been 31 incidents where Officers utilized less lethal applications. These applications have potentially prevented higher-level uses of force.

**(3) Fiscal Cost:**

**A. Initial Cost:**

Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent FN 303s purchased by the department cost \$800.00 each.

**B. Cost of Use:**

Cost for FN 303 use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

**C. Cost of Potential Adverse Effects:**

Adverse effects from improper use of less lethal are not calculable. Improper use could lead to serious bodily injury or death. Only trained officers are authorized to use the FN 303.

**D. Annual and Ongoing Costs:**

See section B above

**E. Training Costs:**

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification class consists of classroom, range qualification and scenario application if the

venue allows. This class is largely handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use. Generally, O-rings need to be replaced every 3000 rounds and cost \$30 per kit.

**G. Upgrade Costs:**

The overall design of the FN 303 has changed little since its initial release in the early 2000s thus anticipated upgrade costs will be minimal.

**(4) Impact:**

The main function of a less lethal device is to preserve the sanctity of human life. The Berkeley Police Department is committed to reducing the potential for violent confrontations. Less lethal projectiles, when used properly, are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation. A less lethal application is an acknowledgment a given situation has the potential to elevate to lethal force and the Officers determined a less lethal application is not only objectively reasonable and objectively necessary, but also the minimal amount of force needed to safely resolve the incident.

The FN 303, with its high level of accuracy can be utilized in a large violent group confrontation to specifically target those who are committing acts of violence on other members of the group, involved persons, or law enforcement personnel. It allows a more immediate action to stop a violent assault, overcome their resistance, and aid in the attempt to safely take them into custody. It also allows officers to prevent a more indiscriminate use of force, such as entering the group or crowd, to take a subject into custody.

**(5) Mitigation:**

Per Policy 300, "In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict." All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

Per Policy 303, "Officers are not required or compelled to use approved projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of



these projectiles cannot be done safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior. Circumstances appropriate for deployment include, but are not limited to, situations in which: (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved projectiles. (b) The suspect has made credible threats to harm him/herself or others. (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers. (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.”

The Berkeley Police Department also trains a recommended range of 3 to 30 meters. Berkeley Police Firearm Instructors recommend a minimum standoff of 3 meters to reduce the potential for unintended injury at a closer distance. The 30-meter maximum recommended range is intended to reduce the possibility of an unintended impact area if the suspect moves or the projectile trajectory begins to deteriorate.

Each officer is trained to aim for large muscle groups, such as the thigh or buttocks area, and avoid areas that may cause serious injury. The department also equips each launcher with a red dot optic. The optic greatly increases an officer’s ability to target approved impact areas.

**(6) Alternative:**

This is the only piece of equipment that allows officers to address a potentially deadly threat from a distance. The TASER allows an officer to maintain distance but limits the range to about 15 to 25 feet. Furthermore, the TASER requires two prongs (barbs) to penetrate the subject’s clothing to be effective and if that is not accomplished the TASER will have no effect. Additionally, the TASER is not an approved less lethal device for the Berkeley Police Department.

Unlike the Penn Arms 40mm single shot and the Milkor LTL multi-shot launcher, the FN 303 is capable of propelling 15 projectiles before a reload is required. The 15 round magazine allows for a quick follow-up application should the situation warrant with an effective range of over 160 feet; compared to the Penn Arms 40mm single shot and the Milkor LTL multi-shot launcher’s 100 feet. The FN303’s smaller and faster projectiles also generally allow for a higher level of accuracy compared to the 40mm foam baton rounds. The FN 303 rounds is also capable of carrying payloads such as paint or PAVA (Oleoresin capsicum).

**(7) Third Party Dependence:**

The Berkeley Police Department armorers are trained and capable of handling regular maintenance and most repairs. In the event of a catastrophic failure, the device will be sent to the manufacturer for repair. To date there have been 2 devices that required manufacturer repair, both of which were under warranty.

Additionally, department firearm instructors are fully certified by state and private training institutes to educate and train BPD officers. No third party is required for maintenance, most repairs, or instruction.

**OC (oleoresin capsicum) Spray****(1) Description:****A. Background:**

For the purposes of this portion of the Impact Statement, OC (Oleoresin capsicum) will be referred to in the spray form as opposed to the aerosol canister form. First Defense manufactures different sizes of OC sprays. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. Besides being effective on humans, OC based chemical agents usually work on animals as well. In a liquid form, OC can appear as a clear, amber, or heavy dark red solution depending on the manufacturer. It is mixed with several types of solutions which act as carriers.

**B. Quantity:**

Qty 23 – First Defense MK-9 OC spray (13- ounces)

Qty 178 – First Defense MK-3 OC spray (3 ounces)

Most of the MK-3 OC sprays are issued to and maintained by individual officers; however, a small amount of these sprays is stored in a secured equipment room as spares in case of damage or new personnel issue.

**C. Capability:**

The First Defense MK-3 OC sprays are standard issued to all police officers and are worn on the police officers' belt. It has an effective range of 10-12 feet. The larger First Defense MK-9 OC sprays are 13 ounces and are used in violent crowd situations. It has an effect range of 18-20 feet.

The use of the First Defense OC spray can render a dangerous and violent situation safe without using a higher level of force.

**D. Lifespan:**

Aerosol products eventually lose pressure over time. The lifespan of both the MK-9 and MK-3 OC spray are dependent on how well the pressure in the can is maintained, but is recommended to be replaced after 5 years.

**E. Use:**

OC spray may be considered for use to bring under control an individual or groups of individuals who are engaging in or about to engage in violent behavior. OC spray should not, however, be used against individuals or group who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

**F. How it Works:**

A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, burning/stinging skin sensation, redness of the skin, irritation and burning of the nose, runny nose, salivation and burning sensation of the mouth, cough, gagging sensation, shortness of breath, temporary paralysis of the larynx (person unable to speak) and nausea (caused by shock, not the OC itself). A person may also feel disorientated, anxiety, and/or panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

**(2) Purpose:**

There are a variety of situations where officers may use OC spray such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

**(3) Fiscal Cost:**

**A. Initial Cost:**

The MK-3 OC spray cost approx. \$19 per unit and the MK-9 OC spray costs approx. \$60 per unit. The manufacturer is Defense Technology and the Berkeley Police Department purchase each unit from Galls Police Supply or LC Action Police Supply. Purchases for these tools are made when inventory gets low which is typically determined by how many new officers are sworn in, as well as if they are utilized in dangerous situations.

**B. Cost of Use:**

The cost of each usage is unpredictable due to the unknown nature of crime, timelines of dangerous situations, and number of applications.

**C. Cost of Potential Adverse Effects:**

Adverse effects of improper use of OC spray are not calculable. It could lead to serious injury. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

See below cost of training.

**E. Training Cost:**

Training is conducted in the police academy and in-house by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

**F. Maintenance and Storage Costs:**

The majority of the MK-3 OC sprays are either stored within the Police Department or with each sworn police officer while they conduct official duties. All MK-9 OC sprays are stored in the basement. There are no additional storage costs or associated costs to transporting, maintain, or upgrade.

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

The physical effects of being subjected to OC may significantly reduce an individual's aggressive behavior. Reports have shown that the use of OC can reduce the amount of officer and arrestee injuries due to its effectiveness. Chemists assigned to the FBI Forensic Science Research and Training Center report no long-term health risks associated with the use of OC. The use of the MK-3 or MK-9 OC spray can render a dangerous and violent situation safe without using a higher level of force.

**(5) Mitigations:**

Law Enforcement Officers attend a Police Officer Standard Training (POST) approved academy before they enter into a Field Training Program and continue their training. During this academy they are taught about OC, how to deploy it, its effects, and the decontamination process. They are also subjected to OC to physically feel the effects themselves. After the academy, each officer is issued a MK-3 OC spray which they

are to keep on their person while on duty. If deployed and when practical, medical personnel should be summoned for the affected person(s) per policy 303. All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

(6) **Alternatives:**

Alternatives to utilizing OC sprays are tools such as expandable batons, less lethal launchers, and/or physical body weapons. The rationale to use OC spray depends on the circumstances of each individual incident and the individual officer involved in the incident. As mentioned above, reports have shown that OC spray may significantly reduce an individual's aggressive behavior which can minimize the amount of force necessary to apprehend that subject. Per our Use of Force policy (Lexipol 300), we shall use the minimal amount of force possible during each incident, thus making OC spray a valuable option.

(7) **Third Party Dependence:**

There is no third-party dependence for the First Defense OC spray. Once they are purchased, they are secured in their designated locations within the Police Department or with sworn police officers while they conduct official duties.

### **Chlorobenzylidene Malonitrile and Oleoresin Capsicum**

(1) **Description:**

A. **Background:**

Chlorobenzylidene malonitrile (CS):

Chlorobenzylidene malonitrile (CS) is one of the most commonly used "tear gases" in the world. It can be liquid, gaseous, or solid substance intended to produce temporary discomfort through being vaporized or otherwise dispersed in the air. Law enforcement (LE) agencies have found this agent invaluable when faced with combative suspects, for crowd/riot control, and for alleviating barricaded subject situations. LE use it to help control individuals or groups without the need for a higher level of force. There are four different deployment methods of chemical agents (Aerosol - most commonly used by police departments, Fogging, Pyrotechnics, and blast expulsion). All methods of deployment can be affected by certain environmental and physical conditions (wind, rain, temperature, distance, and proximity to others). At standard daily

temperatures and pressures, CS forms a white crystal with a low vapor pressure and poor solubility in water.

Oleoresin capsicum (OC):

For this portion of the Impact Statement, Oleoresin capsicum (OC) will be referred to in the aerosol canister form. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. OC is mixed with several types of solutions which act as carriers.

**B. Quantity:**

Inventory for CS canisters:

Qty 6 – 5230 CS Canisters

Qty 24 – 6230 CS Canisters

Qty 20 – 5230B CS Baffled Canister (flameless)

Qty 17 – 5231 CS Tri-Phaser Canisters

Qty 21 – 4630 CS Muzzle Blast (used with 40 mm less lethal launcher)

Qty 4 – 4530 CS Impact Rounds (used with 40 mm less lethal launcher)

Qty 19 – 4330 CS Barricade Projectile Rounds (used with 40 mm less lethal launcher)

Inventory for OC canisters:

Qty 54 - 9440 OC Tear Ball

Qty 19 - 5440 OC Flameless

Qty 20 - 6340 OC Vaper

**C. Capability:**

CS aerosols with microscopic particles which are potent sensory irritants becoming attached primarily to moist mucous membranes and moist skin. Common effects are: coughing, increased mucous secretion, difficulty breathing, skin reactions, and excessive salivation. The onset of symptoms typically occurs within 20 to 60 seconds, and if the exposed individual is placed in fresh air these effects generally cease in 10 to 30 minutes.

A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, stinging skin sensation, redness of the skin, irritation of the nose, runny nose, salivation, cough, gagging sensation, and shortness of breath. A person may also experience anxiety and panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

Both CS and OC canisters can render a dangerous and violent situation safe without using a higher level of force.

**D. Lifespan:**

CS and OC canisters expire in approximately 5 years.

**E. Use:**

Tear gas may be used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances. Only the Chief of Police may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary.

**(2) Purpose:**

There are a variety of situations where peace officers may use chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

**(3) Fiscal Cost:**

**A. Initial Cost:**

The cost for CS canisters ranges from \$20.00 to \$39.00 per unit. The cost for OC canisters ranges from \$36.00 to \$44.00 per unit. The Berkeley Police Department prefers the use of the Combined Tactical Systems (CTS) chemical agents and we purchase them from LC Action Police Supply.

**B. Cost of Use:**

The cost of each proposed use is unpredictable due to the demand, unknown nature and timelines of dangerous crowd/riots situations, dangerous barricade situations, and hostage situations.

**C. Cost of Potential Adverse Effects:**

Adverse effects of improper use of OC and CS are not calculable. It could lead to serious injury. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

See below cost of training.

**E. Training Cost:**

When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor

the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

**F. Maintenance and Storage Costs:**

The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

BPD is committed to preserving and protecting human life and welfare. These tools allow us to fulfill our commitment to our community.

Law Enforcement, under Penal Code 12403.1, is able to lawfully purchase, possess, or use chemical agents in the discharge of their duties. CS and/or OC canisters have been prominently used to resolve dangerous barricaded suspect situations and violent crowd control/riot situations.

Berkeley Police officers are trained to utilize time and distance to de-escalate dangerous barricaded situations in order to resolve each incident with minimal the use of force (per Use of Force Policy 300). In some circumstances when all other options are exhausted, CS and/or OC can be inserted into the structure in which the barricaded suspect is, denying access to certain areas inside. Unless exigent circumstances arise, all attempts to evacuate the structure are made prior to any deployment. When CS and/or OC are deployed into a structure the suspect may be forced outside allowing the situation to resolve safely with no use further use of force.

CS and/or OC chemical agents can be utilized to create order in dangerous crowd control/riot situations that have demonstrated violence or destruction. During these incidents, typically a clear and direct warning has been given to the crowd to disperse before the chemical agents are deployed. The ability to disperse crowds from a distance limits injury to Police Officers as well as damage to critical structures.



**(5) Mitigations:**

Regarding the already mentioned impacts, the decision to utilize chemical agents (unless there are exigent circumstances) flows through the chain of command and ultimately makes its way to the Chief of Police and the City Manager. If there are exigent circumstances, the Field Commander makes the decision and then advises the Chief of Police as soon as practical. All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

With these procedures incorporated in BPD's policies, this mitigates many potential negative impacts. Per Policy 428 – First Amendment Assemblies - The Field Commander shall determine the type and quantity of chemical agents to be used. After use of chemical agents, the Field Commander shall re-evaluate the scene to determine if additional chemical agents are needed. Less-than-lethal munitions (40 mm CS impact rounds), chemical agents (including OC spray), and/or smoke shall only be deployed in crowd control situations as outlined in the Use of Force Policy. For planned events, inventories shall be conducted before and at the conclusion of the incident. Outside agency inventories shall also be tracked.

In addition to the mitigations in place, the Berkeley Police Special Response Team also receives annual training on the use of chemical agents, the effects, and the decontamination process. Per policy 303, when practical, medical personnel should be summoned for the affected person(s).

**(6) Alternatives:**

There are no direct alternatives for CS and OC. They are the industry's leading way to resolve barricaded suspects while reducing the likelihood of injury to the subject, community, and officers. Additionally, it is one of the only tools that allows officers to stop acts of violence or regain order during crowd control/riot situations. They are very distinct in nature and have direct purposes. The rationale to use CS or OC depends on the circumstances of each incident. The Berkeley Police Department shall use the minimal amount of force per our Use of Force Policy 300. The use of CS or OC allows the police personnel to maintain distance, giving officers more time to react and avoid a potential need for a higher level of force to safely resolve the situation.

(7) **Third Party Dependence:**

There is no third-party dependence for CS and OC chemical agents. Once they are purchased, they are secured in their designated areas and stay there until they are either used during incidents or training.

### **Remington 700 Rifle**

(1) **Description:**

A. **Background:**

The Remington 700 is a series of bolt-action rifles designed in 1962 by the Remington Arms Company. The “700” designator is the generic name for multiple models of rifles with various parts, barrel lengths, stocks, etc. The Remington 700 rifle has long been used by law enforcement agencies and continues to be an industry standard for issued equipment. The Berkeley Police Department utilizes a custom Remington 700 action, chambered in the common .308-caliber round, with a 20” barrel and an Accuracy International chassis/stock. The rifle also includes a Nightforce 3-15x magnified optic and bipod.

BPD utilizes Hornady .308-caliber ammunition. This particular ammunition is specially designed for law enforcement applications due to its increased and consistent accuracy and performance.

B. **Quantity:**

The Berkeley Police Department Special Response Team (SRT) currently possesses six Remington 700 rifles, all configured in the same manner.

Currently, BPD has approximately 1,800 Hornady .308-caliber rounds. That quantity of ammunition fluctuates depending on supply from distributors and training schedules of those trained officers.

C. **Capability:**

The Remington 700 rifle, with the appropriate ammunition, training, and practice, is capable of consistent and highly accurate shooting out to a distance of approximately 500-yards.

The Remington 700 is intended to be used in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation.

**D. Lifespan:**

The Remington 700 bolt-action rifles have an expected life span of 10-years if properly maintained.

**E. Use:**

Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

**F. How it Works:**

The Remington 700 is a manually operated rifle. It requires the officer to physically maneuver a handle to expel a spent cartridge and to load another unspent round of ammunition in order to fire a second round. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. The officer must then pull a handle attached to the bolt to the rear, ejecting the spent cartridge. The officer then pushes the bolt forward, which picks up another bullet from the magazine, and closes the chamber, making the rifle ready to fire again.

**(2) Purpose:**

This rifle is to be used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. This rifle provides police with the benefit of adding distance to a volatile situation which can increase the safety for community members and officers. This rifle is an ancillary firearm for situations where increased distance and accuracy is needed to safely resolve the situation.

**(3) Fiscal Cost:****A. Initial Cost:**

The initial cost to purchase this rifle with its associated components is approximately \$10,000 dollars each. Their average life span is 10-years at which time it will likely need to be replaced.

**B. Cost of Use:**

Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on training.

**C. Cost of Adverse Effects:**

Adverse effects and improper usage of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

If this rifle is not cared for or maintained well, then a potential financial adverse impact would be the premature purchasing of a replacement rifle or replacement parts. However, authorized and trained Berkeley Police armorers service and provide regular maintenance of the rifles. The cost of maintenance is staff time.

**E. Training Costs:**

The cost associated with training is the staff time, range fees, and cost of spent ammunition. SRT members train once a month and, on average, each member shoots approximately 50-rounds. Currently, there are only 4 members shooting at each training day. This equates to approximately 2,400 rounds of ammunition being fired per year. This does not include special training days or attendance to training schools/classes. A single box of 20-rounds costs approximately \$20-dollars or \$1 dollar per round.

**F. Maintenance and Storage Costs:**

Maintenance costs vary depending on use over time. Firing pins need to be replaced every 5 to 7 years. The maintenance cost associated with this rifle is minimal.

There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

**G. Upgrade Costs:**

Upgrade costs and maintenance cost are synonymous due to the consistent design. Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing; those upgrade costs are unknown at this time.

**(4) Impact:**

The primary purpose of this rifle is to further SRT's goal of adding time and distance when dealing with a violent and dangerous individual(s). The rifle may allow SRT additional time by increasing the distance between law enforcement and the specific individual, thereby increasing the likelihood of a more peaceful resolution. Like all tools, it has a time and place for its intended operational efficacy.

**(5) Mitigations:**

Mitigating impacts from this tool's primary purpose is done through regular training. The training includes accuracy, decision making, scenarios, and various other training points. All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

**(6) Alternatives:**

The Remington 700 rifle is an industry standard tool used to deliver precision accuracy on an intended target. This tool can deliver accuracy and predictability through intermediate barriers like glass windows. It can be used at distances greater than any other tool currently possessed or authorized. No alternate tool or method would accomplish the same goal.

**(7) Third Party Dependence:**

These rifles are fairly simple in their design and operation. They do require regular maintenance which is commonly performed by each individual member. BPD Armorers are also capable of performing additional maintenance. If an issue arises which is beyond the scope of our Armorers we would seek professional assistance from the manufacturer. However, the need for this is very rare.

### **ReconRobotics Recon Scout XT**

**(1) Description:****A. Background:**

The Recon Scout XT is a throwable micro-robot manufactured by ReconRobotics for use in law enforcement applications. The Recon Scout XT enables officers to obtain instantaneous video footage and audio within indoor or outdoor environments. Designed to withstand repeated drops onto concrete, the Recon Scout XT robot can be thrown into hazardous situations (hostage rescue, barricaded subjects, natural disasters, etc.) in order to allow officers to quickly and safely make informed decisions when seconds count.

**B. Quantity:**

The Berkeley Police Department has two Recon Scout XT throwable robots, both purchased in 2010.

**C. Capability:**

The Recon Scout XT robot is designed to be able to crawl over a variety of terrain, clearing obstacles up to 2" (5 cm) tall. It could be thrown into hazardous situations, indoor and outdoor, and provide live audio and video feed back to the controller.

**D. Lifespan:**

Both Recon Scout XT robots are over 10 years old and ReconRobotics have developed and manufactured more advanced robots. ReconRobotics have stopped manufacturing certain parts for the Recon Scout XT, so the lifespan is dependent on what parts need to be replaced.

**E. Use:**

The Recon Scout XT robot may be deployed to help police officers safely view potentially dangerous environments before entering them.

**F. How it Works:**

The Recon Scout XT robot has a cylindrical body with a finned-wheel at either end of its body, and is stabilized by a rubber "tail". It measures approximately 6 ½" wide, and each wheel is about 5" in diameter (fin to fin) and weights just over one pound (1.2 lbs.). The Recon Scout XT robot sends digital video and audio back to an Operator Control Unit (OCU; controller with a screen and joystick), which allows the officer to control the robot, which provides a live feedback containing audio and visual feeds. The Recon Scout XT robot does not record audio or video footage; there is no data storage capability.

**(2) Purpose:**

The Recon Scout XT robot is intended to safely provide police officers valuable information during high-risk, rapid evolving situations via real-time audio and video footage. It can be driven a distance away from the OCU, creating space between the officer and potential danger, thus decreasing the likelihood of injury to those involved in the event, or even a violent encounter between police officers and a dangerous subject. This asset furthers our commitment to the sanctity of life by offering time and distance in critical incidents.

**(3) Fiscal Cost:****A. Initial cost:**

The initial cost for the Recon Scout XT robot was about \$12,500 per unit (2010 cost).

**B. Cost of Use:**

There is no "per use" cost of this equipment. The Recon Scout XT is powered by a rechargeable battery.

**C. Cost of Potential Adverse Impacts:**

The likelihood of adverse impacts due to the use of the Recon Scout XT robot is low – it is small, lightweight and is not likely to injure persons or damage personal property when deployed; however, there is a small chance that the Recon Scout XT robot might cause damage to personal property when deployed (thrown) into a structure. Due caution is used when it becomes necessary to throw, rather than place, the robot into a structure.

**D. Annual and Ongoing Cost:**

There are no ongoing or annual costs associated with the use of the Recon Scout XT robot. Being that it is battery operated, there is a nominal cost associated with charging the Recon Scout XT robot's batteries, and the batteries of the OCU. The Recon Scout XT robot is fairly simple to operate, thus there is no cost associated with training officers in its use. There are no costs with transportation or storage of the Recon Scout XT robot. While there are newer models of this robot available, there does not appear to be any upgrades available for the Recon Scout XT. The Recon Scout XT robot has been damaged on occasion, and there are costs associated with repair. But generally, the Recon Scout XT robot is robust and does not need regular repair.

**E. Training Cost:**

The Recon Scout XT robot is user friendly and simple to operate. Training is conducted by Berkeley Police personnel familiar with the operations and procedures of the Recon Scout XT robot. The cost of training is staff time.

**F. Maintenance and Storage Costs:**

There are no annual or storage costs.

**G. Upgrade Costs:**

There are no upgrades available at the time of this report.

**(4) Impact:**

The Recon Scout XT robot is used to safely gather information in situations where it may be dangerous to expose an officer, or officers, to gather the same information. Putting officers in such unknown, tense situations has the potential to create violent encounters, or otherwise place officers in unnecessary peril and danger that might otherwise be avoided by the use of a tool like the Recon Scout XT robot. The Recon Scout XT robot is not likely to have a negative impact on the welfare or safety of the public as its role is to gather real-time information during high-risk incidents such as hostage or potentially life-threatening situations. The Recon Scout XT robot is likely to improve the welfare and increase the safety of the public through its ability to gather real-time information and feed it back to police officers. The Recon Scout XT robot does not have the capability to record or store data.

**(5) Mitigations:**

The use of the Recon Scout XT robot is limited to sworn police officers, and guided by field supervisors (Lieutenants and Sergeants). Procedurally, the Recon Scout XT robot is used when exigent circumstances exist (hostage situation, barricaded subject, natural disaster

necessitating rescue, etc.) and real-time information is necessary to safely and effectively resolve the situation. The robot does not record or store data.

(6) **Alternatives:**

Unmanned aerial vehicles (UAV) are an alternative to robots such as the Recon Scout XT robot. However, the Berkeley City Council has prohibited the Berkeley Police Department from using UAVs. They are not constrained by obstacles on the ground and provide far superior perspective and situational awareness; at times, obstacles halt the Recon Scout XT robot's movement. There are several other robots on the market, however, the Recon Scout XT robot is compact, lightweight (weighing in at just over a pound), very maneuverable, and can easily be carried by an officer. It can also be introduced into structures by throwing it through any opening – an option not possible with other robot models.

(7) **Third Party Dependence:**

The Recon Scout XT robot does not currently rely on a third-party company or vendor for its use or maintenance. Should maintenance or parts be required beyond the scope of the members of the Berkeley Police Department, the robot would be sent to ReconRobotics for service.

### **Andros Remotec HD-1 Hazardous Duty Robot**

(1) **Description:**

A. **Background:**

The Andros Remotec HD-1 Hazardous Duty Robot, hereinafter referred to as Remotec HD-1 robot, was designed to support a wide range of missions in demanding environments. The Remotec HD-1 robot is capable of lifting up to 125 pounds, tracked articulators stair climbing, and has an integrated Talisman radio system for a stronger radio wave connection between the controller and the robot.

Remotec has served explosive ordinance disposal units, hazardous materials units, and other first responders as a provider of mobile robotic systems for application into a variety of undesirable, hazardous and potentially life-threatening environments. The Remotec HD-1 robot allows individuals to approach hazardous devices to examine and manipulate the device without putting people in harm's way.

B. **Quantity:**

The Berkeley Police Department Bomb Squad has one robot, the Remotec HD-1 robot.

C. **Capability:**

Remotec HD-1 robot is used in situations where a potential life-threatening situation exists and is too hazardous for a bomb technician to approach in person. The Remotec HD-1 robot is also used to survey an area prior to a bomb technician approaching a



scene to check for trip wires and ascertain a good approach path. The Remotec HD-1 robot has three cameras and audio monitoring that stream live video and audio back to the control module; however, it is unable to record and does not have any data storage capabilities. It has several attachment mounting options as well. The Remotec HD-1 robot also has the ability to carry a variety of tools. Some of the tools are:

- 1) A spike to break glass and access vehicles or homes with potential explosive devices inside
- 2) An X-ray mount in order to remotely X-ray suspected explosive devices.
- 3) Percussion actuated non-electric disruptors which are smooth barrels that are filled with water and fired at high speed with a blank shotgun round to open backpacks, suitcases, and packages from a distance
- 4) A hook with cutting blades that are used to cut backpack straps, ropes, etc.
- 5) PAN rounds containing various fills, from sand to slugs, in order to open sturdier packages made from metal or other hard covers.
- 6) Electrical connections to connect explosives that can be detonated remotely and from a safe distance.

**D. Lifespan:**

The Remotec HD-1 robot has an expected life span of 10 years. It is currently 13 years old and has begun exhibiting issues. The Remotec HD-1 robot weighs just over 200 lbs. and has been near multiple explosions over the years and crossed a variety of off-road terrain

**E. Use:**

Used to examine and possible destroy hazardous materials such as an explosive device.

**F. How it Works:**

The Remotec HD-1 robot is piloted by a bomb technician into a hazardous area to locate, examine, and render suspicious packages and explosive devices safe by utilizing a variety of attachable tools.

**(2) Purpose:**

The Remotec HD-1 robot is used as a means to approach hazardous situations where a potentially lethal threat such as an explosive device exist. The Remotec HD-1 robot allows for the examination and manipulation of an object or potential explosive device without unnecessarily putting a bomb technician's life at risk.

**(3) Fiscal Cost:**

**A. Initial Cost:**

Procured in 2008 for \$214,496 including on-site training through a UASI Grant. (64,292-N.S.)

**B. Cost of Use:**

None. The robot is electric and operated through the City's electricity for charging.

**C. Cost of Potential Adverse Effects:**

The Remotec HD-1 robot interacts with inanimate objects. However, should it encounter a package that explodes, it could potentially destroy the robot and damage other property.

**D. Annual and Ongoing Costs:**

There is no annual cost. Maintenance of the Remotec HD-1 robot is conducted by Berkeley Police Bomb Technicians.

**E. Training Costs:**

Berkeley Police Bomb Technicians are trained during regular bomb squad training sessions and maintain their skills through training scenarios. The cost of training is limited to staff time.

**F. Maintenance and Storage Costs:**

Remotec offers occasional maintenance and upkeep workshops free of charge.

**G. Upgrade Costs:**

There are no costs for upgrades as the company has stopped manufacturing the robot and any applicable upgrades.

**(4) Impact:**

The Remotec HD-1 robot is used by the Berkeley Police Department Bomb Squad as a means to examine a potentially explosive device in order to keep the community safe. Since April 2020, the Berkeley Police Department Bomb Squad has responded to 14 incidents. The impact of the Remotec HD-1 robot has been to reduce and minimize the danger posed by calls of possible explosive devices to the Berkeley Police Department's Bomb Technicians.

**(5) Mitigations:**

The Remotec HD-1 robot is used in situations where a hazardous device exists. In these situations, the area is always evacuated in order to ensure community safety.

**(6) Alternatives:**

The Remotec HD-1 robot is 13 years old and there has been significant development in technology. There are several alternatives that are far superior than our current Remotec HD-1; Mark V-A1 robot developed by Remotec Andros, Caliber Flex developed by ICOR Technology, Digital Vanguard-S developed by Med-Eng and T7 and T4 developed by L3Harris Technologies. These are alternatives that have newer and better technology and capabilities than the Remotec HD-1 robot.

(7) **Third Party Dependence:**

Remotec representatives are the only ones used to diagnose and maintain complex issues on the robot that cannot be done in-house. Since it is proprietary technology, Remotec may void warranties on any repairs made by outside vendors or by untrained personnel. Therefore, all complex issues with the Remotec HD-1 robot must be repaired by Remotec.

### **Light/Sound Diversionary Device**

(1) **Description:**A. **Background:**

Light/Sound Diversionary devices also known as distraction device, flashbang, light/sound and noise/flash devices have been available for approximately 40 years and are a safe and effective tool for Law Enforcement (LE) to use during challenging tactical incidents. The device will be referred to a diversionary device throughout this document.

B. **Quantity:**

Qty 50 - CTS 7290 Diversionary Device

C. **Capability:**

When a diversionary device is deployed they create a loud noise, heat and brilliant light and create an effective diversion. They can create psychological and physiological effects such as: hearing a loud noise beyond that of everyday living, seeing a short bright light, and feeling of a change in atmospheric pressure. These effects may disorient/confuse subjects for a short time giving tactical teams the ability to apprehend that subject without using a higher level of force.

D. **Lifespan:**

The lifespan of the CTS 7290 Diversionary Device is 5 years.

E. **Use:**

The use of a diversionary device is to create a diversion in order to facilitate entry and enable arrest. Circumstances justifying the use of a diversionary device may include, but not limited to barricaded subject or hostage situations and high-risk search warrants services.

F. **How it Works:**

The main charge of a modern diversionary device typically contains flash powder which is sometimes called photoflash powder. Upon initiation, this chemical compound causes the device to deflagrate (not detonate). The powder mixture is

rapidly changed into gases that expand outward reaching upwards to 3,800 times the original volume of the charge itself. This process releases the desired effects of loud noise, bright light and the feeling of atmospheric pressure. Flash powder is typically made up of an oxidizer and some type of fuel. The oxidizer is needed to initiate and sustain the flash powder's rapid combustion. This is required since sufficient oxygen cannot be obtained from just the surrounding air.

(2) **Purpose:**

The purpose of a diversionary device is to create a reactionary gap of a person by temporarily disorienting them. This gap gives tactical teams an opportunity to apprehend a suspect while using the minimal amount of force possible. They can also be used to safely invoke a response or redirect the attention of subjects who are either feigning injury, ignoring police commands or are unresponsive while posing a threat to the public.

(3) **Fiscal Cost:**

A. **Initial Cost:**

Diversionary Devices cost approximately \$45 per unit and are purchased through LC Action Police Supply. Purchases for these tools are made when inventory becomes low, based upon critical incident usage and Special Response Team trainings that incorporate live devices.

B. **Cost of Use:**

The cost of each proposed use is unpredictable due to the unknown nature and timelines of dangerous barricade situations, critical incident, and hostage situations. The devices may be stored inside of the Police Department, in the Special Response Team Vehicle, or in the rescue vehicle. There are no additional storage costs. There are no associated costs for transporting, maintenance, training, or upgrades.

C. **Cost of Potential Advert Effects:**

Adverse effects of improper use of a diversionary device are not calculable. It could result in serious injury. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**

See below training cost.

**E. Training Cost:**

Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices. The cost of training is staff time.

**F. Maintenance and Storage Costs:**

The majority of diversionary devices are stored inside of a room in the basement within the Police Department. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

The Berkeley Police Department is committed to preserving and protecting human life and welfare. These tools allow us to fulfill our commitment to our community.

Diversionsary Devices may be utilized in many situations to include potentially dangerous barricaded subject situations, hostage situations, and critical incidents. Some criteria considered prior to a deployment is dependent upon whether the suspect is a dangerous felon, causes a life-threatening situation and/or other unique incidents where it appears to be a reasonable method in which to resolve the situation. When deployed appropriately these devices can assist in safely apprehending suspects and resolving high risk critical incidents with minimal or no injuries to suspects and/or officers.

**(5) Mitigations:**

Since Diversionsary Devices are considered low explosives, there are several protocols in place to mitigate possible negative results (i.e. minor or major injuries).

Only trained and qualified personnel are permitted to deploy diversionary devices; typically, members of the Special Response Team who receive constant training regarding the deployment, effects, and post deployment protocols.

Pre-deployment concerns are typically gathered and evaluated, such as:

- The number of people at a location and the individual location of suspects within the structure.

- Evaluation if there are children or elderly people present
- An evaluation of the suspect's mental and physical conditioning
- Evaluation of the building/room layout
- Possible combustible/flammable substances present
- Lighting conditions

When a diversionary device is deployed, the officer shall utilize a helmet, hearing protection, eye protection, body armor, and nomex (fire resistive) gloves.

If a diversionary device is used, a supervisor shall be notified, medical treatment/screening is conducted, and a collection of the deflagrated device is completed. Documentation utilizing the device serial number is recorded.

Per Policy 351 - Except in extreme emergencies (i.e., life-threatening situations), flash/sound diversionary devices shall not be used without prior authorization of the incident commander/on-scene supervisor. Whenever diversionary devices are carried by personnel in an actual situation or incident, that fact shall be noted in the after-action report or police report. In the event devices are deployed, the circumstances surrounding their deployment shall be fully described. The Chief of Police or his or her designee shall be responsible for reviewing any deployment of diversionary devices to ensure that policy was followed. Diversionary devices are registered by serial number with the Bureau of Alcohol, Tobacco, and Firearms (ATF). Typically, the police department's purchase of new devices is reported directly (by case-lot serial numbers) to ATF by the device manufacturer via ATF Form 5. The National Firearms Act requires the police department to notify ATF upon the use/expenditure of diversionary devices. A Special Response Team member shall be responsible for submitting written notification to ATF when all devices listed on a single ATF form 5 have been used/expended.

**(6) Alternatives:**

A possible alternative to a diversionary device (flashbang) is the Tactical Electronic Distraction Device (T.E.D.D.) which emits 2600 lumen light and high pitched 120 decibel sound to disorientate subjects. This could be a good tool as it is not a low explosive however it has its negative aspects as well:

- There is no feeling of atmospheric pressure, limiting the desired momentary physiological effect.
- A suspect could pick up and throw the device at potential victims and at police officers. The currently used diversionary devices are too hot to attempt this.
- In certain circumstances, a suspect could potentially steal the device during an escape.
- The individual cost per unit is approx. \$200 which is much more than a diversionary device
- This device is significantly less effective in disorienting subjects compared to a diversionary device.

(7) **Third Party Dependence:**

There is no third-party dependence for Diversionary Devices with the exception of communication with ATF of the purchase. Once they are purchased, they are secured within their designated locations where they are stored until they are either used during incidents or training.

### **Long Range Acoustic Device (LRAD)**

(1) **Description:**

A. **Background:**

The Long-Range Acoustic Device (LRAD) is a high intensity directional acoustical array for long range, crystal clear notification system. The use of the LRAD is for communications.

B. **Quantity:**

The Berkeley Police Department possesses 2 Long Range Acoustic Devices (LRAD) speakers. One is an LRAD 450XL and the other is an LRAD 100X.

C. **Capability:**

Both of these speakers are able to focus sound in directional pattern allowing the user to make sound audible over distances much greater than conventional public address speakers. The LRAD 450XL is the larger of the two and designed to either be used in a fixed location or mounted on a vehicle to make it portable. It

has a usable range of approximately 1 mile. The LRAD 100X is smaller and more portable. It can be carried or mounted to a person's chest for mobility or mounted to a vehicle. Its range is approximately 1/3 of a mile. Both of these systems allow for clear long-range communication, they are also able to play recorded messages.

**D. Lifespan:**

The lifespan for both LRADs is 25 years.

**E. Use:**

The LRADs are used to communicate with the community during natural disasters, crowd management and control situations, or when other forms of communications are ineffective or inoperable to unequivocally communicate messages from Police or Fire and safely resolve uncertain situations where communicating with the public is paramount.

**F. How it Works:**

The LRADs are essentially a long-range speaker or long-range megaphone and operates as such.

**(2) Purpose:**

The LRADs are designed for clear long-range communication. The LRAD's ability to communicate over a long distance is far superior to any megaphone or Public Address (PA) system mounted to a police vehicle. Additionally, LRAD's may be used to:

- Communicate lifesaving information to residents during disasters
- Communicate to large crowds during parades, festivals, concerts and sporting events
- Establish safety zones and perimeters
- Control traffic congestion
- Conduct Special Response Team operations
- Broadcast a dispersal order
- Communicate during hostage and barricaded subject situations
- Announce and serve high risk warrants
- Communicate to protesters
- Communicate to persons threatening suicide who are in an inaccessible location
- Conduct search and rescue operations



The ability to communicate with the public in a large area increases the safety of all members of the public and law enforcement. It allows everyone in a given area to know what is being communicated, gives more situational awareness to everyone in a given area and allows people to know where to go or not to go.

(3) **Fiscal Cost:**

A. **Initial Cost:**

The LRAD 450XL and the LRAD 100X were purchased in 2018. The total cost for both LRADs, rechargeable battery packs and accessories was \$49,999.

B. **Cost of Use:**

There is no cost associated with each use of the LRADs. The systems run on batteries or can plug into a vehicle.

C. **Cost of Potential Adverse Effects:**

Adverse effects of improper use of the LRADs are not calculable. It could lead to hearing loss. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**

BPD has not incurred any additional cost to date for this equipment.

E. **Training Costs:**

Training is conducted by Berkeley Police personnel who are trained in the use and procedures of the LRAD. The cost to train is staff time.

F. **Maintenance and Storage Costs:**

There are no maintenance or storage costs for this equipment.

G. **Upgrade Costs:**

No upgrades exist for this equipment as of this report.

(4) **Impact:**

The Berkeley Police Department is committed to ensuring the safety of our community. Having the ability to communicate efficiently and effectively in different situations is crucial in providing potentially life-saving information to the public. The LRAD provides BPD personnel the ability to communicate long distances to people that are in a given area, inside structures, or barricaded inside a structure. The LRAD is very effective any situation involving communicating information to large crowds, or entire communities.

(5) **Mitigations:**

The only potential negative impact of the LRAD's is that they are capable of producing a high pitched "deterrent tone" that is designed to disperse a potential threat. This "deterrent tone" does have the ability to cause hearing damage. BPD Policy 707 strictly prohibits any member of BPD from using the LRAD as a weapon. Additionally, the LRAD can only be deployed at the direction of a Watch Commander or Incident Commander and may only be used by personnel specifically trained in the use of the LRAD.

(6) **Alternatives:**

BPD is not aware of any other sound speakers that are able to clearly communicate over long distances of up to 1 mile.

(7) **Third Party Dependence:**

To date, BPD has not depended on any third party for the use or maintenance of this equipment.

### **36" Baton**

(1) **Description:**

A. **Background:**

The Berkeley Police Department issues a knurled grip, polycarbonate, fixed-length straight baton for crowd control purposes. The baton is 36" long and 1.25" in diameter and weighs about 1.64 pounds. Polycarbonate is a thermoplastic, which means it is durable, resistant to splintering and heat.

B. **Quantity:**

In 2017, BPD purchased 175 polycarbonate 36" batons to replace aging wood batons of the same purpose. Additional polycarbonate batons were purchased over the past four years to ensure all sworn police officers as well as trained reserve police officers are equipped with the 36" baton. BPD possesses approximately 195 - 36" polycarbonate batons. Most of these batons are issued to and maintained by individuals. However, a small amount of these batons is stored in a secure equipment room as spares in case of damage or new personnel issue.

**C. Capabilities:**

The 36" baton is carried in a "baton ring" on an officer's belt just as any other baton. It is used as a safety tool and is a means for officers to defend themselves in certain crowd control or riot situations. Trained officers may employ particular applications of force with their 36" batons when directed by their chain of command. The 36" baton is the desirable baton in a crowd control situation as it is 7" longer than the standard 29" baton. The longer baton creates more distance between the officer and others, which is critical when dealing with violent or aggressive crowds.

**D. Lifespan:**

The manufacturer provides a lifetime repair or replacement guarantee.

**E. Use:**

The 36" baton is a less-lethal force tool and is intended to be used in crowd control situations in close quarters, where officers may defend an attack, or when engaging in physical contact with combative or aggressive crowd members. The 36" baton is only used for crowd situations.

**F. How it Works:**

There are a number of appropriate blocking or striking techniques an officer may use when force is justified and the decision is made to use the 36" baton to effectively gain control of a person or situation. The use of the baton requires the officer to continually monitor and assess effectiveness of any delivered strikes. The reason this type of force is administered is to stop a person's attack, threat or resistance, with the goal to place them under lawful arrest for their actions.

**(2) Purpose:**

The 36" baton is a less-lethal tool that may be used when a crowd becomes aggressive, hostile or violent. It is the most effective individual tool of choice when officers are in formation and engaged in crowd control duties.

When officers are deployed to maintain, disperse, or protect others from a violent crowd or civil disobedience, it is imperative that they have an adequate safety zone to protect themselves or others. The 36" baton provides officers additional distance from a potential threat than the standard issue 29" baton.

When the baton is used to strike a subject, kinetic energy transfer occurs. Kinetic energy is the energy of motion. The amount of translational kinetic energy which an object has depends upon two variables: the mass of the object and the speed of the

object. The desired effect is for the officer to apply a baton strike with the necessary energy to stop the threat as quickly and safely as possible. By targeting the large muscle areas of the arms or legs with sufficient kinetic energy, motor and sensory nerves can be affected. When the nerves are affected this will create momentary muscle dysfunction or pain, which will allow the officer the ability to gain control of the subject, while minimizing the possibility of long-term injury to the subject.

The head, neck, throat, spine, heart, kidneys and groin should not be intentionally targeted except when the person's conduct is creating an immediate threat of serious bodily injury or death to an officer or any other person as outlined in policy 303 and 300.

**(3) Fiscal Cost:**

**A. Initial Cost:**

The cost of the Monadnock MP36 2004 36" polycarbonate baton with knurled grip was \$53.00 per baton in September 2017. After tax, \$10,132.94 was spent for the purchase of 175 batons. The department placed an additional order for 20 batons in December 2019. It is anticipated that the cost of the baton will fluctuate a few dollars based on supply and demand over time.

**B. Cost of Use:**

The only cost associated with use that of ongoing departmental training to ensure officers are proficient in authorized baton techniques.

**C. Costs of Potential Adverse Impacts:**

Adverse effects from improper use of the 36" baton cannot be anticipated. Improper use could lead to serious bodily injury or death. Additionally, the improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

There is no additional annual or ongoing cost associated with the 36" baton.

**E. Training costs:**

Training on the applications of the batons are conducted at the police academy. Police Office Standard Training (POST) requires "arrest and control" training every 2 years which includes portions of baton training. This training is conducted in-house by POST certified defensive tactics instructors.

**F. Maintenance and Storage Costs:**

There are no associated costs to transporting, maintenance, or upgrades.

**G. Upgrade Costs:**

No upgrades exist for this equipment as of this report.

**(4) Impact:**

Per Policy 300, "The Berkeley Police Department's highest priority is safeguarding the life, dignity, and liberty of all persons. The Department is committed to accomplishing this mission with respect and minimal reliance of the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force."

At times, it may become necessary for police officers to use force in crowd control situations to move a crowd, stop violent behavior, overcome resistance or make a lawful arrest. Officers have been trained that they must do everything possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public. When deemed necessary, use of the 36" baton may be used as a tool to strike a person, create a barrier or used in formation in order to move a crowd in a certain direction. The use of the baton may cause discomfort, pain, blunt trauma and has the potential to cause serious injury. Their use is subject to the totality of the circumstances, proper training, department policy, as well as federal and state law.

Officers who use the 36" baton are trained to continuously assess each situation where force is used and only use the force that is reasonably necessary and proportional to respond to the threat or resistance to effectively and safely resolve the incident.

**(5) Mitigations:**

Per Policy 300, "In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict."

Per Policy 303, "Only officers who have successfully completed department-approved training in the use of any control device are authorized to carry and use the device. Control devices may be used when a decision has been made to control, restrain or arrest a subject who is violent or who demonstrates the intent to be violent, and the use of the device appears reasonable under the circumstances. When reasonable, a verbal warning and opportunity to comply should precede the use of these devices. When using control devices, officers should carefully consider potential impact areas in order to minimize injuries and unintentional targets."

Every officer who carries a 36" baton has been trained how to properly carry the equipment, it's intended use, target areas and non-target areas. Large muscle groups such as the upper legs or lower abdomen are approved target areas and areas to be avoided at the groin and head. When a baton strike is directed at an intended target area and the subject moves simultaneously, it is possible for the officer to unintentionally strike a non-target area. Officers are trained to consider the placement of baton strikes, and to immediately render medical aid to the subject as soon as it is safe to do so.

All uses of force require documentation that is completed by the supervisor in a use of force report and reviewed by the Chain of Command. Furthermore, all deployments of equipment outlined in the Police Equipment and Community Safety Ordinance are documented according to the reporting requirements as mandated in the ordinance.

(6) **Alternatives:**

The alternatives to the 36" crowd control baton are the 29" standard issue baton and collapsible 26" Rapid Containment Baton (RCB). The standard issue baton and RCB are shorter in length and require officers to be closer to the person they are engaging, thereby increasing the risk of injury to the officer and the person. A longer baton provides an officer with more distance which creates a small safety zone and allows the officer time to react and assess the situation before making use of force decisions.

(7) **Third Party Dependence:**

There is no requirement for a third-party service provider to issue the 36" crowd control baton. Berkeley Police Department Defensive Tactics Instructors provide in-house training on the proper use of the baton.

### **Mobile Command Vehicle**

(1) **Description:**

**A. Background**

The Berkeley Police Department owns one Mobile Command Vehicle (MCV). Our MCV is a 2003 Freightliner MT55. This vehicle's most common use is as a commercial delivery vehicle. Our 2003 Freightliner MT55 was converted into a MCV by adding desktop work stations, additional police radios and emergency lighting. The MCV is 30' long and has a gross vehicle weight (GVW) of approximately 23,000 pounds.

**B. Quantity:**

The Berkeley Police Department owns 1 MCV.

**C. Capability:**

The MCV is a mobile office that provides shelter and may be used as a mobile command and communication center.

**D. Lifespan:**

This vehicle is approximately 20 years old and is at the tail end of its serviceable lifespan. All emergency vehicles need to be completely dependable and vehicles of this age start to lose dependability as old parts start to fail without warning. The modern versions of this type of vehicle are typically converted motorhomes.

**E. Use:**

This vehicle is used as a mobile command post for large scaled events.

**F. How it Works:**

This vehicle operates and drives like other vehicles.

**(2) Purpose:**

This vehicle may be used as a mobile command post for any larger scaled events or as a communications center in the event the communications center in the Public Safety Building is inoperable. Some examples of large-scale events include Solano Stroll, Juneteenth, 4<sup>th</sup> of July, critical incidents or natural disasters.

**(3) Fiscal Cost:**

**A. Initial cost:**

The initial cost of the MCV (2003 Freightliner MT55) was \$230,800.

**B. Cost of Use:**

The cost of use is the cost of fuel from the City Corporation Yard.

**C. Cost of Potential Adverse Effects:**

Adverse effects of improper use of the MCV are not calculable, but is the same as improper use of any vehicles. The improper use could result in civil liabilities.

**D. Annual and Ongoing Costs:**

There is no annual or ongoing cost associated with this vehicle. Maintenance of the vehicle is conducted by the City's Corporation Yard.

**E. Training Costs:**

Training is conducted in-house by Berkeley Police personnel who are trained in the operation of the vehicle. The training cost is staff time.

**F. Maintenance and Storage Costs:**

There are no storage costs and maintenance would be conducted by the City of Berkeley Corporation Yard.

**G. Upgrade Cost:**

The MCV is almost 20 years old and upgrades would involve replacing different parts of the vehicle. This work would be conducted by the City of Berkeley's Corporation Yard. The cost would be staff time plus the cost of any necessary parts.

**(4) Impact:**

The MCV is used as a command post for any large scaled event. It works as a mobile central location where resources can stage and be deployed from. It provides the police department with on-site command, supplying a control and communications hub that is needed for large community events, or critical incidents such as natural disasters in order to maintain public safety.

**(5) Mitigations:**

The MCV shall only be operated by trained personnel that have demonstrated proficiency in the operations of this vehicle per Berkeley Police Department Policy 811.

**(6) Alternatives:**

The MCV is almost 20 years old. Current MCV from other agencies are large mobile homes converted into MCVs.

**(7) Third Party Dependence:**

All maintenance is completed through the Cities Corp Yard so there is no dependence on a third party.

**Barrett Model 99 Rifle**

**(1) Description:**

**A. Background:**

The Barrett Model 99 rifle is a single shot bolt-action 50-caliber rifle first



introduced in 1999. It is intended to be used in emergency situations where there is a high potential for violence.

**B. Quantity:**

Berkeley Police Department Special Response Team (SRT) currently possess 1 (one) of these rifles and is not looking to purchase any others.

Currently BPD has approximately 100 Summit Ammunition .50-caliber BNG rounds.

**C. Capability:**

This rifle is used only in situations where a potential life-threatening situation exists. The length of the rifle's barrel coupled with the ammunition result in precision accuracy. This rifle is capable of disabling any vehicle engine block because of the large caliber round.

**D. Lifespan:**

This rifle has been in our possession for almost 15-years and we expect it to last for an additional 20 years or more considering how in-frequently it's used.

**E. Use:**

This rifle is used primarily in emergency situations where a life-threatening situation exists, necessitating a vehicle to be disabled.

**F. How it Works:**

This is a bolt-action rifle that fires one round at a time and needs to be reloaded by hand after each round. The Barrett Model 99 rifle works similar to all modern bolt-action rifles. When the trigger is pressed, a firing pin strikes the primer of a bullet loaded into the chamber of the rifle. The ignited primer ignites gun powder contained in the bullet which pushes the bullet down the barrel and out the muzzle. The operator pulls the bolt back, ejecting the spent cartridge. The operator then loads another bullet into the breach, pushes the bolt forward, and closes the chamber, making the rifle ready to fired again.

**(2) Purpose:**

The Barrett rifle is a firearm that may be used to stop a vehicle which poses a lethal threat to the public, or to disable a vehicle which presents a threat to the safety of another person(s) by its continued use. There are vehicle disabling tools that may disable vehicles by slowly deflating the tires; however, even with tires deflated a vehicle has the ability to operate and remain a threat to the public. Furthermore,

these tools must be hand deployed and, in most circumstances, require officers to expose themselves to deadly threats. The Barrett rifle creates the ability to effectively disable vehicles instantaneously from a distance away.

(3) **Fiscal Cost:**

A. **Initial Cost:**

The Barrett Model 99 50-caliber rifle has a retail cost of approximately \$12,500 dollars. The Department of Justice provided the Barrett rifle to the Berkeley Police Department on 04/04/2007. There was no initial cost related to BPD taking possession of it.

B. **Cost of Use:**

The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately \$6 dollars per bullet; \$60 for a box of 10 and \$600 for a case of 10 boxes, plus shipping and handling. We currently possess 100 rounds of BMG ammunition.

C. **Cost of Potential Adverse Effects:**

Adverse effects of improper use of a firearm are not calculable. It could lead to the loss of life or serious injury. Additionally, the improper use could result in civil liabilities.

D. **Annual and Ongoing Costs:**

The annual cost of the equipment is minimal and includes ammunition expenditure, cleaning equipment, and possibly replacing the optics at some point in the future.

E. **Training Costs:**

The cost associated with training is the staff time, range fees, and cost of spent ammunition.

F. **Maintenance and Storage Costs:**

Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

G. **Upgrade Costs:**

Improvements in technology and new designs may be an additional cost but we can't predict what those will be at this time.

Should advancements be made in ammunition manufacturing; those upgrade costs are unknown at this time.

(4) **Impact:**

The Berkeley Police Department is committed to preserving and protecting human life and welfare. The Barrett rifle is a firearm the department would primarily use to stop a vehicle which poses a lethal threat to the public or used to disable a vehicle that presents a threat to the safety of another person(s) by its continued use.

The Barrett rifle is intended as a tool to increase the safety and welfare of community members and officers alike.

The Barrett rifle has minimal or no impact on civil rights or civil liberties as it will only be deployed in very specific situations, by very select members of the SRT. This is not a piece of equipment that is carried by an officer on routine patrol, and is highly unlikely that any members of our community would ever see this equipment due to its very selective use in the most critical of instances.

(5) **Mitigations:**

Only four BPD members are authorized to utilize this rifle. Authorized members are trained in its use as well as the very specific and limited circumstances where this equipment would be utilized.

(6) **Alternatives:**

There is no other alternative tool or asset available that could accomplish the same goal of this rifle. An alternative rifle to the Barrett model 99 is a different rifle of equal capability, such as a Lapua .338 caliber rifle.

(7) **Third Party Dependence:**

These rifles are simple in their design and operation. They do require regular maintenance which is performed by an SRT Team Leader. If an issue arises which is beyond the scope of our Armorers we would seek manufacturer assistance. However, the need for this is expected to be very rare.

## Appendix:

### Applicable Lexipol Policies Respective to Each Equipment

Policies are hyperlinked to its respective webpage.

#### M4 rifle/Patrol Rifle

- [Policy 300 \(Use of Force\)](#)
- [Policy 349 \(Tactical Rifle Operator Program\)](#)

#### Penn Arms 40MM launcher

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)

#### Milkor LTL multi-launcher

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)

#### FN 303 Launcher & FN Pava rounds

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)

#### Chlorobenzylidene Malononitrile and Oleoresin Capsicum (canister and spray)

- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)

#### Remington 700 Rifle

- [Policy 300 \(Use of Force\)](#)
- [Policy 354 \(Precision Rifle\)](#)

#### ReconRobotics Recon Scout XT Robots & Andros Remotec HD-1 Hazardous Duty Robot

- [Policy 708 \(Robot Cameras\)](#)

#### Light/Sound Diversionary Device

- [Policy 353 \(Diversionary Device\)](#)

#### Long Range Acoustic Device

- [Policy 707 \(Long Range Acoustical Device\)](#)

36" batons

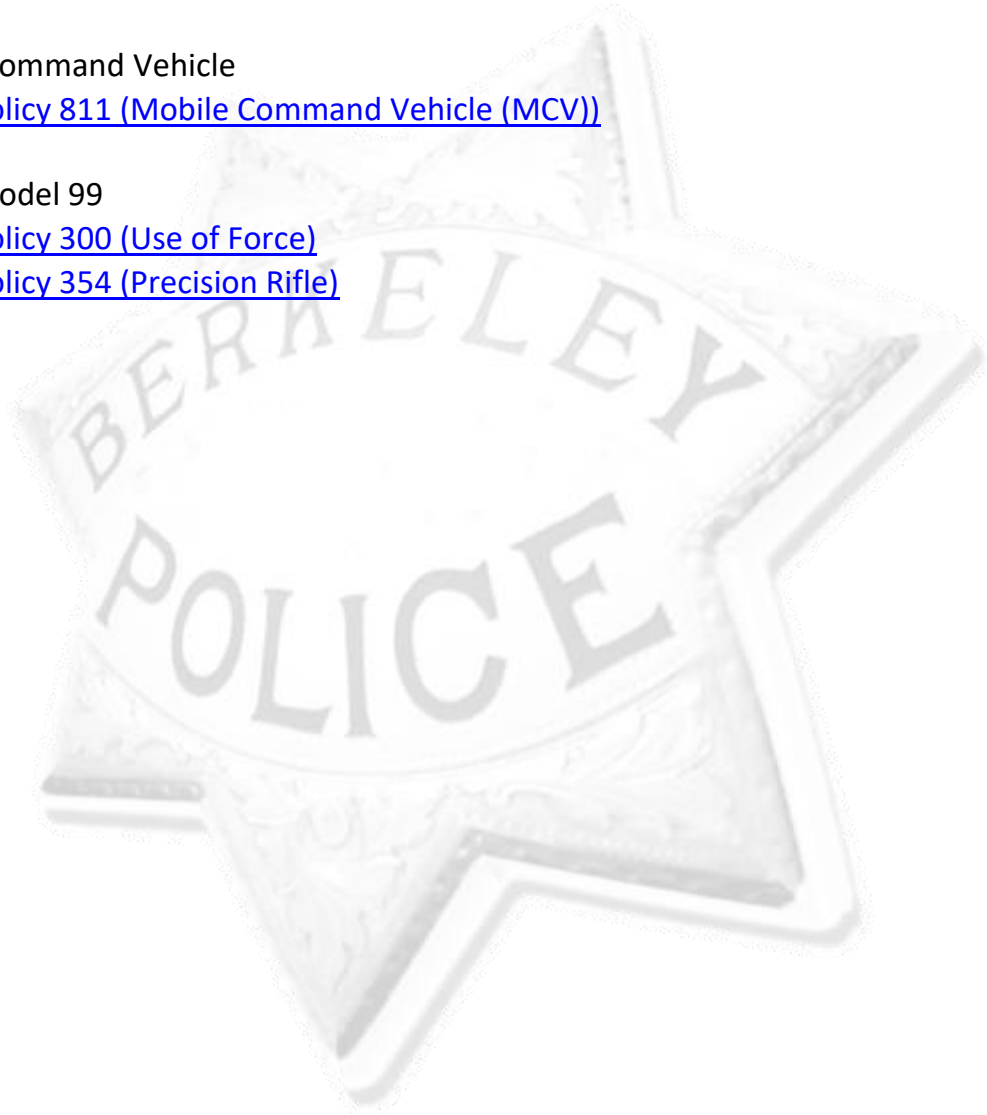
- [Policy 300 \(Use of Force\)](#)
- [Policy 303 \(Control Devices and Techniques\)](#)
- [Policy 428 \(First Amendment Assemblies\)](#)

Mobile Command Vehicle

- [Policy 811 \(Mobile Command Vehicle \(MCV\)\)](#)

Barret Model 99

- [Policy 300 \(Use of Force\)](#)
- [Policy 354 \(Precision Rifle\)](#)



# **Police Equipment and Community Safety Ordinance 2021 Annual Report**



## INTRODUCTION

On May 11, 2021 the Berkeley City Council passed Ordinance NO. 7,760-N.S., the Police Equipment and Community Safety Ordinance. Section 2.100.050 of the ordinance mandates an annual report for the deployment of specific equipment the Berkeley Police Department possesses. This annual report also fulfills the obligations set forth in Assembly Bill No.481. Below is a list of the reportable equipment under the city ordinance and Assembly Bill No.481:

- Patrol Rifle
- Less Lethal single 40MM launcher
- Less Lethal Milkor LTL 40 MM multi-launcher
- Less Lethal FN 303 Launcher
- FN Pava rounds
- Oleoresin capsicum (OC spray)
- Chlorobenzylidene Malononitrile and Oleoresin capsicum (tear gas)
- Remington 700 Precision Rifle
- ReconRobotics Recon Scout XT Robots
- Andros Remotec HD-1 Hazardous Duty Robot
- Light/sound distraction device
- Long Range Acoustic Device (LRAD)
- 36" batons
- Mobile Command Vehicle
- Barret Model 99 Precision Rifle

The annual report on the controlled equipment shall contain the following information per Ordinance NO. 7,760N.S.:

- (a) Production descriptions for Controlled Equipment and inventory numbers of each product in the Police Department's possession.
- (b) A summary of how Controlled Equipment was used. For the purposes of annual reports, "use" of equipment shall refer to equipment that is Deployed, not to transfers of location or placement of equipment inside Department vehicles.

- (c) If applicable, a breakdown of where Controlled Equipment was used geographically by individual police area. For each police area, the Police Department shall report the number of days or instances in which Controlled Equipment was used and what percentage of those daily reported uses were authorized by warrant and by non-warrant forms of court authorization.
- (d) A summary of any complaints or concerns received concerning Controlled Equipment.
- (e) The results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response.

There have been no internal audits (other than those conducted to gather and confirm data for this report), identified violations of equipment use, or any complaints concerning the above listed equipment. For inventory numbers and description of each equipment refer to the Impact Statements.

Section 2.100.020 (D) defines deployment as “to utilize or employ Controlled Equipment for a deliberate purpose in the presence of members of the public during management or control of crowds, during any Special Response Team deployment or to affect some response from members of the public during any other operation or critical response. “Deployed” shall not mean an officer merely wearing a piece of Controlled Equipment on their belt or elsewhere on their person.” Deployment means the display of the equipment to affect some response from members of the public. The equipment does not have to be used; simply having it and in view of a person to specifically affect a response would be considered a deployment. Deployments are to be reported per the ordinance and the table on page 5 of this report reflects both deployments and uses of equipment.

On the date of passage of the Police Equipment and Community Safety Ordinance on May 11, 2021 the Police Department’s Blue Team system was already being utilized to capture the deployment of patrol rifles as well as all uses of force, including the use of less-lethal systems. However, although the use of the above listed equipment was thoroughly documented in police incident or crime reports, no system existed where the deployment of each defined equipment could be



extracted. In response to this, the Professional Standards Bureau and the Police Technology Unit collaborated to develop a new system that was capable of fulfilling the obligations set forth by the ordinance.

The development of the new system began immediately after the ordinance was adopted and the new Equipment Ordinance System was created. Every sworn member of the Berkeley Police Department was trained on this new Equipment Ordinance System, hereinafter referred to as EO System. The EO System was fully implemented in October 2021.

It should be noted that the data on equipment deployments in 2021 does not capture deployments for the entire year. The ordinance was passed in May of 2021. The development and implementation of the EO System and the training of all sworn personnel was completed in October 2021.

The Police Department responded to over 42,500 calls from the community in 2021 and 11,262 were calls which occurred following the development of the new EO System that captured equipment deployments mandated by the ordinance. Of the 11,262 calls received, 29 of them resulted in the deployment of either a patrol rifle or a less-lethal system capable of launching a rubber projectile or a projectile similar to that of a paintball. For details on these systems refer to the Impact Statements located on the Berkeley Police Department website.

The Blue Team system was fully implemented in March of 2021. The system documents all uses of force which includes patrol rifle deployments and uses of less-lethal systems. This system is maintained by the Internal Affairs Bureau. In 2021 there were five incidents where less-lethal systems were used and 14 incidents where a patrol rifle was deployed. These incidents were recorded prior to the EO System going live. Three of the five less-lethal system uses were also entries into the EO System because they occurred after the launch of the EO System.

The table on page 5 details each of the 47-equipment deployment/use incidents extracted from the Blue Team and EO systems as well as 2 deployments of the Hazardous Duty Robot by the Berkeley Police Bomb Squad. Each row within the table represents an incident where a specified equipment was deployed/used. The number of specified equipment deployed per incident is not represented. The

table includes the service of 14 search warrants; 6 of which were served by the Special Response Team in cases involving a violent suspect. Equipment that is not outlined in the table was not used in 2021.

It should be noted that all other equipment deployments that are not related to the service of a search warrant were incidents where officers responded to a call for service by community members. Incident #6 & #17 are the only exceptions. #6 is an incident where an officer witnessed a stabbing and had to take immediate action to save the victim and apprehend the suspect and #17 is an incident where a stolen car and suspect were tracked down by officers. The 5 incidents where less-lethal systems were actually utilized are marked with asterisks next to the incident number. The incidents are listed in chronological order.

| #  | Equipment                                | Summary of Deployment and Use                                                                                                                                                                                                                                                                                                                | Beat |
|----|------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| 1* | 40MM Launcher                            | Victim called and reported being victim of a robbery. Suspect located still armed and refused many orders to drop the weapon. Attempts to deescalate not effective. Less-lethal and lethal force used.                                                                                                                                       | 6    |
| 2  | Patrol Rifle                             | The victims reported that they were robbed via gun. A search warrant was conducted at the suspect's residence in another Bay Area city. Arrest made and evidence seized.                                                                                                                                                                     | X    |
| 3  | Andros Remotec HD-1 Hazardous Duty Robot | Suspicious package left in front of Bank of America with Hong Kong postage. Robot used for initial approach to ensure package is safe.                                                                                                                                                                                                       | 6    |
| 4  | Patrol Rifle                             | Victim called and reported someone brandished him with a gun during an argument. Suspect located, but no gun found. Victim later advised that he never saw a gun. Suspect released on scene.                                                                                                                                                 | 14   |
| 5  | Patrol Rifle                             | Victim reported that his brother brandished him with a gun. The suspect was located in a vehicle nearby. Victim requested suspect be arrested.                                                                                                                                                                                               | 4    |
| 6* | 40MM Launcher                            | Officer witnessed a stabbing. Victim stabbed in neck. Suspect ran from officers still armed with the knife. 40MM used to stop suspect. She stopped, but held onto knife. Attempts to deescalate failed. Still non-compliant and with knife in hand, a sergeant snuck up behind the suspect and grabbed her hand and knife. Suspect arrested. | 6    |

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|----|-------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 7  | Patrol Rifle,<br>Remington 700 Rifle,<br>LRAD, Diversionary<br>Device, FN303, 40mm<br>launcher, Recon Scout<br>XT | Special Response Team, search warrant on a shooting<br>suspect. Suspect arrested and evidence seized.                                                                                                                                                                                                                                | 9  |
| 8  | Patrol Rifle,<br>Remington 700 Rifle,<br>LRAD, Diversionary<br>Device, FN303, 40mm<br>launcher, Recon Scout<br>XT | Special Response Team, search warrant assist to outside<br>agency. Suspect known to carry and sell firearms. Suspect<br>later located by outside agency.                                                                                                                                                                             | 12 |
| 9  | Patrol Rifle                                                                                                      | Caller reported that someone was armed with a gun inside a<br>store. The caller provided details on the gun and the<br>suspect. Suspect was located inside of the store and was<br>identified as the same person by the caller. No gun was<br>located. No arrest.                                                                    | 15 |
| 10 | Patrol Rifle                                                                                                      | Victim reported that her vehicle was stolen. Investigations<br>lead to the service of a search warrant by investigators at<br>the location the suspects were residing. Suspects located<br>and arrested                                                                                                                              | 8  |
| 11 | atrol Rifle                                                                                                       | Victim reported that the suspect forcibly entered her RV<br>armed with a handgun and attempted to rape her. Search<br>warrant served for suspect in another Bay Area city. Suspect<br>arrested                                                                                                                                       | X  |
| 12 | Patrol Rifle,<br>Remington 700 Rifle,<br>LRAD, Diversionary<br>Device, FN303, 40mm<br>launcher, Recon Scout<br>XT | Special Response Team, search warrant conducted in<br>another Bay Area city on a Berkeley shooting suspect.<br>Suspect attempted to flee, but was stopped and arrested. A<br>loaded-fully-automatic pistol was located.                                                                                                              | X  |
| 13 | Patrol Rifle                                                                                                      | Multiple witnesses reported a drive-by shooting into a<br>vehicle near a park. The victim later reported that the<br>suspect fired multiple rounds at their vehicle for no<br>apparent reason. A search warrant was conducted at the<br>suspect's residence by investigators. Suspect located and<br>three guns seized for evidence. | 11 |
| 14 | Patrol Rifle,<br>Remington 700 Rifle,<br>LRAD, Diversionary<br>Device, FN303, 40mm<br>launcher, Recon Scout<br>XT | Special Response Team, search warrant assist to an outside<br>agency on murder suspect. Suspect not located but evidence<br>collected.                                                                                                                                                                                               | 9  |

|    |                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                          |    |
|----|----------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 15 | Andros Remotec HD-1 Hazardous Duty Robot                                                           | Employees at a business reported a disturbance. The employee pointed the suspect out to the officer. Officer contacted suspect and his friend in a stolen car. One of them had an improvised explosive device in his pocket. Both arrested. Bomb squad relocated the device to a safe location and utilized robot for "render safe procedure."                           | 15 |
| 16 | Patrol Rifle, Remington 700 Rifle, LRAD, Diversionary Device, FN303, 40mm launcher, Recon Scout XT | Special Response Team, search warrant on a shooting suspect. Suspect arrested and evidence located.                                                                                                                                                                                                                                                                      | 14 |
| 17 | Patrol Rifle                                                                                       | Officers recognized a vehicle that was involved in a carjacking via gun and several other armed robberies in Berkeley. The car failed to stop for the police. The vehicle was eventually stopped after a lengthy pursuit. Patrol rifles deployed. Suspects arrested.                                                                                                     | 14 |
| 18 | Patrol Rifle                                                                                       | Victim employee reported that someone brandished a firearm at him after an argument inside of a liquor store. The suspect was located down the street. Patrol rifle deployed. Suspect was detained. He was identified by the employee as the suspect. Surveillance video showed the suspect pointed the gun at the employee. Gun was later located and suspect arrested. | 8  |
| 19 | Patrol Rifle, Remington 700 Rifle, LRAD, Diversionary Device, FN303, 40mm launcher, Recon Scout XT | Special Response Team, search warrants on suspects residences who were involved in a daytime gun battle. Suspects arrested. Assault rifles located.                                                                                                                                                                                                                      | 14 |
| 20 | 40MM Launcher                                                                                      | Community member reported a man having a "psychotic episode" and broke into an office. The man was naked and has prior history of smashing windows to use to harm himself. 40mm deployed. Subject safely detained. Property manager of office did not want to prosecute man. Mental Health professionals requested by PD and placed subject on psychiatric hold.         | 13 |
| 21 | 40MM Launcher                                                                                      | Burglary in progress, community member locked the suspect inside a workshop full of tools. Subject is a known to resist and fight the police. Subject was detained without incident. He was arrested and meth was located in his pockets. He later made suicidal statements and was placed on a psychiatric hold.                                                        | 3  |

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|-----|----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 22* | FN303 Launcher                   | BART PD requested emergency assistance. Mental Health crisis, subject possession of knife refusing to drop. Verbal de-escalation attempts failed. Subject ran with knife still in hand. FN303 deployed and used, but had no effect. BART PD used taser which disarmed her. BARD PD placed subject on a psychiatric hold.                                                                                                                                                                     | 9  |
| 23  | 40MM Launcher                    | Officers responded to a residence after the caller reported a suspicious person prowling outside his house. As officers were at this house, they heard a female screaming from the house next door. A female came out of that house and screamed, "Help! Someone call the police!" She reported that a man broke into her house with no pants on. Officers entered the house. 40mm deployed. The subject was located and arrested.                                                           | 11 |
| 24  | Patrol Rifle,<br>40MM Launcher   | Search warrant on sexual assault suspect who victimized a child. Suspect arrested and evidence seized.                                                                                                                                                                                                                                                                                                                                                                                       | 1  |
| 25  | Patrol Rifle,<br>40MM Launcher   | Caller reported that a neighbor fired a gun while yelling threats to shoot. The subject cooperated with officers and exited his house and was detained. Further investigations showed no other neighbors heard gunshots. No firearms were located. No arrest made.                                                                                                                                                                                                                           | 9  |
| 26  | 40MM Launcher,<br>FN303 launcher | A caller reported a suspect pulling off a window to make entry inside. Officers arrived and the suspect locked himself inside of a room and did not comply with call out commands. Unknown if armed with a weapon. Less-lethal deployed but not used. Subject detained and arrested without incident.                                                                                                                                                                                        | 3  |
| 27  | 40MM Launcher                    | Multiple community members called the police about a person who instructed her dog to bite the victim. Victim transported to hospital via ambulance from multiple bites/puncture wounds. Victim pointed suspect out to officers. Suspect refused to stop for the police and yelled at the officers causing the dog to lunge and try to bite officers. 40MM deployed. Mental health professionals were requested. Suspect placed on psychiatric hold by MH. Out of custody charges requested. | 6  |
| 28  | Patrol Rifle                     | Officers responded to reports of an armed robbery (gun) and located a vehicle fleeing the area that matched the description of a get-away car for other armed robberies in Berkeley. A high-risk stop was conducted where one of the 3 suspects fled. Patrol rifle was deployed during the block search. Two suspects were arrested. Stolen items recovered.                                                                                                                                 | 8  |

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|-----|----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 29  | 40MM Launcher,<br>Patrol Rifle   | <p>Caller reported multiple subjects inside a construction site after hours. Officers arrive and heard sawing items inside. Burglary subjects failed to comply with commands, barricaded, and hid during the search. Less-lethal was deployed but not used. Burglary tools located, two arrested. One suspect has extensive arrest history and a warrant for his arrest.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 14 |
| 30  | 40MM Launcher                    | <p>Responded for a medical call of a person badly cut (needed stitches) following a dispute. Officers had reasons to believe it was possibly an assault with a deadly weapon. Requested the 40mm on scene while contact was made with the involved party inside of residence where the assault may have occurred. Further investigation showed no domestic violence. No crime, no arrest made.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                         | 4  |
| 31  | FN303 launcher,<br>40MM Launcher | <p>Officers responded to victim's call for help after being assaulted by her husband. Officers arrived on scene and deployed a 40mm and FN303 due to the suspect's continued violent behavior. He was still breaking things in the house and yelling. Contact made with husband, husband arrested for domestic violence.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 1  |
| 32* | 40MM Launcher                    | <p>Caller requested help with roommate who was "high on drugs" yelling and causing a disturbance. Officers arrived and located the front door unlocked, blood in the living room, broken window, and incoherent speech coming from a bedroom. Occupants including caller was evacuated for their safety while officers attempted to negotiate with subject to exit his room. Subject was naked, covered in blood and threatened to kill officers. Negotiations failed. Subject did not comply with commands and was ultimately hit with 2 rounds from the 40 mm launcher. Officers were able to detain the subject and provide him with medical attention. He was transported to the hospital by the fire department and placed on a psychiatric hold. Illegal drugs were located in subject's room. Out of custody charges requested.</p> | 6  |
| 33  | FN303 launcher                   | <p>Caller is social worker who requested a welfare check of her health client, a subject with a history of violence and history of fighting police. FN was deployed. Subject refused to speak to officers and grabbed several bricks and smashed them while screaming; there were children nearby that had to be escorted out of harm's way. Negotiations not effective. Subject tackled by own father. Subject detained, but continued to fight. Mental Health professions responded and placed a psychiatric hold on subject.</p>                                                                                                                                                                                                                                                                                                        | 11 |

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|-----|---------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 34  | 40MM Launcher                                     | Caller reported ex-boyfriend had a knife and brandished it at him. While on phone with Dispatch caller yelled, "He's got a knife!" All parties located and detained. No knife located and further investigation shows no criminal threats were made. 40MM was deployed during detention. No arrest.                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 13 |
| 35  | Patrol Rifle,<br>FN303 launcher,<br>40MM Launcher | Highland Hospital reported a stabbing victim. Contact made with victim at hospital and she reported being stabbed at a specific location. Search warrant conducted at this location and less-lethal and patrol rifle deployed for service of search warrant. Suspect located and arrested for stabbing victim and puncturing victim's lung.                                                                                                                                                                                                                                                                                                                                                                                                                  | 10 |
| 36  | Patrol Rifle,<br>FN303 launcher                   | Stolen vehicle was tracked by Officers. Stolen vehicle located abandoned by officer and suspect fled on foot into an apartment. Rifle and less-lethal deployment during service of search warrant. Suspect arrested                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 16 |
| 37  | Patrol Rifle                                      | Caller reported a suspect armed with a gun threatened to kill him. Officers located the suspect and patrol rifle was deployed. Suspect detained and identified by victim as the same person who threatened him. No gun located, but witnesses corroborated victim's account of events and how the suspect had a gun. Suspect had an alter state of mind. Psychiatric hold was placed on subject. Out of custody charges requested.                                                                                                                                                                                                                                                                                                                           | 15 |
| 38  | Patrol Rifle                                      | Caller reported armed subject in a vehicle waving a firearm around. Car and subject description provided by caller. Car and driver that matched description were located by an officer. Patrol rifle deployed. Driver ordered out of car. Caller identified the driver as the same person he saw with a gun. A realistic black Beretta BB gun located in the car. Driver said he was shooting fish. Driver relinquished ownership of BB gun. No arrest made.                                                                                                                                                                                                                                                                                                 | 12 |
| 39* | Patrol Rifle,<br>40MM Launcher,<br>FN303 launcher | Caller reported that a subject had hit his mother over the head with a saw-off shotgun. Victim sustained injuries to her head that required stiches. The suspect was reported as being agitated and was heard yelling on the phone by dispatch. Officers arrived on scene and could still hear the suspect yelling. Victim/mother was contacted outside of residence. Subject still had access to the shotgun. Many attempts to deescalate and negotiate for the suspects surrender failed. Subject was on the porch and refused to comply with orders. Patrol rifles and less-lethal deployed. 40mm and FN303 were utilized and caused suspect drop fall onto the ground. Subject immediately taken into custody. Medical attention provided to all parties | 16 |
| 40  | Patrol Rifle,<br>40MM Launcher                    | Search warrant service on rape suspect. One officer wore rifle slung on body. One officer wore 40MM slung on body. Suspect located and arrested                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 12 |

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|----|---------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 41 | 40MM Launcher                                     | Victim called and reported that a neighbor and brandished a knife at him. Victim wanted to press charges. Officers arrived. Subject came out of his apartment and yelled at officers then went back in. 40mm deployed. Subject refused to come outside. Out of custody charges requested.                                                                                                                                                                                                                                                                                                                                                     | 11 |
| 42 | FN303 launcher                                    | Caretakers called and reported a subject with a butcher knife chased caregivers who were attempting to bathe him. Caretakers ran out of the house to call the police. Officers responded with FN303. Subject's son was called to help speak to subject who suffers from dementia. The son agreed to stay to help care for subject and help caretakers. No prosecution requested by caretakers. No injuries sustained by caretakers.                                                                                                                                                                                                           | 10 |
| 43 | Patrol Rifle,<br>40MM Launcher,<br>FN303 launcher | Caller (ex-girlfriend) reported subject (ex-boyfriend) is suicidal and requested welfare check. Officers attempted a welfare check on a suicidal subject inside of his home. The subject told officers he was armed and told officers to leave. Subject hands were not visible to officers. Threat was deemed credible. Less-lethal systems and a Patrol rifle were deployed. Negotiator attempted to negotiate for the subject to exit his residence, but failed. Subject said officers are going to force a confrontation with him. Subject not a threat to others and refused officer's help. No crimes committed. Officers left the area. | 11 |
| 44 | Patrol Rifle,<br>FN303 launcher                   | Officers responded to a call of a possible burglary. A patrol rifle and less-lethal were deployed to clear the building. Suspect located and arrested burglary.                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 4  |
| 45 | 40MM Launcher                                     | Caller is security and reported a subject was verbally threatening staff and residents and assaulted security. Staff wanted him to leave. Subject is a known burglar and have fought officers in the past. Less-lethal deployed. Request subject to leave and he complied. No prosecution requested.                                                                                                                                                                                                                                                                                                                                          | 16 |
| 46 | 40MM Launcher                                     | Caller (wife) reported subject (husband) had a knife and was threatening to kill himself. Caller was contacted outside of house while subject was still inside. 40MM deployed as officers contacted subject. Subject located safely and placed on a psychiatric hold.                                                                                                                                                                                                                                                                                                                                                                         | 12 |
| 47 | 40MM Launcher                                     | Caller (mother) reported subject (son) having a mental health crisis. Caller reported the subject was armed with a knife and standing outside the house. 40mm deployed, subject safely located and placed on 5150 hold.                                                                                                                                                                                                                                                                                                                                                                                                                       | 12 |

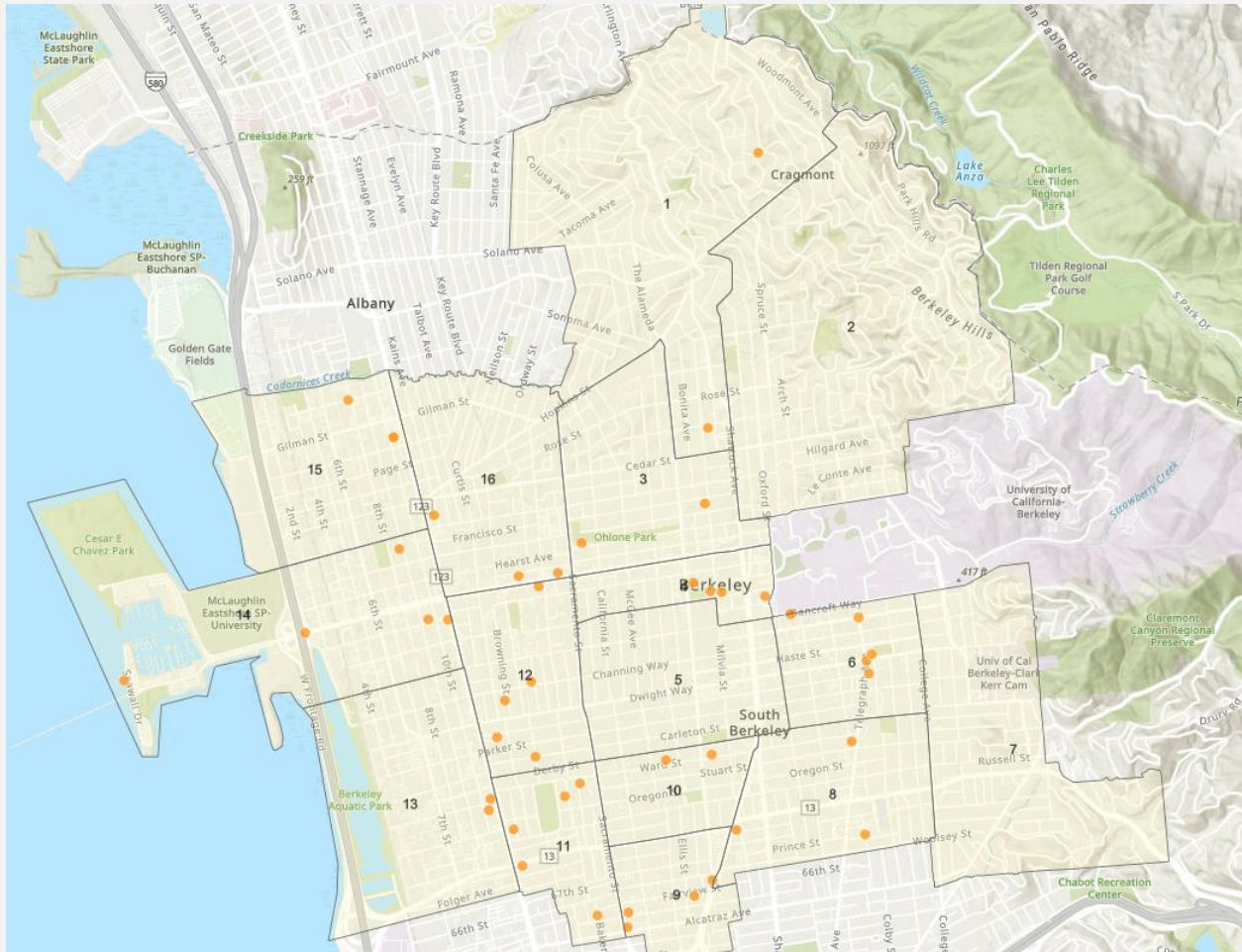


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Below is a table that shows the total number of incidents a specified equipment was deployed in 2021. It should be noted that different types of equipment may be deployed in one incident and the same equipment may be deployed by multiple officers within a single incident.

| EQUIPMENT                                              | Number of Incidents |
|--------------------------------------------------------|---------------------|
| Patrol Rifle                                           | 27                  |
| 40MM Single Launcher                                   | 27                  |
| 40MM LTL Multi-Launcher                                | 0                   |
| FN 303 Launcher                                        | 16                  |
| FN Pava Impact Projectile                              | 0                   |
| Oleoresin Capsicum Spray                               | 0                   |
| Chlorobenzylidene Malononitrile and Oleoresin capsicum | 0                   |
| Remington 700 Rifle                                    | 6                   |
| ReconRobotics Recon Scout XT Robots                    | 6                   |
| Andros Remotec HD-1 Hazardous Duty Robot               | 2                   |
| Light/Sound Diversionary Device                        | 6                   |
| Long Range Acoustic Device                             | 6                   |
| 36" Batons                                             | 0                   |
| Mobile Command Vehicle                                 | 0                   |
| Barret Model 99                                        | 0                   |

Below is a map showing where each of the above 44 equipment deployments occurred in Berkeley. 3 occurred in other Bay Area cities.



