



## PROCLAMATION CALLING A SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

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

**Tuesday, July 26, 2022  
3:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

*Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at [http://berkeley.granicus.com/MediaPlayer.php?publish\\_id=1244](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/89491193768>. 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: **894 9119 3768**. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

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

*To submit a written communication for the City Council's consideration and inclusion in the public record, email [council@cityofberkeley.info](mailto:council@cityofberkeley.info).*

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

## Preliminary Matters

### Roll Call:

## Consent Calendar

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

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

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

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

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

## Consent Calendar

### 1. **Memorandum Agreement: International Brotherhood of Electrical Workers Local 1245**

**From: City Manager**

**Recommendation:** Adopt two Resolutions:

1. Adopting a successor three-year Memorandum Agreement (MA) with the International Brotherhood of Electrical Workers Local 1245 (hereinafter referred to as the “Union”) with a term of July 1, 2022 through June 30, 2025, authorizing the City Manager to execute and implement the revised terms and conditions of employment set forth in the Memorandum Agreement; and
2. Approving a new salary resolution for Representation Unit C that implements the new salary levels negotiated in the new labor agreement and rescinding Resolution No. 69,962-N.S.

**Financial Implications:** See report

Contact: Donald E. Ellison, Human Resources, (510) 981-6800

## Consent Calendar

### 2. **Side Letter of Agreement – SEIU Local 1021 Maintenance and Clerical Chapters** **From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute and implement a Side Letter of Agreement with Service Employees International Union Local 1021 Maintenance and Clerical Chapters to modify Section 31.3 of the Memorandum Agreement regarding the Pre-Age 65 Retiree Health Insurance. Effective 7/1/2022 through 6/30/2023, the City shall contribute an additional \$200.00 toward both single and two-party rate for active employees who retire from city service and file such retirement within thirty (30) days of separation from the city with CalPERS. This enhanced retiree incentive shall continue until Section 31.4 become applicable.

**Financial Implications:** See report

Contact: Donald E. Ellison, Human Resources, (510) 981-6800

## Action Calendar

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

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

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

## Action Calendar – New Business

### 3. **Establishing Policy for Adequate Annual General Fund Contribution for Street Maintenance to Prevent Deterioration of Pavement Condition** **From: Councilmember Wengraf (Author), Councilmember Kesarwani (Author), Mayor Arreguin (Author), Councilmember Taplin (Co-Sponsor)**

**Recommendation:** Adopt a Resolution establishing a Council fiscal policy to allocate \$8 million annually in General Fund monies for street maintenance, adjusted annually for inflation. The allocation will augment the existing General Fund street paving budget of \$7.3 million, for a total of \$15.3 million annually, adjusted for inflation. The policy allows for suspension in any year in which there is a budget deficit or emergency under two circumstances (1) the City Council draws upon \$1 million (or more) from its Stabilization Reserve in order to adopt a final budget; or (2) a two-thirds vote of the City Council.

This policy is needed to ensure that deferred street maintenance is supported by an ongoing adequate General Fund contribution. Without adequate ongoing street maintenance funding, analysis shows that a one-time infusion of resources will only lead to a temporary improvement in the pavement condition.

**Financial Implications:** See report

Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

## Action Calendar – New Business

**4. Placing a General Obligation Bond Measure on the November 8, 2022 Ballot for Affordable Housing, Climate Change Resiliency, Wildfire Protection, and Other Public Infrastructure Improvements**

**From: City Manager**

**Recommendation:**

1. Adopt a Resolution determining public interest and necessity for issuing a general obligation bond in the amount of \$300 million for affordable housing, climate change resiliency, wildfire protection, and other public infrastructure improvements, submitting to the Berkeley electorate on the November 8, 2022 ballot a measure to authorize a general obligation bond in that amount, and finding that the proposed measure is not a project under the California Environmental Quality Act.

2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

**Financial Implications:** See report

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

**5. Placing a Special Tax Measure on the November 8, 2022 Ballot to Fund Street Repairs, Sidewalk Repairs, and Traffic Safety Improvements; and Adopting the Vision 2050 Program Plan**

**From: City Manager**

**Recommendation:**

1. Adopt a Resolution submitting a ballot measure to fund street repairs, sidewalk repairs, and traffic safety improvements to a vote of the electors at the November 8, 2022 General Municipal Election.

2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

3. Adopt a Resolution adopting the Vision 2050 Program Plan.

**Financial Implications:** See report

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

**6. Placing a General Tax Measure on the November 8, 2022 Ballot to Tax Vacant Residential Units**

**From: City Manager**

**Recommendation:**

1. Adopt a Resolution submitting a ballot measure to tax vacant residential units to a vote of the electors at the November 8, 2022 General Municipal Election.

2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

**Financial Implications:** See report

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

## Adjournment

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

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the City of Berkeley to be affixed on this 22<sup>nd</sup> day of July, 2022.



Jesse Arreguin, Mayor

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

ATTEST:



Date: July 22, 2022

Mark Numainville, City Clerk

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

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

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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 <https://berkeleyca.gov/>.

Agendas and agenda reports may be accessed via the Internet at:

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>

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](mailto: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:**

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



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

## **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 #6: Placing a General Tax Measure on the November 8, 2022 Ballot to Tax Vacant Residential Units**

1. Adriel Hampton



Office of the City Manager

CONSENT CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Don E. Ellison, Interim Director of Human Resources  
 Subject: Memorandum Agreement: International Brotherhood of Electrical Workers  
 Local 1245

RECOMMENDATION

Adopt two Resolutions:

1. Adopting a successor three-year Memorandum Agreement (MA) with the International Brotherhood of Electrical Workers Local 1245 (hereinafter referred to as the "Union") with a term of July 1, 2022 through June 30, 2025, authorizing the City Manager to execute and implement the revised terms and conditions of employment set forth in the Memorandum Agreement; and
2. Approving a new salary resolution for Representation Unit C that implements the new salary levels negotiated in the new labor agreement and rescinding Resolution No. 69,962-N.S.

FISCAL IMPACTS OF RECOMMENDATION

The terms of the new MA provide for a 3% salary increase effective the first full pay period after Council adoption; 3% effective July 9, 2023; and 1% July 7, 2024, for a cumulative wage increase of 7% over three (3) years; and one-time lump sum payment of \$1,000. The cost for the new MA is approximately \$221,895 over the term of the agreement (Fiscal Year 2023 through Fiscal Year 2025).

The MA also provides an elimination of the PEPRA CalPERS Cost Share of 1.25% and 3% premium pay to an employee who possesses and maintains a "General Electrician" state certification from the Department of Industrial Relations.

The funding for this MA comes from the General Fund and other special revenue funds. The cost of this labor contract will be included in the fiscal years 2023 through 2025 Budgets.

The terms of the new Memorandum Agreement include a "me too" clause that if the City reaches agreement with the largest bargaining unit or extends the Unrepresented employees an across the board Cost of Living Adjustment (COLA) increase, wage

increase, lump sum payment, or other benefit increase during the term of this agreement, the City agrees to apply the same increases to the Union.

CURRENT SITUATION AND ITS EFFECTS

The City’s labor contract with the Union expired and was fully terminated as of June 30, 2022. In an effort to reach agreement on a successor Memorandum Agreement, representatives of the City and representatives of the Union held approximately 7 negotiating sessions beginning in April 14, 2022. The parties reached agreement on all outstanding economic issues on July 13, 2022.

While the labor contract expired and fully terminated on June 30, 2022, the laws governing collective bargaining agreements provide that the terms and conditions set forth in the expired contract remain in full force and effect until modified through the collective bargaining process. The collective bargaining process has now been completed and the parties have reached tentative agreement on all outstanding issues.

BACKGROUND

There are 15 budgeted positions represented by IBEW Local 1245 in one representational unit (Unit C). IBEW Local 1245 represents employees in the electrical occupations in the Public Works Department.

The City’s philosophy during negotiations with IBEW Local 1245 was to follow City Council policies to protect the City’s short and long-range economic health. City Council policies for labor negotiations include, but are not limited to, the following:

1. Assure that labor organizations and their members are treated fairly and with respect.
2. Negotiate in good faith and within the process established by the parties including honoring the traditional confidentiality of the negotiation process.
3. Negotiate contracts based on a “Total Compensation Package” model (changes in current and future salary, and health and welfare benefits) within the City’s overall financial conditions.

Major provisions of the new labor contract are as follows:

Term	July 1, 2022 through June 30, 2025
11 Salary Increase	3%, 3%, 1%; \$1000 lump sum
37.11 PEPRA Ramp Down 1.25	Elimination of the PEPRA Pension contribution of 1.25% as soon as administratively possible

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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



RATIONALE FOR RECOMMENDATION

Representatives of the City worked within policies set by the City Council for guiding contract negotiations and staff met with the City Council in closed session to discuss and receive the policy direction and economic authority to settle this contract. The overall settlement must be within the City's ability to pay based on projected revenue as well as demands for services across the spectrum of programs the City provides the community. I believe this settlement is in keeping with City Council's direction to staff and is fair and equitable to the members of the Union.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Don E. Ellison, Interim Director of Human Resources, Human Resources, 510-981-6807

Attachments:

- 1: Resolution – Revised Memorandum Agreement: IBEW Local 1245
  - Exhibit A: Memorandum Agreement between the City of Berkeley and the International Brotherhood of Electrical Workers Local 1245 – A.F.L. – C.I.O. July 1, 2022, 2022 through June 30, 2025 (Edited Version)
  - Exhibit B: Memorandum Agreement between the City of Berkeley and the International Brotherhood of Electrical Workers Local 1245 – A.F.L. – C.I.O. – July 1, 2022 through June 30, 2025 (Clean Version)
  
2. Resolution: Approving a New Classification and Salary Resolution for International Brotherhood of Electrical Workers and Rescinding Resolution No. 69,962-N.S.
  - Exhibit A: International Brotherhood of Electrical Workers, Local 1245  
Classification/Salary Resolution Period: August 7, 2022 through June 30, 2025
  
3. Tentative Agreement Between the City of Berkeley and the International Brotherhood of Electrical Workers Local 1245 – A.F.L. –

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

MEMORANDUM AGREEMENT: INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS LOCAL 1245

WHEREAS, the City is obligated under the provisions of California Government Code Section 3500 – 3510, commonly referred to as the Meyers-Milias-Brown Act, to meet and confer in good faith and attempt to reach agreement with representatives of recognized bargaining units on matters within the scope of representation including, but not limited to wages, hours and other terms and conditions of employment; and

WHEREAS, representatives of the City and the International Brotherhood of Electrical Workers, Local 1245 have met and conferred in good faith and have reached agreement on a new Memorandum Agreement that incorporates all changes and modifications in wages, hours and other terms and conditions of employment agreed to by the parties.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute the new Memorandum Agreement for the period July 1, 2022 through June 30, 2025 with the International Brotherhood of Electrical Workers, Local 1245, including changes in certain benefits on dates specified in the Memorandum of Understanding which is attached hereto, made a part hereof and marked Exhibit B.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute and implement said Memorandum Agreement including all changes in wages, hours, and other terms and conditions of employment. A fully executed original of said contract is filed in the Office of the City Clerk.

BE IT FURTHER RESOLVED that this revised resolution provides for amendments to the Memorandum Agreement adopted on July 26, 2022.

Exhibit A: Memorandum Agreement between the City of Berkeley and the International Brotherhood of Electrical Workers Local 1245 – A.F.L. – C.I.O - July 1, 2022 through June 30, 2025 (Edited Version)

Exhibit B: Memorandum Agreement between the City of Berkeley and the International Brotherhood of Electrical Workers Local 1245 – A.F.L. – C.I.O. – July 1, 2022 through June 30, 2025 (Clean Version)



## MEMORANDUM AGREEMENT

Between the

CITY OF BERKELEY

and the

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS  
LOCAL 1245 - A.F.L. - C.I.O.

~~June 28, 2020~~ July 1, 2022 to June 30, ~~2022~~ 2025

RESOLUTION NO. 68,670-N.S.

MEMORANDUM AGREEMENT: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 1245

WHEREAS, the City is obligated under the provisions of California Government Code Section 3500 – 3510, commonly referred to as the Meyers-Milias-Brown Act, to meet and confer in good faith and attempt to reach agreement with representatives of recognized bargaining units on matters within the scope of representation including, but not limited to wages, hours and other terms and conditions of employment; and

WHEREAS, representatives of the City and the International Brotherhood of Electrical Workers Local 1245 have met and conferred in good faith and have reached agreement on a new Memorandum Agreement that incorporates all changes and modifications in wages, hours and other terms and conditions of employment agreed to by the parties.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute the new Memorandum Agreement for the period October 21, 2018 through June 27, 2020 with the International Brotherhood of Electrical Workers Local 1245, including changes in certain benefits on dates specified in the Memorandum Agreement which is attached hereto, made a part hereof and marked Exhibit A.

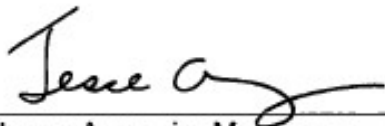
BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute and implement said Memorandum Agreement including all changes in wages, hours, and other terms and conditions of employment. A fully executed original of said contract is filed in the Office of the City Clerk.

The foregoing Resolution was adopted by the Berkeley City Council on November 27, 2018 by the following vote:

Ayes: Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: Bartlett.

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

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

Table of Contents (click section titles to jump to page)

ARTICLE 1 - ADMINISTRATION .....1

SECTION 1: RECITALS .....1

SECTION 2: PARTIES TO THE AGREEMENT .....2

2.1 Exclusive Representation.....2

2.2 Management Rights .....2

SECTION 3: NO DISCRIMINATION .....2

SECTION 4: UNION SECURITY .....3

4.1 Union Security .....3

4.3 New Employee Orientation.....3

SECTION 5: DEDUCTION OF UNION DUES.....5

5.1 Deductions .....5

5.2 Revocation .....5

5.3 Authorization Forms .....5

5.4 Notice.....5

SECTION 6: UNION REPRESENTATIVES.....5

6.1 Number of Representatives .....6

6.2 Maximum Representatives.....6

6.3 Notification .....6

6.4 Union/Management Meetings.....6

6.5 Union Training.....6

SECTION 7: SEPARABILITY OF PROVISIONS .....7

SECTION 8: EXISTING MEMORANDUM AGREEMENT .....7

SECTION 9: FINALITY OF RECOMMENDATIONS .....7

SECTION 10: DURATION .....7

ARTICLE 2 - SALARIES, HOURS OF WORK AND COMPENSATION ISSUES.....7

SECTION 11: SALARIES .....8

11.1 Salary Rates .....8

11.2 Step Placement.....~~8~~

11.3 Maximum Salary Rate .....9

11.4 Effect of Leaves .....9

11.6 Y-Rate.....9

11.7 Pay Frequency.....9

11.8 Higher Classification .....10

11.9 Temporary Appointment.....11

11.10 Step Increases for Provisional Employees.....11

11.11 End of Year Pay Period .....11

11.12 Overtime Underpayment.....11

11.13 Equity Studies .....11

11.14 Step Increase .....11

11.15 Effective Date of Salary Adjustment.....~~11~~

11.16 Reclassification.....~~12~~

11.17 Premium Pay Differential - Working at Heights of 60 Feet or More .....12

11.18 Commercial Driver’s License Premium .....12

11.19 Longevity Pay .....~~12~~<sup>12</sup>

SECTION 12: HOURS AND DAYS OF WORK.....13

12.1 Hours and Days of Work .....13

12.2 Sunday and Graveyard Shifts .....13

12.3 Shift Assignment.....13

12.4 Classes during Shift Assignments.....~~14~~<sup>13</sup>

12.5 Rest Period.....~~14~~<sup>13</sup>

12.6 Daylight Saving Time.....14

SECTION 13: OVERTIME.....14

13.1 Rate.....~~15~~<sup>14</sup>

13.2 Department Head Discretion .....~~15~~<sup>14</sup>

13.3 Payoff of Overtime .....15

13.4 FLSA Workweek .....15

13.5 Emergency Overtime .....15

13.6 Meals.....~~16~~<sup>15</sup>

13.7 Standby Pay .....16

13.8 Emergency Overtime Assignments .....~~17~~<sup>16</sup>

13.9 Overtime Offers .....17

SECTION 14: SHIFT DIFFERENTIAL.....18

14.1 Swing Shift .....18

14.2 Night Shift.....18

SECTION 15: NATURAL DISASTER/DECLARED EMERGENCY .....18

15.1 Call Outside Normal Working Hours .....~~19~~<sup>18</sup>

15.2 Shift Differential.....~~19~~<sup>18</sup>

15.3 Reduction in Hours .....~~19~~<sup>18</sup>

15.4 Change in Assignments .....19

15.5 Hours Worked in Excess of 12-hours.....19

ARTICLE 3 - LEAVES.....19

SECTION 16: VACATION .....19

16.2 Vacation Approval.....19

16.3 Use of Incremental Vacation .....~~20~~<sup>19</sup>

16.4 Accrual Rate as of December 8, 1987 .....~~20~~<sup>19</sup>

16.5 Accrual, Use, and Limitation for Employees with Less than 6-Months of Service .....20

16.6 Vacation Eligibility for Part-time, Intermittent, Leave Without Pay or .....~~21~~<sup>20</sup>

Reemployed Employees .....~~21~~<sup>20</sup>

16.7 Maximum Vacation Accumulation.....21

16.8 Prorated Vacation due to Extended Absence, Reemployment or Reinstatement ..~~22~~<sup>21</sup>

16.9 Payment of Vacation upon Termination or Extended Leave after Six Months of Service ....22

16.10 Calculation and Payment or Reimbursement of Vacation Credits upon Termination or  
Extended Leave .....22

16.11 Lump Sum Payment of Vacation.....~~23~~<sup>22</sup>

16.12 Calculation of Vacation Based on Actual Paid Hours.....23

16.13 Vacation Accounting Procedures.....23

16.14 Voluntary Time Off .....	23
SECTION 17: HOLIDAYS .....	23
17.1 Holidays .....	23
17.2 Floating Holidays .....	24
17.3 Floating Holiday Accrual upon Employment .....	24
17.4 Limitations .....	<del>25</del> 24
17.5 Holidays for Employees whose Work Week is Other than Monday through Friday .....	<del>25</del> 24
17.6 Work during a Holiday .....	25
17.7 Holidays for Part-Time Employees .....	25
SECTION 18: SICK LEAVE .....	<del>26</del> 25
18.1 Eligibility .....	<del>26</del> 25
18.2 Sick Leave Accrual .....	<del>26</del> 25
18.3 Pro-rated Sick Leave for Part-Time Employees .....	26
18.4 Sick Leave for Intermittent Employees .....	26
18.5 Maximum Accumulation .....	26
18.6 Payment upon Retirement/Termination .....	26
18.7 Annual Payment for Hours in Excess of Maximum for Employees Working Half-Time or More for Employees Hired on or Before June 30, 2013 .....	27
18.8 Restoration of Sick Leave if Reemployed within Two Years .....	<del>28</del> 27
18.9 Sick Leave Use/Family Illness .....	<del>28</del> 27
18.10 Prohibition for Use with Outside Employment .....	28
18.11 Notification Requirement .....	28
18.12 Cessation of Accrual .....	<del>29</del> 28
18.13 Workers' Compensation .....	<del>29</del> 28
18.14 Light Duty .....	30
18.15 Control Program for Sick Leave Use .....	31
18.16 Bonus Time for Unused Sick Leave .....	31
18.17 State Disability Insurance .....	<del>32</del> 31
SECTION 19: FUNERAL LEAVE .....	<del>33</del> 32
SECTION 20: MILITARY AND MARITIME LEAVE .....	33
SECTION 21: PARENTAL LEAVE .....	<del>34</del> 33
21.1 Eligibility: .....	<del>34</del> 33
SECTION 22: LEAVE OF ABSENCE WITHOUT PAY .....	<del>35</del> 34
22.1 Department Head Authority .....	<del>35</del> 34
22.2 Union Sponsored Training .....	<del>35</del> 34
22.3 Exhaustion of Accrued Time .....	35
SECTION 23: JURY DUTY LEAVE .....	35
23.1 Court Time .....	<del>36</del> 35
ARTICLE 4 - HEALTH AND WELFARE BENEFITS .....	<del>37</del> 36
SECTION 24: HOSPITAL-MEDICAL, DENTAL, AND VISION COVERAGE .....	<del>37</del> 36
24.1 Medical Coverage .....	<del>37</del> 36
24.2 Maximum Medical Premium Payments .....	<del>37</del> 36
24.3 Dental Coverage .....	<del>38</del> 37
24.4 Vision Coverage .....	<del>39</del> 38

24.5 Change in Insurance Carrier .....	3938
24.6 Domestic Partner Coverage .....	4039
24.7 Part-Time Employees and Prorated Benefits.....	4039
24.8 Commencement of Medical, Dental, and Vision Benefits .....	4039
24.9 Health Insurance In-Lieu Payments.....	4039
24.10 Group Life Insurance .....	4039
24.11 Pre-Tax Status.....	4039
SECTION 25: RETIREE MEDICAL COVERAGE.....	4140
25.1 Amendment of Retiree Health Premium Assistance Plan III, effective January 23, 1998, Restated and Amended effective March 22, 2011.....	4140
25.2 Eligibility .....	4241
25.3 Pre Age 65 Retiree Health Insurance.....	4241
25.4 Retiree Benefits for Employees Age 65 and Over.....	4443
25.5 Termination by City of Retiree Medical Benefit.....	4544
25.6 Retiree Medical Benefit for Employees Retiring Between the Ages of 50 and 55 .....	4544
25.7 Employees Retiring with a CalPERS Approved Disability Retirement.....	4544
25.8 City Funding of Retiree Health Benefit.....	4544
25.9 Actuarial Study .....	4645
ARTICLE 5 – TERMS AND CONDITIONS OF EMPLOYMENT .....	4746
SECTION 26: PROBATIONARY PERIOD.....	4746
26.1 Duration and Effect of Military Leave on Probationary Period .....	4746
26.2 Provisional Appointments to a Higher Classification.....	4746
26.3 Report Requirement.....	4746
26.4 Rejection during Probationary Period.....	4746
26.5 Rejections Subject to Disciplinary Appeal .....	4847
26.6 Probationary or Temporary Employee Assignments.....	4847
SECTION 27: TRANSFER.....	4847
SECTION 28: PROMOTION.....	4847
SECTION 29: DEMOTION .....	4948
SECTION 30: SUSPENSION .....	4948
SECTION 31: DISCHARGE .....	4948
SECTION 32: RESIGNATION .....	5049
SECTION 33: REINSTATEMENT .....	5049
SECTION 34: NOTICE OF TERMINATION.....	5049
ARTICLE 6 - GRIEVANCE AND DISCIPLINARY APPEAL PROCEDURE.....	5049
SECTION 35: GRIEVANCES .....	5049
35.1 Definition.....	5049
35.2 Procedure .....	5150
35.3 EEO Complaints .....	5453
35.4 Compensation Complaints.....	5554
35.5 Changes or Interpretations.....	5554
35.6 Extension of Timelines .....	5554
35.7 Days .....	5554
35.8 Grievances Challenging Disciplinary Action.....	5554



ARTICLE 7 – GENERAL PROVISIONS .....5756

SECTION 36: GENERAL PROVISIONS .....5756

36.1 Personal Conduct .....5756

36.2 Rain Gear .....5756

36.3 Tools .....5756

36.5 Training .....5857

36.6 Use of Automobiles .....5958

36.7 Safety .....6059

36.8 YMCA Group Membership .....6059

36.9 Annual Performance Evaluation .....6059

ARTICLE 8 - PUBLIC EMPLOYEES RETIREMENT SYSTEM .....6160

SECTION 37: PAYMENT OF EMPLOYEES' PERS CONTRIBUTIONS .....6160

37.1 Miscellaneous Designation .....6160

37.2 “Classic Employees” Definition .....6160

37.3 “New Member” Definition .....6160

37.4 CalPERS Retirement Formula for “New Members” as Defined Under the  
Public Employees’ Pension Reform Act of 2013 (PEPRA) .....6160

37.5 CalPERS Retirement Formula and Employer Paid Member Contribution for Classic  
Employees (i.e. current employees and employees who do not qualify as “New Members” under  
PEPRA) .....6160

37.6 CalPERS New Members Normal Share of Cost .....6160

37.7 Reporting of Contributions .....6160

37.8 City Contracts with CalPERS .....6261

37.9 Index Level 1959 Survivor Benefit .....6362

37.10 Classic Members’ Pension Contribution through 20516 a Contract Amendment .....6362

37.11 New Members’ Pension Contributions through 20516 a Contract Amendment .....6362

SECTION 38: SUPPLEMENTAL RETIREMENT/DISABILITY INSURANCE PLAN ..6463

ARTICLE 9 - LAYOFF PROCEDURE .....6564

SECTION 39: LAYOFF .....6564

39.1 Announcement of Layoff .....6564

39.2 Seniority Service Date .....6564

39.3 Establishment of Seniority Lists .....6665

39.4 Employee Retreat Rights .....6665

39.5 Employee Notification .....6766

39.6 Flexible Placement Program .....6867

39.7 Reemployment Lists .....6968

39.8 Career Exempt Employees .....7069

39.9 Appeal Procedures .....7069

39.10 Reemployment Priority Rights .....7170

SIGNATURE PAGE .....7271

EXHIBIT A - Hourly Salary Schedule .....7372

EXHIBIT C .....7573

EXHIBIT D – Service Vacation Leave .....7775

EXHIBIT E - HOURS AND DAYS OF WORK .....7876

EXHIBIT F - IMPLEMENTING THE REDUCED WORK SCHEDULE.....~~79~~<sup>77</sup>

**EXHIBIT G** ..... **76**

**MEMORANDUM AGREEMENT**  
**Between**  
**CITY OF BERKELEY**  
**and the**  
**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS**  
**LOCAL 1245**

**ARTICLE 1 - ADMINISTRATION**

**SECTION 1: RECITALS**

- 1.1 This Memorandum Agreement is entered into pursuant to the Meyers-Milias Brown Act (Government Code, Sections 3500-3511), as amended, and has been jointly prepared by the parties.
- 1.2 The City Manager is the representative of the City of Berkeley (hereinafter referred to as "the City") in employer-employee relations as provided in Resolution No. 43,397-N.S., adopted by the City Council on October 14, 1969.
- 1.3 International Brotherhood of Electrical Workers, Local 1245, is the recognized employee organization for Representation Unit C (Electrical Occupations), which organization has been certified as such pursuant to said Resolution No. 43,397N.S. The employee positions in such Representation Unit are hereinafter set forth in Exhibit A attached hereto and made a part hereof, and International Brotherhood of Electrical Workers, Local 1245 (hereinafter referred to as "the Union") is recognized as the sole representative of employees assigned to such positions.
- 1.4 The parties have met and conferred in good faith regarding wages, hours, and other terms and conditions of employment of the employees in said Representation Unit C, have exchanged freely information, opinions, and proposals, and have endeavored to reach agreement on all matters relating to the employment conditions and employer-employee relations of such employees.
- 1.5 This Memorandum Agreement shall be presented to the City Council as the joint recommendation of the undersigned.
- 1.6 Section titles in this Memorandum Agreement are for identification purposes only and are not to be used for the purpose of interpreting either the intent or the meaning of the language of any section.