## Appendix:

### Applicable Lexipol Policies Respective to Each Equipment

#### Patrol Rifle

- Policy 300 (Use of Force)
- Policy 349 (Tactical Rifle Operator Program)

#### 40MM single launcher

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)

#### 40MM LTL multi-launcher

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)

#### FN 303 Launcher & FN Pava rounds

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)

#### Chlorobenzylidene Malononitrile and Oleoresin Capsicum (canister and spray)

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)

#### Remington 700 Rifle

- Policy 300 (Use of Force)
- Policy 354 (Precision Rifle)

#### ReconRobotics Recon Scout XT Robots & Andros Remotec HD-1 Hazardous Duty Robot

- Policy 708 (Robot Cameras)

#### Light/Sound Diversionary Device

- Policy 353 (Diversionary Device)

#### Long Range Acoustic Device

- Policy 707 (Long Range Acoustical Device)

36" batons

- Policy 300 (Use of Force)
- Policy 303 (Control Devices and Techniques)
- Policy 428 (First Amendment Assemblies)

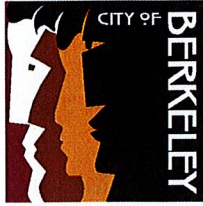
Mobile Command Vehicle

- Policy 811 (Mobile Command Vehicle (MCV))

Barret Model 99

- Policy 300 (Use of Force)
- Policy 354 (Precision Rifle)





OFFICE OF THE DIRECTOR  
OF POLICE ACCOUNTABILITY

April 6, 2022

To: Interim Police Chief Jennifer Louis  
From: Michael Chang, *Michael Chang* Chairperson, Police Accountability Board  
Re: Police Equipment and Community Safety Ordinance Impact Statements

The Police Accountability Board (PAB) held a special meeting on March 30, 2022, for the purpose of reviewing the Impact Statements that the Police Department prepared and submitted to the PAB in order to meet the Department's obligations under the Police Equipment and Community Safety Ordinance ("Ordinance")<sup>1</sup>; specifically under B.M.C. Section 2.100.040 (G), Review Process for Previously-Acquired Equipment.

Preliminarily, we note that the Appendix to the Impact Statements contains "Applicable Lexipol Policies Respective to Each Equipment." Thus, we presume that those Lexipol Policies are intended to serve as the Use Policies that also must be submitted under B.M.C. Section 2.100.040 (G). The introduction to the Impact Statements notes that they also fulfill the obligations set forth in Assembly Bill 481.<sup>2</sup>

However, the PAB identified several ways in which the Impact Statements fall short of meeting the requirements of the Ordinance and of AB 481. Furthermore, the PAB took notice of AB 48,<sup>3</sup> which prohibits law enforcement agencies from using kinetic energy projectiles or chemical agents to disperse an assembly, protest, or demonstration, except in limited circumstances. The limitations in AB 48 do not appear to be incorporated either in the Impact Statements or the Lexipol Policies. Accordingly, the PAB requests that the Police Department revise the Impact Statements and Lexipol Policies so that they are fully compliant with the local Ordinance, state law, and any applicable federal law. The PAB further suggests consultation with the City Attorney's Office to ensure all the City's legal obligations are met.

1. Following are some examples of how the Impact Statements or Use Policies are lacking:

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<sup>1</sup> Ordinance No. 7760-N.S., codified in Berkeley Municipal Code Chapter 2.100.  
<sup>2</sup> Adding Sections 7070 through 7075 to the Government Code.  
<sup>3</sup> Adding Section 13652 to the Penal Code, and other provisions not relevant here.

- FN 303 and FN Pava Impact Projectile:

The Impact Statement for this launcher states in Section E., Use (p. 19), that the FN 303 is designed to reduce the potential for a violent confrontation; is less likely to result in serious bodily injury or death, and can be used to de-escalate a potentially deadly situation. Missing, however, is a reference to the prohibition on the use of kinetic energy projectiles to disperse any assembly, protest, or demonstration, except by a trained peace officer, if the use is objectively reasonable to defend against a threat to life or serious bodily injury, or to bring a dangerous and unlawful situation under control; and, in either case, by following certain guidelines. (AB 48; Penal Code Sec. 13652(b).) This Impact Statement thus fails to meet the conditions of the Ordinance because an Impact Statement must include “intended uses and effects” of each type of controlled equipment (B.M.C. Sec. 2.100.020 (C)).

Moreover, the applicable Lexipol Policies (300 – Use of Force, and 303 – Control Devices and Techniques), do not comply with AB 481, which requires that a “military equipment use policy” address “[t]he purposes and authorized uses for which the law enforcement agency . . . proposes to use each type of military equipment.” (Gov. Code sec. 7070(d)(2).) In omitting the limitations placed on kinetic energy projectiles by Penal Code Section 13652(b), Policies 300 and 303 do not accurately describe the authorized uses of the FN 303 launcher.

These same issues arise for the Impact Statements and Policies 300 and 303 with respect to the Penn Arms and Milkor launchers.

- OC Spray (Pepper Spray):

The Impact Statement for OC Spray is lacking in a way similar to that for the FN 303 launcher. The description of its Use (Section E, p. 25) states that OC spray may be considered for use to bring individuals or groups about to become violent under control; but should not be used against those who merely fail to disperse or do not appear to present a risk to the safety of others. It omits any reference to the stricter limitations on using this chemical agent under AB 48 (the same limitations as for kinetic energy projectiles cited above, under Penal Code Sec. 13652(b)), and thus falls short of compliance with the Ordinance.

Additionally, Lexipol Policy 303 does not reference the current ban on OC spray for crowd control during the COVID-19 pandemic, so it is not compliant with AB 481, requiring a listing of authorized uses. While that ban is included in Policy 300 on Use of Force (in Sec. 300.3.7), the lack of an up-front reference in the Impact Statement is confusing and possibly misleading.

- CS Gas (Tear Gas):

Currently, using tear gas is prohibited under any circumstances, so it is questionable whether an Impact Statement for this chemical agent should be

Interim Police Chief Jennifer Louis  
Police Equipment and Community Safety Ordinance Impact Statements  
April 6, 2022  
p. 3 of 3

included. If it is included because the Department is reporting its possession of this equipment, the ban must be noted, to comply with local and state law.<sup>4</sup>

2. Another problem with the Impact Statements is internal inconsistency of the less-lethal launcher descriptions. For the Penn Arms launcher, Section 6, Alternative (p. 13), states, "This is the only piece of less lethal equipment (other than the FN 303) that allows officers to address a potentially deadly threat from a distance." But identical language is used in describing an Alternative for the Milkor launcher (p. 18), so two pieces of less lethal equipment have been identified as an alternative to the FN 303. Finally, the FN 303 itself is described as "the **only** piece of equipment that allows officers to address a potentially deadly threat from a distance" (p. 23; emphasis added), which contradicts the descriptions of the Penn Arms and Milkor launchers as alternatives to the FN 303.

3. The PAB also discussed a suggestion for the Department to employ best practices in developing its use policies, while acknowledging it did not have time at this point to suggest best practices for all relevant policies within the approval timeframe mandated by the Ordinance.

4. With respect to mutual aid, the PAB points out a pertinent provision of AB 481: A law enforcement agency must obtain the governing body's approval, by adopting a military equipment use policy, before engaging in a number of enumerated activities. (Gov. Code Sec. 7071(a)(1).) One of them is "(D) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the territorial jurisdiction of the governing body." This means that, before any outside law enforcement agency uses military equipment within the City of Berkeley, an approved use policy for that equipment must be in place. As this language has no counterpart in the local Ordinance, it is important that your Department is mindful of this provision.

5. Finally, the PAB requests that when you submit your item seeking approval of the Impact Statements and Use Policies into City Council agenda process, that you also send a copy to the Interim Director of Police Accountability

The PAB approved communicating to you the points made in this memorandum by a unanimous vote at its March 30, 2022 special meeting: Moved/seconded – Owens/Ramsey; Ayes – Calavita, Chang, Harris, Levine, Mizell, Moore, Owens, Ramsey; Noes – none; Abstentions – none; Absent – Leftwich.

cc: Farimah Brown, City Attorney  
Police Accountability Board Members

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<sup>4</sup> Interim Director Lee advised me that, during your April 5 phone conversation, you reminded her that in September 2020 the Police Review Commission supported the BPD's request for an exception to the tear gas ban for use during certain Special Response Team operations. This was not presented to the City Council but may be in the future.

## Military Equipment

### 709.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment ( Government Code § 7070; Government Code § 7071; Government Code § 7072).

#### 709.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

**Governing body** – The Berkeley City Council.

**Military equipment** – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue firearms.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.



## *Military Equipment*

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### **709.2 POLICY**

It is the policy of the Berkeley Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment.

### **709.3 MILITARY EQUIPMENT COORDINATOR**

The Chief of Police should designate a member of this department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying department equipment that qualifies as military equipment in the current possession of the Department, or the equipment the Department intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all military equipment at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of Berkeley Police Department (Government Code § 7071).
- (e) Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the department website (Government Code § 7072).

### **709.4 MILITARY EQUIPMENT INVENTORY**

The following constitutes a list of qualifying equipment for the Department:

- M4 rifle/Patrol Rifle
- Penn Arms 40MM Single Launcher
- Milkor LTL Multi-Launcher
- FN 303 Launcher & FN Pava Impact Projectile
- Oleoresin Capsicum Spray
- Chlorobenzylidene Malononitrile and Oleoresin capsicum
- Remington 700 Rifle
- ReconRobotics Recon Scout XT Robots
- Andros Remotec HD-1 Hazardous Duty Robot
- Light/Sound Diversionary Device
- Long Range Acoustic Device
- Mobile Command Vehicle
- Barret Model 99

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### 709.4.1 BERKELEY POLICE DEPARTMENT'S INVENTORY

#### **Rifles and Associated Ammunitions**

##### **Rifle:**

##### **M4 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

##### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Colt M-4 patterned rifle, which fires the .223 Remington cartridge

**Quantity:** The Berkeley Department currently owns and maintains 96 rifles

**Capabilities:** The M4 pattern rifle is used only in situations when a potential life-threatening situation exists. While a pistol is the common firearm used by police in these dangerous situations, the M4 patterned rifle has numerous advantages over it. The ability to shoulder the rifle, coupled with the rifle's lengthened barrel and ammunition, result in higher accuracy and lessens the chance of officers missing the intended target. Additionally, due to the design of the rifle's bullet, the round is less likely to over penetrate commercial and residential walls should the officer miss the intended target. The rifle is also easier to use compared to a pistol because of the bullet's low recoil. Finally, as the rifle can be adjusted and customized, it can be configured to accommodate officers of any stature (hand size, strength, etc.).

**Lifespan:** Due to the rifle's ability to be maintained by department armorers, these rifles have a relatively long-life span if properly maintained. However, the design has changed little in the last 60 years and we can expect new variations and designs to become the new industry standard in the coming years.

**Manufacturer's Description:** This specially designed law enforcement weapon system features many of the combat proven advantages of the military Colt M4. With the 4-position buttstock fully retracted, the Colt Law Enforcement Carbine is less than 32in length and weighs only 6.9 lb - ideal for tactical deployment and traditional patrol.

##### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The M4 patterned rifle and associated ammunition is intended as a means to safely stop a lethal threat. While a pistol is the firearm that all officers are minimally equipped with, the rifle is an ancillary firearm for situations where increased distance and accuracy are needed to safely resolve the situation.

**Authorized Uses:** Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

##### **FISCAL IMPACT:**

**Initial Cost:** Exact costs unknown. Rifle prices, like other firearms, will range depending on current market demand and availability. While M4 rifles purchased several years ago cost between \$1,000

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and \$1,200 a piece, current rifles cost between \$1,400 and \$1,600. It should be expected that these prices will fluctuate and likely increase over time.

**Annual cost:** Cost of use for all firearms should be based on the ammunition used in training and on duty. This will fluctuate based on whether the rifle is issued to a patrol officer, a firearms instructor, or a Special Response Team member as each assignment has different training requirements.

**Training costs:** Every officer that is authorized to carry a rifle on duty must attend a 16-hour CA POST approved rifle instruction course before being authorized to carry the rifle on duty. This course may be administered by Berkeley Police Firearm Instructors or by other POST approved agencies. Tuition for the CA POST approved class is dependent on the hosting agency. If conducted in house the cost only includes the officer's hourly wage, range fee, and ammunition costs (all vary). Outside agencies charge between \$25 to \$500 depending on the range location and duration (some classes are 32-hours while POST only requires 16-hours.) Additionally, all officers issued a rifle receive specific 8-hour rifle training every two years by POST certified BPD firearm instructors.

**Maintenance costs:** Vary depending on use over time. Traditionally, various springs and pins need to be replaced every five years and may cost between \$3 and \$30 per rifle. Other parts such as the barrel and bolt need replaced around ten years and range between \$150 and \$300 per rifle.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, and Policy 349 Tactical Rifle Operator Program. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### **TRAINING:**

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

### **Remington 700 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** Remington 700 rifle, which fires the .308 caliber ammunition.

**Quantity:** The Berkeley Department currently owns and maintains 6 rifles

**Capabilities:** The Remington 700 rifle, with the appropriate ammunition, training, and practice, is capable of consistent and highly accurate shooting out to a distance of approximately 500-yards.

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The Remington 700 is intended to be used in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation.

**Lifespan:** The Remington 700 bolt-action rifles have an expected life span of 10-years if properly maintained.

**Manufacturer's Description:** The Model 700 SPS Tactical is a highly maneuverable member of the family. It's built for tack-driving accuracy with a 20" heavy-contour tactical-style barrel and dual-point pillar bedding in its black synthetic stock. Hogue® overmoldings on the stock facilitate sure handling, and it has a semi-beavertail fore-end for added stability off a rest.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** This rifle is to be used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers. This rifle provides police with the benefit of adding distance to a volatile situation which can increase the safety for community members and officers. This rifle is an ancillary firearm for situations where increased distance and accuracy is needed to safely resolve the situation.

**Authorized Uses:** Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

### **FISCAL IMPACT:**

**Initial Cost:** The initial cost to purchase this rifle with its associated components is approximately \$10,000 dollars each. Their average life span is 10-years at which time it will likely need to be replaced.

**Annual cost:** If this rifle is not cared for or maintained well, then a potential financial adverse impact would be the premature purchasing of a replacement rifle or replacement parts. However, authorized and trained Berkeley Police armorers service and provide regular maintenance of the rifles. The cost of maintenance is staff time.

**Training costs:** The cost associated with training is the staff time, range fees, and cost of spent ammunition. SRT members train once a month and, on average, each member shoots approximately 50-rounds. Currently, there are only 4 members shooting at each training day. This equates to approximately 2,400 rounds of ammunition being fired per year. This does not include special training days or attendance to training schools/classes. A single box of 20-rounds costs approximately \$20-dollars or \$1 dollar per round.

**Maintenance costs:** Maintenance costs vary depending on use over time. Firing pins need to be replaced every 5 to 7 years. The maintenance cost associated with this rifle is minimal.

There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

### **LEGAL AND PROCEDURAL RULES:**

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Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force, Policy 354-Precision Rifle. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### **TRAINING:**

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

### **Barret Model 99 Rifle (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)**

#### **Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)**

**Type:** The Barrett Model 99 rifle is a single shot bolt-action 50-caliber rifle

**Quantity:** The Berkeley Department currently owns and maintains 1 rifle.

**Capabilities:** This rifle is used only in situations where a potential life-threatening situation exists. The length of the rifle's barrel coupled with the ammunition result in precision accuracy. This rifle is capable of disabling any vehicle engine block because of the large caliber round.

**Lifespan** This rifle has been in our possession for almost 15-years and we expect it to last for an additional 20 years or more considering how in-frequently it's used.

**Manufacturer's Description:** The Model 99 brings new levels of long-range precision shooting. Known as much for its dependability as its versatility, the Model 99 has unfailing accuracy you can rely on.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The Barrett rifle is a firearm that may be used to stop a vehicle which poses a lethal threat to the public, or to disable a vehicle which presents a threat to the safety of another person(s) by its continued use. There are vehicle disabling tools that may disable vehicles by slowly deflating the tires; however, even with tires deflated a vehicle has the ability to operate and remain a threat to the public. Furthermore, these tools must be hand deployed and, in most circumstances, require officers to expose themselves to deadly threats. The Barrett rifle creates the ability to effectively disable vehicles instantaneously from a distance away.

**Authorized Uses:** Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

### **FISCAL IMPACT:**

**Initial Cost:** The Barrett Model 99 50-caliber rifle has a retail cost of approximately \$12,500 dollars. The Department of Justice provided the Barrett rifle to the Berkeley Police Department on 04/04/2007. There was no initial cost related to BPD taking possession of it.

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**Annual cost:** The annual cost of the equipment is minimal and includes ammunition expenditure, cleaning equipment, and possibly replacing the optics at some point in the future.

**Training costs:** The cost associated with training is the staff time, range fees, and cost of spent ammunition.

The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately \$6 dollars per bullet; \$60 for a box of 10 and \$600 for a case of 10 boxes, plus shipping and handling. We currently possess 100 rounds of BMG ammunition.

**Maintenance costs:** Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### **TRAINING:**

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

### **RIFLE AMMUNITION:**

.223 Remington ammunition: 55 grain FMJ (full metal jacket) for training purposes and 62 grain soft point for duty purposes. (Use in the Colt M4 Rifle)

(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: .223 Remington ammunition: 55 grain FMJ (full metal jacket)

.223 Remington ammunition 62 grain soft point for duty purposes

Quantity: Quantity of rifle ammunition fluctuates significantly depending on training attended, including the standard basic police academy, officer assignments, and yearly mandate training cycles. For example, most police academy recruits are required to bring approximately 1,000 rounds to the basic POST approved academy. Most academies have a 16-24-hour rifle training course. The training is required for all officers who are issued a rifle and mandates between 800 and 1,200 rounds. As such, the inventory at the Berkeley Police Department fluctuates significantly depending on how many officers are attending state mandated training and can range from 10,000

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round (our current inventory) to less than 1,000 rounds (our anticipated inventory at the end of December after scheduled department training in November.)

**Capabilities:** The .223 Remington cartridge, depending on the weight of the bullet, 55 grain or 62 grain, travel at approximately 3,000 feet per second and 2,700 feet per second respectively. The round is highly regarded as having a high degree of consistency and accuracy, which is why it is the most common rifle round used in Law Enforcement around the world.

**Lifespan** Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

### **Product Description:**

.223 Remington ammunition: 55 grain FMJ (full metal jacket)

Make sure you hit your target with the Winchester USA .223 Rem 55-Grain Full Metal Jacket Ammunition. The full metal jacket ammunition features a 55 grain weight and includes 200 rounds. The caliber is .223 Rem, and the ammunition is made in the USA.

.223 Remington ammunition 62 grain soft point

Federal TRU 223 ammo is custom made ammunition for the Urban Law Enforcement Officer in mind. It features a lead core Hi Shock Soft Point bullet which offers great stopping power and excellent penetration, a non corrosive primer and brand new never fired brass casing and nickel plated brass primer. This LE Tactical ammo can be reloaded up to 5 times for those shooters that reload their 223 ammo. Federal LE 223 Remington has a muzzle velocity of 3050 feet per second and a muzzle energy of 1281 ft lbs. This 223 Federal ammo is new production packaged in 20 round boxes and 200 rounds per case. Federal TRU ammunition is engineered using Mil-Quality specifications. Each Federal TRU cartridge is made using select mil-quality low flash powders that do not disrupt an officer's night vision. The TRU case and web are built using thicker brass, adding the extra strength needed for the high powered rifle. TRU primers are crimped for added holding ability. This virtually eliminates backed out primers that can lock-up your weapon. With TRU ammunition, potentially disastrous situations are greatly reduced. TRU bullets are specifically engineered ranging from fragmenting designs for tactical entry to deeper penetrating bullets for patrol.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** This rifle ammunition is capable of incapacitating an individual from a distance and providing greater accuracy at a distance. This ammunition is used in the M4 rifle.

**Authorized Uses:** Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

### **FISCAL IMPACT:**

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**Initial Cost:** Ammunition costs fluctuate with the costs of components (brass, primers, gunpowder, and bullets) and supply/demand. Current costs for .223 Remington range from \$0.50 to \$0.75 a round for training ammunition (55 grain) and \$1.25 to \$1.50 a round for duty ammunition (62 grain).

**Annual cost:** The annual cost of the equipment is minimal, and is dependent on the amount of training.

**Training costs:** The cost associated with training is the staff time, range fees, and cost of spent ammunition.

**Maintenance costs:** Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, and Policy 349 Tactical Rifle Operator Program. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

Hornady .308-caliber ammunition (for the Remington 700 Rifle)

(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Hornady .308-caliber ammunition

Quantity: The Berkeley Department currently possess approximately 1800 rounds of this ammunition.

Capabilities: This rifle ammunition is capable of incapacitating an individual or disabling an object in emergency situations where there is a high potential for violence, where the need exists to put distance between officers and a specific individual, such as an armed hostage situation. This ammunition is specifically designed for accuracy at distances of 500 yards.

Lifespan Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.



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Manufacturer's Description: Millions of successful hunts have proven the accuracy and deadly effect of the famous Hornady® InterLock®, SST®, InterBond® and CX™ bullets we load into Hornady® Custom™ rifle ammunition.

Every round of Hornady® Custom™ ammunition is hand inspected before packaging to ensure the highest levels of quality control. At Hornady®, we manufacture Custom™ ammunition to give shooters and hunters the advantage of handloaded accuracy in a factory load.

### PURPOSE and AUTHORIZED USE:

Purpose: This rifle ammunition is capable of incapacitating an individual from a distance of 500 yards and providing greater accuracy at a distance. This ammunition is used in the Remington 700 rifle.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

### FISCAL IMPACT:

Initial Cost: The costs associated with its proposed uses is in the expenditure of its ammunition. The ammunition has a retail cost of approximately \$1 dollars per bullet; \$20 for a box of 20, plus shipping and handling. We currently possess 1800 rounds of BMG ammunition, \$1800.

Annual cost: The annual cost of the equipment is minimal, and is dependent on the amount of training.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition.

Maintenance costs: Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### TRAINING:

Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

Summit Ammunition.50-caliber BNG rounds of ammunition (for the Barrett Model 99)

(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

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Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Summit Ammunition.50-caliber BNG rounds of ammunition

Quantity: The Berkeley Department currently possess approximately 100 rounds of this ammunition.

Capabilities: This rifle ammunition is capable of disabling any vehicle engine block because of the large caliber round.

Lifespan Like all ammunition, if kept cool and dry, ammunition lifespan can exceed ten years. Due to BPD's and State mandates on training, the majority of ammunition is cycled through within a year of purchase.

Manufacturer's Description: This is 50 Cal. BMG Summit Ammunition 700gr. M-2 Armor Piercing Ammo. Summit Ammunition has been manufacturing 50 Cal. BMG for over 10 years and they manufacture a premium quality product. They are a fully licensed and insured manufacturer. This ammo is loaded with NEW Winchester brass, New USGI powder and Pulled Lake City M-2 AP bullets.

### PURPOSE and AUTHORIZED USE:

Purpose: This rifle ammunition is capable of disabling any vehicle engine block because of the large caliber round.

Authorized Uses: Used in the defense of life or great bodily injury to potential victims of violent crimes, general public, and officers.

### FISCAL IMPACT:

Initial Cost:

Annual cost: The annual cost of the equipment is minimal.

Training costs: The cost associated with training is the staff time, range fees, and cost of spent ammunition.

Maintenance costs: Maintenance costs vary depending on use over time and will vary. There are no costs associated with maintenance or storage of ammunition. All ammunition is stored in a climate-controlled room in the Berkeley Police Department.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, and Policy 354 Precision Rifle. The use of this equipment shall comply with the authorizations and prohibitions set forth in Policy 300 – Use of Force. It is the policy of the BPD to utilize rifles only for official law enforcement purposes, and pursuant to State and Federal law regarding the use of force including the provisions of Penal Code Section 13652.

### TRAINING:

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Prior to using a rifle, officers must be certified by POST instructors in the operation of the rifle. Additionally, all members that operate any rifle are required to pass a range qualification.

### Robots:

ReconRobotics Recon Scout XT (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: ReconRobotics Recon Scout XT

Quantity: The Berkeley Department currently owns and maintains 2.

Capabilities The Recon Scout XT robot is designed to be able to crawl over a variety of terrain, clearing obstacles up to 2" (5 cm) tall. It could be thrown into hazardous situations, indoor and outdoor, and provide live audio and video feed back to the controller.

Lifespan: Both Recon Scout XT robots are over 10 years old and ReconRobotics have developed and manufactured more advanced robots. ReconRobotics have stopped manufacturing certain parts for the Recon Scout XT, so the lifespan is dependent on what parts need to be replaced.

Manufacturer's Description: The Recon Scout XT is just eight inches long and weighs just 1.3 lbs., making it extremely easy to carry and throw. Moreover, deploying the Recon Scout XT takes just 5 seconds, and using it requires no special training. Simply pull the activation pin and throw the device through a doorway or over a wall, or drop it down a vertical shaft using a tether. Using a single joystick on the operator control unit (OCU), a tactical team leader or warfighter can then direct the device to move through the environment and send back real-time video. Equipped with an infrared optical system that automatically turns on when the ambient light is low, the Recon Scout XT can transmit video up to 100 feet indoors and 300 feet outdoors, day or night. The Recon Scout XT may also be specified in any of three transmitting frequencies, allowing police and military personnel to operate up to three robots in the same environment at the same time.

### PURPOSE and AUTHORIZED USE:

Purpose: The Recon Scout XT robot is intended to safely provide police officers valuable information during high-risk, rapid evolving situations via real-time audio and video footage. It can be driven a distance away from the OCU, creating space between the officer and potential danger, thus decreasing the likelihood of injury to those involved in the event, or even a violent encounter between police officers and a dangerous subject. This asset furthers our commitment to the sanctity of life by offering time and distance in critical incidents.

Authorized Uses: The Recon Scout XT robot may be deployed to help police officers safely view potentially dangerous environments before entering them.

### FISCAL IMPACT:

Initial Cost: The initial cost for the Recon Scout XT robot was about \$12,500 per unit (2010 cost).

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Annual cost: There are no ongoing or annual costs associated with the use of the Recon Scout XT robot. Being that it is battery operated, there is a nominal cost associated with charging the Recon Scout XT robot's batteries, and the batteries of the OCU. The Recon Scout XT robot is fairly simple to operate, thus there is no cost associated with training officers in its use. There are no costs with transportation or storage of the Recon Scout XT robot. While there are newer models of this robot available, there does not appear to be any upgrades available for the Recon Scout XT. The Recon Scout XT robot has been damaged on occasion, and there are costs associated with repair. But generally, the Recon Scout XT robot is robust and does not need regular repair.

Training costs: The Recon Scout XT robot is user friendly and simple to operate. Training is conducted by Berkeley Police personnel familiar with the operations and procedures of the Recon Scout XT robot. The cost of training is staff time.

Maintenance costs: There are no annual or storage costs.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 708 Robot Cameras.

### TRAINING:

Andros Remotec HD-1 Hazardous Duty Robot (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Andros Remotec HD-1 Hazardous Duty Robot

Quantity: The Berkeley Police Department Bomb Squad has one robot, the Remotec HD-1 robot.

Capabilities Remotec HD-1 robot is used in situations where a potential life-threatening situation exists and is too hazardous for a bomb technician to approach in person. The Remotec HD-1 robot is also used to survey an area prior to a bomb technician approaching a scene to check for trip wires and ascertain a good approach path. The Remotec HD-1 robot has three cameras and audio monitoring that stream live video and audio back to the control module; however, it is unable to record and does not have any data storage capabilities. It has several attachment mounting options as well. The Remotec HD-1 robot also has the ability to carry a variety of tools. Some of the tools are:

- (a) A spike to break glass and access vehicles or homes with potential explosive devices inside
- (b) An X-ray mount in order to remotely X-ray suspected explosive devices.
- (c) Percussion actuated non-electric disruptors which are smooth barrels that are filled with water and fired at high speed with a blank shotgun round to open backpacks, suitcases, and packages from a distance
- (d) A hook with cutting blades that are used to cut backpack straps, ropes, etc.

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- (e) PAN rounds containing various fills, from sand to slugs, in order to open sturdier packages made from metal or other hard covers.
- (f) Electrical connections to connect explosives that can be detonated remotely and from a safe distance.

Lifespan: The Remotec HD-1 robot has an expected life span of 10 years. It is currently 13 years old and has begun exhibiting issues. The Remotec HD-1 robot weighs just over 200 lbs. and has been near multiple explosions over the years and crossed a variety of off-road terrain

Manufacturer's Description: The Remotec ANDROS fleet of hazardous duty unmanned vehicles is the preferred choice of first responders worldwide. The robust, mission-proven design of the ANDROS line keeps danger at a distance with:

- Simultaneous tool mounts for rapid response during dynamic missions (i.e. suits changing needs as the mission unfolds)
- A versatile array of two-way audio, video, advanced sensors, tools and controllers
- Easy maintainability for minimal downtime

Made in the USA and backed by world-class training and post-sale support, it's no wonder there are over 1,000 ANDROS robots deployed around the globe.

### PURPOSE and AUTHORIZED USE:

Purpose: The Remotec HD-1 robot is used as a means to approach hazardous situations where a potentially lethal threat such as an explosive device exist. The Remotec HD-1 robot allows for the examination and manipulation of an object or potential explosive device without unnecessarily putting a bomb technician's life at risk.

Authorized Uses: Used to examine and possible destroy hazardous materials such as an explosive device.

### FISCAL IMPACT:

Initial Cost: Procured in 2008 for \$214,496 including on-site training through a UASI Grant. (64,292-N.S.)

Annual cost: There is no annual cost. Maintenance of the Remotec HD-1 robot is conducted by Berkeley Police Bomb Technicians.

Training costs: Berkeley Police Bomb Technicians are trained during regular bomb squad training sessions and maintain their skills through training scenarios. The cost of training is limited to staff time.

Maintenance costs: Remotec offers occasional maintenance and upkeep workshops free of charge.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 708 Robot Cameras.

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### TRAINING:

#### Less Lethal Launchers:

Penn Arms 40mm Single Launcher (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Penn Arms 40mm Single Launcher

Quantity: The Berkeley Department currently owns and maintains 20.

Capabilities: The Penn Arms single launcher is capable of firing a single projectile out to a maximum manufacturer recommended range of 45 meters. The Penn Arms 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

Lifespan The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

Manufacturer's Description: A 40mm compact single-shot break-open frame launcher with a rifled barrel and folding stock. Features include: Double-action trigger, trigger lock push button and hammer lock safeties.

### PURPOSE and AUTHORIZED USE:

Purpose: The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent or armed confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before

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certain weapons can be utilized. This fact may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Authorized Uses: The Penn Arms 40mm single launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

### FISCAL IMPACT:

Initial Cost: Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$815.00 each.

Annual cost: Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

Training costs Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

Maintenance costs: Maintenance costs vary depending on use. Generally, various springs and pins need to be replaced every 5 years which can cost \$3 to \$30.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### TRAINING:

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

Milkor LTL Multi-launcher (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Milkor LTL Multi-launcher

Quantity: The Berkeley Department currently owns and maintains 2.

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**Capabilities:** The Milkor LTL is capable of firing six 40mm projectiles before reloading is necessary. The Milkor LTL 40mm projectiles are direct fire with a pliable "sponge" tip designed to mold to the body. The projectiles are about the size of a large egg. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas unless a higher level of force is justified. This level of force is considered to be similar to that of a baton strike.

**Lifespan** The manufacturer expected lifespan is about 10 to 15 years depending on use and regular maintenance.

**Manufacturer's Description:** Developed with our partner company, Abrams Airborne Manufacturing, The 40mm Multi-Shot Less-Lethal Tactical Launcher (LTL) was manufactured with the needs of the modern tactical team at the forefront. The launcher is capable of firing a wide variety of 40mm LTL ammo.

### **PURPOSE and AUTHORIZED USE:**

**Purpose:** The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The "less lethal" projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. The projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

**Authorized Uses:** The Milkor LTL multi-shot launcher is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.



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### FISCAL IMPACT:

Initial Cost: Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent Penn Arms purchased by the department cost \$3950.00 each.

Annual cost: Cost for Penn Arms single launcher use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

Training costs Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely handled in house thus the cost only includes staff time, range fees, and projectile costs which all vary.

Maintenance costs: Maintenance costs vary depending on use.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### TRAINING:

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

FN 303 and FN Pava Impact Projectile (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: FN 303 and FN Pava Impact Projectile

Quantity: The Berkeley Department currently owns and maintains 8 FN 303 less lethal launchers.

Capabilities: The FN 303 is capable of firing 15 projectiles out to a maximum manufacturer recommended range of 50 meters. The FN 303 projectiles are direct fire and designed to fragment upon impact to prevent penetration injury. Upon impact, the projectile transfers kinetic energy to the body to gain pain compliance. Large muscle groups such as the upper legs or lower abdomen are approved target areas. This level of force is considered to be similar to that of a baton strike.

Lifespan The manufacturer expected lifespan is about 10 years depending on use and regular maintenance.

Manufacturer's Description: The FN 303® Less Lethal Launcher is constructed from durable lightweight polymer with comfortable ergonomics and an easy to operate safety. The FN 303® Launcher is equipped with both flip-up iron sights and an integrated MIL-STD-1913 top mounting rail for optical or electronic sights or other accessories. The lightweight polymer

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magazine holds 15 projectiles and offers a clear rear cover to allow the operator to instantly verify both the payload type and the number of projectiles remaining.

### PURPOSE and AUTHORIZED USE:

Purpose: The purpose of kinetic energy impact projectiles, commonly referred to as "less lethal" is to preserve life, minimize the use of force and allow time for de-escalation attempts. Less lethal projectiles allow the user to maintain a safe distance from a subject who is armed and/or demonstrates the intent to be violent. The ability to maintain a safe distance – while still providing a level of control over the subject – allows officers to employ de-escalation techniques, request additional resources and develop a plan to safely resolve the situation with the least amount of risk.

Violent confrontations are inherently dangerous to all those involved. Officers are required to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. An Officer's threat perception of a person who is in close proximity as opposed to a person who is at a distance of 20 yards is naturally different. A person in close proximity intent on violence has the ability to immediately utilize personal body weapons, a bludgeoning device or cutting instrument. The immediacy requires the Officer to react instantly and there is a greater potential that a higher level of force will be needed.

On the other hand, a person at a distance of 20 yards may not be perceived as having the immediate ability to violently attack the Officer. The person must first close the distance before such weapons can be utilized. This may allow the Officer time to decide the most appropriate course of action, such as the use of a "less lethal" projectile.

The "less lethal" projectiles utilized by the Berkeley Police Department are generally considered discriminate versus indiscriminate uses of force. Discriminate projectiles are designed to provide a high level of accuracy which minimizes the risk of unwanted impacts. The ability to apply force from a distance reduces the potential for violent confrontation and aides in reducing the level of force needed to safely resolve a conflict.

Authorized Uses: The FN 303 is designed to reduce the potential for a violent confrontation. Less lethal projectiles are less likely to result in serious bodily injury or death and can be used to de-escalate a potentially deadly situation.

### FISCAL IMPACT:

Initial Cost: Less lethal prices, like other equipment, varies depending on market demand and availability. The most recent FN 303s purchased by the department cost \$800.00 each.

Annual cost: Cost for FN 303 use should be based on the projectiles used in training and on duty. This will fluctuate based on department trainings, projectile availability and events that unfold in the city and surrounding region.

Training costs Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Firearm Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows. This class is largely

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handled in house thus the cost only includes the officer's hourly wage, range fees, and projectile costs which all vary.

Maintenance costs: Maintenance costs vary depending on use. Generally, O-rings need to be replaced every 3000 rounds and cost \$30 per kit.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### TRAINING:

Every officer authorized to deploy a less lethal launcher must pass a certification course administered by a Berkeley Police Department Firearms Instructor. The certification class consists of classroom, range qualification and scenario application if the venue allows.

### Light/sound Diversionary Devices:

CTS 7290 Diversionary Device (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: CTS 7290 Diversionary Device

Quantity: The Berkeley Department currently owns and maintains 50.

Capabilities: When a diversionary device is deployed they create a loud noise, heat and brilliant light and create an effective diversion. They can create psychological and physiological effects such as: hearing a loud noise beyond that of everyday living, seeing a short bright light, and feeling of a change in atmospheric pressure. These effects may disorient/confuse subjects for a short time giving tactical teams the ability to apprehend that subject without using a higher level of force.

Lifespan The lifespan of the CTS 7290 Diversionary Device is 5 years.

Manufacturer's Description: The CTS 7290 is the standard for diversionary flash-bang devices. The 7290 produces a 165-180 db and 6-8 million candela of light output. The patented design of the 7290, incorporates a porting system that eliminates movement of the body at detonation even if the top or bottom of the device should be in contact with a hard surface. In addition, internal adjustments have greatly reduced smoke output.

Flash Bangs are used by special tactical units during hostage rescue and high-risk warrants. It is an ATF-controlled Class-C explosive device that emits a bright light and thunderous noise to distract potentially dangerous individuals.

### PURPOSE and AUTHORIZED USE:

Purpose: The purpose of a diversionary device is to create a reactionary gap of a person by temporarily disorienting them. This gap gives tactical teams an opportunity to apprehend a suspect

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while using the minimal amount of force possible. They can also be used to safely invoke a response or redirect the attention of subjects who are either feigning injury, ignoring police commands or are unresponsive while posing a threat to the public.

**Authorized Uses:** The use of a diversionary device is to create a diversion in order to facilitate entry and enable arrest. Circumstances justifying the use of a diversionary device may include, but not limited to barricaded subject or hostage situations and high-risk search warrants services.

### **FISCAL IMPACT:**

**Initial Cost:** Diversionary Devices cost approximately \$45 per unit and are purchased through LC Action Police Supply. Purchases for these tools are made when inventory becomes low, based upon critical incident usage and Special Response Team trainings that incorporate live devices.

**Annual cost:** See below training cost.

**Training costs** Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices. The cost of training is staff time.

**Maintenance costs:** The majority of diversionary devices are stored inside of a room in the basement within the Police Department. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

### **LEGAL AND PROCEDURAL RULES:**

Authorized use must comply with state, federal laws, and Lexipol Policy 353 Diversionary Devices.

### **TRAINING:**

Only trained and qualified personnel are permitted to deploy diversionary devices. These trained Berkeley Police officers are typically members of the Berkeley Police Department Special Response Team who receive monthly training which includes training in the deployment of diversionary devices.

### Long Range Acoustic Device

The Long-Range Acoustic Device (LRAD)(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: The Long Range Acoustic Device (LRAD)

Quantity: The Berkeley Department currently owns and maintains possesses 2 Long Range Acoustic Devices (LRAD) speakers. One is an LRAD 450XL and the other is an LRAD 100X.

Capabilities: Both of these speakers are able to focus sound in directional pattern allowing the user to make sound audible over distances much greater than conventional public address speakers.

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The LRAD 450XL is the larger of the two and designed to either be used in a fixed location or mounted on a vehicle to make it portable. It has a usable range of approximately 1 mile. The LRAD 100X is smaller and more portable. It can be carried or mounted to a person's chest for mobility or mounted to a vehicle. Its range is approximately 1/3 of a mile. Both of these systems allow for clear long-range communication, they are also able to play recorded messages.

Lifespan The lifespan for both LRADs is 25 years.

### Manufacturer's Description

LRAD 100x In addition to being 20 – 30 decibels louder than bullhorns and vehicle-based P.A. systems, the LRAD 100X is also up to 6X louder and much more intelligible than other hailing devices of comparable size and weight. Live or recorded broadcasts from the portable LRAD 100X easily overcome engines, sirens and noisy crowds to ensure every message is heard and understood. The LRAD warning tone safely alerts attention to the voice messages that follow, establishes large standoff zones, and is the safer crowd control alternative to non-lethal and kinetic measures.

LRAD 450XL- The LRAD 450XL utilizes technology developed and patented\* by Genasys Inc. to provide the audio output of larger acoustic hailers almost twice its size and weight, while delivering the same outstanding vocal clarity inherent in all LRAD systems. The LRAD 450XL broadcasts powerful warning tones to command attention to the highly intelligible voice messages that follow, enabling operators to change behavior and enhance response capabilities with safe, scalable escalation of force. Lightweight and designed for use on tripods or mounted on vessels, vehicles, and Remote Weapon Stations (RWS), the LRAD 450XL is a highly effective, long range communication system in use around the world for public safety, law enforcement, maritime and defense applications.

### PURPOSE and AUTHORIZED USE:

Purpose: The LRADs are designed for clear long-range communication. The LRAD's ability to communicate over a long distance is far superior to any megaphone or Public Address (PA) system mounted to a police vehicle. Additionally, LRAD's may be used to:

- Communicate lifesaving information to residents during disasters
- Communicate to large crowds during parades, festivals, concerts and sporting events
- Establish safety zones and perimeters
- Control traffic congestion
- Conduct Special Response Team operations
- Broadcast a dispersal order
- Communicate during hostage and barricaded subject situations
- Announce and serve high risk warrants
- Communicate to protesters

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- Communicate to persons threatening suicide who are in an inaccessible location
- Conduct search and rescue operations

The ability to communicate with the public in a large area increases the safety of all members of the public and law enforcement. It allows everyone in a given area to know what is being communicated, gives more situational awareness to everyone in a given area and allows people to know where to go or not to go.

Authorized Uses: The LRADs are used to communicate with the community during natural disasters, crowd management and control situations, or when other forms of communications are ineffective or inoperable to unequivocally communicate messages from Police or Fire and safely resolve uncertain situations where communicating with the public is paramount.

### FISCAL IMPACT:

Initial Cost: The LRAD 450XL and the LRAD 100X were purchased in 2018. The total cost for both LRADs, rechargeable battery packs and accessories was \$49,999.

Annual cost: BPD has not incurred any additional cost to date for this equipment.

Training costs Training is conducted by Berkeley Police personnel who are trained in the use and procedures of the LRAD. The cost to train is staff time.

Maintenance costs: costs for this equipment.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 707 Long Range Acoustic Device.

### TRAINING:

Training is conducted by Berkeley Police personnel who are trained in the use and procedures of the LRAD.

### Mobile Command Vehicle

Mobile Command Vehicle (MCV)(Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: MCV is a 2003 Freightliner MT55

Quantity: The Berkeley Department currently owns and maintains 1.

Capabilities: The MCV is a mobile office that provides shelter and may be used as a mobile command and communication center.

Lifespan This vehicle is approximately 20 years old and is at the tail end of its serviceable lifespan. All emergency vehicles need to be completely dependable and vehicles of this age start to lose

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dependability as old parts start to fail without warning. The modern versions of this type of vehicle are typically converted motorhomes.

### Manufacturer's Description

The 22' Freightliner MT55 P1200 is the biggest stepvan option for your delivery fleet, offering maximum capacity, accessibility and maneuverability. Built with a powerful Cummins 6.7L 200HP Diesel Motor, this route truck has folding lower shelves to optimize your cargo space and rear sonar for safety.

### PURPOSE and AUTHORIZED USE:

**Purpose:** This vehicle may be used as a mobile command post for any larger scaled events or as a communications center in the event the communications center in the Public Safety Building is inoperable. Some examples of large-scale events include Solano Stroll, Juneteenth, 4<sup>th</sup> of July, critical incidents or natural disasters.

**Authorized Uses:** This vehicle is used as a mobile command post for large scaled events.

### FISCAL IMPACT:

**Initial Cost:** The initial cost of the MCV (2003 Freightliner MT55) was \$230,800.

**Annual cost:** There is no annual or ongoing cost associated with this vehicle. Maintenance of the vehicle is conducted by the City's Corporation Yard.

**Training costs** Training is conducted in-house by Berkeley Police personnel who are trained in the operation of the vehicle. The training cost is staff time.

**Maintenance costs:** There are no storage costs and maintenance would be conducted by the City of Berkeley Corporation Yard.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 811 Mobile Command Vehicle.

### TRAINING:

Training is conducted in-house by Berkeley Police personnel who are trained in the operation of the vehicle.

### Chlorobenzylidene Malononitrile and Oleoresin Capsicum

Chlorobenzylidene Malononitrile (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Chlorobenzylidene malononitrile (CS)

Quantity: The Berkeley Department currently owns and maintains Inventory for CS canisters:

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Qty 6 – 5230 CS Canisters

Qty 24 – 6230 CS Canisters

Qty 20 – 5230B CS Baffled Canister (flameless)

Qty 17 – 5231 CS Tri-Phaser Canisters

Qty 21 – 4630 CS Muzzle Blast (used with 40 mm less lethal launcher)

Qty 4 – 4530 CS Impact Rounds (used with 40 mm less lethal launcher)

Qty 19 – 4330 CS Barricade Projectile Rounds (used with 40 mm less lethal launcher)

Capabilities: CS aerosols with microscopic particles which are potent sensory irritants becoming attached primarily to moist mucous membranes and moist skin. Common effects are: coughing, increased mucous secretion, difficulty breathing, skin reactions, and excessive salivation. The onset of symptoms typically occurs within 20 to 60 seconds, and if the exposed individual is placed in fresh air these effects generally cease in 10 to 30 minutes.

Lifespan CS and OC canisters expire in approximately 5 years.

### Manufacturer's Description

Unable to locate. Chlorobenzylidene malononitrile (CS) is one of the most commonly used "tear gases" in the world. It can be liquid, gaseous, or solid substance intended to produce temporary discomfort through being vaporized or otherwise dispersed in the air. Law enforcement (LE) agencies have found this agent invaluable when faced with combative suspects, for crowd/riot control, and for alleviating barricaded subject situations. LE use it to help control individuals or groups without the need for a higher level of force. There are four different deployment methods of chemical agents (Aerosol - most commonly used by police departments, Fogging, Pyrotechnics, and blast expulsion). All methods of deployment can be affected by certain environmental and physical conditions (wind, rain, temperature, distance, and proximity to others). At standard daily temperatures and pressures, CS forms a white crystal with a low vapor pressure and poor solubility in water.

### PURPOSE and AUTHORIZED USE:

Purpose: There are a variety of situations where peace officers may use chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

Authorized Uses: Tear gas may be used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances. Only the Chief of Police may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary.

### FISCAL IMPACT:

Initial Cost The cost for CS canisters ranges from \$20.00 to \$39.00 per unit.



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Annual cost: See below cost of training.

Training costs When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

Maintenance costs: The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### TRAINING:

Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer.

Oleoresin Capsicum (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

Type: Oleoresin capsicum (OC)

Quantity: The Berkeley Department currently owns and maintains Inventory for OC canisters:

Inventory for OC canisters:

Qty 54 - 9440 OC Tear Ball

Qty 19 - 5440 OC Flameless

Qty 20 - 6340 OC Vaper

Capabilities: A person subjected to OC can expect heavy tearing due to a burning sensation, involuntary closing or blinking of the eyes, stinging skin sensation, redness of the skin, irritation of the nose, runny nose, salivation, cough, gagging sensation, and shortness of breath. A person may also experience anxiety and panic. A complete recovery usually takes place within 45-60 minutes depending on the level of exposure.

Both CS and OC canisters ca

Lifespan CS and OC canisters expire in approximately 5 years.

Manufacturer's Description

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Unable to locate. For this portion of the Impact Statement, Oleoresin capsicum (OC) will be referred to in the aerosol canister form. OC is the chemical agent that is most widely used amongst Law Enforcement (LE) and the general public. OC has a pungent and irritating pepper odor. It is classified as an inflammatory agent. OC is mixed with several types of solutions which act as carriers.

### PURPOSE and AUTHORIZED USE:

Purpose: There are a variety of situations where peace officers may use chemical agents such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

Authorized Uses: Tear gas may be used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances. Only the Chief of Police may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary.

### FISCAL IMPACT:

Initial Cost The cost for OC canisters ranges from \$36.00 to \$44.00 per unit.

Annual cost: See below cost of training.

Training costs When purchased, each unit is given an expiration date which typically falls within a 2-3-year range. Every 2-3 years, new chemical agents are purchased to honor the expiration dates. The expired agents are then used during annual trainings thus minimizing the overall cost. Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

Maintenance costs: The majority of agents are stored inside of a marked chemical agent room within the Police Department, in the Special Response Team vehicle, or in the rescue Vehicle. There are no additional storage costs. There are no associated costs to transporting, maintenance, or upgrades.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### TRAINING:

Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer.

Oleoresin Capsicum Spray (Description, purpose/authorized use, fiscal impact, legal and procedural, and training)

Description (type of equipment, quantity, capabilities, lifespan, and product description from manufacture)

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Type: Oleoresin capsicum (OC) spray

Quantity: The Berkeley Department currently owns and maintains Inventory for OC canisters:

Qty 178 – First Defense MK-3 OC spray (3 ounces)

Most of the MK-3 OC sprays are issued to and maintained by individual officers; however, a small amount of these sprays is stored in a secured equipment room as spares in case of damage or new personnel issue.

Capabilities: The First Defense MK-3 OC sprays are standard issued to all police officers and are worn on the police officers' belt. It has an effective range of 10-12 feet. The larger First Defense MK-9 OC sprays are 13 ounces and are used in violent crowd situations. It has an effect range of 18-20 feet.

The use of the First Defense OC spray can render a dangerous and violent situation safe without using a higher level of force.

Lifespan Aerosol products eventually lose pressure over time. The lifespan of both the MK-9 and MK-3 OC spray are dependent on how well the pressure in the can is maintained, but is recommended to be replaced after 5 years.

### Manufacturer's Description

The MK-4 is an ideal size for patrol officers to wear on a duty belt and will deliver 11-12 short bursts of OC at an effective range of 10-12 feet(18-20 for the MK9). This 1.3/% MC OC aerosol product features a 360-degree stream deliver method which allows the aerosol projector to disperse OC from any angle while providing a target specific, strong concentrated stream for greater standoff.

### PURPOSE and AUTHORIZED USE:

Purpose: There are a variety of situations where officers may use OC spray such as: self-defense, overcoming the resistance of a noncompliant individual, effecting an arrest, preventing escape, violent crowd or riot control, barricade or hostage situations and dealing with dangerous animals.

Authorized Uses: OC spray may be considered for use to bring under control an individual or groups of individuals who are engaging in or about to engage in violent behavior. OC spray should not, however, be used against individuals or group who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

### FISCAL IMPACT:

Initial Cost The MK-3 OC spray cost approx. \$19 per unit and the MK-9 OC spray costs approx. \$60 per unit. The manufacturer is Defense Technology and the Berkeley Police Department purchase each unit from Galls Police Supply or LC Action Police Supply. Purchases for these tools are made when inventory gets low which is typically determined by how many new officers are sworn in, as well as if they are utilized in dangerous situations.

Annual cost: See below cost of training.

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Training costs Training is conducted in the police academy and in-house by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer. The cost of training is staff time.

Maintenance costs: The majority of the MK-3 OC sprays are either stored within the Police Department or with each sworn police officer while they conduct official duties. All MK-9 OC sprays are stored in the basement. There are no additional storage costs or associated costs to transporting, maintain, or upgrade.

### LEGAL AND PROCEDURAL RULES:

Authorized use must comply with state, federal laws, and Lexipol Policy 300 Use of Force, Policy 303 Control Devices, and Policy 428 First Amendment Assembly.

### TRAINING:

Training is conducted by a Police Officer Standard Training (POST) certified Berkeley Police chemical agent training officer.

### **709.5 APPROVAL**

The Chief of Police or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the department website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.
- (b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.
- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.
- (g) Acquiring military equipment through any means not provided above.

## *Military Equipment*

---

### **709.6 COORDINATION WITH OTHER JURISDICTIONS**

Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with this policy.

#### **709.6.1 TEMPORARY USE IN EXIGENT CIRCUMSTANCES**

The Berkeley Police Department may borrow and/or temporarily use Controlled Equipment in Exigent Circumstances without following the requirements in BMC 2.100.040, however the Department must take the following actions:

- (a) Provide written notice of the acquisitions or use to the City Council within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged under local, state, or federal law
- (b) If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed Controlled Equipment Impact Report and Controlled Equipment Use Policy, as applicable, to the City Council within 90 days following the borrowing, acquisition or temporary use, and received approval, as applicable from the City Council pursuant to BMC 2.100.040
- (c) Include the Controlled Equipment in the Department's next annual Controlled Equipment Report.

### **709.7 ANNUAL REPORT**

Upon approval of a military equipment policy, the Chief of Police or the authorized designee should submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

The Chief of Police or the authorized designee should also make each annual military equipment report publicly available on the department website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment in department inventory.

### **709.8 COMMUNITY ENGAGEMENT**

Within 30 days of submitting and publicly releasing the annual report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the Department should discuss the report and respond to public questions regarding the funding, acquisition, or use of military equipment.

### **709.9 MILITARY EQUIPMENT QUESTIONS**

Any member of the public may direct their questions regarding this policy and ordinance to a Sergeant in the Professional Standards Bureau at 510-981-5734 or 510-981-5974. Concerns may also be directed to [police@cityofberkeley.info](mailto:police@cityofberkeley.info). Questions will be answered in a timely manner by a member of the Berkeley Police Department.

## *Military Equipment*

---

### 709.9.1 MILITARY EQUIPMENT CONCERNS

Any member of the public may direct their concerns regarding this policy and any of the military equipment to Internal Affairs Bureau at 510-981-5706.

### **709.10 ASSOCIATED EQUIPMENT USE POLICIES**

The below links will direct to the respective use policies:

[300-Use of Force](#)

[303-Control Devices and Techniques](#)

[349-Tactical Rifle Operator Program](#)

[353-Flash/Sound Diversionary Devices](#)

[354-Precision Rifle Operator Program](#)

[428-First Amendment Assemblies](#)

[707-Long Range Acoustical Device \(LRAD\)](#)

[708-Robot Cameras](#)

[811-Mobile Communications Vehicle \(MCV\)](#)

### **709.11 COMPLIANCE**

The Department's Audit and Inspection Sergeant will ensure that the Department members comply with this policy. The Audit and Inspection Sergeant will conduct an annual audit with the assistance from members of the Professional Standards Bureau. Any violations will be referred to the Internal Affairs Bureau and handled in accordance with General Order P-26 (Personnel Compliant Procedures). All instances of non-compliance will be reported to the City Council via the annual military equipment report.



Office of the City Manager

ACTION CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Paul Buddenhagen, Deputy City Manager  
 Subject: Vision 2050: Strategic Asset Management Plan and Asset Management Policy

RECOMMENDATION

Adopt a Resolution accepting the Strategic Asset Management Plan (SAMP) and approving the Asset Management (AM) policy.

FISCAL IMPACTS OF RECOMMENDATION

The SAMP is the first step in implementing a full Asset Management Program (AMP). Staff and consultant resources will be required to implement the program, and staffing will be essential to maintain ongoing program needs. Funding to support the project will be requested in future budgets.

CURRENT SITUATION AND ITS EFFECTS

The Vision 2050 Task Force presented their report, *Sustainable and Resilient Infrastructure, Creating a Better Future for Berkeley*, and it was adopted by City Council on September 29, 2020. An important concept in the report is Strategy Two: Manage Infrastructure from Cradle to Grave, which recognized that the City not only needs to build more sustainable infrastructure, but that the infrastructure needs to be properly maintained over its useful life. More specifically, Strategy 2, task B recommended the development of an Asset Management Program. The first steps to implementing an AMP include the preparation of a Strategic Asset Management Plan and adopting an Asset Management Policy.

*Strategic Asset Management Plan*

A SAMP is a start to implementing a full AMP. The purpose of the SAMP is to develop policy guidance, review the City's current maintenance practices, and prepare a roadmap of key initiatives for implementing a full AMP. Asset Management is a proactive process to ensure that the design, construction, maintenance, refurbishment, replacement, and disposal of physical assets are planned together to optimize cost and that the systems perform properly. The process is data-driven and includes preparing

an asset inventory, assessing the condition of assets, risk assessment, and the proactive repair and replacement of an asset over its useful life.

Much of Berkeley's infrastructure was built before the Second World War, during the Great Depression, as the population grew. Both civic facilities and infrastructure systems are wearing out and require increasing maintenance and renewal. Aging infrastructure often also does not meet current or future requirements, whether safety standards, demand, or equity. The City is preparing a Capital Improvement Program (CIP), and the plan for FY2022 outlined a greater need for investments in our public infrastructure. The estimated additional funding need is over \$1 billion. While this estimate is very high, known emerging issues will drive this estimate higher.

The importance of proper infrastructure maintenance funding is demonstrated by the at-risk condition of Berkeley's streets. A Pavement Condition Index (PCI) is a scale from 0 to 100, where a score of 50 – 59 indicates "at-risk," 60 – 69 indicates "fair," and 70 – 79 indicates "good" street surface conditions. The City's current PCI is 57, meaning the City's streets are at the "at-risk" level and far short of the City's goal of a PCI of between 70-79, as set in the updated *Street Maintenance and Rehabilitation Policy (2022)*. At the City's current annual street funding of approximately \$7 million, the PCI will decrease another 6 points over the next five years (to a PCI of 51). To simply maintain the City's PCI level, annual street funding must rise to approximately \$15 million (or an additional \$8 million). The SAMP conducts an asset-by-asset review of annual infrastructure maintenance funding and finds that streets are not the only asset with insufficient annual maintenance funding.

AMCL, the consultant retained by the City to prepare the SAMP, used an existing best practice methodology to assess Berkeley's 'Asset Management Maturity.' A series of workshops were held with managers responsible for maintaining each of the City's asset categories to understand the City's current practices and their understanding of life cycle asset management principles. The City's rating was "developing," a common position for cities in the United States and the reason for making progress toward an AMP.

The SAMP proposed a 'Roadmap' of key initiatives, including necessary steps toward an effective AMP in the next two years. The components include:

- Prepare an Asset Management Policy for City Council adoption
- Form an Asset Management team, consisting of a team leader and two program staff
- Form an Asset Management Steering Committee to guide the program implementation
- Provide consultant support resources
- Prepare the strategies, procedures and analyses to implement an AMP
- Finish asset inventories and condition assessments

*Asset Management Policy*



Staff proposes that Council adopt an Asset Management Policy to provide direction for maintaining our City's infrastructure systems. The policy will be citywide but initially implemented in the Public Works and Parks, Recreation, and Waterfront departments. This policy will support one of the key recommendations of the Vision 2050 report.

### BACKGROUND

Berkeley's streets, storm drains, sewers, and water lines date to the early decades of the 20th century. Critical systems that we depend on every day are simply wearing out. Recent budgets were inadequate for infrastructure capital and maintenance needs, let alone modernizing them. Aging infrastructure is not only costly to maintain, but it doesn't meet current or future requirements, leaving the community vulnerable to unplanned failure and service interruptions. For residents, workers, and businesses trying to go about their daily lives, this can translate to unsafe conditions, unexpected costs, and inequity between neighborhoods.

As we begin to grapple with Berkeley's \$1+ billion in deferred infrastructure maintenance, new challenges are emerging. The local impacts of global climate change are a significant threat to our aging infrastructure. Extreme storm events, wildfires, heatwaves, drought, and sea-level rise will challenge streets, pipes, and open spaces designed for a more benign environment. And all of this will be happening as we wait and prepare for the next major earthquake. If the city is to survive and thrive, these challenges must be confronted.

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

On March 16, 2021, City Council held a budget workshop and gave input on the Vision 2050 implementation plan. The adopted budget included \$400,000 for critical tasks of the implementation plan. If approved, this budget would enable the requisite pre-work leading up to the Council's decision on whether to place an infrastructure-focused revenue measure or measures on the November 2022 ballot.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Implementing Vision 2050 would result in public infrastructure that is more resilient, creates fewer greenhouse gases, and reduces conflict between our built and natural environment.

RATIONALE FOR RECOMMENDATION

Adopting the SAMP and AM policy will ensure that Berkeley's infrastructure systems are properly planned and operated over their useful life.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered for this project.

CONTACT PERSON

Liam Garland, Public Works Director, (510) 981-6303

ATTACHMENT

1. Resolution to accept the Strategic Asset Management Plan and to approve the Asset Management policy  
Exhibit A: Strategic Asset Management Plan  
Exhibit B: Asset Management Policy

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

STRATEGIC ASSET MANAGEMENT PLAN AND ASSET MANAGEMENT POLICY

WHEREAS, the Vision 2050 Task Force recommended in the report, *Sustainable and Resilient Infrastructure, Creating a Better Future for Berkeley*, the development of an Asset Management Program (AMP). The first steps to implement an AMP includes the preparation of a Strategic Asset Management Plan (SAMP) and an Asset Management policy; and

WHEREAS, City Council approved the Vision 2050 report on September 29, 2020; and

WHEREAS, Asset Management is a proactive process to ensure that the design, construction, maintenance, refurbishment, replacement, and disposal of physical assets are planned together to optimize cost and that the systems perform properly. The process is data-driven and includes preparing an asset inventory, assessing the condition of assets, risk assessment, and the pro-active repair and replacement of assets over its useful life; and

WHEREAS, staff has worked with specialized consultants to prepare a Strategic Asset Management Plan and Asset Management policy; and

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley accepts the Strategic Asset Management Plan (Exhibit A) and approves the Asset Management policy (Exhibit B).



# STRATEGIC ASSET MANAGEMENT PLAN

City of Berkeley



APRIL 2022



## EXECUTIVE SUMMARY

I am pleased to present the City of Berkeley's (City) Strategic Asset Management Plan (SAMP). Asset Management is an important concept in which the City's infrastructure systems are managed throughout the life cycle from 'cradle to grave'. Taking an asset management approach was a key part of the City Council adopted Vision 2050 recommendations to provide sustainable and resilient infrastructure to the residents of Berkeley.



The purpose of this document is to develop policy guidance, to review the City's current maintenance practices and to prepare a roadmap of key initiatives for implementing a full Asset Management Program (AMP) in Berkeley's Public Works and Parks, Recreation & Waterfront Departments.

Berkeley's streets, sidewalks and utility pipelines date to the early decades of the 20th century. Critical systems that we depend on every day are simply wearing out. Recent budgets were inadequate for infrastructure capital and maintenance needs, let alone modernizing them. Aging infrastructure is not only costly to maintain but it does not meet current or future requirements. An AMP is needed to manage our infrastructure assets throughout their useful life.

The City retained a consultant to assess the City's current asset management practices against a global standard benchmark on Asset Management in these six areas: asset strategy and planning, asset management decision-making, lifecycle delivery, asset information, organization and people, and risk assessment. Based on the benchmark, Berkeley's average assessment was in the 'developing' level of asset management implementation and comparable to many U.S. cities, but not nearly good enough.

The consultant worked with City staff to develop a 'Roadmap' of key initiatives in the next two years to implement an effective AMP. The components include:

- › Prepare an Asset Management policy for City Council adoption
- › Form an Asset Management team, consisting of a team leader and two program staff
- › Form an AM Steering Committee to guide the program implementation
- › Provide consultant support resources
- › Prepare the strategies, procedures and analyses to implement an AMP

I thank the team for this important work and look forward to a future of well-maintained infrastructure systems.

**DEE WILLIAMS-RIDLEY**  
City Manager

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01

# BACKGROUND AND PURPOSE



Street surface in need of repairs



Sewer rehabilitation



Marina dock in need of repairs

## 1.1 Vision 2050 Background

The Vision 2050 concept was initiated by Mayor Arreguin at his 2017 State of the City address. A residents' task force of over 40 members was formed and the group worked to prepare a framework to modernize Berkeley's infrastructure. Their report was adopted by Berkeley's City Council in September 2020. Berkeley voters approved Measure R in November 2018. The measure asked: "Shall the measure, advising the Mayor to engage citizens and experts in the development of Vision 2050, a 30-year plan to identify and guide implementation of climate-smart, technologically-advanced, integrated and efficient infrastructure to support a safe, vibrant and resilient future for Berkeley, be adopted?" The response was a resounding yes. Berkeley's streets, storm drains, sewers, and water lines date to the early decades of the 20th century. Critical systems that we depend on every day are simply wearing out. Recent budgets were inadequate for infrastructure capital and maintenance needs, let alone modernizing them. Aging infrastructure is not only costly to maintain but it does not meet current or future requirements. This leaves the community vulnerable to unplanned failure and service interruptions. For residents,

workers, and businesses trying to go about their daily lives, this can translate to unsafe conditions, unexpected costs, and inequity between neighborhoods.

Now, as we begin to grapple with Berkeley's \$1.2 billion in needed infrastructure improvements, new challenges are emerging. The local impacts of global climate change are a major threat to our aging infrastructure. Extreme storm events, wildfires, heatwaves, drought, and sea level rise will challenge streets, pipes, and open spaces that were designed for a more benign environment. And all of this will be happening as we wait and prepare for the next major earthquake. If our city is to survive and thrive, we must confront these challenges. It was vital to reach out to the broader Berkeley community to both build awareness and provide opportunities for input and engagement. Initial Vision 2050 outreach began early in 2018 with four information nights across Berkeley. This continued with outreach to neighborhood and faith-based groups and community organizations. To support this endeavor, the Mayor's Office partnered with Berkeley's Youth in Government, a group of high school students, who were trained as Vision 2050 ambassadors. Using this model, the Mayor's Office presented at thirteen community organization meetings.

## VISION 2050

The Vision 2050 Task Force reviewed over 20 of the City's current infrastructure plans. The plans are the result of lots of hard work by City staff and community members over the years. It is helpful to build on current planning and to learn what has worked well and what hasn't. The City of Berkeley has an infrastructure system that has allowed us to thrive and grow for over 100 years. Now is the time to incorporate new technologies and meet new environmental standards so that our systems can continue to reliably support us for another 100 years.

The Vision 2050 report recommended three guiding principles, five strategies and several actions, all of which are summarized to the right in Figure 1.

An important concept in the report is Strategy Two: Manage Infrastructure from Cradle to Grave. This was a recognition that we not only need to build more sustainable infrastructure, but that we need to properly maintain it over its useful life. More specifically, Strategy 2, task B recommends the development of an Asset Management Program.



### PRINCIPLES, STRATEGIES AND RECOMMENDED ACTIONS

#### 1 STRATEGY ONE Use Integrated and Balanced Planning

- > Use multi-criteria decision-making
- > Use adaptive planning
- > Prepare and implement a Dig Once policy

#### 2 STRATEGY TWO Manage Infrastructure from Cradle to Grave

- > Institute structured master planning
- > Develop an Asset Management Program

#### 3 STRATEGY THREE Adopt Sustainable and Safe Technologies

- > Accelerate the transition to clean energy and electrification
- > Implement Complete Streets to provide sustainable and healthy transportation
- > Develop natural streetscapes that provide ecosystem services
- > Use sensors, data, and advanced technologies
- > Prepare a wildfire mitigation and safety plan

#### 4 STRATEGY FOUR Invest in Our Future

- > Take advantage of a strong financial position to address infrastructure needs and commit to reducing large unfunded infrastructure liability by doubling capital expenditures

#### 5 STRATEGY FIVE Prepare the City's Organization to Implement a Major Capital Program

- > Develop an organization that is integrated and has capacity to deliver
- > Prepare a program approach with management tools
- > Provide independent oversight and reporting

▲ Figure 1: Vision 2050 Principles, Strategies, and Recommended Actions

## 1.2 Purpose of a Strategic Asset Management Plan

A Strategic Asset Management Plan (SAMP) is the start to implementing a full Asset Management Program. The purpose of this document is to develop policy guidance, to review the City's current maintenance practices and to prepare a roadmap of key initiatives for implementing a full AMP in Berkeley's Public Works and Parks, Recreation & Waterfront Departments. This includes setting specific and measurable Asset Management objectives. The SAMP was prepared by the consultants AMCL and Bellecci and Associates, working with City staff. A description of the project participants is in Appendix A.

Few U.S. cities currently have a comprehensive approach to Asset Management (AM) across different asset categories and service areas. Berkeley has succeeded in moving forward in selected asset categories, such as with the sewer system, fleet and vehicles, and parking meters. The objective now is to develop a comprehensive AMP that is integrated, funded and staffed to maintain all asset categories.



Protected Bicycle Lanes on Adeline Street

## 1.3 Scope of Asset Categories

The scope of the SAMP will include all the following families of physical assets, with the asset information required to maintain them, throughout their lifecycles.

### Public Works Department

- › Streets and roads
- › Sidewalks
- › Streetlights
- › Transportation assets (bikeways, parking meters, traffic signals, parking garages, signage, etc.)
- › Sanitary sewers
- › Stormwater and green infrastructure
- › Zero waste
- › Fleet and vehicles
- › Building facilities

### Parks, Recreation, and Waterfront Department

- › Parks
- › Camps
- › Recreation facilities
- › Waterfront
- › Trees
- › Natural environment and habitat

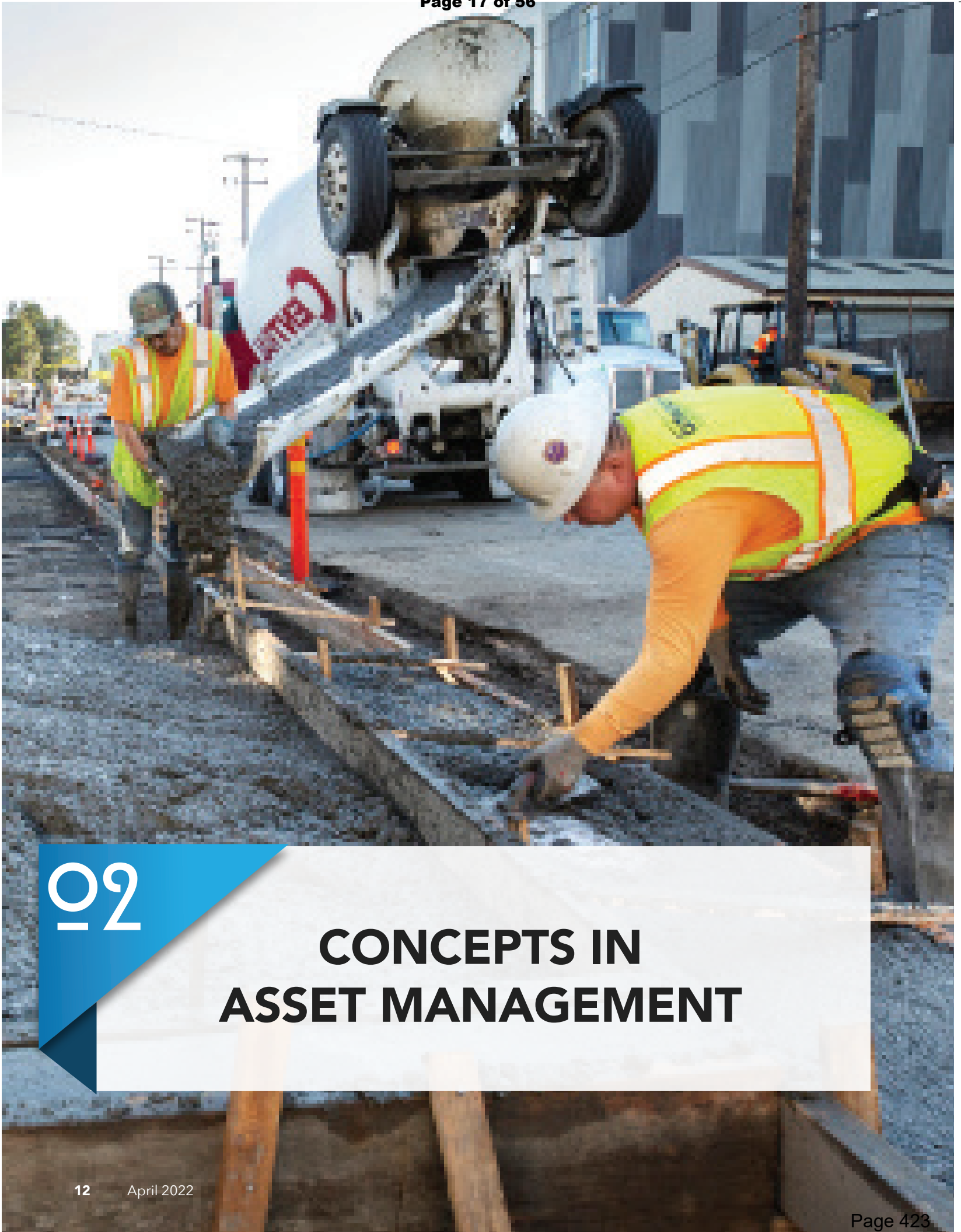
To put these in context, much of Berkeley's critical infrastructure is not owned or controlled by the City; Figure 2 summarizes what is and is not controlled by the City.



Transportation Infrastructure Serving All Users

| MAJOR INFRASTRUCTURE SYSTEMS IN BERKELEY         |                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                 |
|--------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Infrastructure System                            | Controlled by City                                                                                                                                                                                                                                                                                 | Controlled by Others                                                                                                                                                                                                                                                                            |
| Streets, sidewalks, paths, bikeways, and tunnels | <ul style="list-style-type: none"> <li>• 215 miles of streets</li> <li>• 300 miles of sidewalks</li> <li>• 50 miles of paths and bikeways</li> </ul>                                                                                                                                               | <ul style="list-style-type: none"> <li>• AC Transit buses</li> <li>• BART system</li> <li>• AMTRAK and trains</li> <li>• Taxis, Lyft, Uber and rideshare, ZipCar</li> <li>• Bicycles and Micro-Mobility</li> </ul>                                                                              |
| Power and communication systems                  | 7,000 street lights                                                                                                                                                                                                                                                                                | <ul style="list-style-type: none"> <li>• PG&amp;E, EBCE electricity and natural gas delivery systems</li> <li>• Private telecommunications and Internet services</li> </ul>                                                                                                                     |
| Parks, street trees and public plantings         | <ul style="list-style-type: none"> <li>• 42,000 street, park, and camp trees</li> <li>• 52 parks and play grounds</li> </ul>                                                                                                                                                                       | East Bay Regional Parks                                                                                                                                                                                                                                                                         |
| Water supply system                              | 11 creek watersheds                                                                                                                                                                                                                                                                                | EBMUD potable and recycled water                                                                                                                                                                                                                                                                |
| Sanitary sewers                                  | 380 miles of sewers                                                                                                                                                                                                                                                                                | EBMUD sewage treatment                                                                                                                                                                                                                                                                          |
| Stormwater system                                | 220 miles of storm sewers<br>6,000 storm drain facilities                                                                                                                                                                                                                                          | Large portion of creeks                                                                                                                                                                                                                                                                         |
| Solid waste management                           | <ul style="list-style-type: none"> <li>• 7.45 acre transfer/recycling station</li> <li>• All residential, multi-family and commercial collection of refuse, recycling (fiber, glass, etc.) and organics (green/food) materials.</li> <li>• Roll-off box (primarily compactors) services</li> </ul> | <ul style="list-style-type: none"> <li>• Private landfill</li> <li>• Alameda County household hazardous waste services center (residents only)</li> <li>• Organics composting</li> <li>• Construction and demolition hauling, sorting and recycling</li> <li>• Roll-off box services</li> </ul> |
| Public buildings                                 | 95 public buildings                                                                                                                                                                                                                                                                                | BUSD buildings, UC Berkeley buildings, transportation hubs e.g. Berkeley City College                                                                                                                                                                                                           |
| Berkeley marina                                  | Berkeley marina<br>Municipal pier                                                                                                                                                                                                                                                                  | State of California                                                                                                                                                                                                                                                                             |

▲ **Figure 2:** Major Infrastructure Systems in Berkeley



02

**CONCEPTS IN  
ASSET MANAGEMENT**

## 2.1 Definition of Asset Management

Asset Management is a pro-active process to ensure that the design, construction, maintenance, refurbishment, replacement and disposal of physical assets are planned together to optimize cost and that the systems perform properly. The process is data driven and includes preparing an asset inventory, assessment of the condition of assets, risk assessment and the pro-active repair and replacement of asset over its useful life. This concept is illustrated in Figure 3.

As a society, we have effectively managed infrastructure assets for many decades, relying on the commitment, experience and knowledge of our teams on the ground. Good practice Asset Management continues to depend on such commitment and knowledge but adds to this key information and analysis in order to be able to optimize the assets, in other words to deliver levels of service at the right balance of cost, performance and risk (see Figure 4).



▲ **Figure 3:** Proactive Asset Management



▲ **Figure 4:** Asset Management optimizes Asset Cost, Risk and Performance



Woolsey Cistern and Bio-Swale by Billy Hustace



## 2.2 Key Elements in Good Practice Asset Management

A good model of Asset Management used around the globe starts with the **alignment** of goals and activities: how the organizational goals must explicitly drive how we manage the assets. This may sound obvious, but in practice, asset decisions are often uncoordinated and not explicitly focused on levels of service and other targets. Organizations continue doing what we have done in the past, rather than actively seek to maximize asset contribution to current and future goals.

To coordinate asset decisions to deliver our goals, the model shown in Figure 5 highlights six main elements.

The first core elements are proactive asset **strategy** and integrated **planning**, together with improved **decision** techniques. This could be summarized as making full use of developments in risk-based asset decisions, in a framework of 'thinking again' and 'thinking longer term'. More strategic approaches to longer term asset planning, and good practice decision techniques such as prioritizing replacement and maintenance on their impact to levels of service ('risk to customer service'), depend on good **asset information**: on adequate data on what assets we have, their condition and rate of deterioration, good understanding of past failures in order to forecast future risks, as well as the knowledge and experience of our skilled people on the ground.

This also depends on having adequate **resources** - enough of the right people in the right jobs - and a general **culture** of proactive, coordinated and longer-term management of our physical assets.

As well as embedding **continuous improvement**, formal 'Plan-Do-Check-Act' learning processes, good asset management is explicitly based on a better understanding of **risk** - where risk is defined as the impact of uncertainty on our organizational objectives. **Risk** includes safety risks, but it also includes how physical assets may impact any of our goals, including the environment, equity, cost control, and committed levels of service to our customers.

These elements - asset strategy and planning, asset decision-making, asset information, organization and people, risk, and review, along with the adequacy of current delivery processes - were used to assess the current understanding and practice in all the service areas in scope.

Good Asset Management practice is also described by the International Organization for Standardization, ISO, in their ISO 55001 - Asset Management. This International Standard specifies the requirements for the establishment, implementation, maintenance and improvement of a management system for asset management, referred to as an "asset management system". This informed the proposed 'roadmap', or initiatives to implement the Asset Management Program.



▲ **Figure 5:** Asset Management Landscape Conceptual Model

## 2.3 Lifecycle costs

The costs and resources required to manage assets through their useful life are far more than just the upfront costs to build them.

In practice, for many assets, the costs after construction are significantly larger than the cost to construct.

Managing the asset after construction is a major commitment, up to 80% or more of the total cost of ownership. This document particularly focuses on what is required after construction, as that is usually less visible.

| Capital                                                                                                                                                                                                    | Operations                                                                                                              | Maintenance                                                                                                                        | Risk Costs                                                                                                                                     | Disposal                                                                                   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>Design</li> <li>Plant Purchase</li> <li>Installation</li> <li>Commissioning</li> <li>Training</li> <li>Documentation</li> <li>Facilities for Maintenance</li> </ul> | <ul style="list-style-type: none"> <li>Labor</li> <li>Energy</li> <li>Water</li> <li>Raw Materials/Feedstock</li> </ul> | <ul style="list-style-type: none"> <li>Labor</li> <li>Materials</li> <li>Spares</li> <li>Workshops</li> <li>Contractors</li> </ul> | <ul style="list-style-type: none"> <li>Impact on reputation</li> <li>Safety</li> <li>Impact on customer satisfaction</li> <li>Fines</li> </ul> | <ul style="list-style-type: none"> <li>Cost of disposal</li> <li>Residual value</li> </ul> |

▲ **Figure 6:** Typical Lifecycle Costs, from AMCL AM Training



▲ **Figure 7:** Typical costs to manage a facility from construction to disposal, from RTD Denver



03

# THE IMPORTANCE OF MAINTENANCE

## 3.1 What is Maintenance?

Maintenance is often categorized into re-active (fix it when there is a problem) or pro-active (fix it before there is a problem). There are also other terms used to describe maintenance and these are summarized as follows.

1. **Repair or replacement on failure** – also called ‘reactive’ maintenance. Failure is best defined in terms of function: can the asset still fulfil its functions for the City? Such a definition includes continuing to function safely, in compliance with laws, and meeting customer needs.
2. **Routine inspections and regular condition assessment** to catch problems that require reactive maintenance or more generally to monitor the degradation of assets, to plan ahead for preventative actions before they become problems.
3. **Preventative actions** such as planned replacement of components (e.g., changing the timing belt in a vehicle) before they fail.

Inspections, condition assessments, and preventative work are generally all categorized together as **planned maintenance**, as opposed to **reactive maintenance**.

4. **Major refurbishment** of worn assets, often using capital funding (where available). Refurbishment covers a wide range of options short of total replacement of an asset. Major structures such as roads, bridges or even some buildings may never be ‘replaced’, only repeatedly refurbished.
5. **Replacement** of worn or obsolete assets, generally using capital funding. Replacement is usually ‘capital’, but because it is about continuing to provide an existing function, is better grouped with

maintenance than with new investment. Many organizations have a general category of **renewals** to cover both refurbishments and replacements, bringing out the cyclical nature of asset management.

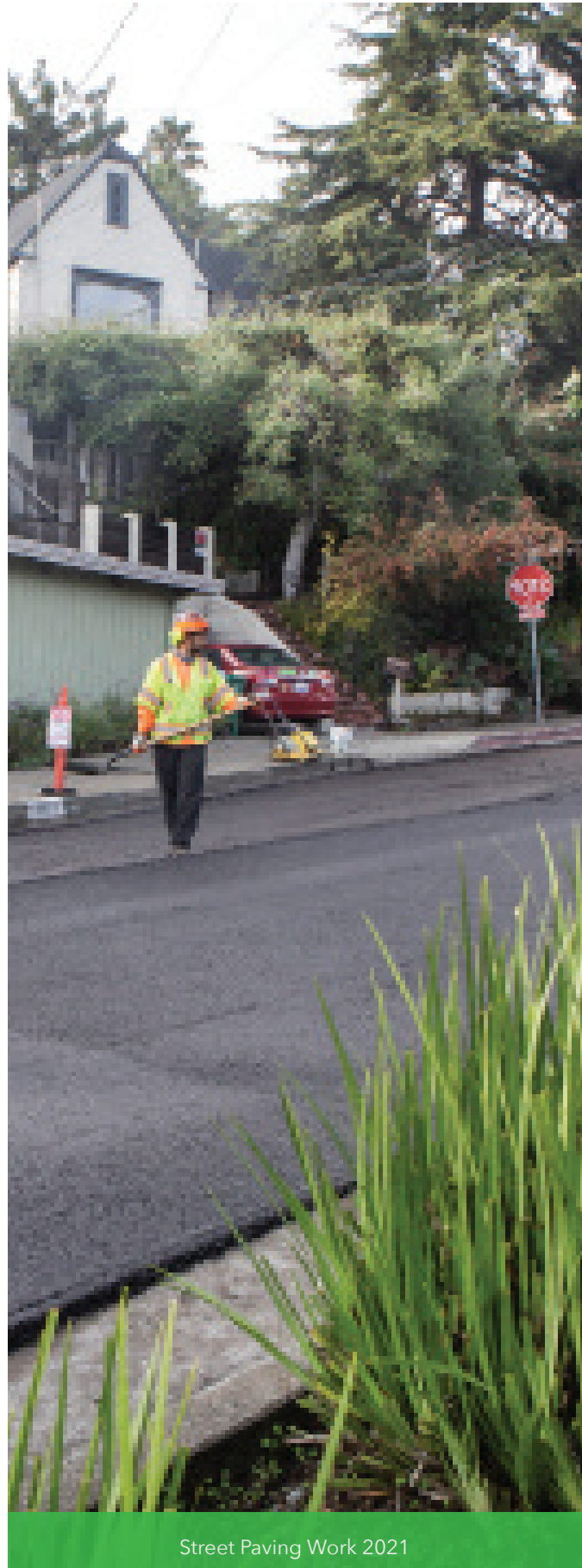
6. **Life-extension** of existing assets tends to cover refurbishment, replacement of some components, and timely repair, that is a lower cost means to maintain function without having to replace the whole asset. The basic concept is the same: to not allow an asset to degrade past the point where it can only be replaced.
7. **Upgrading** existing assets to make them compliant, more equitable, or safe, or to exploit new technology to better deliver the existing services, should also be included in a definition of sustaining the assets to sustain the service they provide. Replacing ‘like for like’ is often not the best option, and ‘modern equivalent asset’ a better default.

These different levels of maintenance can involve work defined as ‘capital’ or ‘on-going operations and maintenance’. The accounting and funding categorization of the work may be defined by a dollar threshold or on whether the work adds to the balance sheet. Funding is frequently more readily accessible for work defined as ‘capital’.

However, Asset Management seeks to optimize cost over an asset’s useful life, including getting value from the existing assets. This involves considering the optimized combination of several different kinds of work and the best value for money may often come from improved on-going maintenance.

## 3.2 Benchmark for Maintenance Funding

While proper maintenance funding can prevent much more expensive repairs later, identifying a proper benchmark to gauge whether the City of Berkeley's maintenance funding is sufficient can be more art than science. The Society of Maintenance and Reliability Professionals (SMRP) suggests that best-in-class values for total annual maintenance cost should range between .7% and 3.6% of the asset's estimated replacement value. It is safe to assume that assets with longer useful lives, such as underground pipes, are probably on the lower end of that range, and those with shorter useful lives, such as pavement and building components, trend toward the higher end. However, this determination is asset specific, and as the City's asset management practices gain in maturity, City-generated data and analysis will enable the use of more accurate and localized benchmarks rather than a generalized one.



Street Paving Work 2021

Blue vertical text on the left margin, partially obscured.




04

# CHALLENGES

## 4.1 Aging Asset Base

Much of Berkeley’s infrastructure was built before the Second World War, during the Great Depression, as the population grew. Both civic facilities and infrastructure systems are wearing out and require increasing maintenance and renewal.

Aging infrastructure often also does not meet current or future requirements, whether that is safety standards, demand, or equity. The City prepares a Capital Improvement Program (CIP) and the plan for FY2022 outlined a greater need for investments in our public infrastructure. The estimated funding need is over \$1 billion and is summarized as follows.

| INFRASTRUCTURE CATAGORY                                                                                                                 | FUNDING NEEDS \$ MILLIONS |
|-----------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
|  PARKS, PARK BUILDINGS, POOLS, WATERFRONT, AND CAMPS | 220                       |
|  PUBLIC BUILDINGS                                    | 285                       |
|  SIDEWALKS                                           | 10                        |
|  STREETS AND ROADS                                   | 250                       |
|  SEWERS                                              | 175                       |
|  STORM WATER                                         | 245                       |
|  TRAFFIC SIGNALS AND PARKING                         | 15                        |
| <b>TOTAL</b>                                                                                                                            | <b>\$1.2 B</b>            |

▲ **Figure 8:** Capital and Maintenance Costs (continuously updated)

While this estimate is high, known emerging issues will likely drive this estimate higher.

These issues include:

- › The City is updating its Watershed Management Plan that was last prepared in 2011. The new plan will incorporate new concepts and will likely have different estimated costs.
- › The City is preparing a long-term street surfacing plan. The new plan will incorporate sustainable technologies, traffic safety and complete streets concepts.
- › The City has prepared a plan to underground overhead utility wires along its evacuation routes to improve safety. The cost of that program is not included in the above estimates.
- › This calculation does not yet reflect the cost to implement the City’s adopted bicycle and pedestrian plans in future years.
- › This calculation does not yet reflect cost estimates related to the to improving Civic Center, including the old City Hall building and the Veteran’s building, and the City’s Transfer Station.
- › This calculation does not reflect the costs of implementing the City’s Resilience and/or Climate Plan in future years.
- › A Berkeley Marina Area Specific Plan is being prepared that will recommend improvements to the Marina, waterfront, municipal pier and a potential ferry. The planning is not completed yet.

## 4.2 Finance for Sustainability

The City has a need to fund capital improvements and on-going operations and maintenance costs. The estimate in Figure 8 includes both capital and maintenance costs. However, the distinction between what is capital and what is maintenance is currently not well defined. The development of the full AMP will need to analyze the following financing topics.

- › Define the threshold for maintenance and capital costs
- › Incorporate updates from the long-range infrastructure planning underway
- › Define the current level of maintenance funding and prepare an estimate of long-term maintenance funding needed
- › Evaluate creating a building replacement fund.



North Berkeley Senior Center in Construction

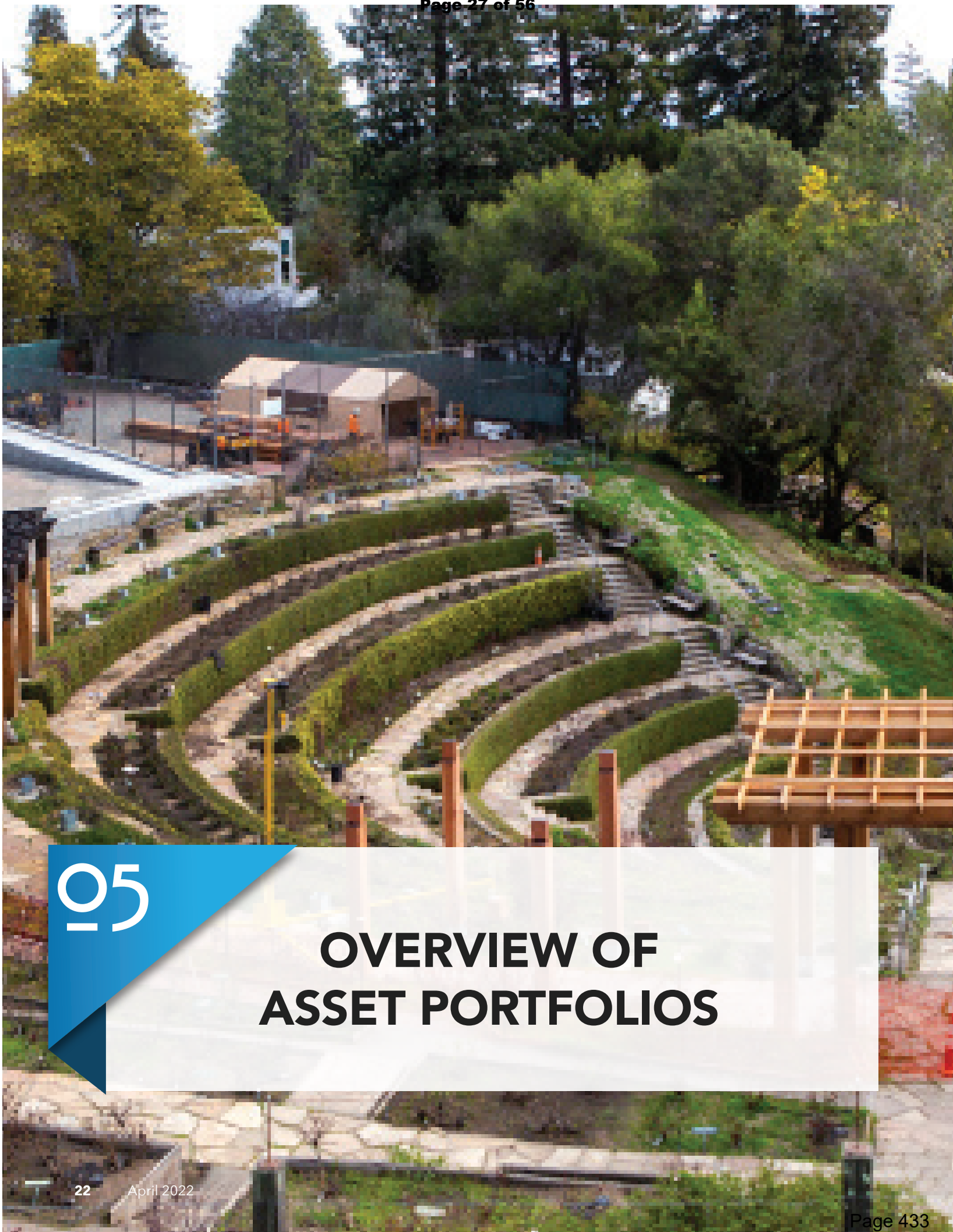
## 4.3 Emerging Challenges

Emerging challenges to existing infrastructure include planning for an environment that is changing and becoming more challenging. The Vision 2050 process sought to anticipate the changes and to create a future Berkeley that is safe and liveable. Our approach to meeting the challenges include the following:

- › To address the multiple risks from climate change, including extreme storm events, wildfires, heatwave, drought and sea level rise. This is on top of the risk of major earthquakes. Our infrastructure will need to be sustainable and resilient in all its aspects, including the use of green technologies, low impact development, undergrounding utilities, water reuse and using long lasting materials.
- › To provide infrastructure services equitably to all of our communities.
- › To improve the quality of life in our City by having vibrant public realm that includes open spaces, trees, recreational opportunities, community placemaking and safety for bicyclists and pedestrians.
- › To incorporate new technologies, including reliable wi-fi available to the public and electrification to reduce our greenhouse gas emissions.

Our infrastructure systems need to be maintained at a state of operational readiness. Letting systems deteriorate will limit our ability to meet the wide range of conditions that are emerging. And keeping these systems in a state of operational readiness means having a workforce that is engaged, well-trained, and healthy.





05

# OVERVIEW OF ASSET PORTFOLIOS

## 5.1 Streets and Roads

There are approximately 215 centerline miles of improved streets in Berkeley and their estimated replacement value is \$816,753,950. Every two to three years, portions of Berkeley's streets are inspected using the Metropolitan Transportation Commission's Pavement Management System (PMS) to identify repair needs and assign a pavement condition index (PCI). The City uses the PMS and PCI to track and prioritize pavement rehabilitation and maintenance needs on individual asphalt streets and the overall condition of the City's street pavement network.

The primary purpose of the street rehabilitation program is to maintain a safe surface conveyance system in the public right-of-way for vehicles, bicycles, and transit. The right-of-way also provides pedestrian access and ancillary functions of a storm water conveyance system and the location of public utilities. Regular street maintenance includes Public Works' staff crack sealing and filling potholes, and ongoing capital projects for seals, refreshing markings, and other activities. Asphalt streets are upgraded with a surface overlay or are reconstructed.

The following is a summary of Berkeley's current street condition.

- › Of the 215 centerline miles of streets (22mi of arterials, 37mi of collectors and 156mi of residential streets), the current overall average PCI rating is 56 (out of 100). This puts Berkeley's streets in the 'at-risk' category.
- › Studies show that \$1 invested in pavement treatment early in the pavement's useful

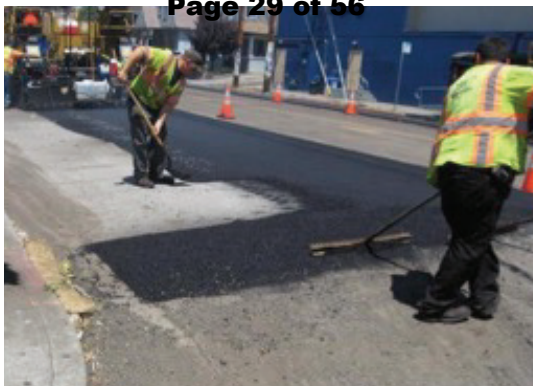
life can save \$8 spent on more expensive repairs later. Yet the City's annual paving funding is far short of the needed amount to make cost-effective repairs. To keep City streets at the current PCI would require boosting annual funding from approximately \$7 million to \$15 million, according to the City's pavement management system. With current annual funding, Berkeley's PCI is expected to decline by 6 points (to a PCI of 51) in the next five years.

- › The recently updated *Street Maintenance and Rehabilitation Policy* (2022) identified a goal of good condition for the City's streets, which is a PCI between 70 to 79. To reach a PCI in this range would require \$115-\$200 million or more.
- › The needs described above only address the pavement surface, markings, and curb cuts. The costs related to drainage improvements, green infrastructure, and implementation of the City's bicycle, pedestrian, and Vision Zero plans are not included.

The City dedicates approximately \$7.5M annually to the maintenance of the City's streets, or .92% of the replacement value. This is at the very low end of the maintenance funding benchmark. Given street condition is "at risk" and declining even more in the next five years, it is clear that this maintenance funding is far short of what is required. Boosting annual funding to \$15 million would result in a maintenance over replacement value of 1.84%, which is the mid-range of the benchmark for maintenance funding. The following illustrates some of the work to maintain our streets.



Street surface in need of repairs



Street being repaired



Completed street surface overlay

## 5.2 Sidewalks

The following illustrates some of the work to maintain our sidewalks.

The City has 400 miles of sidewalk. Public Works manages a sidewalk repair program to keep the City's sidewalks safe and provide for safe pedestrian passage, including make-safe repairs, annual proactive repair program, and the City's 50/50 replacement cost-share program in which the City shares the costs for broken sidewalks with property owners. Public Works staff respond to all reported sidewalk hazards, assesses each situation and installs an asphalt make-safe or grinds the sidewalk hazard if applicable, and on occasion perform limited sidewalk removal and replacement if a sidewalk hazard can't be made reasonably safe.



Sidewalk tripping hazard

These sidewalks have an estimated replacement value of \$400,000,000. Approximately \$1 million is available in annual funding towards sidewalks maintenance and repair from baseline allocations from the Capital Improvement Fund and 50/50 Program contributions from residents. This represents .25% of sidewalk replacement value, which is at the very low end of the maintenance funding benchmark. This is consistent with the growing backlog of sidewalk repairs and the results of a recent proactive condition assessment of sidewalk, rather than relying on residents reports, that suggests a possible \$50M+ backlog of repairs.



Sidewalk hazard repaired

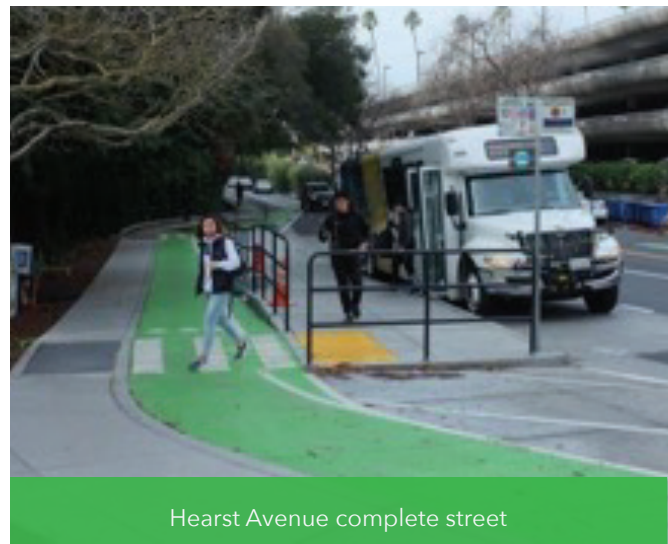
## 5.3 Transportation

The City is committed to improving traffic safety; encouraging transit use, bicycling and walking; and addressing a variety of transportation issues. Public Works' Transportation and Engineering Divisions manage various capital projects related to the City's parking facilities; street improvements; traffic calming measures, such as signs, markings, striping, and traffic circles; and bicycle and pedestrian infrastructure improvements, such as pathways, on-street facilities, and bicycle parking. Multiple transportation capital projects were implemented in the past few years, including:

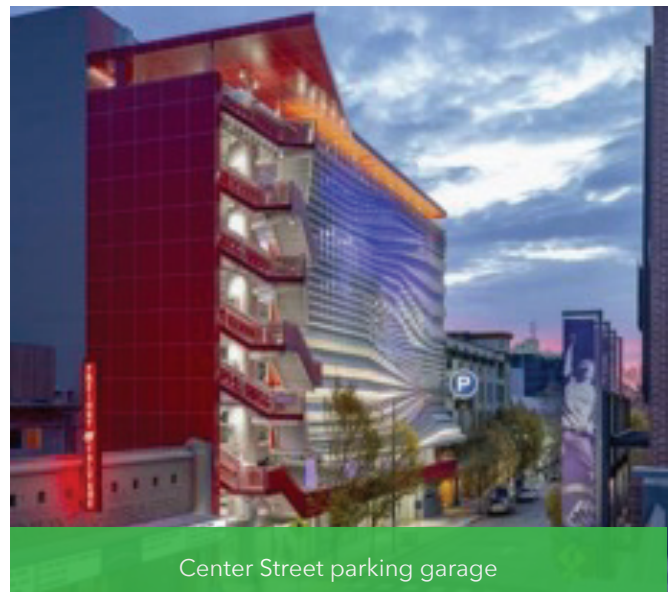
- › Center Street Garage construction completion and opening
- › Ordination of the installation of City's 37 Ford GoBike Bike Share stations
- › Completion of Ashby Corridor Safety Improvements Project which included bike lanes, new rectangular rapid flashing beacons at Tunnel Road/The Uplands, new pedestrian hybrid beacon at Ashby/Hillegass, and new left turn signal phase at Telegraph/Ashby
- › Completion of traffic calming measures along Le Conte Ave., including signal upgrade at the Hearst/Gayley intersection
- › Completion of construction of the Shattuck Avenue Reconfiguration, Downtown Berkeley BART Plaza and Transit Area Capital Improvement Projects
- › Expansion of the goBerkeley Program in the Euclid/Hearst Area

Public Work's Traffic Maintenance Unit handles maintenance of street signs and pavement

markings, the full inventory of which was collected in the last year using 3-D scanning. The department's Parking Meter Maintenance Unit handles maintenance of the parking meters. The City's parking meters have an online management system, and an up-time of 97%. However, the inventory is aging and a replacement of many existing meters is necessary to ensure adaptability to the new 4G networks. Developing replacement values so that the City can benchmark its Transportation maintenance budget is a required next step of the SAMP.



Hearst Avenue complete street



Center Street parking garage

## 5.4 Sanitary Sewers

The City owns and operates 255 miles of sewer mains and 165 miles of lower laterals. Their estimated replacement value is \$820,000,000, and annual maintenance funding is \$15,140,637. The result is a ratio of maintenance funding to replacement value of 1.85%, which is in the mid range of the maintenance funding benchmark. This level of funding is probably on target, given underground pipes are expected to be on the lower end of the benchmark range and much of the sewer pipe network has been replaced since the 1980's.

In 2014, the City (along with EBMUD and all agencies conveying flows to EBMUD) concluded negotiations with the Environmental Protection Agency and the Department of Justice for violation of the Clean Water Act and agreed to a stipulated settlement known as the final Consent Decree. To comply with the Consent Decree, the City is required to rehabilitate an average of 4.2 miles of sewer pipeline annually based on a three-year rolling average. Effectively, this mandated significant additional maintenance activities and capital improvements, and resulted in increased costs of managing the City's existing sewer system. After a sewer rate study was completed, a series of rate adjustments were adopted beginning in FY 2016 to support the added financial load of the Consent Decree requirements. The City is currently on track to meet rehabilitation mileage targets with revenues generated from sanitary sewer fees, however, the costs per mile for sewer construction have increased since the

rate study was completed. These costs will have to be closely monitored going forward over the duration of the Consent Decree, in case funding supplementation from additional sources or future rate adjustments are needed to fund the cost of the required capital improvements.





Deteriorated pipe



Green infrastructure



Piedmont Circle

## 5.5 Stormwater and Green Infrastructure

The City's engineered storm drains include approximately 78 miles of underground pipes, manholes, catch basins and cross-drains, all of which have an estimated replacement value of \$440,253,101. Annual maintenance funding is \$4,397,750, which is 1% of replacement value. Given the life of these assets, expanding green infrastructure requirements, and new threats from more intense, climate-fuelled storms, maintenance funding should probably grow to the middle end of the maintenance funding benchmark range. Assuming near term growth to 1.5%, that would require \$6,603,796 of maintenance funding annually, or \$2,206,046 more than the current funded amount.

Much of the stormwater infrastructure is over 80 years old and needs substantial rehabilitation. The backlog of projects includes: rehabilitation of pipeline reaches; replacement of deteriorated drain inlets and piping; major cleaning of the primary storm collectors in the lower Berkeley drainage watersheds; and replacement of street cross drains. The City desires to address these issues while forwarding its policies to improve the environment by pursuing Low Impact Development (LID) methods. The City has

already started to address implementing LID. In 2012, City Council adopted the City's Watershed Management Plan (WMP). The WMP uses LID methods to develop an integrated and sustainable strategy for managing stormwater resources that addresses water quality, flooding, and the preservation of local creek habitats and the San Francisco Bay. Since then, the City has installed green infrastructure at 30 locations.

The City prepared a Green Infrastructure Plan (GI Plan) in 2019 as required by the Stormwater NPDES Permit. The GI Plan is a dynamic planning document that includes goals for future green streets retrofits, prioritization tools, and guidelines for incorporating green infrastructure into future capital projects.

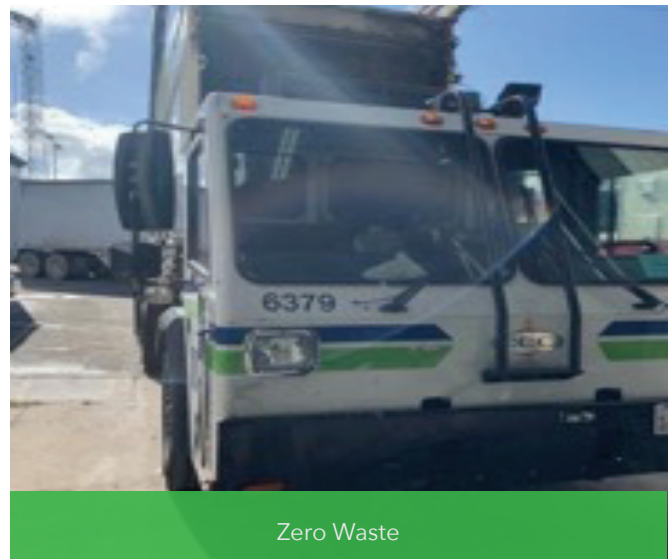
The GI Plan and the WMP do not address rehabilitating and replacing the aging infrastructure. The City needs to integrate the findings of the WMP and the GI Plan with requirements to rehabilitate or replace aging infrastructure and address future flows. This integration will be done by preparing a Stormwater Comprehensive Plan, which is kicking off in calendar year 2022.

## 5.6 Zero Waste

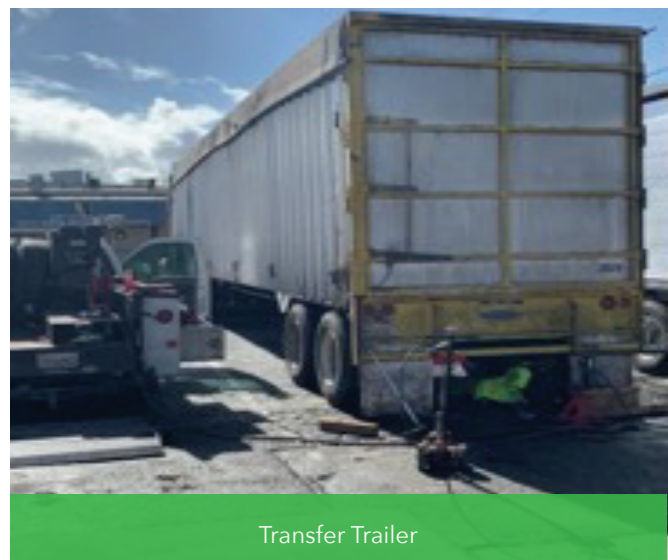
The Transfer Station, which was constructed in 1982, is in need of a redesign and has an estimated replacement value of \$76 million. A Feasibility Study was completed in 2019 and included over 40 hours of public input. The project is proceeding with design/engineering plans (to 10% design level) and CEQA Process (to be completed mid-2023). Currently, the Transfer Station has two below-grade refuse and organic materials load out tunnels that top-load trailers with up to 20 tons materials. The Transfer Station and its ancillary structures and operations are in need of replacement; the facilities are showing considerable wear and tear after thirty 38 years of operation; and the current facilities are not configured for efficient diversion or customer-friendly recycling of incoming materials due to the complexity of a site with one government and two non-profit partners. The Transfer Station replacement is especially important for ensuring the City makes progress towards its goal of Zero Waste.



Transfer Station



Zero Waste



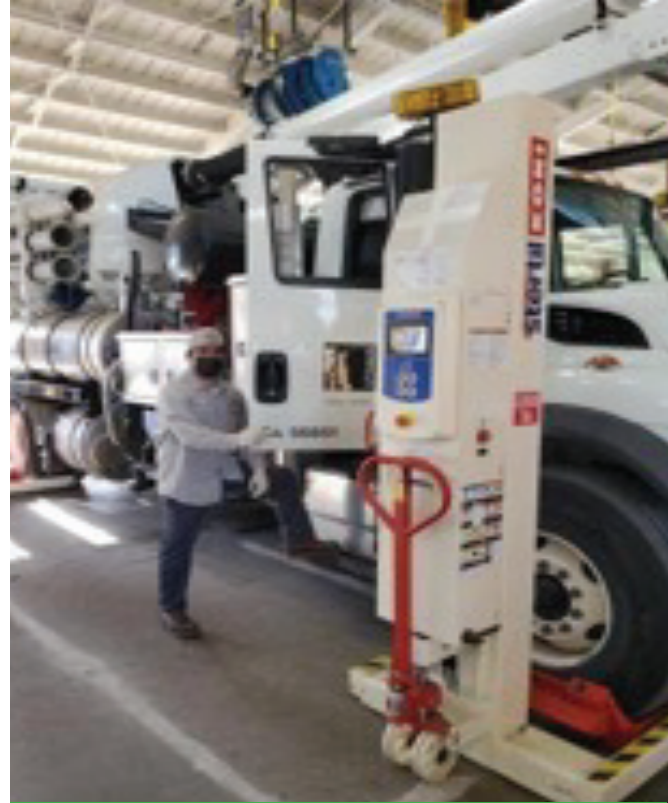
Transfer Trailer

## 5.7 Equipment and Fleet

The City has a fleet of 621 vehicles. All City Departments make annual replacement contributions into the Equipment Maintenance Fund and to the Equipment Replacement Fund. The former funds the mechanics, technicians, and parts and supplies required to maintain the fleet, and the latter funds the eventual replacement of vehicles when they reach or exceed their useful life.

Historically, the Equipment Maintenance Division has been responsible for determining what each Department's replacement contribution will be, recommending a schedule of vehicle replacements to the City Manager, and purchasing the replaced equipment in accordance with the replacement schedule. Staff continue to be identify vehicles on the schedule that can be replaced with electric vehicles. The Division utilizes a newly implemented computerized fleet management system AssetWorks and Syn-tech, fuel management software.

Total replacement value of the fleet is \$53,592,626. Vehicles and equipment are a unique asset category not subject the maintenance funding benchmark. The equipment replacement backlog is currently estimated at \$13.2 million per the City Auditor's report.



Vactor truck maintenance



Waste collection truck maintenance



## 5.8 Building Facilities

The City is responsible for the maintenance of 95 facilities, not including Library facilities and facilities leased to other entities, which were not part of this analysis. Of these 95 facilities, 39 are in the Parks Recreation and Waterfront's inventory and 56 are in Public Works' inventory. A third-party expert has provided facility condition assessments for 30 of these buildings. All projects included in these assessments are considered maintenance, according to the definition used in this report. Repairs to minor components such as plumbing, electrical, HVAC, painting, etc.—what this SAMP refers to as routine maintenance—are handled by the Facilities Division. Staff have developed a 5-Year Facility Capital Improvement Program with approximately \$85 million in building maintenance projects, yet the current budget allocation for this work over that time period is only \$4 million.

The total replacement value of the buildings in this inventory exceeds \$540 million. The City allocates \$4,686,074 annually for maintenance and \$900,000 for major refurbishment or replacement of building components. This results in a ratio of 1.04% maintenance funding to replacement value. Given building components are on the higher end of annual maintenance cost according to SMRP guidance, the shortfall is estimated at 2-3.6%, or \$5.2 million to \$11.7 million annually. Some of this annual funding gap is covered by one-time allocations from the General Fund or T1 funds.



Mental Health Building Renovation



King Park renovation



Berkeley Tuolumne Camp renovation



San Pablo Park playground

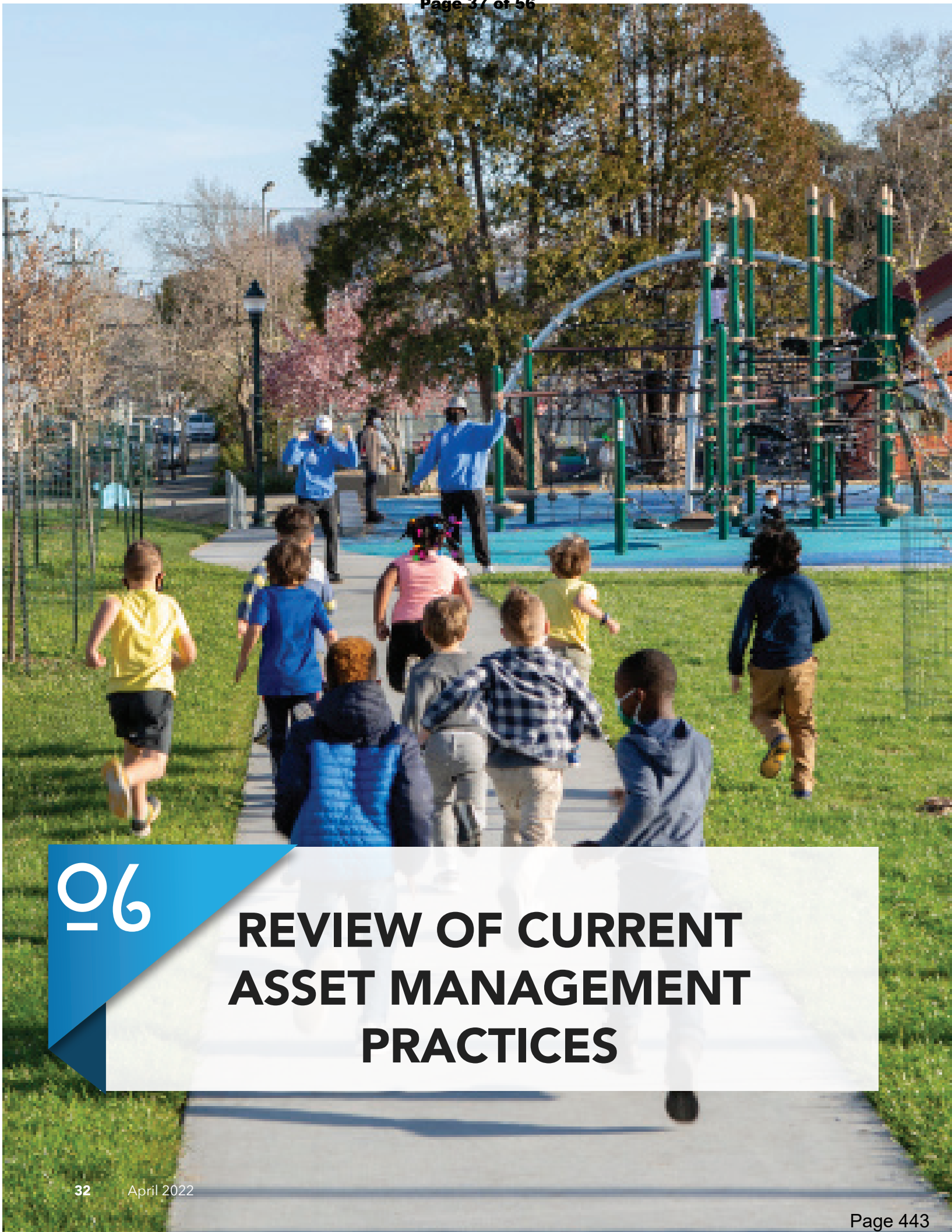
## 5.9 Parks, Camps, Recreation Facilities, Waterfront, and Trees

The Parks, Recreation & Waterfront Department (PRW) operates, maintains and manages 52 parks, 4 community centers, 2 clubhouses, 2 pools, 3 resident camps, 15 sports fields, 49 sports courts, 63 play areas, 36 picnic areas, 42,000 street, parks and camp trees, 152 landscaped street medians and triangles, 263 street irrigation systems, and 30 restrooms and out-buildings. In addition, PRW operates and maintains the Berkeley Waterfront and its related facilities, including the docks, pilings, channel, streets, pathways, parking lots, buildings, trails, Adventure Playground, and 1,000 boat and berth rentals.

The unfunded needs in parks, waterfront, pools and camps and infrastructure are estimated at \$220 million. The majority of these unfunded needs are at the Waterfront, where many of the docks, pilings, buildings, parking lots and streets have reached the end of their useful life and are starting to fail. As documented in multiple

reports over the few years, there is a diminishing ability to pay for the pressing capital needs in the Waterfront. The Marina Fund, which is the City's mechanism for managing all Waterfront revenues and expenditures, is approaching insolvency. Revenues steeply declined in the last two years as a result of safety and security concerns and failing infrastructure. The combination of falling revenue and increasing expenditure needs have strained the relatively small Marina Fund to a breaking point.

The City has begun a long-term planning effort - the Berkeley Marina Area Specific Plan - to establish the community's vision for the Waterfront and a plan for making the Marina Fund viable and stable. There is still a need to address an estimated \$10.33 million in urgent infrastructure repairs to finger docks, pilings, electrical systems, and restrooms. If these investments are not made, facilities and infrastructure will either require more costly emergency funding or be closed as in the case of the Berkeley Pier. Waterfront customers will continue to leave the Berkeley Marina, continuing the downward spiral of revenue loss and blight.



06

# REVIEW OF CURRENT ASSET MANAGEMENT PRACTICES

## 6.1 Assessment of Asset Management Maturity

To develop a forward-looking Asset Management Program, current practices were reviewed. This included both project management and on-going maintenance ('Lifecycle Delivery') as well as strategic activities on asset planning, asset decision making, asset information and data, resourcing, and understanding risk management.

To do this efficiently in a short time, AMCL used an existing best practice methodology for assessing Asset Management Maturity and tailored it to Berkeley priorities. A series of workshops were conducted in July 2021 with the managers responsible for maintaining each of the City's asset categories to understand the City's current practices and their understanding of life cycle asset management principles.

A summary of the findings is as follows:

- › Small teams are all working hard with limited resources to maintain the assets. Vacancies are of particular concern.
- › There is limited pro-active maintenance being done due to the lack of resources, especially in some areas such as with facilities and building maintenance.
- › There is encouraging evidence of good practice such as capital project management, reliability engineering and a promising start on life cycle management with sewer maintenance.
- › A key development will be the successful implementation of NexGen, a new IT system for asset data and work management. Teams are enthusiastic about

this development, although this cannot happen without sufficient resourcing on the data processes needed to populate and maintain the core asset data.

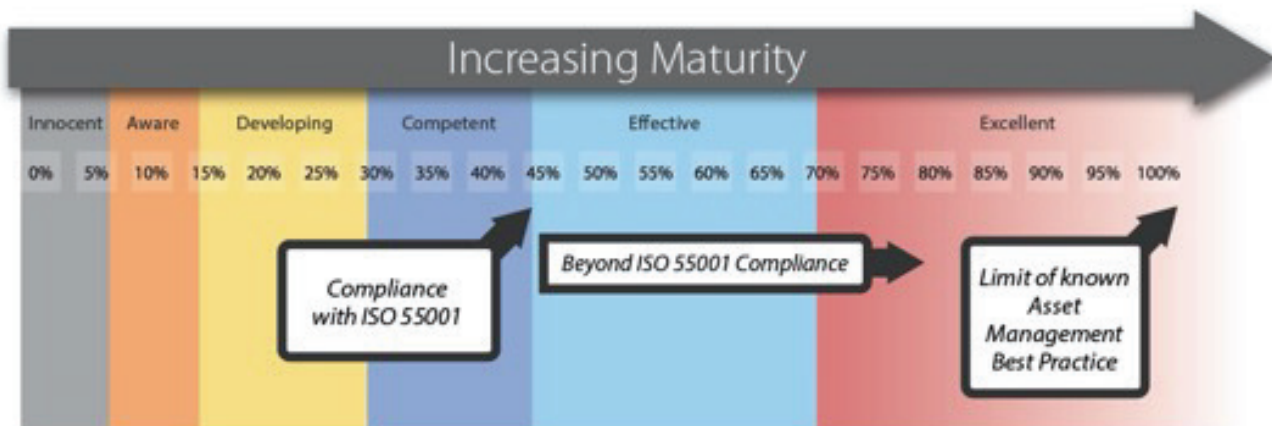
- › Based on AMCL's experience, the City's Public Works and Parks, Recreation & Waterfront Departments measure up well on Asset Management understanding against many U.S. cities. The U.S. municipal sector is generally less developed in Asset Management compared to places where it has been practiced for a longer time (such as the U.K., Australia and Canada). This gives the City a good start to learn from good practice elsewhere.

The questions posed to each workshop (one each on streets & transportation assets; sanitary sewers, stormwater & green infrastructure assets; parks, recreation & waterfront assets; facilities and buildings; vehicles; and zero waste assets) were organized in these assessment categories:

| Assessment Categories                 |
|---------------------------------------|
| Asset Strategies                      |
| Demand Analysis                       |
| Asset Management Planning             |
| Optimization                          |
| Capital Investment Decision-Making    |
| Resourcing Strategy                   |
| Asset Creation & Acquisition          |
| Maintenance Delivery                  |
| Fault & Incident Response             |
| Asset Information Strategy            |
| Asset Information Systems             |
| Data & Information Management         |
| Cost data                             |
| Procurement & Supply Chain Management |
| Asset Management Leadership           |
| Competence Management                 |
| Risk Assessment & Management          |
| Asset Performance Monitoring          |
| Asset Health Monitoring               |

▲ **Figure 9:** Topics covered in Workshops

The results were tabulated using a standard approach to 'maturity', as shown on Figure 10.



The maturity scale has six maturity states as follows:

|   |                   |                                                                                                                                                           |
|---|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | <b>Innocent</b>   | The organization is starting to <i>learn</i> about the importance of Asset Management activities                                                          |
| 2 | <b>Aware</b>      | The organization is aware of the importance of the Asset Management Activities and has started to <i>apply</i> this knowledge                             |
| 3 | <b>Developing</b> | The organization is developing its Asset Management Activities and <i>embedding</i> them                                                                  |
| 4 | <b>Competent</b>  | The organization's Asset Management Activities are developed, <i>embedded</i> and are becoming effective                                                  |
| 5 | <b>Effective</b>  | The organization's Asset Management Activities are fully effective and are being <i>integrated</i> throughout the business                                |
| 6 | <b>Excellent</b>  | The organization's Asset Management Activities are fully <i>integrated</i> and are being continuously improved to deliver <i>optimal</i> whole life value |

▲ **Figure 11:** AMCL AM Maturity Scale

The average score against the scale was 24%, with some areas higher and some lower than this. To put the results in context, fully meeting the international standard on Asset Management, ISO 55000, would require an average of 45%. The City of Berkeley is currently rated at the 'developing' level. This means that the City has a good start for developing an AMP.

The average score across the Public Works and Parks, Recreation and Waterfront departments is shown on Figure 11.



| <b>AVERAGE MATURITY SCORE</b>         |                      |
|---------------------------------------|----------------------|
| <b>Assessment Categories</b>          | <b>Average Score</b> |
| Organizational Direction              | 20%                  |
| SAMP                                  | 25%                  |
| Asset Strategies                      | 28%                  |
| Demand Analysis                       | 30%                  |
| Asset Management Planning             | 35%                  |
| Optimization                          | 31%                  |
| Capital Investment Decision-Making    | 35%                  |
| Resourcing Strategy                   | 20%                  |
| Asset Creation & Acquisition          | 21%                  |
| Maintenance Delivery                  | 31%                  |
| Fault & Incident Response             | 36%                  |
| Asset Information Strategy            | 19%                  |
| Asset Information Systems             | 22%                  |
| Data & Information Management         | 26%                  |
| Cost data                             | 10%                  |
| Procurement & Supply Chain Management | 20%                  |
| Asset Management Leadership           | 20%                  |
| Competence Management                 | 15%                  |
| Risk Assessment & Management          | 15%                  |
| Asset Performance Monitoring          | 26%                  |
| Asset Health Monitoring               | 24%                  |
| <b>Total Average</b>                  | <b>24%</b>           |

▲ **Figure 12:** Major Infrastructure Systems in Berkeley

## 6.2 Summary of Asset Management Gaps

The following is a summary of the current gaps in having a full Asset Management Program.

1. Asset Planning needs to be integrated to move beyond reactive work to sustainable proactive maintenance, both with capital renewals and on-going work. Vision 2050 explicitly calls for integrated planning. Planning should optimize different activities and should integrate across short, medium and longer-term perspectives.

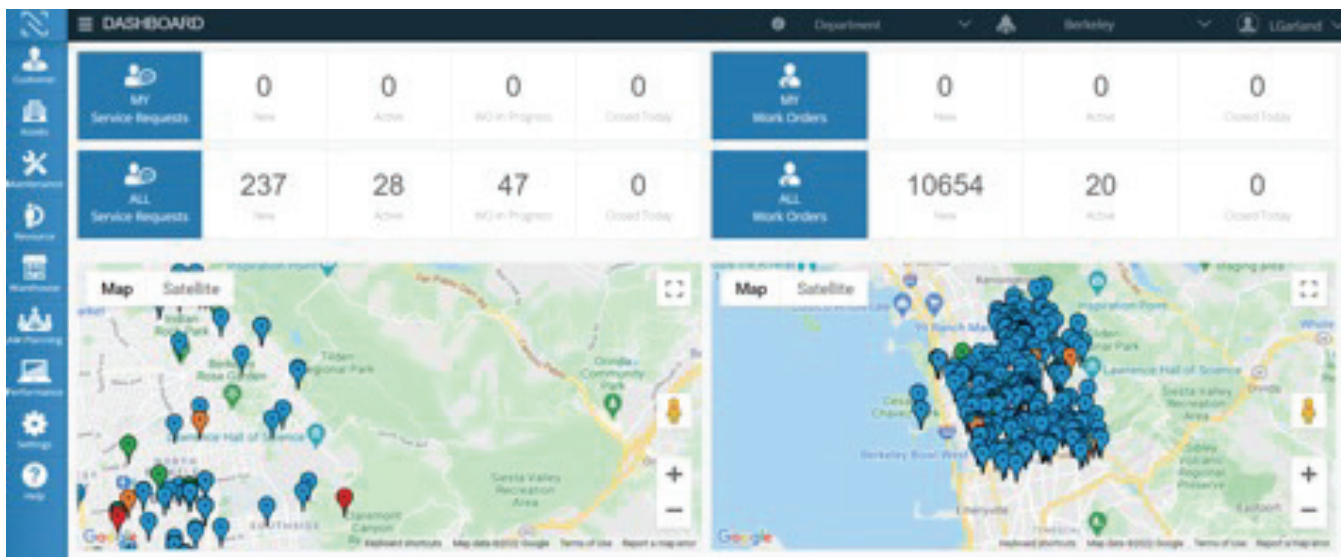
Integrated planning supports a realistic understanding of funding and resourcing needs going forward. Progress should be monitored and reported, and the principle of continuous improvement applied to the planning itself - that every planning cycle learns from the last one, towards increasing maturity in meeting City objectives.

2. A more strategic approach to Asset Information, including appropriate data governance processes, is needed to understand what information is needed

to make asset decisions, how the City will collect that information, and how the City will ensure that the information is accurate and of good quality.

3. The operations and maintenance costs of infrastructure systems are not currently captured and tracked, which hinders the ability to understand lifecycle costs and determine optimal strategies for each type of asset.
4. The next steps are to ensure an overall understanding of an ISO 55000-type Asset Management system and to put an AM effective framework in place, to build on what is already there and implement good practice Asset Management across the different service areas.

One important step already taken by the City is the implementation of NexGen Asset Management software in Public Works operations. The system went live at the end of 2021 and it will be valuable in maintaining asset inventories, in issuing work orders and maintaining a record of work accomplished.



▲ Figure 13: Screen Shot of NexGen system

# 07

## STRATEGIC ASSET MANAGEMENT OBJECTIVES

The following are AM objectives developed through this SAMP.

1. Develop an internal communications and awareness plan around an ISO 55001 compliant AM system.
2. Develop a communications and awareness plan of sustainable Asset Management with external stakeholders.
3. Prepare a plan of the organizational structure, staffing resources, consultants, and system programs needed to fully implement an AMP. This should be prepared in time for the FY2023 budgeting process.
4. Develop an understanding of the maintenance funding shortfalls and to place a revenue measure on the November 2022 ballot.
5. To move towards preparing an annual maintenance plan across asset classes that increases transparency and defines the critical required maintenance, the funding and resources to perform the work.
6. To increase the AM maturity score year over year.
7. To have a long-term projection of the infrastructure repair and replacement cost and schedule across all asset categories. The goal is to have pro-active maintenance while minimizing risks and optimizing costs.
8. Maintaining a record of work accomplished.





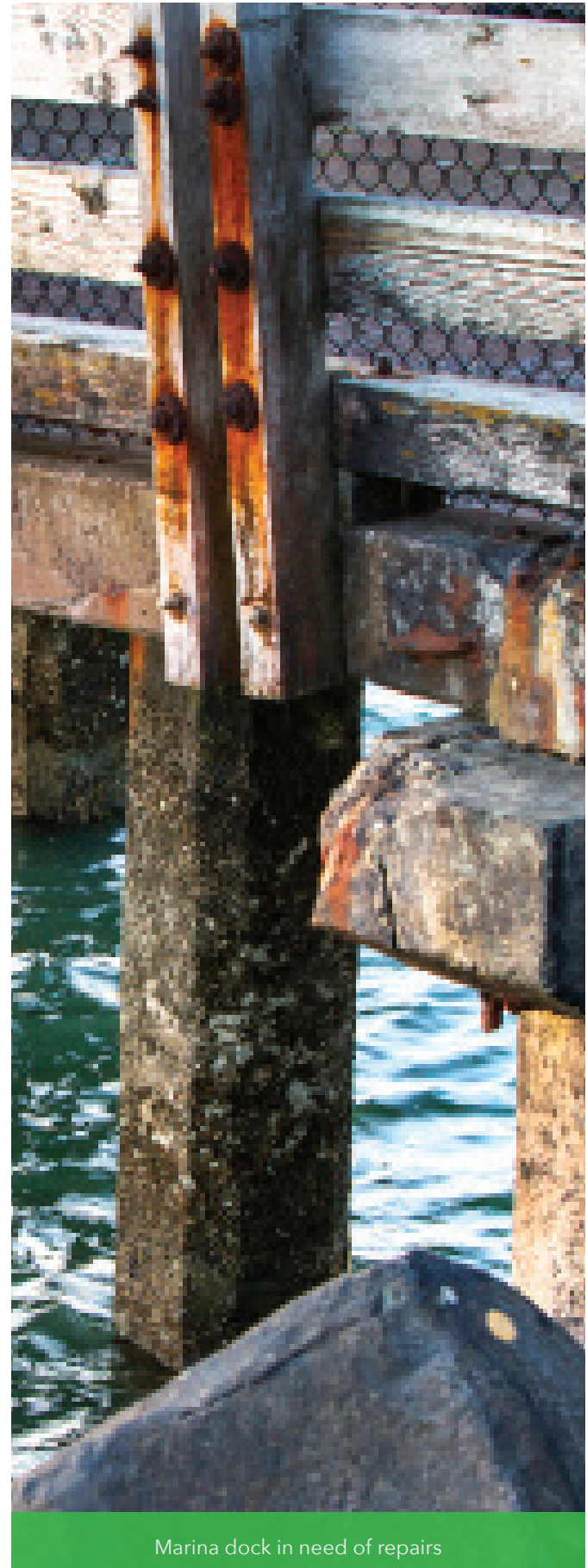
# ROADMAP FOR IMPLEMENTING AN AM PROGRAM

This section presents a proposed 'roadmap' of key initiatives in the next two years for moving to implementing an effective Asset Management Program.

## 8.1 Principles for AM Policy

We propose that a City policy on Asset Management be presented to the Council along with this SAMP report. The following are some principles to be included with the policy.

- › **Life Cycle Approach** - Apply a life-of-an-asset methodology for managing infrastructure assets, including planning, acquisition, operations, maintenance, renewal and surplus or disposal.
- › **Financial Stewardship** - Understand the resources and funding required to sustain the assets to deliver defined levels of service, through appropriate asset cost, risk and performance information
- › **Service Level** - Understand the service level and use of each asset to inform the prioritization of asset maintenance or replacement as it relates to the capital improvement plan.
- › **Risk Mitigation** - Understand and mitigate risk associated with physical assets based on their condition and usability.
- › **Process Optimization** - Continuously seek opportunities and tools to improve asset management processes.
- › **Standard Operating Procedures (SOP)**- Establish and, as processes and tools change, update SOPs to allow for consistent implementation of asset management policy principles.
- › **ISO 55000** - Compliant Asset Management system based on Plan-Do-Check-Act with targets, independent audit and continuous improvement.



Marina dock in need of repairs

## 8.2 AM Roadmap

This report proposes a ‘roadmap’ of key Asset Management initiatives from now until 2024 to build an effective AMP. Asset Management Roadmaps generally plan for an implementation period of 18 to 24 months. The intent is to develop near term ‘quick wins’ and to set the foundation for longer term processes. A major part of any successful AM Roadmap is communications and awareness building.

This Roadmap describes the implementation activities and schedule, forming an Asset Management Steering Committee, identifying an Asset Management Program Manager and the team and a recommendation for resources.

### Implementation Activities and Schedule

The following activities are proposed from the beginning of 2022 to the end of 2023.

#### Work Activities in 2022

The activities in 2022 are to launch the AMP and to incorporate the needs of Asset Management in the FY2023 budgeting process. The activities shall include the following.

1. Develop funding requests for staffing and consultant support in the FY2023 budget.
2. Conduct outreach to internal staff and external stakeholders on the AMP.
3. Continue expanding inventory of assets and include replacement values.
4. Continue expanding condition assessments of assets.

5. Form an Asset Management Steering Committee and create a charter.
6. Prepare a job description for an Asset Management Program manager and staff and begin the recruitment upon approval of funding.
7. Prepare data on current maintenance budgets, estimated budget needs and options for funding the shortfall.
8. Implement the NexGen software system.

#### Work Activities in 2023 and 2024

With the Asset Management team in place, the work activities through 2023 shall include the following.

- › Prepare a manual of initial Asset Management Standard Operating Procedures.
- › Prepare a clear definition of capital versus maintenance and the required budgets for each.
- › Define equity and how Asset Management can promote it in Berkeley.
- › Communicate progress to internal staff and external stakeholders.
- › Continue expanding inventory of assets.
- › Continue expanding condition assessments of assets.

### Asset Management Steering Committee

We recommend that an Asset Management Steering Committee be formed to guide the implementation of the AMP. The members of the

committee could include the following people:

- › Director and a Deputy Director of Public Works Department
- › Director and Deputy Director of Parks, Recreation and Waterfront Department
- › Assistant City Manager
- › Finance Director or his designee
- › Other staff, commissioners, or residents with expertise in Asset Management
- › We recommend that the committee prepare a charter that defines the objectives and performance goals for an AMP.

## Asset Management Program Manager and Team

**We recommend that an Asset Management Program Manager be hired or appointed from current staff.** Asset Management is about people, relationships, assets and strategies. We will need an AM leader that has knowledge of each. The responsibilities of the person shall include the following.

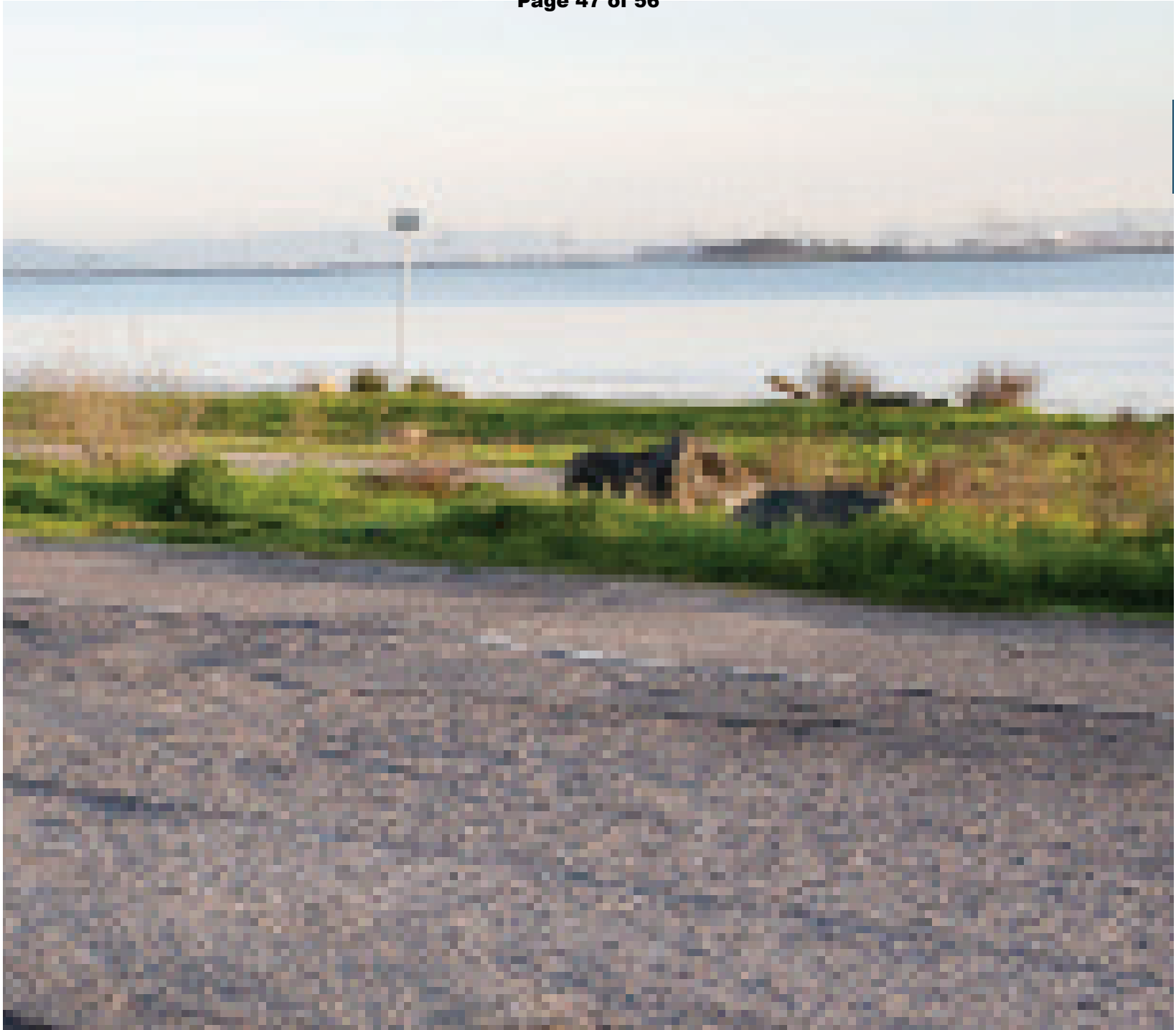
- › Coordinate the preparation of Asset Management Standard Operating Procedures
- › Lead the implementation of Asset Management, including AM training and communications
- › Define capital versus maintenance and develop models for tracking funding needs
- › Key role in defining the asset information strategy
- › Key role in defining the asset risk framework
- › Focus for improved asset decision techniques and models

**We propose that the Asset Management team include two other staff. Their skills can be in budgetary analysis, condition assessment, asset management software, risk analysis or other related topics.**

## Resource Requirements

The following resources are likely to be needed to support the Asset Management team.

- › Funding for consultant services to support the preparation of Standard Operating Procedures, strategies and funding analysis
- › Funding for consultant services to support improving inventory and condition assessments
- › There is the potential for additional software needed to implement the AMP



09

# APPENDICES

## Appendix A: Acknowledgements

### City of Berkeley

Liam Garland, Director  
Public Works

Scott Ferris, Director  
Parks, Recreation and Waterfront

Ray Yep, Vision 2050 Implementation  
Team Lead (volunteer)

Margo Schueler, Vision 2050 Implementation  
Team Co-lead (volunteer)

Andrew Brozyna, Deputy Director  
Public Works

Farid Javandel, Deputy Director  
Public Works

Christina Erickson, Deputy Director  
Parks, Recreation and Waterfront

Joe Enke, Manager of Engineering  
Public Works

Input from Division Managers in the Public  
Works and Parks, Recreation and Waterfront  
Departments

### Consultant Team

#### AMCL

Ruth Wallsgrove, Project Manager  
Nick Lee, Project Engineer

#### Bellecci & Associates

Daniel Leary, Principal

## Appendix B: Glossary of Terms

### Asset Categories

A logical grouping of similar assets or equipment types used to categorize, organize and manage the asset portfolio. Also termed 'asset type' in ISO 55000. IAM definition: Grouping of assets having common characteristics that distinguish those assets as a group or class. This is normally defined using pragmatic asset management considerations rather than theoretically defined by value, size or criticality.

### Asset Class Strategy

The document or group of linked documents that states how City of Berkeley will achieve the objectives for an asset class or family. The Asset Class Strategy will consider all phases of the asset life cycle, including design, procurement, operations and maintenance, the approach for capital replacements and upgrades over the asset's life cycle, and retirement and salvage.

### Asset Information Strategy

The Asset Information Strategy is the plan and process to achieve and implement identified improvements to asset information. The Asset Information Strategy defines the current and future states, along with priority improvements in support of the Asset Management System.

### Asset Planning

Data driven planning that improves operational, maintenance and capital forecasting of potential needs, and optimization of portfolios of investments to realize the greatest value from

assets while operating within established constraints.

### Asset Life Cycle

Time interval that commences with the identification of the need for an asset and terminates with the legal disposal of the asset and any associated liabilities. The phases of an asset life cycle include initiation, planning, design, construction or installation, hand-over, operations and maintenance, replacement/ refurbishment, decommission/ retirement and salvage/disposal.

### Asset Life Cycle Delivery

The execution of asset operations, maintenance and investment plans.

### Asset Management Capabilities

An organization's people, processes, technology, leadership and culture to derive and deliver value from its assets to meet the needs of the organization and its stakeholders in a sustainable manner.

### Asset Management Enablers

The tools, processes, skills and competencies that support effective asset management.

### Asset Management Maturity

The level of an organization's AM capability normally assessed by a standard proprietary or non-proprietary assessment tool; effectively a benchmark of the organization against a standard (such as ISO 55000) or database of other organizations.

**Asset Management Objective**

The plan and process to achieve and implement an identified improvement to the asset management system. The SAMP identifies foundational asset management objectives that are necessary to build and improve City of Berkeley’s asset management system.

**Asset Management Plan (AMP)**

An Asset Management Plan provides a typically 5-plus years forecast of capital and operating requirements for asset systems and classes to achieve the appropriate balance of asset cost, performance and risk to meet the organization’s asset management objectives.

**Asset Management Policy**

The approved Policy which expresses the key AM principles to be applied to all decision making when managing the organization’s assets.

**Asset Management Roadmap**

The program of asset management initiatives that City of Berkeley has in place to develop and improve its asset management capabilities and asset management system.

**Asset Management System**

The Asset Management System is the set of people, processes, tools and other resources involved in the delivery of asset management, including governance.

**Asset Sustainment Requirement**

Work plan identifying all work activities required to maintain a specific asset throughout its lifecycle, as identified by the asset strategy. It includes both resource requirements and forecasted capital and operating expenditures.

**Asset System**

An Asset System is a grouping of assets; usually grouped for reporting, organizational, technical or financial purposes. Example in City of Berkeley include a sewer or stormwater network, a fleet of vehicles, or a parking meter system.

**Six Box Model**

Widely used diagram of main elements of Asset Management, from the Global Framework for Maintenance & Asset Management Asset Management Landscape. These six elements are: Organization & People, Strategy & Planning, Asset Management Decision Making, Asset Information, Lifecycle Delivery, Risk & Review.



**ISO 55000 Series**

The international standard on Asset Management. Often referred to as ISO 55000, the ‘meat’ of the standard is in ISO 55001.

**Optimize**

To achieve by quantitative or qualitative method, as appropriate, the best value compromise between conflicting factors such as performance, cost and risk within established constraints.



### Strategic Asset Management Plan (SAMP)

A SAMP translates the corporate goals and objectives to Asset Management Objectives and documents the strategic actions identified to build and improve the asset management system. The SAMP lays out a roadmap for the ongoing build out of City of Berkeley's Asset Management System to meet organizational objectives and challenges and define performance targets for the assets.

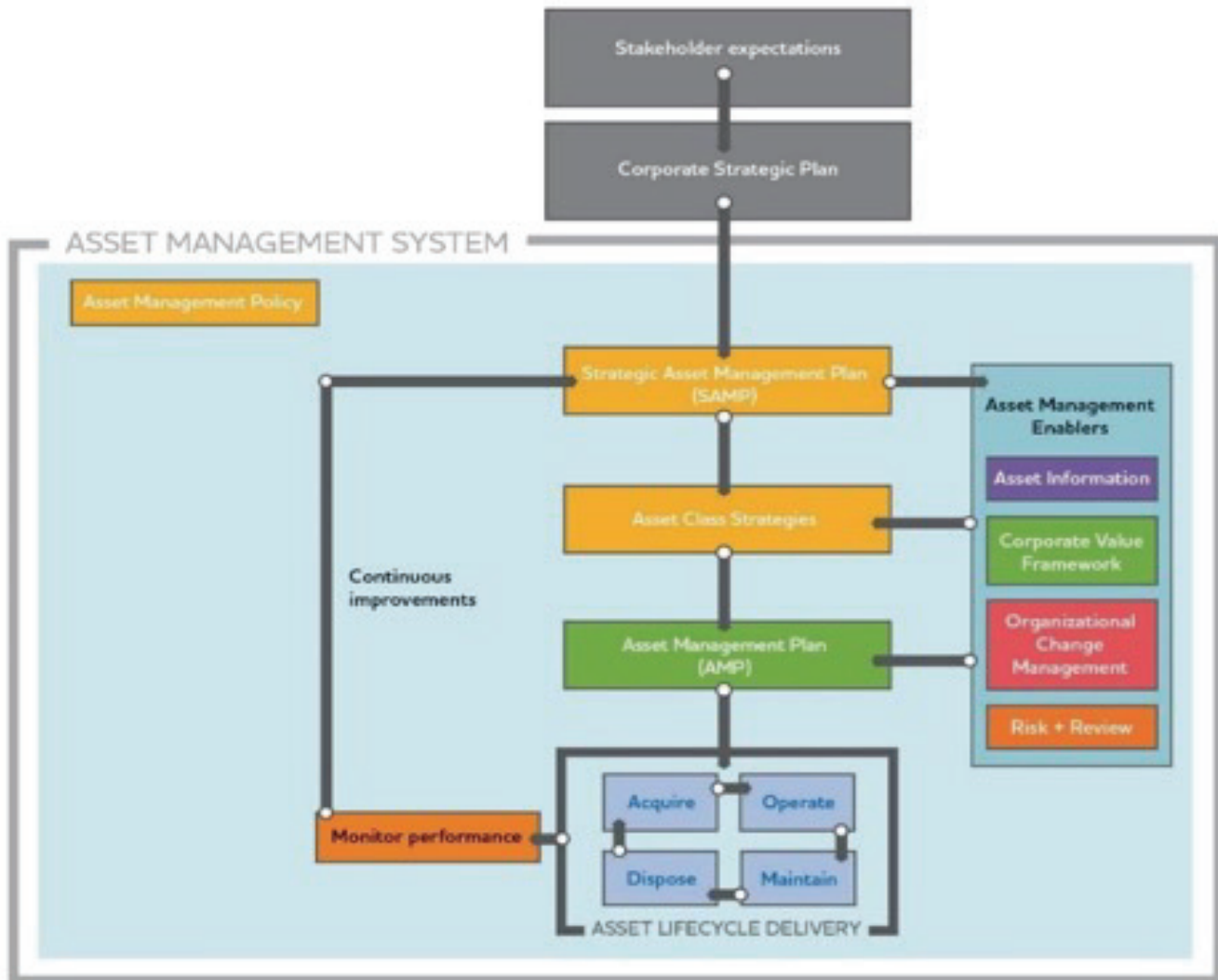
The Corporate SAMP - this document - is a City of Berkeley wide strategy driven by corporate challenges and the Corporate AM Policy.

### References

The following references were used in the development of this terminology list:

- › ISO 55000 Series, 2014
- › BSI PAS 55-1 Asset Management Part 1: Specification for the optimized management of physical infrastructure assets, 2008
- › Institute for Asset Management (IAM) Definitions <https://theiam.org/knowledge/definitions>
- › IAM Asset Management: an anatomy, version 3, December 2015
- › International Infrastructure Management Manual, 2015

# Appendix C: Typical AM System Framework



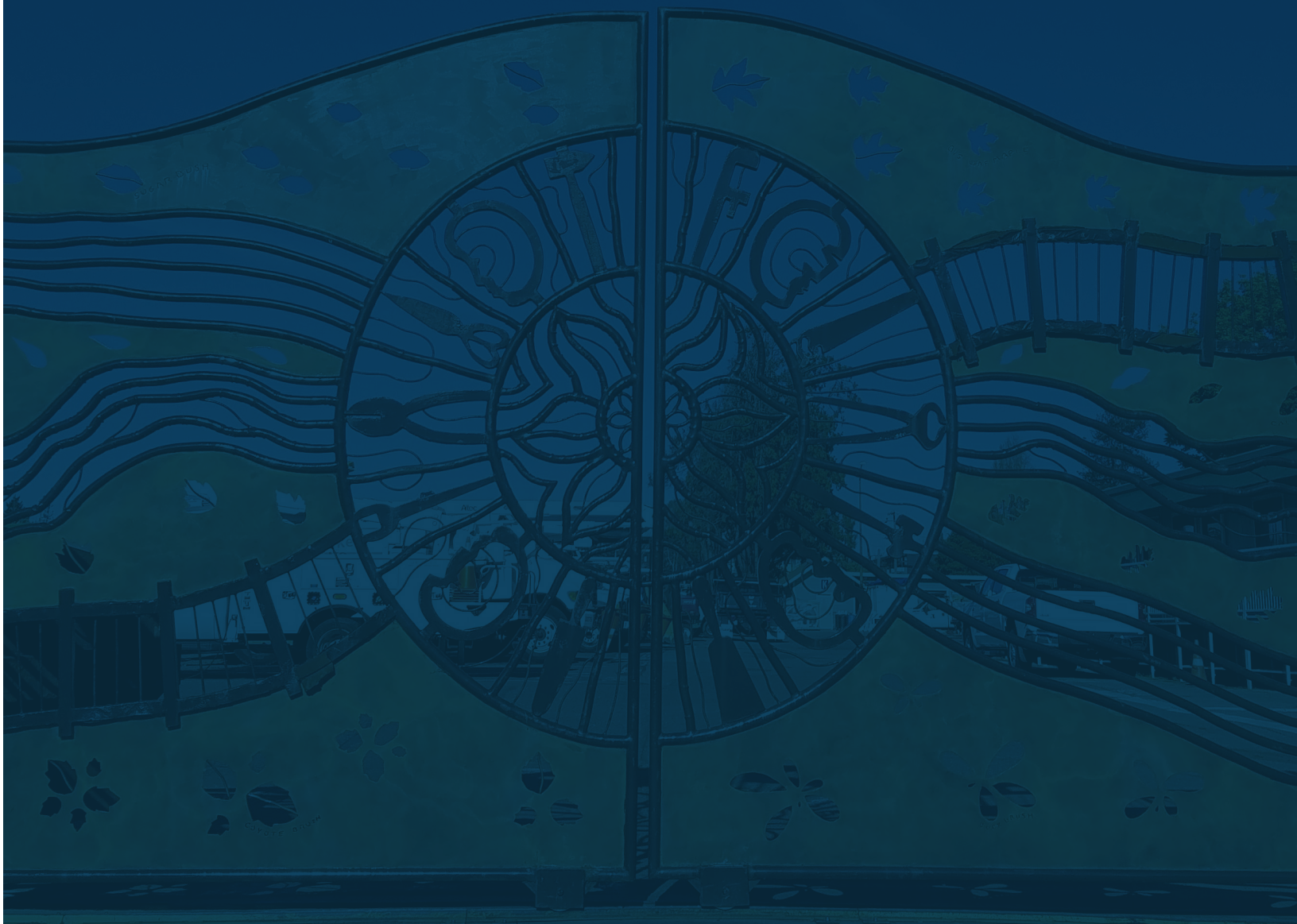


# STRATEGIC ASSET MANAGEMENT PLAN

City of Berkeley

APRIL 2022

2180 Milvia Street  
Berkeley, CA 94704  
[CityofBerkeley.info](http://CityofBerkeley.info)



May 10, 2022

## City of Berkeley Asset Management Policy

### Section 1. General Policy

The City of Berkeley is committed to implementing best asset management practices in order to provide quality services to the community. As stewards of the City's critical infrastructure, facilities and equipment, the Public Works and Parks, Recreation and Waterfront Departments must seek to employ asset management practices to ensure these various assets are maintained and replaced in an economical and sustainable manner. In partnership with the community, the Departments strive to provide outstanding, nationally-recognized leadership in developing and offering efficient, cost effective, resilient and sustainable infrastructure services.

### Section 2. Purpose

The purpose of this policy is to provide guidance and direction to the departments as it pertains to managing all physical assets managed by the Public Works and Parks, Recreation and Waterfront Departments. This policy will include general principles that are to be applied in the implementation of the Asset Management Program (AMP), ranging from initial procurement or installation, asset maintenance during useful life, to the eventual replacement or surplus of various physical assets.

### Section 3. Principles

The program principles shall include:

- Life Cycle Approach – apply a life-of-an-asset methodology for managing infrastructure assets, including planning, acquisition, operations, maintenance, renewal and surplus or disposal.
- Financial Stewardship – understand full asset values to ensure the best short-term and long-term asset decisions are being made.
- Service Level – understand the service level and use of each asset to inform the prioritization of asset maintenance or replacement as it relates to the capital improvement plan.
- Risk Mitigation – understand and mitigate risk associated with physical assets based on their condition and usability.
- Process Optimization – continuously seek opportunities and tools to improve asset management processes.
- Standard Operating Procedures (SOPs) – establish and, as processes and tools change, update SOPs to allow for consistent implementation of asset management policy principles.

### Section 4. Objectives

The program objectives shall include:

- Inventory City owned assets to ensure proper accounting of their location, status, and expected useful life.
- Routinely assess condition of significant assets.
- Continue to explore opportunities to optimize the way in which departments' track and manage physical assets through technology including, but not limited to, work order and asset management software and GIS applications.

May 10, 2022

- Develop standard operating procedures for properly documenting, maintaining and tracking assets throughout their lifecycle.
- Utilize data to report accurately and effectively on the life cycle cost of each physical asset that is tracked. This information must be available for proper planning and budget preparation as it pertains to the capital improvement program, annual capital expenditures and broader infrastructure investment considerations for the City.

### Section 5. Policy Requirements

The AMP shall be based on the following requirements.

#### A. Scope:

This policy will apply Citywide. The AMP will be led in the Public Works and the Parks, Recreation and Waterfront Departments and shall include the following assets:

##### Public Works

- Streets and roads
- Sidewalks
- Streetlights
- Transportation assets (bikeways, parking meters, traffic signals, parking garages, signage, etc.)
- Sanitary sewers
- Stormwater and green infrastructure
- Zero waste
- Fleet and vehicles
- Building facilities

##### Parks, Recreation & Waterfront

- Parks
- Camps
- Recreation facilities
- Waterfront
- Trees
- Natural environment and habitat

The departments will coordinate with the Finance Department to support the Comprehensive Annual Financial Report (CAFR) reporting. City policy (A.R 3.13) has set the capitalization threshold for reporting capital assets at the following:

Non-Infrastructure Capital Assets > \$5,000

Infrastructure Capital Assets > \$100,000

In an effort to continually improve the Department's asset management capabilities, new tools and methods must be evaluated on a consistent basis. The City of Berkeley is implementing new computerized asset management systems for the Parks, Recreation, and Waterfront and Public Works' maintenance functions, and this system is connected to the City's GIS. A new fleet asset management system is also being implemented.

#### B. Equity:

May 10, 2022

The benefits of good infrastructure shall be distributed equitably throughout the entire community regardless of the income, political influence, or demographic characteristics of the residents in each area. Equity means that disadvantaged residents with more pressing needs experience benefits sooner than others.

**C. Performance Metrics:**

The AMP shall prepare a set of performance metrics to monitor the effectiveness of the program. Consideration shall be given to the following topics:

- The percentage of assets that are inventoried.
- The percentage of significant assets that have had routine condition assessment completed on time.
- Completion of the Annual Maintenance Plan completed.
- The amount of annual maintenance funding expended.
- Customer satisfaction.

**Section 6. Funding**

The AMP shall prepare estimates of the cost to inspect, maintain, repair and replace infrastructure systems over its useful life. These costs shall be used to evaluate funding options and incorporated into annual budget requests.

**Section 7. Plan Implementation**

The AMP and policy development shall be implemented and updated as follows:

**A. Initial Implementation:**

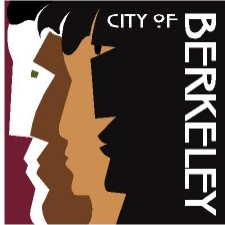
Due to the complexity of the new program, the AMP will be implemented initially in the Public Works and Parks, Recreation and Waterfront Departments. Once the program is in operation, the program will be expanded to other appropriate departments in the City.

**B. Reporting and Oversight:**

The AMP will be managed by an Asset Management Team and direction will be provided by an Asset Management Steering Committee. The Team will prepare an Annual Maintenance Plan and share this report during the budget development process. These reports will be provided to the City Council and relevant commissions and available to the public.

**C. Updates to Policy:**

This policy shall be reviewed and updated every five years.



Office of the City Manager

## REVISED AGENDA MATERIAL

**Meeting Date:** May 10, 2022

**Item Number:** 32

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

**Submitted by:** Interim Chief of Police, Jennifer Louis

The following materials replace the annual technology use reports for GPS trackers and Automated License Plate Readers. The documents originally submitted incorrectly contained some data from the prior year's technology use reports.

## Surveillance Technology Report: Global Positioning System Tracking Devices

October 1, 2020 – Sept. 30, 2021

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Description           | <p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Global Positioning System Trackers are used to track the movements of vehicles, bicycles, other items, and/or individuals.</p> <p><b>What data is captured by this technology:</b><br/>A GPS Tracker data record consists of date, time, latitude, longitude, map address, and tracker identification label. The data does not contain any images, names of subjects, vehicle information or other identifying information on individuals.</p> <p><b>How the data is stored:</b><br/>The data from the GPS tracker is encrypted by the vendor. The data is only accessible through a secure website to BPD personnel who have been granted security access.</p> <p><b>Retention period of data:</b><br/>Tracker data received from the vendor shall be kept in accordance with applicable laws, BPD policies that do not conflict with applicable law or court order, and/or as specified in a search warrant.</p> <p>For the date range of 10-01-20 through 09-30-21 the Global Positioning System (GPS) “Electronic Stake Out” (ESO) devices were not deployed. This program was suspended in mid-March 2020 due to the COVID-19 pandemic.</p> <p>GPS “Slap-N-Track” (SNT) devices were used in two separate investigations during this reporting period:</p> <ul style="list-style-type: none"> <li>(1) An investigation into two individuals and their involvement in a shooting that occurred in Berkeley. The case resulted in the arrest of both individuals and the recovery of 10 firearms, including the firearm used in the original shooting investigation.</li> <li>(2) An investigation into a problematic serial commercial burglar. He is believed to be the responsible in a series of 16 commercial burglaries. Investigation is on-going.</li> </ul> <p>Data may be shared with the District Attorney’s Office for use as evidence to aid in prosecution, in accordance with laws governing evidence; other law enforcement personnel as a part of an active criminal investigation; and other third parties, pursuant to a court order.</p> |
| Geographic Deployment | Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |



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|                       | GPS SNT devices are deployed with judicial pre-approval, based on suspect location, rather than geographical consideration.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Complaints            | <p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There were no complaints made regarding GPS Trackers.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Audits and Violations | <p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>There were no audits and no known violations relating to GPS Trackers.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Data Breaches         | <p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There were no known data breaches relating to GPS Trackers.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Effectiveness         | <p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>The GPS ESO trackers were not used during this time period. The program was suspended in mid-March 2020 due to the COVID-19 pandemic. This program will likely resume once the pre-COVID bail schedule is re-established.</p> <p>GPS SNT trackers are effective in that they provide invaluable information on suspect vehicle location during the investigation of complex cases where suspects may be moving around the Bay Area and beyond.</p> <p>GPS Trackers greatly reduce costs associated with surveillance operations. A bike may be left for days. Surveillance operations generally involve four or more officers for the entire duration of an operation. A moving surveillance is extremely resource-intensive, requiring multiple officers in multiple vehicles for extended periods of time. Using both types of GPS trackers eliminates the need for officers' immediate presence until officers are ready to apprehend the suspect(s).</p> |
| Costs                 | <p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual cost for the GPS Trackers' data service is \$1,800. Further information regarding costs is contained in Policy 1301a, the Surveillance Acquisition Report.</p> <p>There are staff time costs associated with preparing and placing SNT trackers. The investigator must prepare a search warrant and obtain a judge's approval, and a small number of officers must place the tracker on the suspect's car. The total number of hours is a fraction of the time it would take to do a full surveillance operation involving numerous officers.</p> <p>There are staff time costs associated with preparing ESO trackers and placing ESO tracker-equipped bikes for bait bike operations. These are on the order of two-four hours per operation. The total number of hours is extremely small, given the large number of operations, and resulting arrests.</p>                                                                                                                            |

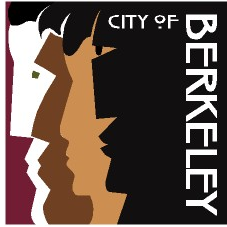
## Surveillance Technology Report: Automated License Plate Readers

October 1, 2020 – Sept. 30, 2021

|             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Description | <p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Automated License Plate Readers (ALPRs) are used by Parking Enforcement Bureau vehicles for time zone parking and scofflaw enforcement. The City's Transportation Division uses anonymized information for purposes of supporting the City's Go Berkeley parking management program. ALPR use replaced the practice of physically "chalking" tires, which is no longer allowed by the courts.</p> <p><b>What data is captured by this technology:</b><br/>ALPR technology functions by automatically capturing an image of a vehicle's license plate, transforming that image into alphanumeric characters using optical character recognition software, and storing that information, along with relevant metadata (e.g. geo-location and temporal information, as well as data about the ALPR).</p> <p><b>How the data is stored:</b><br/>The data is stored on a secure server by the vendor.</p> <p><b>Retention period of data:</b><br/>Collected images and metadata of hits are stored no more than 365 days. Metadata of reads are not stored more than 30 days.</p> <p style="text-align: center;"><b>Summary of ALPR Time Zone Enforcement Data</b></p> <p style="text-align: center;">Read Data (only retained for 30 days)<br/>There was a total of 296,744 reads<br/>There was an average of 9891 "Reads" per working day<br/>(Based on one month's data: 9/1/2021 to 9/30/2021)</p> <p style="text-align: center;">From 10/1/2020 to 9/30/2021<br/>Hit Data<br/>There were 81,892 "Hits"<br/>41,007 "Enforced Hits" resulted in citation issuance.<br/>1,928 "Not Enforced" valid, enforceable hits resulted in no citation issued,<br/>based on PEO discretion.</p> <p>38,945 Hits were not acted upon for a variety of reasons including but not limited to:</p> <ol style="list-style-type: none"> <li>1) Customer comes out to move a vehicle. PEO's are directed not to issue that citation.</li> <li>2) Officer gets to the dashboard and sees a permit not visible from a previous location.</li> </ol> |
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|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                     | <p>3) Officer does a vehicle evaluation and confirms that the vehicle moved from the hit location (e.g. across the street within GPS range).</p> <p>4) Stolen car.</p> <p>5) Similar Plates.</p> <p>6) 600-700 GIG cars- 100 revel scooters.</p> <p>7) Officers leave their LPR “on” collecting time zone enforcement data, but leave the area being enforced to drive to another location on another assignment, such as a traffic post at a collision scene. These hits are not enforced.</p> <p>Genetec is the vendor for the ALPR Time Zone enforcement system. A “read” indicates the ALPR system successfully read a license plate. The information that is generated when a plate is viewed by the ALPR camera is the license plate number, state and geographical (GPS) location it was viewed. A “hit” indicates the ALPR system detected a possible violation, which prompts the Parking Enforcement Officer to further assess the vehicle. At “hit” is when the “read” information is recognized as a license plate that matches, or does not match an entry in a list such as permit list or the stolen vehicle “hot list”. In many cases, hits are “rejected” or “not enforced”, meaning no enforcement action is taken, because the Parking Enforcement Officer determines the vehicle has an appropriate placard or permit, or there is other information or assignment which precludes citation.</p> <p style="text-align: center;"><b>Summary of ALPR Booting Scofflaw Enforcement Data</b></p> <p style="text-align: center;">0 vehicles booted from 10/1/20-9/30/21</p> <p>The Berkeley Police Department no longer maintains the ALPR Booting Scofflaw Enforcement Program. The contract to provide this service became cost prohibitive and the city opted not to renew the contract with the vendor. The city returned to having each PEO working a beat again become responsible for recognizing when a license plate has accumulated five or more unpaid parking tickets.</p> <p>All BPD ALPR data may only be shared with other law enforcement or prosecutorial agencies for official law enforcement purposes, or as otherwise permitted by law. All ALPR data is subject to the provisions of BPD Policy 415 - Immigration Law, and therefore may not be shared with federal immigration enforcement officials.</p> |
| <p><b>Geographic Deployment</b></p> | <p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>Only Parking Enforcement Vehicles are equipped with ALPRs. ALPRs are deployed based on areas where there are parking time restrictions. ALPRs are not deployed based on geographic considerations not related to parking and scofflaw enforcement.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p><b>Complaints</b></p>            | <p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There have been no complaints about to the deployment and use of Automated License Plate Readers.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

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| <p><b>Audits and Violations</b></p> | <p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>There have been no complaints of violations of the ALPR Surveillance Use Policy.</p>                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p><b>Data Breaches</b></p>         | <p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There have been no known data breaches or other unauthorized access to Automated License Plate Reader data.</p>                                                                                                                                                                                                                                                                                                                  |
| <p><b>Effectiveness</b></p>         | <p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>ALPRs have proven effective in parking enforcement for time zone enforcement; the prior utilization of manually chalking car tires for time zone enforcement has been disallowed by court decision.</p> <p>ALPRs have proven effective in supporting enforcement upon vehicles which have five or more unpaid citations. The ALPR's ability to read and check license plates while being driven greatly increases efficiency, allowing an operator to cover larger areas more quickly without having to stop except to confirm a hit.</p> |
| <p><b>Costs</b></p>                 | <p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual system maintenance cost for Genetec is \$51,720. This cost is borne by the Transportation Division, which covers warranties, support, and cellular connection costs.</p> <p>Genetec ALPR units are installed on 22 Parking Enforcement vehicles. Parking Enforcement personnel perform a variety of parking enforcement activities, and are not limited solely to time zone enforcement. Therefore, personnel costs specifically attributable to time zone enforcement are not tracked.</p>                                                                            |



Terry Taplin  
Councilmember District 2

## SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 3

**Meeting Date:** January 25, 2022

**Item Number:** 27

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

**Submitted by:** Councilmember Taplin

The District 2 office submits the following amendments to the District 4 office's supplemental for consideration:

1. Amend Section 1302.3(c)(1): replace subsection with affirmation that "existing laws prohibiting trespassing and unlawful search and seizure shall be followed."
2. Amend Section 1302.3(c)(2): append reference to existing BPD policies prohibiting harassment and intimidation, and pertinent disciplinary actions, including but not limited to General Order P-26.
3. Strike Section 1302.3(c)(6). This would prohibit the use of parking enforcement ALPR data in criminal investigations, even if parked vehicles are in a crime scene under investigation, thus endangering public safety by hindering investigatory capacity.
4. Strike Section 1302.3(c)(7). Parking Enforcement Officers (PEOs) should be able to match ALPR data to other databases where information on suspended or revoked licenses and open arrest warrants may be stored. Stolen vehicles are not the only public safety purpose in which PEOs may be of assistance.
5. Amend Section 1302.4: specify that only authorized staff may access CLETS data pursuant to the California Department of Justice's CLETS Policies, Practices, and Procedures Section 1.9.3 and Section 1.9.4.