## **SECTION 2:      PARTIES TO THE AGREEMENT**

### **2.1      Exclusive Representation**

The Union is the exclusive representative of all employees within Representation Unit C (Electrical Occupations) and shall continue to be recognized as such unless, in accordance with the provisions of Resolution No. 43,397-N.S. or said Resolution may be amended, the Union is no longer certified as the Recognized Employee Organization for employees in Representation Unit C.

### **2.2      Management Rights**

The Union recognizes that the management of the City and its business and the direction of its working forces are vested exclusively in the City, and this includes, but it not limited to, the following: to direct and supervise the work of its employees, to hire, promote, demote, transfer, suspend, and discipline or discharge employees for just cause; to plan, direct, and control operations; to lay off employees because of lack of work or for other legitimate reasons; to introduce new or improved methods or facilities, provided, however, that all of the foregoing shall be subject to the provisions of this Agreement, arbitration decisions, or letters of agreement, or memorandums of understanding clarifying or interpreting this Agreement.

The City shall not by reason of the execution of this Agreement (a) abrogate or reduce the scope of any present plan or rule beneficial to employees, such as its vacation and sick leave policies or its retirement plan, or (b) reduce the wage rate of any employee covered hereby, or change the conditions of employment of any such employee to his disadvantage. The foregoing limitation shall not limit City in making a change in a condition of employment if such change has been negotiated and agreed to by City and Union.

## **SECTION 3:      NO DISCRIMINATION**

The City and Union agree that they will not discriminate against employees based on race, creed, color, ethnicity, ancestry, religion, political affiliation, gender, sexual orientation, age, national origin, marital or domestic partner status, gender identity or gender expression, parental status, pregnancy, disability or medical condition, Acquired Immune Deficiency (AIDS/HIV) or AIDS related condition, or any other status protected by applicable state or federal law, or protected Union activity. Furthermore, the City and Union agree to comply with all applicable federal, state and local laws pertaining to nondiscrimination and equal employment opportunity.

The Union agrees that it will support programs for making members of minority groups and women aware of employment opportunities within the City's jurisdiction, and that it will work with the City to increase recruitment efforts of such minorities and women into

City service. The Union recognizes and supports the City of Berkeley's commitment to equal employment opportunity.

## **SECTION 4:      UNION SECURITY**

### **4.1      Union Security**

4.1.1 An employee included in Unit C, may become and remain a member in good standing of the Union; or pay to the Union an initial fee equal to the regular initiation fee and, thereafter, a monthly fair share service fee equal to the regular monthly union dues and general assessments.

4.1.2 **Contracting Out:** The City will not hire any contractors, firm or individual which will result in the layoff of any employees covered under this Agreement.

4.1.3 **Subcontracting:** If the City intends to subcontract any electrical or communication work, the City will notify the Union in advance of any bid solicitation whose value is estimated to be \$25,000 or more. The City will notify the Union in advance by mailing a copy of the City Council Bid Notifications Report to the Union Stewards. Information will be sent to the Union at the same time it is forwarded to the City Council and will include nature of project, the name of department requesting the work, and the budget code. Upon written request from the Union, the City will provide a copy of the actual bid specifications.

For electrical or communication work estimated to cost less than \$25,000, the City will provide the Union Stewards a copy of the Council Awarded Contracts Report on a monthly basis.

4.2.3 **Indemnification:** The Union shall indemnify and save harmless the City, its officers and employees, from and against any and all loss, damages, costs, expenses, claims, attorneys' fees, demands, actions, suits, judgments and other proceedings arising out of any claims made by Unit C employees for deductions made in reliance on information provided by the Union.

4.2.4 **Union Reports:** The City shall furnish the Union, on a monthly basis, the name, date of hire, salary, classification and work location of all newly-hired employees subject to this Agreement.

### **4.3      New Employee Orientation**

This provision shall apply to new hire employees appointed to classifications covered by this Agreement.

**4.3.1 Onboarding:** The parties acknowledge that the City provides a new employee orientation (onboarding) to each new employee hired by the City. As such, the Union will be provided with not less than 10 calendar days' advanced notice of the time, date, and location of the onboarding of any new employee represented by the Union. The Union will be given 30-minutes at the start of the new employee onboarding in a room designated by the City for no more than one (1) representative to present Union membership information. The City representative will excuse him or herself during the Union portion of the onboarding. The Union agrees in its portion of the onboarding not to engage in speech that could cause disruption or material interference with City activities.

The City will provide 30 minutes of Union Release Time to the Union representative presenting the Union membership information during the scheduled onboarding. The Union shall provide the Union representative's immediate supervisor with the Union representative's name at least five (5) days prior to the onboarding. The Union representative shall be released for this purpose unless unusual operation needs interfere with such release in which case the Union representative's immediate supervisor will provide a written explanation of why release could not be approved. If the Union representative is not released due to department operational needs, the Union representative may arrange an alternative date and time to meet with the newly hired employee within the first two (2) weeks of employment, subject to the 30-minutes onboarding and Union Release Time requirements as stipulated above.

**4.3.2 Information Provided:** On a quarterly basis (March, June, September, and December), the City will provide the Union with a digital file via email to the email address designated by the Union. The Union acknowledges and understands that the City is working diligently and in good faith to update its contact information database functionality to incorporate all the fields of contact information listed below. As a result, the City may not initially be able to provide the employee's work telephone number, personal phone number, and personal email address until the completion and implementation of the City's new Enterprise Resource Management Application (ERMA) system.

The City will provide the Union with the following information on file, to the extent the City has it on file:

- Name.
- Job Title.
- Department.
- Work Location.

- Home telephone number.
- Home address.
- Personal cellular telephone number (new hires hired on or after October 1, 2017).
- Work telephone number (*upon implementing ERMA*).
- Personal email addresses on file with the City (*upon implementing ERMA*).

Notwithstanding the foregoing, limited to the express purpose of the requirements of Government Code section 3558 only, an employee may opt out via written request to the City (copy to the Union) to direct the City to withhold disclosure of the employee's: Home address; home telephone number; personal cellular telephone number; personal email address; and date of birth.

## **SECTION 5:      DEDUCTION OF UNION DUES**

### **5.1      Deductions**

The City shall deduct, once monthly, the amount of Union regular and periodic dues, service fees, or insurance premiums as may be specified by the Union under the authority of written notification by the Union certifying that the employee has provided written affirmed consent for deduction of union membership dues or fair share service fees.

Such deductions, together with a written statement of the names and amounts deducted, shall be forwarded promptly to the Union office.

### **5.2 Revocation**

Upon receipt of a written notice from the Union to the Human Resources Department, the City shall cease deducting membership dues or fair share service fees from the designated employee.

### **5.3      Authorization Forms**

The City may request verification of employee's authorization form giving affirmed consent to deduct dues or fees only if a legitimate dispute arises about the existence or term of the authorization.

### **5.4      Notice**

Union agrees to give reasonable notice of dues change.

## **SECTION 6:      UNION REPRESENTATIVES**

### **6.1 Number of Representatives**

The City shall allow two (2) representatives of the Union reasonable time off from work, without loss of compensation or other benefits, to represent its members in disputes which involve the interpretation or application of those rules, regulations, and resolutions which have been or may hereafter be adopted by the City Council to govern personnel practices and working conditions, including such rules, regulations, and resolutions as may be adopted by the City Council to effect memoranda of understanding which may result from the meeting and conferring process, and to represent its members in meeting and conferring in good faith for amendments to this Memorandum Agreement in the future, subject to the conditions set forth in Sections 6.2 (Maximum Representatives) and 6.3 (Notification).

All release time shall be recorded on time sheets and time cards with appropriate codes.

### **6.2 Maximum Representatives**

Two (2) Union representatives shall be the maximum number who will be allowed concurrent time off.

### **6.3 Notification**

The representatives shall notify the first non-bargaining supervisor a minimum of one workday in advance before leaving their work assignments except for emergency situations which require the immediate attention of said representatives (an emergency is defined as a safety problem or hazardous condition), but in no case shall an employee leave his or her job without notification of the first non-bargaining supervisor. Such request shall include the location, and area of activity, the approximate time needed and the general nature of the union business involved. Such request shall not be unreasonably denied. Failure to comply with notification and time recording rules may be grounds for denial of leave.

### **6.4 Union/Management Meetings**

Quarterly meetings shall be held between the union and management. Release time shall be granted for up to two union representatives. Agendas for such meetings shall be set one week in advance between the Business Representative of the Union and the City Manager or their designees. Meetings within department may be held at the discretion of the department head.

### **6.5 Union Training**

Conditional upon prior approval of the course content and upon receipt of certification of completion, if the employee is an elected official or steward of the Union, the City shall reimburse the employee for up to one-half of his or her regular work time spent in such training at the employee's permanent rate of pay, not to exceed twenty (20) hours of paid leave in a calendar year.



## **SECTION 7:      SEPARABILITY OF PROVISIONS**

In the event that any provisions of this Memorandum Agreement are declared by a court of competent jurisdiction to be illegal or unenforceable, that provision of this Memorandum Agreement shall be null and void, but such nullification shall not affect any other provisions of this Memorandum Agreement, all of which other provisions shall remain in full force and effect.

## **SECTION 8:      EXISTING MEMORANDUM AGREEMENT**

Pursuant to Section A of the Memorandum of Understanding dated August 9, 1972 by and between the City and the Union, this Memorandum Agreement shall supersede all existing Memoranda of Understanding between the City and the Union. There is no guarantee that working conditions and practices will be continued if they are not included in this Memorandum Agreement or have not been or are not hereafter specifically authorized by ordinance or by resolution or the City Council.

## **SECTION 9:      FINALITY OF RECOMMENDATIONS**

The recommendations set forth herein are final. No changes or modifications shall be offered, urged, or otherwise presented by the Union, or the City Manager prior to October 20, 2018; provided, however, that nothing herein shall prevent the parties to this Memorandum Agreement from meeting and conferring and making modifications herein by mutual consent.

## **SECTION 10:      DURATION**

This Memorandum Agreement shall be effective upon ratification by the City Council except for those provisions which have been assigned other effective dates as herein set forth, and shall remain in full force and effect up to and including June 30, 2025<sup>2</sup>. This Memorandum Agreement and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at midnight June 30, 2025<sup>2</sup>.

## ARTICLE 2 - SALARIES, HOURS OF WORK AND COMPENSATION ISSUES

### SECTION 11: SALARIES

#### 11.1 Salary Rates

Salary rates for the period of ~~June 28, 2020~~ July 1, 2022 through June 30, ~~2022~~ 2025, for all classes of positions in Representation Unit C shall be set according to the classifications and salary ranges assigned to those classifications listed in Exhibit "A" and attached hereto and made part hereof.

11.1.1 **Salary Increase upon Council Approval:** ~~Effective July 25, 2021, the~~ salary ranges for ~~those the~~ classification covered by this Agreement as listed in Exhibit A will receive a salary increase ~~of four percent (4.0%) and shall be show in Exhibit A.~~ as follows:

Effective the first full pay period following council approval, the salary ranges for the classification covered by this Agreement as listed in Exhibit A will receive a salary increase of three percent (3.0%).

Effective July 9, 2023, the salary ranges for the classification covered by this Agreement as listed in Exhibit A will receive a salary increase of three percent (3.0%).

Effective July 7, 2024, the salary ranges for the classification covered by this Agreement as listed in Exhibit A will receive a salary increase of one percent (1.0%).

11.1.2 **One-Time Payment:** A onetime non-pensionable lump sum payment of ~~\$1,000.00~~ 1,000.00 for each career ~~bargaining unit~~ employee in this unit shall be ~~conferred and paid on August 13, 2021~~ the first full pay period after council approval. Eligible employees must be current City employees in paid status for the full pay period this lump sum is conferred and shall not apply to unit members who are in unpaid status. Such payment shall be subject to required payroll tax deductions. ~~The parties agree that t~~ This lump sum provision does not create or bind the City to any precedent or past practice.

If during any fiscal year during the term of this agreement, the City reaches agreement with the largest bargaining unit or extends the unrepresented employees an across the board Cost of Living Adjustment (COLA) increase, wage increase, lump sum payment, or other benefit increase the

City agrees to apply these same increases to the salary ranges and/or benefits for those classifications covered by this MA as listed in Exhibit B.

### **11.2 Step Placement**

Employees occupying a position in the competitive service shall be paid a salary or wage within the range established for that position's class as set forth in Exhibit "B". The minimum rate for the class shall apply to employees upon original appointment to the position except as may be determined by the City Manager within the negotiated wage ranges. Employees who have been laid-off and are rehired to the same classification shall be placed on the same wage step they were in when laid-off. Transfers shall not affect an employee's salary rate. Employees appointed to any of the positions set forth in Exhibit "B" and employed or working on a part-time basis shall be paid in proportion to the time worked and described in their appointment.

### **11.3 Maximum Salary Rate**

No salary advancement shall be made so as to exceed the maximum rate established for the class to which the advanced employee's position is allocated. Advancement shall be in accordance with the compensation plan of the City and shall depend upon increased service value of an employee to the City as exemplified by recommendations of the department head, performance record, special training, length of service, and other pertinent evidence.

### **11.4 Effect of Leaves**

An employee's pay increase shall not be affected by any leave of absence without pay if the employee is off the payroll for less than one hundred sixty (160) consecutive hours. If the employee is off the payroll for more than one hundred sixty (160) consecutive hours, the total amount of time off shall be made up before the employee shall be entitled to such pay increase.

### **11.6 Y-Rate**

Any employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary, or occupying a position in a class, the salary rate or range for which is reduced, shall continue to receive his present salary. Such salary shall be designated as a Y rate. When an employee on a Y rate vacates his or her position, subsequent appointments to that position shall be made in accordance with Section 11.1 (Salary Rates).

### **11.7 Pay Frequency**

Payment of salaries shall be made bi-weekly. Each pay period shall begin at 12:01 a.m. Sunday up to and including 12:00 midnight Saturday two weeks following. Each payment shall be made not later than the Friday following the end of each

payroll period and shall include payment for all earnings during the previous payroll period.

11.7.1 **Full-Time:** Bi-weekly payment to full-time employees shall be made on the basis of the hourly rate, as set forth in Exhibit B, multiplied by the number of hours worked during the pay period.

11.7.1.1 **40 Hour Week:** For employees on a forty (40) hour week schedule, the annual salary shall be the product of the hourly salary times 2,080 hours.

11.7.1.2 **37.5 Hour Week:** For employees on a ~~thirty-seven~~ thirty-seven and one-half (37.5) hour work week schedule, the annual salary shall be the product of the hourly salary times 1,950 hours.

11.7.1.3 **Monthly Salary:** The monthly salary shall be the quotient of the annual salary divided by 12.

11.7.2 **Part-Time:** Bi-weekly payment to part-time employees in a class for which a monthly salary rate has been herein established shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period. The hourly rate for such part-time employees shall be computed in the same manner as for full-time employees.

11.7.3 **Intermittent:** Bi-weekly payment to intermittent employees in a class for which a monthly salary rate has been established shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period. The hourly rate for such intermittent employees shall be computed in the same manner as for full-time employees.

11.7.4 **Bi-Weekly Daily Rate:** Bi-weekly payment to employees in a class for which a daily rate rather than a monthly rate has been herein established shall be made on the basis of the actual days worked during the biweekly pay period multiplied by the daily rate.

11.7.5 **Bi-Weekly Hourly Rate:** Bi-weekly payment to employees in a class for which an hourly rate rather than a monthly rate has been herein established shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period.

## 11.8 Higher Classification

The Department Head will work all employees within their career classifications. The departments may specifically assign an employee to work in a higher class. Such assignments shall be in writing and shall indicate the reasons, length and

duties of the assignment. Assignments over one (1) week shall be approved in advance by the City Manager or his or her designee. Blanket authorizations for department will be issued on a yearly basis for applicable positions. To be eligible for higher-class pay, the employee must work a minimum of four (4) hours, meet the minimum qualifications, and perform the duties of the higher class. Employees meeting these requirements will be compensated at the lowest step of the higher classification which provides at least a five percent (5%) differential. The journey level employees will rotate the assignment on a monthly basis and perform the necessary duties. In the event the offer of higher class is declined by the journey level employee assigned for that month, volunteers will be asked according to the rotation list. If there are no volunteers, the journey-level employee assigned for that month will be required to perform the necessary duties.

### **11.9 Temporary Appointment**

When a temporary vacancy is to be filled in a classification for which there is an existing eligibility list, the City shall attempt to make the temporary appointment from that list.

### **11.10 Step Increases for Provisional Employees**

An employee who holds a provisional appointment in a classification shall receive step increases in such classification as if the employee held a permanent appointment thereto.

### **11.11 End of Year Pay Period**

For all salary and benefit purposes, the parties agree that the last day of the last pay period ending in the calendar year shall be the end of the year. For excess leave only, the end of the year shall be treated as the last day of the pay period nearest March 31st.

### **11.12 Overtime Underpayment**

The City will include any payment of overtime, which was inadvertently omitted or miscalculated, in the following pay period's check.

### **11.13 Equity Studies**

A list of comparison jurisdictions is established for the purpose of salary equity studies: Alameda County, Contra Costa County, Oakland, Palo Alto, Richmond, San Francisco, San Jose, San Leandro, Santa Clara, and Vallejo. Other jurisdictions may be added as required by agreement between the parties. Job classifications which fall below the median for these jurisdictions may be reviewed. It is the policy of the City that within available funding limits, equity adjustments which are in the interests of the service will be considered.

#### **11.14 Step Increase**

Step increases shall be effective for payroll purposes only on the first day of the pay period nearest to the actual anniversary date. Personnel records will maintain actual dates and will be used to resolve any discrepancies or questions that may arise.

#### **11.15 Effective Date of Salary Adjustment**

Any general future salary adjustments will be set to become effective on the first day of the pay period.

#### **11.16 Reclassification**

In the event the City reclassifies a position based on an employee initiated review from a lower level classification to a higher level classification, an incumbent occupying such position shall be reclassified without competitive examination provided he or she has performed the duties of the new classification for one (1) year and has not received an unsatisfactory evaluation during that period. All other employees shall be required to pass an examination for the higher classification and shall serve the normal probationary period. If a position is reclassified, the employee shall receive salary compensation retroactive to the date the position description questionnaire is submitted and verified as having been received by the department head. Position description questionnaires will be provided by the City. Employees may request one (1) job audit one (1) year after an initial job audit has been completed on their position. Thereafter one (1) job audit will be permitted every two (2) years.

Reclassification or reallocation of positions shall not be used as a mechanism, the sole purpose of which is to improperly circumvent the provisions of this Agreement, including provisions relating to layoff, transfer, demotion or promotion.

#### **11.17 Premium Pay Differential - Working at Heights of 60 Feet or More**

Assignments for working at heights of 60 feet or more will be on a voluntary basis. However, if all qualified employees decline the assignment, the City will be free to contract the work out to an outside service provider.

Employees who work at heights of 60 feet or more, including but not limited to performing maintenance of lights at San Pablo Park, shall receive Height Premium Pay Differential of one and one-half times (1½) times the normal hourly rate for all time performing such work. The Height Premium Pay Differential shall be reported to CalPERS as Height Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

#### **11.18 Commercial Driver's License Premium**

Employees required to possess and maintain a valid California Class A or Class B Commercial Driver's License as a condition of employment shall receive three

percent (3%) differential to hourly rate. This differential shall be reported to CalPERS as Special Class Driver's License Pay. However, any hours worked on overtime are excluded from CalPERS reported "Compensation earnable" in California Government Code Section 20636.

### **11.19 Longevity Pay**

Effective the first full pay period after Council approval on its Regular Agenda, employees completing nineteen (19) years of service shall receive a three percent (3.0%) differential beginning with the anniversary date of beginning of the twentieth (20<sup>th</sup>) year of service and shall apply to all hours in a paid status. This Longevity Pay shall be reported to CalPERS as Longevity Pay Incentive Pay.

### **11.20 State Certification Premium**

An employee who possesses and maintains a "General Electrician" state certification from the Department of Industrial Relations shall receive an additional three percent (3%) to their base rate of pay. The City shall retain the right to add the general electrician state certification as a minimum qualification for the Electrician and Lead Electrician classifications. If the certification is made a minimum qualification, active employees, employed in classifications within this unit at the time of implementation, shall be exempt from this qualification for the remainder of their employment.

## **SECTION 12: HOURS AND DAYS OF WORK**

### **12.1 Hours and Days of Work**

Hours and days of work shall be governed by rules established by the City Manager. (At the present time, the hours and days of work are as shown in Exhibit E (Hours and Days of Work))

### **12.2 Sunday and Graveyard Shifts**

Regularly scheduled Sunday shifts and "graveyard" shifts, as defined in Section 14 (Shift Differential), shall be for eight (8) consecutive hours, including up to one-half (½) hour for lunch.

### **12.3 Shift Assignment**

Within a given classification, shift assignments shall first be offered to employees by classification seniority on a voluntary basis. In the event shift assignments are not filled voluntarily, such assignments will be made on the basis of inverse classification seniority.

### 12.3.1 Types of Shifts:

- a. **Swing shift** means authorized work schedules regularly assigned in which at least four (4) hours worked are between the hours of 5:00 p.m. and 12:00 midnight of each workday.
- b. **Night shift** means authorized work schedules regularly assigned in which at least four (4) hours worked are between the hours of 12:00 midnight and 7:00 a.m. of each workday.
- c. **Day shift** means any authorized work schedules between the hours of 7:00 a.m. and 5:00 p.m.