## Surveillance Use Policy – Automatic License Plate Readers

### 1302.1 PURPOSE

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

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

### 1302.2 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 1302.3 AUTHORIZED AND PROHIBITED USES

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

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

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

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

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

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

(b) ALPR data strictly obtained from Parking Enforcement Operations retained pursuant to this use policy, including data and metadata associated with ALPR Reads and Hits,



may be used to support a specific criminal investigation only pursuant to a valid court order, subpoena, or a search warrant.

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

(1) Invasion of Privacy

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

(2) Harassment or Intimidation

It is a violation of this Policy to use the Genetec ALPR system to harass and/or intimidate any individual or group, pursuant to BPD General Order P-26.

(3) Use Based on a Protected Characteristic.

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

(4) Personal Use

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

(5) First Amendment Rights

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

~~(6) Criminal Enforcement~~

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

~~(7) Use of Hot Lists~~

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

**1302.4 DATA COLLECTION AND RETENTION**

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

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

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

(a) ALPR Read Images

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

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

(b) ALPR Reads Not Resulting in ALPR Hits

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

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

(c) ALPR Hits

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

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

(d) Unenforced ALPR Hits

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

(e) Enforced ALPR Hits

Only ALPR Read Images and Metadata associated with Enforced ALPR Hits shall be downloaded to the Passport Parking Management servers with a minimum retention period of one year ~~(Government Code § 34090.6)~~ and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal action pursuant to a valid court order, subpoena, or a search warrant or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

### 1302.5 DATA ACCESS

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

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

(c) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so pursuant to California Department of Justice's CLETS Policies, Practices, and Procedures Section 1.9.3 and Section 1.9.4

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

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

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

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

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

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

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

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

#### **1302.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:**

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

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

#### **1302.7 PUBLIC ACCESS**

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

#### **1302.8 THIRD-PARTY DATA-SHARING**

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

(b) The ALPR data may be shared only with other law enforcement or prosecutorial agencies ~~for official law enforcement purposes or~~ as permitted by this policy ~~and under~~

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~~no circumstances- ALPR data is subject to the provisions of BPD Policy 415, and hence may not~~ be shared with federal immigration enforcement officials.

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

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

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

### **1302.9 TRAINING AND ALPR ADMINISTRATOR**

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

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

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

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

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

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

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

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

### **1302.10 AUDITING AND OVERSIGHT**

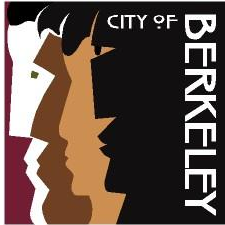
Genetec ALPR System audits will be conducted by the Professional Standards Bureau's (PSD) Audit and Inspections Sergeant pursuant to ~~Municipal Code Section~~BMC 2.99.020 4. k. on a regular basis, at least biannually.

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

(2) The audit shall be documented in the form of an internal department memorandum to the Chief of Police. The memorandum shall include any data errors found so that such errors can be corrected. After review by the Chief of Police, the memorandum and any associated documentation shall be placed into the annual report filed with the City Council pursuant to BMC Section 2.99.020 2. d., published on the City of Berkeley website in an appropriate location, and retained by PSD.

#### **1302.11 MAINTENANCE**

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



Kate Harrison  
Councilmember District 4

## REVISED AGENDA MATERIAL for Supplemental Packet 2

**Meeting Date:** November 30, 2021

**Item Number:** 27

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

**Submitted by:** Councilmember Harrison

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

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

## Surveillance Use Policy – Automatic License Plate Readers

### 1302.1 PURPOSE

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

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

- (1) match between an ALPR Read and ALPR Read Metadata stored in the Genetec ALPR System, to include the State Stolen ~~or Wanted~~ System; or
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“PocketPEO” means a mobile device providing handheld ticket issuance and ALPR data reference capabilities.

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

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

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

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

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

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

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

(1) Invasion of Privacy

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

(2) Harassment or Intimidation

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

(3) Use Based on a Protected Characteristic.

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

(4) Personal Use

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

(5) First Amendment Rights

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

(6) Criminal Enforcement

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

(7) Use of Hot Lists

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

### 1302.4 DATA COLLECTION AND RETENTION

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

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

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

(a) ALPR Read Images

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

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

(b) ALPR Reads Not Resulting in ALPR Hits

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

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

(c) ALPR Hits

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

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

(d) Unenforced ALPR Hits

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

(e) Enforced ALPR Hits

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

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

### 1302.5 DATA ACCESS

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

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

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

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

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

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

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

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

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

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

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

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

### **1302.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:**

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

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

### **1302.7 PUBLIC ACCESS**

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

### **1302.8 THIRD-PARTY DATA-SHARING**

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

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

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

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

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

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

### **1302.9 TRAINING AND ALPR ADMINISTRATOR**

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

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

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

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

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

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

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

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

### **1302.10 AUDITING AND OVERSIGHT**

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

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

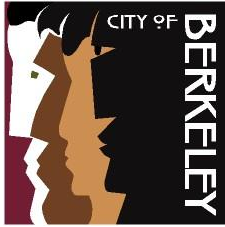
(2) The audit shall be documented in the form of an internal department memorandum to the Chief of Police. The memorandum shall include any data errors found so that such errors can be corrected. After review by the Chief of Police, the memorandum and

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

### **1302.11 MAINTENANCE**

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





Kate Harrison  
Councilmember District 4

## REVISED AGENDA MATERIAL for Supplemental Packet 1

**Meeting Date:** November 30, 2021

**Item Number:** 27

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

**Submitted by:** Councilmembers Harrison and Hahn

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

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

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

### Use Policy Overview:

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

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

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

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

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

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

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

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

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

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

Attachment

1. Surveillance Use Policy – Automatic License Plate Readers

## Surveillance Use Policy – Automatic License Plate Readers

### 1302.1 PURPOSE

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

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

### 1302.2 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **1302.3 AUTHORIZED AND PROHIBITED USES**

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

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

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

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

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

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

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

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

(1) Invasion of Privacy

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

(2) Harassment or Intimidation

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

(3) Use Based on a Protected Characteristic.

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

(4) Personal Use

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

(5) First Amendment Rights

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

(6) Criminal Enforcement

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

(7) Use of Hot Lists

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

**1302.4 DATA COLLECTION AND RETENTION**

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

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

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

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

(a) ALPR Reads

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

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

(b) ALPR Reads Not Resulting in ALPR Hits

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

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

(c) ALPR Hits

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

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

(d) Unenforced ALPR Hits

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

(e) Enforced ALPR Hits

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



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

### **1302.5 DATA ACCESS**

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

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

- (ii) Visual verification of license plate number.

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

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

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

### **1302.7 PUBLIC ACCESS**

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

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

### **1302.8 THIRD-PARTY DATA-SHARING**

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

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

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

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

### **1302.9 TRAINING AND ALPR ADMINISTRATOR**

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

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

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

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

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

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

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

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

### **1302.10 AUDITING AND OVERSIGHT**

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

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

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

### **1302.11 MAINTENANCE**

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



Office of the City Manager

ACTION CALENDAR  
May 10, 2022  
(Continued from April 26, 2022)

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

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

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

RECOMMENDATION

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

FISCAL IMPACTS OF RECOMMENDATION

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

CURRENT SITUATION AND ITS EFFECTS

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

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

One of the reporting categories of the surveillance technology use is whether complaints have been received by the community about the various technologies. To date Berkeley Police Department Internal Affairs Bureau (IAB) has not received any

external personnel complaints surrounding the use of Automatic License Plate Readers, GPS Trackers, or Body Worn Cameras. External complaints from community members can be made in writing, via email, in person or via telephone. Complaints can be received with direct communication to Internal Affairs from the complainant and/or be received by any member of the Department and then forwarded through the chain of command. If a community member initiates a complaint against a subject employee and during the investigation it is determined the subject employee violated policy regarding the misuse of technology, an additional complaint is initiated by the Chief of Police.

Community members also have the right to initiate complaints against employees of BPD by reporting directly to the Police Accountability Board (PAB). The Director of Police Accountability notifies the Chief of Police when an investigation into a complaint is initiated by the PAB, which would prompt a parallel IAB investigation.

Attached to this staff report are Surveillance Technology Reports for Automatic License Plater Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project.

#### BACKGROUND

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance. Section 2.99.070 of the Ordinance requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November.

For each of the four technologies, the Surveillance Technology Reports were prepared to satisfy the specific, section-by-section requirements of the Ordinance, and are attached to this report.

The Surveillance Technology Use Policy for ALPR technology is still outstanding due Council questions about policy language, scheduling and directed focus during COVID-19. This item will be returned to the Council agenda in early 2022.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

#### RATIONALE FOR RECOMMENDATION

City Council is being requested to adopt the attached resolution for the City to be in compliance with the Ordinance.

#### ALTERNATIVE ACTIONS CONSIDERED

City Council could decide not to adopt the resolution.

CONTACT PERSON

LaTanya Bellow, Interim Director of Information Technology (510) 981-6541

Jennifer Louis, Acting Chief of Police, (510) 981-5700

LaTanya Bellow, Interim Deputy City Manager, (510) 981-7012

ATTACHMENTS

1. Resolution
2. Body Worn Cameras
  - a) Surveillance Technology Report: Body Worn Cameras
  - b) Retention Schedule
3. Global Positioning System (GPS) Tracking Devices  
Surveillance Technology Report
4. Automated License Plate Readers  
Surveillance Technology Report: Automated License Plate Readers
5. Street Level Imagery Project  
Surveillance Technology Report: Street Level Imagery Project

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

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

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

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

WHEREAS, the Surveillance Technology Reports satisfy the requirements of the Ordinance.

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



**Surveillance Technology Report: Body Worn Cameras**

**October 1, 2020 – Sept. 30, 2021**

|                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| <p>Description</p> | <p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Body Worn Cameras are used to capture video recordings of contacts between department personnel and the public, to provide an objective record of these events. These recording are used in support of criminal prosecutions, to limit civil liability, increase transparency and enhance professionalism and accountability in the delivery of police services to the community. Body Worn Camera (BWC) files are shared with the Alameda County District Attorney’s office in support of prosecution for crime, and may be shared with other law enforcement agencies to support criminal investigations.</p> <p><b>Policy regarding activation of the Body Worn Camera BPD Policy 425.7</b></p> <p>Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.</p> <p>The BWC shall be activated in any of the following situations:</p> <ul style="list-style-type: none"> <li>(a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.</li> <li>(b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.</li> <li>(c) Self-initiated field contacts in which a member would normally notify the Communications Center.</li> <li>(d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.</li> <li>(e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.</li> <li>(f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.</li> </ul> <p><b>What data is captured by this technology:</b></p> <p>BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC</p> |
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|                                     | <p>recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited.</p> <p><b>How the data is stored:</b><br/>                 BWC videos are stored on a secure server. All BWC data will be uploaded and stored on Axon Cloud Services, Evidence.com. Axon complies with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information transferred from the European Union and Switzerland to the United States (collectively, "Privacy Shield"). Axon has certified to the U.S. Department of Commerce that it adheres to the Privacy Shield Principles.</p> <p><b>Retention period of data:</b><br/>                 See attached retention schedule.</p> <p>Summary of Body Worn Camera Videos Uploaded Oct. 1, 2020 to Sept. 30, 2021:</p> <table border="0" style="margin-left: auto; margin-right: auto;"> <tr> <td style="padding-right: 20px;">Total Number of Videos</td> <td>62,283</td> </tr> <tr> <td>Total Hours of Videos</td> <td>16,310</td> </tr> <tr> <td>Total GB of BWC Videos</td> <td>29,017</td> </tr> </table> <p>Summary of Digital Evidence Uploaded, Oct. 1, 2020 to Sept. 30, 2021:</p> <table border="0" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="padding-right: 20px;">Type</th> <th style="padding-right: 20px;">File Count</th> <th>Size (GBs)</th> </tr> </thead> <tbody> <tr> <td>Audio</td> <td style="text-align: center;">1,150</td> <td style="text-align: center;">11.72</td> </tr> <tr> <td>Document</td> <td style="text-align: center;">737</td> <td style="text-align: center;">2.38</td> </tr> <tr> <td>Image</td> <td style="text-align: center;">67,672</td> <td style="text-align: center;">331.36</td> </tr> <tr> <td>Other</td> <td style="text-align: center;">1,292</td> <td style="text-align: center;">157.71</td> </tr> <tr> <td>Video*</td> <td style="text-align: center;">67,865</td> <td style="text-align: center;">30,086.75</td> </tr> <tr> <td><b>Total</b></td> <td style="text-align: center;"><b>138,716</b></td> <td style="text-align: center;"><b>30,589.92</b></td> </tr> </tbody> </table> <p>* Includes all uploaded BWC videos and all other videos booked into the evidence management system. Other videos include iPhone videos uploaded, security camera video, copies of BWC videos (for redaction, etc.), and any other videos.</p> | Total Number of Videos | 62,283 | Total Hours of Videos | 16,310 | Total GB of BWC Videos | 29,017 | Type | File Count | Size (GBs) | Audio | 1,150 | 11.72 | Document | 737 | 2.38 | Image | 67,672 | 331.36 | Other | 1,292 | 157.71 | Video* | 67,865 | 30,086.75 | <b>Total</b> | <b>138,716</b> | <b>30,589.92</b> |
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| Total Number of Videos              | 62,283                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                        |        |                       |        |                        |        |      |            |            |       |       |       |          |     |      |       |        |        |       |       |        |        |        |           |              |                |                  |
| Total Hours of Videos               | 16,310                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                        |        |                       |        |                        |        |      |            |            |       |       |       |          |     |      |       |        |        |       |       |        |        |        |           |              |                |                  |
| Total GB of BWC Videos              | 29,017                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                        |        |                       |        |                        |        |      |            |            |       |       |       |          |     |      |       |        |        |       |       |        |        |        |           |              |                |                  |
| Type                                | File Count                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Size (GBs)             |        |                       |        |                        |        |      |            |            |       |       |       |          |     |      |       |        |        |       |       |        |        |        |           |              |                |                  |
| Audio                               | 1,150                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 11.72                  |        |                       |        |                        |        |      |            |            |       |       |       |          |     |      |       |        |        |       |       |        |        |        |           |              |                |                  |
| Document                            | 737                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 2.38                   |        |                       |        |                        |        |      |            |            |       |       |       |          |     |      |       |        |        |       |       |        |        |        |           |              |                |                  |
| Image                               | 67,672                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 331.36                 |        |                       |        |                        |        |      |            |            |       |       |       |          |     |      |       |        |        |       |       |        |        |        |           |              |                |                  |
| Other                               | 1,292                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 157.71                 |        |                       |        |                        |        |      |            |            |       |       |       |          |     |      |       |        |        |       |       |        |        |        |           |              |                |                  |
| Video*                              | 67,865                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 30,086.75              |        |                       |        |                        |        |      |            |            |       |       |       |          |     |      |       |        |        |       |       |        |        |        |           |              |                |                  |
| <b>Total</b>                        | <b>138,716</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b>30,589.92</b>       |        |                       |        |                        |        |      |            |            |       |       |       |          |     |      |       |        |        |       |       |        |        |        |           |              |                |                  |
| <p><b>Geographic Deployment</b></p> | <p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>Body Worn Cameras are worn by all BPD uniformed officers city-wide at all times; BWCs are not deployed based on geographic considerations.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                        |        |                       |        |                        |        |      |            |            |       |       |       |          |     |      |       |        |        |       |       |        |        |        |           |              |                |                  |
| <p><b>Complaints</b></p>            | <p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There have been no complaints about the deployment and use of Body Worn Cameras.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                        |        |                       |        |                        |        |      |            |            |       |       |       |          |     |      |       |        |        |       |       |        |        |        |           |              |                |                  |
| <p><b>Audits and Violations</b></p> | <p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |        |                       |        |                        |        |      |            |            |       |       |       |          |     |      |       |        |        |       |       |        |        |        |           |              |                |                  |

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|               | <p>File meta-data are routinely reviewed by our BWC manager, to ensure required metadata fields are completed. There have been no complaints with regards to violations of the Surveillance Use Policy.</p>                                                                                                                                                                                                                                                                                                                            |
| Data Breaches | <p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There have been no known data breaches or other unauthorized access to BWC data.</p>                                                                                                                                                                                       |
| Effectiveness | <p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>Body Worn Cameras have proven effective in supporting criminal prosecutions, as video footage is available for all criminal prosecutions. Body Worn Cameras have been effective for training purposes, as footage can be reviewed in incident de-briefs. Body Worn Cameras have been extremely effective in support of Internal Affairs investigations and Use of Force Review.</p> |
| Costs         | <p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual cost for the Body Worn Cameras, including cameras, replacement cameras, software, and Axon's secure digital evidence management system is approximately \$204,000 per year over a five-year, \$1,218,000 contract. There is one full-time employee assigned to the BWC program, an Applications Programmer Analyst II, at a cost of \$168,940 per year, including benefits.</p>                                  |

| NAME                        | RETENTION DURATION     |
|-----------------------------|------------------------|
| Uncategorized               | Until manually deleted |
| 187 / Felony Sex Assault    | Until manually deleted |
| Civil / City / Non-Evidence | 1 year                 |
| Collision                   | 2 years                |
| Consent / Aid               | 108 weeks              |
| Detention / Warrant Only    | 108 weeks              |
| Felony Evidence             | 5 years                |
| Litigation                  | Until manually deleted |
| Misdemeanor Evidence        | 2 years                |
| Officer Injury              | Until manually deleted |
| OIS / Critical Incident     | Until manually deleted |
| Pending Review              | Until manually deleted |
| Personnel / VSA             | 3 years                |
| Personnel Complaint         | Until manually deleted |
| Traffic Stop                | 108 weeks              |
| Training                    | 60 days                |
| Use of Force                | 108 weeks              |
| z_Saved                     | Until manually deleted |

## Surveillance Technology Report: Global Positioning System Tracking Devices

October 1, 2019 – Sept. 30, 2020

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| Description | <p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Global Positioning System Trackers are used to track the movements of vehicles, bicycles, other items, and/or individuals.</p> <p><b>What data is captured by this technology:</b><br/>A GPS Tracker data record consists of date, time, latitude, longitude, map address, and tracker identification label. The data does not contain any images, names of subjects, vehicle information or other identifying information on individuals.</p> <p><b>How the data is stored:</b><br/>The data from the GPS tracker is encrypted by the vendor. The data is only accessible through a secure website to BPD personnel who have been granted security access.</p> <p><b>Retention period of data:</b><br/>Tracker data received from the vendor shall be kept in accordance with applicable laws, BPD policies that do not conflict with applicable law or court order, and/or as specified in a search warrant.</p> <p>For the date range of 10-01-19 through 09-30-20 the Global Positioning System (GPS) “Electronic Stake Out” (ESO) devices were deployed on “bait” bicycles 52 times, resulting in 34 arrests, 4 eluded capture, 1 person was detained and not arrested, and in 13 deployments the bicycle was not stolen. This program was suspended in mid-March due to the COVID-19 pandemic.</p> <p>GPS “Slap-N-Track” (SNT) devices were used in three separate investigations during this reporting period:</p> <ol style="list-style-type: none"> <li>(1) An investigation of an individual for Sexual Exploitation, Child Pornography, and Distribution of Child Pornography. This suspect currently has a Federal warrant.</li> <li>(2) An investigation of a serial kidnap rape suspect. The suspect was arrested and charged.</li> <li>(3) An investigation into multiple suspects involved in a “Rolex” robbery series that involved the cities of Berkeley, Piedmont, and Orinda. Two devices were used on two different suspect vehicles during this investigation. Four suspects from the above cases were arrested and charged for their involvement in these robberies.</li> </ol> |
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|                       | Data may be shared with the District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence; other law enforcement personnel as a part of an active criminal investigation; and other third parties, pursuant to a court order.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Geographic Deployment | <p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>GPS ESO-equipped bikes were deployed primarily in commercial districts across the city where bikes are frequently stolen.</p> <p>GPS SNT devices are deployed with judicial pre-approval, based on suspect location, rather than geographical consideration.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Complaints            | <p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There were no complaints made regarding GPS Trackers.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Audits and Violations | <p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>There were no audits and no known violations relating to GPS Trackers.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Data Breaches         | <p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There were no known data breaches relating to GPS Trackers.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Effectiveness         | <p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>GPS Trackers continue to be very effective in apprehending bicycle thieves, many of whom are repeat offenders who've committed not only bike thefts, but other crimes as well, such as burglaries, auto burglaries, and vehicle thefts. SNT trackers are effective in that they provide invaluable information on suspect vehicle location during the investigation of complex cases where suspects may be moving around the Bay Area and beyond.</p> <p>GPS Trackers greatly reduce costs associated with surveillance operations. A bike may be left for days. Surveillance operations generally involve four or more officers for the entire duration of an operation. A moving surveillance is extremely resource-intensive, requiring multiple officers in multiple vehicles for extended periods of time. Using both types of GPS trackers eliminates the need for officers' immediate presence until officers are ready to apprehend the suspect(s).</p> <p>The program was suspended in mid-March due to the COVID-19 pandemic. This program will likely resume once the pre-COVID bail schedule is re-established.</p> |
| Costs                 | Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

The annual cost for the GPS Trackers' data service is \$1,920. Further information regarding costs is contained in Policy 1301a, the Surveillance Acquisition Report.

There are staff time costs associated with preparing and placing SNT trackers. The investigator must prepare a search warrant and obtain a judge's approval, and a small number of officers must place the tracker on the suspect's car. The total number of hours is a fraction of the time it would take to do a full surveillance operation involving numerous officers.

There are staff time costs associated with preparing ESO trackers and placing ESO tracker-equipped bikes for bait bike operations. These are on the order of two-four hours per operation. The total number of hours is extremely small, given the large number of operations, and resulting arrests.

## Surveillance Technology Report: Automated License Plate Readers

October 1, 2019 – Sept. 30, 2020

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| Description | <p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Automated License Plate Readers (ALPRs) are used by Parking Enforcement Bureau vehicles for time zone parking and scofflaw enforcement. The City's Transportation Division uses anonymized information for purposes of supporting the City's Go Berkeley parking management program. ALPR use replaced the practice of physically "chalking" tires, which is no longer allowed by the courts.</p> <p><b>What data is captured by this technology:</b><br/>ALPR technology functions by automatically capturing an image of a vehicle's license plate, transforming that image into alphanumeric characters using optical character recognition software, and storing that information, along with relevant metadata (e.g. geo-location and temporal information, as well as data about the ALPR).</p> <p><b>How the data is stored:</b><br/>The data is stored on a secure server by the vendor.</p> <p><b>Retention period of data:</b><br/>Collected images and metadata of hits are stored no more than 365 days. Metadata of reads are not stored more than 30 days.</p> <p style="text-align: center;"><b>Summary of ALPR Time Zone Enforcement Data</b></p> <p style="text-align: center;">Read Data<br/>There was an average of 12,059 "Reads" per working day<br/>(Based on one month's data: 9/1/20/-9/30/20)</p> <p style="text-align: center;">Hit Data<br/>There were 44,068 "Hits"<br/>14,945 "Enforced Hits" resulted in citation issuance.<br/>2,569 "Not Enforced" valid, enforceable hits resulted in no citation issued,<br/>based on PEO discretion.</p> <p>26,554 Hits were not acted upon for a variety of reasons including but not limited to:</p> <ol style="list-style-type: none"> <li>1) Customer comes out to move a vehicle. PEO's are directed not to issue that citation.</li> <li>2) Officer gets to the dashboard and sees a permit not visible from a previous location.</li> <li>3) Officer does a vehicle evaluation and confirms that the vehicle moved from the hit location (e.g. across the street within GPS range).</li> <li>4) Stolen car.</li> <li>5) Similar Plates.</li> <li>6) 600-700 GIG cars- 100 revel scooters.</li> </ol> |
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|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                     | <p>7) Officers leave their LPR “on” collecting time zone enforcement data, but leave the area being enforced to drive to another location on another assignment, such as a traffic post at a collision scene. These hits are not enforced.</p> <p>Genetec is the vendor for the ALPR Time Zone enforcement system. A “read” indicates the ALPR system successfully read a license plate. The information that is generated when a plate is viewed by the ALPR camera is the license plate number, state and geographical (GPS) location it was viewed. A “hit” indicates the ALPR system detected a possible violation, which prompts the Parking Enforcement Officer to further assess the vehicle. At “hit” is when the “read” information is recognized as a license plate that matches, or does not match an entry in a list such as permit list or the stolen vehicle “hot list”. In many cases, hits are “rejected” or “not enforced”, meaning no enforcement action is taken, because the Parking Enforcement Officer determines the vehicle has an appropriate placard or permit, or there is other information or assignment which precludes citation.</p> <p style="text-align: center;"><b>Summary of ALPR Booting Scofflaw Enforcement Data</b></p> <p style="text-align: center;">0 vehicles booted from 10/1/19-9/23/20.</p> <p>The Berkeley Police Department no longer maintains the ALPR Booting Scofflaw Enforcement Program. The contract to provide this service became cost prohibitive and the city opted not to renew the contract with the vendor. The city returned to having each PEO working a beat again become responsible for recognizing when a license plate has accumulated five or more unpaid parking tickets.</p> <p>All BPD ALPR data may only be shared with other law enforcement or prosecutorial agencies for official law enforcement purposes, or as otherwise permitted by law. All ALPR data is subject to the provisions of BPD Policy 415 - Immigration Law, and therefore may not be shared with federal immigration enforcement officials.</p> |
| <p><b>Geographic Deployment</b></p> | <p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>Only Parking Enforcement Vehicles are equipped with ALPRs. ALPRs are deployed based on areas where there are parking time restrictions. ALPRs are not deployed based on geographic considerations not related to parking and scofflaw enforcement.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p><b>Complaints</b></p>            | <p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There have been no complaints about to the deployment and use of Automated License Plate Readers.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p><b>Audits and Violations</b></p> | <p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>There have been no complaints of violations of the ALPR Surveillance Use Policy.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

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| <p>Data Breaches</p> | <p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There have been no known data breaches or other unauthorized access to Automated License Plate Reader data.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <p>Effectiveness</p> | <p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>ALPRs have proven effective in parking enforcement for time zone enforcement; the prior utilization of manually chalking car tires for time zone enforcement has been disallowed by court decision.</p> <p>ALPRs have proven effective in supporting enforcement upon vehicles which have five or more unpaid citations. The ALPR's ability to read and check license plates while being driven greatly increases efficiency, allowing an operator to cover larger areas more quickly without having to stop except to confirm a hit.</p>                                                                                                                                                    |
| <p>Costs</p>         | <p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual system maintenance cost for Genetec is \$47,000. This cost is borne by the Transportation Division, which also purchased the ALPR units used in Time Zone Enforcement.</p> <p>Two new Genetec ALPR units were purchased during the period covered by this report. The two new units were purchased in order to equip the final two parking vehicles that did not have ALPR units attached to them.</p> <p>Genetec ALPR units are installed on 23 Parking Enforcement vehicles. Parking Enforcement personnel perform a variety of parking enforcement activities, and are not limited solely to time zone enforcement. Therefore, personnel costs specifically attributable to time zone enforcement are not tracked.</p> |

## Surveillance Technology Report: Street Level Imagery Project

|                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| <p><b>Description</b></p>           | <p><b>A description of all non-privileged and non-confidential information about the use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report will include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</b></p> <p>Street level imagery will be utilized exclusively by authorized City staff for infrastructure asset management and planning activities. The street level imagery of City infrastructure assets in the Public Right of Way that is provided to the City will not consist of information that is capable of being associated with any individual or group.</p> |
| <p><b>Geographic Deployment</b></p> | <p><b>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</b></p> <p>Street level imagery was collected by driving through the entire community over a three week period. It is accessible to the City through a proprietary third-party application, Street SmartTM.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p><b>Complaints</b></p>            | <p><b>A summary of each complaint, if any, received by the City about the Surveillance Technology.</b></p> <p>There have been no complaints about the deployment and use of Street SmartTM.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p><b>Audits and Violations</b></p> | <p><b>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</b></p> <p>There have been no complaints with regards to violations of the Surveillance Use Policy.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p><b>Data Breaches</b></p>         | <p><b>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</b></p> <p>There have been no known data breaches or other unauthorized access to Cyclomedia Street Level Imagery data.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                    |



|                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| <p><b>Effectiveness</b></p> | <p><b>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</b></p> <p>Staff considered hiring contractors to use GPS in the field to create and update the infrastructure asset GIS data. This method is costly and time consuming. Cyclomedia’s unique and patented processing techniques allow positionally-accurate GIS data to be collected in a cost-effective way and over a shorter period of time than a “boots on the ground” GPS field survey.</p> <p>The Imagery is being used to extract the following Citywide Infrastructure assets to create accurate and current Geographic Information Systems (GIS) data inventories:</p> <ul style="list-style-type: none"> <li>• Bus pads / stops</li> <li>• Maintenance Access Holes</li> <li>• Pavement Striping</li> <li>• Curb paint color</li> <li>• Parking meters</li> <li>• Pedestrian Signal</li> <li>• Pavement marking</li> <li>• Storm drains</li> <li>• Signs</li> <li>• Street trees</li> <li>• Traffic lights</li> </ul> <p>The street level imagery captured is also being used to:</p> <p>Create a street sign GIS layer with condition assessment to support compliance with the Manual on Uniform Traffic Control Devices Code and provide an accurate inventory of City signs. The existing sign inventory is contained in a spreadsheet that does not have accurate location data.</p> <p>Create a curb color layer with condition assessment to indicate where there are red, yellow, blue, white and green colors. This is critical to support Public Safety.</p> <p>Create pavement striping and paint symbol layers to support Transportation Planning and Vision Zero.</p> <p><b><u>Benefits Projected:</u></b></p> <p>The data from the street level imagery is being integrated into the City’s work order and asset management system for planning activities and to document repair and maintenance.</p> <p>Planners can use the street level imagery provided to the City to take measurements remotely, such as sidewalk width and public right of way impacts at proposed development locations.</p> <p>City staff can use the street level imagery to plan the location of road markings for pedestrian crossings, bike lanes or other striping.</p> |
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|                       | <p>City staff can remotely take accurate measurements of infrastructure assets to adequately plan for repair and replacement.</p> <p>City staff can use the street level imagery to enhance community engagement. The street level imagery can be used to identify and depict the impact of development such as an intersection restriping plan in order to article before and after conditions.</p> |                                            |                                                                                                                                |                                                                                                                                |
| <b>Costs</b>          | <p><b>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</b></p>                                                                                                                                                                                                                                                                                       |                                            |                                                                                                                                |                                                                                                                                |
|                       | <p>The total cost of the system is \$232,401 and is itemized below.</p>                                                                                                                                                                                                                                                                                                                              |                                            |                                                                                                                                |                                                                                                                                |
|                       | <b>Year No.</b>                                                                                                                                                                                                                                                                                                                                                                                      | <b>Description</b>                         | <b>Cost</b>                                                                                                                    | <b>Notes</b>                                                                                                                   |
|                       | 1                                                                                                                                                                                                                                                                                                                                                                                                    | Licenses                                   | \$48,000                                                                                                                       | Resolution No: 69,482-N.S. 30JUN20                                                                                             |
|                       | 1                                                                                                                                                                                                                                                                                                                                                                                                    | Professional Services for asset extraction | \$139,401                                                                                                                      | Resolution No: 69,482-N.S. 30JUN20                                                                                             |
|                       | 2                                                                                                                                                                                                                                                                                                                                                                                                    | Licenses and Support – One-Time            | \$45,000                                                                                                                       | Pending Council approval after imagery and data extraction work is completed<br>Licensing Costs included in IT Cost allocation |
| 3                     | License and Support – Ongoing Annual Costs                                                                                                                                                                                                                                                                                                                                                           | \$3,000                                    | Pending Council approval after imagery and data extraction work is completed<br>Licensing Costs included in IT Cost allocation |                                                                                                                                |
| <b>Total Year 1-3</b> |                                                                                                                                                                                                                                                                                                                                                                                                      | <b>\$235,401</b>                           |                                                                                                                                |                                                                                                                                |



Office of the City Manager

## ACTION CALENDAR

May 10, 2022

*(Continued from April 26, 2022)*

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Liam Garland, Director, Department of Public Works  
 Subject: Hopkins Corridor Project Conceptual Design

### RECOMMENDATION

Adopt a Resolution approving the conceptual design for the Hopkins Corridor Project on Hopkins Street between Sutter Street and Gilman Street, and directing the City Manager to proceed with the detailed engineering design of the project.

### SUMMARY

The Hopkins Corridor design concept addresses pedestrian and bicyclist safety on Hopkins Street between Sutter and Gilman Streets. Features include a physically protected bikeway, a segment of Class II bicycle lane, bus boarding islands, and intersection safety treatments such as corner sidewalk extensions, a raised crosswalk, and high-visibility pavement markings. Another key design feature is increased public space through the provision of sidewalk bulbouts at the Hopkins/ California Street/ Monterey Avenue intersection. The proposed design concept was developed through a robust public and stakeholder engagement process that included four rounds of public meetings over a period of one and a half years.

### FISCAL IMPACTS OF RECOMMENDATION

The recommendation has no fiscal impacts.

### CURRENT SITUATION AND ITS EFFECTS

The proposed design concept was developed through the Hopkins Corridor Traffic and Placemaking Study which was initiated as the result of a budget referral by Councilmember Sophie Hahn, dated January 23, 2018. The budget referral allocated funding for a traffic and placemaking study including Hopkins Street from Sutter Street to Gilman Street. It called for the study to use “a ‘complete streets’ approach to identify improvements to be integrated into the paving and bicycle infrastructure work already scheduled for this area...with an emphasis on pedestrian safety, bike and vehicle safety and flow.” Complete Streets are streets that are designed and operated to accommodate the needs of all road users. Preceding this referral, the Berkeley Bicycle Plan, adopted by City Council in 2017, calls for evaluation of two-way cycle tracks (protected bike lanes) on Hopkins Street as low-stress biking facilities. More recently,

Hopkins Street was identified as a high-injury street for severe and fatal traffic crashes in the Berkeley Vision Zero Action Plan adopted by City Council in 2020.

### Project Goals

The goals developed through and for the Hopkins Corridor Traffic and Placemaking Study are as follows:

- Improving the safety of walking along and crossing Hopkins Street,
- Improving bicycle and vehicular transportation safety and flow along and crossing Hopkins Street,
- Transforming Hopkins Street between Sacramento Street and McGee Avenue into a community gathering place,
- Managing parking to meet the needs of residents and local businesses,
- Supporting local businesses by creating a streetscape that attracts customers,
- Installing green infrastructure to protect the Bay while also providing visual enjoyment, and
- Improving aesthetics all along Hopkins Street, employing a design palette consistent with its historic character.

### Recommended Design Concept

An iterative design process was implemented due to extensive input from community members and institutions along the corridor. The resulting near-term design recommendations are compromises intended to meet the project's goals while also minimizing trade-offs and accommodating needs such as on-street parking, curbside access, and bicycle and pedestrian safety.

Broadly, the project would allow for the implementation of the following features.

- Dedicated bicycle facilities along the corridor, ranging from a two-way protected bikeway to Class II bicycle lanes
- Bus boarding islands to facilitate public transportation along the corridor
- Intersection treatments to improve pedestrian safety and comfort, such as sidewalk extensions (bulbouts), center median islands, pavement markings, and a raised crosswalk. Sidewalk extensions provide additional public space and opportunities for landscaping.



### *Sutter Street to The Alameda*

The south side of the street would feature a parking-protected bicycle lane with a striped buffer zone between the bicycle lane and parked vehicles. On the north side, a Class II bicycle lane (between on-street parking and the traffic lane) would be installed with a striped buffer on each side – one next to parked vehicles and the other separating cyclists from moving vehicles. On-street parking would be retained on both sides of the street.

Modifications at the intersection with The Alameda would be made to address community input, including adjustments to north- and southbound vehicle alignment and the provision of more clearly defined aprons around the existing raised islands in the intersection, which would have beveled curbs in order to be more forgiving of driver error. Proposed modifications would be designed to aesthetically complement the surrounding area. The intersection islands would have rose coloring and landscaping that harmonize with the existing rose colored sidewalk and vegetation in front of the North Branch Library.

### *The Alameda to McGee Avenue*

A two-way protected bikeway would be constructed on the south side of the street. A buffer zone would provide separation from parked vehicles as well as loading space. Most on-street parking would be retained on both sides of the street.

At the Hopkins Street intersection with Josephine Street, two sidewalk corner bulbouts are proposed for the southern leg of the intersection to shorten the crossing distance for pedestrians. The bulbouts would realign Josephine to intersect with Hopkins at an angle closer to 90 degrees, reducing vehicle turning speeds. A new raised crosswalk would be placed across Hopkins Street, perpendicular to the roadway, to meet the new bulbout on the southwest corner of the intersection, increasing the visibility of pedestrians while shortening the crossing distance and reducing vehicular speeds.

### *McGee Avenue to Gilman Street*

The bi-directional protected bikeway would continue from McGee Avenue to Gilman Street. From McGee to Monterey Avenue, the bikeway would be protected by parked vehicles separating it from the vehicle travel lanes. All on-street parking with the exception of one stall would be retained along the south side of the street in this commercial block. Between Monterey Avenue and Gilman Street, the bi-directional bikeway along the south side of the street would be protected from the travel lanes with a raised concrete median. All parking would be removed on both sides of the street on these blocks in order to provide enough space for the protected bike lanes.

The project would result in safety improvements at the Hopkins Street / Monterey Avenue / California Street Intersection. A bulbout into California Street on the southwest corner would shorten the pedestrian crossing distance while expanding the sidewalk space at this currently very constrained corner. The crosswalk on the north side of the intersection across Monterey Avenue, which was the location of a pedestrian fatality, will be raised to slow vehicle speeds to and from this street onto Hopkins. Further, a

raised median would be constructed on the northeast corner to narrow this wide crossing and reduce pedestrian exposure to traffic.

The proposed modifications to the roadway would necessitate changes to the Hopkins Street / Sacramento Street intersection. Specifically, the space for the protected bike lanes would be provided by converting the existing westbound informal left turn / through lane configuration into a single lane that accommodates both through-movements and left turns. These movements would be made more efficient than existing conditions by having a dedicated signal phase for both movements, freeing up time in the signal cycle for a dedicated pedestrian and bicyclist crossing phase on the south side of the intersection.

## BACKGROUND

### *Public Engagement*

A total of four sets of virtual workshops were held to get public feedback throughout the project. Each of the four workshops included over 100 attendees. The first workshop was held on October 22, 2020. The purpose of this workshop was to introduce the project as well as the concept of “complete streets” and to present an overview of existing conditions along the corridor. The workshop also included small group discussions where participants provided feedback on the draft project goals and completed a prioritization exercise for improvements that may be considered along the corridor.

Workshop #2, held on March 20, 2021, shared initial proposed corridor-wide design improvements; reviewed options for placemaking opportunities; and solicited feedback from the public on proposed measures through facilitated break-out room exercises. About 800 comments were received during the public comment period following this meeting.

Workshop #3 was held on October 28, 2021. During this workshop, options for placemaking were reviewed and specific near- and long-term complete street corridor design options were presented. This workshop included a facilitated discussion in virtual break-out rooms where participants could provide their feedback on both the placemaking and complete streets options. A virtual crowd-sourcing platform, called Social Pinpoint, was used to solicit specific public comment on the proposed near- and long-term design options and placemaking opportunities. The public was invited to participate in the Social Pinpoint exercise for approximately five weeks after the workshop. Over 700 individual comments were recorded from the Social Pinpoint exercise over the 5-week period.

Finally, a series of three webinars was held on March 1, 7, and 14, 2022. Each of the webinars included a presentation of the City’s recommended short-term design concepts that would be implemented as part of the 2023 paving project for each of the three segments of the corridor. Participants had the opportunity to ask questions about these designs during the webinar that were addressed by staff after the presentation.

This public engagement was supplemented by direct conversations held between staff and key stakeholders in the community, including business-owners, residents, and representatives of the numerous institutions along the corridor, such as the schools, pre-schools, churches and the library, among others. This engagement resulted in a greater understanding of the needs of these stakeholders and resulted in adjustments to the design plans to accommodate these needs.

### Options Previously Considered

During the course of the study, a range of options were considered, including the following.

- Retain existing on-street parking along both sides of Hopkins Street for the entire length from Sutter to Gilman. This option required that bicyclists ride in the general purpose vehicular traffic lanes between McGee and Gilman, not meeting the project goal of improving bicycle transportation safety and flow.
- Retain existing on-street parking along both sides of Hopkins Street from Sutter to Josephine, and on the south side of Hopkins between Josephine and McGee, but eliminate all on-street parking along both sides of Hopkins from Josephine to Gilman. This option provided space for either a protected bicycle lane or Class II bicycle lane on each side of Hopkins Street for the entire length, but impacted public access to the recreational facilities between Josephine and McGee and to the shops between McGee and California Street.

After much public engagement and analysis, a hybrid design was developed that retained nearly all of the on-street parking as far west as the California/Monterey intersection. This was accomplished by providing a two-way cycle track on one side of Hopkins Street (the south side), requiring space for only one buffer or median between the bikeway and parking lane or vehicular traffic lane.

### Project Timeline

- Conceptual Design, Preliminary Engineering, Public Outreach, and Environmental Review August 2020 to April 2022
- Detailed Engineering Design April-December 2022
- Advertise project & award construction contract December 2022
- Construction Summer-Fall 2023

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Installation of protected bikeways and improved pedestrian crossings is anticipated to increase walking and biking, which is consistent with the 2009 Berkeley Climate Action Plan Policy that calls for expanding and improving Berkeley's bicycle and pedestrian infrastructure. The 2009 Berkeley Climate Action Plan sets targets of reducing

transportation emissions 33% below year 2000 levels by 2020, and 80% below year 2000 levels by 2050. The Plan further states that transportation modes such as public transit, walking, and bicycling must become the primary means of fulfilling the City's mobility needs in order to meet these targets.

RATIONALE FOR RECOMMENDATION

Approval of the conceptual designs will keep the project on schedule for detailed engineering design in 2022, allowing the City to award the construction contract in time to receive responsive bids and start construction in 2023.

ALTERNATIVE ACTIONS CONSIDERED

Council could opt not to approve the conceptual designs for the project or could opt to approve the proposed design concept for only a subset of project segments.

CONTACT PERSON

Farid Javandel, Deputy Director of Public Works for Transportation (510) 981-7061  
Beth Thomas, Principal Planner, Public Works (510) 981-7068  
Ryan P. Murray, Associate Planner, Public Works (510) 981-7056

Attachments:

- 1: Resolution
  - Exhibit A: Hopkins Corridor Design Concept

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

HOPKINS CORRIDOR PROJECT CONCEPTUAL DESIGN

WHEREAS, the project corridor includes Hopkins Street from Sutter Street to Gilman Street; and

WHEREAS, the Berkeley Vision Zero Action Plan has documented severe and fatal crashes on Hopkins Street; gaps in the low-stress protected bikeway network on Hopkins Street result in connectivity problems that discourage bicycling for transportation; and the Berkeley Bicycle Plan has recommended evaluating cycle tracks for providing a low-stress bikeway on Hopkins Street; and

WHEREAS, to address these needs, the project delivers on the City's Vision Zero, Complete Streets, and Climate Action Plan policies; and

WHEREAS, with the support of an engineering and design consultant team, City staff have identified conceptual design options for the Project corridor; sought public input on and analyzed those conceptual design options; and have selected a recommended conceptual design for consideration by the Berkeley City Council; and

WHEREAS, the recommended design includes physically protected bicycle lanes on the south side of Hopkins Street between Sutter and Gilman and a Class II bicycle lane on the north side of Hopkins Street between Sutter and The Alameda, in addition to pedestrian safety features, as shown in Exhibit A to this Resolution; and

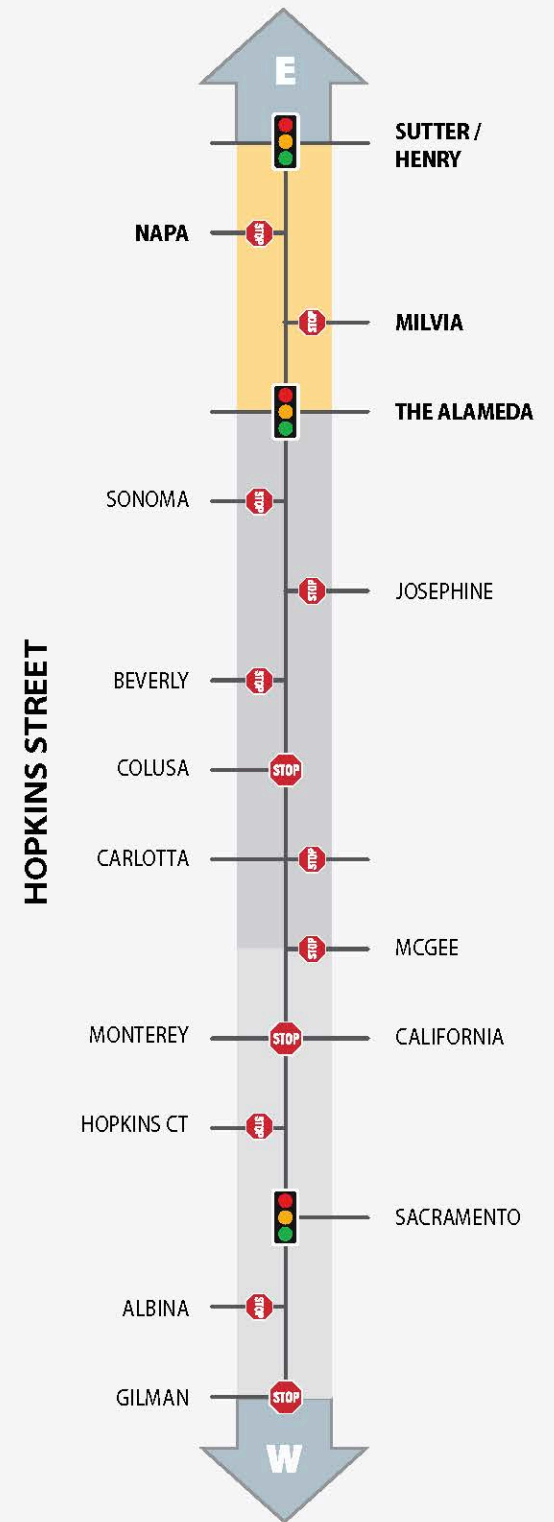
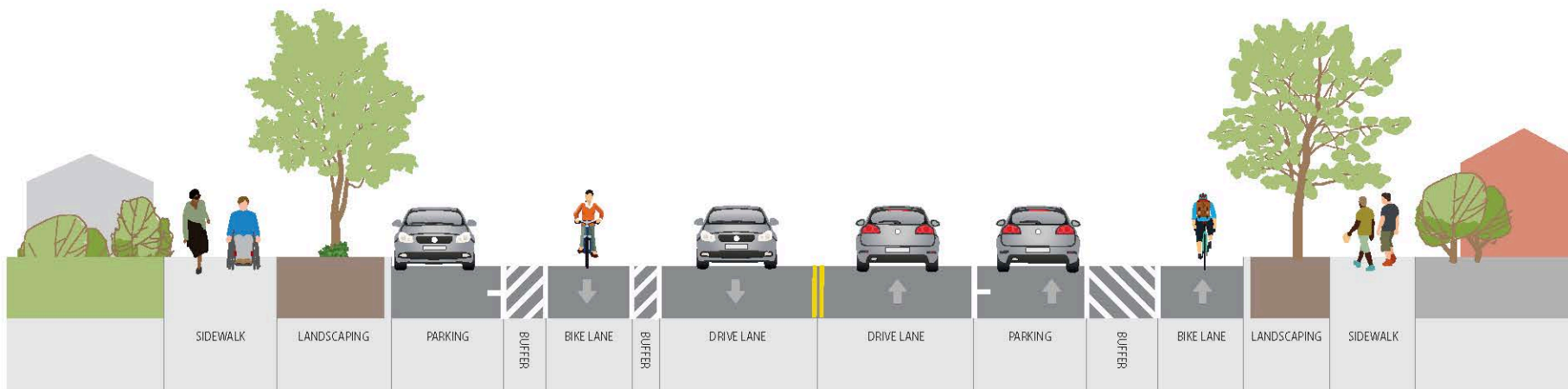
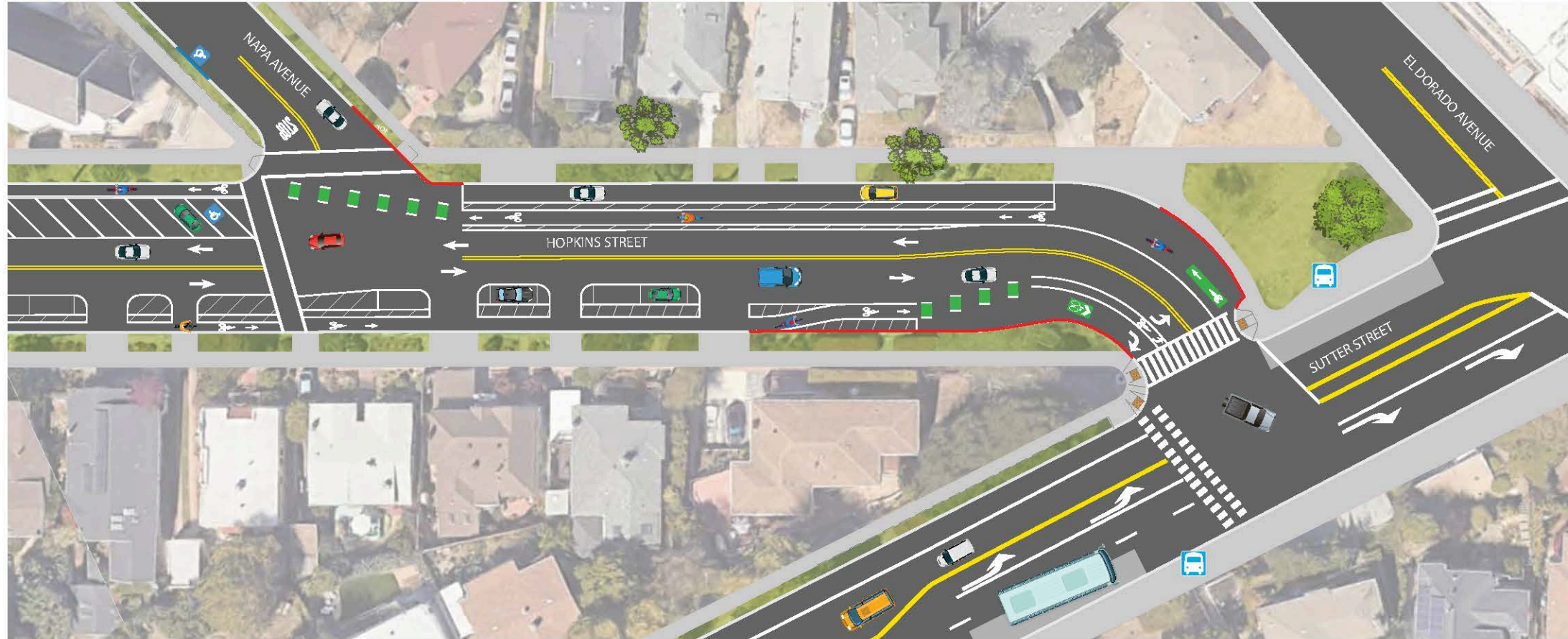
WHEREAS, approval of the Hopkins Corridor Project recommended conceptual design will keep the project on schedule for detailed engineering design in 2022.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to proceed with the detailed engineering design of the Hopkins Corridor Project, based on the preliminary engineering of the recommended conceptual design.

# EXHIBIT 1

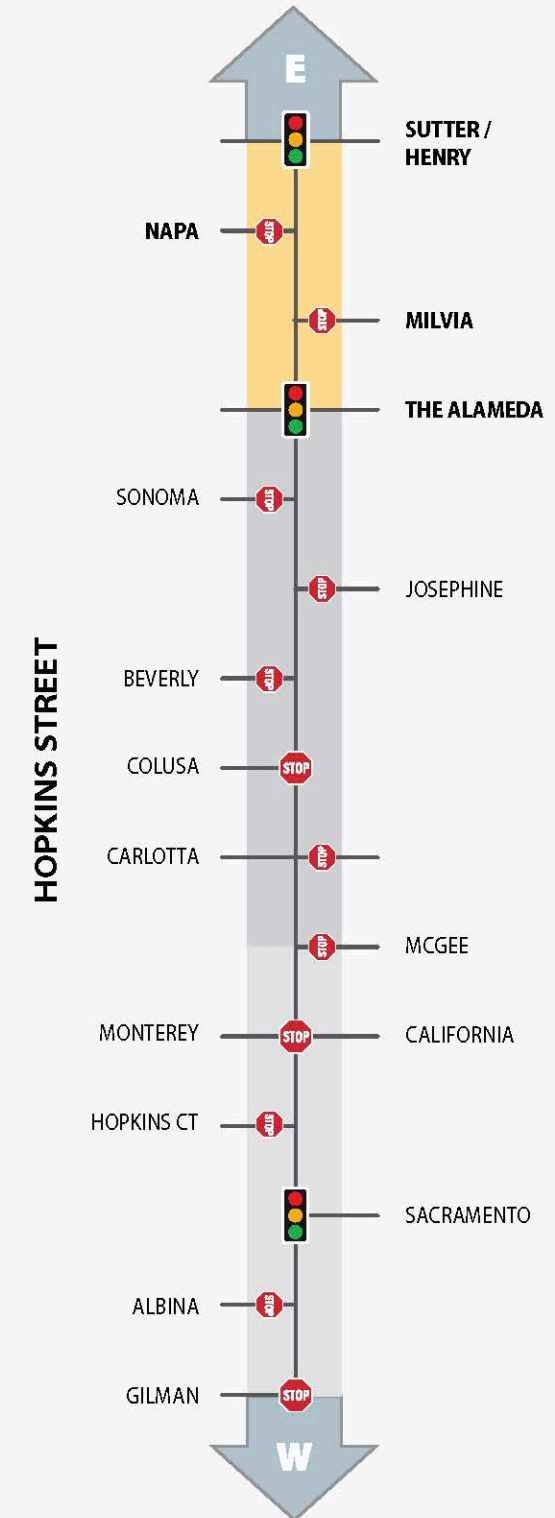
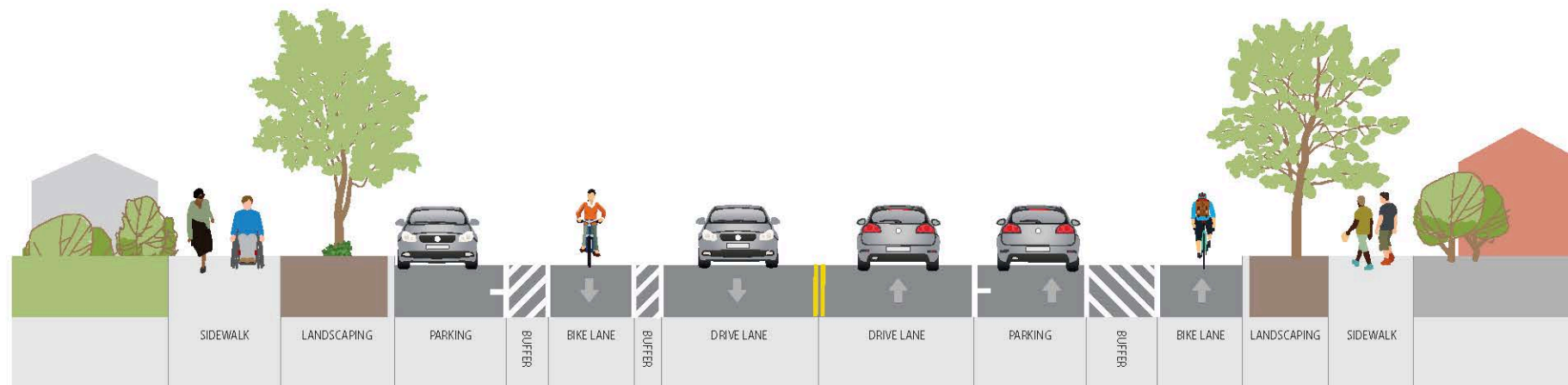
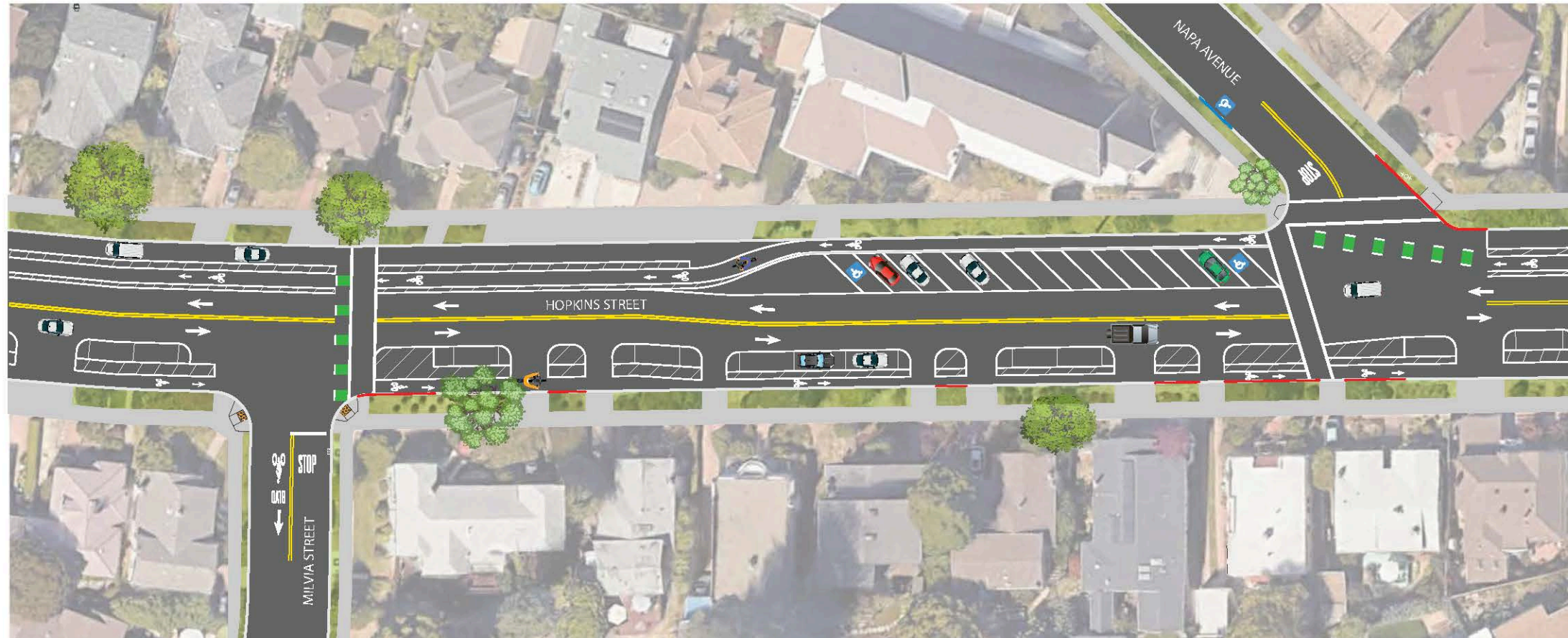
## Hopkins Corridor Traffic and Placemaking Study Near-Term Design Alternative

### Segment 1: Sutter Street to The Alameda



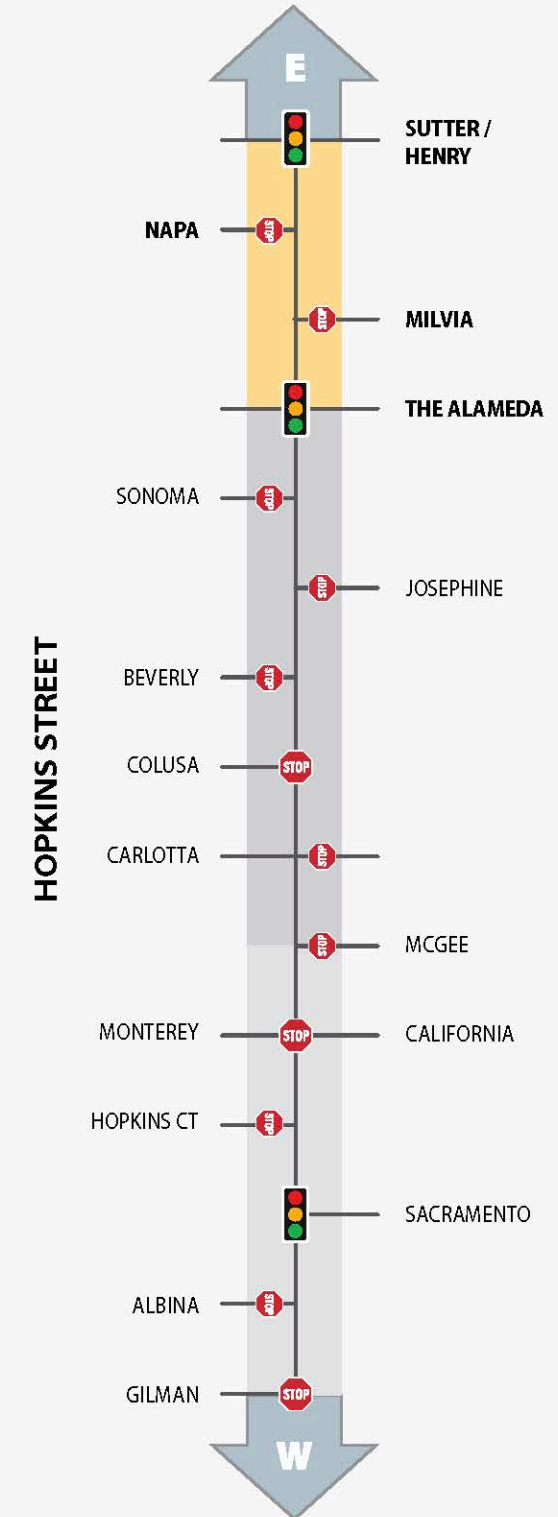
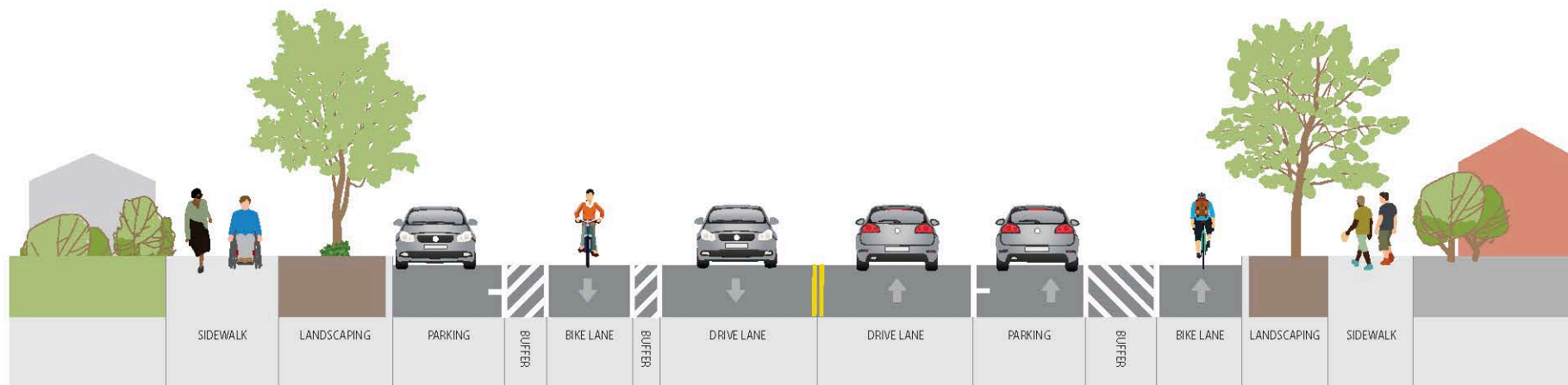
# Hopkins Corridor Traffic and Placemaking Study Near-Term Design Alternative

## Segment 1: Sutter Street to The Alameda



# Hopkins Corridor Traffic and Placemaking Study Near-Term Design Alternative

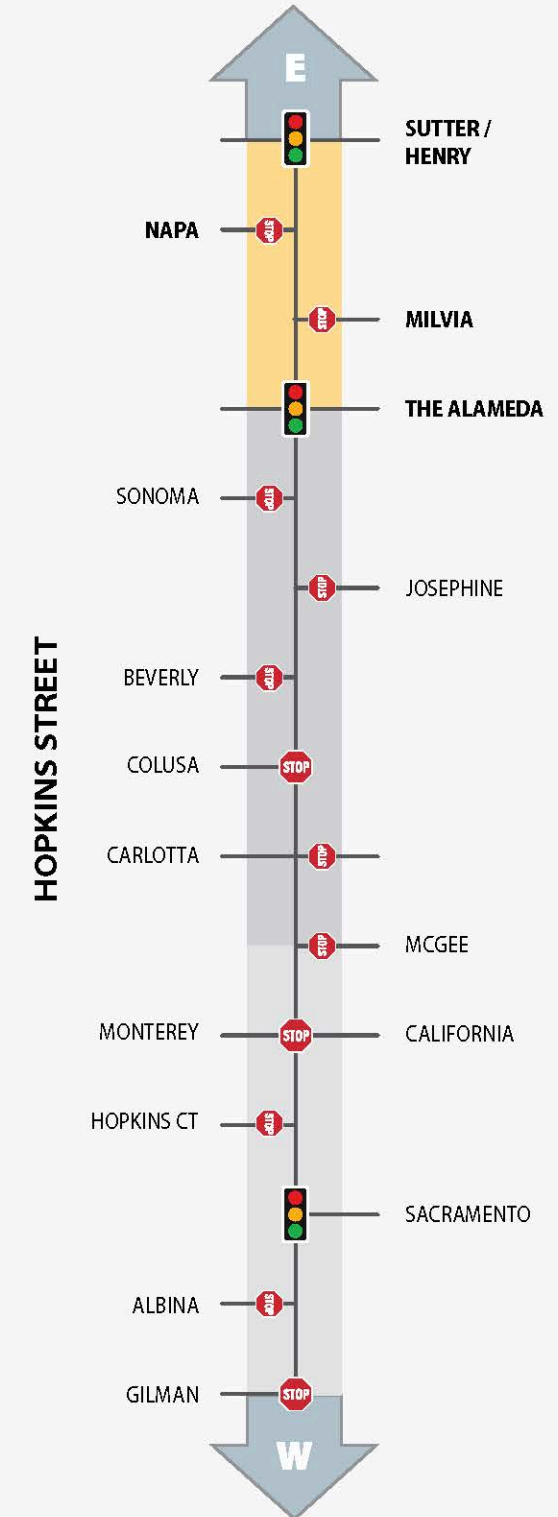
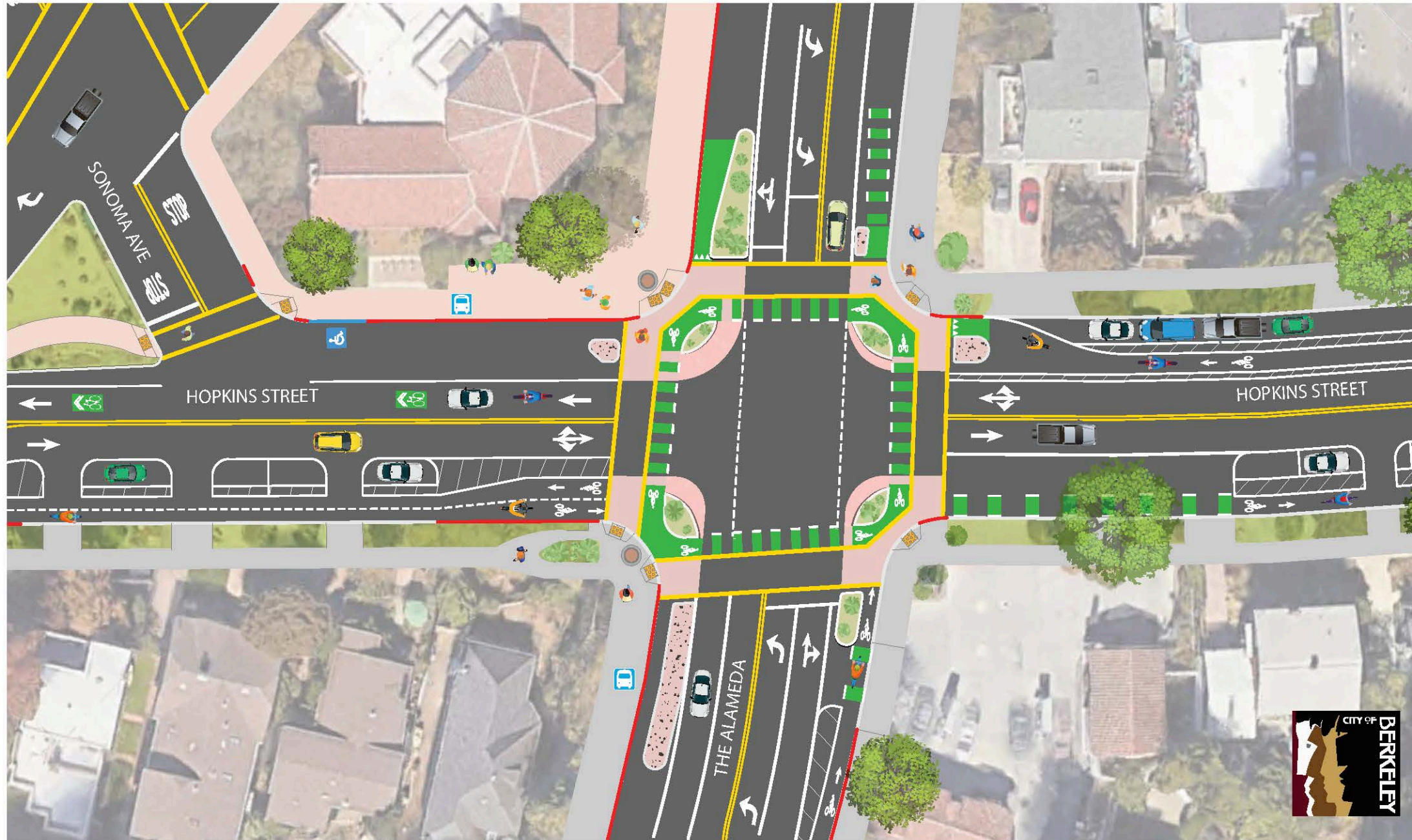
## Segment 1: Sutter Street to The Alameda





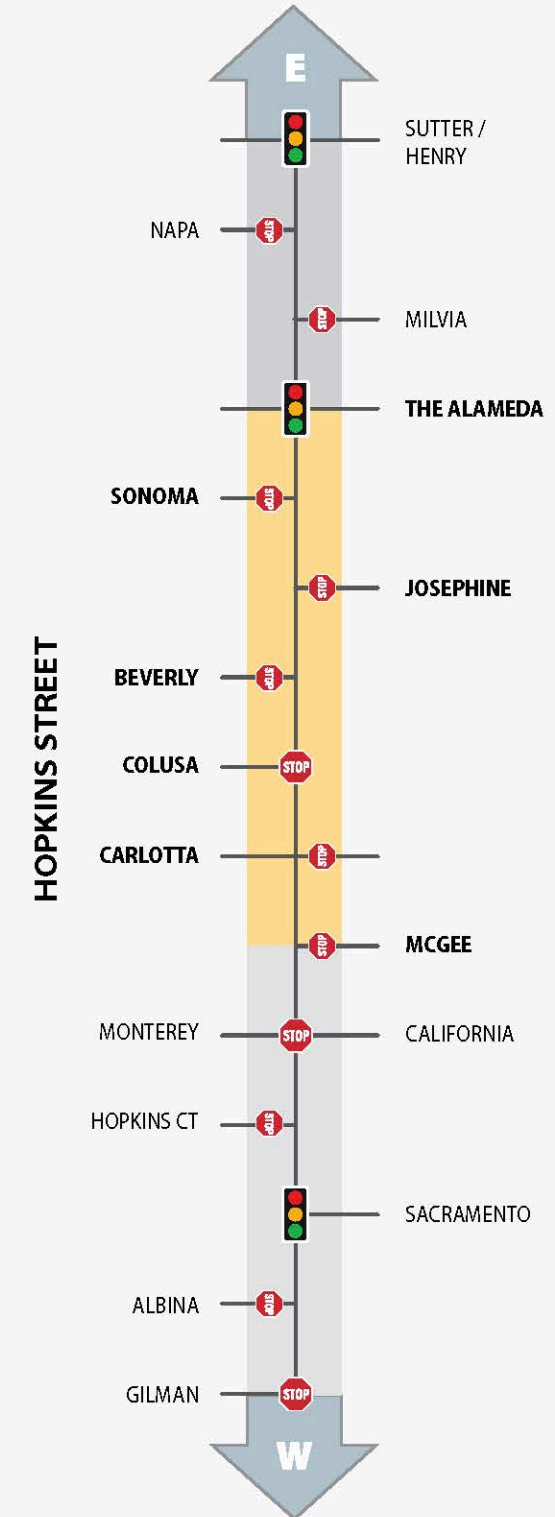
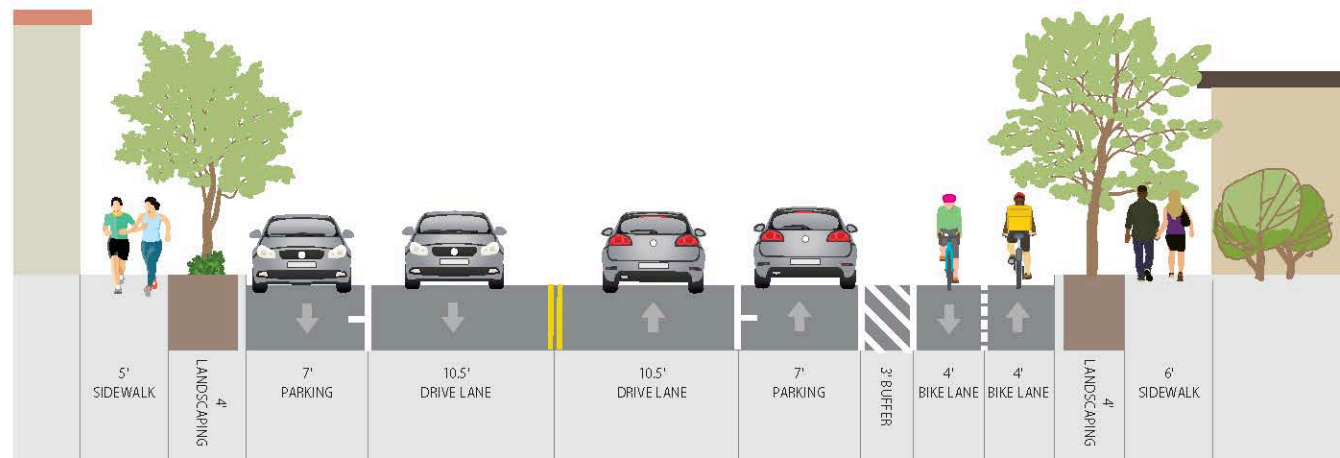
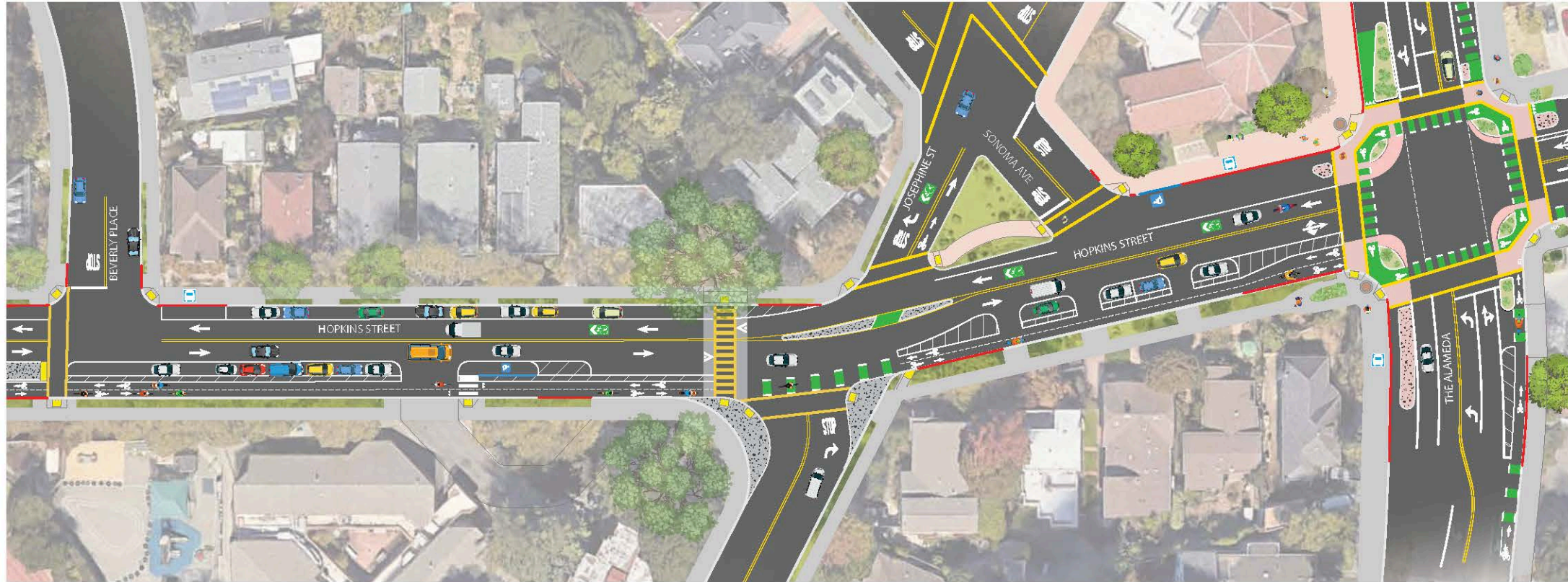
# Hopkins Corridor Traffic and Placemaking Study Near-Term Design Alternative