### 12.4 Classes during Shift Assignments

If an employee assigned to the swing or graveyard shift wishes to attend classes during the day, the employee shall notify the first non-bargaining supervisor of his or her intention to enroll in classes during the day and the completion date of the classes. The City will review the work program and advise the employee within 14 days whether or not the day classes will interfere with the shift assignments. If no conflict exists, the City will not change the shift assignment until after the semester ends provided that the employee continues to be actively enrolled in the class.

### 12.5 Rest Period

Each employee shall be entitled to a rest period of fifteen (15) minutes during each one-half (½) shift worked.

### 12.6 Daylight Saving Time

12.6.1 **Spring:** In the Spring when transitioning to Daylight Saving Time (DST), employees working during the one (1) hour transition from Standard Time to DST will be paid only for actual hours worked. Employees working on a shift which includes the one (1) hour transition may be granted an option by the Department Head or his or her designee, to work an additional hour or use compensatory time, floating holiday, or vacation to make up the lost work hour.

12.6.2 **Fall:** In the Fall when transitioning from DST, employees working during the one (1) hour transition will be paid for all hours worked including overtime at one and one-half (1½) times the straight-time rate of pay for hours worked in excess of the regular workweek as set forth in Section 13 (Overtime) of this Agreement.



## **SECTION 13: OVERTIME**

Employees required to work in excess of their basic work week or in excess of 8 hours in one day (excepting voluntary regular schedules of 9 or 10 hours) during any one week shall be compensated for such overtime services as follows:

### **13.1 Rate**

The overtime rate shall be one and one-half (1½) times the regular hourly salary for the first four (4) hours of such excess and at two (2) times the regular hourly salary for the balance of such excess.

### **13.2 Department Head Discretion**

Whether an employee shall be compensated for overtime by compensatory time off or by payment shall be at the sole discretion of the employee's department head.

**13.2.1 Compensatory Time Off:** Compensatory time off may be earned in lieu of overtime pay at the rate of one and one-half (1½) hours for each overtime hour worked up to a maximum of sixty (60) hours of such compensatory time. Accumulation of compensatory time off in excess of sixty (60) hours may be allowed at the discretion of the department head. Utilization of compensatory time shall be at the discretion of the employee's department head. The times during the calendar year at which an employee shall take his or her compensatory time off shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of the service. As used herein, sixty (60) hours is equivalent to ninety (90) hours of time off work.

### **13.3 Payoff of Overtime**

In the event that an employee resigns or is terminated, he or she shall be entitled to compensation for his or her accumulated overtime.

### **13.4 FLSA Workweek**

For the purpose of computing overtime, the work week shall be defined as beginning at 12:01 a.m. Sunday and ending at 12:00 midnight Saturday. Any applied benefited leave shall be included in the calculation of overtime.

### **13.5 Emergency Overtime**

Employees who are called from their living quarters for emergency work or duty on days other than normal workdays, or on normal workdays outside of their regular work hours, shall be paid emergency overtime compensation for actual time worked;

provided, however, that in any case of emergency overtime as herein provided the minimum time for which such overtime compensation shall be paid shall be four (4) hours; and provided further that if such overtime work is performed prior to the beginning of the regularly scheduled work period and such overtime continues into such regularly scheduled work period without a break in service, compensation shall be paid only for the actual time worked.

### **13.5.1 Overtime Earned Rest Period**

If an employee has worked four (4) hours or more of overtime between the hours of 10:30 p.m. and 6:30 a.m. preceding the beginning of his/her regular work hours on a workday, he/she shall be entitled, except in an emergency, to a rest period to include two (2) hours of his/her workday without loss of his/her regular straight-time pay. If the overtime work period extends for six (6) hours or more of overtime between the hours of 10:30 p.m. and 6:30 a.m. preceding the beginning of his/her regular work hours on a workday, he/she shall be entitled, except in an emergency, to a rest period to include five (5) hours of his/her workday without loss of his/her regular straight-time pay. In the event that an employee, due to operational need, is required to work during an earned rest period during regular work hours, the employee will be paid for the earned rest period in addition to wages earned for hours worked.

### **13.6 Meals**

The City will provide meals to employees during emergency assignments and when the employees work continuously for two (2) or more hours immediately before or after their regular shift of eight (8) or nine (9) hours for a total of ten (10) or eleven (11) hours. The employee shall earn an additional meal for every four (4) hours of continuous work after the first meal is earned or taken.

The City will reimburse the employees for the costs of the meal up to twenty five dollars (\$25) if no meals are provided.

### **13.7 Standby Pay**

An employee assigned to standby shall receive ten (10) hours of overtime compensation in addition to any overtime worked while on standby.

**13.7.1 Standby Week:** For the purpose of this Section 13.7.1 (Standby Week), a week shall mean the seven (7) consecutive calendar days following assignment to standby service. In the case of emergencies, the Senior Supervisor or Superintendent may assign another employee to complete the standby week for the originally assigned employee. In that case, the ten (10) hours standby compensation will be pro-rated between the employees.

13.7.2 **Missed Assignment while on Standby:** If an employee misses an overtime assignment while on standby duty, he or she will not receive the standby pay for that day. If he or she misses a second call during the same standby period, he or she will forfeit all the standby pay for that period.

13.7.3 **Consequences:** If an employee develops a pattern of failing to perform the service when called, they will be subject to disciplinary action and the Union reserves the right to appeal any action.

13.7.4 **Standby Vehicle:** The City will provide the employee on standby duty with a vehicle. Said employee shall be responsible for taking all reasonable steps to insure the safety of the tools and equipment on that vehicle.

### 13.8 Emergency Overtime Assignments

All emergency overtime assignments including calling an employee other than the employee on scheduled standby status will be paid the minimum overtime compensation as defined in Section 13.5 (Emergency Overtime). In the event that the employee on scheduled standby is not called, and another employee has been called to perform the emergency overtime assignment, both the employee who performed the assignment and the employee on scheduled standby status will receive the minimum overtime compensation.

13.8.1 **Scheduled Overtime during Standby:** The employee who is on scheduled standby status may perform scheduled overtime tasks on a voluntary basis. The standby premium shall not be pro-rated. If an emergency call occurs during the time that the employee is performing scheduled overtime tasks that call shall be paid at the time and one-half rate and not at the call back rate set forth in Section 13.5 (Emergency Overtime). If other City electrical employees are concurrently performing scheduled overtime tasks, the Senior Electrical Supervisor may, at his or her discretion, assign the work to electrical employees present within the City performing the scheduled overtime tasks at the regular overtime rate of pay. The employee who is on scheduled standby status who chooses to perform scheduled overtime shall defer to other employees who choose schedule overtime assignments pursuant to Section 13.9 (Overtime Offers).

### 13.9 Overtime Offers

The Department will offer Scheduled Overtime on a voluntary basis to employees with the least amount of overtime worked in accordance with the following provisions:

13.9.1 **Posting of Overtime:** The Department will post a Scheduled Overtime Sign-up List on the Division's bulletin board once every two weeks.

Employees who wish to be considered for scheduled overtime during that time period must sign the list.

13.9.2 **Scheduled Overtime Definition:** Scheduled Overtime shall be defined as an overtime assignment scheduled at least 24 hours in advance.

13.9.3 **Overtime Report:** The Department will prepare and post a Report of Overtime Worked for employees on a calendar year basis beginning with a zero balance on January 1. The report will be updated after each pay period.

13.9.4 **Overtime Assignments:** As scheduled overtime assignments occur, the Department will offer the assignment to individuals on the list for the applicable time period beginning with the person on the sign-up list with the least amount of overtime worked during the calendar year. Notification of scheduled overtime assignments shall be made during work hours at the work place, and employees must be present at the work place to receive the overtime work assignment.

13.9.5 **Overtime Assignment Tie Breaker:** If employees have equal amounts of overtime, the scheduled overtime assignment shall be offered to employees in the same order as their names appear on the sign-up list.

## **SECTION 14:    SHIFT DIFFERENTIAL**

### **14.1 Swing Shift**

Employees who regularly work a full shift of seven and a half (7½) hours or more on swing shift as defined in Section 12.3.1 (Types of Shifts), which includes more than four (4) hours between the hours of 5:00 p.m. and 12:00 midnight, shall be paid their regular salary plus seven and a half percent (7½%) of their regular monthly salary per month.

### **14.2 Night Shift**

Employees who regularly work a full shift of seven and a half (7½) hours or more on night shift as defined in Section 12.3.1 (Types of Shifts), which includes more than four (4) hours between the hours of 12:00 midnight and 7:00 a.m. (night shift), shall be paid their regular salary plus ten percent (10%) of their regular monthly salary per month; provided, however, that in the case of any such employee who is regularly assigned to such night-shift work for less than an entire work week, the additional payment shall be made only for the portion of the work week worked on the night-shift assignment.

## **SECTION 15:     **NATURAL DISASTER/DECLARED EMERGENCY****

If an emergency is formally declared by the City, county, state or national authority:

### **15.1 Call Outside Normal Working Hours**

If an employee is called outside of normal working hours, the employee gets time and one-half (1½) the normal rate of pay for the first whole shift regardless of the number of hours worked. If the employee is not called from home the regular rules apply (i.e., overtime for hours worked above eight in a day).

### **15.2 Shift Differential**

Thereafter, the first eight hours at regular rate and 7½% for hours worked between 5:00 p.m. and midnight; 10% for hours worked from midnight to 7:00 a.m. For hours greater than eight in a shift, the employee gets time and one-half (1½) the normal rate of pay but no shift differential on those hours above eight.

### **15.3 Reduction in Hours**

There will be no reduction in the number of hours in the regular work week schedule.

### **15.4 Change in Assignments**

If an employee is at work during the day when an emergency is declared and is assigned to work a night shift and is sent home, the employee will be compensated as follows:

15.4.1     If an employee has been at work for up to but not more than two (2) hours the employee will be paid for two (2) hours at the straight time rate.

15.4.2 If an employee has been at work for more than two (2) hours but not more than four (4) hours the employee will be paid for four (4) hours at the straight time rate.

15.4.3 If an employee has been at work for more than four (4) hours the employee will be paid for eight (8) hours at the straight time rate.

### **15.5 Hours Worked in Excess of 12-hours**

An employee working more than twelve (12) hours in one continuous shift will be compensated at two (2) times the normal hourly rate.

## **ARTICLE 3 - LEAVES**

**SECTION 16: VACATION**

**16.2 Vacation Approval**

The times during the calendar year at which an employee shall take his or her vacation shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of the service. Wherever practical, employees working in the same classifications within a division shall be given preference of vacation time by seniority. If the requirements of the service are such that a department head cannot permit an employee within his or her department to take an annual vacation leave or any part of such leave within a particular calendar year, the City Manager may permit such employee to take the deferred vacation during the following year.

**16.3 Use of Incremental Vacation**

Employees may, with advance supervisory approval, use vacation leave in increments of one hour.

**16.4 Accrual Rate as of December 8, 1987**

Effective December 8, 1987, the vacation accrual rate shall be modified as follows:

<b>Vacation Accrual Schedule</b>	<b>Authorized Annual Workweeks of Vacation</b>	<b>Vacation Leave Credits in Work Days per Month of Service</b>	<b>Vacation Leave Credits in Hours Earned per Month of Service</b>
Through the first three (3) calendar years of service (except as provided in Section 16.4 (Accrual Rates as of December 8, 1987) and 16.5	2 work weeks	0.833	6.667
Fourth (4 <sup>th</sup> ) through eleventh (11 <sup>th</sup> ) calendar years of service (except as provided in Section 16.5 below)	3 work weeks	1.25	10.00
Twelfth (12 <sup>th</sup> ) through seventeenth (17 <sup>th</sup> ) calendar years (except as provided in Section 16.5	4 work weeks	1.667	13.33
Eighteenth (18 <sup>th</sup> ) through twenty-fourth (24 <sup>th</sup> ) calendar years (except as provided in Section 16.5	5 work weeks	2.083	16.667
Twenty-fifth (25 <sup>th</sup> ) and subsequent calendar years (except as provided in Section 16.5	6 work weeks	2.5	20.00

The authorized annual vacation leave for prior years is set forth in Exhibit D attached hereto and made a part hereof.

**16.5 Accrual, Use, and Limitation for Employees with Less than 6-Months of Service**

Each employee, during that portion of the calendar year in which he or she is originally appointed and during the next succeeding year, shall be entitled to vacation leave credits at the rate of 0.833 work days for each calendar month of service. Each such employee shall be entitled to take during these two (2) calendar years only such annual vacation leave as he or she earns.

**16.6 Vacation Eligibility for Part-time, Intermittent, Leave Without Pay or Reemployed Employees**

For an employee who has worked on a part-time or intermittent basis or who has been on leave of absence without pay for a total of six (6) months or more or who has been terminated and subsequently reemployed, the actual years of service with the City shall be used for the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5) and six (6) weeks' rate.

**16.6.1 Prorated Vacation for Intermittent or Part-Time Employees:** Employees working on an intermittent or part-time basis who have worked half-time or more in the preceding calendar year without termination of employment shall be entitled to a prorated vacation leave based upon the actual years of service with the City and upon the actual amount of time worked in the preceding calendar year.

**16.6.2 Effect of Military Leave on Vacation Eligibility:** For the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5) or six (6) weeks' rate, time spent on extended military leave shall be counted as time spent in the service of the City.

**16.7 Maximum Vacation Accumulation**

Employees may accrue vacation earned up to a maximum cumulative total of 320 hours. Once an employee accrues 320 hours vacation, the employee shall not accrue any additional vacation leave hours until his or her vacation leave balance is below the maximum 320 hours. Under no circumstances will an employee be allowed to accrue more than 320 hours vacation leave. As provided below, the City will advise employees and their supervisors when the employee has attained an accumulation of 280 hours. Supervisors should be flexible in granting vacation requests from employees who reach 280 hours. Provided further that with regard to employees who have reached 280 hours, no vacation request by such employee shall be unreasonably denied. No employee shall be denied vacation leave such that it causes him or her to reach the 320 hour limit.

**Notification:** To assist employees to remain below the 320 hours vacation leave maximum accumulation, the parties agree that no later than October 1 of each

year of this Agreement, the City will provide the Union and Department Heads with a report identifying accumulated vacation hours of all employees. The City also agrees to notify all employees who have accrued 280 hours of vacation leave, as of this date, that they must take vacation leave to reduce their vacation leave to avoid reaching the 320 hour maximum accrual.

**16.8 Prorated Vacation due to Extended Absence, Reemployment or Reinstatement**

An employee who has returned from extended military leave or any other extended leave of absence without pay or who has been reemployed or reinstated shall be entitled, during the calendar year in which he or she returns to the City service, to a prorated vacation based upon the total years of service with the City and upon the total number of months of actual service with the City during the said calendar year. For succeeding calendar years, his or her vacation leave shall be as provided elsewhere in this Section 16 (Vacation).

An employee who is granted a leave of absence without pay and who is off the payroll for less than one hundred sixty (160) consecutive hours shall be entitled to a full vacation. If such an employee is off the payroll for one hundred sixty (160) consecutive hours, his or her vacation shall be as provided in the preceding paragraph of this Section 16.8 (Prorated Vacation due to Extended Absence, Reemployment or Reinstatement) or Section 16.9 (Payment of Vacation upon Termination or Extended Leave after Six Months of Service).

**16.9 Payment of Vacation upon Termination or Extended Leave after Six Months of Service**

If an employee, is terminated, or is granted an extended military leave or other extended leave of absence without pay, such employee, or his or her estate, shall be paid for vacation credits in excess of the actual amount of vacation leave taken or such employee, or his or her estate, shall reimburse the City for the actual amount of vacation leave taken in excess of vacation leave credits, as the case may be.

**16.10 Calculation and Payment or Reimbursement of Vacation Credits upon Termination or Extended Leave**

Upon termination, extended military leave, or other extended leave of absence without pay, vacation leave credits shall be totaled, and the actual amount of vacation leave taken, including any that may have been taken during the year in which the termination, extended military leave, or other extended leave of absence without pay occurs, shall be deducted from the total credits. If the credits exceed the actual amount of vacation leave taken, such employee, or his or her estate, shall be paid for the excess of credits on the basis hereinafter set forth. If the actual amount of vacation leave taken exceeds the credits, such employee, or his or her estate, shall reimburse the City on the same basis.



The basis for such payment by the City or for such reimbursement to the City shall be as follows:

The employee's hourly pay rate at date of termination, extended military leave, or other extended leave of absence without pay, multiplied by the excess of credits over vacation leave actually taken or excess of vacation leave actually taken over credits, as the case may be.

#### **16.11 Lump Sum Payment of Vacation**

Upon termination, extended military leave or other extended leave of absence without pay, payment for excess of vacation leave credits shall be made in one lump sum at time of termination, extended military leave, or other extended leave of absence without pay, or as soon thereafter as possible; provided, however, that an employee may elect to use excess vacation leave credits prior to termination, extended military leave, or other extended leave of absence without pay, to the extent permitted by this Section 16 (Vacation), and receive a lump sum payment for the balance of leave credits, if any. An employee, or his or her estate, shall not be paid for vacation leave credits in excess of eight (8) calendar weeks. Notwithstanding the foregoing, accumulated but unearned vacation credit at the time of retirement shall be paid off in a lump sum.

#### **16.12 Calculation of Vacation Based on Actual Paid Hours**

All vacation benefits shall be calculated upon actual paid hours of work. This provision shall go into effect immediately upon implementation of necessary data processing and programming changes.

#### **16.13 Vacation Accounting Procedures**

The City may revise vacation accumulation provisions in order to standardize accounting procedures without effect on the amount of employees' vacation, subject to review and approval by the union.

#### **16.14 Voluntary Time Off**

The City will implement a voluntary time off (VTO) program, which may include a year-end holiday closure. It is understood by the parties that employee participation is completely voluntary and that employees who wish to work during such periods will be permitted to do so.

## **SECTION 17: HOLIDAYS**

### **17.1 Holidays**

Recognized holidays for employees in Representation Unit C shall be:

- 17.1.1 New Year's Day
- 17.1.2 Martin Luther King's Birthday (3rd Monday of January)
- 17.1.3 Lincoln's Birthday
- 17.1.4 Washington's Birthday (observed on the third Monday in February)
- 17.1.5 Malcolm X's Birthday (observed on Monday or Friday nearest May 19th)
- 17.1.6 Memorial Day (observed on the last Monday in May)
- 17.1.7 Juneteenth National Independence Day – observed on the Monday or Friday nearest June 19
- 17.1.8 Independence Day
- 17.1.9 Labor Day (observed on the first Monday in September)
- 17.1.10 Indigenous Peoples' Day (observed on the second Monday in October)
- 17.1.11 Veteran's Day
- 17.1.12 Thanksgiving Day
- 17.1.13 Day after Thanksgiving Day
- 17.1.14 Christmas Day
- 17.1.15 Effective January 9, 2000, each employee shall be granted three (3) floating holidays each calendar year.

## 17.2 Floating Holidays

Any employee shall be granted three (3) floating holidays each calendar year. The days selected shall be by mutual agreement between the employee and the department head (or his or her designee). In the event mutual agreement cannot be reached on the selection of floating holidays, the employee shall have the three (3) days added to his or her accrued vacation time. Employees may take Floating Holidays in one (1) hour increments.

### 17.2.1 Additional Floating Holidays

For employees who were required to remain in the workplace from March 17, 2020 - June 1, 2020, the City will provide 8 hours of floating holidays for every 40 hours of regularly scheduled hours worked in the workplace up to a maximum of 32 hours of floating holiday. The City will credit these floating holiday hours in the first full pay period after adoption of the MOU.

City will use a specific pay code for the additional floating holiday, hours will be available June 30, 2021. These additional 32 hours of floating holiday shall have no cash value and may not roll over to vacation if not used by June 30, 2021.

## 17.3 Floating Holiday Accrual upon Employment

In the first calendar year of employment, an employee hired before May 1 shall be entitled to three (3) floating holidays; and an employee hired on or after May 1, but before September 1, shall be entitled to two (2) floating holidays; and an employee hired

on or after September 1, shall be entitled to one (1) floating holiday in that first calendar year.

#### **17.4 Limitations**

No monetary award shall be authorized for unused accumulated Floating Holidays for employees who terminate employment prior to the completion of six (6) months of continuous City service.

#### **17.5 Holidays for Employees whose Work Week is Other than Monday through Friday**

Employees whose work week is Monday through Friday shall be allowed all holidays with pay which fall within such work week. Those employees whose work week is other than Monday through Friday shall be entitled to the same number of holidays, with pay, during each calendar year as are allowed to employees whose work week is Monday through Friday. The procedure for allowing holidays for employees whose workweek is other than Monday through Friday shall be established by the City Manager. The provisions of this Section 17.5 (Holidays for Employees whose Work Week is Other than Monday through Friday) are not applicable to intermittent employees.

#### **17.6 Work during a Holiday**

An employee required to work on any day which is a holiday for employees whose work week is Monday through Friday shall be paid for the number of hours worked during such day at the rate of one and one-half (1½) times the straight-time rate, based upon his or her regular monthly salary, or shall be granted compensatory time off in an amount equal to one and one-half (1½) times the number of hours worked on such holiday. Any employee who works on Christmas day or Thanksgiving Day shall be paid double time for that day. The hours worked on such holiday and paid at the rate herein provided shall not be credited in computing the hours worked in the week for overtime purposes.

The holiday pay provided for shall be in addition to an employee's regular salary. In the event that the time worked on such a holiday is also overtime, as provided in Section 13 (Overtime) of this Memorandum Agreement, payment will be made for the hours worked either as overtime under said Section 13 (Overtime), or as holiday pay under this Section 17 (Holidays), but will not be made under both Sections.

#### **17.7 Holidays for Part-Time Employees**

Regularly scheduled part-time employees 1) who are assigned to a regular schedule of twenty (20) or more hours per week; 2) who have worked for the City as regular or part-time employees for one (1) or more years; and 3) who during such period of time have worked a minimum of 1,000 hours shall be entitled to the holiday pay for the number of hours which such employee would have worked had the holiday not

occurred, provided such holiday occurs on a day which such employee is regularly scheduled to work.

## **SECTION 18:    SICK LEAVE**

### **18.1 Eligibility**

Any employee shall be entitled to take sick leave with full pay in case of sickness, disability, or serious illness within the immediate family of the employee in accordance with the provisions of Sections 18.2 (Sick Leave Accrual) to 18.12 (Cessation of Accrual).

### **18.2 Sick Leave Accrual**

Each employee shall be credited with one (1) working day of sick leave with full pay for each month of service.

For the purposes of this Section 18 (Sick Leave), a month of service shall mean thirty (30) consecutive calendar days in the case of employees working on a fulltime or part-time basis, and shall mean 163 hours of work in the case of employees working on an intermittent basis.

### **18.3 Pro-rated Sick Leave for Part-Time Employees**

An employee working on a part-time basis shall be entitled to use earned sick leave only on a pro rata basis; for example if an employee works half-time, he or she shall be paid for time off on sick leave on a half-time basis.

### **18.4 Sick Leave for Intermittent Employees**

An employee who works on an intermittent basis shall be entitled to use earned sick leave only for those days on which he or she would have worked if he or she had not been sick; provided, however, that an employee working on an intermittent basis who works only when called shall be entitled to use earned sick leave only when he or she becomes sick after reporting to work in response to such call.

### **18.5 Maximum Accumulation**

Such sick leave as provided in Section 18.2 (Sick Leave Accrual), when not used, shall be cumulative; but the accumulated unused period of sick leave shall not exceed two hundred (200) working days, regardless of the length of service. When the maximum of two hundred (200) working days has been reached, and thereafter part of said maximum has been used, the used part of said maximum may subsequently be replenished at the applicable rate provided in Section 18.2 (Sick Leave Accrual).

## **18.6 Payment upon Retirement/Termination**

All accumulated sick leave shall be canceled when an employee terminates or is terminated, except as provided below for employees hired on or before June 30, 2013.

**18.6.1 Employees Hired on or Before June 30, 2013:** For employees hired on or before June 30, 2013 who retire or voluntarily terminate with a vested pension, and with between twenty (20) years and twenty-eight (28) years of benefited service shall be entitled to receive payment in an amount equal to thirty eight percent (38%) of their accrued sick leave days up to a maximum of the two hundred (200) day maximum accumulation. Provided further that any employee retiring on permanent disability arising out of and incurred in the course and scope of his employment with the City shall be entitled to receive payment at retirement for thirty eight percent (38%) of accumulated unused sick leave days but not, in any event, more than thirty eight percent (38%) of the two hundred (200) day maximum accumulation.

**18.6.2 Payment After 28 Years of Service for Employees Hired on or Before June 30, 2013:** Employees who were hired on or before June 30, 2013, who terminate with at least twenty-eight (28) years of benefited City of Berkeley service or employees retiring on permanent disability arising out of and incurred in the course and scope of their employment with the City with at least twenty-eight (28) years of benefited service shall be entitled to receive payment in an amount equal to fifty percent (50%) of their accrued sick leave days up to a maximum of two hundred (200) unused sick leave days.

**18.6.3 Sick Leave Payout to 401(a) Plan for Employees Hired on or Before June 30, 2013:** The City and the Union have met and conferred on an Internal Revenue Code Section 401(a) plan and trust agreement to address the liquidation of sick leave at time of retirement. This plan and trust agreement was originally negotiated with the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 and has been submitted to the Internal Revenue Service for a Determination Letter and a Private Letter Ruling which are pending. If the City receives a positive response from the Internal Revenue Service, the plan and trust agreement will be extended to the employees in the bargaining unit. This will provide the employees with an irrevocable option to defer accrued but unused sick leave at time of retirement into a 401(a) plan or be paid out the balance of the accrued but unused sick leave less withholding of applicable federal and state taxes.

**18.7 Annual Payment for Hours in Excess of Maximum for Employees Working Half-Time or More for Employees Hired on or Before June 30, 2013**

Employees who regularly work one-half (½) time or more and who have attained the one hundred fifty (150) day maximum sick leave accumulation shall be entitled to receive payment for one-third (1/3) of the first twelve (12) days of sick leave for which they become eligible but do not use and would otherwise forfeit because of the one hundred fifty (150) day maximum limitation. Determination of eligibility for such payment shall be made on an annual calendar year basis, and payment for such sick leave for any calendar year shall be made not later than January 22 of the following year. Such payment shall be made at the employee's salary rate in effect on the preceding December 31 and shall be made only in units of whole days and not for any fraction of a day.

**18.8 Restoration of Sick Leave if Reemployed within Two Years**

Accumulated sick leave, which has been canceled by reason of an employee's termination, shall be credited back to such employee if the employee returns to City employment within two (2) years of such termination.

**18.9 Sick Leave Use/Family Illness**

Sick leave shall not be considered as a privilege which an employee may use at his or her discretion but shall be allowed only in case of his or her sickness or disability or in the case of serious illness within the immediate family of the employee. Not more than fifteen (15) working days in any calendar year may be taken as sick leave because of the illness of a member of the employee's immediate family, except for serious medical conditions covered under the provisions of Administrative Regulation 2.4 (Family Care Leave). The immediate family of an employee, for the purpose of this Section, shall be defined as: spouse, domestic partner, son, daughter, parent or dependent.

**18.10 Prohibition for Use with Outside Employment**

No sick leave shall be allowed for time off for an injury incurred while working for another employer, provided that such injury is covered by the Workers' Compensation laws of the State of California, or other provision for payment for time off because of such injury is made by such other employer. In the event such injury is not covered by the Workers' Compensation laws of the State of California and no other provision for payment for time off because of injury is made by such other employer, sick leave in accordance with the provisions of this Section shall be allowed only if such outside employment has been approved by the City.

**18.11 Notification Requirement**

In order to receive compensation while absent on sick leave, the employee shall notify his department head prior to or within four (4) hours after the time set for beginning his or her daily duties, or as may be approved by the head of his or her department. The Union and the City recognize it is advantageous to both parties that calls should normally be made prior to the beginning of the work shift. Leave for non-

emergency doctors' appointments shall be requested in advance. In specific instances the City may by written notice require an employee (s) to call in prior to the beginning of their shift in order to be eligible for sick leave.

### **18.12 Cessation of Accrual**

An employee who is granted a leave of absence without pay and who is off the payroll for less than one hundred-sixty consecutive hours shall receive his or her earned sick leave credit. If the employee is off the payroll for one hundred-sixty (160) consecutive hours or more, he or she shall not earn sick leave credit for each two successive pay periods that he or she is off the payroll.

### **18.13 Workers' Compensation**

All probationary and permanent employees of the City and provisional employees who have worked a total of four (4) months or more for the City, who have suffered any disability arising out of and in the course of their employment as defined by the Worker's Compensation Insurance and Safety Act of the State of California, and who are receiving or shall receive compensation from the insurance carrier for such disability, and during the first seven (7) days after such disability when compensation is not paid by the insurance carrier shall be entitled to remain absent from duty with pay until such time as they are able to return to duty or some other final disposition is made of their case; provided, however, that provisional employees who have worked a total of four (4) months or more for the City shall be entitled to remain absent from duty with pay for the period they would have been permitted to remain provisional employees under their employment at the time of injury.

All employees, other than probationary and permanent employees and provisional employees who have worked a total of four (4) months or more, shall be entitled to such compensation as may be allowed them by the Workers' Compensation Insurance and Safety Act of the State of California.

**18.13.1 Workers' Compensation Payments:** Payments from the insurance carrier for disability arising out of and in the course of employment shall be paid to the employee. The amount of such payment or payments shall be deducted from the monies, which the employee received from the City. Payments from the insurance carrier, plus the monies paid to the employee by the City, shall be equivalent to the employee's regular full pay.

**18.13.2 Workers' Compensation Leave and Salary Continuation:** Payments under the Workers' Compensation law for temporary disability, or a recurrence thereof, arising out of and in the course of employment shall be paid for a period not to exceed 365 days at a maximum payment of the employee's pre-disability net pay but shall not exclude any salary

adjustments to which the employee is entitled. Thereafter, the employee will continue to receive only the temporary disability payments provided under state law, and the City will cease to pay the difference. However, salary continuation payments above the statutorily required temporary disability payments shall not be reported by the City to CalPERS as compensation. No time worked shall be part of the 365 calendar days of salary supplement paid by the City. This change shall not affect employees who are currently off the job with a work-related injury which occurred prior to July 1, 1979.

**18.13.3 Calculation:** The City shall continue to calculate salary continuation at pre-disability gross pay. The City may calculate salary continuation payments at pre-disability net pay at such time when they develop the capacity to administer it equitably. Any change in calculation shall not reduce employees' combination of disability payments and salary continuation payments below employees' pre-disability net pay.

The change in calculation shall not affect employees who are off the job with a work-related injury prior to the new calculation method being implemented.

**18.13.4 Workers' Compensation Related Absence of Less than Four (4) Hours:** An employee who is absent from work for a medical appointment or physical therapy for less than four (4) hours will have ½ day charged against his or her 365 day maximum period for receipt of salary continuation pre-disability net pay.

**18.13.5 Workers' Compensation Related Absence of Four (4) Hours or More:** An employee who is absent from work for a medical appointment or physical therapy for 4 hours or more will have 1 day charged against his or her 365 day maximum period for receipt of salary continuation pre-disability net pay.

**18.13.6 Calculation Based on Actual Paid Hours:** All sick leave benefits shall be calculated upon actual paid hours.

#### **18.14 Light Duty**

Assignments for temporarily disabled employees.

An employee who is absent by reason of industrial disability may be returned to work and given temporary light duties within his or her ability to perform. The duration of any such period of temporary work should be determined by the City. Employees should be compensated at the rate of pay of their regular classification while



engaged in such temporary duties, and such work assignments are to incorporate the following provisions:

18.14.1 **Modified Duty Accommodation:** The City shall accommodate, when feasible, employees covered by this memorandum under the provisions of workers' compensation, and such work assignments are to incorporate the following provision:

18.14.1.1 The assignment shall be consistent with medical limitations as determined by the physician of record.

18.14.1.2 The Assignment shall be within the City of Berkeley and may include hours and days of work other than the employee's regular assignment.

18.14.2 **Modified Duty Accommodation for Non-Industrial Disabilities:** The City may accommodate an employee disabled with a non-industrial disability by providing a modified work assignment in that employee's classification. To be eligible for such a modified assignment, the employee must provide the Human Resources Department with a medical statement from his or her treating physician that clearly states the medical limitations and abilities of the employee. If modification of that position does not serve the best interests of the City, other classifications may be considered, subject to the approval of the Human Resources Director. Compensation will be provided at the level of the classification in which the temporarily disabled employee works during the disability. The employee must meet standards of satisfactory performance for the duration of the work assignment.

18.14.3 **Modified Duty for Pregnancy-Related Disability:** In the case of a medically certified, pregnancy-related disability, in which the normal duties clearly threaten the health and safety of the employee or the unborn child, the Human Resources Department will endeavor to place the employee in a position which best serves the interest of the City with no loss of pay, but in no event will such placement exceed 5 months in duration.

18.14.4 **Light Duty Assignments:** Availability of light duty job assignments shall be discussed upon request at the monthly Labor-Management Meetings.

### 18.15 Control Program for Sick Leave Use

The City may establish a reasonable program for the control of abuse of sick leave and absenteeism, subject to Union review and comment.

### **18.16 Bonus Time for Unused Sick Leave**

For every six (6) months of perfect sick leave attendance the employee will receive eight (8) hours of bonus time. A leave of absence from work pursuant to workers' compensation is counted as an absence from work in the same manner as sick leave for the purpose of this bonus. This bonus time will be prorated for part-time employees. Such bonus time can be used for any leave purpose covered by this Memorandum Agreement. Such bonus time shall be counted as vacation leave credits for purposes of determining eligibility for carry-over and cash payment.

### **18.17 State Disability Insurance**

Except as provided in 18.17.1.3 below, any employee who is absent due to personal illness for more than 7 calendar days (or for any period of time if hospitalized) may apply for State Disability Insurance Benefits.

**18.17.1 State Disability Integration:** After such employee has been absent from work due to personal illness for six (6) consecutive work days, if the employee applies and is eligible for State Disability Insurance, the City shall integrate the employee's pay with the employee's State Disability benefits in the following way:

18.17.1.1 The City will determine the weekly SDI benefit amount based on the amount of wages earned with the City of Berkeley in the SDI base period.

18.17.1.2 The weekly SDI benefit will be subtracted from the employee's normal weekly wages and the amount necessary to bring the total of State Disability plus wages to 100% will be deducted from any accumulated sick leave, vacation leave and compensatory time available to the employee. The integration with vacation leave and compensatory time is optional but will be automatically implemented after sick leave has expired unless written notification is received from the employee, as discussed below.

18.17.1.3 The employee must notify the payroll clerk, in writing, to stop integration of State Disability Insurance payments with vacation leave or compensatory time. Upon receipt of notification, the payroll clerk will cease integration of any future leave for that incident of illness.

18.17.1.4 The employee must show the State of California form (Disability Insurance Notice of Computation) to his or her payroll clerk to verify dates covered by SDI and the amount to

be paid. The employee must inform their payroll clerk of all SDI payments. Any employee entitled to State Disability Insurance shall receive in addition thereto such portion of his or her accumulated leave as will meet, but not exceed, the standard earnings of the employee for his or her normal workweek, up to a maximum of five (5) days.

## **SECTION 19: FUNERAL LEAVE**

In the case of death within the immediate family of an employee (who is not excluded from such benefit pursuant to Chapter 4.04.120 of the Berkeley Municipal Code (Personnel Ordinance) which is attached hereto as Exhibit C (City of Berkeley Municipal Code Chapter 4.04.120) and made a part hereof, such employee shall be entitled to remain absent from duty with pay in order to attend the funeral or memorial service for a period not exceeding three (3) working days or, in the case of a funeral or memorial service conducted out of the State of California, for a period not exceeding five (5) working days. For the purpose of this Section, the immediate family of an employee shall be defined as: husband, wife, domestic partner, mother, father, sister, brother, child, grandmother, grandfather, grandchildren, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-inlaw, and daughter-in-law, step-parent, step-sibling, step-child, aunts and uncles, nieces and nephews.

Leave of absence with pay because of death in an employee's immediate family is allowed for the purpose of attending the funeral or memorial services, and such leave shall not be charged against vacation or sick leave that an employee may be entitled to but shall be in addition thereto. Employees may request, and the City will make reasonable efforts to accommodate requests, for employees to supplement bereavement leave by using accrued vacation, compensatory time, or floating holiday. All accrued leave (and/or sick leave, if applicable) shall be utilized prior to taking a leave of absence without pay.

**Funeral Leave for Persons Other than Immediate Family:** In special cases, with the approval of the department head, the City Manager may grant a death leave to allow an employee to attend funeral or memorial services because of a death of a person not included within the definition of the immediate family.

## **SECTION 20: MILITARY AND MARITIME LEAVE**

Military and Maritime Leave shall be governed by the provisions of the Federal Uniformed Services Employment and Reemployment Rights Act (USERRA) and any regulations promulgated to implement the Act and the California Military and Veteran's Code.

If an employee voluntarily extends his or her military leave in excess of two (2) weeks, the amount of pay received by the employee for his or her military duty shall be deducted from his or her regular pay for such period.

## **SECTION 21: PARENTAL LEAVE**

### **21.1 Eligibility:**

Employees with one (1) or more years of employment with the City (or equivalent in the case of part-time employees) shall be entitled to parental leave as follows:

A continuous parental leave of up to one year will be granted to any employee with one year (full-time) or more years of employment with the City (or equivalent in the case of part-time employees) upon the birth of a child or the legal adoption of a child who is five years or younger, provided that:

**21.1.1 Commencement of Parental Leave:** The one year parental leave must commence no later than 13 months from the date of birth or adoption and must expire no later than 25 months from the date of birth or adoption, and.

**21.1.2 Notice Requirement:** Employees exercising their rights under this provision must provide the City at least 45 calendar days notice prior to the anticipated commencement date of the parental leave, unless a shorter notice is approved for good cause.

**21.1.3 Use of Sick Leave:** The employee, at his or her option, may request that all or any portion of sick leave (up to a maximum of two hundred (200) days) or vacation leave that he or she has accumulated be paid in the same manner as it would if he or she had been absent due to illness or on vacation during the leave. In the event both parents are employed by the City, nothing in the Personnel Rules and Regulations shall prohibit both employees from taking simultaneous parental leave.

**21.1.4 Verification Requirement:** The foregoing leave shall be granted upon medical certification of pregnancy or the presentation of legal evidence of adoption.

**21.1.5 Life and Health Insurance Coverage Upon Exhaustion of Leave:**

During approved parental leave, after all earned leaves are exhausted, (except sick leave) the City agrees to maintain life and health insurance coverage for duration of the approved leave subject to any regular participation requirement of the employee. Thereafter the City agrees to continue coverage for the employee at the employee's expense.

## **SECTION 22: LEAVE OF ABSENCE WITHOUT PAY**

### **22.1 Department Head Authority**

Upon the request of the employee, a department head may grant a leave of absence to an employee within his or her department without pay for a period not to exceed fifteen (15) working days. No leave without pay shall be granted for more than fifteen (15) working days except upon the written request of an employee and approval of the City Manager. Failure on the part of an employee on leave to report promptly at its expiration shall be cause for discharge.

### **22.2 Union Sponsored Training**

A leave of absence without pay shall be granted at the request of an employee and the Union for the purpose of the employee's attending a training course sponsored by the Union. The maximum duration of such leave shall not exceed two (2) consecutive payroll periods in a calendar year.

### **22.3 Exhaustion of Accrued Time**

Leaves of absence without pay shall be granted only after the employee has utilized all accrued vacation and any other time owed to the employee, except sick leave.

## **SECTION 23: JURY DUTY LEAVE**

An employee who is called or required to serve as a trial juror shall be entitled to be absent from work with pay during the period of jury service or while required to be present in court as a result of a call to jury duty. An employee is required to be present at work when not serving as a trial juror or as a member of a jury selection panel. An employee will notify his or her supervisor of any unusual constraints (e.g., time to call in, time to report for jury service) made by the court that affect the employee's ability to simultaneously fulfill his or her jury duty service and employment obligations; and the supervisor will attempt to accommodate the employee based on the operational needs of the department. Absence from work to perform jury duty service shall apply to employees who work swing and graveyard shifts for those days on jury duty. An employee who serves jury duty on his or her day off shall be granted an equivalent number of days off during his or her normal workweek. Employees are required to submit a written proof of jury duty service issued

by the court in order to receive payment for Jury Duty Leave. The employee will keep any payment received for jury service including mileage reimbursement.

### **23.1 Court Time**

The City will guarantee a minimum of three (3) hours pay for every court appearance required by an employee in the conduct of official City of Berkeley job duties on the employee's scheduled day off and three (3) hours minimum if on a workday but outside scheduled working hours. In addition, employees assigned to court phone standby in the conduct of official City of Berkeley job duties will be compensated by earning compensatory time as follows: Duty day, outside of scheduled working hours, one hour minimum compensatory time and hour for hour thereafter. Day off, two-hour minimum compensatory time and hour for hour thereafter.

## **ARTICLE 4 - HEALTH AND WELFARE BENEFITS**

### **SECTION 24: HOSPITAL-MEDICAL, DENTAL, AND VISION COVERAGE**

#### **24.1 Medical Coverage**

The City shall pay the cost of health insurance coverage for employees who are not excluded from such benefit pursuant to Chapter 4.04.120 of the Berkeley Municipal Code (Personnel Ordinance) which is attached hereto as Exhibit C (City of Berkeley Municipal Code Chapter 4.04.120) and made a part hereof, and who have such coverage under any group health insurance plan authorized by the City Council. The present level of benefits under the Kaiser Plan shall be maintained at City expense for the duration of this Memorandum Agreement. Medical benefits are extended to full-time employees, spouse of the employee or domestic partner, and IRS dependent up to age 26.

The City is committed to providing at least one fully paid employer provided health insurance option for employees and eligible dependents. The Union acknowledges the City's policies as stated above.

#### **24.2 Maximum Medical Premium Payments**

24.2.1 Effective January 1, 2003, the City will transfer employees who chose to maintain Kaiser medical plan coverage from the Kaiser V-5 Plan into the Kaiser S-1 Plan. Effective January 1, 2003, the City will transfer employees who chose to maintain Health Net HMO coverage from the Health Net W-2 Plan to the Health net C9A Plan.

24.2.2 For employees hired on or after January 1, 2003, the maximum amount the City shall be required to pay for medical insurance premiums shall be the applicable Kaiser rate (i.e., single party, two-party, or family) regardless of the City sponsored health plan selected by the employee.

24.2.3 For employees in a probationary or career benefited status as of January 1, 2003, the City will continue to pay 100% of the health care premium costs (employee and any dependents) for the health plan the employee is enrolled in as of this date as long as the employee remains employed in the bargaining unit. After January 1, 2003, if the employee transfers health coverage to a different health plan, the employee will assume responsibility for paying the difference, if any, between the Kaiser monthly premium rate (i.e., single-party, two-party, or family) and the plan chosen by the employee from that date forward.

24.2.4 Effective January 1, 2009, the amount the City contributes each calendar year toward the payment of health insurance premiums, in accordance with Section 24.2 (Maximum Medical Premium Payment), will increase by the lesser of twenty percent (20%) (single, two-party, family) or the amount of the Kaiser HMO premium amount (single, twoparty, family) in effect on that date.

24.2.5 Effective January 1, 2014, for those employees who are enrolled on October 31, 2012 in the Health Net Point of Service (POS) health plan (Payroll Benefit Code Description HJ, HK, and HL) the City shall pay medical insurance premiums at the applicable rate for the Health Net HMO plan (i.e., single; 2-party, or family). If the employee chooses to remain enrolled in the Health Net POS Plan on or after January 1, 2014, the employee will assume responsibility for paying the difference between the Health Net POS and the Health Net HMO monthly premium rate (single; 2-party, or family). Provided further that if at any time after January 1, 2014 the employee transfers health coverage from Health Net POS to the Kaiser health plan, the maximum amount the City shall be required to pay for medical insurance premiums shall be the applicable Kaiser rate (i.e., single 2-party; or family) even if the employee subsequently enrolls in a different City sponsored health plan.

24.2.6 **Meet & Confer:** The Parties agree to meet and confer with the City, commencing no sooner than January 1, 2017. The negotiations shall be on developing comparable and less expensive health plan options as a means of reducing or ensuring that the City shall not be required to pay any penalties associated with the Excise Tax. This meet and confer process will be subject to normal rules of collective bargaining, including applicable impasse, strike or lock-out procedures.

Any changes resulting from a review of employee health insurance or other health related benefits will be subject to meet and confer between the Union and the City, except as otherwise provided in Section 24.5 (Change in Insurance Carrier).

### **24.3 Dental Coverage**

The City shall provide a dental care program for employees who are not excluded from such benefit by Chapter 4.04.120 of the Berkeley Municipal Code (Personnel Ordinance) which is attached hereto as Exhibit C (City of Berkeley Municipal Code Chapter 4.04.120) and made a part hereof. The present level of benefits under the Dental Program shall be maintained at City expense for the duration of this Memorandum. Dental benefits are extended to full-time employees, spouse of the employee or domestic partner, and IRS dependents up to age 26.



24.3.1 Effective January 1, 2000, the dental plan is improved from 90% coverage to 100% coverage.

24.3.2 Effective January 1, 2003, the annual maximum dental benefit will be increased to \$4000 per year, the lifetime maximum orthodontia benefit will be increased to \$4000, and the annual cleanings will be increased from two (2) to four (4). Effective January 1, 2016, the number of annual cleanings will be decreased from four (4) to three (3).

#### 24.4 Vision Coverage

Effective January 1, 2003, the City shall provide a Vision Care Program for employees covered by this Agreement. The annual maximums for this benefit are as follows:

Benefit	Benefit Frequency
Exam	12-Months
Lenses	12-Months
Frames	24-Months
Contact Lenses**	12-Months
**Note: Benefits for Contact Lenses are in lieu of benefits for lenses and frames.	

The maximum amount the City shall be required to pay for the Vision Care Program shall be the applicable Vision Services Plan (\$25 Plan B) rate (i.e., employee only, employee plus spouse, employee plus one (1) child; employee plus family).

If during the term of this Agreement the premiums for such Vision Care Program are increased, the amount the City contributes shall increase no more than five percent (5%) above the previous calendar year's contribution amount towards the payment of the monthly premium.

Recognizing that the "vision exam" portion of the Vision Care Program duplicates existing benefit provided under Medical Coverage Section 24.1 (Medical Coverage) and 24.2 (Maximum Medical Premium Payments), the Union and the City agree to revisit the Vision Care Program during the term of this Agreement with the expectation that it may be possible to identify a plan that provides a "Hardware Only" benefit (Lenses every 12-months; Frames every 24-months). Such "Hardware Only" plan shall be at a lower City and employee cost than the present Vision Services Plan (\$25 Plan B).

#### 24.5 Change in Insurance Carrier

Before the City acts to change an insurance carrier during the term of this Agreement, the City shall give the Union thirty (30) days notice of its intention to change carriers and shall, upon written request, meet with the Union to discuss the reasons for

such change. The final determination of insurance carriers shall be at the sole discretion of the City.

#### **24.6 Domestic Partner Coverage**

If an employee chooses to complete and submit an Affidavit of Domestic partnership and sign up for medical and/or dental benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

#### **24.7 Part-Time Employees and Prorated Benefits**

All career and grant-funded, benefited employees working less than full time shall receive prorated rather than full fringe benefits and shall pay, by payroll deduction, a pro rata portion of the health and dental insurance premiums.

#### **24.8 Commencement of Medical, Dental, and Vision Benefits**

Medical, dental, and vision benefits shall begin the first day of the calendar month following the date of hire, and end the last day of the month an employee is in pay status.

#### **24.9 Health Insurance In-Lieu Payments**

Effective January 1, 2019, for employees who show proof of alternate medical coverage, the City will compensate the employee \$576.00 per month, prorated for less than full-time employees, as provided in Section 24.7 (Part-Time Employees and Prorated Benefits). In order to include in-lieu payments in the regular rate of pay for the correct overtime calculation, the City must provide in-lieu payments on the bi-weekly payroll cycle. This benefit shall be frozen at this amount for the term of this agreement.

#### **24.10 Group Life Insurance**

Effective January 1, 2016, the City shall provide group life insurance, by a carrier of the City's choice, in the amount of \$100,000 which shall include a standard accidental death and dismemberment provision of a like amount. In addition, the employee may purchase additional life insurance up to a maximum of \$300,000 at a rate offered by the City's insurance carrier and subject to any medical exam as required by the insurance carrier. Life insurance shall become effective the first day of the calendar month following the date of hire, and shall continue until the last day of the calendar month in a pay status.