## The Alameda Intersection



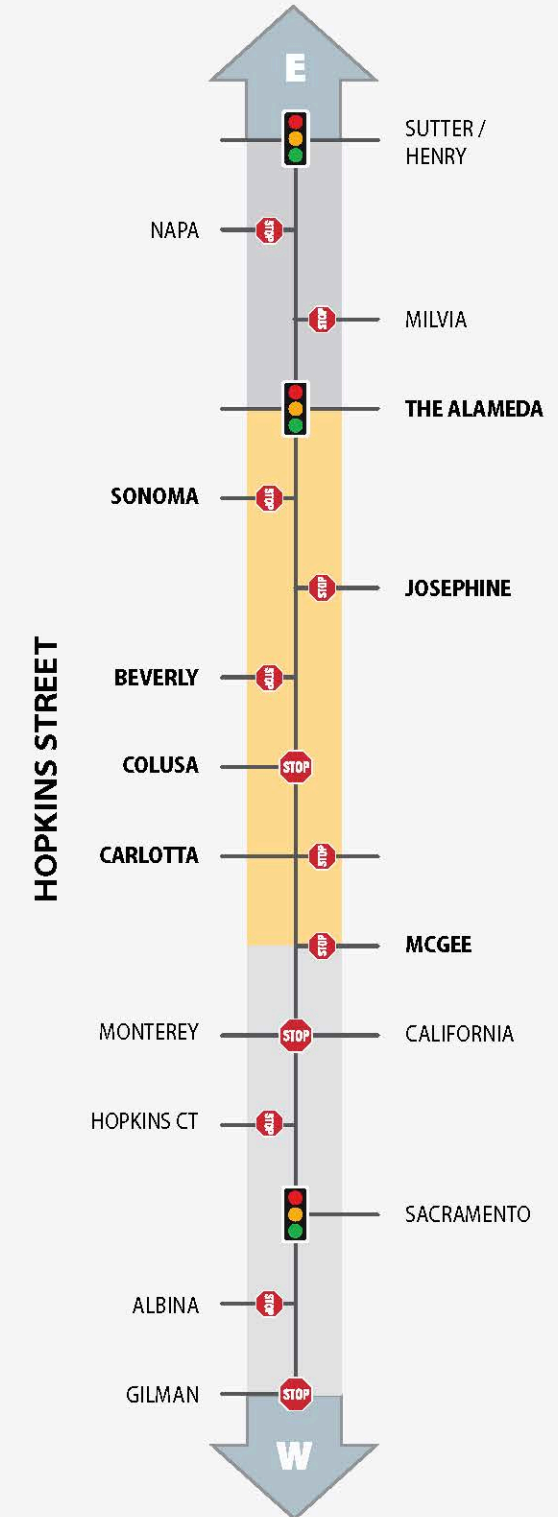
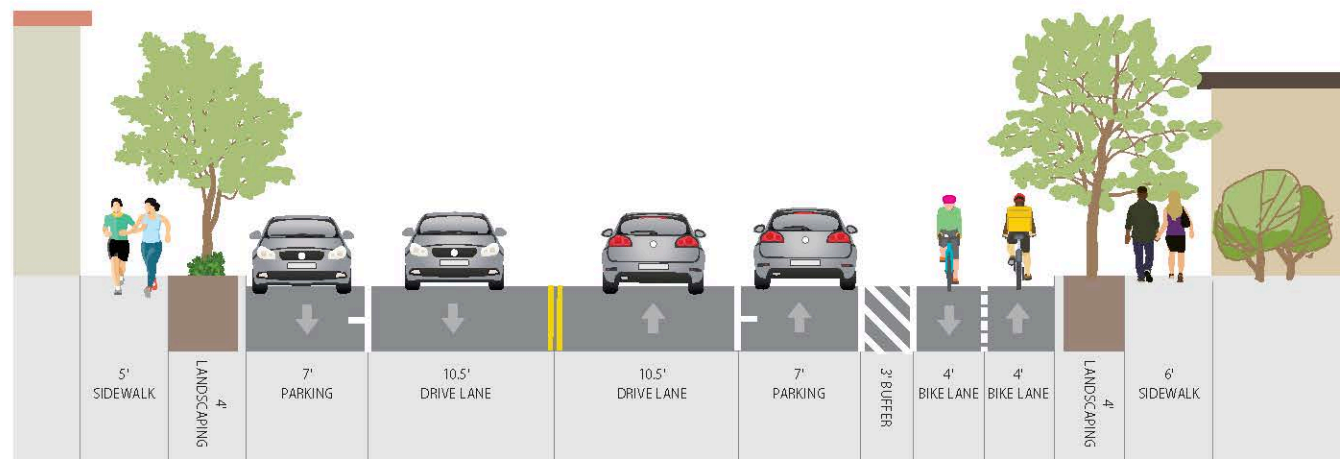
# Hopkins Corridor Traffic and Placemaking Study Near-Term Design Alternative

## Segment 2: The Alameda to McGee Avenue



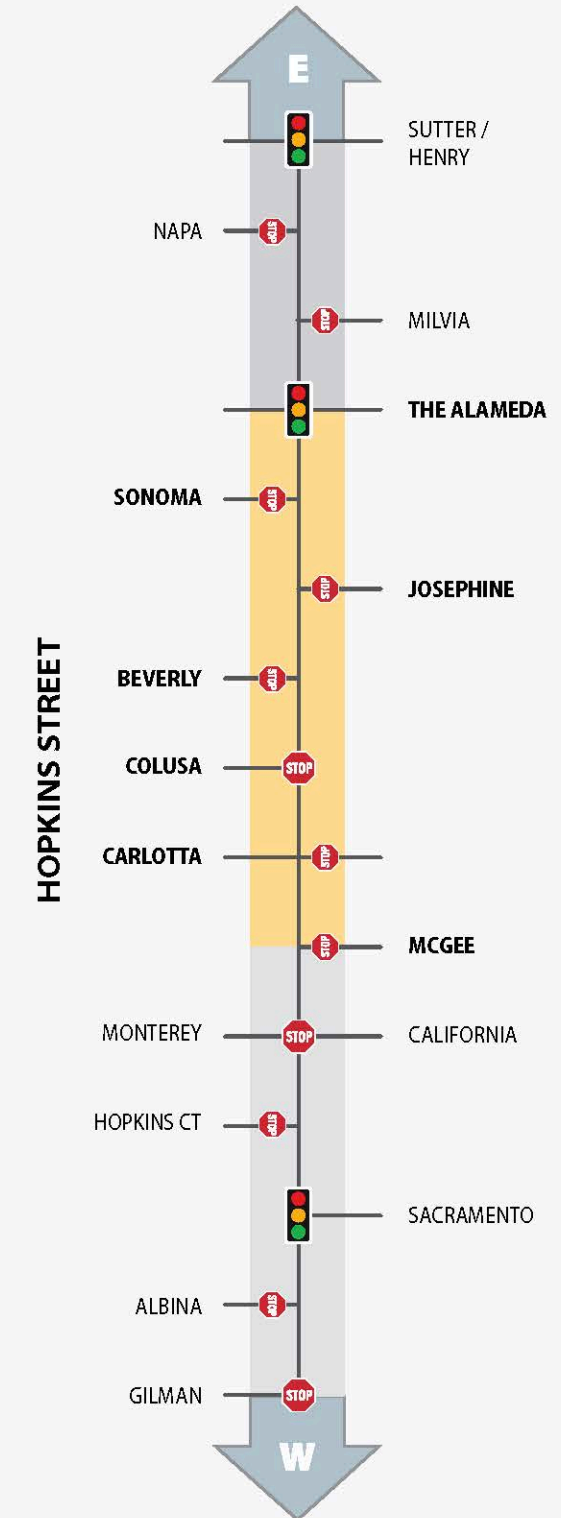
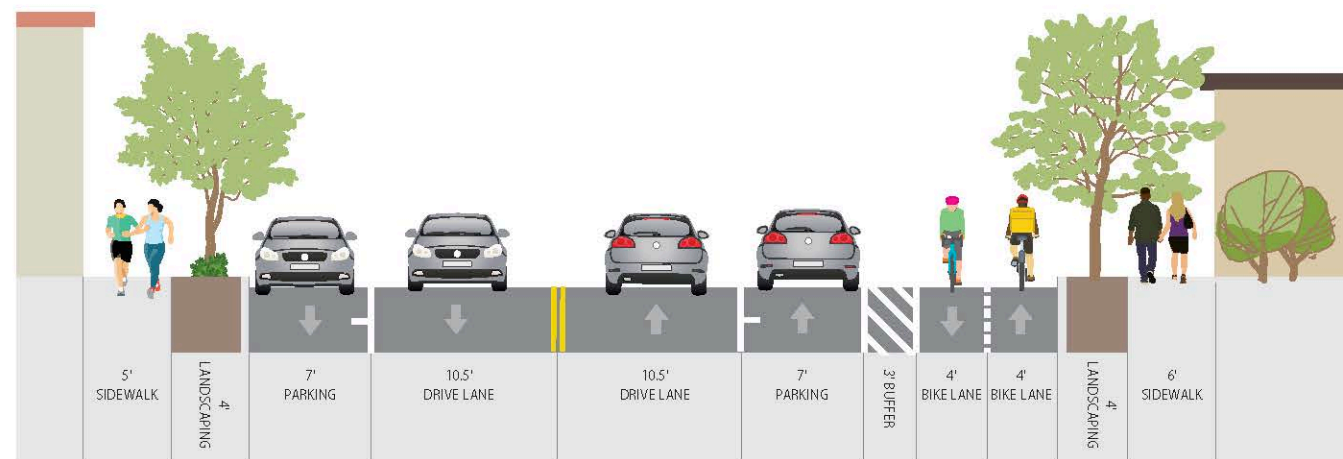
# Hopkins Corridor Traffic and Placemaking Study Near-Term Design Alternative

## Segment 2: The Alameda to McGee Avenue



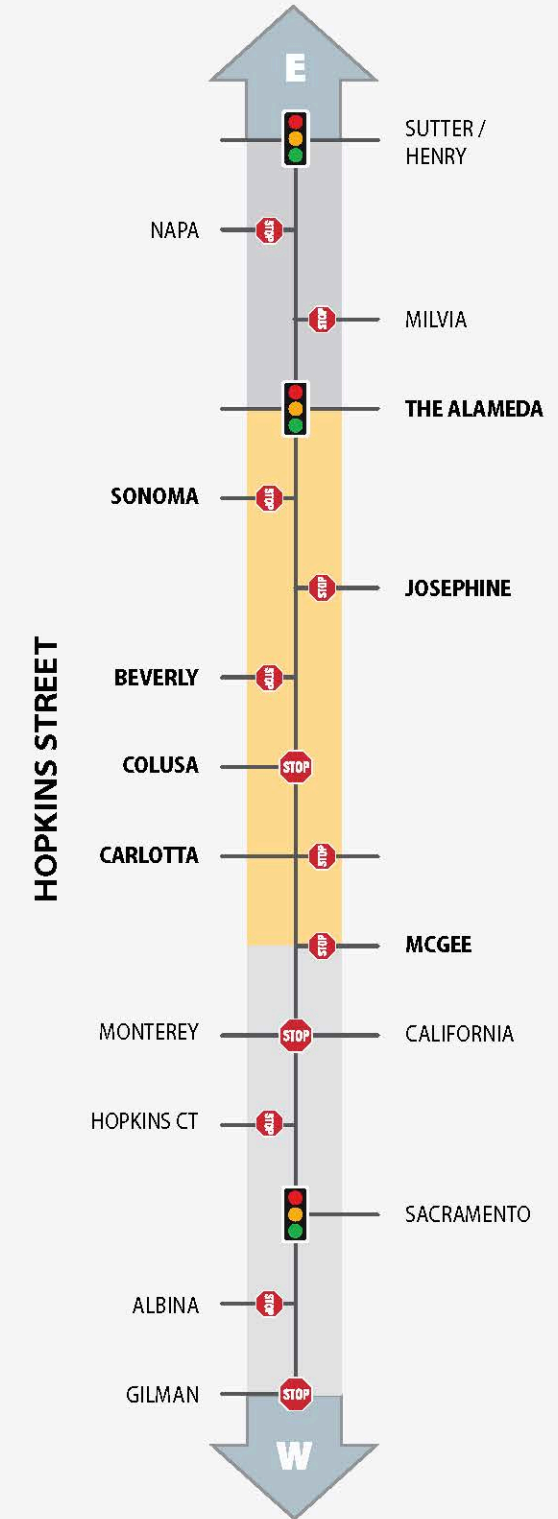
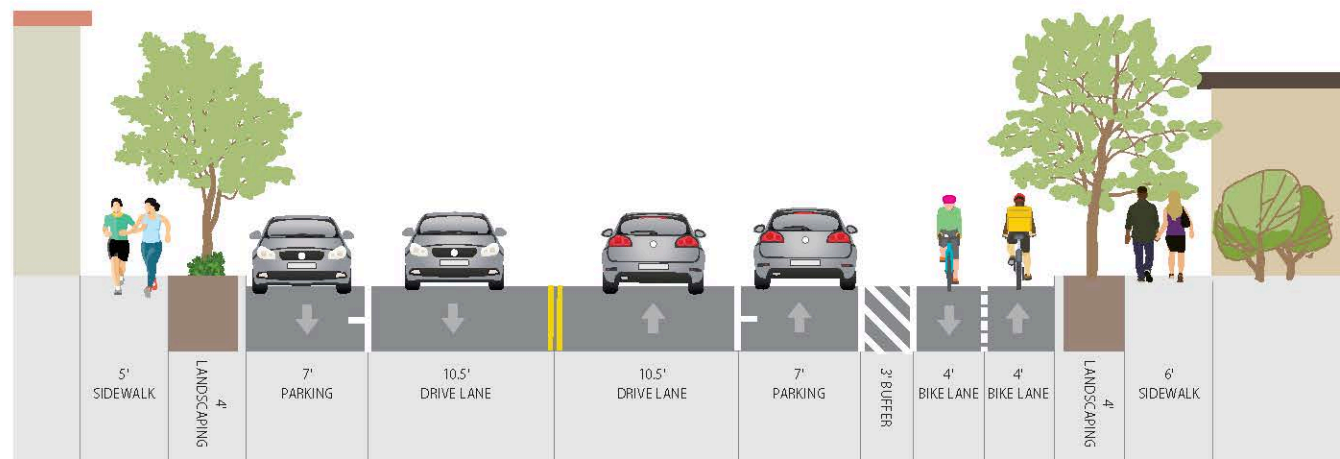
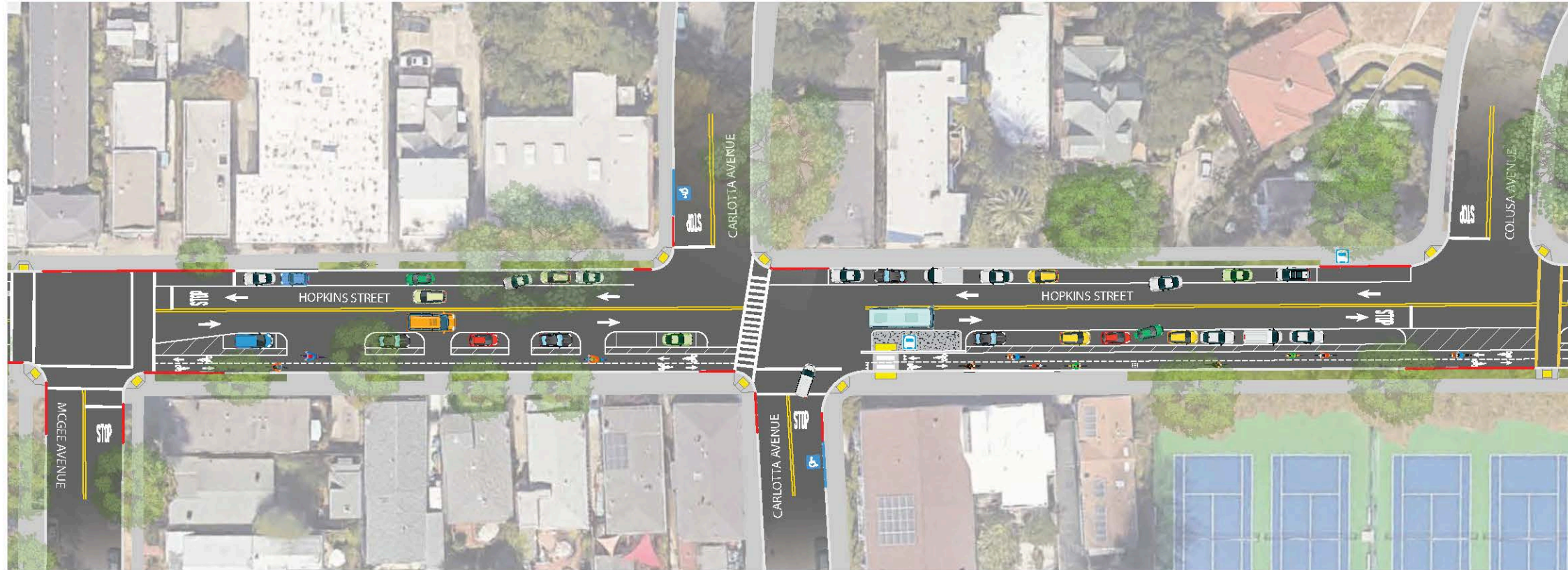
# Hopkins Corridor Traffic and Placemaking Study Near-Term Design Alternative

## Segment 2: The Alameda to McGee Avenue



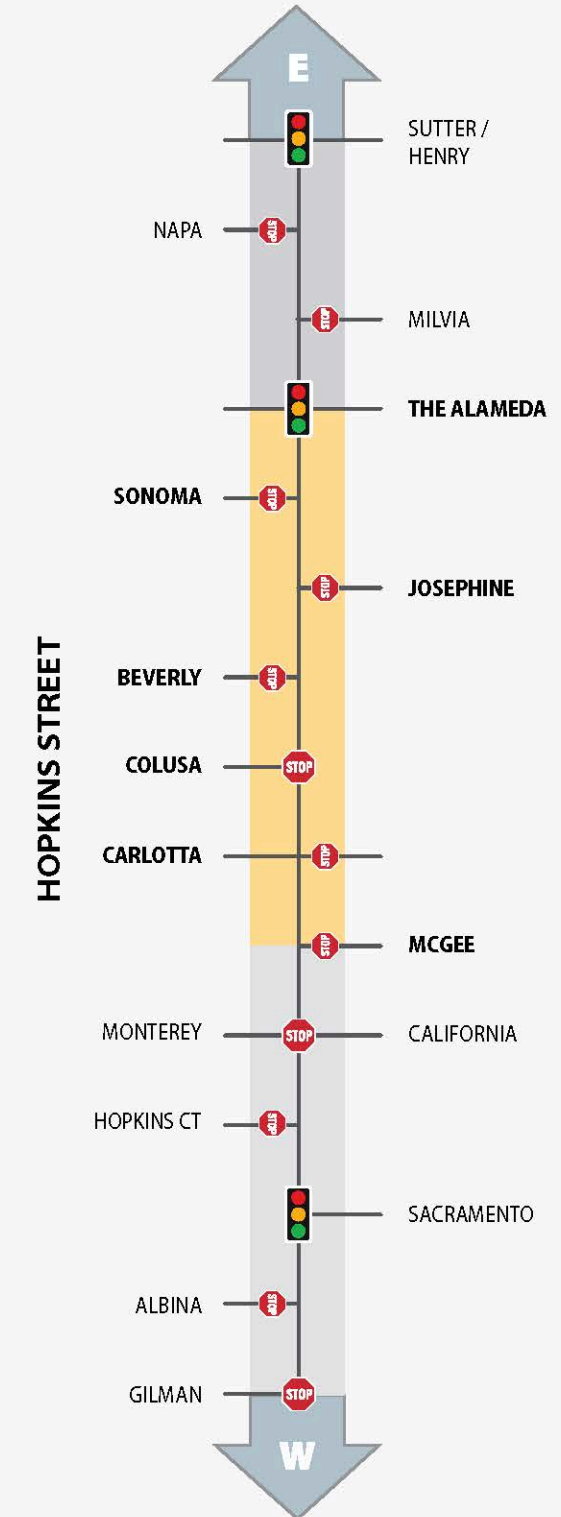
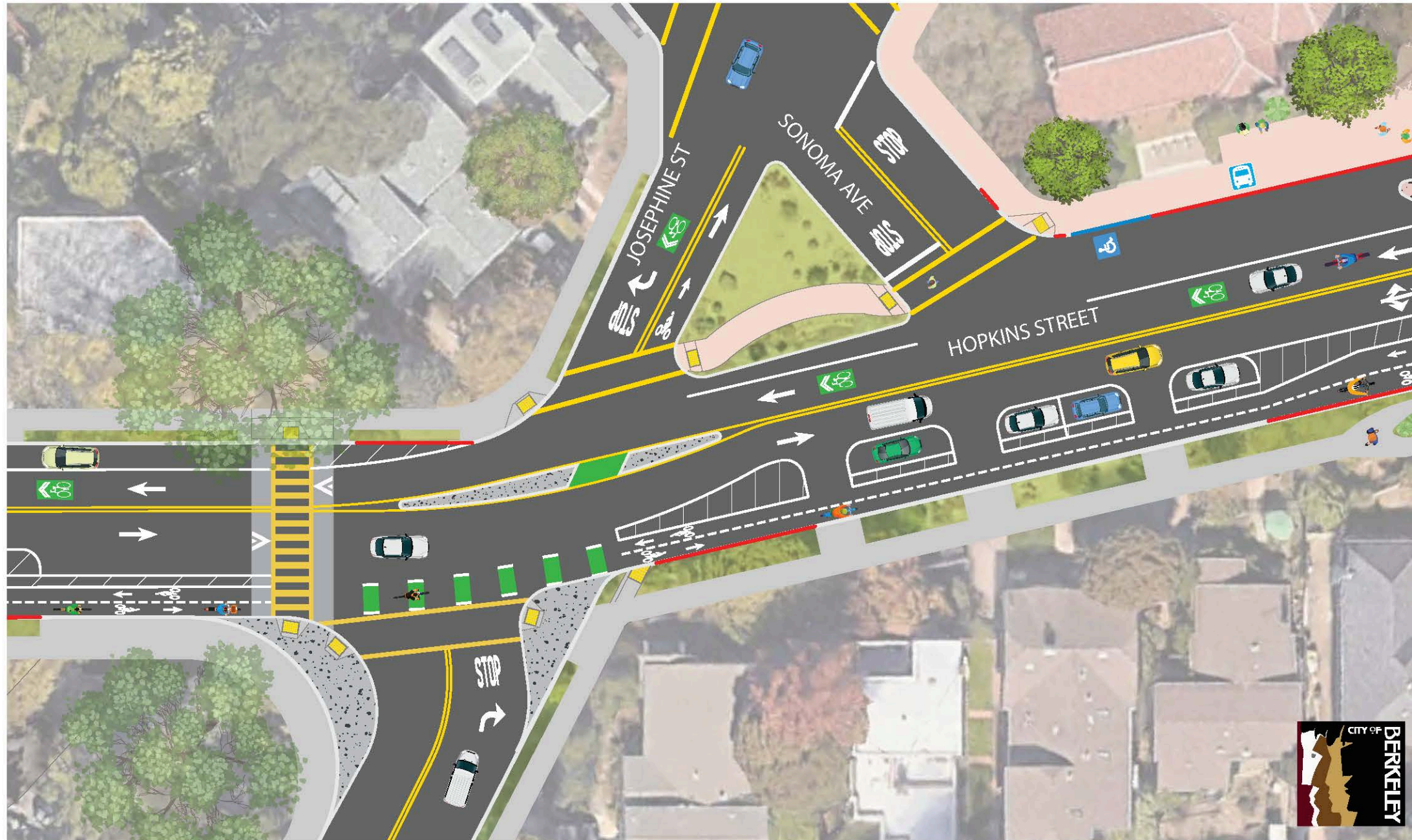
# Hopkins Corridor Traffic and Placemaking Study Near-Term Design Alternative

## Segment 2: The Alameda to McGee Avenue



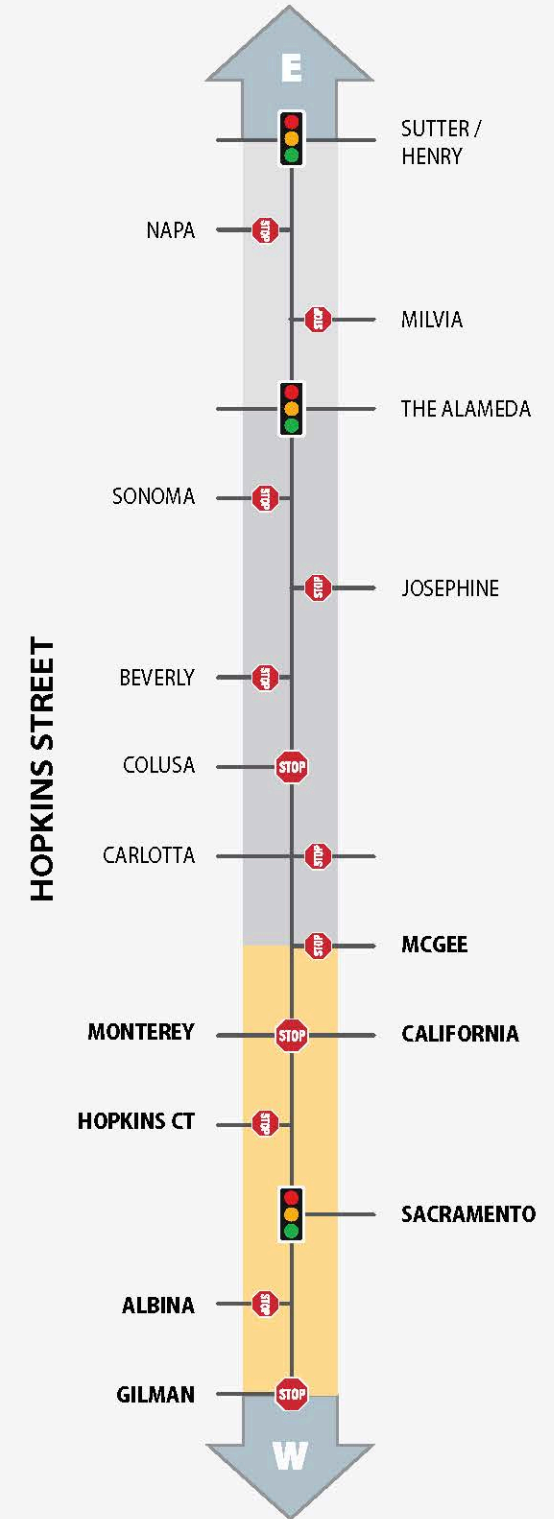
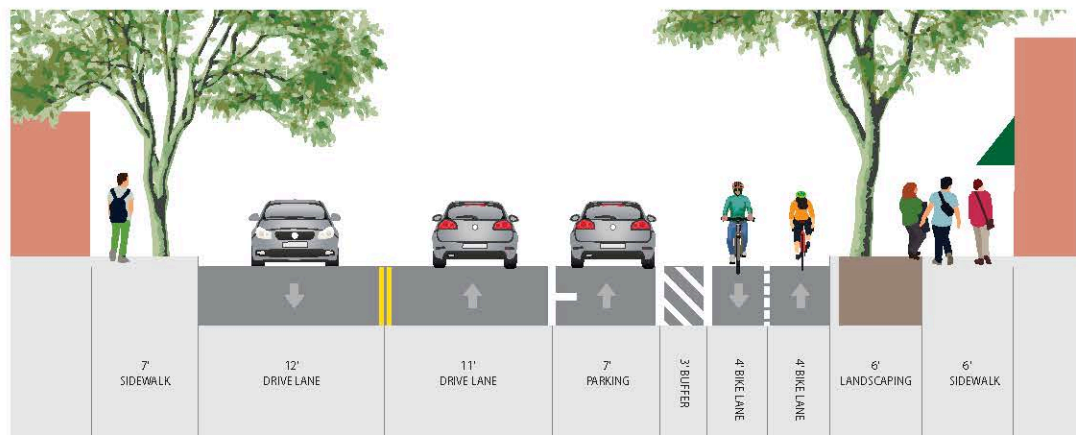
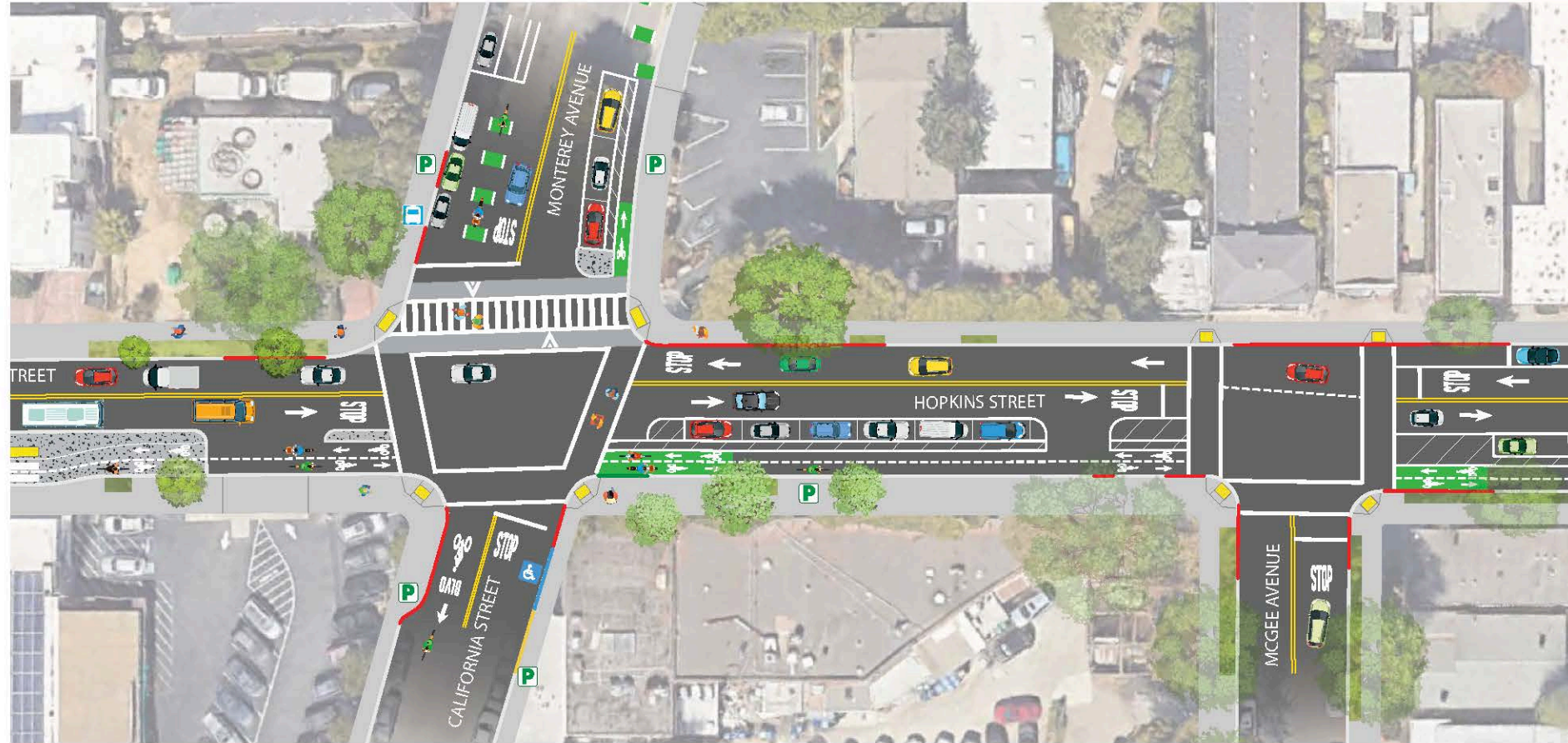
# Hopkins Corridor Traffic and Placemaking Study Near-Term Design Alternative

## Segment 2: Josephine Street and Hopkins Street Intersection



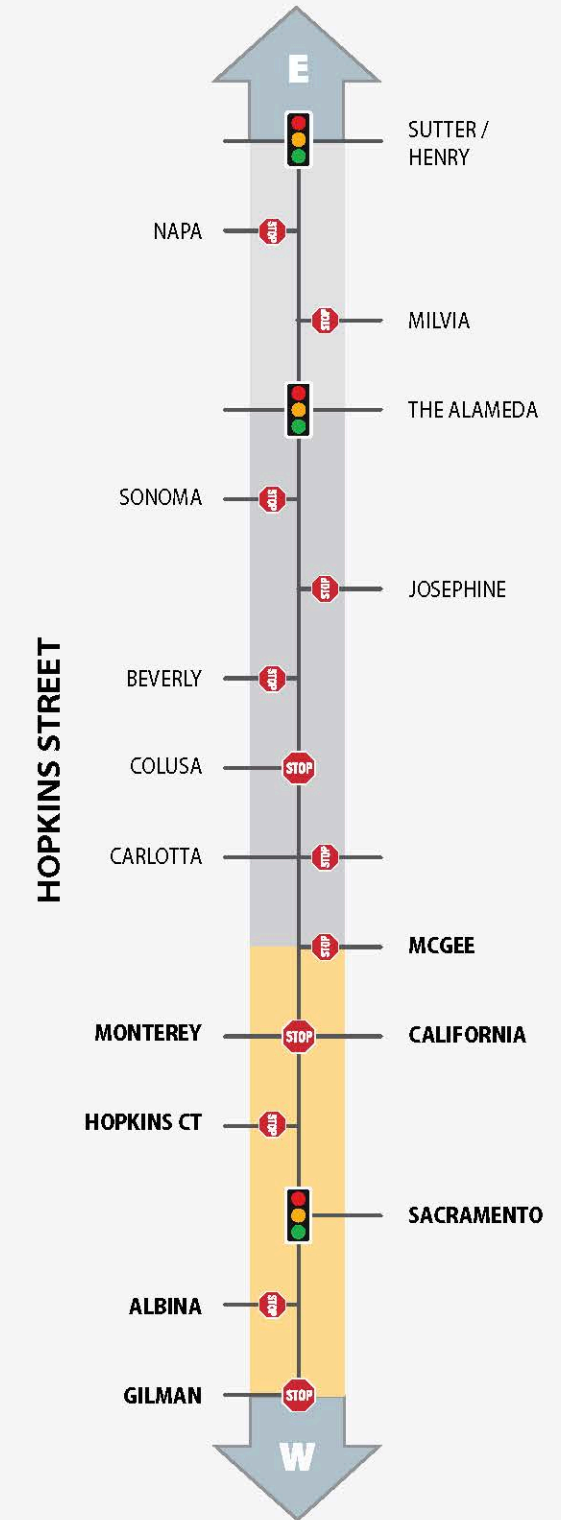
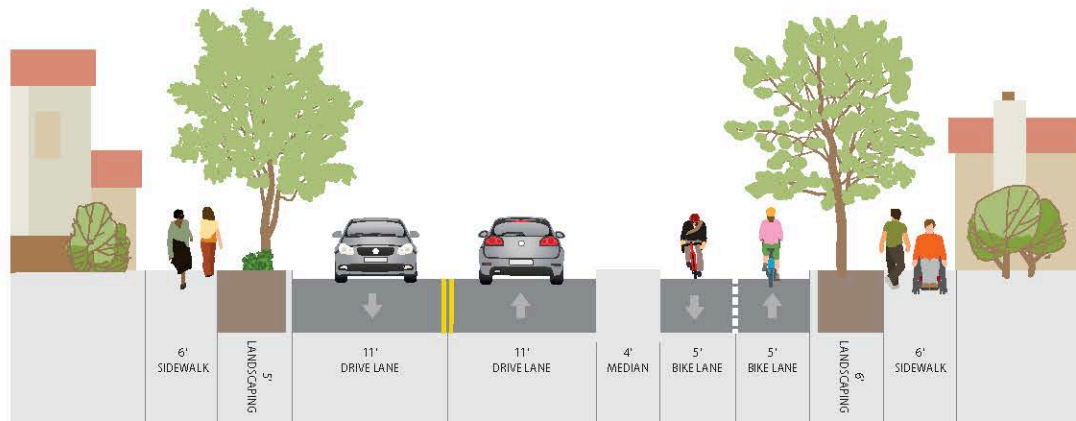
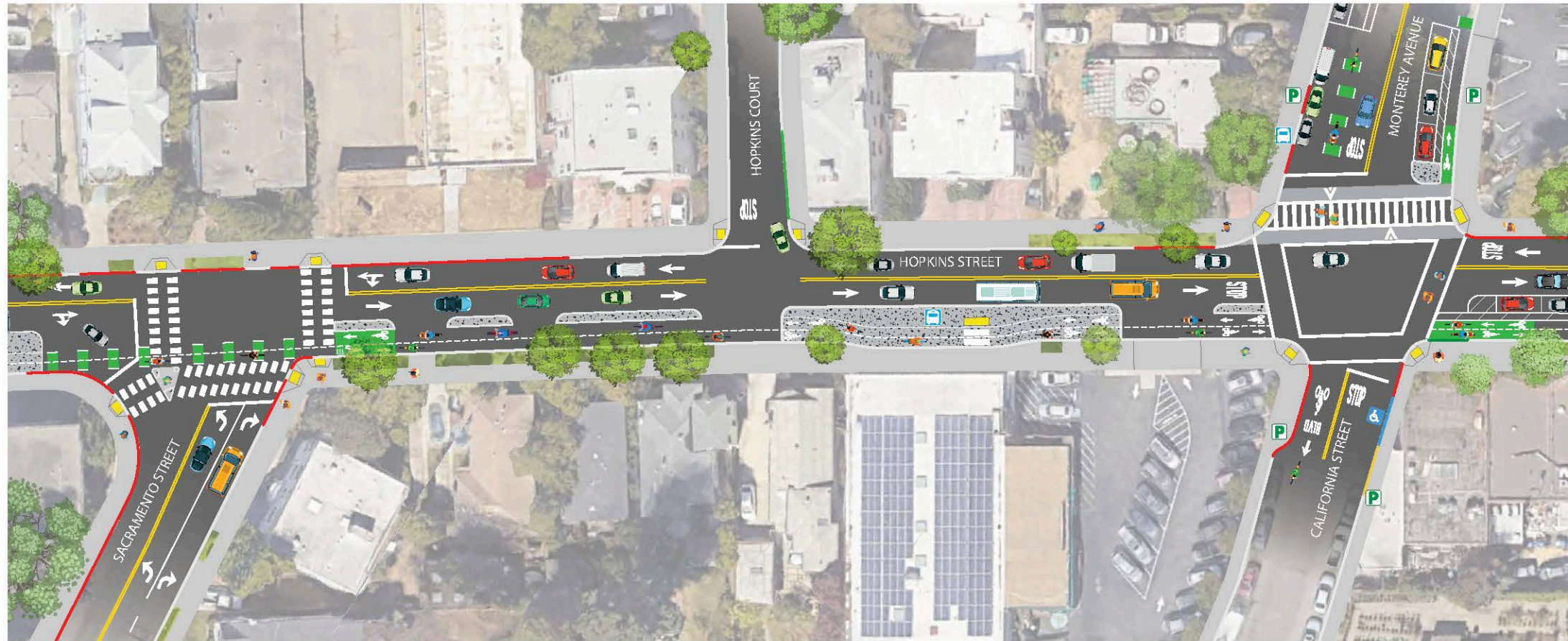
# Hopkins Corridor Traffic and Placemaking Study Near-Term Design Alternative

## Segment 3: McGee Avenue to Gilman Street



# Hopkins Corridor Traffic and Placemaking Study Near-Term Design Alternative

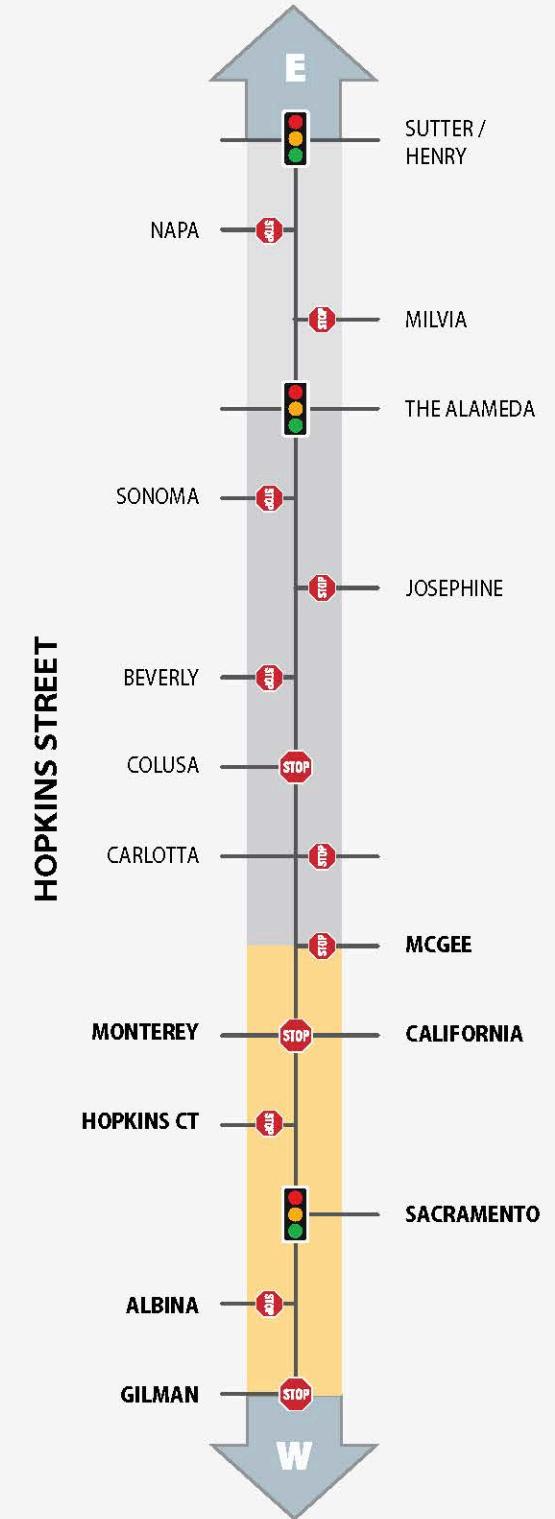
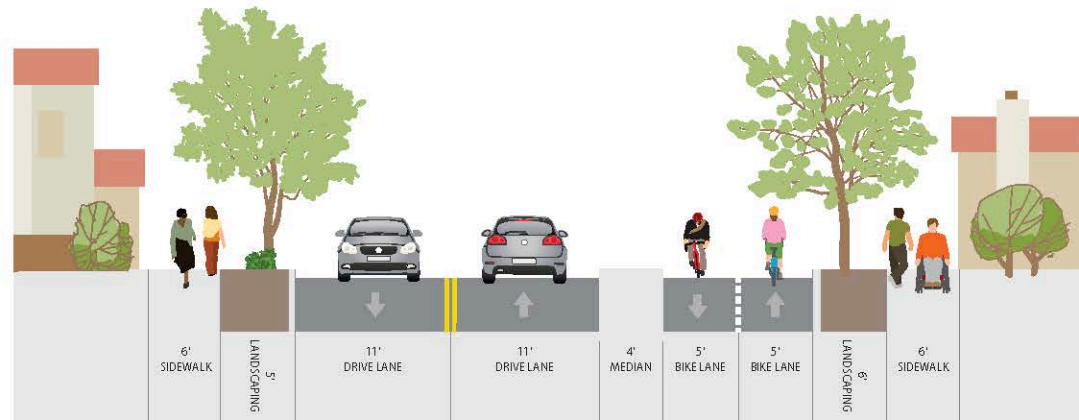
## Segment 3: McGee Avenue to Gilman Street





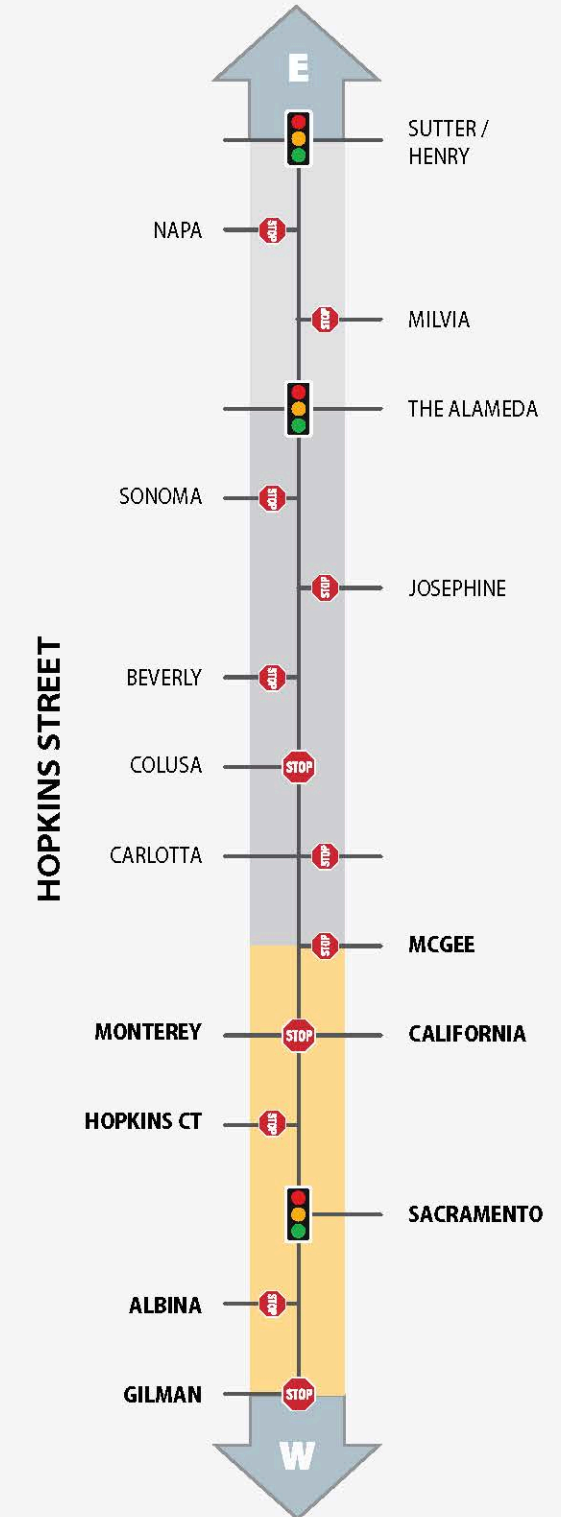
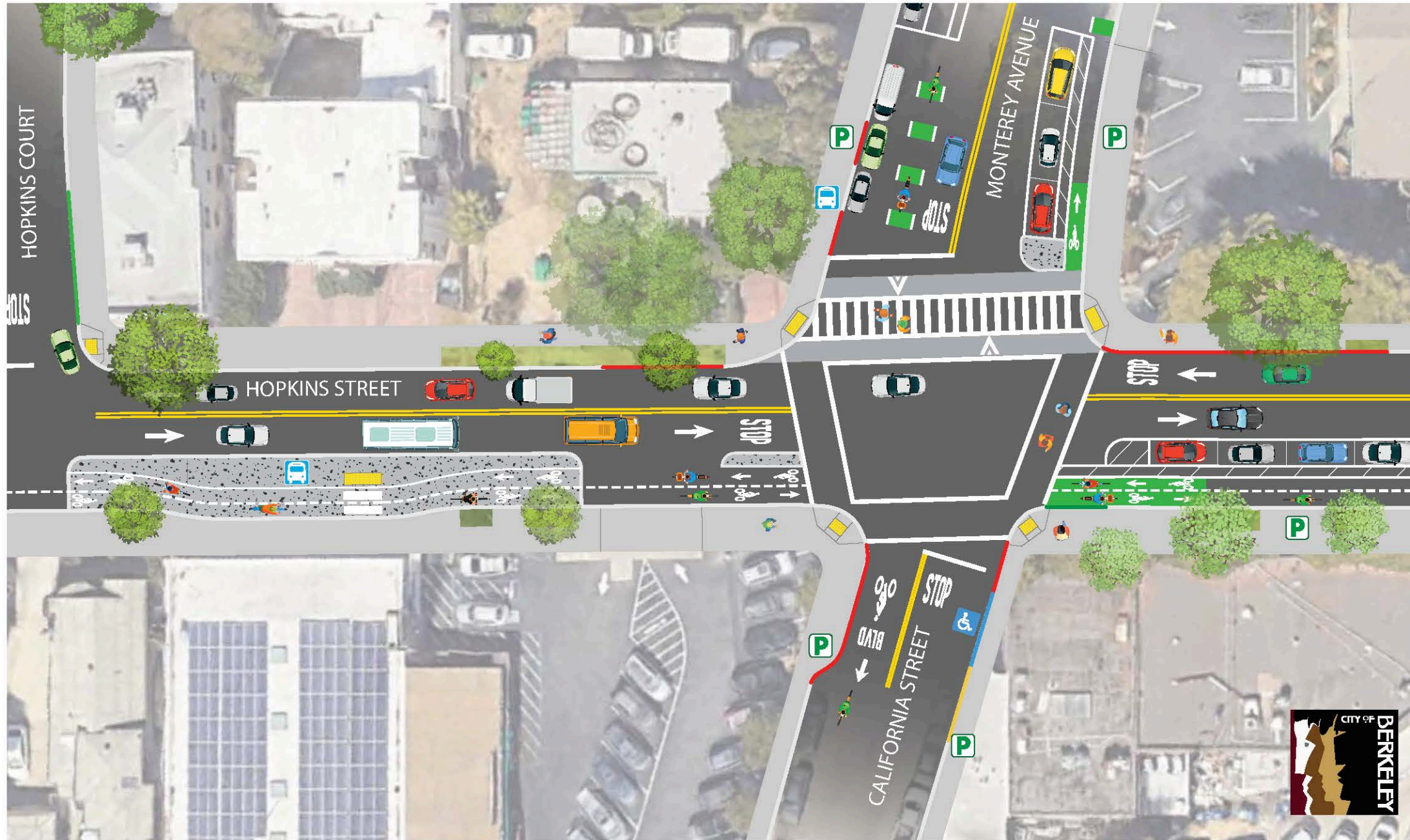
# Hopkins Corridor Traffic and Placemaking Study Near-Term Design Alternative

## Segment 3: McGee Avenue to Gilman Street



# Hopkins Corridor Traffic and Placemaking Study Near-Term Design Alternative

## Hopkins Street and Monterey Avenue Intersection





Office of the City Manager

INFORMATION CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Sharon Friedrichsen, Budget Manager

Subject: Fiscal Year 2022 Mid-Year Budget Update

**INTRODUCTION**

This report presents the Fiscal Year (“FY”) 2022 Mid-Year Budget Update and presents actual General Fund and Special Fund expenditures incurred from July 1, 2021 to December 31, 2021. It also presents projected General Fund revenues and expenditures for FY 2022 and projected expenditures for All Funds by department.

**CURRENT SITUATION AND ITS EFFECTS**

The City of Berkeley is currently in Fiscal Year 2022 (FY 2022). On June 29, 2021, the City Council adopted the FY 2022 budget, which included the General Fund being balanced through the use of American Rescue Plan Funds. FY 2022 runs from July 1, 2021 through June 30, 2022.

As depicted in the table below, as of December 31, 2021, while General Fund revenues are on track to exceed initial estimates, General Fund expenses are also somewhat higher than anticipated but are projected to finish FY 2022 with a savings of \$5.3 million. Given these trends and the fiscal uncertainty attributed to the COVID-19 pandemic, Staff will carefully monitor revenues and expenses in the second half of FY 2022.

**Table 1: FY 2022 Mid-Year Budget at a Glance**

| <i>\$'s in Millions</i>        | <b>FY 2022<br/>Adjusted<br/>Budget</b> | <b>FY 2022<br/>Mid-Year<br/>Actuals</b> | <b>Percentage of<br/>Revenue Received/<br/>Expensed and<br/>Encumbered</b> |
|--------------------------------|----------------------------------------|-----------------------------------------|----------------------------------------------------------------------------|
| Revenues                       | \$236.0                                | \$128.2                                 | 54%                                                                        |
| Expenditures                   | (\$259.8)                              | (\$118.3)                               | 53%                                                                        |
| Carryover and Excess<br>Equity | \$25.0                                 |                                         |                                                                            |
| Balance                        | \$1.2                                  |                                         |                                                                            |

The carryover and excess equity are carried forward from FY 2021. Additional information on the carryovers and excess equity allocation is discussed later in this report under the General Fund Expenditures section.

### FY 2021 Mid-Year Summary

On December 14, 2021, Council was provided the [FY 2021 Year-End Results and FY 2022 First Quarter Budget Update](#) report. At the time, both the General Fund revenues and the General Fund expenditures were tracking within budget.

The chart below shows FY 2022 General Fund Revenues through the first six months of the current fiscal year and compares the year-to-date revenues received to the first six months of FY 2021.

### General Fund Revenues (Adopted and Year to Date Actual thru December 31)

| Revenue Categories                                      | FY 2022              |                      |                       |               | FY 2021              |                      |                      |               | Comparison FY22 vs FY 21 |               | Mid Year Revised<br>FY 2022<br>Projections |
|---------------------------------------------------------|----------------------|----------------------|-----------------------|---------------|----------------------|----------------------|----------------------|---------------|--------------------------|---------------|--------------------------------------------|
|                                                         | Adopted              | Actual               | Variance              | % Received    | Adopted              | Actual               | Variance             | % Received    | Amount                   | %             |                                            |
|                                                         | (a)                  | (b)                  | c=(b) - (a)           | (d) = (b)/(a) | (e)                  | (f)                  | g=(f) - (e)          | (h) = (f)/(g) | (i) = (b) - (f)          | (j) = (i)/(f) |                                            |
| Secured Property                                        | \$71,382,000         | \$36,349,204         | (\$35,032,796)        | 50.92%        | \$61,165,454         | \$34,731,618         | (\$26,433,836)       | 56.78%        | \$1,617,586              | 4.66%         | \$71,382,000                               |
| Redemptions - Regular                                   | 831,441              | 415,104              | (416,337)             | 49.93%        | 534,512              | 432,291              | -102,221             | 80.88%        | (17,187)                 | -3.98%        | 831,441                                    |
| Supplemental Taxes                                      | 2,000,000            | 608,905              | (1,391,095)           | 30.45%        | 1,260,000            | 855,050              | -404,950             | 67.86%        | (246,145)                | -28.79%       | 2,000,000                                  |
| Unsecured Property Taxes                                | 2,625,000            | 3,048,386            | 423,386               | 116.13%       | 2,250,000            | 2,995,351            | 745,351              | 133.13%       | 53,035                   | 1.77%         | 3,516,000                                  |
| Property Transfer Tax                                   | 21,000,000           | 21,710,019           | 710,019               | 103.38%       | 16,500,000           | 10,665,913           | -5,834,087           | 64.64%        | 11,044,106               | 103.55%       | 39,437,743                                 |
| Property Transfer Tax-Measure P (New December 21, 2018) | 8,500,000            | 8,626,946            | 126,946               | 101.49%       | 4,747,414            | 4,254,324            | -493,090             | 89.61%        | 4,372,622                | 102.78%       | 17,070,110                                 |
| Sales Taxes                                             | 18,287,215           | 9,533,614            | (8,753,601)           | 52.13%        | 15,786,200           | 8,069,851            | -7,716,349           | 51.12%        | 1,463,763                | 18.14%        | 18,287,215                                 |
| Soda Taxes                                              | 990,210              | 519,699              | (470,511)             | 52.48%        | 970,794              | 530,328              | -440,466             | 54.63%        | (10,629)                 | -2.00%        | 990,210                                    |
| Utility Users Taxes                                     | 13,000,000           | 6,534,425            | (6,465,575)           | 50.26%        | 12,750,000           | 6,304,755            | -6,445,245           | 49.45%        | 229,670                  | 3.64%         | 13,800,000                                 |
| Transient Occupancy Taxes                               | 2,173,000            | 2,471,311            | 298,311               | 113.73%       | 5,070,000            | 1,084,961            | -3,985,039           | 21.40%        | 1,386,350                | 127.78%       | 4,300,000                                  |
| Short-term Rentals                                      | 630,000              | 586,569              | (43,431)              | 93.11%        | 676,260              | 218,590              | -457,670             | 676,260       | 367,979                  | 168.34%       | 900,000                                    |
| Business License Tax                                    | 18,498,146           | 1,393,760            | (17,104,386)          | 7.53%         | 12,984,192           | 390,253              | -12,593,939          | 3.01%         | 1,003,507                | 257.14%       | 19,000,000                                 |
| Recreational Cannabis                                   | 1,643,739            | 600,770              | (1,042,969)           | 36.55%        | 1,300,000            | 355,641              | -944,359             | 27.36%        | 245,129                  | 68.93%        | 1,800,000                                  |
| U1 Revenues                                             | 5,120,350            | 153,243              | (4,967,107)           | 2.99%         | 2,700,000            | 53,389               | -2,646,611           | 1.98%         | 99,854                   | 187.03%       | 5,120,350                                  |
| Other Taxes                                             | 1,761,714            | 1,052,445            | (709,269)             | 59.74%        | 922,048              | 705,675              | -216,373             | 76.53%        | 346,770                  | 49.14%        | 1,800,000                                  |
| Vehicle In-Lieu Taxes                                   | 14,959,837           | 7,503,002            | (7,456,835)           | 50.15%        | 12,421,597           | 7,190,227            | -5,231,370           | 57.88%        | 312,775                  | 4.35%         | 15,024,697                                 |
| Parking Fines- Regular Collections                      | 3,726,450            | 2,451,293            | (1,275,157)           | 65.78%        | 5,049,000            | 1,714,828            | -3,334,172           | 33.96%        | 736,465                  | 42.95%        | 4,326,450                                  |
| Parking Fines-Booting Collections                       |                      |                      | -                     |               |                      |                      | -                    |               | -                        |               |                                            |
| Moving Violations                                       | 132,600              | 83,533               | (49,067)              | 63.00%        | 190,000              | 42,277               | -147,723             | 22.25%        | 41,256                   | 97.58%        | 132,600                                    |
| Ambulance Fees                                          | 3,154,002            | 1,715,639            | (1,438,363)           | 54.40%        | 5,103,208            | 1,414,206            | -3,689,002           | 27.71%        | 301,433                  | 21.31%        | 3,268,275                                  |
| Interest Income                                         | 4,462,320            | 3,107,784            | (1,354,536)           | 69.65%        | 2,851,200            | 2,627,359            | -223,841             | 92.15%        | 480,425                  | 18.29%        | 4,462,320                                  |
| Franchise Fees                                          | 1,613,283            | 350,085              | (1,263,198)           | 21.70%        | 1,551,696            | 370,029              | -1,181,667           | 23.85%        | (19,944)                 | -5.39%        | 1,613,283                                  |
| Other Revenue                                           | 6,729,977            | 3,275,856            | (3,454,121)           | 48.68%        | 6,246,348            | 5,631,071            | -615,277             | 90.15%        | (2,355,215)              | -41.83%       | 6,729,977                                  |
| IDC Reimbursement                                       | 5,490,000            | 2,470,002            | (3,019,998)           | 44.99%        | 5,490,000            | 2,683,137            | -2,806,863           | 48.87%        | (213,135)                | -7.94%        | 5,490,000                                  |
| Transfers                                               | 27,354,923           | 13,677,462           | (13,677,461)          | 50.00%        | 17,274,293           | 8,865,281            | -8,409,012           | 51.32%        | 4,812,181                | 54.28%        | 27,354,923                                 |
| <b>Total Revenue:</b>                                   | <b>\$236,066,207</b> | <b>\$128,239,056</b> | <b>-\$107,827,151</b> | <b>54.32%</b> | <b>\$195,794,216</b> | <b>\$102,186,405</b> | <b>-\$93,607,811</b> | <b>52.19%</b> | <b>\$26,052,651</b>      | <b>25.50%</b> | <b>\$268,637,594</b>                       |

The mid-year review generally focuses primarily on the major revenue fluctuations and changes that have occurred that might result in significant changes in future projections.

Typically, Staff waits until the mid-year to identify General Fund revenue projections that should be revised.

During the first half of FY 2022, General Fund revenues and transfers increased by \$26,052,651 or 25.50%, from \$102,186,405 in the first half of FY 2021, to \$128,239,056 in the first half of FY 2022, primarily due to the following increases (decreases):

|                                   |              |
|-----------------------------------|--------------|
| • Secured Property Taxes          | \$ 1,617,586 |
| • Property Transfer Taxes         | 11,044,106   |
| • Measure P                       | 4,372,622    |
| • Sales Taxes                     | 1,463,763    |
| • Transient Occupancy Taxes (TOT) | 1,386,350    |
| • Business License Taxes          | 1,003,507    |
| • Parking Fines                   | 895,662      |
| • Transfers In                    | (840,890)    |
| • Other Income                    | (2,339,677)  |

**Secured Property Tax (\$1,617,586 more than FY 2021 Actual)**

During the first half of FY 2022, Secured Property Tax revenues totaled \$36,349,204, which was \$1,617,586 or 4.66% more than the \$34,731,618 received for the same period in FY 2021. The FY 2022 Adopted Budget assumes a 4.72% increase for the year, while the County's Certification of Assessed Valuation reflects growth of 4.48%.

**Unsecured Property Tax (\$53,035 more than FY 2021 Actual)**

During the first half of FY 2022, Unsecured Property Tax revenues totaled \$3,048,386, which was \$53,035 or 1.77% more than the \$2,995,351 in the same period in FY 2021. The FY 2022 Adopted Budget reflected a decline of 31.4%, while the County's Certification of Assessed Valuation growth reflected growth of 1.96% for FY 2022. Staff will be increasing the FY 2022 Unsecured Property Tax revenue projection to \$3,516,000.

**Property Transfer Tax (\$11,044,106 more than FY 2021 Actual)**

During the first half of FY 2022, Property Transfer Tax totaled \$21,710,019, which was \$11,044,106 or 103.5% more than the \$10,665,913 received for the first half of FY 2021. However, \$3,384,375, or 15.6%, of that increase resulted from the late payment by the County of the May 2021 Property Transfer Taxes, which should have been received in FY 2021. A payment of \$4,630,461 was received by the County in January 2022. Assuming no growth over the total received in the last five months of FY 2021 (\$13,097,203), the FY 2022 total would be \$39,437,743 (including the May 2021 payment of \$3,384,375 received in FY 2022). Staff is increasing the FY 2022 projection of \$21,000,000 to \$39,437,743.

The primary reasons for the remaining \$7,659,731 (\$11,044,106-\$3,384,375) increase in Property Transfer Tax were (1) The dollar value of property sales increased by \$559 million or 81.9% during the first half of FY 2022, as illustrated in Table 2 below; (2) The number of property sales transactions increased by 141 or 29.9% during the first half of FY 2022, as illustrated in Table 3 below; and (3) Seismic rebates increased from \$365,976 in the first half of FY 2021 to \$515,478 for the same period in FY 2022.

**Table 2: FY 2022 and FY 2021 6 Month Comparison of Property Sales**

| Property Sales (In Million \$) | July    | Aug     | Sept    | Oct     | Nov     | Dec     | Total Property Sales \$ |
|--------------------------------|---------|---------|---------|---------|---------|---------|-------------------------|
| FY 2022                        | \$179.7 | \$194.3 | \$209.9 | \$204.5 | \$252.9 | \$200.2 | \$1,241.5               |
| FY 2021                        | 74.0    | 115.0   | 106.4   | 129.7   | 139.0   | 118.4   | 682.5                   |
| Change                         | 105.7   | 79.3    | 103.5   | 74.8    | 113.9   | 81.8    | 559.0                   |
| % Change                       | 142.7%  | 69.0%   | 97.3%   | 57.7%   | 81.9%   | 69.1%   | 81.9%                   |

**Table 3: FY 2022 and FY 2021 6 Month Comparison of Property Transfer Transactions**

| Property Transfer Transactions | July   | Aug  | Sept | Oct   | Nov   | Dec   | Total |
|--------------------------------|--------|------|------|-------|-------|-------|-------|
| FY 2022                        | 114    | 84   | 74   | 104   | 120   | 116   | 612   |
| FY 2021                        | 50     | 82   | 73   | 86    | 93    | 87    | 471   |
| Change                         | 64     | 2    | 1    | 18    | 27    | 29    | 141   |
| % Change                       | 128.0% | 2.4% | 1.4% | 20.9% | 29.0% | 33.3% | 29.9% |

**Measure P-Property Transfer Tax (\$4,372,622 more than FY 2021 Actual)**

In addition, \$8,626,946 in Measure P taxes (a tax which took effect on December 21, 2018) were collected during the first half of FY 2022, which was \$4,372,622 or 102.8% more than the \$4,254,324 collected during the first half of FY 2021. The increase was a result of (1) 103.2% increase in the property sales amount in FY 2022 versus those for the same period in FY 2021, as reflected in the Table 4 below; (2) As reflected in Table 5, there was an 87.4% increase in the number of property sales transactions with a value of \$1.5 million or more; and (3) there were 10 property sales transactions with a value of \$10 million or more (average of \$19.7 million) in FY 2022 versus one such transaction in FY 2021 (\$12 million).

A payment of \$2,347,440 was received by the County in January 2022. Assuming no growth over the total received in the last five months of FY 2021 (\$6,095,724), the FY 2022 total would be \$17,070,110. Staff is increasing the FY 2022 projection of \$8,500,000 to \$17,070,110.

**Table 4: FY 2022 and FY 2021 6 Month Comparison-Property Sales of \$1.5 Million or More**

| Property Sales \$1.5 million+ | July    | Aug     | Sept    | Oct     | Nov     | Dec     | Total   |
|-------------------------------|---------|---------|---------|---------|---------|---------|---------|
| FY 2022                       | \$117.7 | \$128.5 | \$147.9 | \$145.5 | \$190.7 | \$134.0 | \$864.3 |
| FY 2021                       | 39.3    | 61.0    | 58.6    | 67.8    | 82.9    | 115.8   | 425.4   |
| Change                        | 78.4    | 65.8    | 89.3    | 77.7    | 107.8   | 18.2    | 438.9   |
| % Change                      | 199.8%  | 107.9%  | 152.4%  | 114.6%  | 130.0%  | 15.7%   | 103.2%  |

**Table 5: FY 2022 and FY 2021 6 Month Comparison of Measure P Transactions**

| Measure P Transactions | July   | Aug   | Sept  | Oct   | Nov   | Dec   | Total |
|------------------------|--------|-------|-------|-------|-------|-------|-------|
| FY 2022                | 53     | 42    | 49    | 44    | 59    | 51    | 298   |
| FY 2021                | 10     | 26    | 27    | 30    | 38    | 28    | 159   |
| Change                 | 43     | 16    | 22    | 14    | 21    | 23    | 139   |
| % Change               | 430.0% | 61.5% | 81.5% | 46.7% | 55.3% | 82.1% | 87.4% |

**Sales Tax (\$1,463,763 more than FY 2021 Actual)**

For the first half of FY 2022, Sales Tax revenue totaled \$9,533,614, which was \$1,463,763 or 18.1% more than the \$8,069,851 received for the first half of FY 2021.

The increase was consistent with the following projection made by the City's Sales Tax Consultant in Table 6 below:

**Table 6: Sales Tax Categories and FY 22 Revenue Projection**

| Sales Tax Category   | Revenue Projection     |
|----------------------|------------------------|
| General Retail       | \$ 3,582,787           |
| Food Products        | 5,573,760              |
| Transportation       | 2,482,737              |
| Construction         | 1,227,280              |
| Business-to-business | 1,782,010              |
| Miscellaneous        | 786,424                |
| Subtotal             | 15,434,998             |
| County pool          | 3,956,336              |
| State pool           | 9,966                  |
| County sharing       | (970,065) <sup>1</sup> |

<sup>1</sup> The cities in Alameda County share 5% of their Bradley Burns sales taxes with the County; and,

|                  |                        |
|------------------|------------------------|
| CDTFA admin. fee | (144,019) <sup>2</sup> |
| <b>Total</b>     | <b>\$18,287,216</b>    |

**Utility Users Taxes (\$229,670 more than FY 2021 Actual)**

Utility Users Tax (UUT) revenue for the first half of FY 2022 totaled \$6,534,425, which was \$229,670 or 3.6% more than the \$6,304,755 received for the same period in FY 2021. This increase of \$229,670 is shown in Table 7 below:

**Table 7: FY 2022 and FY 2021 6 Month Comparison of UUT Revenues**

| Utility      | FY2022             | FY 2021            | \$ Change         | % Change     |
|--------------|--------------------|--------------------|-------------------|--------------|
| Telephone    | \$ 584,334         | \$ 626,608         | \$ -42,274        | -6.75%       |
| Cable        | 515,651            | 487,938            | 27,713            | 5.68%        |
| Cellular     | 848,280            | 669,829            | 178,451           | 26.64%       |
| Electric     | 3,551,297          | 3,655,820          | -104,523          | -2.86%       |
| Gas          | 1,034,863          | 864,560            | 170,303           | 19.70%       |
| <b>Total</b> | <b>\$6,534,425</b> | <b>\$6,304,755</b> | <b>\$ 229,670</b> | <b>3.64%</b> |

Staff is increasing the FY 2022 UUT projection from \$13,000,000 to \$13,800,000.

**Transient Occupancy Tax (\$1,386,350 more than FY 2021 Actual)**

Transient Occupancy Tax (TOT) revenue for the first half of FY 2022 totaled \$2,471,311, which was \$1,386,350 or 127.78% more than the \$1,084,961 received for the first half of FY 2021. The increase in FY 2022 was primarily attributable to an increase of 138.2% at the five largest hotels in Berkeley during the first half of the year (155.8% in the first quarter and 134.1% in the second quarter). Staff is increasing the FY 2022 TOT projection from \$2,173,000 to \$3,800,000 to accommodate the new downtown hotel that came online during the second quarter of the fiscal year.

**Short-Term Rentals (\$367,979 more than FY 2021 Actual)**

Short-Term Rentals revenue for the first half of FY 2022 totaled \$586,569, which was \$367,979 or 168.3% more than the \$218,590 received for the first half of FY 2021. Based on the mid-year results, staff is increasing the FY 2022 projection to \$900,000.

**Business License Taxes (\$1,003,507 more than FY 2021 Actual)**

Business license Taxes (BLT) revenue for the first half of FY 2022 totaled \$1,393,760, which was \$1,003,507 or 257.1% more than the \$390,253 received for the first half of FY 2021. BLT are not due yet, so it is too soon to gauge the FY 2022 trend. However, the increase so far is partly due to the following: (1) Business license applications, which generated \$21,400 in additional revenue; (2) More than 200 more business license renewals were received, due to the delinquent notices sent out in September 2021; and (3) The business license revenue for retail and rental classifications

<sup>2</sup> The CDTFA administrative fees are a percentage of taxes CDTFA charges to administer the sales tax program.



increased in FY 2022 by \$31,000 and \$165,000, respectively. Based on the mid-year results, staff is increasing the FY 2022 projection to \$19,000,000.

**Recreational Cannabis (\$245,129 more than FY 2021 Actual)**

Recreational Cannabis revenue for the first half of FY 2022 totaled \$600,770, which was \$245,129 or 68.9% more than the \$355,641 received in the first half of FY 2021.

Recreational Cannabis taxes are not due yet, so it is too soon to gauge the trend in FY 2022 revenue.

**Vehicle In Lieu Taxes (\$312,775 more than FY 2021 Actual)**

Vehicle in Lieu Taxes (VLF) for the first half of FY 2022 totaled \$7,503,002, which was \$312,775 or 4.35% more than the \$7,190,227 received in the first half of FY 2021. This increase is consistent with the County's Certification of Assessed Valuation, which reflects growth of 4.48%. Changes in VLF revenues are based on the growth in assessed values.

**Parking Fines (\$736,465 more than FY 2021 Actual)**

Parking Fines revenue for the first half of FY 2022 totaled \$2,451,293, which was \$736,465 or 42.95% more than the \$1,714,828 received for the first half of FY 2021.

The primary reasons for the increase was a significant increase in ticket writing and a higher collection rate on outstanding citations.

During the first half, ticket writing increased from 55,734 or 10.5% in the first half of FY 2021 to 61,603 in the first half of FY 2022, as shown in Table 8 below:

**Table 8: FY 2022 and FY 2021 6 Month Comparison of Parking Tickets Written**

| <b>Tickets</b> | <b>July</b> | <b>August</b> | <b>Sept.</b> | <b>Oct</b> | <b>Nov</b> | <b>Dec</b> | <b>Total</b> |
|----------------|-------------|---------------|--------------|------------|------------|------------|--------------|
| FY 2022        | 9,231       | 9,362         | 11,401       | 11,021     | 10,434     | 10,154     | 61,603       |
| FY 2021        | 6,810       | 7,654         | 9,093        | 12,519     | 10,357     | 9,301      | 55,734       |
| Difference     | +2,421      | +1,708        | +2,308       | -1,498     | 77         | 853        | +5,869       |
| % Difference   | +35.6%      | +22.3%        | +25.4%       | -12.0%     | -0.7%      | 9.2%       | +10.5%       |

Staff has increased the Parking Fines projection from \$3,726,450 to \$4,326,450.

**Ambulance Fees (\$301,433 more than FY 2021 Actual)**

Ambulance Fees revenue for FY 2022 totaled \$1,715,639, which was \$301,433 or 21.3% more than the \$1,414,206 received for the same period during FY 2021. This increase was primarily due to an increase in the number of transports in FY 2022. The City's Ambulance Fees vendor projects that the total number of transports for FY 2022 will be 4,500, an increase of 400 over the 4,100 transports in FY 2021.

**Interest Income (\$480,425 more than FY 2021 Actual)**

For the first half of FY 2022, interest income totaled \$3,107,784, which was \$480,425 or 18.29% more than the total of \$2,627,359 received for the same period in FY 2021. This

increase was primarily attributable to an increase in the proportion of the portfolio that was invested in long-term (i.e., one year or more) securities than in short-term securities (i.e., less than one year, which paid rates ranging from .01%-.25%), despite the decline in average interest rates. The City moved a significant portion of its short-term funds from its Fidelity money market fund, that paid a rate of .01% into other short-term alternatives, like Commercial Paper.

This increase of \$480,425 occurred despite the Fed's actions to keep short-term rates near zero, and the net interest rate earned by the City dropped from a range of 1.13%-1.17% during the first half of FY 2021, to a range of .96%-1.08% during the first half of FY 2022, as follows:

**Table 9: FY 2022 and FY 2021 6 Month Comparison of Monthly Net Interest Rate Earned**

| Interest | July  | August | Sept  | Oct   | Nov   | Dec   |
|----------|-------|--------|-------|-------|-------|-------|
| FY 2022  | .91%  | 1.03%  | 1.06% | 1.08% | 1.02% | .96%  |
| FY 2021  | 1.17% | 1.13%  | 1.14% | 1.12% | 1.16% | 1.14% |

**Transfers (\$4,812,181 more than FY 2021 Actual)**

Transfers from other funds for the first quarter of FY 2022 totaled \$13,677,462 which was \$4,812,181 or 54.28% more than the \$8,865,281 received for the same period in FY 2021. This was primarily attributable to the Transfer of \$11,484,678 from the American Rescue Plan Fund in the first half of FY 2022, to recover from the impact of the COVID-19 pandemic, compared to the Transfer of \$3,450,000 from the Stabilization Reserve Fund and the \$2,250,000 from the Catastrophic Reserve Fund during the FY 2021 first half, to mitigate the negative impact of COVID-19. In addition, there was a one-time Shelter Plus Care County grant of \$1,600,000 received during the first half of FY 2021.

**Other Revenues (\$2,355,215 less than FY 2021 Actual)**

Other Revenues consists of licenses and permits; grants; preferential parking fees; general government charges for services; public safety charges for services; health charges for services; culture and recreation charges for services; rents and royalties; and other miscellaneous revenues that are not considered major.

Other Revenues for the first half of FY 2022 totaled \$3,275,856 which was \$2,355,215 or 41.8% less than the \$5,631,071 received for the first half of FY 2021. This decrease resulted primarily from the FY 2021 receipt of \$1,500,000 from the COVID Relief Program, and \$704,000 from the East Bay Community Foundation for the Berkeley Relief Fund, to finance grant payments to assist businesses and nonprofit organizations impacted by the COVID-19 pandemic.

**General Fund Revenue Projections (FY 2022 to FY 2026)**

The following chart shows projected General Fund revenues for FY 2022 and the current projections for FY 2023 through FY 2026.

| <b>5 YEARS PROJECTED GENERAL FUND REVENUES</b> |                                       |                    |                    |                    |                    |
|------------------------------------------------|---------------------------------------|--------------------|--------------------|--------------------|--------------------|
|                                                | <b>Projected General Fund Revenue</b> |                    |                    |                    |                    |
|                                                | <b>FY 2022</b>                        | <b>FY 2023</b>     | <b>FY 2024</b>     | <b>FY 2025</b>     | <b>FY 2026</b>     |
| <b>Undesignated Revenues</b>                   |                                       |                    |                    |                    |                    |
| Secured Property Taxes                         | 71,382,000                            | 75,308,010         | 79,449,951         | 83,819,698         | 88,429,781         |
| Supplemental Taxes                             | 2,000,000                             | 2,110,000          | 2,226,050          | 2,348,483          | 2,477,649          |
| Unsecured Property Taxes                       | 3,516,000                             | 3,709,380          | 3,913,396          | 4,128,633          | 4,355,707          |
| Property Transfer Taxes                        | 12,500,000                            | 12,500,000         | 12,500,000         | 12,500,000         | 12,500,000         |
| Property Transfer Tax - Measure P              | 17,070,110                            | 11,810,614         | 12,283,038         | 12,774,360         | 13,285,334         |
| Sales Taxes                                    | 18,287,215                            | 19,827,678         | 20,660,832         | 21,528,995         | 22,433,638         |
| Soda Tax                                       | 990,210                               | 1,010,014          | 1,030,214          | 1,050,819          | 1,071,835          |
| Utility Users Taxes                            | 13,800,000                            | 14,076,000         | 14,357,520         | 14,644,670         | 14,937,564         |
| Transient Occupancy Taxes(TOT)                 | 4,300,000                             | 4,515,000          | 4,740,750          | 4,977,788          | 5,226,677          |
| Short-term Rentals                             | 900,000                               | 945,000            | 992,250            | 1,041,863          | 1,093,956          |
| Business License Taxes                         | 19,000,000                            | 19,950,000         | 20,947,500         | 21,994,875         | 23,094,619         |
| Recreational Cannabis                          | 1,800,000                             | 1,836,000          | 1,872,720          | 1,910,174          | 1,948,378          |
| Measure U1                                     | 5,120,350                             | 5,222,757          | 5,327,212          | 5,433,756          | 5,542,432          |
| Other Taxes                                    | 2,631,441                             | 2,684,070          | 2,737,751          | 2,792,506          | 2,848,356          |
| Vehicle In Lieu Taxes                          | 15,024,697                            | 15,851,055         | 16,722,863         | 17,642,621         | 18,612,965         |
| Parking Fines - Regular Collections            | 4,326,450                             | 4,542,773          | 4,769,911          | 5,008,407          | 5,258,827          |
| Parking Fines - Booting Collections            | -                                     | -                  | -                  | -                  | -                  |
| Moving Violations                              | 132,600                               | 135,252            | 137,957            | 140,716            | 143,531            |
| Ambulance Fees                                 | 3,268,275                             | 3,333,641          | 3,400,313          | 3,468,320          | 3,537,686          |
| Interest Income                                | 4,462,320                             | 4,411,120          | 4,411,120          | 4,411,120          | 4,411,120          |
| Franchise Fees                                 | 1,613,283                             | 1,645,549          | 1,678,460          | 1,712,029          | 1,746,269          |
| Other Revenues                                 | 6,729,977                             | 6,200,000          | 6,200,000          | 6,200,000          | 6,200,000          |
| Indirect cost reimbursements                   | 5,490,000                             | 5,490,000          | 5,490,000          | 5,490,000          | 5,490,000          |
| Transfers                                      | 27,354,923                            | 4,966,745          | 4,966,745          | 4,966,745          | 4,966,745          |
|                                                |                                       |                    |                    |                    |                    |
| <b>Total Undesignated Revenues</b>             | <b>241,699,851</b>                    | <b>222,080,657</b> | <b>230,816,554</b> | <b>239,986,576</b> | <b>249,613,069</b> |
|                                                |                                       |                    |                    |                    |                    |
| <b>Designated Revenues</b>                     |                                       |                    |                    |                    |                    |
| Prop. Transfer Taxes for capital improvements  | 26,937,743                            | 10,721,903         | 11,650,779         | 12,616,811         | 13,621,483         |
| <b>Total Designated Revenues</b>               | <b>26,937,743</b>                     | <b>10,721,903</b>  | <b>11,650,779</b>  | <b>12,616,811</b>  | <b>13,621,483</b>  |
|                                                |                                       |                    |                    |                    |                    |
| <b>TOTAL REVENUES AND TRANSFERS</b>            | <b>268,637,594</b>                    | <b>232,802,560</b> | <b>242,467,334</b> | <b>252,603,387</b> | <b>263,234,552</b> |

*\*Property Transfer Tax Revenues are set at a baseline amount of \$12.5 million. The Council Fiscal Policies require any excess property transfer tax revenues over the baseline to be allocated to capital improvements. Council may waive this policy as needed to balance the budget or prioritize these funds for other critical needs*

**Property Taxes**

Given the continued high collection rate, and the resilience of property values in the City, as well as a large volume of recent property sales (which bring assessed values to market value), we are projecting that annual growth will be approximately 5.5% over the next several years. The persistence of strong growth of property valuations in recent years, as well as the spike in current year sales (which bring properties assessed valuations to market value), have caused staff to increase the projected growth rate from the 3.5% that we have used in prior long-term projections.

**Sales Taxes**

We project that the immense effects of COVID-19 on sales tax revenue in FY 2021 to be largely reversed in FY 2022, with revenue levels almost back to FY 2019 levels, and project growth to then level off to approximately 4% in FY 2024. There is still some potential risk that an overall slowdown in underlying economic recovery will be reflected in reduced growth in consumer spending and sales tax collections.

**Business License Taxes**

We are projecting a 5% growth in Business License Tax revenue from heavily impacted FY 2021 levels, as economic activity recovers from the recession caused by the pandemic. Long-term projections will be adjusted as the post-pandemic economic environment becomes clearer. 2022 business license returns (for 2021 gross receipts) are just now being received, so we will know more about how revenues are trending once they are processed over the next month or so.

**Transient Occupancy Tax (“TOT”)**

With recovery of business at the City’s hotels expected to lag behind general economic recovery, and relying on industry guidance regarding predicted occupancy levels, we are currently projecting only 5% annual growth from current revenue levels. Even after taking into consideration the new downtown hotel, we will continue to monitor the major hotels’ projections of future occupancies and will adjust long-term projections as necessary.

**Utility Users Tax**

We expect UUT revenue to rise marginally from FY 2022 through FY 2024, after increasing slightly in the current year due to rate increases approved by the Public Utilities Commission. Revenues are expected to remain flat after FY 2024 and beyond after all the rate increases have been actualized.

**Transfer Tax**

Given the continued strength in property values and in sales activity, we expect Transfer Tax revenues to increase 4% per year from FY 2023 – FY 2026, calculated based on FY 2021 revenue. The spike in revenue being seen in FY 2022 is likely due to sales triggered by looming interest rate increases that have been signaled by the Federal Reserve, as well as some pent-up demand from mildly depressed sales during the

pandemic. Over the 5 years prior to the pandemic, transfer tax revenues grew 6% per year on average, but interest rate increases will probably negatively impact sales prices and volumes somewhat in the next few years. We similarly expect revenues from Measure P supplemental tax on high value property transfers to increase at the 4% rate.

### **Conclusion**

The FY 2022 Revised Projections are, as the name implies, projections. It assumes the economic performance experienced thus far in the first half of the fiscal year will continue until the end of the fiscal year on June 30, 2022. At this point in time, only certain revenues (unsecured property tax, preparty transfer tax, Measure P and TOT) totaling approximately \$1.6 million have already exceeded the adopted revenue targets. However, there is a great deal of uncertainty that lays ahead as explained in more detail below. Accordingly, the revised projections are not a guarantee that additional revenue will be received by the City. The actual revenues will be known after the completion of the FY 2022 financial audit in the latter part of calendar year 2022.