#### **24.11 Pre-Tax Status**

When employees are required to contribute to the cost for medical, dental, or vision insurance, those contributions will continue to qualify as pre-tax expenses under the provisions of IRS Section 125.

## **SECTION 25:     **RETIREE MEDICAL COVERAGE****

The City and Union have agreed that the City will make available retiree health insurance coverage under certain terms and conditions described below. The retiree medical benefit described below is the plan tentatively agreed to during multi-union bargaining during the summer of 1998. The terms and conditions of this benefit shall be set forth in a separate document which shall contain a full plan description and shall control the administration of the retiree medical plan.

The City will begin to provide the retiree medical coverage set forth in this Section on July 1, 1998. An employee's entitlement to any and all benefits provided by the City under this retiree medical cover plan are subject to the funding limitations set forth in sub-Section 25.8 (City Funding of Retiree Health Benefit).

### **25.1 Amendment of Retiree Health Premium Assistance Plan III, effective January 23, 1998, Restated and Amended effective March 22, 2011**

Employees who retire on or after June 21, 2015, shall be permitted, at their discretion, to enroll in non-City sponsored health plans. After Council approval of the successor Memorandum of Understanding, the City shall amend the Retiree Health Premium Assistance Plan III as soon as practicable to allow enrollment in non-City sponsored health plans. In the event a retiree elects to enroll in a non-City sponsored health plan, the City shall make medical insurance premium payments directly to the health insurance provider in an amount equal to what the City would contribute to the City sponsored health plan. Retiree shall be solely responsible for all aspects of the requirements to enroll in a non-City sponsored health plan and maintain eligibility for such a plan; the City's sole obligation is to pay the medical insurance premium contribution required under this Section, as directed by the retiree to a non-City sponsored health plan. The City shall not be responsible for any excess cost differentials associated with the direct payment of premiums to non-City sponsored plans. The City will only make payments through its third party administrator to provide medical insurance premium payments for an individual plan and will not make payments for a group plan. The retiree and/or surviving spouse or domestic partner that enroll in non-City sponsored health plans shall be solely responsible for paying the administrative set up fee, the monthly administrative fee, and/or any other fees established by the third party administrator, and said fees will be deducted directly from the retiree's monthly contribution. No cash payments will be paid directly to the retiree and/or the retiree's spouse/domestic partner. There shall be no cash in lieu payments made under this benefit.

The City and the Union agree that the City will also amend the Retiree Premium Assistance Plan III to allow eligible retirees who retired prior to June 21, 2015 to enroll in a non-City sponsored health plan.

**25.2 Eligibility**

An employee is eligible for the retiree health insurance coverage set forth in subSection 26.2 (Provisional Appointments to a Higher Classification) below if he or she meets all the following criteria:

- 25.2.1 retires on or after July 1, 1998,
- 25.2.2 is vested with CalPERS,
- 25.2.3 has at least eight (8) years of CalPERS qualifying service with the City,
- 25.2.4 is at least age 55.

**25.3 Pre Age 65 Retiree Health Insurance**

**25.3.1 Beginning July 1, 1998:** The City shall make available health insurance coverage to the employee and his or her spouse or domestic partner. The City will pay on the employee’s behalf no more than \$166.26 per month for an employee electing single party health coverage and no more than \$332.52 per month for an employee electing two party coverage. The actual monthly amount of money the City will contribute on the employee’s behalf will be based on the employee’s total years of CalPERS service as provided in the following chart:

<b>Years of CalPERS Qualifying Service</b>	<b>Percent of City Contribution</b>
8	30%
9	40%
10	50%
11	58%
12	66%
11	58%
12	66%
13	74%
14	82%
15	90%
16	92%
17	94%
18	96%
19	98%
20	100%

The employee will pay the difference between the City’s monthly contribution and the actual monthly insurance premium charged by the health plan he or she has elected for retiree medical coverage. If during the term of this Agreement, the premiums for such health insurance are increased, the

amount the City contributes shall increase no more than 4.5% above the previous year's contribution. No increases in the amount the City contributes shall occur before July 1, 1999. Thereafter, any increase in the amount contributed by the City will occur on July 1 each year thereafter.

- 25.3.2 **Effective June 28, 2009:** For employees who retire on or after June 28, 2009, the City will pay on the employee's behalf no more than \$358.19 per month for an employee electing single party health coverage and no more than \$716.38 per month for an employee electing two party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.
- 25.3.3 **Effective June 27, 2010:** For employees who retire on or after June 27, 2010, the City will pay on the employee's behalf no more than \$424.31 per month for an employee electing single party health coverage and no more than \$848.61 per month for an employee electing two party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.
- 25.3.4 **Effective June 26, 2011:** For employees who retire on or after June 26, 2011, the City will pay on the employee's behalf no more than \$468.40 per month for an employee electing single party health coverage and no more than \$936.80 per month for an employee electing two party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.
- 25.3.5 **Effective June 24, 2012:** For employees who retire on or after June 24, 2012, the City will pay on the employee's behalf no more than \$589.48 per month for an employee electing single party health coverage and no more than \$1,178.96 per month for an employee electing two-party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.
- 25.3.6 **Effective June 23, 2013:** For employees who retire on or after June 23, 2013, the City will pay on the employee's behalf no more than \$666.00 per month for an employee electing single party health coverage and no more than \$1,332.01 per month for an employee electing two-party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.

**25.3.7 Effective June 22, 2014:** For employees who retire on or after June 22, 2014, the City will pay on the employee's behalf no more than \$720.97 per month for an employee electing single party health coverage and no more than \$1441.94 per month for an employee electing two-party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.

**25.3.7.1 Retiree Health Premium Assistance Plan Benefit as of June 30, 2017:** As of June 30, 2017, the maximum amount the City will pay the health care service provider, which were increased in accordance with Section 25.3 (Pre Age 65 Retiree Health Insurance), total \$1,517.40 for two party coverage for the retiree and spouse or domestic partner or \$758.70 for single party coverage.

#### **25.4 Retiree Benefits for Employees Age 65 and Over**

Once an employee or retiree reaches age 65, he or she is eligible for Medicare. As a result his or her eligibility for the retiree medical benefits set forth in subsection 25.3 (Pre Age 65 Retiree Health Insurance) ceases. On reaching age 65, the City will make available health insurance coverage in addition to Medicare. When an employee or retiree reaches age 65, the City will contribute no more than \$50.00 per month on the employee's behalf for single party health insurance coverage and no more than \$100.00 per month for two party health coverage. If during the term of this Agreement, the premiums for such health insurance are increased, the amount the City contributes shall increase no more than 4.5% above the previous year's contribution.

The City will take such actions under the provisions of Section 218(g) of the Social Security Act to permit employees who are not currently paying employee portion of the Medicare Tax with a one-time opportunity to choose to be covered by the Medicare Tax. If the employee chooses to be covered by the Medicare Tax the choice cannot be revoked at a later date.

The City shall include in its next actuarial request, the impact on the City if the City were to amend its Retiree Health Premium Assistance Plan III to provide the following benefit levels:

Single Party Health:     \$200.00  
Two Party Health:       \$400.00

**25.4.1 Retiree Health Premium Assistance Plan Benefit as of June 30, 2017:** As of June 30, 2017, the maximum amount the City will pay the health care service provider, which were increased in accordance with Section 25.4

(Retiree Benefits for Employees Age 65 and Over), total \$62.59 for two party coverage for the retiree and spouse or domestic partner or \$31.30 for single party coverage.

### **25.5 Termination by City of Retiree Medical Benefit**

Failure of the retiree or surviving spouse to pay their monthly share of the health insurance premium will result in termination of the retiree medical benefit and relieve the City of any further obligation to provide any further benefits under this Section.

### **25.6 Retiree Medical Benefit for Employees Retiring Between the Ages of 50 and 55**

An employee who is at least 50 years of age, but less than 55, and has at least eight years of CalPERS qualifying employment with the City will retain eligibility for the retiree medical benefits provided in sub-Section 25.3 (Pre Age 65 Retiree Health Insurance) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his or her termination from City employment until the employee's 55th birthday. If for any reason the employee has a lapse in group health care coverage the employee forfeits his or her eligibility for the retiree health plan benefits upon reaching age 55 and the City has no further obligation to provide any benefits under this Section to the employee and/or his spouse or domestic partner.

### **25.7 Employees Retiring with a CalPERS Approved Disability Retirement**

If an employee retires from the City before age 55 with a CalPERS approved disability retirement, the employee will retain eligibility for the retiree medical benefits provided in sub-Section 25.3 (Pre Age 65 Retiree Health Insurance) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his or her termination from City employment until the employee's 55th birthday. If for any reason the employee has a lapse in health care coverage the employee forfeits his or her eligibility for the retiree health plan benefits upon reaching age 55 and the City has no further obligation to provide any benefits under this Section to the employee and/or his spouse or domestic partner.

### **25.8 City Funding of Retiree Health Benefit**

City contributions to the retiree medical benefit will begin on July 1, 1998. Funding of this benefit will be set aside in a trust to be established by the City.

The retiree medical benefit will be funded by a charge of 0.25% of payroll in each year of this Agreement, so that contributions are at 1% of the payroll in the fourth year of the Agreement. The City will fund the benefit at approximately 1% of the payroll for every year thereafter with the intent of achieving a funding level of 70% after 30 years. The funding will be ongoing to maintain a 70% funding level thereafter.

Effective June 28, 2009, a total charge of twenty six thousand, six hundred and forty (\$26,640) of employee payroll will be charged in the final three years of the Agreement so that contributions are at 1.764% in the final year of the Agreement. The purpose of the 0.764% increase in payroll contributions is to fund Pre Age 65 Retiree Health Insurance.

### **25.9 Actuarial Study**

The Union understands and acknowledges that the City conducted an actuarial study to determine the percentage of payroll it needed to set aside each year and the rate of return of 7% it must achieve to fund the retiree health benefit provided in this Section. The City will conduct an actuarial study by an outside actuary of the retiree medical plan prior to June 30, 2002. After that time, the City will conduct an actuarial study by the outside actuary of the retiree medical plan every two to three years to review the funding status of the program. The outside actuary will be selected by mutual agreement of the parties. The Union and City agree that if the Actuary concludes that the City's funding of this benefit by contribution of 1% of the payroll for all miscellaneous employees is insufficient to fully fund the retiree medical benefits, the City shall not be required to increase its funding for this benefit to more than 1% of the payroll for miscellaneous employees. In the event that there are insufficient funds in the trust to cover all retirees' monthly health premiums, the City and the Union agree to meet and confer regarding the City's distribution of its 1% contribution.



## **ARTICLE 5 – TERMS AND CONDITIONS OF EMPLOYMENT**

### **SECTION 26: PROBATIONARY PERIOD**

#### **26.1 Duration and Effect of Military Leave on Probationary Period**

Original and promotional appointments from employment lists shall be tentative and subject to a probationary period of: one (1) year (full time equivalent exclusive of all leave and light duty completed within 18 months) upon original appointment to the unit; employees promoted within the unit are subject to a probationary period of six (6) months (half time equivalent exclusive of all leave and light duty completed within one year); in addition, employees in trainee programs with specified training, evaluation or probation periods shall be governed by the applicable provisions of such program. Probationary employees who are granted military leaves of absence shall complete the balance of their probationary period within a period of six (6) months following their return to City service. No provision of this Section shall be interpreted to preclude the City from establishing new classifications, which may require a probationary period of more than six (6) months.

#### **26.2 Provisional Appointments to a Higher Classification**

If, before completing the required probationary period, an employee is provisionally appointed to a higher class in the same or a related series of classes, the time served in such higher class shall be counted toward completion of the probationary period in the lower class.

#### **26.3 Report Requirement**

If the service of the probationary employee has been satisfactory to the department head, the department head shall file with the Director of Human Resources a statement in writing to such effect and stating that the retention of such probationer in the service is desired. If such service has been unsatisfactory, the department head shall file with the Director of Human Resources such a statement in writing with the recommendation to the City Manager that the employee be rejected.

#### **26.4 Rejection during Probationary Period**

During the probationary period, an employee may be rejected at any time without right of appeal or hearing in any manner. An employee rejected from a position to which he has been promoted shall be reinstated to the position from which he was promoted unless charges are filed and he is discharged as provided in Section 31 (Discharge). Career City employees who are rejected during their probationary period in a promotional position or fail to complete the training requirements of a training program (academics or OJT) shall revert to their prior classification.

### **26.5 Rejections Subject to Disciplinary Appeal**

A promoted employee may not grieve his or her rejection from probationary period/training. However, an employee disciplined for cause while on promotional probationary period shall have access to the disciplinary appeal procedure.

### **26.6 Probationary or Temporary Employee Assignments**

No probationary or temporary employee will be assigned as the only ground worker with an Electrician until such employee has completed one (1) month of familiarization with aerial truck equipment.

## **SECTION 27:    TRANSFER**

A transfer may be made at any time by the City Manager. Transfer shall not be used to effect a promotion, demotion, advancement, or reduction, each of which may be accomplished only as provided elsewhere in this Memorandum Agreement. No person shall be transferred to a position for which he or she does not possess the minimum qualifications. An employee with permanent status who is transferred from one class to another class shall assume permanent status in the class to which the employee is transferred.

## **SECTION 28:    PROMOTION**

Insofar as practicable and consistent with the best interests of the service, all vacancies in the competitive service shall be filled by promotion from within the competitive service after a promotional examination has been given and a promotional list established.

If, in the opinion of the City Manager, the best interests of the service can be served by an open, competitive examination instead of a closed, promotional examination, and if there is not already a promotional list for the higher position, which list has not been abolished and from which the vacancy could be filled, then the City Manager may instruct the Director of Human Resources to call for applications for the vacancy and arrange for an open, competitive examination and for the preparation and publication of an eligibility list.

**Interview of Employees:** A City employee who is on a closed promotional or open competitive list shall have the option to interview for the vacancy. A City employee who is unsuccessful and who so requests shall be advised of steps he or she may take to increase his or her competitive standing for future promotional opportunities.

Employees who have qualified for promotional lists shall be considered for promotion based on the following factors: previous work performance, previous training and experience, merit, ability, and seniority.

## **SECTION 29: DEMOTION**

The City Manager may demote an employee who so requests it, or whose ability to perform his or her required duties falls below standard, or for disciplinary purposes. No employee shall be demoted to a class for which he does not possess the minimum qualifications as determined by the Director of Human Resources.

Notice of the demotion shall be given the employee not later than four (4) weeks prior to the effective date of demotion and a copy of said notice filed with the Director of Human Resources. Any employee who has been demoted shall be entitled to receive a written statement of the reasons for such action.

An employee with permanent status who is demoted shall assume permanent status in the class to which he or she is demoted.

Upon request of the employee, demotion may be made to a vacant position as a substitution for layoff. In such cases, the employee shall be restored to his or her former position without further examination whenever such position is again to be filled.

## **SECTION 30: SUSPENSION**

The City Manager may suspend an employee from his position at any time for the good of the service, for a disciplinary purpose, or for other just cause. Suspension without pay shall not exceed twenty (20) working days, nor shall any employee be penalized by suspension for more than twenty (20) days in any fiscal year. Any employee who has been suspended shall be entitled to receive a written statement of the reasons for such action.

For the good of the service, a department head may suspend an employee for not more than three (3) working days for any one offense. Such suspension shall be reported immediately to the City Manager.

## **SECTION 31: DISCHARGE**

An employee may be discharged at any time by the City Manager, but if the probationary period has been completed then such discharge must be for just cause. Any employee

who has been discharged shall be entitled to receive a written statement of the reasons for such action.

### **SECTION 32:     RESIGNATION**

An employee wishing to leave the competitive service in good standing shall file with the department head, at least two (2) weeks before leaving the service, a written resignation stating the effective date and reasons for leaving. The resignation shall be forwarded to the Director of Human Resources with a statement by the department head as to the resigned employee's service performance and other pertinent information concerning the cause for resignation. Failure of the employee to give the notice required shall be entered on the service record of the employee and may be cause for denying future employment by the City. The resignation of an employee who fails to give notice shall be reported by the department head immediately.

### **SECTION 33:     REINSTATEMENT**

A permanent or probationary employee who has resigned with a good record may be reinstated within two (2) years to his or her former position, if vacant, or to a vacant position in the same or comparable class without further competitive examination. This Section shall not be interpreted as a guarantee of reinstatement to an employee who has resigned with a good record and requests reinstatement within two (2) years.

### **SECTION 34:     NOTICE OF TERMINATION**

Department head shall notify the Director of Human Resources of all terminations of employment before or within two (2) days after the termination has taken place. Such notice shall be on forms provided by the Director of Human Resources and shall indicate the effective date and reasons for termination and a statement certifying whether or not the employee's services have been satisfactory.

## **ARTICLE 6 - GRIEVANCE AND DISCIPLINARY APPEAL PROCEDURE**

### **SECTION 35:     GRIEVANCES**

#### **35.1 Definition**

A grievance is any dispute which involves the interpretation or application of those rules, regulations, and resolutions which have been or may hereafter be adopted by the

City Council to govern personnel practices and working conditions, including such rules, regulations, and resolutions as may be adopted by the City Council to effect memorandum agreements which result from the meeting and conferring process.

A grievant may be any member of the bargaining unit covered by the terms of this Agreement, or the grievant may designate the Union to act on his or her behalf, or the Union itself may file a grievance on behalf of a member or group of members. Grievances must be filed in a timely manner. Grievances that are filed by the Union on behalf of a member or group of members, or when a grievant designates the Union to act on his or her behalf, are subject to settlement at any step of the grievance procedure at the Union's sole discretion.

A member of the bargaining unit that files a grievance where the Union is not representing or acting on the grievant's behalf, may only utilize this grievance procedure through step 3. The Union retains the sole discretion to refer which, if any, grievances to move to arbitration.

The parties agree that disclosure to the other party of all relevant information available to them is critical to the successful resolution of grievances at the lowest possible step of the grievance procedure. The parties therefore agree to disclose to each other the relevant information in their possession related to the grievance. Further, the parties agree to comply with reasonable grievance related information requests from the other party in a timely manner.

### **35.2 Procedure**

Grievances shall be processed in the following manner:

**35.2.1 Informal Step:** An employee who believes that he or she has a grievance (and / or the employee's steward or Union representative) may discuss the complaint with the Deputy Director of Public Works, or with such subordinate management official as the Deputy Director may designate. If the issue is not resolved informally, the formal procedures hereinafter specified may be invoked.

**35.2.2 First Formal Step:** Any informal grievance which has not been resolved by the Deputy Director of Public Works or his or her designee, must be filed in writing to the Deputy Director of Public Works within thirty (30) days from the date the informal discussion was initiated. The written grievance must state specific issues involved, the decision rendered at the informal step, and the remedy sought. The Deputy Director or his or her designee shall have five (5) days to respond in writing to the formal, written grievance.

35.2.3 **Second Formal Step:** Any formal grievance which has not been resolved by the Deputy Director of Public Works or his or her designee, may be referred to the Director of Public Works or his or her designee within thirty (30) days from the date of the Deputy Director's formal written response, or if more than five (5) days have elapsed since the grievance was presented at the Deputy Director's level.

35.2.3.1 **Referral to Department Director:** The grievance may be referred to the Director's level and shall include a copy of the original grievance, the decision rendered at the Deputy Director's level, and a clear, concise statement of the reasons for the referral.

The Director of Public Works may designate a personnel representative to investigate the merits of the complaint, to meet with the complaining employee (and/or the employee's steward or Union representative); if the grievant is not the Union itself, to meet with the officials of the Union; and to settle such grievance or to make recommendations thereon to the City Manager in his or her capacity as an employee relations officer. The Director of Public Works shall issue a formal written decision within five (5) days of receipt of the grievance or if a meeting is held with the employee and his or her Union, the meeting must be held within ten (10) days of receiving the referral. The Director of Public Works or his or her designee shall issue a written decision within five (5) days from his or her meeting with the complaining employee and/or Union representative. If the issue is not resolved the grievance may be referred to the Third Formal Step within thirty (30) days of receipt of the response from the Director of Public Works.

35.2.4 **Third Formal Step:** Any grievance which has not been resolved by the procedures hereinabove set forth may be referred to the City Manager by the grievant, the Union, or the Director of Public Works. Any such referral shall be in writing including a copy of the original grievance, the decision rendered at the Director's level, and a clear, concise statement of the reasons for the referral. The City Manager shall designate a Human Resources representative to investigate the merits of the complaint, and upon request from the employee or the union, that representative to meet with the complaining employee (and/or the employee's steward or Union representative), if the grievant is not the Union itself, to meet also with the officials of the Union, and to settle such

grievance or to make recommendations thereon to the City Manager in his or her capacity as an employee relations officer.

The City Manager shall issue a decision within ten (10) days of receipt of the grievance referral or within ten (10) days of the meeting, or if a meeting is held with the employee and/or the Union, the meeting must be held within ten (10) days of the referral. Grievances filed by a bargaining member where the Union is not representing or acting on the grievant's behalf, shall end at this step and no further right of appeal exists. The City Manager's decision shall be final.

**Union controlled grievances:** If the issue is not resolved, the grievance may be referred to Arbitration by the Union pursuant to Section 35.2.5 (Arbitration: The Union retains the sole discretion to move a grievance to arbitration) below within thirty (30) days of receipt of the City Manager's response. Provided further that the Union shall forward to the City the Union's portion of the State Mediation and Conciliation Services (SMCS) fee within sixty (60) days of receipt of the City Manager's response. Failure by the Union to meet this sixty (60) days deadline for both referral to Arbitration and payment of the SMCS fee shall be deemed as a full and complete waiver by the Union to appeal the City Manager decision to Arbitration and the City Manager decision shall be final and binding on all parties.

**35.2.5 Arbitration: The Union retains the sole discretion to move a grievance to arbitration.** Any grievance which has not been resolved by the procedures hereinabove set forth may be referred by the Union, or the City to an impartial arbitrator who shall be designated by mutual agreement between the Union and the City, using the State Mediation and Conciliation Services (SMCS) to provide a list of five (5) arbitrators. The City and the Union will alternately strike a name until one remains. The remaining name will be the arbitrator. The fees and expenses of the arbitrator, the State Mediation and Conciliation Services (SMCS) and of the court reporter shall be shared equally by the Union and the City. Each party, however, shall bear the cost of its own presentation, including preparation and post-hearing briefs, if any. Arbitrator decisions on matters properly before them shall be final and binding on both parties.

The arbitrator may hear testimony, receive written briefs, interview witnesses, and conduct any investigation she or he deems appropriate, and shall render a final and binding decision to the parties which will end the formal grievance process.

35.2.5.1 **Arbitrator Jurisdiction:** No arbitrator shall entertain, hear, decide, or make recommendations on any dispute involving a position over which a formally recognized employee organization has jurisdiction unless such dispute falls within the definition of a grievance as hereinabove set forth in Section 35 (Grievances).

35.2.5.2 **No Modifications:** Proposals to add to or change this Memorandum Agreement or written agreements or addenda supplementary hereto shall not be arbitrable, and no proposal to modify, amend, or terminate this Memorandum Agreement, nor any matter arising out of or in connection with such proposal, may be referred for arbitration under this Section; and no arbitrator shall have the power to amend or modify or recommend amendment or modification of this Memorandum Agreement or any written agreements or addenda supplementary hereto or to establish or recommend establishment of any new terms and conditions of employment.

35.2.5.3 **Timeliness of Award:** No arbitrator will be selected hereunder who does not agree to render an award not later than thirty (30) calendar days after the close of the hearing. By mutual agreement between the City and the Union, the arbitrator may render an award immediately upon the conclusion of the presentation of evidence.

### 35.3 EEO Complaints

Any grievance which in any way affects the implementation of the City's Equal Employment Opportunity Policy shall not be subject to arbitration. The decision as to whether or not implementation of the Equal Employment Opportunity Policy is in any way involved shall be made by the City Manager in his or her sole discretion. If, in his or her judgment, any grievance which involves the Equal Employment Opportunity Policy, the Equal Employment Opportunity and Diversity Officer shall notify the Union to that effect in writing within seven (7) days of the date upon which the grievance is received in the Human Resources Department and, in such notification, refer to that Section of the Equal Employment Opportunity Complaint Investigation & Resolution Procedure which is involved; provided, however, that such notice may come at any time prior to arbitration if additional factors come to the attention of the Equal Employment Opportunity and Diversity Officer on the basis of which he or she considers it appropriate to change his or her original determination.