Projecting revenues many years into the future is inherently difficult to do with accuracy, as shifts in the macroeconomic climate can cause asset valuations and economic output to fluctuate in ways not able to be anticipated at the time projections are made. Staff use the best assumptions available, based on historic trends, observation of leading economic indicators, and known changes in the regulatory environment. The current environment, however, presents heightened uncertainty due to several macroeconomic factors that could impact future City revenues.

First, while the health emergency related to the COVID-19 pandemic is finally receding, and while many of the restrictions that had constrained economic activity have been or soon will be lifted, there is a possibility that the local economy has been reshaped in ways that will not return to a pre-pandemic “normal.” The increase in telecommuting that occurred in the past couple of years may not fully recede. This could have effects on spending activities of residents and employees of City businesses and institutions, as well as the desirability of certain locations for home purchases. These trends will have to be studied and analyzed and adjustments made as more data comes in.

Second, after being kept at manageable levels for many years, there are signs that inflationary pressure is driving prices higher. It is not yet clear if this is the temporary effect of disrupted supply chains caused by COVID-19 or a more long-lasting phenomenon. The Federal Reserve Board has indicated and the markets are adjusting to the fact that interest rates will be raised as the Fed’s start to tighten monetary policy to combat inflation. This will have immediate effects on economic activities in all sectors of the economy.

Third, the outbreak of war in Europe between Ukraine and Russia has the potential to dramatically reshape global markets, especially if Russian oil and natural gas are cut off

from the rest of the world. This would drive fuel and transportation prices higher, with downstream effects on the prices of most goods.

Any one or a combination of these factors could necessitate further revision of the projections presented here. Staff will continue to monitor the revenues we actually receive and changes in the economic environment, so that we may update or revise our projections if changes in our forecasts are warranted.

### General Fund Expenditures

On December 14, 2021, the City Council approved General Fund recommended rollovers, carryovers, and adjustments totaling \$25 million in the [Amendment to the FY 2022 Annual Appropriations Ordinance](#)<sup>3</sup>(AAO).

On July 29, 2021, Council adopted the FY 2022 Budget, which authorized General Fund expenditures of \$234.8 million. Subsequently, Council authorized adjustments to the adopted budget through the Annual Appropriations Ordinance as shown in the table below:

**Table 11: FY 2022 General Fund Revised Budget**

| FY 2022 Adopted Budget | Encumbered Recommended | Unencumbered Recommended | Other Adjustments | FY 2022 Revised Budget |
|------------------------|------------------------|--------------------------|-------------------|------------------------|
| \$234,754,491          | \$8,451,781            | \$4,405,774              | \$12,151,842      | \$259,763,888          |

The encumbered rollovers of \$8.5 million reflect contractual obligations entered into in FY 2021, which had not been paid as of June 30, 2021. Unencumbered carryovers of \$4.4 million are approved by Council for specific purposes that had not been completed by the end of FY 2021. Funding for these commitments is brought forward into the current fiscal year to provide for payment of these obligations. Adjustments are new allocations for projects and Council priorities as detailed in the AAO.

Included in the other adjustments of \$12.2 million are Council authorized allocations for the following items:

1. \$5,069,609 for the Mayor's Proposed Supplemental Recommendations for the Allocation of General Fund Excess Equity
2. \$3,775,783 for FY 2022 General Fund Cost of Living Adjustments
3. \$339,008 for FY 2022 General Fund PEPRA Ramp Down
4. \$439,420 for the off-street safe parking program for Recreational Vehicles at 742 Grayson Street and other shelter operational costs

<sup>3</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/12\\_Dec/Documents/2021-12-14\\_Supp\\_3\\_Reports\\_Item\\_45\\_Rev\\_CMO\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/12_Dec/Documents/2021-12-14_Supp_3_Reports_Item_45_Rev_CMO_pdf.aspx)

5. \$179,551 in Health, Housing & Community Services for COLA's, CalPERS, and bonuses that cannot be absorbed by grant funds in FY 2022 for labor contracts approved by Council

General Fund expenditures incurred by department as of December 31, 2021 are shown in the chart below along with projections regarding the expenditures likely to be incurred through June 30, 2022. The projected savings/ deficit column in the chat below is an estimate of whether the department will likely be under or over the adopted budget and their respective appropriation limit based upon the first six months of the year. The General Fund is currently projected to finish FY 2022 with a balance of \$5.4 million. However, there is some fluidity in the projection as currently most of the savings are based upon vacant positions. Projected expenditures will fluctuate as departments either (1) fill vacant positions throughout the course of the fiscal year; (2) increase overtime spending to provide services despite vacancies and/or (3) spend more on consultants and other professional services (“non-personnel costs”) to mitigate vacant staff positions.

| FY 2022 MID-YEAR GENERAL FUND EXPENDITURES (AS OF DECEMBER 31, 2021)                                                              |                    |                    |                       |                           |                                                   |                                   |                                       |                                |                             |
|-----------------------------------------------------------------------------------------------------------------------------------|--------------------|--------------------|-----------------------|---------------------------|---------------------------------------------------|-----------------------------------|---------------------------------------|--------------------------------|-----------------------------|
| DEPARTMENT                                                                                                                        | FY 2022 ADOPTED    | FY 2022 REVISED*   | YEAR-TO-DATE EXPENDED | YEAR-TO-DATE ENCUMBRANCES | AVAILABLE BUDGET (YEAR-TO-DATE LESS ENCUMBRANCES) | PERCENT OF PERSONNEL BUDGET SPENT | PERCENT OF NON-PERSONNEL BUDGET SPENT | FY 2022 PROJECTED EXPENDITURES | PROJECTED BALANCE/(DEFICIT) |
| MAYOR & COUNCIL                                                                                                                   | 3,096,559          | 3,828,949          | 1,563,198             | 49,091                    | 2,216,660                                         | 42%                               | 46%                                   | 3,828,949                      | (0)                         |
| CITY AUDITOR                                                                                                                      | 2,705,379          | 2,712,758          | 1,216,853             | 7,230                     | 1,488,675                                         | 45%                               | 50%                                   | 2,503,615                      | 209,143                     |
| POLICE ACCOUNTABILITY                                                                                                             | 1,114,235          | 1,149,235          | 382,012               | 33,712                    | 733,511                                           | 36%                               | 38%                                   | 883,925                        | 265,310                     |
| CITY MANAGER                                                                                                                      | 10,912,354         | 12,811,793         | 6,119,195             | 718,409                   | 5,974,189                                         | 45%                               | 70%                                   | 12,344,803                     | 466,990                     |
| CITY ATTORNEY                                                                                                                     | 3,434,164          | 3,711,854          | 1,185,801             | 25,752                    | 2,500,301                                         | 33%                               | 30%                                   | 2,502,657                      | 1,209,197                   |
| CITY CLERK                                                                                                                        | 2,396,737          | 2,762,298          | 1,224,689             | 200,851                   | 1,336,759                                         | 45%                               | 60%                                   | 2,653,075                      | 109,223                     |
| FINANCE                                                                                                                           | 7,041,962          | 8,908,286          | 3,228,885             | 1,164,527                 | 4,514,874                                         | 42%                               | 63%                                   | 8,226,859                      | 681,427                     |
| HUMAN RESOURCES                                                                                                                   | 2,407,724          | 2,594,692          | 1,116,086             | 99,283                    | 1,379,324                                         | 46%                               | 51%                                   | 2,466,850                      | 127,842                     |
| INFORMATION TECHNOLOGY                                                                                                            | 1,526,760          | 2,362,181          | 877,061               | 793,040                   | 692,080                                           | 0%                                | 71%                                   | 2,361,061                      | 1,120                       |
| HEALTH HOUSING & COMMUNITY SERVICES                                                                                               | 23,455,690         | 32,345,797         | 10,898,278            | 7,182,622                 | 14,264,898                                        | 38%                               | 68%                                   | 28,540,438                     | 3,805,359                   |
| PARKS RECREATION & WATERFRONT                                                                                                     | 7,675,564          | 10,059,050         | 3,887,713             | 767,195                   | 5,404,142                                         | 44%                               | 49%                                   | 10,059,050                     | 0                           |
| PLANNING & DEVELOPMENT                                                                                                            | 2,325,367          | 2,950,953          | 1,238,880             | 60,009                    | 1,652,064                                         | 45%                               | 42%                                   | 2,950,953                      | 0                           |
| PUBLIC WORKS                                                                                                                      | 4,742,625          | 10,296,492         | 2,781,682             | 1,239,766                 | 6,050,044                                         | 37%                               | 42%                                   | 8,438,147                      | 1,858,345                   |
| POLICE                                                                                                                            | 73,228,172         | 74,257,431         | 37,451,561            | 1,060,381                 | 35,745,489                                        | 52%                               | 55%                                   | 75,587,892                     | (1,330,461)                 |
| FIRE & EMERGENCY SERVICES                                                                                                         | 37,021,939         | 42,244,587         | 20,756,846            | 4,886,856                 | 16,600,885                                        | 54%                               | 80%                                   | 44,294,587                     | (2,050,000)                 |
| NON-DEPARTMENTAL                                                                                                                  | 51,669,260         | 38,018,841         | 21,022,210            | 194,772                   | 16,801,858                                        | 41%                               | 56%                                   | 38,018,841                     | -                           |
| <b>GRAND TOTAL</b>                                                                                                                | <b>234,754,491</b> | <b>251,015,198</b> | <b>114,950,950</b>    | <b>18,483,496</b>         | <b>117,355,753</b>                                | <b>49%</b>                        | <b>60%</b>                            | <b>245,661,702</b>             | <b>5,353,496</b>            |
| <i>*FY 2022 Revised does not reflect as of December 31, 2021 all Council approved allocations included in the FY 2021 AAO #1.</i> |                    |                    |                       |                           |                                                   |                                   |                                       |                                |                             |

With 50 percent of the fiscal year elapsed, most departments are tracking under 50 percent spent in personnel due to vacant positions. Conversely, there is an increased spending in non-personnel for some departments related to the use of professional

services to provide services despite vacancies. Some departments that are over 50 percent in non-personnel expenditures is related to encumbrances, meaning that departments have set aside funds to meet contractual obligations entered into in FY 2022, for services that may not be completed rendered by June 30, 2022.

Explanations for significant projected savings and overages are as follows:

- City Attorney (\$1,209,197): Projected savings resulting from several vacant positions that have occurred during the year and that may not be fully filled by the end of the fiscal year.
- Health, Housing & Community Services (\$3,805,359): Projected savings due to vacancies and staff redeployed to COVID-19 activities, which are funded by grants and other revenues rather than the General Fund.
- Public Works (\$1,858,345): Projected savings is tied to General Fund project funds that will not be fully spent by the end of FY 2022. These funds will be carried over to FY 2023.
- Police (-\$1,330,461): The projected overage in the Police Department is due several factors, including the use of overtime to address staffing shortages.
- Fire (-\$2,050,000): Fire is projected to finish FY 2022 over budget by \$2 million. The department has incurred COVID-19 impacts on staffing levels. In addition, the Department is still recovering from the nine deferred positions that were part of the hiring freeze and has experienced challenges in recruiting and retaining qualified firefighter/paramedics.
- In addition, the City Auditor, the Office of the Director of Police Accountability, the City Manager's Office, the City Clerk, the Finance Department, and Human Resources are expected to finish the year under budget, largely due to savings attributed to vacant positions. The project surplus for these departments combined is \$1,859,935.

### **Projected General Fund Budget Summary**

Based on the General Fund revenue and expenditure projections that have been provided above, the following chart provides a projected FY 2022 ending fund balance for the General Fund:



|                                               |                                        |                       |                       |                            |               |
|-----------------------------------------------|----------------------------------------|-----------------------|-----------------------|----------------------------|---------------|
| FY 2022 Beginning General Fund Balance        |                                        |                       |                       |                            | \$ 36,838,797 |
| <b>FY 2022 Revenues and Expenditures</b>      |                                        |                       |                       |                            |               |
|                                               |                                        | <b>Adopted</b>        | <b>Actual YTD</b>     | <b>Revised Projections</b> |               |
| <b>Revenues</b>                               |                                        |                       |                       |                            |               |
|                                               | Property Taxes and Vehicle In-Lieu     | 91,798,278            | 47,924,601            | 92,754,138                 |               |
|                                               | Real Estate Transfer Taxes             | 29,500,000            | 30,336,965            | 56,507,853                 |               |
|                                               | Sales Taxes                            | 19,277,425            | 10,053,313            | 19,277,425                 |               |
|                                               | Utility Users Taxes and Franchise Fees | 14,613,283            | 6,884,510             | 15,413,283                 |               |
|                                               | Hotel and STR Taxes                    | 2,803,000             | 3,057,880             | 5,200,000                  |               |
|                                               | Business License Taxes                 | 25,262,235            | 2,147,773             | 25,920,350                 |               |
|                                               | Fines and Fees                         | 7,013,052             | 4,250,465             | 7,727,325                  |               |
|                                               | Interest and Other Revenue             | 18,444,011            | 9,906,087             | 18,482,297                 |               |
|                                               | Transfers from Other Funds             | 27,354,923            | 13,677,462            | 27,354,923                 |               |
|                                               | <b>Total Revenues</b>                  | <b>\$ 236,066,207</b> | <b>\$ 128,239,056</b> | <b>\$ 268,637,594</b>      |               |
| <b>Expenditures</b>                           |                                        |                       |                       |                            |               |
|                                               | <b>Total Personnel Costs</b>           | <b>148,035,070</b>    | <b>73,355,772</b>     | <b>149,898,761</b>         |               |
|                                               | <b>Total Non-Personnel Costs</b>       | <b>86,719,421</b>     | <b>40,626,797</b>     | <b>95,762,940</b>          |               |
|                                               | <b>Total Expenditures</b>              | <b>\$ 234,754,491</b> | <b>\$ 113,982,570</b> | <b>\$ 245,661,701</b>      |               |
|                                               | <b>Net Change</b>                      | <b>\$ 1,311,716</b>   | <b>\$ 14,256,486</b>  | <b>\$ 22,975,893</b>       |               |
| Projected FY 2022 Ending General Fund Balance |                                        |                       |                       |                            | \$ 59,814,690 |

**It is important to emphasize two things in the above table: (1) that the Transfers from other funds of \$27,354,923 includes \$11,484,678 that was transferred from the American Rescue Plan Fund and (2) that the revenue and expenditure projections provided are the best estimates staff has at this time for how the General Fund is projected to end FY 2022. Between now and the end of the year, a number of assumptions could change that will impact these projections.**

Staff is carefully monitoring the FY 2022 General Fund budget to make sure the City stays within budget and is also reviewing and analyzing data to make sure that savings realized as part of the adopted budget deferrals for FY 2022 are met by the end of the year.

Staff is also in the process of developing a new 5 Year Forecast that combines both the revenue and expenditure projections that will easily summarize the General Fund

budget status for the upcoming FY 2023 & FY 2024 Biennial Budget and the following FY 2025 & FY 2026 Biennial Budget.

### All Funds Expenditures

The General Fund comprises 30.5 percent of the total adjusted budget. The rest of the budget consists of various Special Funds. Special Funds are collected for a specific purpose; therefore, the projected balances are not considered to be discretionary and available to be re-allocated toward other programs, projects and services. Only costs associated with the Special Fund activity may be charged to a Special Fund.

Included in the FY 2022 Mid-Year All Fund Expenditures by Department chart below are both the General Fund expenditures to date and the Special Funds expenditures to date. On an All Funds basis, the City is tracking under budget as of December 31, 2021 as can be seen in the following chart:

| FY 2022 MID-YEAR ALL FUNDS EXPENDITURES (AS OF DECEMBER 31, 2021) |                    |                    |                    |                    |                    |                                 |                                |                             |
|-------------------------------------------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|---------------------------------|--------------------------------|-----------------------------|
| DEPARTMENT                                                        | FY 2022 ADOPTED    | FY 2022 REVISED*   | YTD EXPENDED       | ENCUMBRANCES       | AVAILABLE BUDGET   | PERCENT OF BUDGET SPENT TO DATE | FY 2022 PROJECTED EXPENDITURES | PROJECTED BALANCE/(DEFICIT) |
| MAYOR & COUNCIL                                                   | 3,096,559          | 3,836,449          | 1,563,198          | 49,091             | 2,224,160          | 42%                             | 3,836,449                      | 0                           |
| CITY AUDITOR                                                      | 2,805,883          | 2,813,262          | 1,230,151          | 7,230              | 1,575,881          | 44%                             | 2,530,891                      | 282,371                     |
| RENT BOARD                                                        | 6,825,535          | 7,502,298          | 2,520,539          | 1,214,837          | 3,766,922          | 50%                             | 7,502,298                      | 0                           |
| POLICE ACCOUNTABILITY                                             | 1,114,235          | 1,149,235          | 382,012            | 33,712             | 733,511            | 36%                             | 883,925                        | 265,310                     |
| CITY MANAGER                                                      | 13,852,717         | 19,653,847         | 8,047,478          | 1,311,152          | 10,295,216         | 48%                             | 18,900,613                     | 753,234                     |
| LIBRARY                                                           | 25,566,341         | 25,680,866         | 8,589,625          | 2,177,725          | 14,913,515         | 42%                             | 20,325,974                     | 5,354,892                   |
| CITY ATTORNEY                                                     | 7,278,096          | 7,924,642          | 2,520,476          | 537,108            | 4,867,058          | 39%                             | 6,643,110                      | 1,281,532                   |
| CITY CLERK                                                        | 2,901,739          | 3,267,300          | 1,269,182          | 200,851            | 1,797,268          | 45%                             | 3,160,302                      | 106,998                     |
| FINANCE                                                           | 9,431,102          | 11,319,338         | 4,101,165          | 1,234,332          | 5,983,841          | 47%                             | 10,495,041                     | 824,297                     |
| HUMAN RESOURCES                                                   | 4,438,053          | 4,651,435          | 1,797,375          | 125,697            | 2,728,363          | 41%                             | 4,030,855                      | 620,580                     |
| INFORMATION TECHNOLOGY                                            | 20,423,888         | 25,758,933         | 7,533,395          | 5,153,106          | 13,072,432         | 49%                             | 24,438,828                     | 1,320,105                   |
| HEALTH HOUSING & COMMUNITY SERVICES                               | 84,514,926         | 129,182,820        | 37,250,059         | 31,234,274         | 60,698,488         | 53%                             | 110,457,573                    | 18,725,247                  |
| PARKS RECREATION & WATERFRONT                                     | 52,979,556         | 88,900,408         | 30,323,588         | 24,547,087         | 34,029,734         | 62%                             | 83,434,951                     | 5,465,457                   |
| PLANNING & DEVELOPMENT                                            | 25,252,729         | 27,774,725         | 10,647,422         | 1,247,297          | 15,880,006         | 43%                             | 27,774,725                     | 0                           |
| PUBLIC WORKS                                                      | 147,438,656        | 229,036,144        | 60,612,570         | 52,028,114         | 114,444,862        | 49%                             | 194,459,479                    | 34,576,665                  |
| POLICE                                                            | 77,807,443         | 80,581,579         | 39,464,967         | 1,713,694          | 39,402,918         | 51%                             | 81,827,004                     | -1,245,425                  |
| FIRE & EMERGENCY SERVICES                                         | 60,351,430         | 66,013,514         | 26,260,403         | 8,261,635          | 31,491,476         | 52%                             | 61,847,423                     | 4,166,091                   |
| NON-DEPARTMENTAL                                                  | 127,522,399        | 109,912,191        | 56,631,533         | 737,440            | 52,772,418         | 52%                             | 109,912,191                    | 0                           |
| <b>GRAND TOTAL</b>                                                | <b>673,601,287</b> | <b>844,958,987</b> | <b>300,745,138</b> | <b>131,814,381</b> | <b>410,678,071</b> | <b>51%</b>                      | <b>772,461,632</b>             | <b>72,497,356</b>           |

\*FY 2022 Revised does not reflect as of December 31, 2021 all Council approved allocations included in the FY 2021 AAO #1.

On All Funds basis, the City is projected to finish FY 2022 with a balance of \$72.5 million.

Health, Housing, & Community Services, Parks, Recreation & Waterfront, and Public Works are expected to finish FY 2022 with significant balances that are tied to both vacancies and projects and grants started in FY 2021 that are not expected to be

finished by the end of the fiscal year. These departments also appropriated new grant funds that support programs and services as well as special funds for capital improvements.

Details of these carryover requests can be found in the [December 14, 2021, \(AAO\)](#)<sup>4</sup> discussed earlier in this report.

### **Next Steps:**

Staff is currently in the process of preparing the FY 2023 & FY 2024 Budget, which will be presented to Council on May 10, 2022. We are also in the process of developing a new 5 Year Forecast that will summarize the General Fund budget status for the upcoming FY 2023 & FY 2024 Biennial Budget and the following FY 2025 & FY 2026 Biennial Budget.

Final FY 2022 year-end General Fund revenues and expenditures information will be included in the “**FY 2022 Year-End Report and FY 2023 First Quarter Update**” that will be presented to Council in November 2022.

The FY 2022 Mid-Year Budget Update is a Strategic Plan Priority, advancing our goal to provide an efficient and financially-healthy City government.

### ENVIRONMENTAL SUSTAINABILITY

Actions included in the budget will be developed and implemented in a manner that is consistent with the City’s environmental sustainability goals and requirements.

### CONTACT PERSON

Sharon Friedrichsen, Budget Manager, City Manager’s Office, 981-7000  
Rama Murty, Senior Management Analyst, City Manager’s Office, 981-7000  
Henry Oyekanmi, Finance Director, Department of Finance, 981-7300

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<sup>4</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/12\\_Dec/Documents/2021-12-14\\_Supp\\_3\\_Reports\\_Item\\_45\\_Rev\\_CMO\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/12_Dec/Documents/2021-12-14_Supp_3_Reports_Item_45_Rev_CMO_pdf.aspx)





Office of the City Manager

INFORMATION CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Alene Pearson, Acting Director, Planning and Development Department  
 Subject: LPO NOD: 1940 Hearst Avenue/#LMIN2021-0003

INTRODUCTION

The attached Notice of Decision (NOD) for the Landmarks Designation is presented to the Mayor and City Council pursuant to Berkeley Municipal Code/Landmarks Preservation Ordinance (BMC/LPO) Section 3.24.160, which requires that “a copy of the Notice of Decision shall be filed with the City Clerk and the City Clerk shall present said copy to the City Council at its next regular meeting.”

CURRENT SITUATION AND ITS EFFECTS

The Landmark Preservation Commission (LPC/Commission) has designated the subject property as a City of Berkeley Landmark. This action is subject to a 15-day appeal period, which began on April 25, 2022.

BACKGROUND

BMC/LPO Section 3.24.190 allows the Council to review any action of the Commission in granting or denying Landmark, Structure of Merit or Historic District status. In order for Council to review the decision on its merits, Council must appeal the NOD. To do so, a Councilmember must move this Information Item to Action and then move to “certify” the decision. Such action must be taken within 15 days from the mailing of the NOD or by May 10, 2022. Such certification to Council shall stay all proceedings in the same manner as the filing of an appeal.

If the Council chooses to appeal the action of the Commission, then a public hearing will be set within 25 days pursuant to BMC/LPO Section 3.24.300. The Council must then rule on the designation within 30 days from the date that the public hearing is opened or the decision of the Commission is automatically deemed affirmed.

Unless the Council wishes to review the determination of the Commission and make its own decision, the attached NOD is deemed received and filed.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Landmark designation provides opportunities for the adaptive re-use and rehabilitation of historic resources within the City. The rehabilitation of these resources, rather than

their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers.

POSSIBLE FUTURE ACTION

The Council may choose to certify or appeal the decision to grant designation status, setting the matter for public hearing at a future date.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no known fiscal impacts associated with this designation action.

CONTACT PERSON

Fatema Crane, Senior Planner, Planning and Development Department, 510-981-7410

Attachments:

1: Notice of Decision – #LMIN2021-0003, 1940 Hearst Avenue



L A N D M A R K S  
P R E S E R V A T I O N  
C O M M I S S I O N  
N O T I C E O F D E C I S I O N

**DATE OF BOARD DECISION: March 3, 2022**  
**DATE NOTICE MAILED: April 25, 2022**  
**APPEAL PERIOD EXPIRATION: May 10, 2022**  
**EFFECTIVE DATE OF PERMIT (Barring Appeal or Certification): May 11, 2022<sup>1</sup>**

## **1940 Hearst Avenue**

### **James T. Stocker-Loni Ding House**

**Landmark application (#LMIN2021-0003) for consideration of City Landmark or Structure of Merit designation status for a residential building constructed in 1901 – APN 057-2056-026-00.**

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, **APPROVED** the following designation:

- City of Berkeley Landmark, pursuant to Berkeley Municipal Code Section 3.24.110(A)

**INITIATED BY:** May Ying Welsh

**ZONING DISTRICT:** Restricted Multiple-Family Residential (R-2A)

**ENVIRONMENTAL REVIEW STATUS:** Categorically exempt pursuant to Section 15061(b)(3) of the CEQA Guidelines -- Review for Exemptions.

**The application materials for this project are available online at:**  
<http://www.cityofberkeley.info/zoningapplications>

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<sup>1</sup> Pursuant to BMC Section 23B.32.090, the City Council may “certify” any decision of the LPC for review, which has the same effect as an appeal. In most cases, the Council must certify the LPC decision during the 14-day appeal period. However, pursuant to BMC Section 1.04.070, if any portion of the appeal period falls within a Council recess, the deadline for Council certification is suspended until the first Council meeting after the recess, plus the number of days of the appeal period that occurred during the recess, minus one day. If there is no appeal or certification, the Use Permit becomes effective the day after the certification deadline has passed.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION

Landmark designation status - #LMIN2021-0003

1940 Hearst Avenue – James T. Stocker-Loni Ding House

May 10, 2022

Page 2 of 4

**FINDINGS, CONDITIONS AND LANDMARK APPLICATION ARE ATTACHED TO THIS NOTICE**

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**COMMISSION VOTE: 7-0-0-2**

**YES:** ADAMS, CRANDALL, ENCHILL, FINACOM, LEUSCHNER, MONTGOMERY, SCHWARTZ

**NO:** None

**ABSTAIN:** None

**ABSENT:** JOHNSON, TWU

**TO APPEAL THIS DECISION (see Section 3.24.300 of the Berkeley Municipal Code):**

To appeal a decision of the Landmarks Preservation Commission to the City Council you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the City Clerk, located at 2180 Milvia Street, 1<sup>st</sup> Floor, Berkeley; or by facsimile to (510) 981-6901. The City Clerk's telephone number is (510) 981-6900.
  - a. Pursuant to BMC Section 3.24.300.A, an appeal may be taken to the City Council by the application of the owners of the property or their authorized agents, or by the application of at least fifty residents of the City aggrieved or affected by any determination of the Commission made under the provisions of Chapter 3.24.
2. The appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).
3. Submit the required fee (checks and money orders must be payable to 'City of Berkeley'):
  - a. The basic fee for persons other than the applicant is \$500. This fee may be reduced to \$100 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
  - b. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is \$500, which may not be reduced.
  - c. The fee for all appeals by Applicants is \$2500.

If no appeal is received, the landmark designation will be final on the first business day following expiration of the appeal period.



LANDMARKS PRESERVATION COMMISSION

NOTICE OF DECISION

Landmark designation status - #LMIN2021-0003

1940 Hearst Avenue – James T. Stocker-Loni Ding House

May 10, 2022

Page 3 of 4

**NOTICE CONCERNING YOUR LEGAL RIGHTS:**

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If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Landmarks Preservation Commission at, or prior to, the public hearing.
2. You must appeal to the City Council within fifteen (15) days after the Notice of Decision of the action of the Landmarks Preservation Commission is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a “taking” of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
  - A. That this belief is a basis of your appeal.
  - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
  - C. All evidence and argument in support of your belief that the decision or condition constitutes a “taking” as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION

Landmark designation status - #LMIN2021-0003

1940 Hearst Avenue – James T. Stocker-Loni Ding House

May 10, 2022

Page 4 of 4

**PUBLIC COMMENT:**

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Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

**FURTHER INFORMATION:**

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Questions about the project should be directed to the project planner, Allison Riemer, at (510) 981-7433 or [ariemer@cityofberkeley.info](mailto:ariemer@cityofberkeley.info) or [lpc@cityofberkeley.info](mailto:lpc@cityofberkeley.info)

**ATTACHMENTS:**

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1. Findings and Conditions
2. Landmark application



**ATTEST:** \_\_\_\_\_  
Fatema Crane, Secretary  
Landmarks Preservation Commission

Cc: City Clerk  
Property Owner/Applicant: May Ying Welsh, 1940 Hearst Ave., Berkeley, CA 94709

## ATTACHMENT 1, PART 2

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### FINDINGS

MARCH 3, 2022

## 1940 Hearst Avenue – James T. Stocker-Loni Ding House

**Landmark application #LMIN2021-0003 for the consideration of City Landmark designation status for a residential building constructed in 1901 – APN 057-2056-026-00**

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#### PROJECT DESCRIPTION

City Landmark designation of the property at 1940 Hearst Avenue, James T. Stocker-Loni Ding House.

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#### CEQA FINDINGS

1. The project is found to be exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15061.b.3 of the CEQA Guidelines (activities that can be seen with certainty to have no significant effect on the environment).

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#### LANDMARK PRESERVATION ORDINANCE FINDINGS

2. Pursuant to BMC Section 3.24.110(A)(1)(c) of the Landmarks Preservation Ordinance, the Commission finds that the subject main building exhibits *architectural merit* as part of a neighborhood fabric wherein it is one of a few extant buildings on its block from the era prior to the construction of BART in the early 1970s. The building retains integrity of design primarily throughout its street-facing facade, in spite of exterior alterations on the side and rear elevations; it retains integrity of location, materials, feeling, association and workmanship. Through these qualities, it conveys its significant associations with its period of construction (1901), as well as the First Bay Tradition.
3. Pursuant to BMC Section 3.24.110(A)(2) of the LPO, the Commission further finds that the subject building exhibits *cultural value* through its association with long-time resident Loni Ding (1931-2010), who was an award-winning filmmaker, producer, editor, teacher, social justice activist, and mentor; her work resulted in greater exposure and representation for Asians and Asian Americans in broadcast media as both the subjects and producers of content. She invited UC Berkeley students to her home, which also served as a production studio, and a repository for tapes, and archives used in the development of her films.

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**FEATURES TO BE PRESERVED**

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1. This City Landmark designation shall apply to the subject property and the following distinguishing features of the main building shall be preserved:

- Rectangular footprint
- Three stories
- Side-gabled roof with gable-end returns and closed eaves
- Hip-roofed north-facing dormer with twin double-hung windows
- Wood-shingled exterior walls
- Symmetrical north façade
- Two gabled north-facing rooflets with deep-framed, shingled pediments
- Two second-story boxed windows under the gabled rooflets
- Flaring second- and first-story walls on north, east, and west façades
- Second-story overhang on north façade
- Beadboard soffits under boxed windows and second-story overhang
- Heavy wooden molding trim edging the skirt and soffits
- Elaborate scrolled wooden brackets under second-story overhang at either end of the north façade
- Scrolled wooden corbels at either end of soffits under boxed windows
- Recessed entrance porch supported by a battered column at the northeast corner
- Centrally located entrance door within the porch
- Shingled porch walls, beadboard ceiling, and floor clad in floorboards
- North- and east-facing porch openings outlined in frames with turned upper corners
- Three-faceted window bay on north façade, with a double-hung, wood-framed window set in each facet
- Double-hung, wood-framed windows on north, east, and west façades
- Molded wood window casings and sill trims
- Two semi-glazed, exterior wooden doors on upper levels of east façade
- Wooden exterior staircase on east façade
- Wooden molding strip under the wall skirt and above the foundation

CITY OF BERKELEY  
Ordinance #4694 N.S.  
LANDMARK APPLICATION

James T. Stocker–Loni Ding House  
1940 Hearst Avenue  
Berkeley, CA 94709

Land Use Planning  
Received  
November 18, 2021



Figure 1. Street façade, June 2021

1. **Street Address:** 1940 Hearst Avenue  
**County:** Alameda      **City:** Berkeley      **ZIP:** 94709
2. **Assessor's Parcel Number:** 57-2056-26 (Sea View Park, Block 3, Lot 2)  
**Dimensions:** 45 feet x 100 feet  
**Cross Streets:** Bonita Avenue & Milvia Street
3. **Is property on the State Historic Resource Inventory?** No  
**Is property on the Berkeley Urban Conservation Survey?** Yes  
**Form #:** 21465
4. **Application for Landmark Includes:**
  - a. **Building(s):** Yes    **Garden:** Yes    **Other Feature(s):**
  - b. **Landscape or Open Space:** Yes
  - c. **Historic Site:** No
  - d. **District:** No
  - e. **Other:** Entire property
5. **Historic Name:** Stocker House  
**Commonly Known Name:** Loni Ding House
6. **Date of Construction:** 1901    **Factual:** Yes  
**Source of Information:** *Berkeley Daily Gazette*, 11 Apr. 1901;  
1902 property assessment record
7. **Designer:** Unknown; probably James T. Stocker, Jr.
8. **Builder:** James Thomas Stocker, Jr.
9. **Style:** Arts & Crafts with Colonial Revival elements
10. **Original Owners:** James T. & Belle A. Stocker  
**Original Use:** Single-family residence
11. **Present Owners:**  
May Ying Welsh & Elias Welsh  
1940 Hearst Avenue  
Berkeley, CA 94709  
  
**Present Occupants:** Owners & tenants
12. **Present Use:** Residential (three flats)  
**Current Zoning:** R-2A    **Adjacent Property Zoning:** R-2A
13. **Present Condition of Property:**  
**Exterior:** Excellent    **Interior:** Good    **Grounds:** Good  
  
**Has the property's exterior been altered?** Yes, front door, rear façade & exterior stairs on east side. The house was recently restored.

## Executive Summary

The James T. Stocker–Loni Ding House is a shingle-clad dwelling built in 1901 by carpenter James T. Stocker for his own family residence. It is the only house of its type in the Sea View Tract and possibly in all of Berkeley, with a rarely encountered hybrid style that crosses Arts & Crafts with Colonial Revival elements. Among the distinguishing features of the Stocker-Ding House are a side-gabled roof with gable-end returns; twin gable rooflets over second-story boxed windows; elaborate scrolled wooden brackets under flaring overhangs; scrolled corbels under the boxed windows; and beadboard soffits edged with heavy molding. The street façade of the Stocker-Ding House retains virtually all its original character-defining features.

The Stocker-Ding House is a survivor on a block that has lost 70% of its historic fabric and that faces blocks to the north and south that lost, respectively, 50% and 100% of their historic fabric.

The Stocker-Ding House was the home and workplace of the late multiple-award-winning filmmaker, acclaimed social documentarian, and university instructor Loni Ding (1931–2010), who acquired it in 1965. The house is still owned and inhabited by Ms. Ding’s immediate family and has recently undergone extensive rehabilitation and restoration that preserve its historic appearance and character.

## 14. Description

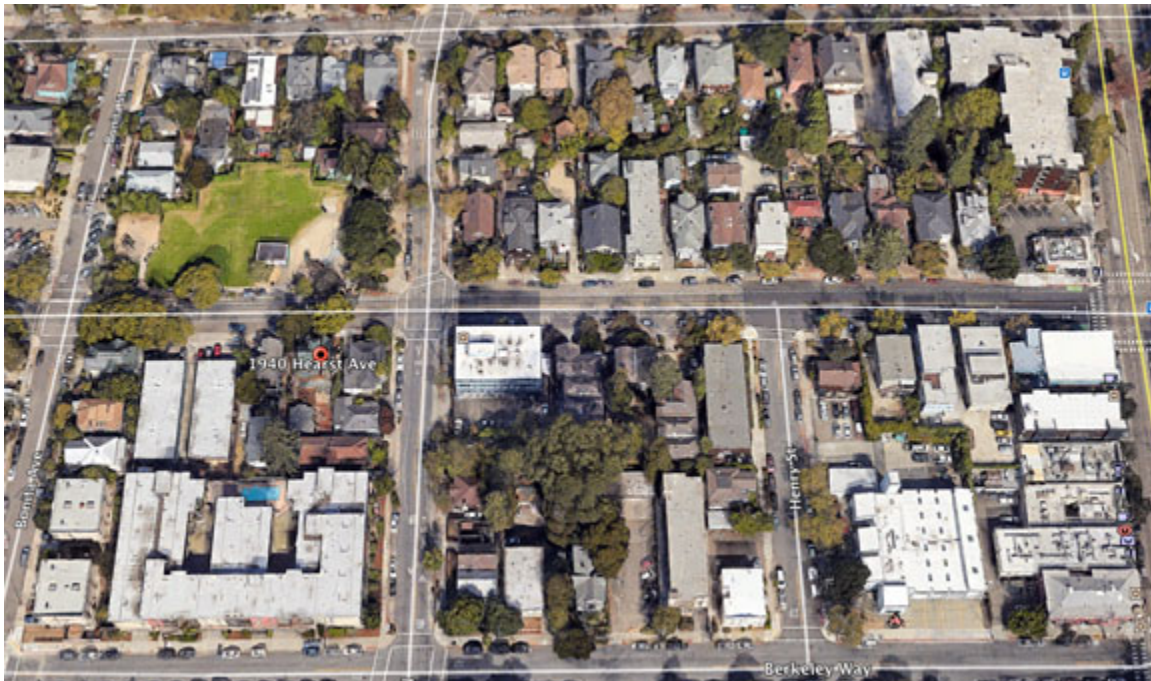


Figure 2. The Sea View Park tract (Google Earth)

The Stocker-Ding House is a wood-framed, two-and-a-half-story dwelling, converted into three flats circa 1920 or a little earlier. It is situated in the Sea View Park tract, a five-block subdivision in North-Central Berkeley. The house is

located on the historic Lot 2 (now Lot 26) in Block 3 (Assessor's Block 2056) of the tract, within two short city blocks of Shattuck Avenue, University Avenue, and Martin Luther King, Jr., Way. The lion's share of the block is occupied by mid-20<sup>th</sup>-century apartment buildings, with two enclaves of older houses at the northeast and northwest corners. All but three of the older houses have been converted to apartments and contain two or three units each.

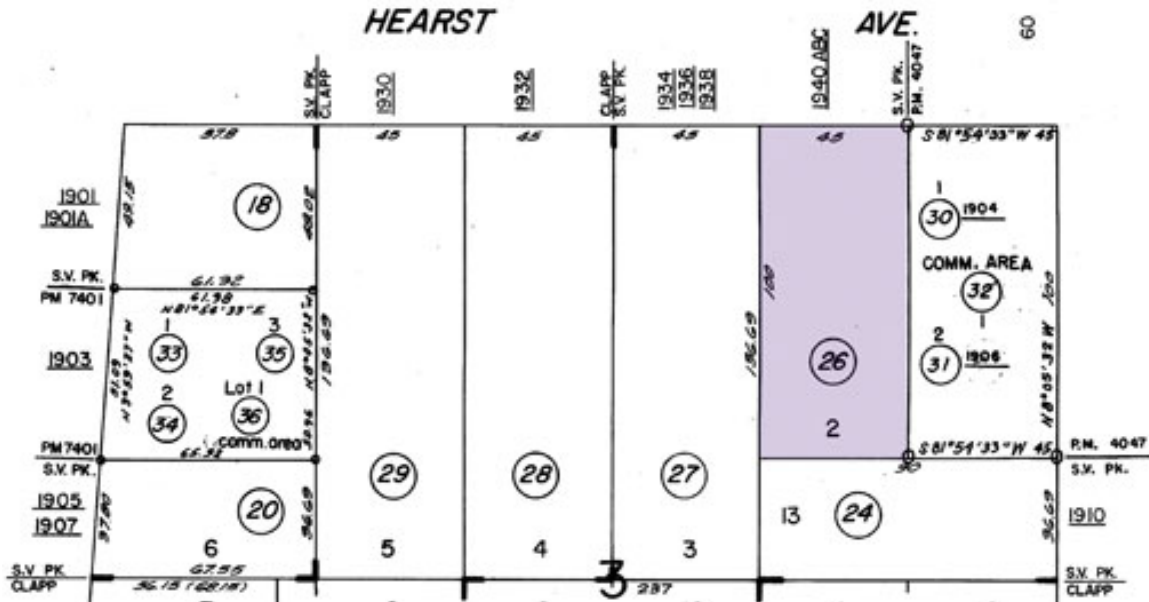


Figure 3. Northern half of Block 3, Sea View Park (Assessor's Map 57-2056)

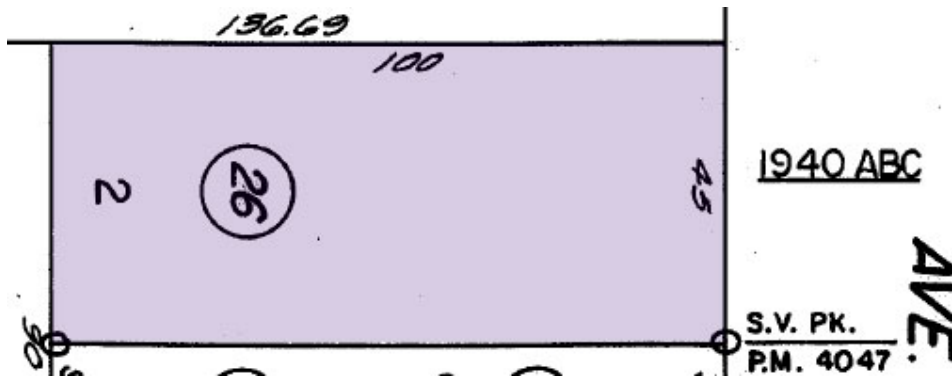


Figure 4. The subject property on Assessor's Map 57-2056

### Architectural Style

When the Stocker-Ding House was built in 1901, Colonial Revival was the prevailing style in East Bay home construction. During the same period, Bernard Maybeck, Charles Keeler, and members of the Hillside Club were promoting the Arts & Crafts style, imported from England and evolved here into the variant known as the First Bay Region Tradition. Its early practitioners were Ernest



Coxhead, Willis Polk, Albert C. Schweinfurth, and Maybeck.<sup>1</sup> Especially on the Northside, artistic brown-shingle houses proliferated, becoming synonymous with Berkeley domestic architecture.

As a carpenter, James Thomas Stocker, Jr. would have been familiar with the popular but conventional Colonial Revival style; yet building the house for himself and his wife-to-be, he may have wanted it to be more distinctive than the average “Classic Box.”

The June 1899 issue of *The House Beautiful* magazine carried an article by Hillside Club founder Margaret “Madge” Robinson (later Mrs. Oscar Maurer), titled “The Hillside Problem.”<sup>2</sup> In it, Ms. Robinson offered solutions to building on a hillside, with three illustrations as examples.

Two of the examples included unusually large twin gables, and the second (Fig. 6) also featured a side-gabled roof. This house, captioned “The Broad, Pleasant Face, One’s First Welcome,” appears to be a loose interpretation of Willis Polk’s double house, built in 1892 for Polk’s family and Mrs. Virgil Williams at 1013–1019 Vallejo Street in San Francisco.<sup>3</sup>

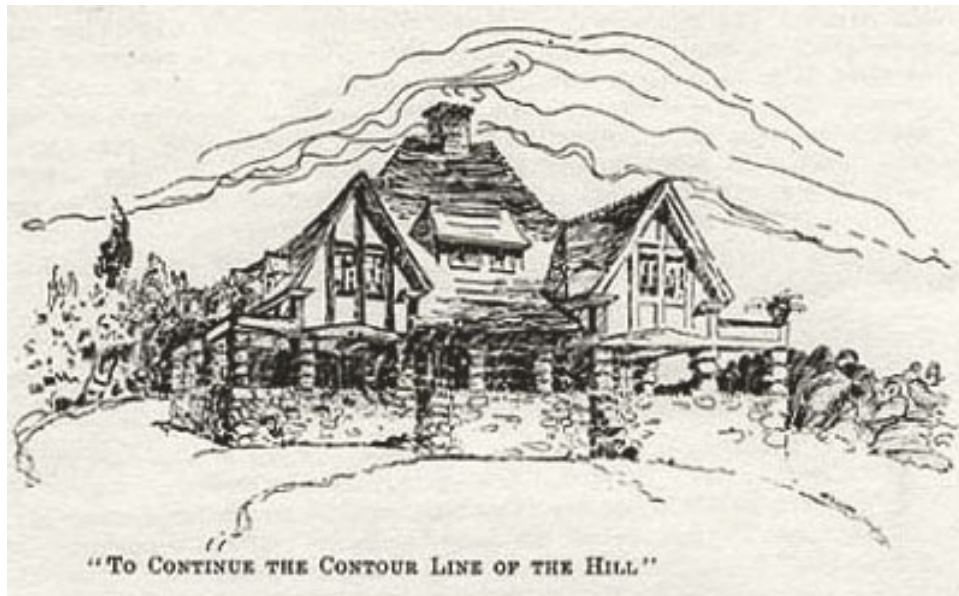


Figure 5. Illustration from “The Hillside Problem” (*House Beautiful*, June 1899)

<sup>1</sup> Richard Longstreth. *On the Edge of the World: Four Architects in San Francisco at the Turn of the Century*. Berkeley: University of California Press, 1998.

<sup>2</sup> Daniella Thompson. “The Hillside Problem: Madge Robinson, architectural activist.” [http://berkeleyheritage.com/berkeley\\_landmarks/hillside\\_problem.html](http://berkeleyheritage.com/berkeley_landmarks/hillside_problem.html)

<sup>3</sup> Polk-Williams House, 1013 Vallejo Street, San Francisco. Library of Congress. <https://www.loc.gov/item/ca1393/>



Figure 6. A possible inspiration for the Stocker House. Illustration from "The Hillside Problem" (*House Beautiful*, June 1899)

Such published designs could have inspired James Stocker to build his house along Arts & Crafts lines. However, while doing so, he also included a typical Colonial Revival bay window on the ground floor of the front façade, albeit positioned in the center rather than on one side. All the other windows also are more typical of Colonial Revival than of Arts & Crafts. The result is an unusual hybrid that is quite rare in Berkeley.

### Massing, Cladding, and Roof

The Stocker-Ding House footprint is rectangular. Sanborn maps from 1903, 1911, 1929, and 1950 (Figs. 8–11) show the evolution of the house from a single-family dwelling to two, then three units. Over the years, the house retained its original footprint, with most of the alterations occurring in the rear. The rear wing was remodeled at various times, an external staircase on the west side came and went, as did a garage in the rear yard.



Figure 7. Side-gable roof & hip-roofed dormer (Google Maps)

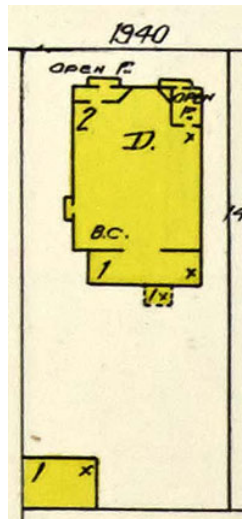


Figure 8. Sanborn, 1903

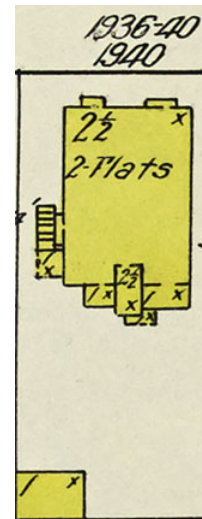


Figure 9. Sanborn, 1911

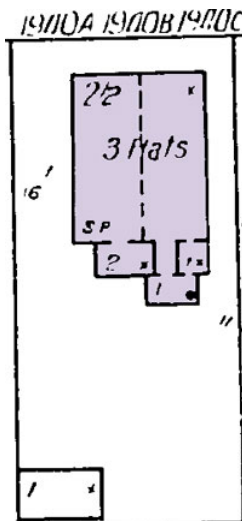


Figure 10. Sanborn, 1929

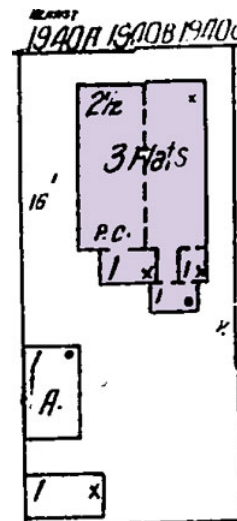


Figure 11. Sanborn, 1950

The main roof is gabled, its ridge running parallel to the street. The roof eaves are closed and trimmed with molding. There are gable-end returns on the east and west façades.

The exterior is clad in unpainted wood shingles. The shingle cladding was replaced in the spring of 2021 as part of a general restoration project that also included rebuilding the exterior staircase along the east façade.



*Figure 12. Closed roof eaves & gable-end return*

A central dormer can be found on the north-facing slope. The dormer's roof is hipped, its ridge level with the main roof's ridge, and its eaves are closed and trimmed with molding. Two double-hung, wood-framed windows are set in the dormer's north wall (Figs. 13, 14).

Below the dormer, on either side, are two smaller gable roofs that extend northward, protruding beyond the central roof edge, crowning two boxed windows on the second story.



*Figure 13. North-facing dormer*

## Front (North) Façade



*Figure 14. Front façade closeup view*

The front façade is symmetrical. The second story's wall flares out into a skirt, overhanging the first story and trimmed with elaborate unpainted molding. The soffit under the second story is lined with unpainted beadboard. Scrolled wooden brackets are positioned at either end (Fig. 16).



*Figure 15. Boxed window, soffit & corbels*

Two boxed windows surmounted by gable roofs dominate the second-story façade. The gable pediments are clad in shingles, set within deep frames trimmed with wooden molding. The windows are wood-framed, double-hung, with undivided panes. They are considerably wider than the other windows on this house. Beadboard soffits under the windows are trimmed with molding and supported by scrolled wooden corbels (Fig. 15).



*Figure 16. Skirt molding, soffit & scrolled bracket*



Tucked under the soffit at the center of the ground floor façade is a three-faceted bay with individually framed, double-hung windows. The windows are trimmed with molded casings and sills (Fig. 18).

*Figure 17. Window bay*



*Figure 18. Window sash, trim & sill detail*



*Figure 19. Front porch*

The front porch is recessed and supported by a battered column at the northeast corner. The walls are clad in shingles, the ceiling in beadboard, and the

floor in floorboards. The porch's north and east openings are outlined in wooden frames with curved upper corners.



*Figure 20. Porch detail*



*Figure 21. Porch openings, June 2021*





*Figure 22. The porch pre-restoration, June 2018 (photo by owners)*

The front door, installed in 2017, is a reconstruction of the original entrance. During one of the early 20<sup>th</sup>-century remodels, the entrance door was shifted from the porch's center wall to its west wall. The original doorway was replaced with two windows (see pre-restoration photo, Fig. 22). As part of the recent restoration project, the windows were removed, a new door was installed in the center wall, and the west wall was closed off. Like the previous door, the new one is semi-glazed, featuring wood panels below and a rectangle of beveled glass above.

The ground-floor wall also ends with a flared skirt. The original brick foundation was replaced with concrete in 2005. A relic of the old foundation is a wooden molding strip (possibly a water table) between the wall shingles and the new foundation (Fig. 17).

## East Façade

The flared skirt and heavy molding continue on the east façade, but without a soffit. This façade provides access to the second- and third-floor flats via an external staircase. The house lost its internal staircase sometime in the early 20<sup>th</sup> century (no surviving permit specifies its removal). In June 1933, owner Joseph O. Branstetter, a carpenter, took out a permit to “Construct outside stair on east side. No legal light obstructed.” (The old staircase can be seen in Fig. 22.) The replacement staircase, designed by architect James Novosel and completed in the spring of 2021, conforms to the Arts & Crafts idiom of the house. It is flanked by solid parapet walls, except for the section along the porch opening, where vertical wood rails are used.



*Figure 23. East façade & rebuilt staircase*

Three wood-framed windows are set in the gable of the east façade. A side-by-side pair of double-hung windows is located under the roof ridge, and a small, square, fixed window, possibly of later vintage, is located under the roof's north slope. The two entrance doors to the apartments are semi-glazed, featuring wood panels below and a rectangle of plain glass above.

At the second-story level toward the rear is another wood-framed, double-hung window that might have served the internal staircase in earlier times.

A shed-roofed storage enclosure is built onto the staircase's eastern wall. At the rear of the east façade, a pair of kitchen windows have been shortened, their lower portions filled with framed wood panels.



Figure 24. Kitchen windows



Figure 25. East façade, rear



Figure 26. West façade post-restoration

## West Façade

The flared skirt and heavy molding continue on the west façade, but without a soffit. At the ground-floor level are four wood-framed windows, three of which are double hung and one is shorter and fixed. On the second-story level, there is a single double-hung window at the north end and an attached pair at the south end. In the center is a long and narrow fixed window added by Loni Ding. A single double-hung window is located under the gable at the attic level.

## Rear (South) Façade

The rear façade has been altered multiple times and therefore will not be described here. As part of the recent renovation work, back stairs that led to the upper floors have been removed, all wiring and plumbing were brought indoors, and the one-story extension in the rear was entirely rebuilt.



*Figure 27. West & rear façades post-renovation, June 2021*



*Figure 28. Rear façade post-renovation, June 2021*



Figure 29. Rear façade in November 2017 (photo by owners)

## Exterior Restoration



Figure 30. Window restoration work (photo by owners)

All historic exterior features were restored on the premises. Window restoration work involved removing ancient, flaking lead paint from the sashes; “caulking” the panes with wooden shims salvaged from the house; resurfacing weather-beaten sash parts with salvaged wood trim from the house, priming and painting or sealing.

Soffits, molding trim, scrolled brackets, and corbels were stripped, sanded, and refinished by hand.



*Figure 31. Exterior detail restoration work (photo by owners)*



*Figure 32. Restored window detail*

## Features to Be Preserved

The distinguishing features of the Stocker-Ding House include the following:

- Rectangular footprint
- Two stories + attic
- Side-gabled roof with gable-end returns and closed eaves
- Hip-roofed north-facing dormer with twin double-hung windows
- Wood-shingled exterior walls
- Symmetrical north façade
- Two gabled north-facing rooflets with deep-framed, shingled pediments
- Two second-story boxed windows under the gabled rooflets
- Flaring second- and first-story walls on north, east, and west façades
- Second-story overhang on north façade
- Beadboard soffits under boxed windows and second-story overhang
- Heavy wooden molding trim edging the skirt and soffits
- Elaborate scrolled wooden brackets under second-story overhang at either end of the north façade
- Scrolled wooden corbels at either end of soffits under boxed windows
- Recessed entrance porch supported by a battered column at the northeast corner
- Centrally located entrance door within the porch
- Shingled porch walls, beadboard ceiling, and floor clad in floorboards
- North- and east-facing porch openings outlined in frames with turned upper corners
- Three-faceted window bay on north façade, with a double-hung, wood-framed window set in each facet
- Double-hung, wood-framed windows on north, east, and west façades
- Molded wood window casings and sill trims
- Two semi-glazed, exterior wooden doors on upper levels of east façade
- Wooden exterior staircase on east façade
- Wooden molding strip (water table?) under the wall skirt and above the foundation

## 15. History

### Early Days of the Tract

The Sea View Park tract, in which the Stocker-Ding House is located, was part of Rancho San Antonio, a 44,800-acre Spanish land grant given to Sergeant Luís María Peralta (1759–1851) in 1820 by the last Spanish governor, Don Pablo Vicente de Sol, in recognition of Peralta's forty years of military service to the Spanish king. The rancho included lands that form Oakland, Alameda, Piedmont, Emeryville, Berkeley, and parts of San Leandro and Albany.

In 1842, Luís Peralta divided the rancho among his four sons. Domingo and José Vicente were given the land that now comprises Oakland and Berkeley.

Within less than a decade, squatters overran the Peraltas' properties, stole their cattle, and sold it in San Francisco. Worse, parcels of rancho land were sold without legal title. Domingo and Vicente Peralta fought the appropriations in the courts. In 1856, the U.S. Supreme Court confirmed their title, but by then the brothers had been forced to sell most of their lands to cover legal costs and taxes. The various buyers engaged cartographer Julius Kellersberger<sup>4</sup> to map the Peralta Ranchos for subdivision purposes.



Figure 33. Plot 79 (shaded) in Kellersberger's Map

<sup>4</sup> Map of the Ranchos of Vicente & Domingo Peralta. Containing 16970.68 Acres. Surveyed by Julius Kellersberger. Surveyed 1853. Partitioned 1854. Filed Jan. 21st 1857. Courtesy of Barry Lawrence Ruderman Antique Maps, Inc. <http://www.raremaps.com/gallery/enlarge/39956>



Plot 79, which contained the future Sea View Park tract, was a 160-acre parcel located just north of Francis K. Shattuck's land. Its boundaries were today's M.L. King, Jr. Way to the west, Cedar Street to the north, Arch Street to the east, and Addison Street to the south. Like so much of the Peraltas' lands, Plot 79 was acquired by the French-born, San Francisco-based financier François Louis Alfred Pioche (1818–1872).<sup>5</sup> Pioche apparently sold it to Joshua Hathaway, who died without paying, as one surmises from Pioche's 1857 lawsuit to recover the 160 acres from the Hathaway estate.<sup>6</sup>



Figure 34. F.L.A. Pioche by Adrien Tournachon (Nadar jeune)

## Joseph Clapp & the Clapp Tract

Joseph Lewis Clapp (c. 1828–1886) was born in Norfolk County, Massachusetts. Drawn to California during the Gold Rush, he spent his early years in the state as a miner in Mariposa County.<sup>7</sup> In the gold fields he met and befriended the Maine-born William Twichell, M.D. (1825–1886). Dr. Twichell [aka Twitchell] moved to New York in 1853 but returned to California in 1860, settling in San Francisco and later in Alameda. Meanwhile, Clapp had moved to Grass Valley, Nevada County, where he owned and operated the [Golden Eagle Hotel](#)<sup>8</sup> with his young wife, Mary Jane.

In the mid-1870s, both Clapp and Twichell, likely anticipating the introduction of the Berkeley Branch train service by the Central Pacific Railroad, acquired adjoining tracts of land near Shattuck Avenue. Clapp's 1875 voter registration listed him as a farmer residing in Oakland Township. One would assume that he farmed the 15 acres he had acquired in North-Central Berkeley. The land extended from Louisa Street (now Bonita Avenue) to Shattuck Avenue, and from Delaware Street to Berkeley Way.

In August 1876, the Central Pacific Railroad's Berkeley Branch opened, running 3.84 miles from Shellmound via Adeline Street to downtown Berkeley. This was the opportunity many a Berkeley landowner had been waiting for. In the fall of that year, Joseph Clapp subdivided the southern half of his land into three blocks whose northern boundary was College Way (now Hearst Avenue).

<sup>5</sup> "Forgotten Financier: François L.A. Pioche." *California Historical Quarterly*, Vol. 53, No. 1, Spring 1974, pp. 17–24.

<sup>6</sup> *Pioche v. Hathaway*. Private Common Law Case Files, 1855–1863. Box 10, Docket Book 1, Case #146. Filed 21 May 1857. Judgment for Pioche, 2 November 1857.

<sup>7</sup> Clapp was listed as a miner in Mariposa County in the 1850 U.S. Census, enumerated on 23 October 1850, and in the California State Census of 1852.

<sup>8</sup> Current location of the Nevada County Bank Building, 131 Mill Street.

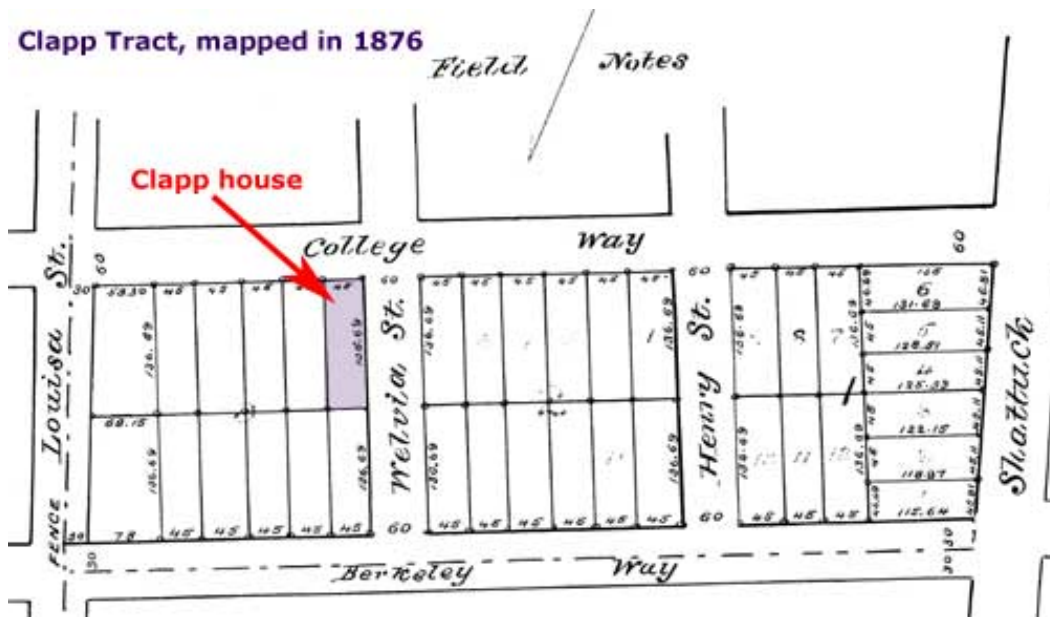


Figure 35. The first subdivision map of the Clapp Tract, 1876

Joseph Clapp's residence, the first one built on the tract, stood—and still stands, now greatly altered—on Lot 1 in Block 3, on the southwest corner of Hearst Avenue and Milvia Street, next door to the Stocker-Ding House.



Figure 36. Joseph Clapp House, 1942 Hearst Ave./1904 Milvia St.

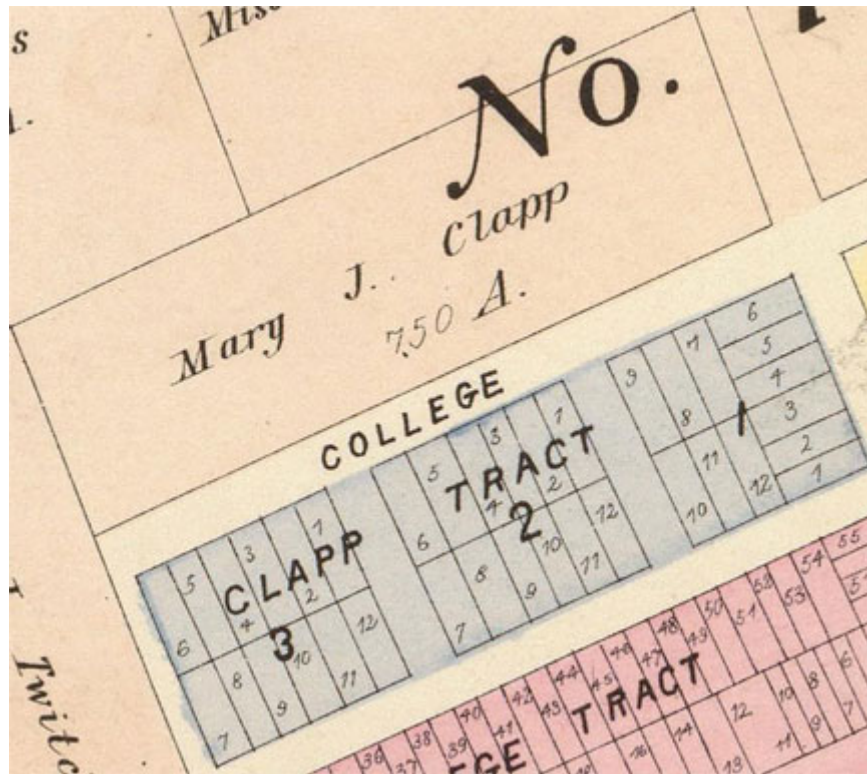


Figure 37. Clapp's 15 acres in Map No. 16 of Thompson & West's Atlas of Alameda County, 1878 (David Rumsey Historical Map Collection)

In 1878, Joseph Clapp still owned all but one lot in Block 1, including the only building on the block, assessed at \$2,400. That building was Clapp's Hall, which stood on the northwest corner of Shattuck Avenue and Berkeley Way and served as a meeting place for the Town Trustees, various social clubs and fraternal lodges, church services, and even school classes.

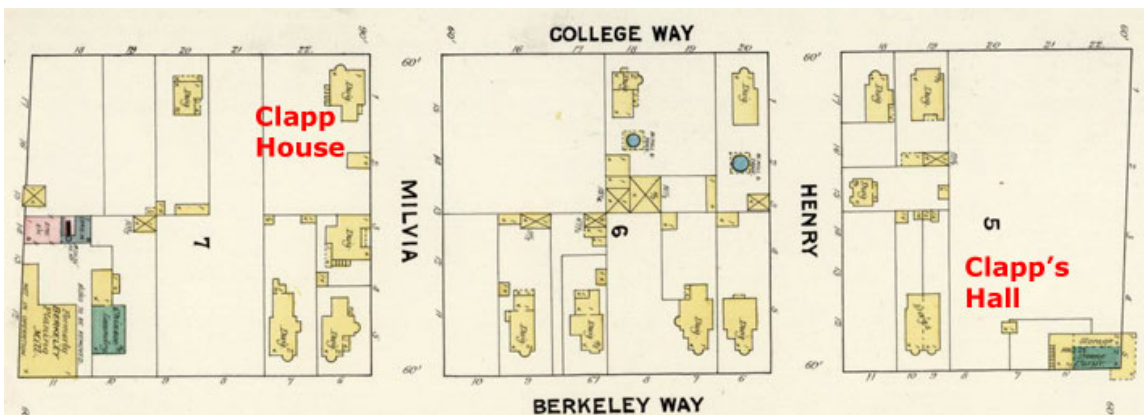


Figure 38. The subject property was part of the Clapp home parcel (Sanborn map, 1890)

Beginning in 1880, Clapp began listing himself in the city directory as a real estate dealer. About the same time, carpenter Ira A. Boynton built himself a new house on a parcel acquired from Clapp. Located on the southeast corner of

Henry Street and College Way, it was the second building erected on Block 1 of the Clapp Tract.

The map of Berkeley published by realtors Carnall & Eyre in 1880 showed all 15 acres owned by Joseph and Mary Jane Clapp as a subdivided tract, although comprising six blocks rather than five.

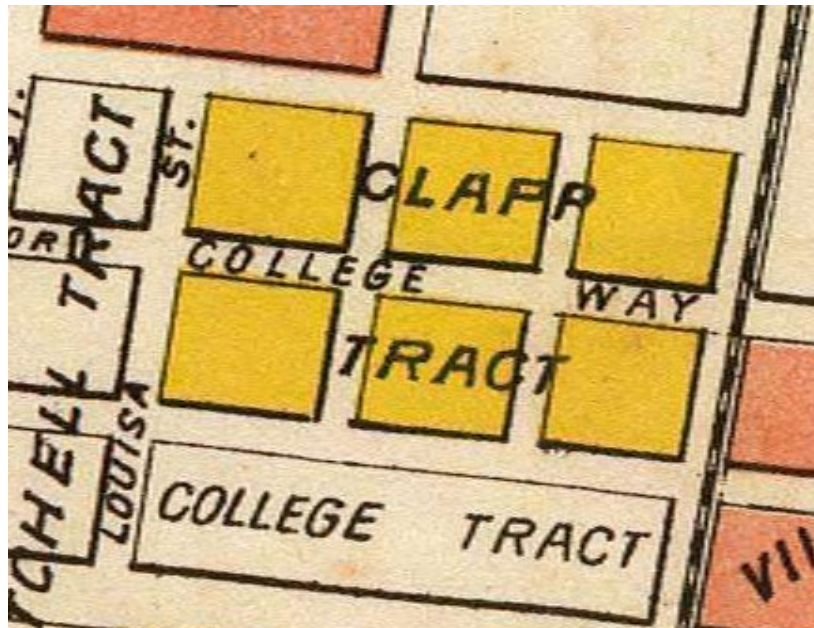


Figure 39. Clapp Tract in the Carnall & Eyre Map of Berkeley, 1880  
(David Rumsey Historical Map Collection)

On 7 June 1886, Mary Jane Clapp was committed to the Napa Insane Asylum.<sup>9</sup> She died there two weeks later, leaving a will, dated 8 May 1886, in which she bequeathed most of her estate to Dr. Twichell, with the income going to her husband.<sup>10</sup> Joseph Clapp contested the will but did not appear in court on the appointed day, 27 August 1886. He had been staying with the Twichells in Alameda and was found dead in their stable, having slashed his throat with a razor. In his will, Clapp left his entire property to Dr. Twichell and appointed him executor of his estate. Twichell himself died only four months after Clapp's suicide, leaving a will bequeathing his entire estate—including his interests in the estates of Mary Jane and Joseph Clapp—to his wife, Lydia Twichell. Soon, various East Coast relatives of Joseph Clapp's emerged to contest his will. Representing several of them was Thomas Frederick Graber, Berkeley's City Attorney at the time. After lengthy litigation, the parties settled in May 1888, the Clapp relatives receiving a cash payment and Mrs. Twichell keeping all the former Clapp land holdings.

<sup>9</sup> Local Briefs from Tuesday's Daily. *The Napa Register* (weekly), 11 June 1886, page 3.

<sup>10</sup> "Death of Successful Owners of Real Estate." *Oakland Tribune*, 30 May 1888, page 1.



Figure 40. Clapp Tract in the Woodward & Gamble Map of Oakland & Surrounding, 1888 (Barry Lawrence Ruderman Antique Maps, Inc.)

### The Sea View Park Tract

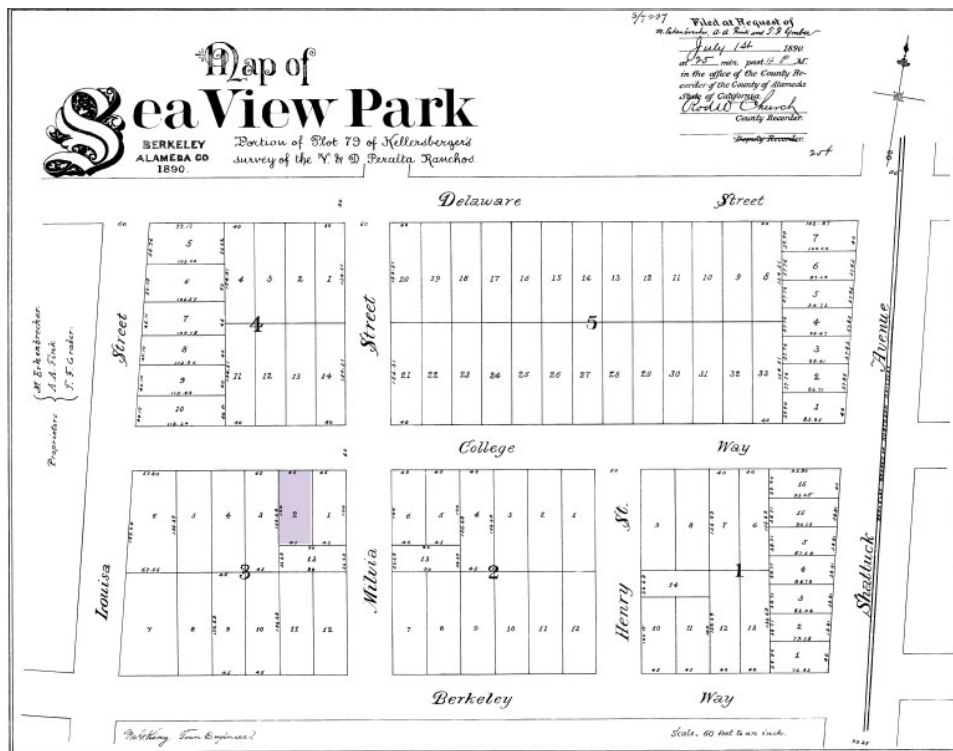


Figure 41. Sea View Park tract map, filed on 1 July 1890

On 17 June 1890, the *Daily Alta California* announced, “The Clapp tract, consisting of eighty lots, bounded by Shattuck avenue, Berkeley way, Louisa and Delaware streets, will soon be placed on the market.” By the end of the month, the tract had been sold, and a tract map was filed on July 1. The *San Francisco Call* reported on the 4<sup>th</sup> of that month that “[t]he owners of the original Clapp tract decided at the last moment before the maps of the tract were to be printed to change the name to Sea View Park tract instead of to Antonio tract.”

The Sea View Park tract map listed the proprietors as M. Erkenbrecher, A.A. Fink, and T.F. Graber. This unlikely trio had two things in common: all three were either of German extraction or married into a German American family, and they were active investors.

**Thomas Frederick Graber** (1848–1914), born in Lockport, upstate New York, graduated from the University of Michigan in Ann Arbor before arriving in Berkeley. He was the lawyer who had served as Berkeley’s City Attorney from 1883 to 1890 and who represented some of Joseph Clapp’s relatives in the probate litigation. He lived at 2037 Durant Avenue.

**Anton Alexander Fink** (1831–1919), a Texas-born street contractor and realtor, came to Berkeley from Oregon. He was the only one of the three who built a home on the tract, although he remained in it only a couple of years.

The third partner never lived in Berkeley. She was **Matilda Erkenbrecher**, née Cunningham (1838–1911). Born in Ohio, she was the second wife of Andrew Erkenbrecher, a wealthy German-born Cincinnati starch manufacturer and eventual founder of the Cincinnati Zoo. Andrew’s death in 1885 left Matilda rich and independent. When she moved to California in 1895, it was to Los Angeles, where her son attended business school, and where they both lived for the rest of their lives.

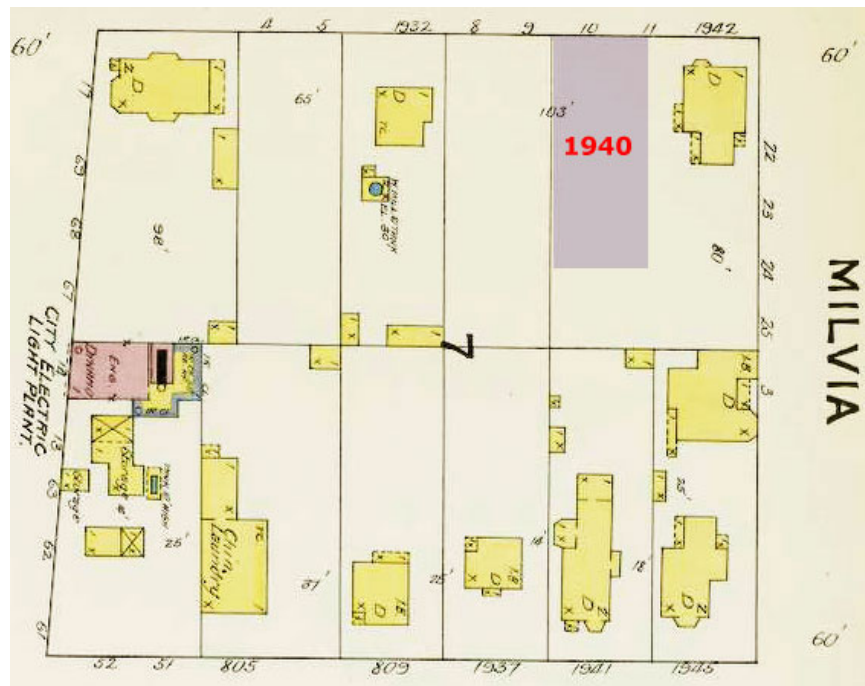


Figure 42. The future Lot 2 (shaded) on the former Clapp home parcel (Sanborn map, 1894)

Beginning in 1890, Lot 2 in Block 3, still part of Joseph Clapp's home parcel (Lot 1), was owned jointly by Fink, Graber, and Erkenbrecher. It first appeared in print as an independent parcel in November 1894, when Thomas and Ada Graber deeded their undivided quarter interest in it to Anton Fink.<sup>11</sup> Two years later, Matilda Erkenbrecher deeded her undivided quarter interest in the lot to Fink.<sup>12</sup>

When the Commercial Bank of Berkeley sold Lot 1 to James R. Little in late August 1898, that lot had already been reduced to its current dimensions of 45 x 100 feet, indicating that Lots 2 and 13 had been split off from it.<sup>13</sup>

No record has been found for the deed transfer of Lot 2 to James T. Stocker. The earliest notice of his ownership of this lot came in the form of a brief announcement in the *Berkeley Daily Gazette* on 11 April 1901 (Fig. 43).

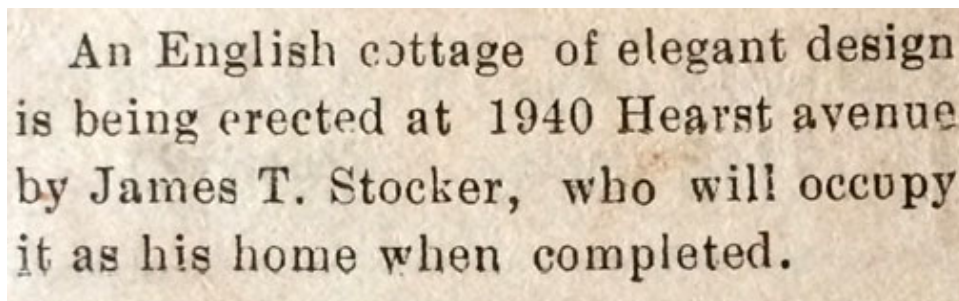


Figure 43. Item in *Berkeley Daily Gazette*, 11 April 1901

### James T. Stocker & Belle A. Ellis

James Thomas Stocker, Jr. (1851–1921) was born in Northern California, the son of pioneers. His parents, James Thomas, Sr. and Josephine Elizabeth, were natives of Baltimore, Maryland. The father had sailed to California on one of the American warships that mistakenly captured Monterey in 1842. In 1874, he married in Baltimore, returning to California as a forty-niner and settling in Marin County c. 1851–52. James Sr. soon established himself as a prominent citizen, serving as Marin County Sheriff in 1853–55 and as a State Assembly member in 1857–58.<sup>14</sup> The Stockers operated a dairy ranch in Point Reyes.<sup>15</sup>

James Jr. was one of nine siblings. On 20 March 1876, he married 16-year-old Henrietta "Ettie" M. Franklin in Alameda County. It's possible that the couple eloped, since neither appears to have been an Alameda County resident. A daughter, Maude, was born to them in 1879. The 1880 U.S. Census enumerated them on June 8 in San Rafael. James's occupation was noted as house carpenter, but he had spent six months unemployed during the Census year. In December of that year, a son was born to them, named James Thurman Stocker.

In June 1898, James T. Stocker was declared an insolvent debtor, and the Sheriff of Marin was directed to take possession of all his belongings. The

<sup>11</sup> Real Estate Transactions. *San Francisco Call*, 23 November 1894, page 7.

<sup>12</sup> Real Estate Transactions. *San Francisco Call*, 5 September 1896, page 12.

<sup>13</sup> Real Estate Transactions. *San Francisco Call*, 2 September 1898, page 8.

<sup>14</sup> Death notice in the *Marin Journal*, 26 September 1889.

<sup>15</sup> David V. Mitchell. "The Origins of Point Reyes Station."  
<https://www.sparselysageandtimely.com/blog/?p=13519>

following year, Stocker's mother died in Los Gatos (his father had died of drowning in Tillamook Bay, Oregon, in 1889).

In his 1900 U.S. Census record, James Stocker was enumerated as single and living at San Quentin State Prison, where he worked as a guard. The clerk and secretary of the prison was Joseph Valentine Ellis (1839–1900), whose recently divorced daughter, Belle (1866–1912), was residing with her parents and sister in San Quentin. The Ellis household also included Belle's daughter, Margery McGuire, aged 5.

James Stocker and Belle Ellis married on 14 July 1901 at St. Mary's Cathedral in San Francisco. One would assume that the house Stocker was building in Berkeley had been completed by then. The first property assessment on the house was made to Belle A. Ellis in 1902. During the first two years of their residence in Berkeley, James Stocker was listed in the directory as a furniture manufacturer. This was a passing phase, however; beginning in the 1904 directory, he was consistently listed as a carpenter.

While living on Hearst Avenue, the Stockers brought two children into the world: Woodburn (born 1903) and Isabel Adele (born 1905).

The Stockers lived here until 1908, when they either sold the house to Charles F. Townsend or exchanged it for Townsend's farm in Rincon Valley, near Santa Rosa. The Stockers went to live on the farm, where Belle died in a November 1912 fire that destroyed the house. James Stocker continued to live there until his death in 1921.

### A Decade of Ownership by Real Estate Investors

In 1909 and 1910, the former Stocker parcel was assessed to **Charles Francis Townsend** (c. 1853–1913). He was the son of a well-known Berkeley character, Mary Ann Townsend, an Irish-born Civil War widow who, in 1876, famously refused to allow the Central Pacific Railroad Company to build its Berkeley Branch track in front of her Shattuck Avenue property. Twenty years later, she moved her house to the middle of Shattuck Avenue in a dispute with the City of Berkeley over a 50-foot-wide strip of land claimed by both.<sup>16</sup>

Charles Townsend, who never married, lived with his mother, changing his occupation practically every year. Mrs. Townsend was apparently well-acquainted with many prominent Berkeley families, since she worked for them as a house cleaner and laundress.<sup>17</sup>

In 1901, Mrs. Townsend reached a settlement with the City of Berkeley, selling the disputed strip of land for \$475.<sup>18</sup> Shortly thereafter, mother and son moved to a farm in Rincon Valley, four miles outside Santa Rosa. Mary Ann Townsend died there in 1908, and Charles returned to Berkeley. He went to work as a salesman for the Mills Company, a real estate and insurance firm owned by Philo Mills (1836–1918), with offices on Shattuck Avenue. It's possible that Mills was one of Mary Ann Townsend's former employers, for in 1908, Charles Townsend made out a will, bequeathing the lion's share of his property to Philo

<sup>16</sup> "Berkeley Trustees and a Citadel." *San Francisco Call*, 9 November, 1896.

<sup>17</sup> Richard Schwartz. *Eccentrics, Heroes, and Cutthroats of Old Berkeley*, Chapter 6. Berkeley: RSB Books, 2007.

<sup>18</sup> "Townsend Litigation Amicably Settled." *San Francisco Call*, 26 July 1901.



Mills, if living, or to Philo's son, Charles B. Mills. In the will, Townsend stated that he was leaving his estate to Philo Mills "in consideration of kindness shown to my mother and me."

No record of a deed transfer from Stocker to Townsend has been found, but the circumstances strongly suggest that the Stockers exchanged their Hearst Avenue house for the Townsend farm in Rincon Valley.

Townsend never lived at 1940 Hearst Avenue. He found lodging at 2041 Haste Street, next door to Philo Mills's home at 2035 Haste, and the Stocker House was turned into a rental property.

Sometime in late 1910 or early 1911, Townsend transferred the title to Charles Ballantine Mills, Philo's son and secretary of the Mills Company. Mills was assessed on the property in 1911. On 25 May 1911, Mills entered into a contract to sell 1940 Hearst Avenue to **Dr. Lyman Allen** (1837–1919), a real-estate broker who lived around the corner, at 1920 Milvia Street. Allen co-owned the Clapp House and had turned it into a rental property. He was paying for 1940 Hearst Avenue in installments, as stipulated in the contract. Eventually, title was transferred back from Mills to Townsend, who was assessed on the property in 1913, the year of his death. On 16 May 1914, a judge of the Alameda County Superior Court issued an order to convey the deed to Lyman Allen.<sup>19</sup>

With Lyman Allen in possession, a separate apartment was built in the attic of 1940 Hearst Avenue. On 6 August 1911, the following classified ad was published on page 71 of the *San Francisco Call*:



Figure 44. Ad, *San Francisco Call*, 6 August, 1911

A week later, a follow-up ad, this time over Lyman Allen's name, offered not only the top-floor apartment but (to be rented separately) the lower floors of the house, as well as a 3-room apartment in the adjacent Clapp House. Keys to all three rentals were available at 1920 Milvia Street, where Lyman Allen was residing at the time.

<sup>19</sup> Order for conveyance of real estate. Probate court documents pertaining to Charles F. Townsend's estate. 16 March 1914.

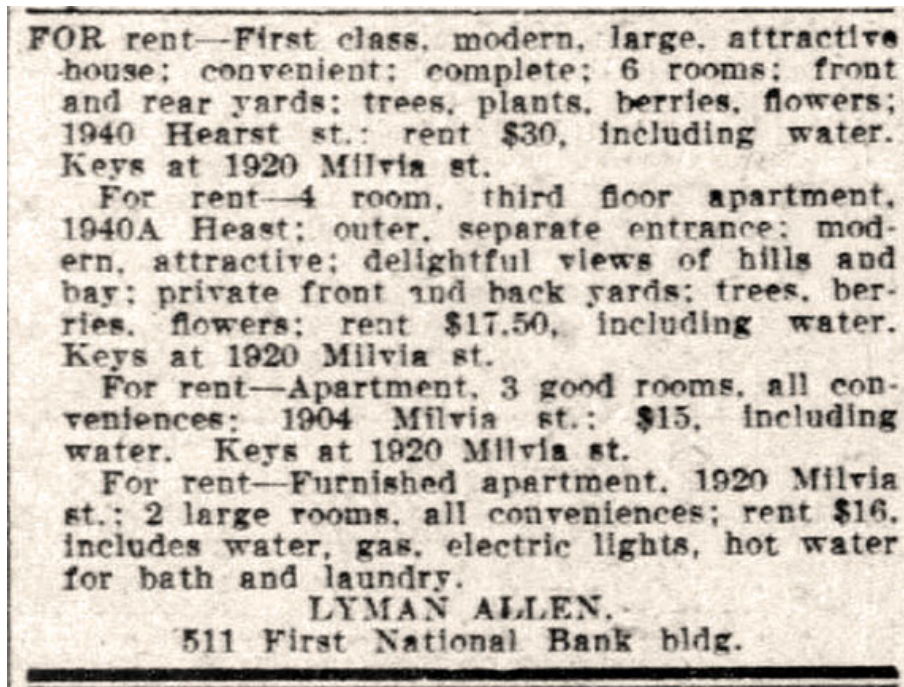


Figure 45. Lyman Allen ad, *San Francisco Call*, 13 August, 1911

No additional ownership records during the 1910s have emerged. Lyman Allen died in Napa on 26 April 1919, and it is not known whether he held on to the property until his death.

Throughout the 1910s, the Stocker House was occupied by tenants. By 1920, the house comprised three flats, each with a separate household, as enumerated in the U.S. Census taken on 2 January 1920.

The top-floor flat, 1940A, was occupied by Frances A. Cole, a 60-year-old widow, and her 50-year-old widowed sister, Rowena Smith. Both were teachers, Mrs. Smith's specialty being music.

On the second floor, flat #1940B was home to a Canadian family of three: Allan Betzner, 48, his wife Lillian, 50, and their daughter Ruth, 17. None of the Betznors listed an occupation, although Allan Betzner soon found work as a railroad motorman. (The Betznors eventually acquired their own home across the street, at 1939 Hearst Avenue.)

The ground-floor flat, 1940C, housed the Warfield family, headed by Bertha, a 52-year-old widow, and including daughter Mabel, 22, son Walter, 27, and Walter's wife, also Mabel, 28. Walter Warfield worked as a steamfitter in the Navy Yard, and his sister was a stenographer for an insurance company.

### **The Blakeslee-Branstetter Family**

The Blakeslee family's ownership of and residence at 1940 Hearst Avenue appears to have begun in 1920. In June of that year, an alteration permit showing Mrs. Blakeslee as owner and resident was applied for, seeking to enlarge the back porch on the ground floor, enclosing it with sash and shingle while leaving the east side open.

Born in Battle Creek, Michigan, **Mark L. Blakeslee** (1855–1932), a traveling salesman, and his wife, **Idella “Birdie” Snow** (1860–1938), arrived in Berkeley with their three grown daughters and two granddaughters toward the end of the 1910s. The 1920 U.S. Census enumerated them as tenants at 2240 Dwight Way. In 1922, they were listed at 1940 Hearst Avenue in both the Berkeley city directory and Birdie Blakeslee’s voter registration record. Also living in the house in 1922 was a carpenter by the name of Joseph O. Branstetter.

**Joseph Oscar Branstetter** (1874–1939) was born in Ferndale, Humboldt County, to a stock raiser from Missouri and his Swiss-born wife. The father was murdered in 1875 during a card game dispute. In 1900, when Joseph was 26, his mother gave him 30 acres of land.<sup>20</sup> At the time, he was living in Rohnerville, and in 1904 he married his first wife, Olive Elizabeth Williams. The 1910 U.S. Census enumerated them on a farm in Van Duzen Township, Humboldt County, along with daughter Maxine, 4, and son Clifton, 2.

By 1912, Joseph Branstetter was listing his occupation as carpenter. The employer he indicated in his 1918 World War I draft registration card was the Libby, McNeil & Libby creamery in Loleta, where he was still working when enumerated in the 1920 U.S. Census. In September 1919, Elizabeth Branstetter had sued for divorce, which was granted in November 1920.

On 4 March 1922, Joseph Branstetter remarried. His new wife was **Shirley Blakeslee Pfander** (1884–1975), eldest daughter of Mark and Birdie Blakeslee. Shirley had married a Battle Creek wholesale news dealer in 1906 and divorced him in 1916. After the separation, Shirley returned to her parents’ house with her daughter, Margaret Pfander. It’s not clear whether Branstetter came to live with the Blakeslees after his marriage to Shirley, or whether he met Shirley as a result of living in the house as a tenant.

For a few years, the Blakeslees and the Branstetters lived under the same roof, but in 1925, the Blakeslees moved to San Diego, where they lived out their lives. Mark L. Blakeslee was still listed as the owner of 1940 Hearst Avenue in a 1927 alteration permit, to shingle one side of the house, and in a 1929 permit to build a garage. Joseph Branstetter was the builder in both cases.

The 1930 U.S. Census enumerated two households residing at 1940 Hearst Avenue. In addition to Joseph and Shirley Branstetter, there was a family of five, consisting of Kenneth E. Dunn, a public-school custodian, his wife, Florence, their two young daughters, and Florence’s father, also a school custodian.

Branstetter was first listed as owner of the house in a 1933 alteration permit for constructing an exterior staircase. One would assume that Shirley’s father, who died in 1932, left the house to her and to Joseph.

The 1933 permit says nothing about interior alterations, but it’s likely that the interior staircase was removed about the same time. Branstetter also relocated the front door to the west side of the porch and built an angled wall between the living room and the original foyer to create a bedroom in the latter space (Fig. 46).

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<sup>20</sup> Deeds. *Humboldt Times*, 4 January 1900.

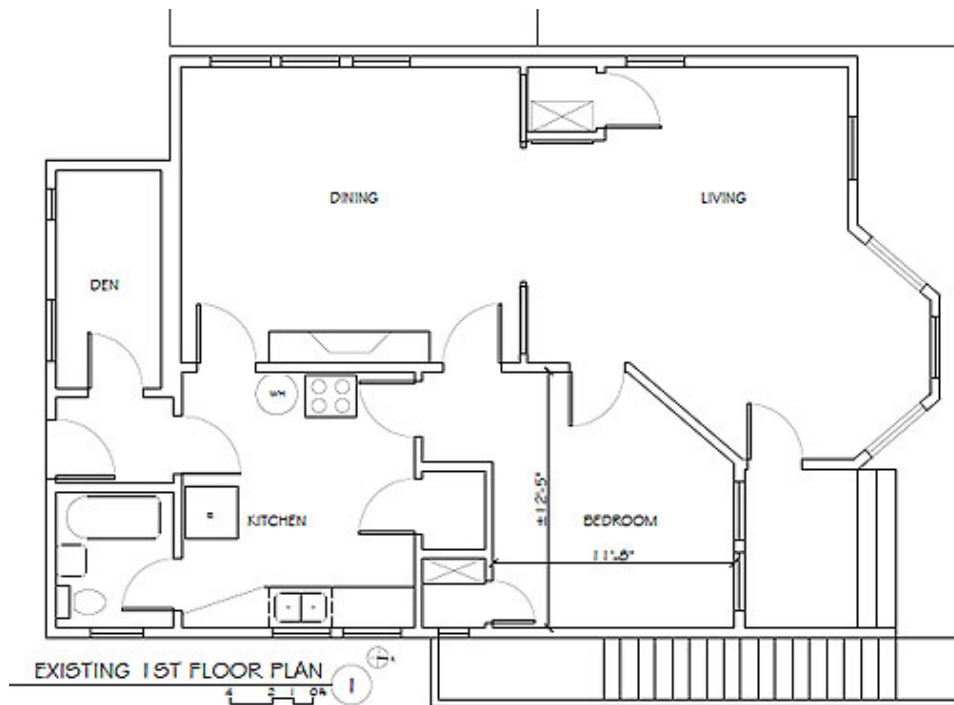


Figure 46. First-floor plan in 2017, before the restoration project

In September 1939, Branstetter took out a permit to replace the back staircase. Joseph Branstetter died on 18 November 1939. The 1940 U.S. Census enumerated three households in residence at 1940 Hearst Avenue. The building's owners were Shirley's daughter, Margaret, and her second husband, Russell Earle Harris (1899–1963), a salesman. Shirley Branstetter was enumerated as a renter in a separate unit, while the Alton family, consisting of Willard Alton (also a salesman), his wife, Meredith, and their daughter, Ruth, occupied a third unit.

On 10 September 1941, Shirley Branstetter married William B. Quigley, a stationary engineer, in Carson City, Nevada. As recorded in the 1942 voter registrations, the Quigleys made their residence in 1940B, the Harrises lived in 1940A, and the Altons at plain 1940.

Will Quigley died in September 1948. Shirley and Margaret continued to own the house until 29 July 1965, when they sold it to Isadora Q. Ding, better known as the filmmaker and social documentarian Loni Ding.



Figure 47. 1940 Hearst Avenue in 1964 (Donogh files, BAHA)

### Loni Ding (Isadora Quanehia Ding)



When she acquired the Stocker House from the Branstetter family in 1965, Loni Ding (1931–2010) was a U.C. Berkeley Ph.D. candidate and lecturer in Sociology.

She was born Isadora Quanehia Ding, aka Bik Lon Ding, in San Francisco, the seventh and last child of Chuck Sing Ding (1874–1943) and May Ying Kwan (1893–1963), both born in Guangdong Province, China.

Figure 48. Loni Ding, then a lecturer at Mills College, 1963

Chuck Sing Ding came to the United States in 1907 as Din Lung Ding (later Den Leung Ding). A young married teacher, he left his wife and three-year-old son in China.<sup>21</sup> According to the Ding family's oral history, he was sent to the United States by the Chinese Imperial government to establish Chinese language schools in California. Ding's listing in the S.S. *Mongolia's* passenger manifest showed his status as Exempt, yet it was noted that his passage had been paid by a friend in Stockton (where a Chinese community had existed since the Gold Rush).<sup>22</sup>

<sup>21</sup> S.S. *Mongolia* ship manifests, 23 July & 30 July 1907.

<sup>22</sup> Chinese Heritage in Stockton. <http://www.stocktongov.com/discover/history/siteMiner.html>

Although no records have been found of his early years in California, it is known that Ding eventually settled in Sacramento, where he appears to have taught at and possibly even established the Chung Wah Chinese School.<sup>23</sup> The book *Sacramento's Chinatown*, published by the Chinese American Museum of Northern California, informs, "As the population of young Chinese Americans increased, new organizations formed to meet their needs. First among them were Chinese schools teaching language and history from the homeland. Chung Wah Chinese School was founded in 1908."<sup>24</sup>

In 1916, Chuck Sing returned to China, but not to his wife. In 1918,<sup>25</sup> he married May Ying Kwan (1893–1963), a Christian minister's daughter who trained in medicine under a German physician.<sup>26</sup> The couple sailed to San Francisco on board the S.S. *China*, arriving on 27 July 1919. The ship's manifest noted their destination as Chung Wah College, Third Street, Sacramento.

By the early 1920s, the Dings had established the Kin Quon Herb Co. at 1049 Stockton Street, in San Francisco's Chinatown, selling medicinal herbs.<sup>27</sup>

In the mid-1930s, the Dings opened a second herbal remedies store in a run-down Victorian building at 3307 Mission Street. Located in the Bernal Heights neighborhood, the area was populated with "working-class Catholics, Portuguese, Greeks, Italians, and Irish."<sup>28</sup> The Dings called their new store Shanghai Herb Co., a name not quite as foreign as Kin Quon.

About 1941, the top-floor flat in the same building became available, and the Dings moved in. This wasn't the ideal neighborhood in which to raise children, since "there were broken families and a lot of drunkenness," as Loni Ding would tell interviewer Barbara Abrash of New York University in 1991.<sup>29</sup>

In a videotaped interview at Stony Brook University, Loni Ding said that the move out of Chinatown stemmed from her parents' desire that their children speak English without a Chinese accent. With restrictive covenants barring non-Whites from most residential neighborhoods, the Dings had searched for five years before managing to obtain a month-to-month lease in the Victorian on Mission Street.

The Shanghai Herb Co. was located on the second floor, above Cavanaugh's Irish tavern. Decades later, Loni remembered carrying buckets of water downstairs every morning to wash vomit off the doorstep and sidewalk. In order to remain in the landlord's good graces, Loni regularly brought him homemade cakes.<sup>30</sup>

<sup>23</sup> S.S. *China* ship's manifest, 27 July 1919.

<sup>24</sup> Lawrence & Brian Tom. *Sacramento's Chinatown*. Chinese American Museum of Northern California, 2010.

<sup>25</sup> May Ying Ding's petition for naturalization, 11 November 1954.

<sup>26</sup> Information provided by the Ding family.

<sup>27</sup> Kin Quon Herb Co., 1049 Stockton St., San Francisco. Drug store listing in Julius Su Tow, *The Real Chinese in America*. New York: The Academy Press, 1923.

<sup>28</sup> Interview with Loni Ding at Stony Brook University, 2000.

<https://www.youtube.com/watch?v=dtOqyTHEmZ0>

<sup>29</sup> Interview with Loni Ding by Barbara Abrash, 28 April 1991.

<http://documentaryisneverneutral.com/words/intloniding.html>

<sup>30</sup> Information from Loni Ding's daughter, May Ying Welsh.



Figure 49. 3307 Mission Street, SF, 1944  
(Ding-Welsh family collection)

In her interview with Barbara Abrash, Loni Ding recalled what she and her family went through in those days:

We grew up in Chinatown for the first three years of my life and then we moved into a part of San Francisco which was, at that time, a place where “Orientals” did not live. There was something called “restrictive covenant,” so you could not just live anywhere in the city.

All through my school years, right up until the time I went to college at U.C. Berkeley, I attended schools in which my sisters and brothers were the only Asians, so I had the experience of growing up very aware that I was different from everyone else. It was also really clear to me that we, as a family, were embattled, and every one of us had a job to do: to represent ourselves as a Chinese family.

We were only six [Note: *actually, 3.6*] miles from Chinatown, but it might as well have been on another planet, because life was still that segregated.

Very early, I had to make up my mind what I felt about being Chinese. Was that an inferior thing or not? Luckily, because of the kind of family I grew up in, I knew absolutely that the problem was not mine.<sup>31</sup>

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<sup>31</sup> Abrash, 28 April 1991.

Despite language barriers and prejudice, the Dings' herb store was successful, as Chinese remedies for hangovers, asthma, arthritis, skin conditions, "female troubles," colds, and constipation—as well as Mrs. Ding's unique blend of Western and Chinese therapeutic approaches to cancer and other serious illnesses—proved popular with non-Asian San Franciscans. Mrs. Ding prepared custom remedies, made house calls, and eventually had patients flying in for consultation from as far away as Europe.

The Ding children commuted daily by bus and cable car between home in the Mission—where they attended all-White schools—and Chinatown, where they took Chinese language classes. The movement back and forth between White and Chinese worlds was a formative experience in Loni's life, creating a desire to bridge the two through understanding.

As a student at U.C. Berkeley, Loni earned her B.A. in Communications and Public Policy in 1954, followed by an M.A. in Sociology and Social Institutions in 1957. She was a lecturer in the Sociology Department from 1958 to 1967, also lecturing as a faculty member at Mills College.

In 1958, Loni Ding married Professor Herbert Franz Schurmann (1926–2010), a sociologist and historian who taught at U.C. Berkeley for 38 years. Schurmann was an expert on China during the Cold War,<sup>32</sup> and Loni was his teaching assistant. They remained married until 1968.

In 1965, Loni purchased the house at 1940 Hearst Avenue. The location was ideal, just a few minutes' walk away from the U.C. campus.

When the Vietnam War came along, Loni was writing her Ph.D. dissertation.

I had teaching positions, and everything was going well for me except that the war was truly overwhelming. Being at Berkeley at the time, we were among the leaders of the Anti-War movement. I ended up finally leaving the university for full-time organizing against the war. That put me out into the Bay Area communities, and I found that I was truly happy doing that instead of being in the stacks with my books and writing and re-writing very turgid stuff.<sup>33</sup>

In 1968, Loni Ding married David Welsh, a journalist, civil rights and labor activist, and musician who became "my life partner, a key person in my development and my work."<sup>34</sup>

She eventually got involved in grass-roots organizing for the arts and media advocacy for communities of color.

The Chinese community wanted a TV series for teaching basic English to Chinese immigrants. I ended up being the project director and line producer for this TV series of English lessons done in sixty-five half-hour programs. It gave me my first experience in what television could do, and I loved it.<sup>35</sup>

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<sup>32</sup> Franz Schurmann obituary. *New York Times*, 26 August 2010.  
<https://www.nytimes.com/2010/08/27/us/27schurmann.html>

<sup>33</sup> Abrash, 28 April 1991.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.



In 1971, Ding and nine others were selected out of hundreds of applicants to participate in the groundbreaking TEACH (Television Experiments in Alternatives in Cultural Harmony) program for people of color at KQED TV. The year-long program provided training in television production, engineering, and station operations. Following training, Ding spent seven years as a staff producer at KQED before becoming an independent producer-director, a multiple award-winning filmmaker, and a teacher of filmmaking for nearly 30 years in the Department of Ethnic Studies at U.C. Berkeley.

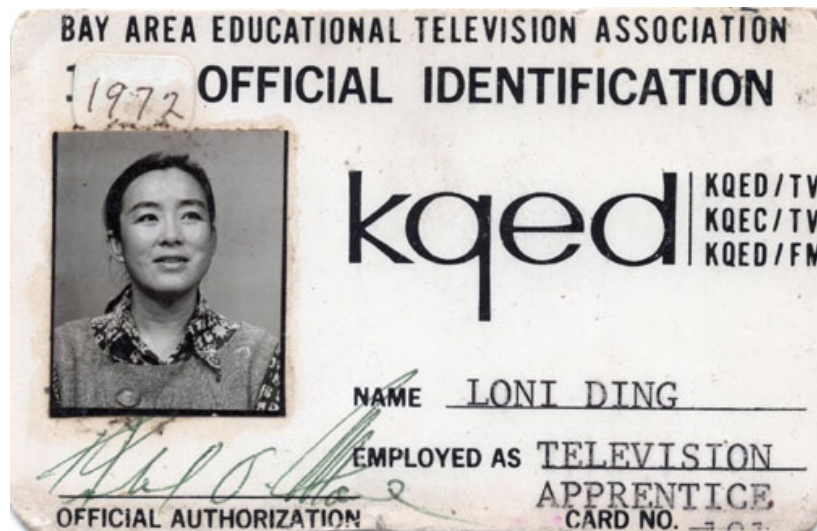


Figure 50. Loni Ding's KQED TV employment ID card, 1972



Figure 51. Loni Ding directing, 1975 (Ding-Welsh family collection)

### Career Accomplishments

Loni Ding produced more than 250 broadcast programs, including five series for the Public Broadcasting Service (PBS) and international broadcasts. She also

produced documentary films collaboratively with the California Historical Society, California State Department of Education, Chinese for Affirmative Action, San Francisco Opera Center, and KQED TV.

Ding's films helped rewrite U.S. history and turn the lens on previously invisible American heroes. Her documentaries *Nisei Soldier* and *The Color of Honor: The Japanese-American Soldier During World War II* were screened to both houses of Congress, as well as to then-President Ronald Reagan, and were instrumental in helping pass the 1988 Civil Liberties Act, which granted formal U.S. reparations to American citizens of Japanese descent interned during World War II.



Figure 52. Advocating for Independent Television funding at the U.S. Senate, 1987

Her landmark PBS series, *Ancestors in the Americas*,<sup>36</sup> is taught in classrooms across the country and serves as a main reference on Asian American history, offering an epic scope of Asian migrations to North America, South America, and the Caribbean from the 1700s to the early 1900s and uncovering the role of Asians in building the United States.

Loni Ding's productions have been honored with multiple Emmy awards and have been broadcast internationally on four continents, including Japan (NHK) and the United Kingdom (BBC), and screened at international film festivals around the world. Her achievements in media have been recognized by more than 15 career awards and fellowships, including the Rockefeller Foundation Film/Video Fellowship (1994); a Guggenheim Fellowship (1982); the American Film Institute Director's Fellowship (1983); and the Asian CineVision Annual Filmmaker's Award (1988).

The *San Francisco Examiner* called her "a master of her craft." In the program notes for a retrospective of her work at the Pacific Film Archive, Loni Ding was described as "that rare artist who entwines twin passions for social justice and the 'true facts' of history in films that are works of hard-hitting revelation and lyrical beauty."<sup>37</sup>

<sup>36</sup> "Emmy Award-winning filmmaker Loni Ding dies." *San Francisco Chronicle*, 12 March 2010. <https://www.sfgate.com/bayarea/article/Emmy-Award-winning-filmmaker-Loni-Ding-dies-3196841.php>

<sup>37</sup> Spotlight on Loni Ding. <https://bampfa.org/event/spotlight-loni-ding>



Figure 53. Loni Ding at the Northern California Emmy Awards, 1981  
(Ding-Welsh family collection)

For almost 30 years, Loni Ding taught media analysis and hands-on film production in the Department of Ethnic Studies at the University of California, Berkeley. She has also been a visiting faculty member at Cornell University, New School for Social Research (NY), and Mills College, as well as a Distinguished Visiting Professor at the University of California, Santa Cruz.

Loni Ding was a prime mover and co-founder of several local and national media and arts organizations, and a policy advocate for more democratic public-interest art and media resources.

Her pioneering efforts helped establish the Center for Asian American Media (CAAM),<sup>38</sup> the largest organization dedicated to the advancement of Asian Americans in television and filmmaking; the Independent Television Service (ITVS), “public media’s leading incubator and presenter of independent film”<sup>39</sup>; the Neighborhood Arts Program of the San Francisco Art Commission; and San Francisco PBS station KQED’s Open Studio. She also served as Co-President of the national board of the New York-based Association of Independent Video and Filmmakers (AIVF), to which she was elected eight times by her peers.

Loni Ding is survived by her husband, David Welsh, her daughter, May Ying, and her son, Elias. The three continue to live at 1940 Hearst Avenue. Their family holds the record for longest tenure at this address, marking 56 years of ownership and residence in 2021.

<sup>38</sup> <https://caamedia.org/about-caam/>

<sup>39</sup> <https://itvs.org/about/mission>



Figure 54. Loni Ding & David Welsh in France, 1988

## Ownership Timeline

|              |                              |
|--------------|------------------------------|
| 1901–1908    | James T. & Belle A. Stocker  |
| 1908–1911    | Charles F. Townsend          |
| 1911–1919?   | Lyman Allen                  |
| 1920–1965    | Blakeslee-Branstetter family |
| 1965–Present | Loni Ding & Welsh family     |

## 16. Context

The neighborhood north of University Avenue, between Shattuck Avenue and Martin Luther King, Jr. Way (formerly Grove Street), was mostly farmland during the second half of the 19<sup>th</sup> century. Subdivision into building lots began in a piecemeal fashion after train service from Oakland to downtown Berkeley was inaugurated in 1876.

The earliest of the four tracts in the area between University Avenue and Delaware Street were the Clapp Tract (1876) and the College Tract (subdivided in 1876, map filed in 1877). Block A of the Twichell Tract was subdivided in 1877, the rest of the tract in 1889. Sea View Park was subdivided in 1890.

The 1890 Sanborn map (Fig. 55) shows five dwellings on Block 3 in Sea View Park. Only the oldest among them—the Clapp House at 1942 Hearst Avenue/1904 Milvia Street—still stands, albeit severely altered.

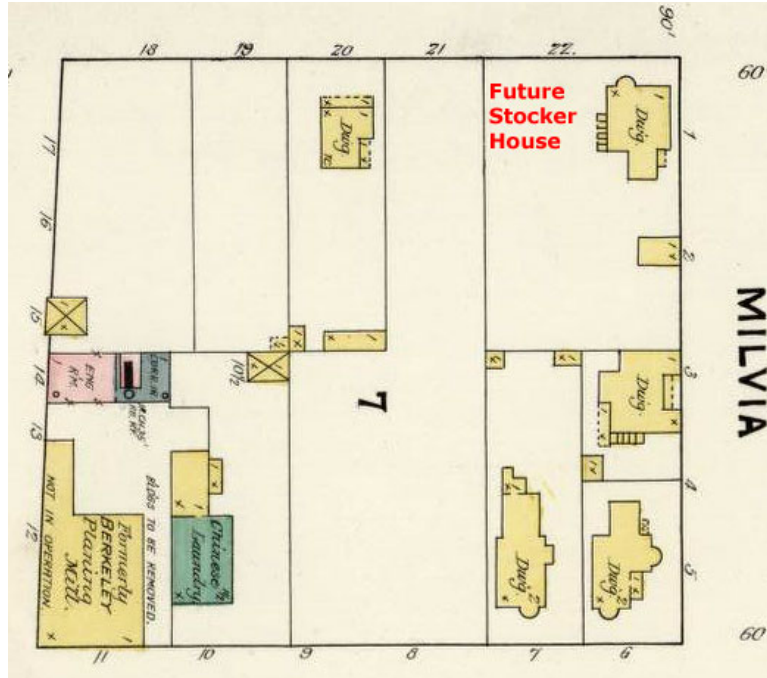


Figure 55. SVP Block 3 in the 1890 Sanborn map



Figure 56. George A. Embury House, 141 Berkeley Way, in 1960 (Donogh, BAHA)

Three Victorian houses stood on the corner of Milvia Street and Berkeley Way in 1890. The only photograph showing any of them is of the 1870s Stick-Eastlake residence of carpenter George A. Embury at 141 Berkeley Way. This house was one of “eight slum structures”<sup>40</sup> that were removed in 1968 to make room for a

<sup>40</sup> “Up From the Ashes.” *Oakland Tribune*, 28 September 1969.

93-unit apartment building erected by Smith & Haley Construction Co. at 1945 Berkeley Way.

At the block's southwestern corner, the former site of George Pape's East Berkeley Planing Mill was vacant in 1890, the mill having moved to Addison Street two years earlier. The Sanborn map indicated that the mill buildings were to be removed. A Chinese laundry operated next to the former mill. Ironically, only four years earlier, this laundry was advertised as employing "White Labor."



Figure 57. Ad in *The Occident*, March & April 1886

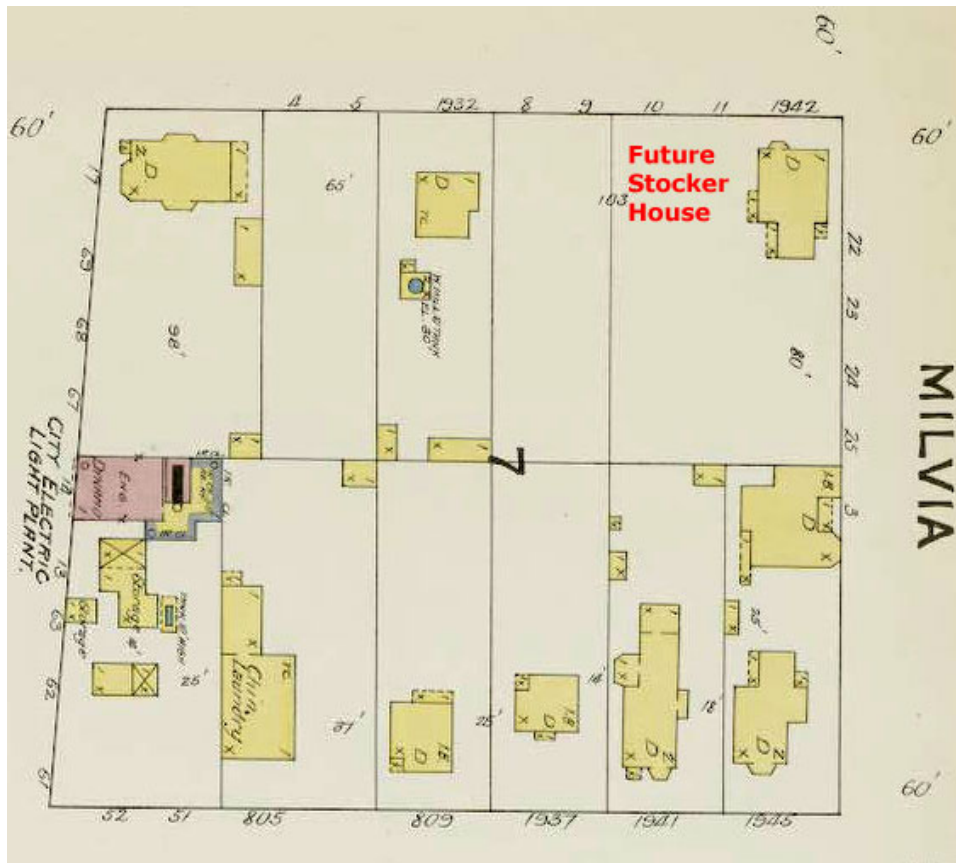


Figure 58. SVP Block 3 in the 1894 Sanborn map

The arrival of electric streetcars in 1891 gave building activities in North-Central Berkeley a boost. The 1894 Sanborn map of Block 3 in Sea View Park (Fig. 58) shows eight dwellings. Harry Hartkop's 1870s cottage at 1932 Hearst Avenue had gained a new windmill and water tank. The abandoned planing mill buildings had been removed and replaced with a municipal electric light plant. The Chinese laundry was still in operation.

One of the new dwellings was Anton A. Fink's residence, built in 1891 and still standing at 1901 Bonita Avenue (Fig. 60). Two cottages at 1933 and 1937 Berkeley Way survived until 1968.

Development in the neighborhood accelerated as the railway was extended from University Avenue to Cedar Street in 1902. On Block 3 of Sea View Park, the 1903 Sanborn map (Fig. 59) shows Lot 2 split off from Lot 1 and containing the Stocker House, built two years earlier.

Two houses at the corner of Milvia Street and Berkeley Way had been turned into flats, and a third, at 1933 Berkeley Way, had doubled in size. The Chinese laundry was still in place, now with a windmill and a water tank. The electric power plant had been privatized.

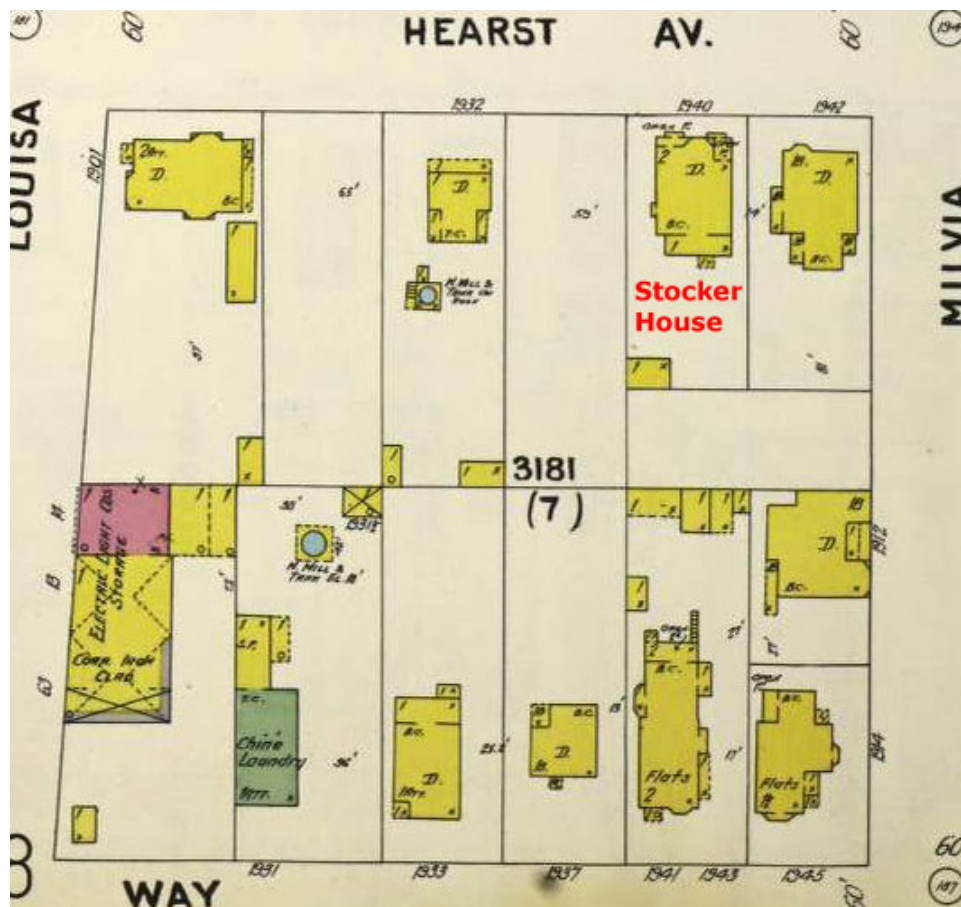


Figure 59. SVP Block 3 in the 1903 Sanborn map



Figure 60. A.A. Fink House (1891), 1901  
Bonita Avenue



Figure 61. F.D. Chase Flats (1908),  
1905-07 Bonita Avenue

In 1904-05, realtor William T. Gillihan built a speculative Dutch Colonial Revival house that is still standing at 1938 Hearst Avenue, directly to west of the Stocker home. The house was sold to the Keating family, who remained in residence for decades.



Figure 62. 1938 Hearst Avenue in 1956 (Donogh files, BAHA)



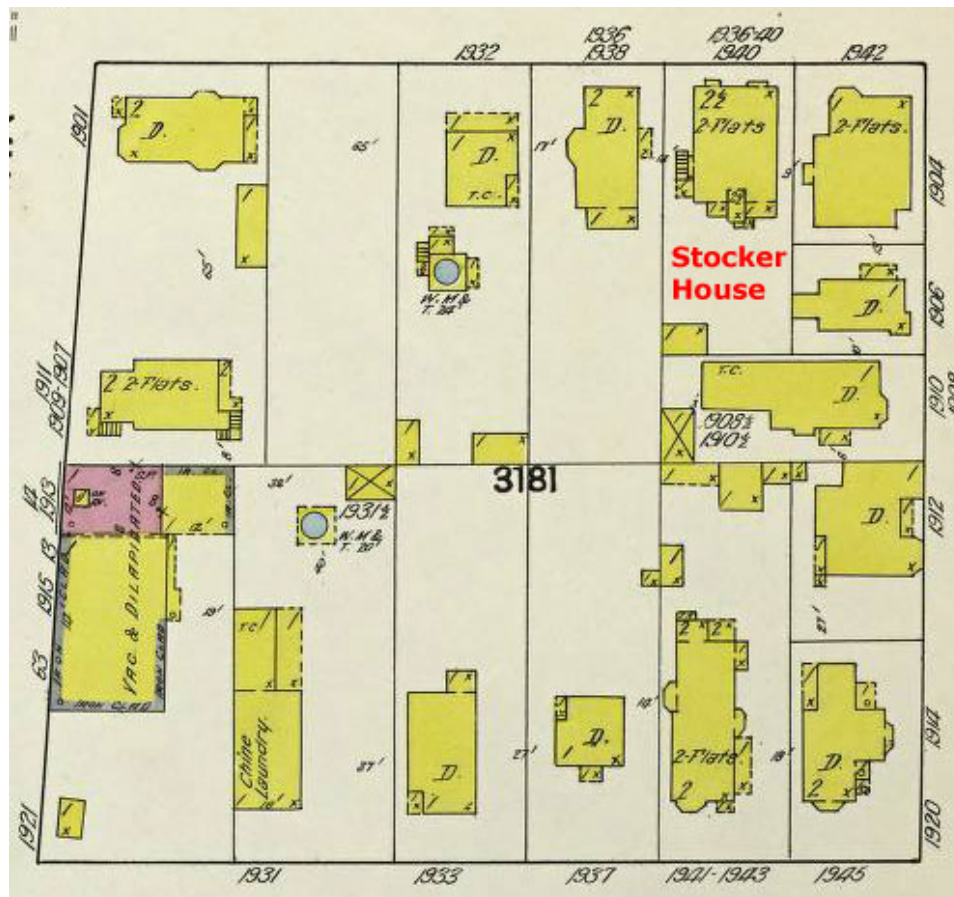


Figure 63. SVP Block 3 in the 1911 Sanborn map

By 1911, the neighborhood was almost fully built, and still primarily residential. Included in the architectural mix were Victorian houses built in the earlier years of settlement, but the dominant building style was Colonial Revival, fashionable between 1895 and 1910.

On Block 3 of Sea View Park, the 1911 Sanborn map shows a new building at the southern end of the former A.A. Fink parcel on Bonita Avenue. Although this pair of flats, currently numbered 1905–07 Bonita (Fig. 61), is Victorian in appearance, it was built in 1908 for the parcel's owner, Franklin D. Chase, a prominent realtor and lumber merchant who made the Fink House his home in 1903.

The 1911 map also shows two new one-story houses at 1906 and 1910 Milvia Street. Still standing on a site carved out of the Clapp House parcel, the small Colonial Revival (altered) cottage at 1906 Milvia was built c. 1903–04 as a rental property for landlord Nelson Butler, who owned Lot 1 at the time. The Colonial Revival cottage at 1910 Milvia, also a survivor, was built c. 1904–05 as a rental property for landlord Enoch Morrill.



Figure 64. 1910 Milvia Street in 1954 (Donogh files, BAHA)



Figure 65. 1910 Milvia St. (Google, 2018)



Figure 66. 1906 Milvia Street



Figure 67. Joseph Clapp House, Milvia Street façade

By 1911, both the Clapp House and the Stocker House had been acquired by realtor Lyman Allen and turned into two apartments each. The only downsizing

Stocker-Ding House, 1940 Hearst Avenue Landmark Application, Page 46 of 62

on the block occurred at 1920 Milvia Street, which had reverted from flats to a single-family dwelling. This coincided with the residence of Lyman Allen in the house.

The electric plant was marked vacant and dilapidated in 1911, but the Chinese laundry was still in operation. Ownership in the laundry changed over the years (Chin On in 1900, Shick Jung in 1910), but there was always a contingent of eight or nine Chinese male laundrymen residing and working on the premises.

In 1923, a Queen Anne cottage, owned by Francis & Inez Dam, appeared at 1930 Hearst Avenue, having been moved there from an unknown location. It is shown for the first time in the 1929 Sanborn map (Fig. 70). In January 1955, the house was moved again, this time to 916 Bancroft Way, making way for a mid-century apartment court.



Figure 68. Dam House being moved from 1930 Hearst Ave. to 916 Bancroft Way (Berkeley Daily Gazette, 26 January 1955)

Other additions to the block seen in the 1929 Sanborn map include a third structure on Franklin D. Chase's parcel—a rental property at 1903 Bonita Avenue, built or moved here c. 1913–1914. This house, whose hip roof suggests a 19<sup>th</sup>-century core, has been altered beyond recognition (Fig. 69).

The 1929 map also marks the disappearance of the Chinese laundry and its replacement with an elegant Queen Anne house (Fig. 71), apparently moved here circa 1921. This was another of the eight “slum structures” removed in 1968 to make room for the apartment complex that occupies nearly half the block.

The former electric plant site was now vacant.



Figure 69. F.D. Chase rental property, 1903 Bonita Avenue

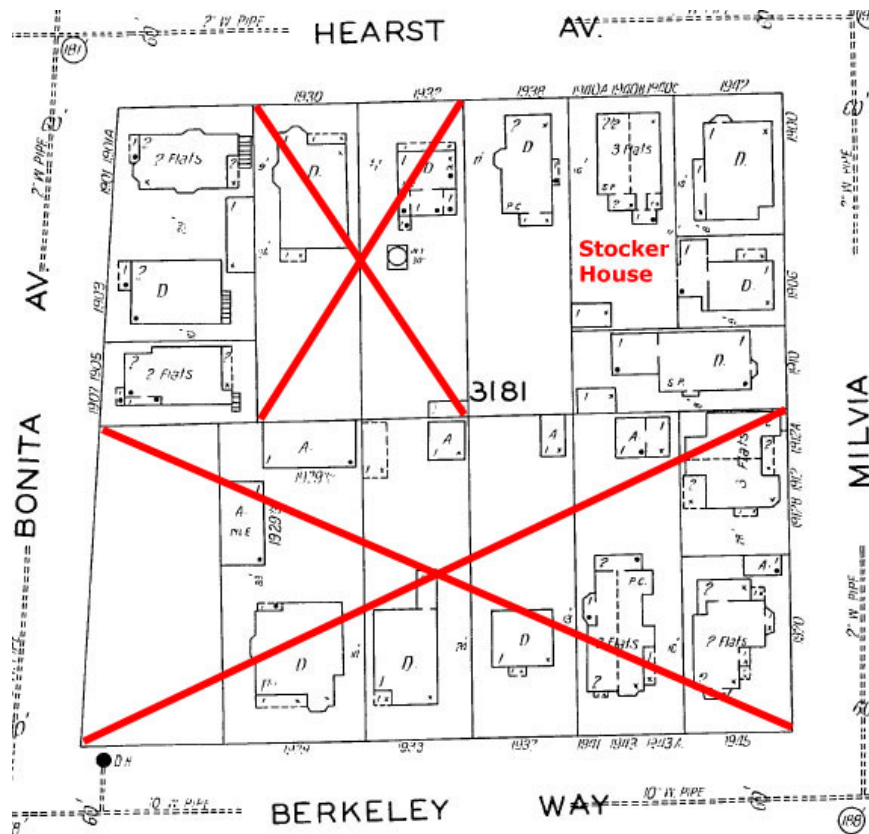


Figure 70. SVP Block 3 in the 1929 Sanborn map. X marks indicate structures that have since been demolished.



Figure 71. 1929 Berkeley Way in 1967. This house was moved here c. 1921 and demolished in 1968 (Donogh files, BAHA)

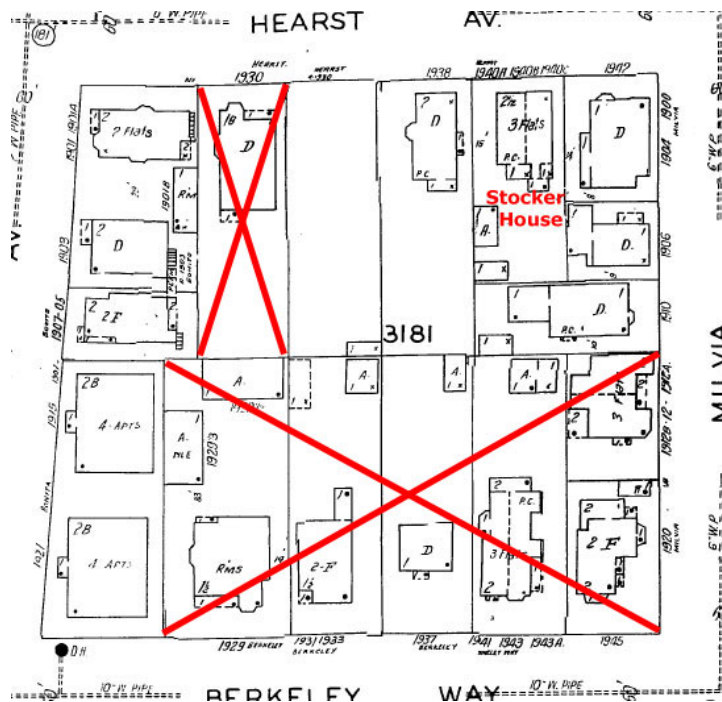


Figure 72. SVP Block 3 in the 1950 Sanborn map. X marks indicate structures that have since been demolished.

Two notable changes can be seen in the 1950 Sanborn map. The little Hartkop cottage and its water tower had disappeared from 1932 Hearst Avenue, and two 4-unit apartment buildings occupied the former site of the planing mill and electric plant. These Moderne-style buildings at 1915 and 1921 Bonita (Fig. 73) were constructed in 1946 for H.C. Reid by contractor W.M. Fariss.

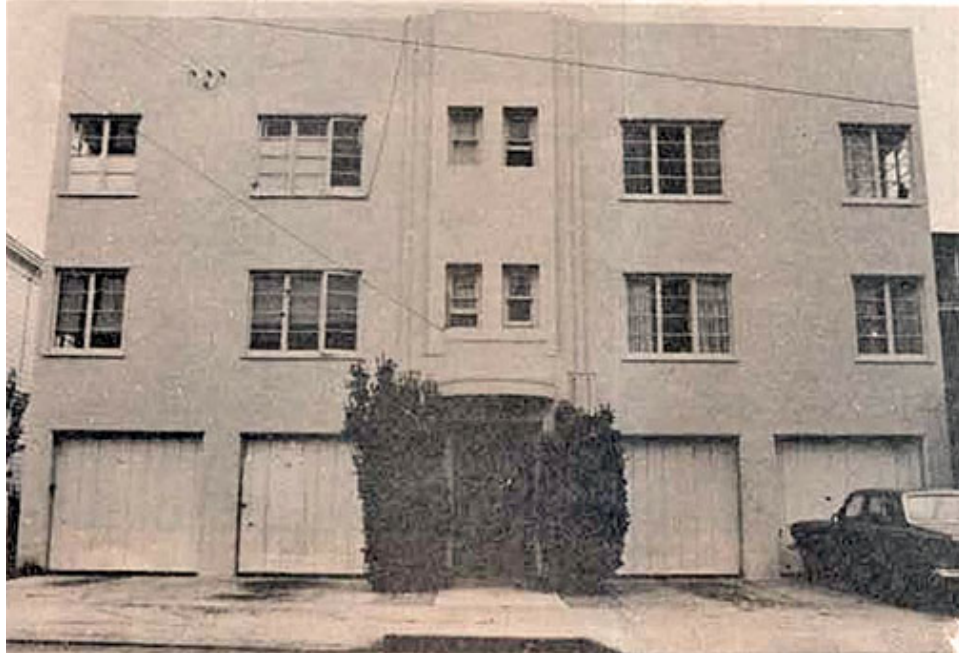


Figure 73. Reid Apartments (1946), 1915 Bonita Ave., in 1972 (Donogh files, BAHA)

Between 1929 and 1950, houses on Block 3 were further subdivided into additional units and single rental rooms. From the 1950s until the early '70s, older houses on nearly every block were demolished, giving way to large, boxy apartment blocks.

On Block 3, three new structures were erected in 1955: side-by-side, motel-like twin apartment buildings at 1930 and 1932 Hearst Avenue, and a "tickyack"<sup>41</sup> bungalow behind the Dutch Colonial at 1938 Hearst Avenue.



Figure 74. Apartments, 1930 & 1932 Hearst Avenue, built in 1955

<sup>41</sup> Berkeley Urban Conservation Survey, 1982. BAHA archives.

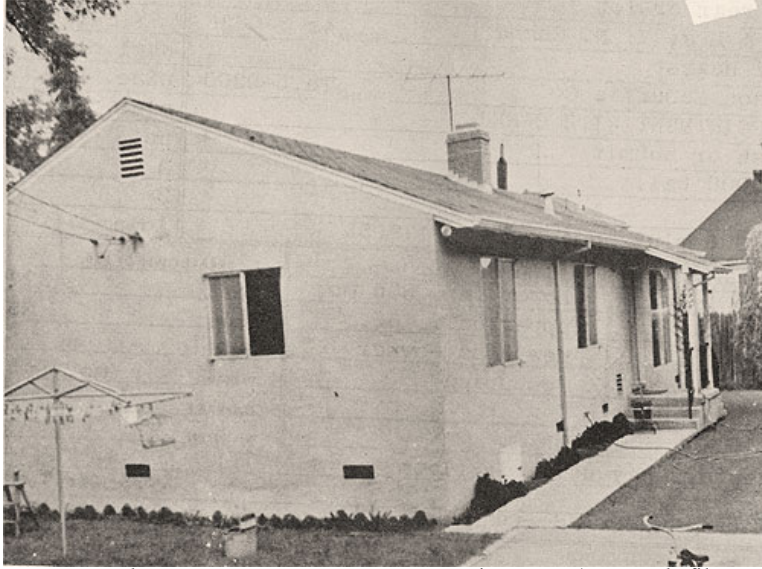


Figure 75. Rear house, 1934–38 Hearst Ave., in 1956 (Donogh files, BAHA)

During the 1960s, BART construction gave rise to land speculation that was particularly evident on the southern half of this block. Figure 76 below shows four of the eight historic houses characterized in the press as “slum dwellings,” although photos from that decade show them as sound.



Figure 76. 1929, 1931, 1937 & 1941 Berkeley Way in 1965. All were razed in 1968 to make way for the apartment block at 1945 Berkeley Way. (Donogh files, BAHA)

In December 1965, a real estate listing offered for sale the houses at 1929, 1931, 1937, 1941, and 1945 Berkeley Way. The listing's description stated, "5 old homes as carriers. Value in LAND." The remarks below promised "Terrific appreciation potential. See to believe. 32,295 sf ft of land near proposed BART station. 2½ blocks to West Gate of U.C. [...] Value in land. O.K. for 99 units low-rise or 134 [units] high-rise."

Eight historic houses facing Berkeley Way and Milvia Street were removed to make way for an apartment block erected by Smith & Haley Construction Co. at 1945 Berkeley Way. Construction was underway in September 1968 when a fire destroyed all but the concrete foundation. The project was rebuilt and completed a year later. It occupies almost half the block.



*Figure 77. Smith & Haley apartments, 1945 Berkeley Way  
(Oakland Tribune, 28 Sept. 1969)*



*Figure 78. 1945 Berkeley Way, August 2021*





Figure 79. The block viewed from the south (Apple Maps)

BART construction resulted in the loss of nearly all the houses along the north side of Hearst Avenue between Milvia and Sacramento streets. In response to citizen action, Ohlone Park was created instead of the apartments that BART had intended to construct on top of the train tube.

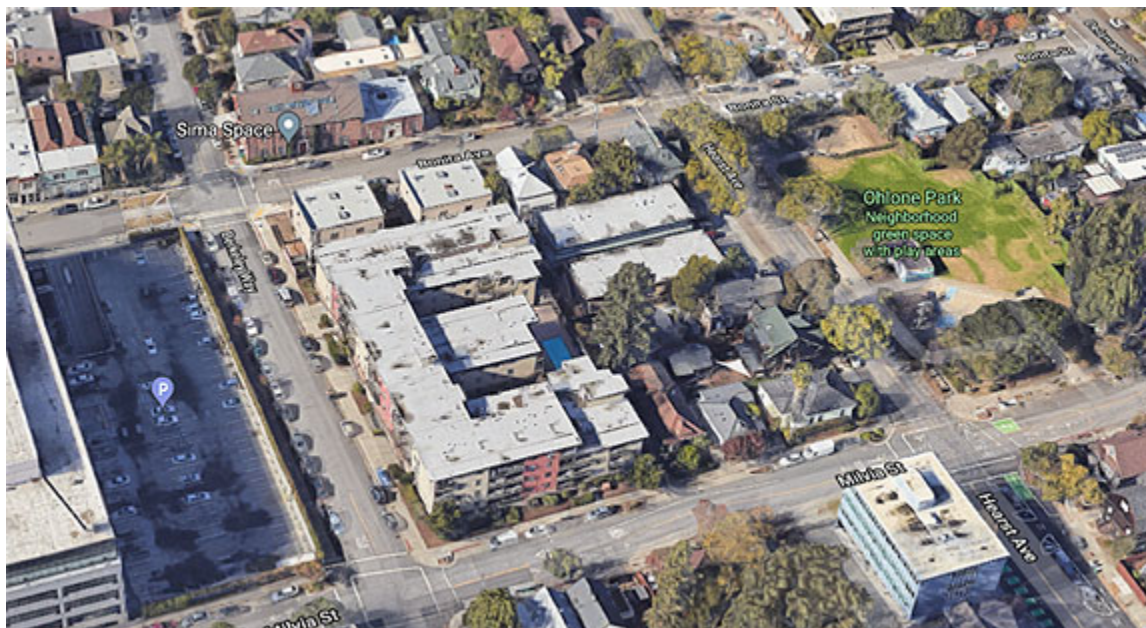


Figure 80. The block viewed from the east (Google Maps)

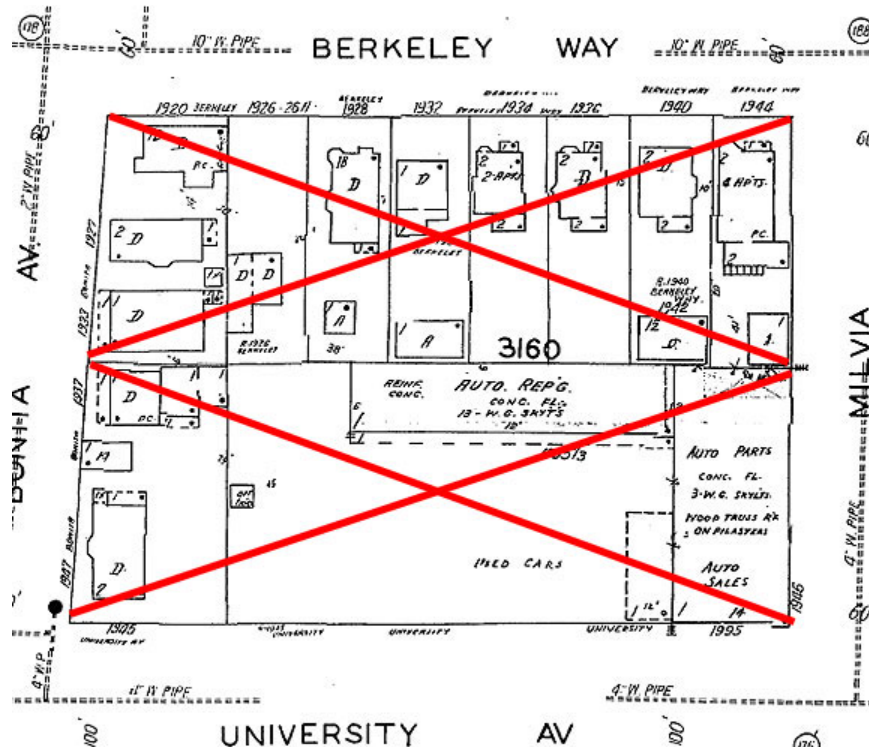


Figure 81. The next block to the south in 1950 (Sanborn map). The entire block was razed for the Golden Bear development and parking lot.

On the next block to the south, 13 historic residential structures were razed in 1968. They were replaced in 1987 by the Golden Bear Building, 1995 University Avenue, and its parking lot, which takes up the northern half of the block.



Figure 82. Reid Apartments & Golden Bear Center, Bonita Ave. & Berkeley Way

## Neighborhood Streetscapes



*Figure 83. 1938, 1940 & 1942 Hearst Avenue*



*Figure 84. Ohlone Park, north side of Hearst Avenue*



*Figure 85. South side of Hearst Avenue*



*Figure 86. Hearst & Milvia intersection, looking northeast*



*Figure 87. North side of Hearst Avenue, east of Milvia Street*



*Figure 88. North side of Hearst Avenue, east of Milvia Street*



*Figure 89. Milvia Street south of Hearst Avenue (Google Street View)*



*Figure 90. Bonita Avenue north of Hearst Avenue*



Figure 91. Bonita south of Hearst Avenue



Figure 92. Bonita Hall (William G. Black, 1905), 1918 Bonita Avenue

Two City of Berkeley Landmarks stand in the neighborhood. One of them is Bonita Hall, constructed by brickmason and contractor William G. Black in 1905.<sup>42</sup> Black's own house, an Italianate Victorian that was moved circa 1902 to its present location at 1930 Delaware Street, is currently suffering demolition by neglect (Fig. 93).

The second designated landmark is the Charles H. Spear House (1904), 1905 Martin Luther King, Jr. Way.<sup>43</sup>

<sup>42</sup> Daniella Thompson. "A Yankee Bricklayer's Creation, Bonita Hall Endures." [http://berkeleyheritage.com/berkeley\\_landmarks/bonita.html](http://berkeleyheritage.com/berkeley_landmarks/bonita.html)

<sup>43</sup> Daniella Thompson. "A Tale of Two Mystery Houses and One Politician." [http://berkeleyheritage.com/eastbay\\_then-now/spear.html](http://berkeleyheritage.com/eastbay_then-now/spear.html)

Not designated but noteworthy for historic reasons is architect William H. Wharff's Colonial Revival house (1907) at 2000 Delaware Street and Milvia.<sup>44</sup> Wharff designed many Berkeley buildings, including the landmark Masonic Temple (1905–06) and the landmark F.D. Chase Building (1909) at 2107 Shattuck Avenue.



Figure 93. William G. Black House, 1930 Delaware Street



Figure 94. William H. Wharff House, 2000 Delaware Street

While many historic structures remain in the neighborhood, none resemble the Stocker-Ding House, which offers a singular presence in this district.

## 17. Significance

The James T. Stocker–Loni Ding House meets the following criteria for designation in the Berkeley Landmarks Preservation Ordinance, BMC Section 3.24.110.

**Section 3.24.110A.1.a.** *Property that is the first, last, only or most significant architectural property of its type in the region;*

The Stocker-Ding House possesses architectural merit. It is the only structure of its type in North-Central Berkeley and possibly in the entire city. Its rarely encountered hybrid style combines Arts & Crafts design with Colonial Revival windows. Although there exist in Berkeley several Colonial Revival brown-shingle houses that incorporate some Arts & Crafts elements, no other house is known to be designed primarily in the Arts & Crafts style with Colonial Revival elements.

<sup>44</sup> Daniella Thompson. "William Wharff: Architect, Civil War Vet, and Freemason." [http://berkeleyheritage.com/eastbay\\_then-now/wharff.html](http://berkeleyheritage.com/eastbay_then-now/wharff.html)



**Section 3.24.110A.1.b.** *Properties that are prototypes of or outstanding examples of periods, styles, architectural movements or construction [...];*

The Stocker-Ding House possesses architectural merit. Some of its distinguishing features are a side-gabled roof with gable-end returns; twin gable rooflets over second-story boxed windows; elaborate scrolled wooden brackets under flaring overhangs; scrolled corbels under the boxed windows; and beadboard soffits edged with heavy molding. The street façade of the Stocker-Ding House retains virtually all its original character-defining features.

**Section 3.24.110A.1.c.** *Architectural examples worth preserving for the exceptional values they add as part of the neighborhood fabric.*

The Stocker-Ding House is worth preserving for the exceptional value it adds to the neighborhood fabric. It is the only house of its style in a district that includes a mixture of Victorians, Colonial Revival “boxes,” and mid-20<sup>th</sup>-century apartments and commercial or institutional buildings.

The house stands on a block that has lost about 70% of its historic fabric to mid-20<sup>th</sup>-century development. To the north, the house faces a block that has lost 50% of its historic fabric—the entire Hearst Avenue frontage—to BART construction. Adjacent blocks on the east, west, and south all lost historic fabric to a greater or lesser degree (the next block to the south was entirely razed).

The Stocker-Ding House retains integrity of location, design, materials, and setting. It is both instantly recognizable and highly memorable for its unique features, which enhance the Hearst Avenue streetscape.

**Section 3.24.110B.4.** *Historic value: Preservation and enhancement of structures, sites and areas that embody and express the history of Berkeley/Alameda County/California/United States.*

The Stocker-Ding House possesses historic value. It was the home and the workplace of Loni Ding (1931–2010), a pioneering Asian American documentary filmmaker, university educator, and media activist. Ms. Ding worked to create public institutions that showcased under-represented voices in American life, mentored hundreds of emerging Asian, Pacific Islander, Black, Latino, and other filmmakers, and created award-winning films that broadened the historical narrative, redefining what it is to be American.

Loni Ding was one of the first women and people of color to break into the all-white, male world of U.S. television in the late 1960s and early 1970s. She and a handful of pioneers produced the first “minority”-made programs on American television and went on to train a generation of minority and women producer-directors, camera people, and engineers with the skills to demand a place in the industry.

A tireless organizer and advocate for democratizing television and making it accessible and accountable to communities, Loni Ding played a leading role in creating the Center for Asian American Media (CAAM) the largest organization dedicated to the advancement of Asian Americans in television and filmmaking, and the Independent Television Service (ITVS), “public media’s leading incubator and presenter of independent film.”

As a professor of filmmaking in the Department of Ethnic Studies at U.C. Berkeley for over 30 years, she trained and inspired hundreds of young people of color and women to enter the media field.

Loni Ding's films helped re-write U.S. history and turn the lens on previously invisible American heroes. Her documentaries *Nisei Soldier* and *The Color of Honor: The Japanese-American Soldier During World War II* were screened to both houses of Congress, as well as to then-President Ronald Reagan, and were instrumental in helping pass the 1988 Civil Liberties Act, which granted formal U.S. reparations to American citizens of Japanese descent interned during World War II.

Loni Ding's acclaimed PBS series, *Ancestors in the Americas*, is a main reference on Asian American history, offering an epic scope of Asian migrations to North America, South America, and the Caribbean from the 1700s to the early 1900s, and uncovering the role of Asians in building the United States.

Her productions have been honored with multiple Emmy awards, have been broadcast internationally on four continents, and were screened at international film festivals around the world.

**Historic Value:** City Yes Neighborhood Yes  
**Architectural Value:** Neighborhood Yes

**18. Is the property endangered?** No

**19. Reference Sources:**

Alameda County assessment records. BAHA.

Berkeley and Oakland directories. BAHA, Berkeley Historical Society, Ancestry.com.

Block files. BAHA.

Sanborn Fire Insurance Maps. BAHA.

Assessor's maps. Alameda County Assessor's Office.

U.S. Census and California Voter Registration records. Ancestry.com.

Ormsby Donogh files. BAHA.

Historic newspapers. BAHA archives, California Digital Newspaper Collection, Chronicling America, Ancestry.com

Center for Educational Telecommunications (CET) <http://www.cetel.org/>

Contemporary photographs by Daniella Thompson unless otherwise specified.

Nelson, Marie. *Surveys for Local Governments – A Context for Best Practices*. California Office of Historic Preservation, 2005. [http://ohp.parks.ca.gov/pages/1054/files/Survey Savvy CCAPA.pps](http://ohp.parks.ca.gov/pages/1054/files/Survey_Savvy_CCAPA.pps)

**20. Recorder:**

Daniella Thompson  
2663 Le Conte Avenue  
Berkeley, CA 94709

**Applicant:**

May Ying Welsh  
1940 Hearst Avenue  
Berkeley, CA 94709

**Date:** August 2021



Office of the City Manager

INFORMATION CALENDAR

May 10, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Alene Pearson, Acting Director, Planning and Development Department

Subject: LPO NOD: 2523 Piedmont Avenue/#LMIN2021-0004

INTRODUCTION

The attached Notice of Decision (NOD) for the Landmarks Designation is presented to the Mayor and City Council pursuant to Berkeley Municipal Code/Landmarks Preservation Ordinance (BMC/LPO) Section 3.24.160, which requires that “a copy of the Notice of Decision shall be filed with the City Clerk and the City Clerk shall present said copy to the City Council at its next regular meeting.”

CURRENT SITUATION AND ITS EFFECTS

The Landmark Preservation Commission (LPC/Commission) has designated the subject property as a City of Berkeley Structure of Merit. This action is subject to a 15-day appeal period, which began on April 25, 2022.

BACKGROUND

BMC/LPO Section 3.24.190 allows the Council to review any action of the Commission in granting or denying Landmark, Structure of Merit or Historic District status. In order for Council to review the decision on its merits, Council must appeal the NOD. To do so, a Councilmember must move this Information Item to Action and then move to “certify” the decision. Such action must be taken within 15 days from the mailing of the NOD or by May 10, 2022. Such certification to Council shall stay all proceedings in the same manner as the filing of an appeal.

If the Council chooses to appeal the action of the Commission, then a public hearing will be set within 25 days pursuant to BMC/LPO Section 3.24.300. The Council must then rule on the designation within 30 days from the date that the public hearing is opened or the decision of the Commission is automatically deemed affirmed.

Unless the Council wishes to review the determination of the Commission and make its own decision, the attached NOD is deemed received and filed.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Landmark designation provides opportunities for the adaptive re-use and rehabilitation of historic resources within the City. The rehabilitation of these resources, rather than

their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers.

POSSIBLE FUTURE ACTION

The Council may choose to certify or appeal the decision to grant designation status, setting the matter for public hearing at a future date.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no known fiscal impacts associated with this designation action.

CONTACT PERSON

Fatema Crane, Senior Planner, Planning and Development Department, 510-981-7410

Attachments:

1: Notice of Decision – #LMIN2021-0004, 2523 Piedmont Avenue



L A N D M A R K S  
P R E S E R V A T I O N  
C O M M I S S I O N

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N O T I C E O F D E C I S I O N

**DATE OF BOARD DECISION: February 3, 2022**  
**DATE NOTICE MAILED: April 25, 2022**  
**APPEAL PERIOD EXPIRATION: May 10, 2022**  
**EFFECTIVE DATE OF PERMIT (Barring Appeal or Certification): May 11, 2022<sup>1</sup>**

## **2523 Piedmont Avenue**

### **The Wurts-Lenfest House**

**Landmark application (#LMIN2021-0004) for consideration of City Landmark or Structure of Merit designation status for a single-family residence – APN 055-1851-022-00.**

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, **APPROVED** the following designation:

- City of Berkeley Structure of Merit, pursuant to Berkeley Municipal Code Section 3.24.110.B

**INITIATED BY:** Petition of Berkeley Residents

**ZONING DISTRICT:** Restricted Multiple-Family Residential (R-2A)

**ENVIRONMENTAL REVIEW STATUS:** Categorically exempt pursuant to Section 15061(b)(3) of the CEQA Guidelines -- Review for Exemptions.

**The application materials for this project are available online at:**  
<http://www.cityofberkeley.info/zoningapplications>

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<sup>1</sup> Pursuant to BMC Section 23B.32.090, the City Council may “certify” any decision of the LPC for review, which has the same effect as an appeal. In most cases, the Council must certify the LPC decision during the 14-day appeal period. However, pursuant to BMC Section 1.04.070, if any portion of the appeal period falls within a Council recess, the deadline for Council certification is suspended until the first Council meeting after the recess, plus the number of days of the appeal period that occurred during the recess, minus one day. If there is no appeal or certification, the Use Permit becomes effective the day after the certification deadline has passed.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
Structure of Merit designation status - #LMIN2021-0004  
2523 Piedmont Avenue – Wurts-Lenfest House  
May 10, 2022  
Page 2 of 4

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**FINDINGS, CONDITIONS AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE**

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**COMMISSION VOTE: 9-0-0-0**

**YES:** ADAMS, CRANDALL, ENCHILL, FINACOM, JOHNSON, LEUSCHNER,  
MONTGOMERY, SCHWARTZ, TWU

**NO:** None

**ABSTAIN:** None

**ABSENT:** None

**TO APPEAL THIS DECISION (see Section 3.24.300 of the Berkeley Municipal Code):**

To appeal a decision of the Landmarks Preservation Commission to the City Council you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the City Clerk, located at 2180 Milvia Street, 1<sup>st</sup> Floor, Berkeley; or by facsimile to (510) 981-6901. The City Clerk's telephone number is (510) 981-6900.
  - a. Pursuant to BMC Section 3.24.300.A, an appeal may be taken to the City Council by the application of the owners of the property or their authorized agents, or by the application of at least fifty residents of the City aggrieved or affected by any determination of the Commission made under the provisions of Chapter 3.24.
2. The appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).
3. Submit the required fee (checks and money orders must be payable to 'City of Berkeley'):
  - a. The basic fee for persons other than the applicant is \$500. This fee may be reduced to \$100 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
  - b. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is \$500, which may not be reduced.
  - c. The fee for all appeals by Applicants is \$2500.

If no appeal is received, the landmark designation will be final on the first business day following expiration of the appeal period.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
Structure of Merit designation status - #LMIN2021-0004  
2523 Piedmont Avenue – Wurts-Lenfest House  
May 10, 2022  
Page 3 of 4

**NOTICE CONCERNING YOUR LEGAL RIGHTS:**

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If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Landmarks Preservation Commission at, or prior to, the public hearing.
2. You must appeal to the City Council within fifteen (15) days after the Notice of Decision of the action of the Landmarks Preservation Commission is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a “taking” of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
  - A. That this belief is a basis of your appeal.
  - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
  - C. All evidence and argument in support of your belief that the decision or condition constitutes a “taking” as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
Structure of Merit designation status - #LMIN2021-0004  
2523 Piedmont Avenue – Wurts-Lenfest House  
May 10, 2022  
Page 4 of 4

**PUBLIC COMMENT:**

Communications to Berkeley boards, commissions or committees are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

**FURTHER INFORMATION:**

Questions about the project should be directed to the project planner, Fatema Crane, at (510) 981-7410 or [fcrane@cityofberkeley.info](mailto:fcrane@cityofberkeley.info) or [lpc@cityofberkeley.info](mailto:lpc@cityofberkeley.info)

**ATTACHMENTS:**

- 1. Findings and Conditions
- 2. Landmark application



**ATTEST:** \_\_\_\_\_  
Fatema Crane, Secretary  
Landmarks Preservation Commission

Cc: City Clerk  
Property Owner: Wilson Wong & Christina Kwan, 2523 Piedmont Ave., Berkeley, CA  
Applicants: Claremont Elmwood Neighborhood Association, P. O. Box 5108, Berkeley, CA



ATTACHMENT 1, PART 2

FINDINGS FOR APPROVAL

FEBRUARY 3, 2022

**2523 Piedmont Avenue – The Wurtz-Lenfest House**

**City of Berkeley Landmark Application #LMIN2021-0004**

PROJECT DESCRIPTION

Structure of Merit Designation of the property at 2523 Piedmont Avenue [APN 055 185102200] – The Wurtz-Lenfest House

CEQA FINDINGS

1. The project is found to be exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15061.b.3 of the CEQA Guidelines (activities that can be seen with certainty to have no significant effect on the environment).

LANDMARK PRESERVATION ORDINANCE FINDINGS

2. Pursuant to Berkeley Municipal Code (BMC) Section 3.24.110.B.2.c of the Landmarks Preservation Ordinance, and based on the evidence presented in the Landmark application, the Landmarks Preservation Commission of the City of Berkeley (Commission) finds that the subject property exhibits architectural merit as a good example of the East Shingle Cottage, also known as the High-Peaked Colonial Revival House. The subject main building dates to the period during which this regional style emerged and retains all of its character-defining features, including: a steeply-pitched roof with front-facing gable, horizontal wood siding on the lower story and wood shingles on the upper story; recessed entry porch with partial height pony walls and classical column posts; bay window at lower story of front elevation; windows in front gable with shingles curving inward to meet the frame; wood windows throughout with painted sashes and broad, flat trim. Further, the building retains its original design, materials and workmanship, which are the National Park Service's hallmarks of architectural integrity. For these reasons, the property and building warrant designation status as a City of Berkeley Structure of Merit.
3. Further, the Commission finds that property was the long-time residence of David Mundstock, a key figure in the development of progressive politics and government in Berkeley. Mundstock was the author of major reforms in elections, fair representation, and local government structure and policies; he was a community historian who compiled records and analysis of his era.
4. The property is one of four, extant residences in the immediate area that was developed by Rebecca Snyder Wurts and Myron Le Fevre Wurtz.

FEATURES TO BE PRESERVED, OR RESTORED WHERE POSSIBLE

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This designation shall apply to the subject property and the following distinguishing features shall be preserved:

Main Building

- Two-story massing, with A-frame upper story roughly twice the height (at the ridge) than the lower story
- Recessed main entry porch, with partial-height walls topped with classical columns
- Wood exterior materials and trim, including shingles on the upper story and horizontal, narrow gauge clapboard siding on lower story
- Bay window on lower floor at front facade
- Original wood main door, including glazing in the upper half and ornamental wreath detail within the lower half
- Twenty-seven original wood windows including: west/front elevation (at ground floor and upper floors) containing double-hung with true-divided-lites and ogee lugs at the upper sash; north/side elevation (at ground and upper floors) containing double-hung with true-divided-lites and ogee lugs at the upper sash and (at upper floor) containing a horizontally-oriented, fixed true divided lite window; south/side elevation (at ground and upper floors) containing double-hung with true-divided-lites and ogee lugs at the upper sash; and east/rear (at ground and upper floors) containing double-hung with true-divided-lites and ogee lugs at the upper sash and (ground) true-divided lite wood door.

Received  
OCT 04 2021  
Land Use Planning

**CITY OF BERKELEY**  
*Ordinance #4694 N.S.*  
**LANDMARK APPLICATION**

**Wurts-Lenfest House**  
**2523 Piedmont Avenue**  
**Berkeley, California**



*Figure 1. Street (west) façade of the Wurts-Lenfest House. Anthony Bruce, 2021*

1. **Street Address:** 2523 Piedmont Avenue  
**County:** Alameda    **City:** Berkeley    **ZIP:** 94704
2. **Assessor's Parcel Number:** 55-1851-22 (Kearney Tract, Block 1, part of Lot 6)  
**Dimensions:** 30 feet x 135 feet  
**Cross Streets:** Dwight Way and Parker Street
3. **Is property on the State Historic Resource Inventory?** No  
**Is property on the Berkeley Urban Conservation Survey?** Yes  
**Form #:** 17540
4. **Application for Landmark Includes:**
  - a. **Building(s):** Yes    **Garden:** No    **Other Feature(s):** No
  - b. **Landscape or Open Space:** No
  - c. **Historic Site:** No
  - d. **District:** No
  - e. **Other:** Entire property
5. **Historic Names:** Wurts-Lenfest House  
**Commonly Known Name:** David Mundstock's House
6. **Date of Construction:** 1901    **Factual:** Yes  
**Source of Information:** Lot sale recorded in *SF Call*, 1 Aug. 1900;  
1902 property assessment record
7. **Designer:** Unknown [A.W. Smith ?]
8. **Builder:** Unknown
9. **Style:** High-Peaked Colonial Revival
10. **Original Owners:** Myron LeFevre and Rebecca Snyder Wurts (1901);  
Arabelle Lenfest and heirs (1902–c. 1915)  
**Original Use:** Single-family residence
11. **Present Owner:** Wilson K. Wong and Christina Kwan,  
2523 Piedmont Avenue, Berkeley, California 94704  
**Present Occupant:** Vacant
12. **Present Use:** Residential  
**Current Zoning:** R-2A    **Adjacent Property Zoning:** R-2A
13. **Present Condition of Property:**  
**Exterior:** Excellent    **Interior:** Guttled    **Grounds:** Defoliated  
**Has the property's exterior been altered?** Minimally

## 14. Description

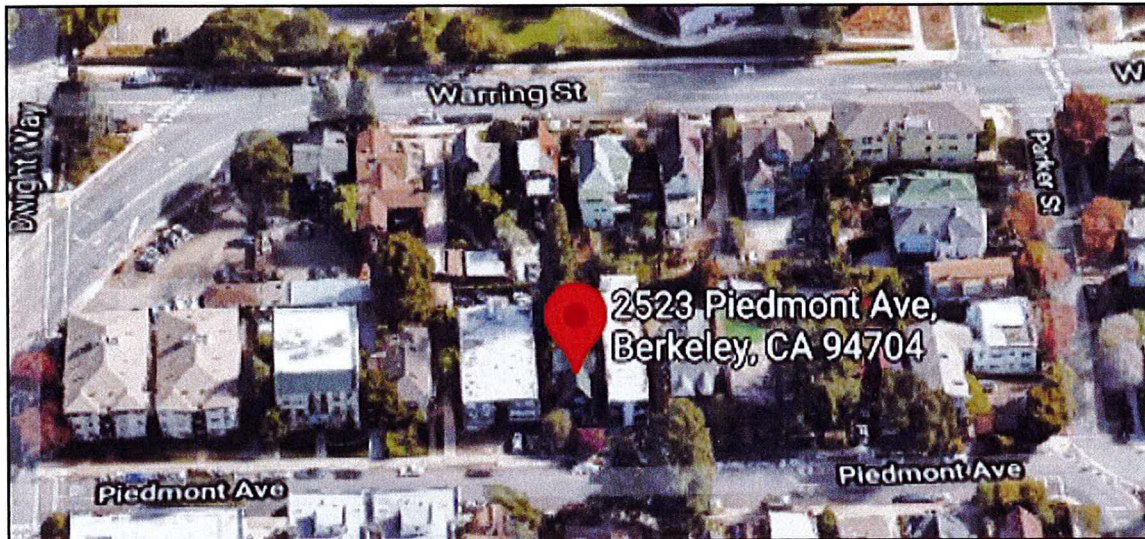


Fig. 2. Block 1, Kearney Tract. Google view.

The Wurts-Lenfest House is located at 2523 Piedmont Avenue, on a block lying directly west of the Clark Kerr Campus and south of Dwight Way. The house is a wood-framed, one-and-a-half-story structure built in 1901 in the High-Peaked Colonial Revival style.

The house is clad in narrow-gauge painted clapboard on all sides of the ground floor. Its high-peaked gable and two dormers retain the original unpainted shingles. The porch columns, windows, and front steps conform to the classic Colonial Revival style, complemented by the inward-curving gable walls flanking the upper front bay window that echoes a feature often found in the Bay Area's late Victorian shingled style houses.

The various windows (twenty-seven in all) are original, save two, and exhibit a handsome repetitive patterning. In early 2021, the house was repainted so as to compliment its distinctive features. The house is an excellent example of the High-Peaked Colonial Revival style.

### Massing, Roof, and Cladding

The building's footprint is rectangular. The footprint includes a one-story, flat-roofed rear wing—typical for houses of this period—projecting to the east (fig. 3).

Typical of the High-Peaked Colonial Revival house, a dormer is featured on both the north and south slope of the main roof: a shed-roofed dormer on the north slope and a gable-roofed dormer on the south slope. Both dormers are clad in the original unpainted shingles (Figs. 4 and 5).

In the front of the house (Figs. 1 and 6), the high gable roof projects over the first floor about twenty inches. The gable has closed eaves over a plain, wide frieze board. A row of small dentils runs at the top of the frieze board, with moldings above and below.



Fig. 3. The one-story extension of the ground floor at the rear. Daniella Thompson, 2021



Fig. 4. The dormer on the north, showing the horizontal stair landing window. Daniella Thompson, 2021



Fig. 5. The south dormer over the group of four entry hall windows. Daniella Thompson, 2021

## Front (West) Façade High-Peaked Gable

The front façade is distinguished by its symmetrical high roof gable and an asymmetrical ground floor (Fig. 6). The roofline of the gable is flared outward at its lower tips. Bordering the gable's shingle cladding at the roof's edge is a single row of vertical shingles. A narrow vertical vent with a wooden frame and sill is embedded in the gable wall's upper region, further emphasizing the height of the roof.

The three-sided upper front bay window is inset some twenty-five inches within the gable, with its center window flush with the gable wall. The window bay is flanked by the gable's curving walls, which form niches for the bay's side windows. The windows are painted in a handsome shade of cream trim and grey-green sash (as are all the windows). A horizontal narrow painted board undergirds the bay window inset, stretching across the front inset to unify the bay with the shingled façade.

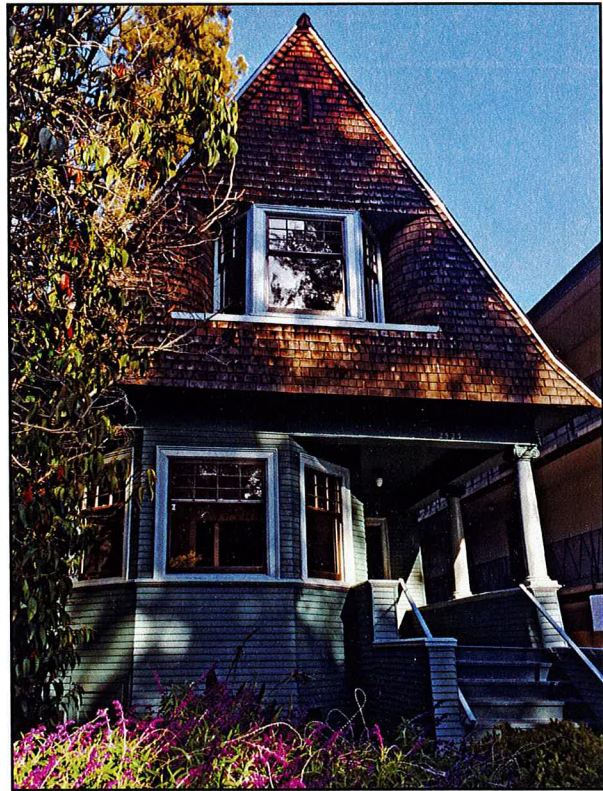


Fig. 6. Front façade. Anthony Bruce, 2021

The three windows in the bay act as the model for the noteworthy window patterning throughout the house. They are double-hung, wood-framed, and set within molded casings. The longer lower sashes are single-paned, while the shorter upper sashes are divided by wooden muntins. The center window's upper sash is divided into twelve (4 over 3) lites, and the side windows are divided into six (2 over 3) lites. A long, plain, wooden sill extends across the bottom of the bay. It appears that recently the lower sash of the south window in the bay has been broken.