### **35.4 Compensation Complaints**

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Director of Human Resources. In such cases, no adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed or thirty (30) days from the date when an employee may reasonably be expected to have learned of said claimed violation. Only grievants which allege that employees are not being compensated in accordance with the rules, regulations, and resolutions of the City Council or in accordance with the understanding contained in any Memorandum Agreement which has resulted from the meeting and conferring process shall be considered as grievances. Any other matters of compensation are to be resolved in the meeting and conferring process and, if not detailed in the memorandum agreement which results from such meeting and conferring process, shall be deemed withdrawn until the meeting and conferring process is next open for such discussion.

**35.4.1 Response Time Limits:** The Director of Human Resources or his or her designee shall issue a decision in writing within twenty (20) days from the time he or she received the compensation grievance in writing. The grievant or the Union may refer the decision to the Third Formal Step (Section 35.2.4 - Third Formal Step) of this Memorandum Agreement) within twenty (20) days of receipt of the written decision.

### **35.5 Changes or Interpretations**

No changes in this Memorandum Agreement or interpretation thereof (except interpretations resulting from arbitration proceedings hereunder) will be recognized unless agreed to by the City Manager and the Union.

### **35.6 Extension of Timelines**

Timelines noted in this Section may be extended for cause upon mutual agreement between the City and the Union.

### **35.7 Days**

All references in this Section 35 (Grievances) to "days" shall mean normal working days except as otherwise noted.

### **35.8 Grievances Challenging Disciplinary Action**

35.8.1 Any grievance involving any disciplinary action up to as three (3) day suspension will be filed at the Director level.

35.8.2 All grievances involving demotion, discharge, or suspension of greater than three (3) days will be filed at the City Manager's level of the grievance

procedure. If the issue is not resolved within fifteen (15) days of referral to this step, the procedures hereinafter specified may be invoked.

35.8.3 No grievance involving the suspension or discharge of an employee will be entertained unless it is filed in writing with the City Manager within five (5) working days of the time at which the affected employee was notified of such action in writing. If the City Manager, in pursuance of the procedures outlined in Section 35.2.4 (Third Formal Step) above, resolves a grievance which involves suspension or discharge, he or she may agree to payment for lost time or to reinstatement with or without payment for lost time.

35.8.4 Arbitrator decisions on matters properly before them which pertain to the suspension or discharge of an employee shall be final and binding on both parties, to the extent permitted by the Charter of the City.

## **ARTICLE 7 – GENERAL PROVISIONS**

### **SECTION 36: GENERAL PROVISIONS**

#### **36.1 Personal Conduct**

36.1.1 No employee shall accept appointment to the deputyship or assistantship of any county or state office or position, or otherwise incur an obligation of civil public service outside his or her regular municipal employment without first obtaining the recommendation of the head of his or her department and of the City Manager.

36.1.2 No employee shall be disciplined for off-the-job activities which do not affect his or her job performance.

36.1.3 Employees shall so arrange their personal financial affairs so that the demands of creditors and collection agencies shall not impose a recurring burden upon the offices of the City Manager, the department head, or the Director of Human Resources for the purpose of making collections.

36.1.4 Full-time City employees may not carry on concurrently with their public service any private business or undertaking, attention to which affects the time or quality of their work or which casts discredit upon or creates embarrassment for the City government.

36.1.5 No official or employee who wears a badge or other official insignia as evidence of his or her authority and identity shall permit such badge or insignia to be used or worn by any other person of the same or another department or otherwise to leave his possession without approval by the head of this department. The department head shall not grant such approval except as to persons regularly and formally appointed by the City Manager to the position designated by the badge or insignia.

#### **36.2 Rain Gear**

The City will provide rain gear for employees in Representation Unit C assigned to work in inclement weather.

#### **36.3 Tools**

Each employee shall continue to be responsible for providing tools of the trade or other equipment, but shall receive a flat annual tool replacement allowance each July 1.

New employees hired before or after July 1 will be entitled to a prorated tool replacement allowance payable the following July 1 after employment.

36.3.1 **Allowance:** Effective July 1, 2015, the tool replacement is five hundred dollars (\$500). Tool allowances shall be paid at the end of the fiscal year in which they are earned.

### 36.4 Shoes

Effective June 18, 2017, all classifications covered by this MA shall be eligible for reimbursement of up to two hundred dollars (\$200.00) per fiscal year for the cost of safety shoes. Employees receiving this reimbursement must wear safety shoes on duty.

36.4.1 **Reimbursement:** Employees shall be required to submit a reimbursement request, along with receipts verifying the purchase of safety shoes within sixty (60) days of purchase. Reimbursements will be paid within forty-five (45) days of complete reimbursement requests.

### 36.5 Training

36.5.1 **Responsibility:** Responsibility for developing training programs for employees shall be assumed by the City Manager. Such training programs may include lecture courses, demonstrations, assignment of reading matter, or such other devices as may be available for the purpose of improving the efficiency and broadening the knowledge of municipal employees in the performance of their duties. The City shall endeavor to provide training for all new technology purchased by the City and maintained by members of this Agreement.

36.5.2 **Advancement/Promotional Consideration for Special Training Courses:** Participation in and successful completion of special training courses may be considered in making advancements and promotions. Evidence of such activity shall be filed with the Director of Human Resources by the department head.

36.5.3 **Mileage and Tuition Reimbursement:** The City shall reimburse all employees for mileage and tuition expenses related for attendance at job-related courses. Provided that the employee must have prior authorization from his or her department head and the course has been approved by the City.

36.5.4 **Education Leave:** The City shall allow up to forty (40) hours off with pay per year to employees:

36.5.4.1 Who are required to obtain a license (excluding Class C driver's licenses) issued by the State of California and, in order to do so, must take courses which were not offered as a part of their basic curriculum or,

36.5.4.2 Who are required to obtain continuing education as a condition of license renewal; provided the license is required by the City for the employment or continued employment of the employee and that no more hours than are required by the State shall be granted. Employees seeking time off to take courses for an initial license must provide verification that the course was not offered as a part of their basic curriculum.

Employees who take classes during non-scheduled work hours in order to retain a job required license or to meet continuing education requirements shall be allowed time off from work on an hour-for-hour basis without loss of compensation or other benefits.

36.5.4.3 To obtain education and training related to job skills to enhance performance, or to qualify for promotion, at the discretion of the department head.

**36.5.5 Management/Union Meetings:** The City and Union agree that it is beneficial to both parties to discuss and develop training for all classifications. The Director of Public Works and the Union shall meet on a quarterly basis to discuss and review progress made in addressing initial employee orientation, new equipment training, and vendor training.

**36.5.6 Commercial Driver's License:** The City shall provide the necessary training for employees to obtain a California Class B driver's license when such license is a requirement of their job classification and a condition of employment. Employees who fail to obtain the required California Class B driver's license after training will be subject to rejection from the probationary period pursuant to Section 26.4 (Rejection during Probationary Period) of this Memorandum Agreement.

### **36.6 Use of Automobiles**

The City Manager shall govern the use of City-owned automotive equipment and privately-owned automotive equipment by such rules and regulations as he or she may establish. Compensation shall be given in the form of a cash allowance for the use of private-owned automobiles on City business if such use has been

authorized in advance by the City Manager. The cash allowance will be equal to the amount established by the Internal Revenue Service, and will change as necessary to comply with IRS Standard Mileage Rate.

### 36.7 Safety

36.7.1 **Safety Committee:** The City and the Union will make every effort to maintain excellent health and safety standards. No employee shall be required to perform work with unsafe equipment or in situations which are injurious to his or her health or safety. To further these purposes, the City shall maintain an ongoing safety program which shall include committees comprised of representatives from the Union and appropriate supervisory personnel.

36.7.2 **Rainy Weather Assignments:** The City shall endeavor to avoid assigning non-emergency, routine work in rainy weather, which would constitute a safety hazard.

### 36.8 YMCA Group Membership

The City shall offer employees a low or no-cost group membership in the Berkeley Central YMCA. As of July 1, 1999, the City will pay 75% of the membership fee. If the monthly fee is increased to more than \$60, the employee share will be capped at \$30 per month; the City will pay the balance. The amount the City contributes toward the employee's monthly membership fee is subject to federal and state income tax withholding.

Use of the YMCA membership by a City of Berkeley employee, as provided for in this Agreement, is non-compensable, is not a part of the employee's work-related duties, is not required for employment and is not condoned as part of a physical fitness program, or required to remain top physical conditioning for the employee's job performance.

The City of Berkeley or its Claims Administrator may not be liable for any injury that arises out of a City of Berkeley employee's participation in and use of a YMCA membership.

### 36.9 Annual Performance Evaluation

The City may implement a program of annual performance evaluation. Such evaluations shall be conducted by the employee's immediate supervisor and reviewed by additional levels of supervision. Each employee may make written comments on the evaluation, which shall be made a part of the employee's personnel records.

## **ARTICLE 8 - PUBLIC EMPLOYEES RETIREMENT SYSTEM**

### **SECTION 37: PAYMENT OF EMPLOYEES' PERS CONTRIBUTIONS**

#### **37.1 Miscellaneous Designation**

The City shall continue participation under the Miscellaneous Employees Plan of the California Public Employees' Retirement System, (CalPERS).

#### **37.2 "Classic Employees" Definition**

Classic Employees are defined as current employees and future employees who do not qualify as "New Members" under the California Public Employees' Pension Reform Act of 2013 (PEPRA).

#### **37.3 "New Member" Definition**

"New Members are as defined in the Public Employees' Pension Reform Act of 2013 (PEPRA), Government Code Section 7522.04(f).

#### **37.4 CalPERS Retirement Formula for "New Members" as Defined Under the Public Employees' Pension Reform Act of 2013 (PEPRA)**

"New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the retirement formula set forth in PEPRA.

#### **37.5 CalPERS Retirement Formula and Employer Paid Member Contribution for Classic Employees (i.e. current employees and employees who do not qualify as "New Members" under PEPRA)**

Current employees and other employees who do not qualify as "New Members" under PEPRA shall continue to be entitled to the 2.7% at age 55 retirement formula benefit, and the City shall continue the contribution of eight percent (8%) to CalPERS on behalf of the employee.

#### **37.6 CalPERS New Members Normal Share of Cost**

New Members as defined by PEPRA who are hired on or after January 1, 2013 shall pay 50% of the normal share of cost required by PEPRA. New Members shall receive any other additional optional CalPERS benefits that the City provides to Classic Employees as allowed by PEPRA.

#### **37.7 Reporting of Contributions**

Effective July 3, 1994, contributions made pursuant to Section 37.5 above have been reported to CalPERS as "special compensation" as provided in Government Code Section 20636(c)(4) pursuant to Section 20691. Said contributions shall not apply in the case of temporary or provisional employees.

The member contributions made by the City shall not be considered as a part of an employee's salary for the purpose of computing straight time earnings, compensation for overtime worked, or education incentive pay; nor shall such contribution be taken into account in determining the level of any other benefit which is a function of or percentage of salary. Pursuant to California Government Code Section 20691, the City shall not increase, reduce or eliminate payments of the normal contributions on behalf of the employee without engaging in the meet and confer process with the Union.

The City will not treat these contributions as compensation subject to income tax withholding unless the Internal Revenue Service or Franchise Tax Board indicates that such contributions are taxable income subject to withholding. Each employee shall be solely and personally responsible for any federal, state or local tax liability of the employee that may arise out of the implementation of this Section or any penalty that may be imposed therefore.

### **37.8 City Contracts with CalPERS**

The City's contract with CalPERS includes the following optional benefits:

**37.8.1 Classic Employees – One Year of Final Compensation:** Classic Employees as defined in Section 37.2 ("Classic Employees" Definition) above and as provided in Government Code Section 20042 (July 9, 1978).

**37.8.2 New Members – Three Years Final Compensation:** Provided further that New Members as defined by PEPRA hired on or after January 1, 2013 shall be eligible to receive retirement allowance based on three (3) highest consecutive years of compensation under the plan as provided under the California Public Employees' Pension Reform Act of 2013, or as subsequently amended.

**37.8.3 Post Retirement Survivor Allowance** as provided in Sections 21624, 21626 and 21628 (December 16, 1973).

**37.8.4 Post Retirement Survivor Allowance to Continue after Remarriage** as provided in Section 21635 (July 18, 1986).

**37.8.5 Credit for Unused Sick Leave** as provided in Section 20965 (June 26, 1988).

**37.8.6 1959 Survivor Benefits to Surviving Spouse at Age 60** as provided in Section 21580 (December 16, 1973).



37.8.7 Third Level of 1959 Survivor Benefits as provided in Section 21573 (November 28, 1996).

37.8.8 2% @ 55 for Local Miscellaneous Members as provided in Section 21354 (June 30, 1992).

37.8.9 Military Service Credit as Public Service as provided in Section 21024 (April 9, 1999).

37.8.10 Public Service Credit for Peace Corps or AmeriCorps/VISTA Service as Provided in Section 21023.5 (April 14, 2000).

### **37.9 Index Level 1959 Survivor Benefit**

The City intends to amend its contract with CalPERS to provide the Indexed Level of the 1959 Survivor Benefit as provided in Section 21574.5 when administratively feasible.

### **37.10 Classic Members' Pension Contribution through 20516 a Contract Amendment**

37.10.1 **July 3, 2016:** Effective July 3, 2016, employees will contribute one and one-quarter percent (1.25%) toward the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allows such contributions via automatic payroll deduction on a pre-tax basis, in exchange for the City granting the salary increase set forth in Section 11.1.5 (July 3, 2016 - Salary/PERS Exchange) of this MA. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.

### **37.11 New Members' Pension Contributions through 20516 a Contract Amendment**

37.11.1 **July 3, 2016:** Effective July 3, 2016, in addition to the contributions in Section 37.4 (CalPERS Retirement Formula for "New Members" as Defined Under the Public Employees' Pension Reform Act of 2013 (PEPRA)), New Members will contribute one and one-quarter percent (1.25%) towards the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allows such contributions as pre-tax via automatic payroll deduction, in exchange for the City granting the salary increase set forth in Section 11.1.5 (July 3, 2016 - Salary/PERS Exchange) of this MA. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.

37.11.2 The parties recognize that the CalPERS 20516 amendment that allows employee contributions toward the employer rate is in addition to the

required 50% of the normal cost of "New Members" benefits and made in consideration of additional salary increases in Section 11.1.5 (July 3, 2016 - Salary/PERS Exchange) above (a total of 1% salary increases in exchange for employees paying a total of 1.25% towards CalPERS pension cost).

As soon as administratively possible, following council approval of this agreement, the additional contribution of 1.25%, as indicated in Section 37.11.1, shall be eliminated through a contract amendment with CalPERS. The start of the first full pay period following completion of the contract amendment shall be the effective date of the reduction.

### **SECTION 38: SUPPLEMENTAL RETIREMENT/DISABILITY INSURANCE PLAN**

Effective January 1, 1983, the majority of miscellaneous employees under the City's contract with the State of California Public Employees Retirement System who were covered by the integrated Social Security Program voted to withdraw from participation in the Federal Social Security Program. In lieu of Social Security payments, the City has agreed to pay an amount equal to that percent of individual pay (6.7% payable on the first \$32,400 of salary paid in the calendar year) which had been paid by the City to Social Security as of December 31, 1982 to a Supplemental Retirement and Income and Long Term Disability Insurance Plan for those employees previously covered under the integrated PERS/Social Security Plan. Provisions of this plan are described in Berkeley Municipal Code Chapter 04.36.101 (Supplemental Retirement and Income Plan I) as amended and Berkeley Municipal Code Chapter 04.38.101 (Supplemental Retirement and Income Plan II) as amended. All employees hired after July 22, 1988 are in SRIP II. All employees hired prior to July 22, 1988 are in SRIP I unless they chose to enroll in SRIP II prior to December 17, 1988.

## **ARTICLE 9 - LAYOFF PROCEDURE**

### **SECTION 39: LAYOFF**

The layoff policy for the City of Berkeley is intended to provide the maximum employment protection of the City staff should a layoff become necessary. The policy also aims to minimize the impact such a layoff might have on the City's affirmative action accomplishments.

#### **39.1 Announcement of Layoff**

**39.1.1 Notification:** The City Council, City Manager, and department head shall make every reasonable effort to manage and budget the City's resources effectively and to plan for the delivery of City services in a manner which will avoid the necessity of laying off career City employees. If a reduction in the work force for more than thirty (30) calendar days is necessitated by, but not limited to, the following: a material change in duties and organization, adverse working conditions, return of employee from leave of absence, or shortage of work or funds, the City Manager shall notify the Director of Human Resources of the intended action and the reason for the layoff.

**39.1.2 Freezing of Vacancies:** Immediately following a decision which may involve the potential layoff of career City employees, the City Manager shall freeze all current City vacancies in the competitive service in similar and related classifications to those likely to be targeted for layoff, as well as all related full-time, benefited, temporary positions which are expected to last six (6) months or more, and notify all department heads that such current and anticipated vacancies will be frozen until further notice in order to implement the provisions of Section 39.6 (Flexible Placement Program).

#### **39.2 Seniority Service Date**

**39.2.1** All service in the employ of the City shall be counted toward the establishment of an employee's seniority service date, including, for example, permanent, probationary, provisional, temporary (full-time and intermittent), seasonal, and exempt employment, as well as leaves of absence for obligatory military service while an employee of the City. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the seniority service date. Time off as a result of formal disciplinary action will be subtracted from the seniority service date.

- 39.2.2 The auditor's office will maintain up-to-date and current seniority dates for all City employees holding probationary and permanent appointments.

### **39.3 Establishment of Seniority Lists**

39.3.1 Whenever a layoff of one or more career employees becomes necessary, as defined above, such layoffs shall be made according to City-wide classification seniority lists. Upon receiving notification that the City Manager must proceed with a possible reduction in the work force, and following receipt of information concerning the specific positions, programs, and departments involved, the Human Resources Department will immediately establish separate probationary and permanent seniority lists for each classification targeted for layoff.

39.3.2 The names of all City employees holding permanent and probationary appointments in a given classification will be listed on the appropriate list in descending order by seniority service date. Employees on both lists shall be laid off on the basis of their seniority service date, i.e., employees with the least amount of total service shall be laid off first. All emergency, temporary, and provisional employees working in classifications similar to those identified for layoff must be terminated prior to the layoff of probationary or permanent employees. Employees on the probationary seniority list for a specific classification will be laid off prior to employees on the permanent seniority list for that classification.

39.3.3 Probationary or permanent employees temporarily acting out of classification and holding a provisional appointment in another classification will only be listed on a seniority list of the classification in which they hold permanent or probationary status targeted for layoff.

39.3.4 If two (2) or more employees on a seniority list have an identical seniority service date, the tie shall be broken in the following order:

39.3.4.1 Time in classification - the employee having least time in the classification shall be released first;

39.3.4.2 By lot.

### **39.4 Employee Retreat Rights**

- 39.4.1 Before an employee with permanent or probationary status may be released from employment with the City of Berkeley, the Human Resources Department must consider the employee's right to retreat to lower level classifications through which he or she was originally promoted or any subsequently created intermediate level career classification which provides normal progression through the classification series. Retreat rights shall also extend to employees who have not previously been promoted through a classification but for whom the classification is a natural progression or beginning in the classification series.
- 39.4.2 In the process of retreating, the same rules concerning the length of service, classification seniority lists, etc., apply as in the first stage of the layoff process. In order to retreat, the targeted employee must be higher on the seniority list for the classification into which he or she is retreating than at least one of the incumbents on the probationary or permanent seniority list for that classification.
- 39.4.3 If an employee is qualified for retreat into more than one classification with comparable salary ranges, or if a vacancy exists in a classification to which an employee is entitled to retreat, the options shall be discussed with the employee and due consideration shall be given to the employee's preferences. However, it is the prerogative of the City Manager to determine the final placement offer to the employee.
- 39.4.4 The retreating employee has a right to be retained in the highest salary range possible which is equal to or less than his or her present salary range. An employee involved in layoff does not have a right of mandatory placement to positions with a higher salary range, i.e., promotion.

### **39.5 Employee Notification**

- 39.5.1 Emergency, temporary, intermittent, seasonal, etc., employees shall be notified individually, in writing, of pending layoff as soon as possible, but no definite time period is required. However, at least two (2) weeks notification is desirable if possible.
- 39.5.2 Provisional employees shall be notified individually, in writing, of pending layoff as soon as possible, with no less than fifteen (15) calendar days notification if targeted for release or reassignment.
- 39.5.3 Permanent, probationary, and career-exempt employees should be notified individually in writing of pending layoffs as soon as possible, with no less

than thirty (30) calendar days notification if targeted for release or reassignment.

If an employee fails to accept a bona fide offer of reassignment within ten (10) calendar days after the offer has been made, he or she forfeits further right to employment retention. Acceptance of a reassignment does not remove the right of appeal under Section 39.9 (Appeal Procedure).

35.5.4 An employee who is transferred in lieu of layoff when his or her position has been eliminated shall have automatic return rights to the previous position if it is restored within one (1) year of the date of the transfer. If an employee with a full time position is offered a reduction in hours in that position or in a lower classification, the employee may elect to be targeted for layoff for purpose of consideration under Section 39.6 (Flexible Placement Program.) If there is no flexible placement available for the employee, the employee may accept the reduction in hours, in lieu of layoff.

### **39.6 Flexible Placement Program**

39.6.1 In order to minimize the negative impact of layoff, the City Manager will, as previously stated in Section 39.1.2 (Freezing of Vacancies), impose a citywide freeze on all appropriate vacancies as soon as it has been determined that a layoff of career City employees may be necessary.

39.6.2 Following the release of all emergency, temporary, and provisional employees in classes similar to those targeted for layoff, and as soon as employees targeted for layoff have been identified and the provisions under Sections 39.4 (Employee Retreat Rights) have been carried out, the Human Resources Department will review and identify the frozen vacant classifications into which employees ultimately targeted for layoff may be placed on the basis of total experience and education. In making this decision, a waiver of minimum qualification standards, and/or the substitution of related experience and education may be made, with an understanding on the part of management and supervisory personnel that adequate on-the-job training, which can be completed within no more than six (6) months, will be provided to facilitate job adjustment and to compensate for the waiver of qualification standards if that has occurred.

This shall be called the qualification period. The employee shall be advised of their progress after two months and four and six months in the new classification. If at the end of the qualification period the department head notifies the Human Resources Department that the employee is

unable to adequately perform the assignment or fails a test for the position administered by Human Resources then the employee shall be subject to the layoff process.

39.6.3 Assignments under the Flexible Placement Program shall be limited to positions in the same or lesser salary range as the classification from which the employee is to be laid off, except that the City Manager may authorize the offer of a flexible placement to position with a maximum salary of no more than five (5) percent above the salary range as the classification from which layoff is targeted, when it is in the best interest of the City service to do so. Whenever flexible placement is made to a classification with a greater salary range, the appointment shall be probationary, in accordance with the terms of that classification.

39.6.4 Offers to positions under the Flexible Placement Program shall be made according to seniority service date and in accordance with the probationary and permanent seniority list certification process outlined in Section 39.3 (Establishment of Seniority Lists). All offers and placements made under this provision of the layoff policy shall be documented in detail, with records available for audit and review at all times.

39.6.5 If an employee fails to accept a bona fide written offer of an alternative job within ten (10) calendar days after the offer has been made, he or she forfeits further rights to employment retention. Acceptance of an alternative job under the Flexible Placement Program in no way jeopardizes an employee's standing on the reemployment priority lists on which his or her name has been placed in accordance with Section 39.7 (Reemployment Lists).

### **39.7 Reemployment Lists**

39.7.1 The names of all probationary and permanent employees released from positions in the competitive service as a result of layoff must be placed on reemployment priority lists for those classifications from which they were separated, as well as all other classifications to which they have retreat rights in accordance with Section 39.4 (Employee Retreat Rights).

39.7.2 A reemployment priority list shall remain in effect for three (3) years.

39.7.3 Departments with vacancies in any classification for which there is an active reemployment priority list must use the reemployment priority list to fill their positions and may not use any other recruitment or appointment

method to fill a vacancy until appropriate reemployment lists have been exhausted.

39.7.4 When a vacancy occurs in a class for which there is a reemployment priority list, the name of the employee on the appropriate reemployment priority list with the highest seniority date shall be certified to the selecting official. Employees so certified from the reemployment priority list must be appointed to the existing vacancy.

39.7.5 If a former employee fails to accept a bona fide written offer of reemployment within fifteen (15) calendar days, his or her name will be removed permanently from the reemployment priority list from which the offer was made. Failure to accept an offer of reemployment to the classification with the highest salary range for which the employee is eligible for reemployment will result in automatic removal from all reemployment priority lists. However, the employee may decline (or accept) reemployment to lower salary range classifications without jeopardizing his or her standing on the reemployment priority list for the classification from which he or she was originally terminated.

39.7.6 Upon reappointment to the classification from which the employee was originally separated or demoted, the employee has the right to be placed at the step of the salary range which the employee held at the time of layoff or demotion.

### **39.8 Career Exempt Employees**

Only those employees holding full-time, benefited, exempt positions, who in the past have achieved permanent status and have been continuously employed without a break in service between their career and exempt appointment, have the right to retreat to previously held career classifications, placement on the reemployment priority lists, and all other provisions governing layoff procedures. For the purpose of layoff, such employees shall be referred to as "career-exempt."

### **39.9 Appeal Procedures**

Any permanent, probationary, or career-exempt employee who is laid off, demoted, or reassigned as a result of layoff who believes that the layoff procedure has been improperly administered as it pertains to the employee's case may appeal the action under Section 35 (Grievances). In addition, employees may, at all times before, during, and subsequent to layoff, review all records, including seniority lists, reemployment priority lists, documentation pertaining to appointments under the Flexible Placement Program, etc., which pertain to their classification and their rights under the provisions of the layoff policy.



### **39.10 Reemployment Priority Rights**

If it is determined that a vacancy has been filled by a non-reemployment priority list eligible in a classification for which a reemployment priority list existed and which included available applicants at the time, the former employee with reemployment rights shall be hired and given retroactive pay from the date that the vacancy occurred. The employee who was originally hired to fill the vacancy shall continue to be retained in City employment, provided he or she has completed the probationary period.

## SIGNATURE PAGE

Executed this \_\_\_\_ day of \_\_\_\_\_, 20224, by the Employer and Employee representatives whose signatures appear below for their respective organizations.

FOR INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1245      FOR THE CITY OF BERKELEY

\_\_\_\_\_  
Bob Dean, Business Manager

\_\_\_\_\_  
Dee Williams-Ridley, City Manager

\_\_\_\_\_  
Charley Souders, Business Representative  
([Chief Negotiator](#))

\_\_\_\_\_  
~~LaTanya Bellow~~[Donald Ellison](#), [Interim](#)  
Director of Human Resources

\_\_\_\_\_  
Greg Marwick, Steward

\_\_\_\_\_  
~~Andrew Brozyna~~ [Dawud Brewer](#),  
[Employee Relations Manager \(Chief](#)  
[Negotiator\)](#) [Deputy Director of Public](#)  
[Works](#)

\_\_\_\_\_  
~~Tom Hartman~~[Ryan Schaffler](#), Negotiation  
Committee

\_\_\_\_\_  
~~Alicia Platt~~[Joy Brown](#), [Operations](#)  
[Manager Public Works](#)[Senior Human](#)  
[Resources Analyst](#)

\_\_\_\_\_  
Amani Manning, Assistant Human  
Resources Analyst

**-EXHIBIT A - Hourly Salary Schedule**

As of ~~July August 257, 20221~~ (43.0% Salary Increase)

Job Code	Rep Unit	Classification Title	FLSA	Step 1	Step 2	Step 3	Step 4	Step 5
32020	C	COMMUNICATIONS TECHNICIAN	N	0	0	<del>46.887848.2945</del>	<del>49.143050.6173</del>	<del>51.385352.9270</del>
52180	C	ELECTRICAL PARTS TECHNICIAN	N	0	<del>34.284035.3125</del>	<del>36.498337.5934</del>	<del>38.412439.5648</del>	<del>39.383240.5647</del>
51030	C	ELECTRICIAN	N	0	0	<del>46.887848.2945</del>	<del>49.143050.6173</del>	<del>51.385352.9270</del>
51100	C	LEAD COMMUNICATION TECHNICIAN	N	0	0	<del>50.127551.6314</del>	<del>52.396553.9685</del>	<del>54.912456.5598</del>
51080	C	LEAD ELECTRICIAN	N	0	0	<del>50.127551.6314</del>	<del>52.396553.9685</del>	<del>54.912456.5598</del>

As of July 7, 2023 (3.0% Salary Increase)

<u>Job Code</u>	<u>Rep Unit</u>	<u>Classification Title</u>	<u>FLSA</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
<u>32020</u>	<u>C</u>	<u>COMMUNICATIONS TECHNICIAN</u>	<u>N</u>	<u>0</u>	<u>0</u>	<u>49.74.33</u>	<u>52.1358</u>	<u>54.5148</u>
<u>52180</u>	<u>C</u>	<u>ELECTRICAL PARTS TECHNICIAN</u>	<u>N</u>	<u>0</u>	<u>36.3719</u>	<u>38.7212</u>	<u>40.7517</u>	<u>41.7816</u>
<u>51030</u>	<u>C</u>	<u>ELECTRICIAN</u>	<u>N</u>	<u>0</u>	<u>0</u>	<u>49.7433</u>	<u>52.1358</u>	<u>54.5148</u>
<u>51100</u>	<u>C</u>	<u>LEAD COMMUNICATION TECHNICIAN</u>	<u>N</u>	<u>0</u>	<u>0</u>	<u>53.1803</u>	<u>55.5876</u>	<u>58.2566</u>
<u>51080</u>	<u>C</u>	<u>LEAD ELECTRICIAN</u>	<u>N</u>	<u>0</u>	<u>0</u>	<u>53.1803</u>	<u>55.5876</u>	<u>58.2566</u>

**As of July 9, 2024 (1.0% Salary Increase)**

<u>Job Code</u>	<u>Rep Unit</u>	<u>Classification Title</u>	<u>FLSA</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
<u>32020</u>	<u>C</u>	<u>COMMUNICATIONS TECHNICIAN</u>	<u>N</u>	<u>0</u>	<u>0</u>	<u>50.2407</u>	<u>52.6572</u>	<u>55.0599</u>
<u>52180</u>	<u>C</u>	<u>ELECTRICAL PARTS TECHNICIAN</u>	<u>N</u>	<u>0</u>	<u>36.7356</u>	<u>39.1084</u>	<u>41.1592</u>	<u>42.1994</u>
<u>51030</u>	<u>C</u>	<u>ELECTRICIAN</u>	<u>N</u>	<u>0</u>	<u>0</u>	<u>50.2407</u>	<u>52.6572</u>	<u>55.0599</u>
<u>51100</u>	<u>C</u>	<u>LEAD COMMUNICATION TECHNICIAN</u>	<u>N</u>	<u>0</u>	<u>0</u>	<u>53.7121</u>	<u>56.1435</u>	<u>58.8392</u>
<u>51080</u>	<u>C</u>	<u>LEAD ELECTRICIAN</u>	<u>N</u>	<u>0</u>	<u>0</u>	<u>53.7121</u>	<u>56.1435</u>	<u>58.8392</u>

Note: Employee's monthly salary will depend upon the number of hours worked. Employees hired before January 9, 2000, have an option (discussed in detail in Exhibit E (Hours and Days of Work) to work either a 37.5-hour work week or a 40-hour work week. Employees hired after January 9, 2000 work a 40-hour per week schedule.

## EXHIBIT C

### CITY OF BERKELEY MUNICIPAL CODE CHAPTER 4.04.120

#### **4.04.120 Exemption from Career Service (At-Will Employees).**

The provisions of this chapter shall apply to all positions in the service of the city except:

- A. The city manager, assistant city manager, deputy city manager, assistant to the city manager, police review commission officer, police review commission investigator, and assistant to the mayor;
- B. Assistant, associate and senior management analyst when appointed to the city manager's department or to the Budget Unit of the Management and Administrative Services Agency; and secretary to the mayor, administrative secretary and secretary when appointed to the mayor's office;
- C. All department heads, health officer, and supervising psychiatrist;
- D. Persons employed seasonally in the summer camps;
- E. Persons employed as reserve or emergency employees during the period of national emergency as provided in the ordinance creating such employment;
- F. All persons who are paid at an hourly rate with the exception of library aides. Persons appointed as hourly Library Aides shall be part of the career service with the exception of those hired to fill temporary positions of six months or less.

Persons appointed to these positions which are exempt from the career service shall serve at the pleasure of the appointing authority and may be demoted, suspended, or otherwise rejected at any time without cause and without right of appeal or hearing in any manner. Except that, any employee in the career service promoted or transferred to a position not included in the career service and made exempt from the career service shall be reinstated to his or her career appointment from which he or she was promoted or transferred if within six months of appointment to a position not included in the career service, action is taken to dismiss him or her, unless charges are filed and the employee is discharged in accordance with this chapter and the rules established hereunder for positions in

the career service. All employments designated in this Section shall be entitled to only those benefits provided for at-will employees in the personnel rules and regulations or in applicable memoranda agreements.

### EXHIBIT D – Service Vacation Leave

Years During Which Service Rendered	Number of Years of Service	AUTHORIZED ANNUAL VACATION LEAVE (IN CALENDAR WEEKS)
All years prior to 01/01/1950		2
01/01/1950 through 12/31/1956	First 10 years of service	2
	Years of service in excess of 10	3
01/01/1957 through 12/31/1961	First 5 years of service	2
	6 through 25 years of service	3
	Years in excess of 25	4
01/01/1962 through 12/31/1965	First 5 years of service	2
	6 through 20 years of service	3
	Years of service in excess of 20	4
01/01/1966 through 06/30/1970	First 5 years of service	2
	6 through 20 years of service	3
	21 through 25 years of service	4
	Years of service in excess of 25	5
Subsequent to 06/30/1970	First 5 years of service	2
	6 through 15 years of service	3
	16 through 25 years of service	4
	Years of service in excess of 25	5
Effective 01/01/1981	First 4 years of service	2
	5 through 12 years of service	3
	13 through 20 years of service	4
Effective 07/01/1984	First 3 years of service	2
	4 through 11 years of service	3
	12 through 17 years of service	4
	18 and subsequent years of service	5
Effective 12/08/1987	First 3 years of service	2
	4 through 11 years of service	3
	12 through 17 years of service	4
	18 through 24 years of service	5
	25 and subsequent years of service	6

## **EXHIBIT E - HOURS AND DAYS OF WORK**

The hours and days of work applicable to employees in Representation Unit C, as set by the City Manager, are presently as follows:

### **1. Hours per Day**

Field Operations: Working arrangements may vary as to daily schedules under the reduced workweek.

Flexible Hours: On a job-by-job basis, with prior approval of the Senior Electrical Supervisor, a crew may schedule a workday, or workdays, other than the normal workday schedule of 7:00 a.m. to 3:30 p.m.

### **2. Hours per Week (Basic)**

Field Operations: 40 hours. However, employees in Representation Unit C as of January 9, 2000 have the option of retaining a 37.5-hour per week work schedule. An employee will have an option to change his work schedule to 40 hour per week at the beginning of a payroll period. An employee will have a one-time option to revert to a 37.5 hour per week work schedule at the beginning of a payroll period. After exercising this one time option, if the employee chooses to change his work schedule to 40 hours per week, the employee must maintain this work schedule for the balance of his career in this Representation Unit. All persons hired on or after January 9, 2000 will work a 40-hour per week schedule and will not be permitted to change his or her work schedule to 37.5 hours per week.

The parties may agree in writing to alternative work schedules other than those set forth in this Agreement, such as a 9-80 work schedule which produces an 80-hour pay period with the hours worked in nine work days. The City will take into consideration its operational needs, including the impact of potential overtime, in deciding whether to approve an alternate work schedule. However, such alternate work schedule will not be unreasonably denied.

### **3. Work Week**

The work week will begin at 12:01 a.m., Sunday and end at Saturday midnight. Regular days off will be considered to be Saturday and Sunday.



## **EXHIBIT F - IMPLEMENTING THE REDUCED WORK SCHEDULE**

**NOTE:** This Exhibit F applies only to employees hired before January 9, 2000 who are permitted to work a 37.5 hour per week work schedule subject to the conditions set forth in Exhibit E (Hours and Days of Work).

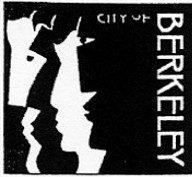
The City and the Union agree that the implementation of the reduced work schedule which is to be effective June 29, 1986 will be as follows:

That one-fourth of the Electrical Division employees will be off every fourth Monday on a staggered basis. This time would be treated as a scheduled day off and could not be adjusted or moved. A yearly schedule would be set up at the beginning of the year so that each employee would know what days he would have off. Since the agreed upon reduced work schedule does not calculate evenly into one day off every four weeks, it is proposed that an additional day off (Friday) be given once every 16 weeks. This agreement very closely approximates the reduced work schedule. Any discrepancies would be credited to the employee's vacation at the end of the contract year.

For Fair Labor Standards Act purposes, the workweek is defined as 40 hours.

Sick leave, vacation, and other compensable leaves of absences shall be based on the 40 hour work week.

When a scheduled day off falls on a holiday, the next regularly scheduled work day shall be observed as the scheduled day off.




Office of the City Manager

## **EXHIBIT G**

### **DIRECTIVE PROHIBITING UNAUTHORIZED CONSTRUCTION**

July 31, 2001

To: Department Directors

From: Weldon Rucker  City Manager

Subject: **DIRECTIVE PROHIBITING UNAUTHORIZED CONSTRUCTION  
OR FACILITY MAINTENANCE WORK IN CITY FACILITIES**

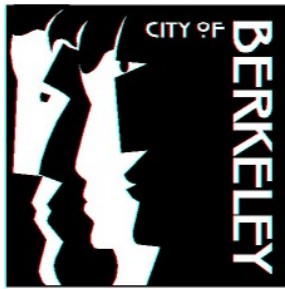
It has come to my attention that some construction, building maintenance and electrical work is being improperly performed at various facilities that are either owned or leased by the City. Because this work can affect the health and safety of all City employees and can result in a significant potential liability for the City, it is absolutely essential that any such work be done by competent and experienced individuals. Even if licensed contractors are brought in to do the work, they may not be fully aware of how their work will impact other City projects or facilities. Furthermore, already scarce City funds are wasted when Public Works has to correct improper or hazardous work performed by unauthorized individuals or contractors. Accordingly, such construction and maintenance work must only be performed by properly trained and supervised Public Works maintenance staff or contractors selected by, and under the direction of, the Public Works Department.

Therefore, I am reminding and directing all department directors to ensure that absolutely no construction, building maintenance or electrical work be performed in any City owned or leased facilities by contractors or anyone else not under the direction of Public Works. All construction and facility maintenance work is to be referred to the Public Works Department.

For routine maintenance, minor repairs, or minor physical modifications, contact the Public Works Customer Service representative at 644-6620. For larger construction projects, contact Public Works Capital Improvement Projects at 981-6330. Public Works can then make appropriate decisions as to whether construction or maintenance work should be performed by City employees or by outside contractors, utilities, or agencies.

Thank you, in advance, for your full compliance with this direction.

cc: City Manager's Office



## **MEMORANDUM AGREEMENT**

**Between the**

**CITY OF BERKELEY**

**and the**

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS  
LOCAL 1245 - A.F.L. - C.I.O.**

**July 1, 2022 to June 30, 2025**

Table of Contents [\(click section titles to jump to page\)](#)

ARTICLE 1 - ADMINISTRATION .....1

SECTION 1: RECITALS .....1

SECTION 2: PARTIES TO THE AGREEMENT .....2

2.1 Exclusive Representation.....2

2.2 Management Rights .....2

SECTION 3: NO DISCRIMINATION .....2

SECTION 4: UNION SECURITY .....3

4.1 Union Security .....3

4.3 New Employee Orientation.....3

SECTION 5: DEDUCTION OF UNION DUES.....5

5.1 Deductions .....5

5.2 Revocation .....5

5.3 Authorization Forms .....5

5.4 Notice.....5

SECTION 6: UNION REPRESENTATIVES.....5

6.1 Number of Representatives .....6

6.2 Maximum Representatives.....6

6.3 Notification .....6

6.4 Union/Management Meetings.....6

6.5 Union Training.....6

SECTION 7: SEPARABILITY OF PROVISIONS .....7

SECTION 8: EXISTING MEMORANDUM AGREEMENT .....7

SECTION 9: FINALITY OF RECOMMENDATIONS .....7

SECTION 10: DURATION .....7

ARTICLE 2 - SALARIES, HOURS OF WORK AND COMPENSATION ISSUES.....7

SECTION 11: SALARIES .....8

11.1 Salary Rates .....8

11.2 Step Placement.....8

11.3 Maximum Salary Rate .....9

11.4 Effect of Leaves .....9

11.6 Y-Rate.....9

11.7 Pay Frequency.....9

11.8 Higher Classification .....10

11.9 Temporary Appointment.....11

11.10 Step Increases for Provisional Employees.....11

11.11 End of Year Pay Period .....11

11.12 Overtime Underpayment.....11

11.13 Equity Studies.....11

11.14 Step Increase.....11

11.15 Effective Date of Salary Adjustment.....11

11.16 Reclassification.....12

11.17 Premium Pay Differential - Working at Heights of 60 Feet or More .....12

11.18 Commercial Driver’s License Premium .....12

11.19 Longevity Pay .....12

SECTION 12: HOURS AND DAYS OF WORK .....13

12.1 Hours and Days of Work .....13

12.2 Sunday and Graveyard Shifts .....13

12.3 Shift Assignment.....13

12.4 Classes during Shift Assignments.....14

12.5 Rest Period.....14

12.6 Daylight Saving Time.....14

SECTION 13: OVERTIME.....14

13.1 Rate .....15

13.2 Department Head Discretion .....15

13.3 Payoff of Overtime .....15

13.4 FLSA Workweek .....15

13.5 Emergency Overtime .....15

13.6 Meals.....16

13.7 Standby Pay .....16

13.8 Emergency Overtime Assignments .....17

13.9 Overtime Offers .....17

SECTION 14: SHIFT DIFFERENTIAL .....18

14.1 Swing Shift .....18

14.2 Night Shift.....18

SECTION 15: NATURAL DISASTER/DECLARED EMERGENCY .....18

15.1 Call Outside Normal Working Hours .....19

15.2 Shift Differential .....19

15.3 Reduction in Hours .....19

15.4 Change in Assignments .....19

15.5 Hours Worked in Excess of 12-hours .....19

ARTICLE 3 - LEAVES .....19

SECTION 16: VACATION .....19

16.2 Vacation Approval.....19

16.3 Use of Incremental Vacation .....20

16.4 Accrual Rate as of December 8, 1987 .....20

16.5 Accrual, Use, and Limitation for Employees with Less than 6-Months of Service .....20

16.6 Vacation Eligibility for Part-time, Intermittent, Leave Without Pay or .....21

Reemployed Employees .....21

16.7 Maximum Vacation Accumulation.....21

16.8 Prorated Vacation due to Extended Absence, Reemployment or Reinstatement .....22

16.9 Payment of Vacation upon Termination or Extended Leave after Six Months of Service ....22

16.10 Calculation and Payment or Reimbursement of Vacation Credits upon Termination or  
Extended Leave .....22

16.11 Lump Sum Payment of Vacation.....23

16.12 Calculation of Vacation Based on Actual Paid Hours.....23

16.13 Vacation Accounting Procedures.....23

16.14 Voluntary Time Off.....23

SECTION 17: HOLIDAYS.....23

17.1 Holidays.....23

17.2 Floating Holidays.....24

17.3 Floating Holiday Accrual upon Employment.....24

17.4 Limitations.....25

17.5 Holidays for Employees whose Work Week is Other than Monday through Friday.....25

17.6 Work during a Holiday.....25

17.7 Holidays for Part-Time Employees.....25

SECTION 18: SICK LEAVE.....26

18.1 Eligibility.....26

18.2 Sick Leave Accrual.....26

18.3 Pro-rated Sick Leave for Part-Time Employees.....26

18.4 Sick Leave for Intermittent Employees.....26

18.5 Maximum Accumulation.....26

18.6 Payment upon Retirement/Termination.....26

18.7 Annual Payment for Hours in Excess of Maximum for Employees Working Half-Time or More for Employees Hired on or Before June 30, 2013.....27

18.8 Restoration of Sick Leave if Reemployed within Two Years.....28

18.9 Sick Leave Use/Family Illness.....28

18.10 Prohibition for Use with Outside Employment.....28

18.11 Notification Requirement.....28

18.12 Cessation of Accrual.....29

18.13 Workers' Compensation.....29

18.14 Light Duty.....30

18.15 Control Program for Sick Leave Use.....31

18.16 Bonus Time for Unused Sick Leave.....31

18.17 State Disability Insurance.....32

SECTION 19: FUNERAL LEAVE.....33

SECTION 20: MILITARY AND MARITIME LEAVE.....33

SECTION 21: PARENTAL LEAVE.....34

21.1 Eligibility:.....34

SECTION 22: LEAVE OF ABSENCE WITHOUT PAY.....35

22.1 Department Head Authority.....35

22.2 Union Sponsored Training.....35

22.3 Exhaustion of Accrued Time.....35

SECTION 23: JURY DUTY LEAVE.....35

23.1 Court Time.....36

ARTICLE 4 - HEALTH AND WELFARE BENEFITS.....37

SECTION 24: HOSPITAL-MEDICAL, DENTAL, AND VISION COVERAGE.....37

24.1 Medical Coverage.....37

24.2 Maximum Medical Premium Payments.....37

24.3 Dental Coverage.....38

24.4 Vision Coverage .....39

24.5 Change in Insurance Carrier .....39

24.6 Domestic Partner Coverage .....40

24.7 Part-Time Employees and Prorated Benefits.....40

24.8 Commencement of Medical, Dental, and Vision Benefits .....40

24.9 Health Insurance In-Lieu Payments.....40

24.10 Group Life Insurance .....40

24.11 Pre-Tax Status.....40

SECTION 25: RETIREE MEDICAL COVERAGE.....41

25.1 Amendment of Retiree Health Premium Assistance Plan III, effective January 23, 1998, Restated and Amended effective March 22, 2011 .....41

25.2 Eligibility .....42

25.3 Pre Age 65 Retiree Health Insurance.....42

25.4 Retiree Benefits for Employees Age 65 and Over.....44

25.5 Termination by City of Retiree Medical Benefit.....45

25.6 Retiree Medical Benefit for Employees Retiring Between the Ages of 50 and 55 .....45

25.7 Employees Retiring with a CalPERS Approved Disability Retirement.....45

25.8 City Funding of Retiree Health Benefit.....45

25.9 Actuarial Study .....46

ARTICLE 5 – TERMS AND CONDITIONS OF EMPLOYMENT .....47

SECTION 26: PROBATIONARY PERIOD.....47

26.1 Duration and Effect of Military Leave on Probationary Period .....47

26.2 Provisional Appointments to a Higher Classification.....47

26.3 Report Requirement.....47

26.4 Rejection during Probationary Period.....47

26.5 Rejections Subject to Disciplinary Appeal .....48

26.6 Probationary or Temporary Employee Assignments.....48

SECTION 27: TRANSFER.....48

SECTION 28: PROMOTION.....48

SECTION 29: DEMOTION .....49

SECTION 30: SUSPENSION.....49

SECTION 31: DISCHARGE .....49

SECTION 32: RESIGNATION .....50

SECTION 33: REINSTATEMENT .....50

SECTION 34: NOTICE OF TERMINATION.....50

ARTICLE 6 - GRIEVANCE AND DISCIPLINARY APPEAL PROCEDURE.....50

SECTION 35: GRIEVANCES .....50

35.1 Definition .....50

35.2 Procedure .....51

35.3 EEO Complaints .....54

35.4 Compensation Complaints.....55

35.5 Changes or Interpretations .....55

35.6 Extension of Timelines .....55

35.7 Days .....55

35.8 Grievances Challenging Disciplinary Action .....55

ARTICLE 7 – GENERAL PROVISIONS .....57

SECTION 36: GENERAL PROVISIONS .....57

36.1 Personal Conduct .....57

36.2 Rain Gear .....57

36.3 Tools .....57

36.5 Training.....58

36.6 Use of Automobiles .....59

36.7 Safety .....60

36.8 YMCA Group Membership .....60

36.9 Annual Performance Evaluation.....60

ARTICLE 8 - PUBLIC EMPLOYEES RETIREMENT SYSTEM .....61

SECTION 37: PAYMENT OF EMPLOYEES' PERS CONTRIBUTIONS.....61

37.1 Miscellaneous Designation .....61

37.2 “Classic Employees” Definition .....61

37.3 “New Member” Definition .....61

37.4 CalPERS Retirement Formula for “New Members” as Defined Under the  
Public Employees’ Pension Reform Act of 2013 (PEPRA).....61

37.5 CalPERS Retirement Formula and Employer Paid Member Contribution for Classic  
Employees (i.e. current employees and employees who do not qualify as “New Members” under  
PEPRA) .....61

37.6 CalPERS New Members Normal Share of Cost.....61

37.7 Reporting of Contributions .....61

37.8 City Contracts with CalPERS .....62

37.9 Index Level 1959 Survivor Benefit .....63

37.10 Classic Members’ Pension Contribution through 20516 a Contract Amendment.....63

37.11 New Members’ Pension Contributions through 20516 a Contract Amendment.....63

SECTION 38: SUPPLEMENTAL RETIREMENT/DISABILITY INSURANCE PLAN .....64

ARTICLE 9 - LAYOFF PROCEDURE.....65

SECTION 39: LAYOFF.....65

39.1 Announcement of Layoff.....65

39.2 Seniority Service Date .....65

39.3 Establishment of Seniority Lists .....66

39.4 Employee Retreat Rights .....66

39.5 Employee Notification.....67

39.6 Flexible Placement Program.....68

39.7 Reemployment Lists .....69

39.8 Career Exempt Employees.....70

39.9 Appeal Procedures .....70

39.10 Reemployment Priority Rights .....71

SIGNATURE PAGE .....72

EXHIBIT A - Hourly Salary Schedule .....73

EXHIBIT C.....75

EXHIBIT D – Service Vacation Leave .....77



EXHIBIT E - HOURS AND DAYS OF WORK .....78  
EXHIBIT F - IMPLEMENTING THE REDUCED WORK SCHEDULE.....79  
**EXHIBIT G ..... 76**

**MEMORANDUM AGREEMENT**  
**Between**  
**CITY OF BERKELEY**  
**and the**  
**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS**  
**LOCAL 1245**

**ARTICLE 1 - ADMINISTRATION**

**SECTION 1: RECITALS**

- 1.1 This Memorandum Agreement is entered into pursuant to the Meyers-Milias Brown Act (Government Code, Sections 3500-3511), as amended, and has been jointly prepared by the parties.
- 1.2 The City Manager is the representative of the City of Berkeley (hereinafter referred to as "the City") in employer-employee relations as provided in Resolution No. 43,397-N.S., adopted by the City Council on October 14, 1969.
- 1.3 International Brotherhood of Electrical Workers, Local 1245, is the recognized employee organization for Representation Unit C (Electrical Occupations), which organization has been certified as such pursuant to said Resolution No. 43,397N.S. The employee positions in such Representation Unit are hereinafter set forth in Exhibit A attached hereto and made a part hereof, and International Brotherhood of Electrical Workers, Local 1245 (hereinafter referred to as "the Union") is recognized as the sole representative of employees assigned to such positions.
- 1.4 The parties have met and conferred in good faith regarding wages, hours, and other terms and conditions of employment of the employees in said Representation Unit C, have exchanged freely information, opinions, and proposals, and have endeavored to reach agreement on all matters relating to the employment conditions and employer-employee relations of such employees.
- 1.5 This Memorandum Agreement shall be presented to the City Council as the joint recommendation of the undersigned.
- 1.6 Section titles in this Memorandum Agreement are for identification purposes only and are not to be used for the purpose of interpreting either the intent or the meaning of the language of any section.