## Front (West) Façade First Floor

The handsome ground-floor façade is both in balance and in contrast to the dramatic high-peaked gable above. (Figs. 1 and 6) The north side of the first floor is three-sided with one window per side set directly under the wide frieze board. Below the north facet of the bay, close to the ground, is a crawl-space access door. The south side of the first floor is defined by a substantial wide stairway with a recessed entrance porch. The height and spread of the first floor narrow-gauge clapboard



*Fig. 7. The front porch.  
The Grubb Company listing photo, 2021*



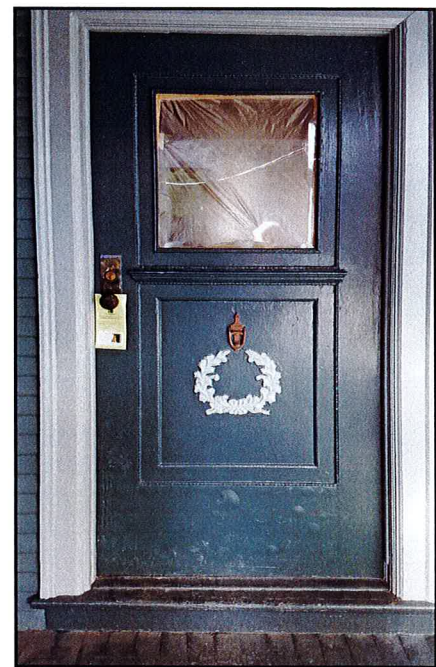
*Fig. 8. An Ionic capital on a porch column.  
The Grubb Company listing photo, 2021*

siding, below the bay windows, together with the prominent wide stairway leading up to the inset porch, give the entire house frontage, including the high-peaked gable, a substantial and balanced architectural “footing” and presence.

The windows in the first floor bay are of the same type seen in the gable, but here a molded sill runs under all three facets (Fig. 7). While the center window is identical to the one in the upper bay, the side windows below have nine (3 over 3) lites in their upper sashes.

The recessed porch is open on the south side and reached by a wooden staircase flanked by two-step parapets with molded wooden caps. The southern parapet continues into the porch. Supporting the porch on the open side are two distinctive wooden Tuscan columns with Ionic capitals. The porch walls are clad in the narrow-gauge clapboard, topped by the plain wide cornice. The porch ceiling is paneled in tongue-and-groove and there is a ceiling light.

At the eastern end of the porch a finely crafted entrance door is set within wide, mitred, molded casing. The door features two rectangular frames, the upper containing a clear beveled-glass pane and the lower, a panel adorned with a garland. The door retains its original ornate brass hardware, including a bell turn that rings on the inside of the door.



*Fig. 9. The front door.  
Ramine Akhavan, 2021.*

## South Façade

The front part of the south façade is situated under the overhang of the gable roof (see Fig. 1). On the upper level, the gable-roofed dormer has closed roof eaves but no frieze board. A narrow vertical vent with a wood frame and sill is embedded in the gable wall's upper region. The dormer features an off-center double-hung window with twelve (4 over 3) lites in the upper sash.

On the ground floor, to the east of the porch, a distinctive bank of four small, wood-framed casement windows illuminating the entrance hall is set in a molded casing. The upper third of each window is divided into six (3 over 2) lites.

Further east is a shallow bay with three identical double-hung windows set in molded casings and featuring twelve (4 over 3) lites in the upper sash. The windows share a molded sill that is continuous from the porch parapet.

Beyond the bay begins the one-story rear wing (Fig. 3). This wing is clad in the same narrow-gauge clapboard as the rest of the house but has no frieze board. Instead, a strip of molding runs under the roof soffit. The south façade of the rear wing includes three windows. A small casement with six (3 over 2) lites in its upper part is located close to the bay. Beyond it are two double-hung windows, the first with twelve (4 over 3) lites in the upper sash and the second with nine (3 over 3).

The right bay window glass was recently broken and also the middle (or large) window for the back room appears to have been broken. The front steps are said to be being pushed out of line by the underground roots of a Bay Tree that was cut down some time ago.



*Fig. 10. South façade, looking east.  
Daniella Thompson, 2021*



## North Façade

On the north side, a substantial shed-roofed dormer occupies the central portion of the façade (Fig 11). Its roof slopes from the tip of the gable to the lower edge of the main roof, and its vertical wall extends directly down to the ground, enclosing the space below the gable overhang and creating additional space for the stairwell.

The north wall of the dormer includes a horizontal stairwell-landing window with eighteen (9 over 2) lites (Fig. 12) in fixed position. Further to

*Fig. 11. Front façade showing some of the north elevation. Anthony Bruce, 2021*



the rear in the dormer is a double-hung window with nine (3 over 3) lites. Below this window on the ground floor there is another double-hung window with nine (3 over 3) lites.

The rear wing's front part shelters under the main gable eave, while the rest possesses its own roof. A single double-hung window is set on the north wall of this wing, with twelve (4 over 3) lites in its upper sash.

### Rear (East) Façade

The east wall of the main gable features two windows that are only partially visible from the ground. Both are double-hung and possess nine (3 over 3) lites in the upper sash (Fig. 3).

The rear wing's east wall has been altered. It contains two doors in flat board casings. The one on the left is wood-framed and glazed with ten (2 over 5) lites. The door in the center, which opens onto a small porch accessed by stairs, is screened, and its features and materials are not visible. Above the central door is a metal awning. To its right is a double-hung window with undivided panes, set in a narrow casing of undetermined material. At the extreme right of the wall, a patch in the clapboard suggests that a window has been removed from that spot.

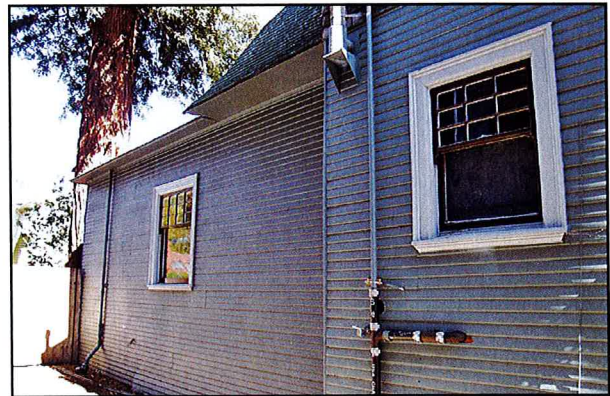


*Fig. 12. The stair landing window in the north dormer (before interior demolition) The Grubb Company listing photo, 2021*

### Yard Areas

Both the front and back yard have recently been cleared of flowering shrubs, trees, and plants, except for a large, mature redwood tree in the back (Figs. 1 and 13). The architectural impact of the house is enhanced by the traditional garden set-back and by the natural east-west slope of the land.

*Fig.13. North side of the one-story extension. Daniella Thompson, 2021*

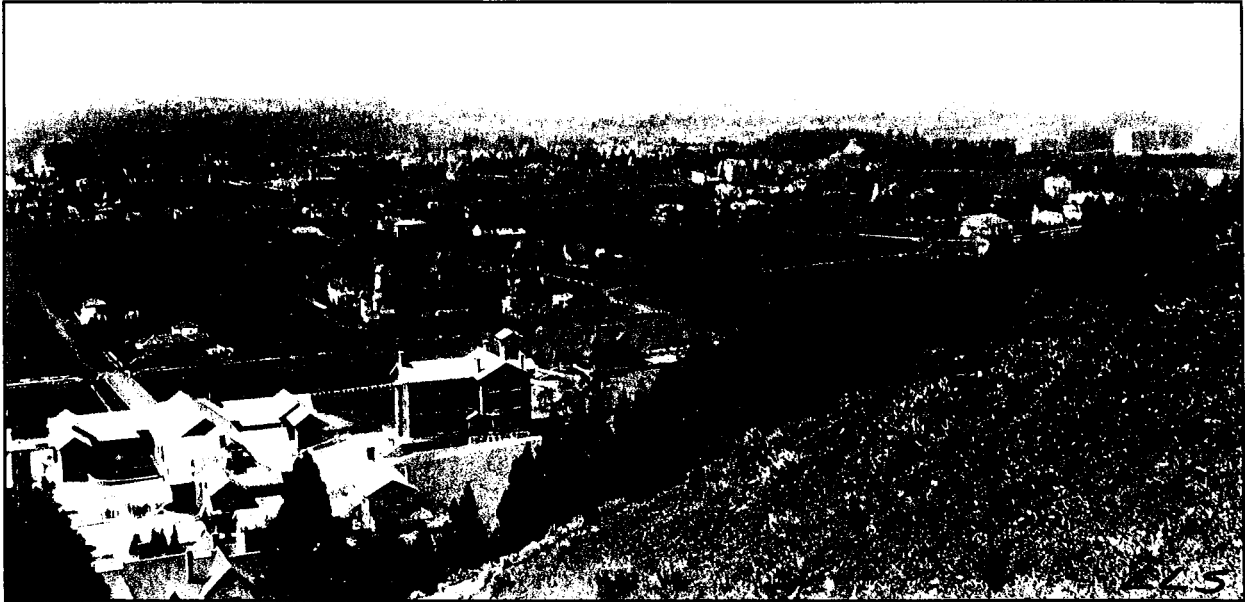


### Features to Be Preserved

The Wurts-Lenfest House is a classic High-Peaked Colonial Revival house of simple, yet striking, appearance. It was seemingly designed so that every individual feature might be harmonious and contribute to a rhythm that creates a balanced, yet dramatic whole. Because the exterior of the house has been maintained in fine condition over the last one hundred and twenty years, and because the house retains almost all of its original features—all essential to its whole; therefore, all its features appear to be significant, including, but not limited to:

- the 27 original windows
- the window framing and sills
- the high-peaked gable roof
- the shingled walls within the gable roof
- the shingled dormers
- the narrow-gage clapboard siding
- the neo-classical pillars on the porch
- the wooden porch stairs and side parapets
- existing garden set-back

## 15. History



*Fig. 14. The 2500 blocks of Warring and Piedmont, west of the California School for the Deaf and Blind School, seen from the hill behind the school. Berkeley Historical Society.*

### **Introduction: John Kearney Tract**

The Wurts-Lenfest House story begins with John Kearney who is said to have been one of those men who joined the Irish Catholic migration to the United States after the Potato Famine of 1846-47. In 1869, by the age of 36, he became a naturalized citizen in San Francisco. Before then, however, he was already known to be a grain farmer on a section of the East Bay Hills, above what became College Avenue, north of what became Derby Street, and south of Dwight Way. He would have obtained this land from some transaction involving the Peralta Family, but how he did is unclear given that the Peralta land transactions were questionable at that time.

John Kearney appears somewhat later to have foreseen a new direction of land use, following the lead of the College of California (then located in Oakland). In 1863, the College had purchased extensive farmland to the north of Strawberry Creek, which became the future site for the University of California (U.C.), and property to the south of Strawberry Creek extending to the point of Dwight Way, to be platted for the selling of village lots to finance an envisioned new campus. Not long after, in 1867, Kearney is recorded to have sold a 130-acre parcel of his farmland, east of what would become Warring Street, for \$12,100 in gold coin for the State Deaf, Dumb, and Blind Asylum, or the California School for the Deaf and Blind, now U.C.'s Clark Kerr Campus.

The Berkeley Architectural Heritage Association (BAHA) tour booklet entitled "The Making of a Streetcar Suburb: Classic Berkeley Houses in the Kearney Tract on the College Avenue Electric Line" tells that Kearney must have felt an excitement then for the possibilities of a new town:

...Kearney was present at an historic meeting held on January 20, 1874 in the Oakland home of Francis K. Shattuck and presided over by Dr. Henry Durant, then mayor of Oakland and the first president of the University, at which a heated discussion occurred regarding incorporation of the growing community around the college campus. It was

Kearney who is reported to have made the motion to incorporate Berkeley, backed by the college professors in the room, who wanted “to keep out of the jaws of Oakland.”

The incorporation of Berkeley did not occur until 1878, but Kearney proceeded regardless to subdivide his remaining farmland into a residential tract composed of six blocks. He filed the subdivision map with the County of Alameda, titled, “Map of the Property of John Kearney Near the State University” on September 12, 1876.

The Kearney Tract was adjacent to the College of California’s “Berkeley Property” subdivision already laid out in 1865 by Frederick Law Olmsted (known for his design of New York’s Central Park). Olmsted’s plan featured a novel, centrally divided road “along the curve of the hillside” named “Piedmont Way” (California Registered Historic Landmark No. 986, City of Berkeley Landmark #130). In 1900 the City of Berkeley renamed the street Piedmont Avenue and connected it to the Kearney Tract’s “Mark Street,” where the Wurts-Lenfest House was built in 1901.

The Kearney Tract was originally laid out in 1876 with large “villa” lots measuring 120 feet x135 feet, large enough for gardens and horse stables, as well as a house. As early as 1877, three large houses were built on the 2500 block of Piedmont, including a house in lot 6, numbered 2521 Piedmont, for William H. Chapman (where Lela Lenfest was living at the time of her death in 1951). Up until the late 1890s, the Kearney Tract simply reflected the rural life that had been in the greater East Bay: an evolving mix of farms, and clusters of houses and businesses within the town grids, a few factory sites here and there, all connected to the transcontinental railroad terminus and wharfs along the Bay. U.C. had only just begun to grow its campus.

## The East Bay Building Boom

What changed life in the East Bay and, in turn, the Kearney Tract, was an economic growth and prosperity that just seemed to “boom” across the landscape in the 1890s, spreading quickly through the towns of Alameda, Oakland, and Berkeley. The clear cause was the continual modernizing of the train and ferry transportation systems connecting Oakland to San Francisco, and, then, Oakland to Berkeley.

In 1876 former Governor Leland Stanford and real estate developer Francis Kittredge Shattuck purchased a steam train right-of-way, creating a spur line from the railroad along the Bay to go up Stanford Avenue and Adeline Street—through farm property then, up to the small cluster of business properties at Shattuck and University Avenues. In 1891, well after Berkeley was incorporated and beginning to grow and thrive, the first electric streetcar was “hooked up” from central Oakland to travel out Grove Street (now Martin Luther King) to Downtown Berkeley. And, of course, as more announcements of plans for new streetcar connections were being made, property near the lines was quickly being subdivided for new homes, including all along College Avenue.



*Fig. 15. The Chapman House (1877) stood at 2521 Piedmont Avenue. Note Wurts-Lenfest House to the south in this 1939 photo. Donogh File, BAHA Archives.*

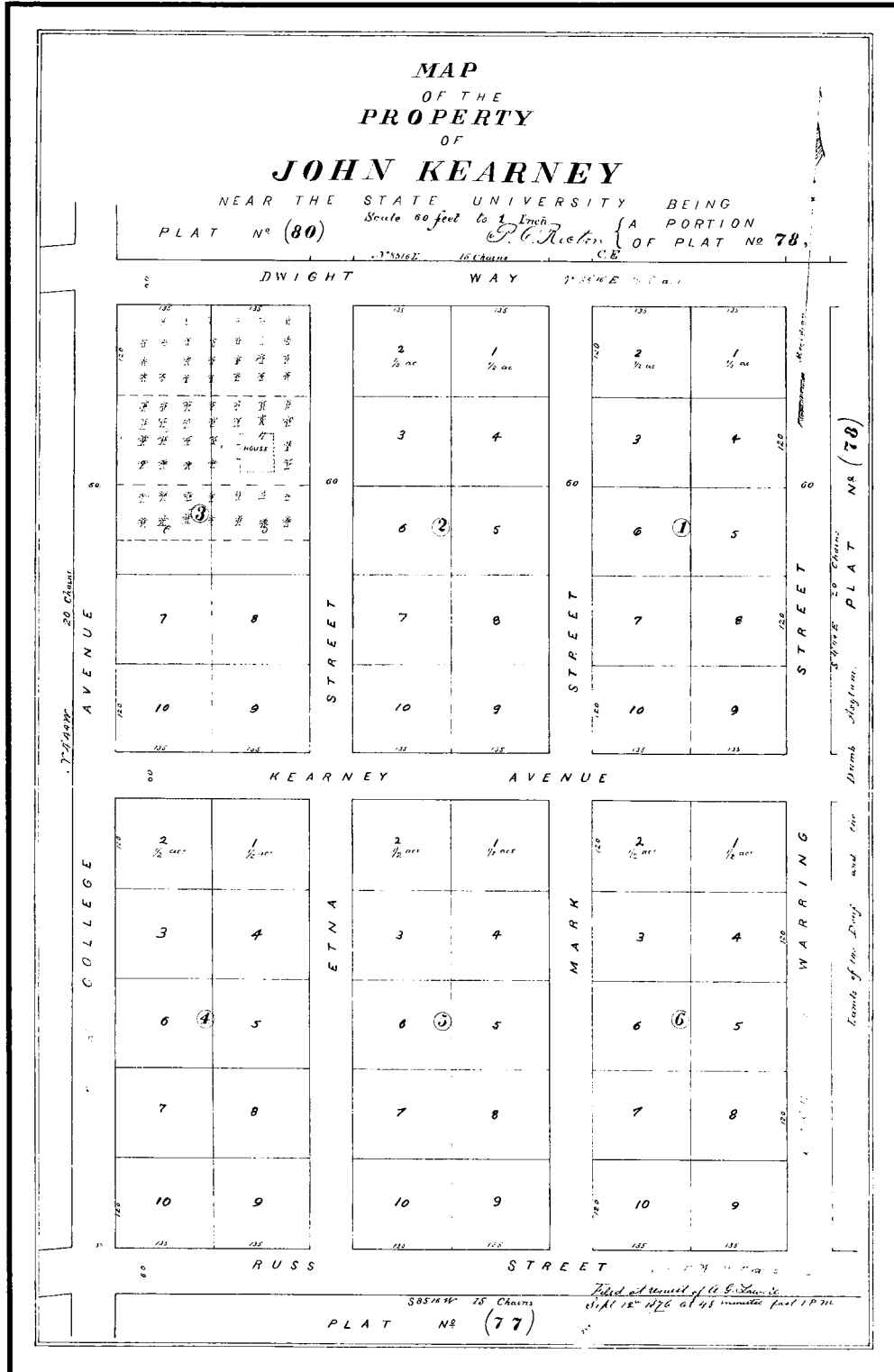


Fig. 16. Map of the Kearney Tract, filed with the County in 1876. Lot 6 in Block 1 is the site of the Wurts-Lenfest House.

Accordingly, to quote from an article in the *Oakland Enquirer*, June 12, 1899, entitled “Realty and Building”:

Large Number of Realty Sales Indicates a Very Healthy Local Market: Business in real estate and building circles is increasingly active. It has been estimated that there are at least 100 houses in process of construction in Oakland and vicinity. The rule is becoming more general that a real estate transfer means a new dwelling. There is a great demand for structures ranging in price from \$2500 to \$3000 and sales are easier made of new than old houses...The various new tracts about the suburbs which have recently been put on the market find ready buyers.

In concert with the real estate developers and the buyers, there was a ready stream of contractors and carpenters. Lumber was piling up at the piers, and most of the builders were skilled craftsmen.

### Emergence of the Colonial Revival House

By the end of the 19th Century, a new American architectural vision had reached the East Bay, replacing the fanciful Queen Anne Victorian house in popularity: the Colonial Revival style (which was contemporaneously referred to as “Late Colonial Revival”). The design type, based on American house architecture of the Georgian period, presented a style of symmetry and balance, with classical details (Fig. 17 and 25). Thus, on those streets soon to be serviced by new streetcar lines, developers created rows of these handsome, boxy one- or two-story dwellings: the Colonial Revival. Again, from “The Making of a Streetcar Suburb”:

...It has a square or rectangular boxy shape, with a hipped roof and a central, usually hipped-roofed dormer. Some were designed by architects, others put up by builders from pattern books. Some are wide and large, and some narrow and small. Some have elaborate Classic details, and others are plain and covered with brown shingles in the Craftsman Style. Some were designed to look like single family dwellings but were actually built with 2-4 units. They have a good flexible floor plan, and are easy to convert to multiple units or for making additions to the rear without changing the facade.

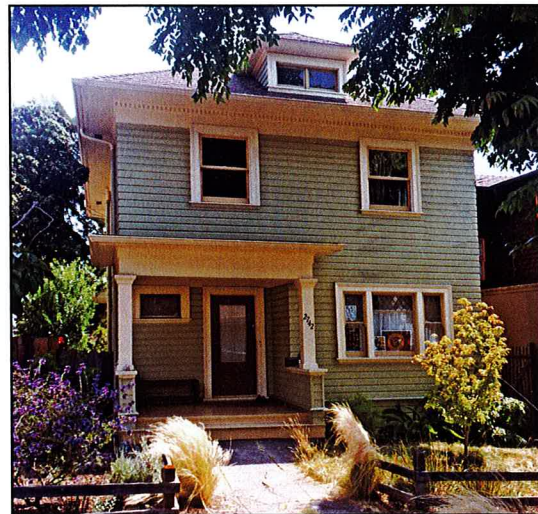


Fig. 17. A Colonial Revival style house at 2742 Garber Street. Anthony Bruce, 2021

### Emergence of the High-Peaked Colonial Revival House

Interspersed with the Colonial Revival houses, there could be found an unusual variant: the High-Peaked Colonial Revival house. Sometimes, even, there were several in a row, as on the 3000 block of Martin Luther King (Fig. 22). The High-Peaked Colonial Revival house did not just appear overnight. Initially, it seems to have developed from a playfulness with the late Victorian era



*Fig. 18. The high-gabled house at 2535 St. Charles Avenue in Alameda, designed by Edgar Mathews in 1894. Google Street View.*



*Fig.19. The earliest known true High-Peaked Colonial Revival house, at 2354 East 23rd Street in Oakland, designed by Hugo Storch in 1895. Google Street View.*



*Fig. 20. A High-Peaked Colonial Revival house on 33rd Street in Oakland, built by J.H. Simpson and likely designed by A. W. Smith. Google Street View.*

house before it found its own distinct mode when it merged successfully with the Colonial Revival house style, embellishing it with a dramatic high-peaked roof flair, after a short experimental period in the late 1890s (Figs. 20,21,23). In time, the High-Peaked Colonial Revival house became so stylized and balanced, that it appeared that if the gable roof were to be removed, then the first floor could stand on its own and the house would actually be a Colonial Revival Cottage.

Yet, no two High-Peaked Colonial Revival houses appear to be alike, each appears to have its own special appeal. The design became most popular during the early 1900s, and was rarely built after about 1905. Nevertheless, these houses make up a significant part of what gives the East Bay—and Berkeley—a distinctive architectural character. Daniella Thompson in her research has identified almost 200 examples remaining in Berkeley. (see: [http://berkeleyheritage.com/east-bay\\_then-now/highpeak\\_colonial.html](http://berkeleyheritage.com/east-bay_then-now/highpeak_colonial.html)) Very few have survived with their historic fabric intact, which makes the exterior of the Wurts-Lenfest House all the more important, as it is a perfect “text book” example of the style in fine exterior condition.

While the origin of the style is elusive, it does seem to be an East Bay phenomenon. The earliest known high-peaked “try-out” house was built in 1894 at 2535 St. Charles Street in Alameda (Fig. 18). It was designed by Oakland-born architect Edgar A. Mathews, who is much acclaimed for his later Bay Region styled residential work featuring high-gabled roofs in San Francisco’s Pacific Heights district. His Alameda house is more a playful suggestion than a true High-Peaked Colonial Revival, as there are several high gables and they are integrated into the first floor (coupled with a turret), instead of being a separate roof element.

The next pin-pointed example of the developing style, built in 1895, is a house found at 2354 East 23rd Street in Oakland’s Fruitvale district designed by Hugo Storch (Fig. 19). Storch also designed South Berkeley Community Church, 1912 (City of Berkeley Landmark #10, placed on the National Register of Historic Places). Storch’s Fruitvale house, although severely altered, includes many of the hallmarks of a High-Peaked Colonial Revival, including the design of the upper floor as a separate triangular volume from the first floor.



*Fig. 21. A late 1890s High-Peaked Colonial Revival on 32nd Street in Oakland, designed by A.W. Smith. Google Street View.*

Until about 1900, the High-Peaked Colonial Revival houses were elaborately ornamented. Then, given the demand on developers for new housing, the house type was simplified to feature its essential elements for speed and economy of construction. Nevertheless, whether simple or ornamented, the house is identified by its steep gable making up about two thirds of the height of the house, appearing as if it were a geometric triangular volume set on top of the first story. The window pattern(s) in the gable usually reflect Colonial Revival features (such as Palladian windows and columns) and are often repeated in other house features. Because shingles were becoming a new Bay Area building material at that time, the gable and side dormers, or entire house, might be shingled.



Fig. 22. Three High-Peaked Colonial Revival houses in a row in the 3000 block of Martin Luther King, Jr. Way. Daniella Thompson, 2005.

### High-Peaked Colonial Revival House and A. W. (Alfred William) Smith, Architect (1864-1933)

The article in the June 12, 1899 *Oakland Enquirer*, telling of the building boom, also celebrates the sudden emergence of this new house type (which was called “Dutch Colonial” in the article). The writer ascribes the new style to “Mr. Smith” (failing to mention the 1895 house designed by Hugo Storch), describing a house at 36th and Grove (Martin Luther King):

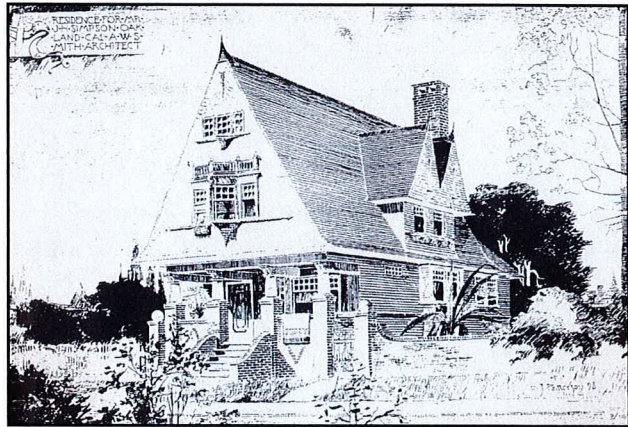


Fig.23. A High-Peaked Colonial Revival residence in Oakland designed by A.W. Smith for J.H. Simpson in late 1897. Perspective drawing by D. J. Patterson. From California Architect and Building News.

...He [Smith] declares it wasn't a very handsome structure, because it exaggerated every idea he wanted to incorporate in the house which he subsequently built along this line. Mechanics and contractors who visited the structure while in course of erection laughed at it. However, notwithstanding their jeers, the style caught on and has been wonderfully popular. Mr. Smith ascribes the popularity to the growth of the artistic in the building public, which has caused a departure from the strict rules of architecture and given rise to the development of the picturesque style.

The same article attributes the growing popularity of the style to the real estate developer and builder Joseph H. Simpson, as well as to the architect A. W. Smith, conveying that the style had burst into popularity overnight, during the urgent need for homes for normal working people:

...One of the most distinctive features of recent local building operations is the wonderful popularity suddenly achieved by the style of house known as the Dutch Colonial whose principal characteristic is a high peaked roof ... the style has been adapted

and enlarged upon by Architect A. W. Smith who since the 15th of January of last year [1898] has put up no less than twenty-seven houses, all on this peculiar line of architecture...

Mr. Smith ascribes the popularity to the growth of the artistic in the building public, which has caused a departure from the strict rules of architecture and given rise to the development of the picturesque style.

Simpson had a house-building shop and mill in Oakland on Brockhurst Street and owned surrounding land on 32nd and 33rd Streets, as well as on Brockhurst. Today this area — the Hoover-Foster neighborhood — still displays (in spite of every negative 20th Century urban environmental impact) picturesque examples of the Colonial Revival house mixed together with remarkable High-Peaked Colonial Revival houses, most likely all designed by Smith. And, it is most likely that two years later Smith also designed the Wurts-Lenfest House.



Fig. 24. An example of a High-Peaked Colonial Revival built by the Berkeley Homebuilding Association in 1906–07 at 3015 Hillegass Avenue.  
Anthony Bruce, 2020

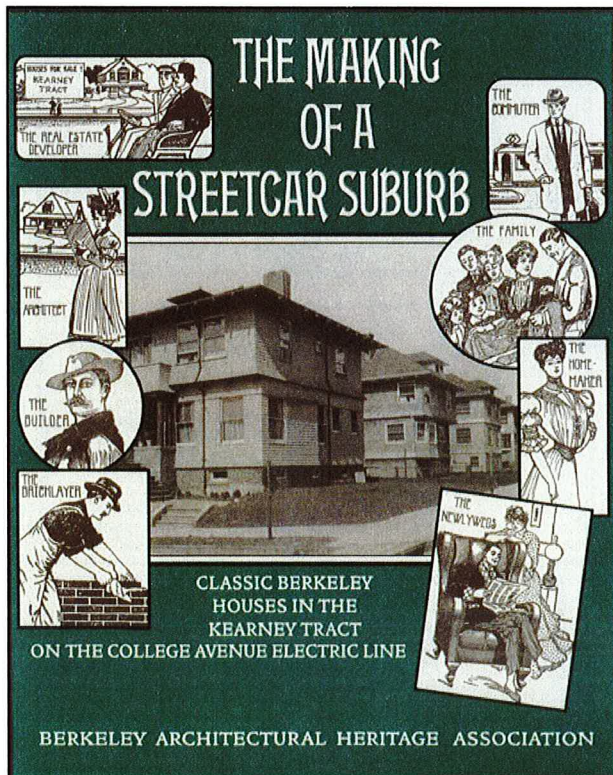


Fig. 25. The cover of the BAHA tour booklet, showing a row of Colonial Revival houses in Berkeley.

A. W. Smith could almost be called a native of the East Bay, having attended Oakland High School and, then, living his later years in Berkeley. His family came from Louisiana to Oakland when he was a boy so that his father could work at the transcontinental railroad terminus. Smith listed himself in Oakland's 1888 voter registration as "carpenter," learning his design skills as a contractor. By 1892 Smith was listed in the newspaper contract notices as an "architect." He was granted a California State Architect Certificate in 1901.

Smith's contribution as a local self-made architect in the East Bay has been recognized as a remarkable feat. He designed hundreds of buildings (400 listed in the Oakland permit ledger, the BAHA office lists some 150 buildings known in Berkeley) in all styles from Queen Anne to the Colonial Revival and High-Peaked Colonial Revival before the turn-of-the-century and, then, in the early years of the 20th Century he adjusted his vision to Craftsman, Shingle, Prairie, and



Mission designs, as well as churches, lodges, and commercial buildings. When Smith moved to Berkeley, he lived on Telegraph in a brown-shingle house that he designed in 1908. It is said that Smith may have been the most prolific architect in the East Bay, adjusting, with agility, from one style to the next. As the Alameda Architectural Preservation Society wrote of Smith's architectural work:

[his buildings] ... did—and do—more to shape the area's character than the select gems and jewels of the "name" architects. Smith's buildings — whimsical, severe, naturalistic, honest, unpretentious, charming, exotic, elegant, inventive, eccentric, mannerist, substantial — give a distinctive flavor to our East Bay cities.



Fig. 26. Snyder House, 2820 San Pablo Ave., designed by A. W. Smith in 1901. Daniella Thompson, 2005.

### Streetcar Suburb Houses in the Kearney Tract

Now, to focus on the sudden real estate activity in the Kearney Tract after 1900, and more specifically on Piedmont Avenue (formerly Mark Street) and Lot 6 of Block 1. Records show that in 1878 the Julius F. Foss family purchased the William H. Chapman house, which included all of Lot 6. Then, in 1895, Eli Gardner acquired Lot 6, only to turn around and sell it to a Dr. C. P. Devore in 1899, who then, in September of that year, sold all of Lot 6 to Dr. Henry Newton Yates of Crockett. Then, in August 1900, Dr. Yates sold the southern portion of Lot 6 to Rebecca Wurts (he deeded the northern part of Lot 6 to his father, who resided in the former Chapman House, 2521 Piedmont Avenue). On August 1, 1900, the *San Francisco Call* reported Rebecca Wurts' purchase among its listing of real estate transactions:

Henry N. and Beatrice Yates to Rebecca Wurts [wife of Myron L.], lot on E line of Mark Street [soon to be Piedmont], 300 S of Dwight Way, S 60 by E. 135, being the S half of lot 6, block 1, map of property of John Kearney, Berkeley: \$10.

Several months later, Rebecca and her husband Myron Wurts also acquired the full Lot 5 of the Kearney Tract facing east onto Warring Street which was connected to Lot 6 on the back-side. Lot 5 included a small house (built c. 1897–98) at 2520 Warring Street, the north portion of Lot 5. The "small house," altered and enlarged, is still there.

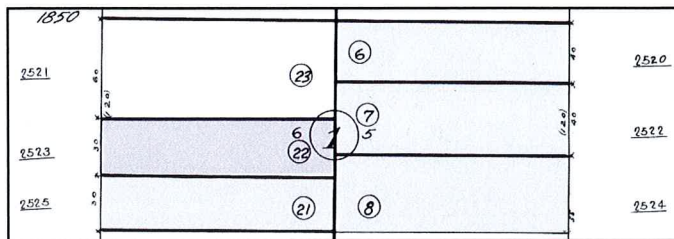


Fig. 27. Map of the five lots owned by Myron and Rebecca Wurts in Block 1.

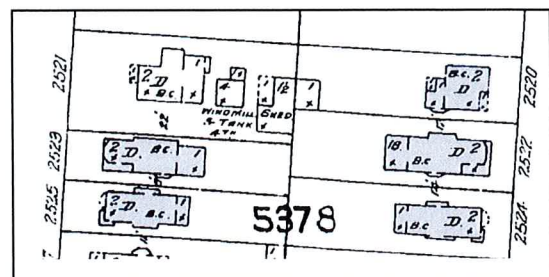


Fig. 28. The five houses built or remodeled by Myron and Rebecca Wurts in Block 1.

## Rebecca Snyder Wurts and Myron LeFevre Wurts, Developers

So, why would Rebecca and Myron Wurts snap up property in the Kearney Tract in 1900? The answer is that they were not beginners in real estate investments. And, as already presented here, the East Bay was becoming seamless with the advance of the streetcar, or at least, because of talk that it was coming. One little community was connecting to another, streets were connecting to each other, and the un-built-upon parcels were selling fast. To quote, again, from “The Making of a Streetcar Suburb”:

The newspapers of the day were full of reports and rumors that soon a streetcar line would be established on College Avenue to connect the area with “Downtown” Berkeley, Oakland, and San Francisco. By 1904, the *Berkeley Reporter* described how Berkeleyans were “anxiously awaiting completion of a new car line to be constructed on College Avenue. It will be the impetus to the promotion of building.” But homeowners and real estate speculators did not wait for the arrival of the new car line. As soon as there was a hint of truth to the rumors, real estate activity began in the vicinity of College Avenue.

Rebecca Snyder Wurts (1871–1957) was an Oakland native. She was the daughter of Andrew Jackson Snyder (1823–1896) who is known to be the first substantial developer of early Oakland in the 1860s, when its commercial center was being built on lower Broadway. His obituary described him as, “the first real estate dealer of Oakland and one of the city’s wealthy men.”

Myron LeFevre Wurts (c.1859–1925) was born in New York State and is known to have arrived in San Francisco by 1887. On his way to California he had tried his luck in silver ore mining in Arizona. He and Rebecca married in 1888 when he is recorded to have set up a real estate business.

In 1889, Myron Wurts is known to have purchased nineteen acres of property in West Berkeley (for \$24,000), along San Pablo Avenue, close to property his father-in-law already owned in West Berkeley. And, then in 1892, with a new partner and a Boston investor, he purchased a large section of undeveloped land behind Lake Merritt where he is reported to have made large capital expenditures preparing the land for a subdivision called “Boulevard Heights,” soon to be serviced by an electric line. Sometime between 1895 and 1896, Wurts established his own real estate office in Berkeley, located on Shattuck Avenue.

## Rebecca and Myron Wurts and the Kearney Tract

With development in their blood, it seems natural and opportune that in 1900 Rebecca and Myron Wurts would be interested in and, then, purchase two large villa-sized lots in the Kearney Tract—Lot 5 and Lot 6 in Block 1 (Fig. 27). As the streetcar line was anticipated, and Mark Street was being connected to Piedmont Avenue (i.e. connected to the U.C. community), and as development was the Wurtses’ business, it is quite natural that as soon as they acquired the two large lots, they immediately subdivided them so as to become five new parcels for the building of four new houses.



Fig. 29. The other High-Peaked Colonial Revival house that the Wurts’ built on Lot 5, directly behind the Wurts-Lenfest House. Anthony Bruce, 2021.

## Rebecca and Myron Wurts and architect A. W. Smith

In 1901, Rebecca and Myron Wurts made additions to the small house on Warring and built four new handsome Colonial Revival houses: 2523 Piedmont (High-Peaked Colonial Revival to become the Lenfest home), 2525 Piedmont (hip-roofed Colonial Revival, demolished in 1957 for an apartment building), 2522 Warring (High-Peaked Colonial Revival mirroring the Lenfest House, with design variations, Fig. 29), and 2520 Warring (hip-roofed Colonial Revival, altered in late 1930s). By 1902 the five houses were assessed to Rebecca Wurts.

Understanding that the building of homes in the East Bay was “hot” at the turn-of-the-century, who would Rebecca and Myron Wurts have asked to design the four houses on their new parcels in Kearney Tract? Given that the Wurts-Lenfest house is such a masterfully designed High-Peaked Colonial Revival house, it seems logical that they might have asked Smith. Certainly, Rebecca and Myron Wurts and A. W. Smith were fellow participants in the East Bay’s new and dynamic development activity.

In asking such a question, it is worth noting that even in BAHA’s 2002 tour booklet “The Making of a Streetcar Suburb” which listed every address in the Kearney Tract, along with a known date of construction, architect, and or builder for each address, the builder or architect was still a mystery for the five houses in Lots 5 and 6. In this case, a quote from Betty Marvin, of the Oakland Cultural Heritage Survey, applies: “Vast numbers of developers used their own contractors and did not record building contracts in those days.”

Even though no contract or completion notices have been found that identify Smith with the Wurts houses in the Kearney Tract, there is a tangible link between Rebecca and Myron Wurts and A. W. Smith. Rebecca’s brother Lewis C. Snyder’s architect of choice at that time was none other than A. W. Smith. The Wurts’ would therefore have had reason to ask Smith to design their four houses in the Kearney Tract. At that very same time, the A.W. Smith was designing a High-Peaked Colonial Revival house for Lewis Snyder’s own residence at 2820 San Pablo Avenue (Fig. 26). The contract and completion notices for that house, published in *Edwards Transcript of Records*, May and August 1901, confirms the architect was A.W. Smith.



Fig. 30. Lela Lenfest, from the 1905 Blue and Gold.

## Residency in 2325 Piedmont

Upon the completion of 2523 Piedmont, as if according to plan, the handsome speculative High-Peaked Colonial Revival house sold to a mother who sought a residence while her daughter attended the University. Belle Lenfest and her daughter Lela moved into the new house in 1902. They came from Mendocino County where Mr. Lenfest, who had died in 1896, had been a foreman in a sawmill. Belle and Lela stayed in the house on Piedmont until Belle’s death in 1914.

Lela had graduated from U.C. and taught high school classes. Soon after, Lela inherited the house from her mother’s estate. She sold it and moved elsewhere for several years. Then, as if she missed the Kearney Tract, its neighborhood vitality, its handsome streets as a “streetcar suburb,” and being adjacent to the University, Lela bought the large, old 1877 Chapman House at 2521 Piedmont, on the northern larger half of lot 6, a house big enough for her to rent rooms until 1951 when she passed away (fig. 15). Her nephew sold the house to Values, Inc. to be replaced by an apartment building in 1956.

## The Wurts-Lenfest House into the Twenty-First Century

Being so close to U.C., the 2500 block of Piedmont has often housed campus-related residents like Belle Lenfest who originally came to Berkeley because of her daughter's attendance at the University. Because the 2500 block was close to the campus and because there were still undivided villa lots remaining in the twentieth century, the street was a natural site for large-scale apartment building development. It began in 1922 when the Le Conte estate (1877), on two villa lots, was divided and a very fine building designed by Walter Ratcliff was built at 2515 Piedmont. Then, an even larger apartment house was built in 1930 across the street on one of the villa lots that had been part of the Goodall estate (1877). By 1955, two more apartments had been added to the streetscape on yet-unsubdivided villa lots. Many of the homes were altered to accommodate the in-and-out living of student life. The Wurts-Lenfest House stands sound and handsome, regardless of the changing times, the construction in the mid-1950s of small apartment houses on either side, and the impacts of transient student living.

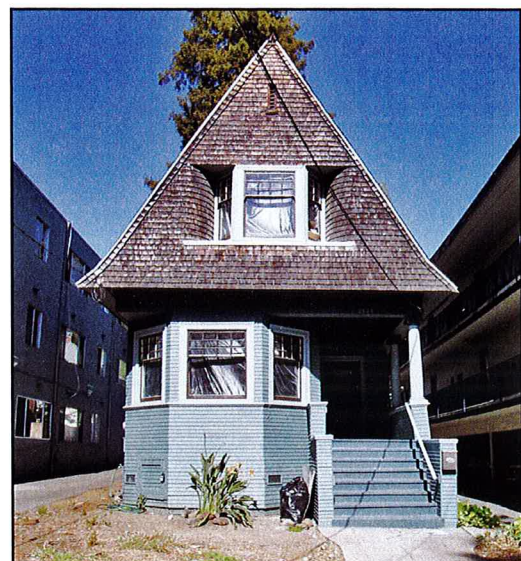
David Mundstock (1948–2020) who owned the Wurts-Lenfest House from 1978 to 2020 (a co-owner for part of the time) deserves credit for the fine condition of the house today. David, who was a graduate of both U.C. and U.C. Berkeley's law school, was admired all over Berkeley as a "progressive political activist," serving as an aide to Councilwoman Loni Hancock, later Berkeley's Mayor. David first lived in the Wurts-Lenfest House as a student himself and, then, as the owner, he rented to students. He cared very much about the character and preservation of the neighborhood and was a critical advocate of researching the history of the Merton J. Congdon House, built in 1894 (City of Berkeley Structure of Merit, No. 208), nearby at 2527 Piedmont. It is thanks in large part to David that the Wurts-Lenfest House stands today as such a fine surviving example of the High-Peaked Colonial Revival.

Ironically and sadly, after the caring stewardship of the house by David Mundstock, the new owner has destroyed all the original interior features that meant so much to David and to anyone who had visited the house and lived in it over the years.

All of David's papers were donated to the Berkeley Historical Society after his death. The Historical Society recently announced that it is planning an exhibit based upon the materials in his collection.



*Fig. 31. The Wurts-Lenfest House in 1939. Note added flower shelf in the upstairs bay, since removed. Donogh File, Berkeley Architectural Heritage Association*



*Fig. 32. The Wurts-Lenfest House. Daniella Thompson, 2021.*

**16. Significance (City of Berkeley Landmarks criteria 1-b, 1-c, and 2)**

The Wurts-Lenfest House is significant as a text-book example of the High-Peaked Colonial Revival style, a house type that was created in the East Bay and that flourished for only a short period of time. The Wurts-Lenfest House is also significant as an example of a house type popular with developers of speculative houses at the turn-of-the-20th-century during the development of East Bay streetcar suburbs. Additionally, the Wurts-Lenfest House is significant as it is not only a fine architectural example, but it is also a pristine, intact example.

Today the Wurts-Lenfest House stands out almost like a museum artifact, not only because it is one of the earliest subdivision houses built in the Elmwood District along its streetcar line, but also because the original residential setting of the northern half of this block of Piedmont Avenue has almost vanished. Yet, its presence maintains the historic character of the Kearney Tract amid its newer surroundings. Nearly isolated by a since-emerged apartment house row, its exuberant High-Peaked style, nevertheless, remains proud as a dramatic reflection of an era that burst forth with rapid development in every direction, abundant skills of craftsmanship, and the dynamics of educational growth. Set on a slight rise above the sidewalk, and recently cleared of all garden enhancements, the Wurts-Lenfest House is now completely visible as a nearly perfect prototype of its time — in design, proportions, balance, materials, and craftsmanship.

That the Wurts-Lenfest House stands today as finely as it does is also of particular consequence because, whether in Alameda, Oakland, or Berkeley, it is not often that an intact High-Peaked Colonial Revival can be found. More often than not, most of the remaining High-Peaked Colonial Revival houses have been diminished in architectural integrity, suffering from either the ravages of time and/or the often difficult challenge to maintain the original details and integrity of design and materials (note the tragic fire this summer that took two of A.W. Smith’s 1899 High-Peaked Colonial Revival houses on 9th Street in Oakland).

It is exciting, however, that interest in the High-Peaked Colonial Revival house has begun to blossom — thanks in part to George Gunn in Alameda, Betty Marvin in Oakland, and Daniella Thompson in Berkeley. Just recently there have been several shared discoveries posted on Facebook. Still, no East Bay town has yet landmarked a High-Peaked Colonial Revival house, its own to claim. Let’s make Berkeley the lead in the recognition of our collective regional charm and style, citing one of the finest in design, balance, detail, and representation: the Wurts-Lenfest House at 2523 Piedmont Avenue.

**17. Historic Value—**                      **City:** Yes      **Neighborhood:** Yes

**Architectural Value—**      **City:** Yes      **Neighborhood:** Yes

**18. Is the property endangered? Yes**

**19. Bibliography:**

anonymous. “A.W. Smith...Architect Extraordinaire, presented by Betty Marvin,” Alameda Ar-

chitectural Preservation Society, January 2006.

Bagwell, Beth. *Oakland; The Story of a City*, Presido Press, 1982.

Berkeley assessment records. The Bancroft Library.

Berkeley and Oakland directories. Berkeley Architectural Heritage Association, Berkeley Historical Society, Ancestry.com.

Berkeley Architectural Heritage Association, "The Making Of A Streetcar Suburb; Classic Berkeley Houses in the Kearney Tract on the College Avenue Electric Line," 2002.

Block (plat) books. Berkeley Architectural Heritage Association.

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California School for the Blind: History, website: <https://www.csb-cde.ca.gov/about/history/>

Hancock, Loni. "Remembering David Mundstock" *Berkeley Daily Planet*, September 19, 2020.

Nelson, Marie. Surveys for Local Governments—A Context for Best Practices. California Office of Historic Preservation, 2005. [http://ohp.parks.ca.gov/pages/1054/files/Survey Savvy CCAPA](http://ohp.parks.ca.gov/pages/1054/files/Survey_Savvy_CCAPA).

Ormsby Donogh Real Estate File. Berkeley Architectural Heritage Association.

Sanborn Fire Insurance Maps. Berkeley Architectural Heritage Association.

Thompson, Daniella. "High-Peaked Colonial Revival." BAHA website, 2005. [http://berkeley-heritage.com/eastbay\\_then-now/highpeak\\_colonial.html](http://berkeley-heritage.com/eastbay_then-now/highpeak_colonial.html)

Tracts maps. Alameda County Assessor's Office.

U.S. Census and California Voter Registration records. Ancestry.com.

Wollenberg, Charles, *Berkeley: A City in History*, University of California Press, 2008.

To date, a thorough study of the High-Peaked Colonial Revival House has not been undertaken. Such a study does seem timely as many of these amazing houses have already disappeared or are in disrepair.

**20. Recorder:** Lesley Emmington, Anthony Bruce for the Claremont Elmwood Neighborhood Association (CENA), P.O. Box 5108, Berkeley, California 94705

**Date:** September 2021



Office of the City Manager

INFORMATION CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Alene Pearson, Acting Director, Planning and Development Department  
 Subject: LPO NOD: 2580 Bancroft Way – Application LMSAP2022-0003

INTRODUCTION

The attached Notice of Decision adopted by the Landmarks Preservation Commission is presented to the Mayor and City Council pursuant to Berkeley Municipal Code/Landmarks Preservation Ordinance Section 3.24.240.A, which requires that “a copy of the Notice of Decision shall be filed with the City Clerk and the City Clerk shall present said copy to the City Council at its next regular meeting.”

CURRENT SITUATION AND ITS EFFECTS

The Landmark Preservation Commission (LPC) has approved a Structural Alteration Permit (SAP) to install new equipment on City Landmark Fred Turner building. This action is subject to a 15-day appeal period, which began when the Notice of Decision (NOD) was mailed on April 25, 2022.

BACKGROUND

BMC/LPO Section 3.24.300 allows City Council to review any action of the LPC in granting or denying an SAP. For Council to review the decision on its merits, Council must appeal the Notice of Decision. To do so, this Information Item must be taken up as an Action Item and then set for a public hearing at a later date. Such action must be taken within 15 days of the mailing of the Notice of Decision, or by May 10, 2022. Such certification to Council shall stay all proceedings in the same manner as the filing of an appeal.

If the Council chooses to appeal the action of the Commission, then a public hearing will be set. The Council must then rule on the designation within 30 days of closing the hearing; otherwise, the decision of the Commission is automatically deemed affirmed.

Unless the Council wishes to review the determination of the Commission and make its own decision, the attached NOD is deemed received and filed.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Landmark designation provides opportunities for the adaptive re-use and rehabilitation of historic resources within the City. The rehabilitation of these resources, rather than their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers.

POSSIBLE FUTURE ACTION

The Council may choose to appeal the decision of the LPC to approve the SAP, in which case it would conduct a public hearing at a future date.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no known fiscal impacts associated with this action.

CONTACT PERSON

Fatema Crane, Senior Planner, Planning and Development Department, 510-981-7410

Attachments:

1: Notice of Decision – #LMSAP2022-0003 for 2580 Bancroft Way





L A N D M A R K S  
P R E S E R V A T I O N  
C O M M I S S I O N

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N O T I C E O F D E C I S I O N

**DATE OF BOARD DECISION: April 7, 2022**  
**DATE NOTICE MAILED: April 25, 2022**  
**APPEAL PERIOD EXPIRATION: May 10, 2022**  
**EFFECTIVE DATE OF PERMIT (Barring Appeal): May 11, 2022<sup>1</sup>**

## 2580 Bancroft Way

**Structural Alteration Permit (#LMSAP2022-0003) to install roof equipment on a City Landmark Building – Fred Turner Building.**

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, **APPROVED** the following permit:

**PERMITS REQUIRED:**

- Structural Alteration Permit

**APPLICANT:** Gary Wang & Associates, Inc., 1000 Corporate Center Drive, Suite 550, Monterey Park, CA

**ZONING DISTRICT:** Commercial Telegraph (C-T)

**ENVIRONMENTAL REVIEW STATUS:** Categorically exempt pursuant to Section 15331 of the CEQA Guidelines (Historical Resource Restoration and Rehabilitation).

**The Application materials for this project are available online at:**

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

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<sup>1</sup> Pursuant to BMC Section 1.04.070, if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day. Pursuant to BMC Section 3.24.190, the City Council may “certify” any decision of the LPC for review, within fifteen days from the mailing of the NOD. Such certification shall stay all proceedings in the same manner as the filing of a notice of appeal.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
#LMSAP2022-0003  
2580 Bancroft Way  
April 25, 2022  
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**FINDINGS, CONDITIONS AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE**

**COMMISSION VOTE: 8-0-0-1**

**YES:** ADAMS, CRANDALL, ENCHILL, FINACOM, JOHNSON, LEUSCHNER,  
MONTGOMERY, TWU

**NO:** [NONE]

**ABSTAIN:** [NONE]

**ABSENT:** SCHWARTZ

**TO APPEAL THIS DECISION (see Section 3.24.300 of the Berkeley Municipal Code)**

An appeal may be taken to the City Council by the City Council on its own motion, by motion of the Planning Commission, by motion of the Civic Art Commission, by the verified application of the owners of the property or their authorized agents, or by the verified application of at least fifty residents of the City aggrieved or affected by any determination of the commission made under the provisions of this chapter.

Such appeal shall be taken by filing a written notice of appeal with the City Clerk within fifteen days after the mailing of the notice of the decision of the commission. The notice of appeal shall clearly and concisely set forth the grounds upon which the appeal is based. If the appeal is taken by an owner of the property affected, or an authorized agent, the notice of appeal shall be filed in duplicate and the City Clerk shall immediately forward one copy to the secretary of the commission. If the appeal is taken by someone other than an owner of affected property or an authorized agent, the notice of appeal shall be filed in triplicate and the City Clerk shall immediately forward one copy to the owner or authorized agent of the affected property and one copy to the secretary of the commission. Within ten days after the filing of a notice of appeal, the secretary of the commission shall transmit to the City Council a copy of the application, a copy of the notice of appeal and a written statement setting forth the reasons for the commission's decision, and shall make available to the council, at the time the matter is considered by the council, all other papers constituting the record upon which the action appealed from was taken.

The City Clerk is located at 2180 Milvia Street, 1<sup>st</sup> Floor, Berkeley. The City Clerk's facsimile number is (510) 981-6901. The City Clerk's telephone number is (510) 981-6900.

An appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).

The required fee is as follows (checks and money orders must be payable to "City of Berkeley"):

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- a. The basic fee for persons other than the applicant is \$500. This fee may be reduced to \$100 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
- b. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is \$500, which may not be reduced.
- c. The fee for all appeals by Applicants is \$2,500.

**STRUCTURAL ALTERATION PERMIT ISSUANCE:**

If no appeal is received, the Structural Alteration Permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time. Information about the Building Permit process can be found at the following link:

<http://www.ci.berkeley.ca.us/permitservicecenter/>.

**NOTICE CONCERNING YOUR LEGAL RIGHTS:**

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised in a public hearing and/or written correspondence during the proceedings related to this permit.
2. You must appeal to the City Council within fifteen (15) days after the Notice of Decision of the action of the Landmarks Preservation Commission is mailed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a “taking” of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must including the following information:
  - A. That this belief is a basis of your appeal.

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- B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
- C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

**PUBLIC COMMENT:**


Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

**FURTHER INFORMATION:**

Questions about the project should be directed to the project planner, Fatema Crane, at (510) 981-7413 or fcrane@cityofberkeley.edu. All project application materials, including full-size plans, may be viewed at the Permit Service Center (Zoning counter), 1947 Center Street, between 8 a.m. and 4 p.m., Monday through Thursday.

**ATTACHMENTS:**

- 1. Findings and Conditions
- 2. Project Plans, revised **February 17, 2022**

**ATTEST:**   
 Fatema Crane, Senior Planner  
 Secretary to the Landmarks Preservation Commission

cc: City Clerk  
 Applicant: Ruben Rodela  
 Gary Wang & Associates, Inc.  
 1000 Corporate Center Drive, Suite 550  
 Monterey Park, CA 91754

LANDMARKS PRESERVATION COMMISSION  
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Property Owner: The Mark at Berkeley, LLC  
315 Oconee Street  
Athens, GA 30601

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## FINDINGS AND CONDITIONS

### 2580 BANCROFT WAY – Fred Turner Building

#### **Structural Alteration Permit #LMSAP2022-0003**

**Structural Alteration Permit #LMSAP2022-0003 to install new rooftop equipment as a part of tenant improvements for one of the two commercial tenant spaces in the Turner Building.**

#### **FINDINGS REQUIRED UNDER CEQA**

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15331 of the CEQA Guidelines (“Historic Resource Restoration/Rehabilitation”). Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, and (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5,.

#### **FINDINGS RELATED TO THE SECRETARY OF THE INTERIOR’S STANDARDS**

Regarding the Secretary of the Interior’s Standards for Rehabilitation, the Landmarks Preservation Commission of the City of Berkeley makes the following findings:

1. The property has historically been used as commercial space. The work proposed in this application would support the continued use of this as a commercial space.
2. The scope of proposed work would not remove or alter any significant features.
3. The proposed scope will not affect any changes to the property that have acquired historic significance in their own right.
4. The required alterations to the building to accommodate the proposed scope are minimal and will not affect any distinctive materials, features, finishes, and construction techniques, or examples of craftsmanship that characterize the property. Perforations in the historical façade shall be as discreet as possible and patched where necessary.
5. No deteriorated historic features will be affected by this request and none are proposed to be replaced.
6. The applicant does not propose chemical or physical treatments. However, standard conditions of Structural Alteration Permit approval would require any chemical or physical treatments to be undertaken using the gentlest means possible.

7. The project does not have the potential to affect any archaeological resources because the applicant proposes no excavation.
8. The applicant proposes no exterior alterations beyond the addition of the roof mounted mechanical equipment. The equipment will be painted so as to be visually compatible with the colors and massing of the existing architecture. The screening mechanism will
9. The equipment will be installed in such a manner that, if it were removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

#### **FINDINGS REQUIRED UNDER LANDMARK PRESERVATION ORDINANCE**

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1. As required by Section 3.24.260 of the Landmarks Preservation Ordinance, the Commission finds that proposed work is appropriate for and consistent with the purposes of the Ordinance, and will preserve and enhance the characteristics and features specified in the designation for this property. Specifically:
  - A. Staff finds that the proposed scope will not adversely affect the exterior features of the landmark, the special character or special historical, architectural or aesthetic interest or value of its site and will preserve its distinguishing features.
  - B. The equipment would be installed without impairing the building, and the screening element would adequately camouflage the equipment so as to be compatible with the existing proportions, colors, and scale of the architecture.

## STANDARD CONDITIONS

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The following conditions, as well as all other applicable provisions of the Landmarks Preservation Ordinance, apply to this Permit:

### 1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Permit, under the title 'Structural Alteration Permit Conditions'. *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

### 2. Plans and Representations Become Conditions

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

### 3. Subject to All Applicable Laws and Regulations

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Zoning Adjustments Board or Zoning Officer, Building and Safety Division, Public Works Department and other affected City divisions and departments.

### 4. Exercise and Lapse of Permits (Section 23B.56.100)

- A. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- B. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

### 5. Indemnification Agreement

The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.



**ADDITIONAL CONDITIONS**

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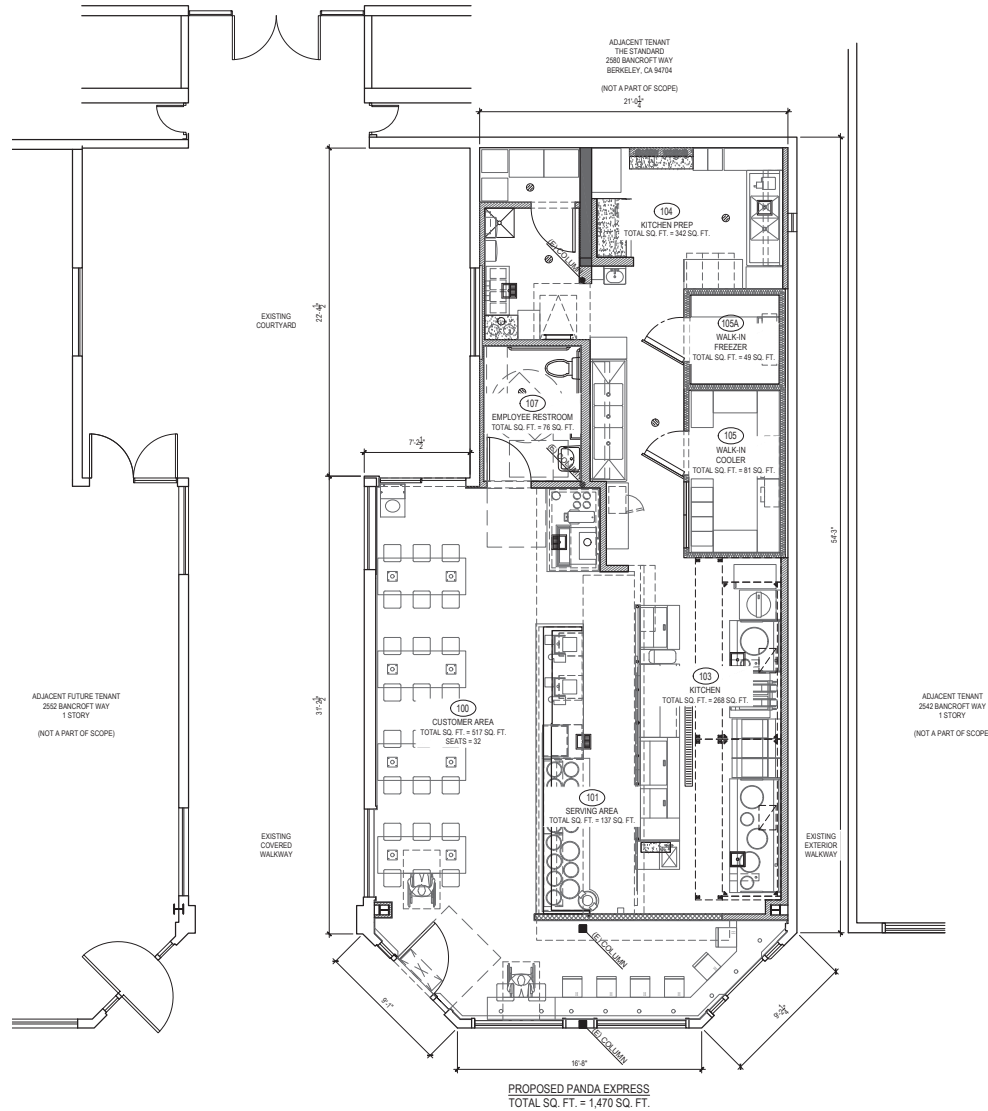
The following additional conditions are attached to this Permit:

6. **REVISED PROJECT PLANS -- SCREEN ELEMENT.** Prior to submitting any building permit application for this project, the applicant shall revise the project and proposed screen to include a return on both the east and west sides. The applicant shall provide staff with site photos that accurately show sight lines to the roof; upon staff's review of the revisions and photographs, staff shall determine the minimum and maximum length and depth of the screen element return.
7. **ROOF EQUIPMENT.** Any above ground or roof equipment, such as transformer(s), utilities, fire apparatus, air conditioning units, compressors, etc. shall be shown to scale on the architectural drawings of the building permit set of drawings in both plan and elevation, in order to determine if additional screening and SAP may be required.
8. **COLORS.** Prior to Landmarks plan checker sign-off of the Building Permit set of drawings, the applicant shall submit color and materials information for review and approval by Landmarks staff, in coordination with the LPC Chair as needed.
9. **REPAIR AND REPLACEMENT OF CHARACTER-DEFINING FEATURES** (where applicable). Repair and replacement of character-defining features. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old or historic feature in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
10. **DETAILS.** Prior to Landmarks plan checker sign-off of the Building Permit set of drawings, the applicant shall submit screen element details for review and approval by the Landmarks plan checker.
11. **LIGHTING.** Prior to Landmarks plan checker sign-off of the building permit set of drawings, the applicant shall submit lighting details showing all existing and proposed site and building lighting. Exterior lighting, including for signage, shall be downcast and not cause glare on the public right-of-way and adjacent parcels.
12. The applicant shall be responsible for identifying and securing all applicable permits from the Building and Safety Division and all other affected City divisions/departments prior to the start of work.
13. The applicant is responsible for complying with all the above conditions. Failure to comply with any condition could result in construction work being stopped, issuance of citations, as well as further review by the Landmarks staff, which may modify or impose additional conditions, or revoke approval.
14. All building permit drawings and subsequent construction shall substantially conform to the approved plans as outlined in Condition #1. Any modifications must be reviewed

by the Landmarks plan checker to determine whether the modification requires approval.

15. The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.





PROPOSED PANDA EXPRESS  
TOTAL SQ. FT. = 1,470 SQ. FT.



PANDA EXPRESS, INC.  
1683 Walnut Grove Ave.  
Rosemead, California  
91770  
Telephone: 626.799.9898  
Facsimile: 626.372.8288

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ISSUE DATE:

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| 101 | 1ST SAP SUBMITTAL | 01-03-22 |
| 200 | 2ND SAP SUBMITTAL | 02-16-22 |

DRAWN BY: RRUJHAB

PANDA PROJECT #: S4-21-08218  
ARCH PROJECT #: 20-109



1000 Corporate Center Dr., Suite 350  
Menlo Park, CA 94025  
TEL: (650) 288-8888 FAX: (650) 788-7101  
http://www.garywang.com

PANDA EXPRESS

2548 BANCROFT WAY, SUITE 1,  
BERKELEY, CA 94704

A-101

FLOOR PLAN

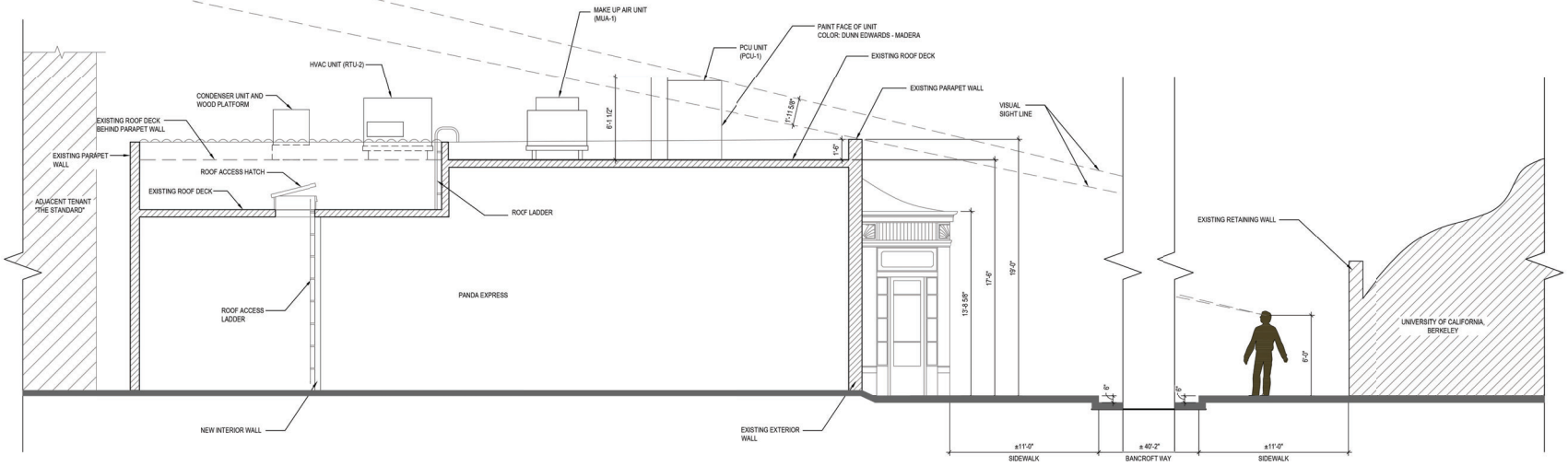






NOTE:  
EXISTING EXTERIOR BUILDING COLORS AND FINISHES TO REMAIN  
AND PROTECT IN PLACE. NO EXTERIOR MODIFICATIONS.

NORTH ELEVATION | 2  
Scale = 1/4" = 1'-0" | A-200.1



LINE OF SIGHT ANALYSIS | 1  
Scale = 1/4" = 1'-0" | A-200.1



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ISSUE DATE:

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DRAWN BY: RRUJHAB  
PANDA PROJECT #: S4-21-DB218  
ARCH PROJECT #: 20-109



GARY WANG & ASSOCIATES, INC.  
1000 Corporate Center Dr., Suite 550  
Menlo Park, CA 94025  
TEL: (650) 288-8898 FAX: (650) 768-7101  
http://www.garywang.com

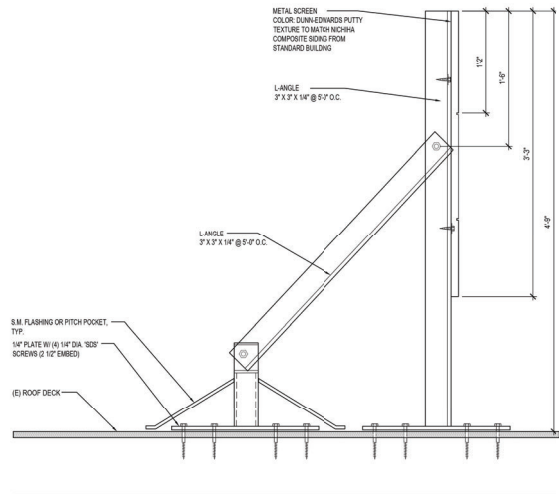
PANDA EXPRESS  
2548 BANCROFT WAY, SUITE 1.  
BERKELEY, CA 94704

A-200.1

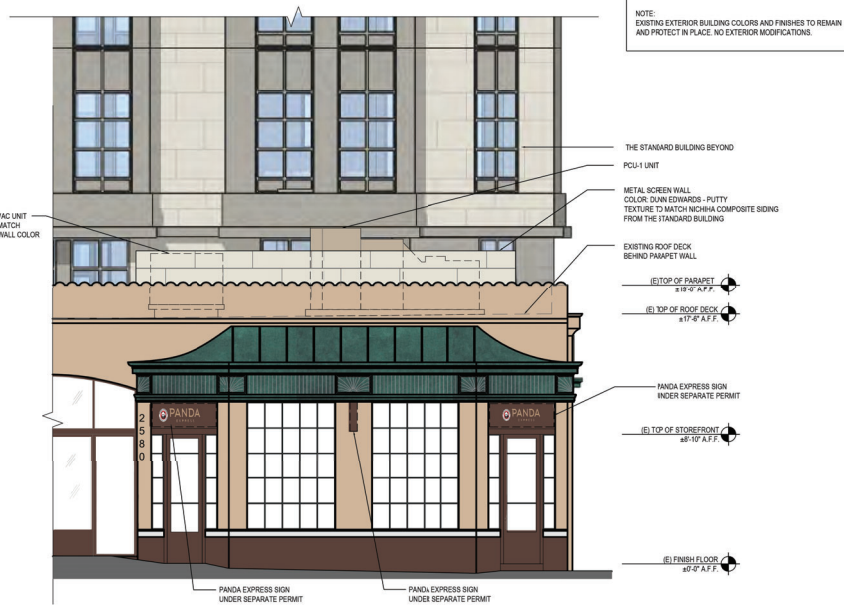
EXTERIOR ELEVATION AND  
LINE OF SIGHT ANALYSIS



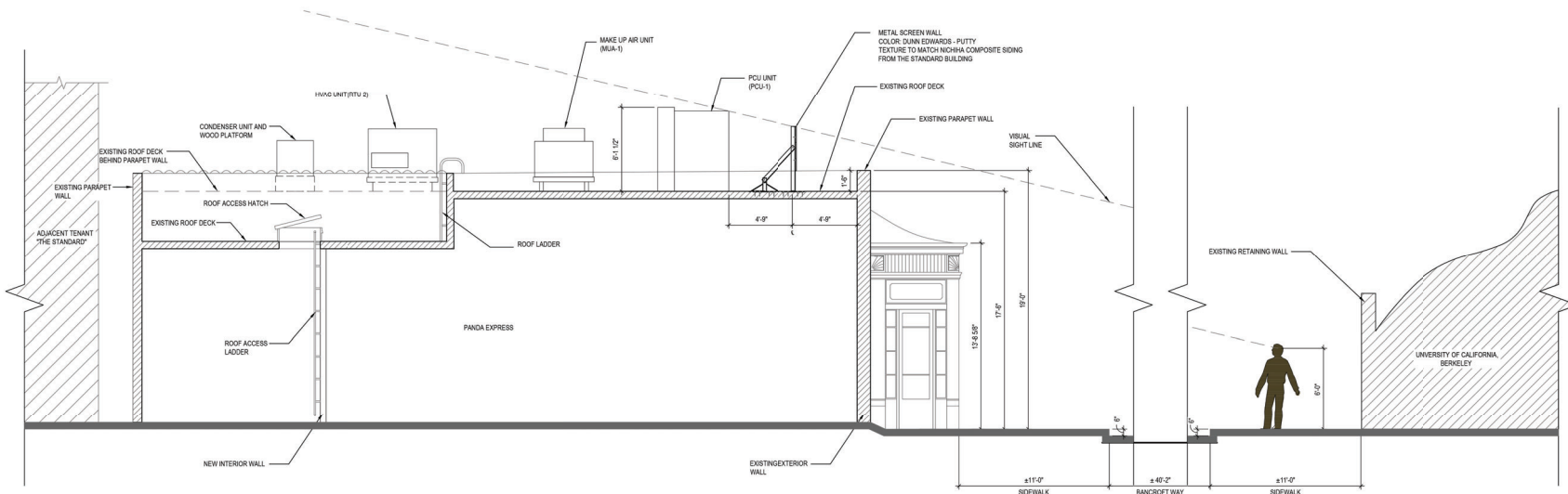




SCREEN WALL DETAIL 3  
Scale= 1 1/2" = 1'-0" A-200.3



NORTH ELEVATION 2  
Scale= 1/4" = 1'-0" A-200.3



LINE OF SIGHT ANALYSIS 1  
Scale= 1/4" = 1'-0" A-200.3



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DRAWN BY: RRI/JHAB  
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ARCH PROJECT #: 20-109

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BERKELEY, CA 94704

**A-200.3**

EXTERIOR ELEVATION AND  
LINE OF SIGHT ANALYSIS





Mental Health Commission

INFORMATION CALENDAR

May 10, 2022

To: Honorable Mayor and Members of the City Council  
 From: Mental Health Commission  
 Submitted by: Dr. Margaret Fine, Chair, Mental Health Commission  
 Subject: Mental Health Commission Work Plan 2022-2023

INTRODUCTION

At its March 24, 2022 meeting, the Mental Health Commission adopted its 2022-2023 Work Plan.

CURRENT SITUATION AND ITS EFFECTS

On March 24, 2022, the Mental Health Commission adopted the attached work plan through the action detailed

M/S/C (Fine, Opton) Motion to pass the work plan 2022 with the 3 changes and submit to the Mental Health Commission and Berkeley City Council. The 3 changes: 1. On the Blue Print that we make sure it's coordinated with Alameda Court. 2. Area in Equity and having someone appointed from the Mental Health Commission to the Mental Health Division. 3. Explore how we add substance use as appropriate to the commission, division and manager titles.

PASSED

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

The Mental Health Commissioners include: Margaret Fine (Chair), Monica Jones (Vice-Chair), Edward Opton, Andrea Pritchett, Tommy Escarcega, and Councilmember Terry Taplin. On March 25, 2022, the Mental Health Commission adopted the attached work plan through the action detailed below during its regular public meeting.

The 2022-2023 Work Plan is designed to address the public mental health and substance use system for people living with serious mental illness and substance use issues and disorders—many of whom are unhoused, people of color, LGBTQIA+ people, people living with disabilities of all ages. It is further designed to address public mental health and substance use to inform the community at-large, particularly through programs at its public meetings.

The Mental Health Commission advances: 1) a whole person care approach that equitably provides well-integrated, coordinated systems of care to diverse people with mental health and substance use challenges, and 2) a diversion approach to reduce interactions with law enforcement and using hospital emergency rooms, inpatient psychiatric hospitalization, and incarceration for service delivery whenever possible.

Overall, the Work Plan is designed to advance a comprehensive 365/24/7 mental health and substance use system for Berkeley, including implementing an alternative non-police responder program, the Specialized Care Unit, and establishing a crisis stabilization center in Berkeley for people who seek voluntary urgent care. The Work Plan is designed to further achieve these goals through building partnerships with consumers, families, community, the Division of Mental Health, and community-based organizations. Further, the Mental Health Commission achieves them through membership, Site Visit Subcommittee, and inviting speakers to present about the public mental health and substance use and related systems at public meetings.

Last, the Mental Health Commission has the goal to submit a Blueprint to the Berkeley City Council making recommendations on the public mental health, substance use, and related systems for serving Berkeley people with mental health and substance use challenges. Overall, the Work Plan is designed to champion and demonstrate the importance of equitable, inclusive public mental health and substance use service delivery in the form of tailored culturally safe and responsive services to diverse people and communities.

#### BACKGROUND

In 2016, the City Council adopted direction to commissioners to submit a work plan annually.

#### ENVIRONMENTAL SUSTAINABILITY

There is no identifiable environmental sustainability impact associated with the adoption of this work plan.

#### POSSIBLE FUTURE ACTION

None.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None.

#### CONTACT PERSON

Jamie Works-Wright, MH Commission Secretary, HHCS/MH, 510-981-7721

#### Attachments:

1: FY 2022-2023 Work Plan

WORK PLAN 2022-2023  
Mental Health Commission for the City of Berkeley

“Contributing to building a comprehensive 365/24/7 behavioral health system for Berkeley.”

- Participate in the selection of the next Division Manager for the Division of Mental Health according to state-mandated duties for the Mental Health Commission.
- Establish a Site Visit Committee that may visit "any facility within the county or jurisdiction where mental health evaluations or services are being provided, including but not limited to, schools, emergency departments, and psychiatric facilities" in alignment with the Mental Health Commission's state-mandated duties.
- Build and continue building partnerships with diverse consumers, families, community, the Division of Mental Health, community-based organizations, including to outreach for new members and by continuing to invite speakers to present and answer questions about the public behavioral health (mental health and substance use) and related systems.
- Develop and advance a diversion program for diverse people with mental health and substance use challenges away from hospital emergency rooms, inpatient psychiatric hospitalization, law enforcement, and criminal legal and incarceration systems. Collaborate with the Mental Health Subcommittee of the Police Accountability Board and the Police Accountability Board to develop a diversion program (Santa Rita Jail Subcommittee).
- Write and submit a Blueprint for the City of Berkeley with recommendations for building a comprehensive 365/24/7 behavioral health system for our city—particularly focused on diverse people with mental health, substance use, and housing challenges and equitable, inclusive care—and submit to the Berkeley City Council, including to ensure joint action with Alameda County.
- Advance establishment of an alternative non-police responder program, the Specialized Care Unit, for the City of Berkeley.
- Advance establishment of a crisis stabilization center in Berkeley to serve diverse individuals with mental health and substance use challenges who voluntarily seek urgent care in our city, including a center that aligns with the SAMHSA National Behavioral Health Crisis Care Guidelines for the definition of crisis stabilization and the minimum expectations for operating a crisis stabilization center.
- Advance using a whole person care approach that equitably provides well-integrated, coordinated systems of care for diverse Berkeley people with

behavioral health challenges, including through current onboarding and use of the Community Health Records by the Division of Mental Health with Alameda County.

- Evaluate levels of equity, disparities, and inclusion for diverse and marginalized people with mental health and substance use challenges who use or attempt to use the Division of Mental Health for the City of Berkeley, including having a Mental Health Commissioner appointed to participate on the Mental Health Equity Committee for this Division of Mental Health.
- Explore changing the titles of the Mental Health Commission, the Manager for Mental Health Services, and the Division of Mental Health to include substance use as appropriate to reflect: 1) the high number of clients served by the Division of Mental Health with mental health and substance use issues and disorders, and 2) the scope and nature of Medi-Cal insurance under CalAIM for people experiencing serious mental illness and substance use disorders at the Division of Mental Health.

## Communications – May 10, 2022

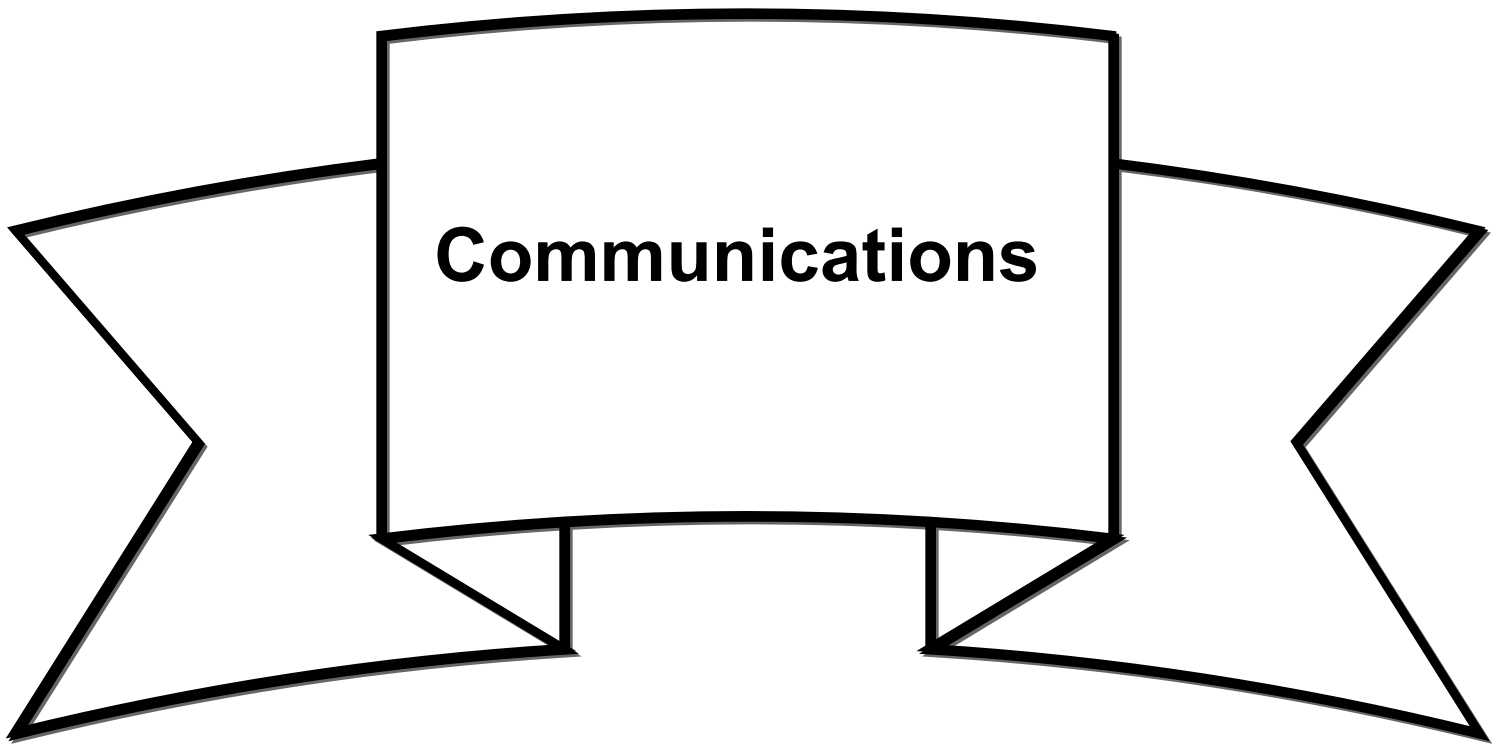
*Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record.*

### **Item #31: Vision 2050: Strategic Asset Management Plan and Asset Management Policy**

1. Claudia Kawczynska
2. Anna Gazdowicz and Jeffrey Faden
3. Juliette Tinnus
4. Lisa Woo
5. Rachel Zisook
6. Sandra Reisman
7. Kris Jones
8. Mira Stein
9. Kester Allen
10. Elliott Schwimmer
11. Kelly Zito
12. Minda Berbeco
13. Claire Heinzelman
14. Arabelle Malinis
15. Naoimi Marks
16. Jennifer Shanoski
17. Eric Wiesner
18. Cameron Woo
19. Rena Fischer

### **Berkeley Marina Area Specific Plan (BMASP)**

20. Peter Kuhn
21. Rachel Bradely
22. Loren Chuse
23. Mary Foley
24. Mary Law
25. Merrill Gillaspay
26. Debra Golata and Jon Harris
27. Janet Cole
28. John Haptas
29. Daven Gee
30. Jan Ruchlis
31. Sue Sheftel
32. Judith Thomas
33. Carol Cohen
34. Joyce Kwok
35. Deborah Abraham
36. Emilie Keas



All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

**City Clerk Department**

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

**Records Online**

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

To search for communications associated with a particular City Council meeting using Records Online:



1. Select Search Type = “Public – Communication Query (Keywords)”
2. From Date: Enter the date of the Council meeting
3. To Date: Enter the date of the Council meeting (this may match the From Date field)
4. Click the “Search” button
5. Communication packets matching the entered criteria will be returned
6. Click the desired file in the Results column to view the document as a PDF