## **SECTION 2: PARTIES TO THE AGREEMENT**

### **2.1 Exclusive Representation**

The Union is the exclusive representative of all employees within Representation Unit C (Electrical Occupations) and shall continue to be recognized as such unless, in accordance with the provisions of Resolution No. 43,397-N.S. or said Resolution may be amended, the Union is no longer certified as the Recognized Employee Organization for employees in Representation Unit C.

### **2.2 Management Rights**

The Union recognizes that the management of the City and its business and the direction of its working forces are vested exclusively in the City, and this includes, but is not limited to, the following: to direct and supervise the work of its employees, to hire, promote, demote, transfer, suspend, and discipline or discharge employees for just cause; to plan, direct, and control operations; to lay off employees because of lack of work or for other legitimate reasons; to introduce new or improved methods or facilities, provided, however, that all of the foregoing shall be subject to the provisions of this Agreement, arbitration decisions, or letters of agreement, or memorandums of understanding clarifying or interpreting this Agreement.

The City shall not by reason of the execution of this Agreement (a) abrogate or reduce the scope of any present plan or rule beneficial to employees, such as its vacation and sick leave policies or its retirement plan, or (b) reduce the wage rate of any employee covered hereby, or change the conditions of employment of any such employee to his disadvantage. The foregoing limitation shall not limit City in making a change in a condition of employment if such change has been negotiated and agreed to by City and Union.

## **SECTION 3: NO DISCRIMINATION**

The City and Union agree that they will not discriminate against employees based on race, creed, color, ethnicity, ancestry, religion, political affiliation, gender, sexual orientation, age, national origin, marital or domestic partner status, gender identity or gender expression, parental status, pregnancy, disability or medical condition, Acquired Immune Deficiency (AIDS/HIV) or AIDS related condition, or any other status protected by applicable state or federal law, or protected Union activity. Furthermore, the City and Union agree to comply with all applicable federal, state and local laws pertaining to nondiscrimination and equal employment opportunity.

The Union agrees that it will support programs for making members of minority groups and women aware of employment opportunities within the City's jurisdiction, and that it will work with the City to increase recruitment efforts of such minorities and women into

City service. The Union recognizes and supports the City of Berkeley's commitment to equal employment opportunity.

## **SECTION 4:      UNION SECURITY**

### **4.1      Union Security**

4.1.1 An employee included in Unit C, may become and remain a member in good standing of the Union; or pay to the Union an initial fee equal to the regular initiation fee and, thereafter, a monthly fair share service fee equal to the regular monthly union dues and general assessments.

4.1.2 **Contracting Out:** The City will not hire any contractors, firm or individual which will result in the layoff of any employees covered under this Agreement.

4.1.3 **Subcontracting:** If the City intends to subcontract any electrical or communication work, the City will notify the Union in advance of any bid solicitation whose value is estimated to be \$25,000 or more. The City will notify the Union in advance by mailing a copy of the City Council Bid Notifications Report to the Union Stewards. Information will be sent to the Union at the same time it is forwarded to the City Council and will include nature of project, the name of department requesting the work, and the budget code. Upon written request from the Union, the City will provide a copy of the actual bid specifications.

For electrical or communication work estimated to cost less than \$25,000, the City will provide the Union Stewards a copy of the Council Awarded Contracts Report on a monthly basis.

4.2.3 **Indemnification:** The Union shall indemnify and save harmless the City, its officers and employees, from and against any and all loss, damages, costs, expenses, claims, attorneys' fees, demands, actions, suits, judgments and other proceedings arising out of any claims made by Unit C employees for deductions made in reliance on information provided by the Union.

4.2.4 **Union Reports:** The City shall furnish the Union, on a monthly basis, the name, date of hire, salary, classification and work location of all newly-hired employees subject to this Agreement.

### **4.3      New Employee Orientation**

This provision shall apply to new hire employees appointed to classifications covered by this Agreement.

**4.3.1 Onboarding:** The parties acknowledge that the City provides a new employee orientation (onboarding) to each new employee hired by the City. As such, the Union will be provided with not less than 10 calendar days' advanced notice of the time, date, and location of the onboarding of any new employee represented by the Union. The Union will be given 30-minutes at the start of the new employee onboarding in a room designated by the City for no more than one (1) representative to present Union membership information. The City representative will excuse him or herself during the Union portion of the onboarding. The Union agrees in its portion of the onboarding not to engage in speech that could cause disruption or material interference with City activities.

The City will provide 30 minutes of Union Release Time to the Union representative presenting the Union membership information during the scheduled onboarding. The Union shall provide the Union representative's immediate supervisor with the Union representative's name at least five (5) days prior to the onboarding. The Union representative shall be released for this purpose unless unusual operation needs interfere with such release in which case the Union representative's immediate supervisor will provide a written explanation of why release could not be approved. If the Union representative is not released due to department operational needs, the Union representative may arrange an alternative date and time to meet with the newly hired employee within the first two (2) weeks of employment, subject to the 30-minutes onboarding and Union Release Time requirements as stipulated above.

**4.3.2 Information Provided:** On a quarterly basis (March, June, September, and December), the City will provide the Union with a digital file via email to the email address designated by the Union. The Union acknowledges and understands that the City is working diligently and in good faith to update its contact information database functionality to incorporate all the fields of contact information listed below. As a result, the City may not initially be able to provide the employee's work telephone number, personal phone number, and personal email address until the completion and implementation of the City's new Enterprise Resource Management Application (ERMA) system.

The City will provide the Union with the following information on file, to the extent the City has it on file:

- Name.
- Job Title.
- Department.
- Work Location.

- Home telephone number.
- Home address.
- Personal cellular telephone number (new hires hired on or after October 1, 2017).
- Work telephone number (*upon implementing ERMA*).
- Personal email addresses on file with the City (*upon implementing ERMA*).

Notwithstanding the foregoing, limited to the express purpose of the requirements of Government Code section 3558 only, an employee may opt out via written request to the City (copy to the Union) to direct the City to withhold disclosure of the employee's: Home address; home telephone number; personal cellular telephone number; personal email address; and date of birth.

## **SECTION 5: DEDUCTION OF UNION DUES**

### **5.1 Deductions**

The City shall deduct, once monthly, the amount of Union regular and periodic dues, service fees, or insurance premiums as may be specified by the Union under the authority of written notification by the Union certifying that the employee has provided written affirmed consent for deduction of union membership dues or fair share service fees.

Such deductions, together with a written statement of the names and amounts deducted, shall be forwarded promptly to the Union office.

### **5.2 Revocation**

Upon receipt of a written notice from the Union to the Human Resources Department, the City shall cease deducting membership dues or fair share service fees from the designated employee.

### **5.3 Authorization Forms**

The City may request verification of employee's authorization form giving affirmed consent to deduct dues or fees only if a legitimate dispute arises about the existence or term of the authorization.

### **5.4 Notice**

Union agrees to give reasonable notice of dues change.

## **SECTION 6: UNION REPRESENTATIVES**

### **6.1 Number of Representatives**

The City shall allow two (2) representatives of the Union reasonable time off from work, without loss of compensation or other benefits, to represent its members in disputes which involve the interpretation or application of those rules, regulations, and resolutions which have been or may hereafter be adopted by the City Council to govern personnel practices and working conditions, including such rules, regulations, and resolutions as may be adopted by the City Council to effect memoranda of understanding which may result from the meeting and conferring process, and to represent its members in meeting and conferring in good faith for amendments to this Memorandum Agreement in the future, subject to the conditions set forth in Sections 6.2 (Maximum Representatives) and 6.3 (Notification).

All release time shall be recorded on time sheets and time cards with appropriate codes.

### **6.2 Maximum Representatives**

Two (2) Union representatives shall be the maximum number who will be allowed concurrent time off.

### **6.3 Notification**

The representatives shall notify the first non-bargaining supervisor a minimum of one workday in advance before leaving their work assignments except for emergency situations which require the immediate attention of said representatives (an emergency is defined as a safety problem or hazardous condition), but in no case shall an employee leave his or her job without notification of the first non-bargaining supervisor. Such request shall include the location, and area of activity, the approximate time needed and the general nature of the union business involved. Such request shall not be unreasonably denied. Failure to comply with notification and time recording rules may be grounds for denial of leave.

### **6.4 Union/Management Meetings**

Quarterly meetings shall be held between the union and management. Release time shall be granted for up to two union representatives. Agendas for such meetings shall be set one week in advance between the Business Representative of the Union and the City Manager or their designees. Meetings within department may be held at the discretion of the department head.

### **6.5 Union Training**

Conditional upon prior approval of the course content and upon receipt of certification of completion, if the employee is an elected official or steward of the Union, the City shall reimburse the employee for up to one-half of his or her regular work time spent in such training at the employee's permanent rate of pay, not to exceed twenty (20) hours of paid leave in a calendar year.

**SECTION 7: SEPARABILITY OF PROVISIONS**

In the event that any provisions of this Memorandum Agreement are declared by a court of competent jurisdiction to be illegal or unenforceable, that provision of this Memorandum Agreement shall be null and void, but such nullification shall not affect any other provisions of this Memorandum Agreement, all of which other provisions shall remain in full force and effect.

**SECTION 8: EXISTING MEMORANDUM AGREEMENT**

Pursuant to Section A of the Memorandum of Understanding dated August 9, 1972 by and between the City and the Union, this Memorandum Agreement shall supersede all existing Memoranda of Understanding between the City and the Union. There is no guarantee that working conditions and practices will be continued if they are not included in this Memorandum Agreement or have not been or are not hereafter specifically authorized by ordinance or by resolution or the City Council.

**SECTION 9: FINALITY OF RECOMMENDATIONS**

The recommendations set forth herein are final. No changes or modifications shall be offered, urged, or otherwise presented by the Union, or the City Manager prior to October 20, 2018; provided, however, that nothing herein shall prevent the parties to this Memorandum Agreement from meeting and conferring and making modifications herein by mutual consent.

**SECTION 10: DURATION**

This Memorandum Agreement shall be effective upon ratification by the City Council except for those provisions which have been assigned other effective dates as herein set forth, and shall remain in full force and effect up to and including June 30, 2025. This Memorandum Agreement and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at midnight June 30, 2025.



## ARTICLE 2 - SALARIES, HOURS OF WORK AND COMPENSATION ISSUES

### SECTION 11: SALARIES

#### **11.1 Salary Rates**

Salary rates for the period of July 1, 2022 through June 30, 2025, for all classes of positions in Representation Unit C shall be set according to the classifications and salary ranges assigned to those classifications listed in Exhibit "A" and attached hereto and made part hereof.

**11.1.1 Salary Increase upon Council Approval:** The salary ranges for the classification covered by this Agreement as listed in Exhibit A will receive a salary increase as follows: Effective the first full pay period following council approval, the salary ranges for the classification covered by this Agreement as listed in Exhibit A will receive a salary increase of three percent (3.0%).

Effective July 9, 2023, the salary ranges for the classification covered by this Agreement as listed in Exhibit A will receive a salary increase of three percent (3.0%).

Effective July 7, 2024, the salary ranges for the classification covered by this Agreement as listed in Exhibit A will receive a salary increase of one percent (1.0%).

**11.1.2 One-Time Payment:** A onetime non-pensionable lump sum payment of \$1,000.00 for each career employee in this unit shall be paid the first full pay period after council approval. Eligible employees must be current City employees in paid status for the full pay period this lump sum is conferred and shall not apply to unit members who are in unpaid status. Such payment shall be subject to required payroll tax deductions. This lump sum provision does not create or bind the City to any precedent or past practice.

If during any fiscal year during the term of this agreement, the City reaches agreement with the largest bargaining unit or extends the unrepresented employees an across the board Cost of Living Adjustment (COLA) increase, wage increase, lump sum payment, or other benefit increase the City agrees to apply these same increases to the salary ranges and/or benefits for those classifications covered by this MA as listed in Exhibit B.

### **11.2 Step Placement**

Employees occupying a position in the competitive service shall be paid a salary or wage within the range established for that position's class as set forth in Exhibit "B". The minimum rate for the class shall apply to employees upon original appointment to the position except as may be determined by the City Manager within the negotiated wage ranges. Employees who have been laid-off and are rehired to the same classification shall be placed on the same wage step they were in when laid-off. Transfers shall not affect an employee's salary rate. Employees appointed to any of the positions set forth in Exhibit "B" and employed or working on a part-time basis shall be paid in proportion to the time worked and described in their appointment.

### **11.3 Maximum Salary Rate**

No salary advancement shall be made so as to exceed the maximum rate established for the class to which the advanced employee's position is allocated. Advancement shall be in accordance with the compensation plan of the City and shall depend upon increased service value of an employee to the City as exemplified by recommendations of the department head, performance record, special training, length of service, and other pertinent evidence.

### **11.4 Effect of Leaves**

An employee's pay increase shall not be affected by any leave of absence without pay if the employee is off the payroll for less than one hundred sixty (160) consecutive hours. If the employee is off the payroll for more than one hundred sixty (160) consecutive hours, the total amount of time off shall be made up before the employee shall be entitled to such pay increase.

### **11.6 Y-Rate**

Any employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary, or occupying a position in a class, the salary rate or range for which is reduced, shall continue to receive his present salary. Such salary shall be designated as a Y rate. When an employee on a Y rate vacates his or her position, subsequent appointments to that position shall be made in accordance with Section 11.1 (Salary Rates).

### **11.7 Pay Frequency**

Payment of salaries shall be made bi-weekly. Each pay period shall begin at 12:01 a.m. Sunday up to and including 12:00 midnight Saturday two weeks following. Each payment shall be made not later than the Friday following the end of each payroll period and shall include payment for all earnings during the previous payroll period.

11.7.1 **Full-Time:** Bi-weekly payment to full-time employees shall be made on the basis of the hourly rate, as set forth in Exhibit B, multiplied by the number of hours worked during the pay period.

11.7.1.1 **40 Hour Week:** For employees on a forty (40) hour week schedule, the annual salary shall be the product of the hourly salary times 2,080 hours.

11.7.1.2 **37.5 Hour Week:** For employees on a thirty-seven and one-half (37.5) hour work week schedule, the annual salary shall be the product of the hourly salary times 1,950 hours.

11.7.1.3 **Monthly Salary:** The monthly salary shall be the quotient of the annual salary divided by 12.

11.7.2 **Part-Time:** Bi-weekly payment to part-time employees in a class for which a monthly salary rate has been herein established shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period. The hourly rate for such part-time employees shall be computed in the same manner as for full-time employees.

11.7.3 **Intermittent:** Bi-weekly payment to intermittent employees in a class for which a monthly salary rate has been established shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period. The hourly rate for such intermittent employees shall be computed in the same manner as for full-time employees.

11.7.4 **Bi-Weekly Daily Rate:** Bi-weekly payment to employees in a class for which a daily rate rather than a monthly rate has been herein established shall be made on the basis of the actual days worked during the biweekly pay period multiplied by the daily rate.

11.7.5 **Bi-Weekly Hourly Rate:** Bi-weekly payment to employees in a class for which an hourly rate rather than a monthly rate has been herein established shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period.

## 11.8 Higher Classification

The Department Head will work all employees within their career classifications. The departments may specifically assign an employee to work in a higher class. Such assignments shall be in writing and shall indicate the reasons, length and duties of the assignment. Assignments over one (1) week shall be approved in advance by the City Manager or his or her designee. Blanket authorizations for department will be issued on a yearly basis for applicable positions. To be eligible

for higher-class pay, the employee must work a minimum of four (4) hours, meet the minimum qualifications, and perform the duties of the higher class. Employees meeting these requirements will be compensated at the lowest step of the higher classification which provides at least a five percent (5%) differential. The journey level employees will rotate the assignment on a monthly basis and perform the necessary duties. In the event the offer of higher class is declined by the journey level employee assigned for that month, volunteers will be asked according to the rotation list. If there are no volunteers, the journey-level employee assigned for that month will be required to perform the necessary duties.

### **11.9 Temporary Appointment**

When a temporary vacancy is to be filled in a classification for which there is an existing eligibility list, the City shall attempt to make the temporary appointment from that list.

### **11.10 Step Increases for Provisional Employees**

An employee who holds a provisional appointment in a classification shall receive step increases in such classification as if the employee held a permanent appointment thereto.

### **11.11 End of Year Pay Period**

For all salary and benefit purposes, the parties agree that the last day of the last pay period ending in the calendar year shall be the end of the year. For excess leave only, the end of the year shall be treated as the last day of the pay period nearest March 31st.

### **11.12 Overtime Underpayment**

The City will include any payment of overtime, which was inadvertently omitted or miscalculated, in the following pay period's check.

### **11.13 Equity Studies**

A list of comparison jurisdictions is established for the purpose of salary equity studies: Alameda County, Contra Costa County, Oakland, Palo Alto, Richmond, San Francisco, San Jose, San Leandro, Santa Clara, and Vallejo. Other jurisdictions may be added as required by agreement between the parties. Job classifications which fall below the median for these jurisdictions may be reviewed. It is the policy of the City that within available funding limits, equity adjustments which are in the interests of the service will be considered.

### **11.14 Step Increase**

Step increases shall be effective for payroll purposes only on the first day of the pay period nearest to the actual anniversary date. Personnel records will maintain actual dates and will be used to resolve any discrepancies or questions that may arise.

### **11.15 Effective Date of Salary Adjustment**

Any general future salary adjustments will be set to become effective on the first day of the pay period.

### **11.16 Reclassification**

In the event the City reclassifies a position based on an employee initiated review from a lower level classification to a higher level classification, an incumbent occupying such position shall be reclassified without competitive examination provided he or she has performed the duties of the new classification for one (1) year and has not received an unsatisfactory evaluation during that period. All other employees shall be required to pass an examination for the higher classification and shall serve the normal probationary period. If a position is reclassified, the employee shall receive salary compensation retroactive to the date the position description questionnaire is submitted and verified as having been received by the department head. Position description questionnaires will be provided by the City. Employees may request one (1) job audit one (1) year after an initial job audit has been completed on their position. Thereafter one (1) job audit will be permitted every two (2) years.

Reclassification or reallocation of positions shall not be used as a mechanism, the sole purpose of which is to improperly circumvent the provisions of this Agreement, including provisions relating to layoff, transfer, demotion or promotion.

### **11.17 Premium Pay Differential - Working at Heights of 60 Feet or More**

Assignments for working at heights of 60 feet or more will be on a voluntary basis. However, if all qualified employees decline the assignment, the City will be free to contract the work out to an outside service provider.

Employees who work at heights of 60 feet or more, including but not limited to performing maintenance of lights at San Pablo Park, shall receive Height Premium Pay Differential of one and one-half times (1½) times the normal hourly rate for all time performing such work. The Height Premium Pay Differential shall be reported to CalPERS as Height Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

### **11.18 Commercial Driver's License Premium**

Employees required to possess and maintain a valid California Class A or Class B Commercial Driver's License as a condition of employment shall receive three percent (3%) differential to hourly rate. This differential shall be reported to CalPERS as Special Class Driver's License Pay. However, any hours worked on overtime are excluded from CalPERS reported "Compensation earnable" in California Government Code Section 20636.

### **11.19 Longevity Pay**

Effective the first full pay period after Council approval on its Regular Agenda, employees completing nineteen (19) years of service shall receive a three percent (3.0%) differential beginning with the anniversary date of beginning of the twentieth (20<sup>th</sup>) year of service and shall apply to all hours in a paid status. This Longevity Pay shall be reported to CalPERS as Longevity Pay Incentive Pay.

### **11.20 State Certification Premium**

An employee who possesses and maintains a "General Electrician" state certification from the Department of Industrial Relations shall receive an additional three percent (3%) to their base rate of pay. The City shall retain the right to add the general electrician state certification as a minimum qualification for the Electrician and Lead Electrician classifications. If the certification is made a minimum qualification, active employees, employed in classifications within this unit at the time of implementation, shall be exempt from this qualification for the remainder of their employment.

## **SECTION 12: HOURS AND DAYS OF WORK**

### **12.1 Hours and Days of Work**

Hours and days of work shall be governed by rules established by the City Manager. (At the present time, the hours and days of work are as shown in Exhibit E (Hours and Days of Work))

### **12.2 Sunday and Graveyard Shifts**

Regularly scheduled Sunday shifts and "graveyard" shifts, as defined in Section 14 (Shift Differential), shall be for eight (8) consecutive hours, including up to one-half ( $\frac{1}{2}$ ) hour for lunch.

### **12.3 Shift Assignment**

Within a given classification, shift assignments shall first be offered to employees by classification seniority on a voluntary basis. In the event shift assignments are not filled voluntarily, such assignments will be made on the basis of inverse classification seniority.

### 12.3.1 Types of Shifts:

- a. **Swing shift** means authorized work schedules regularly assigned in which at least four (4) hours worked are between the hours of 5:00 p.m. and 12:00 midnight of each workday.
- b. **Night shift** means authorized work schedules regularly assigned in which at least four (4) hours worked are between the hours of 12:00 midnight and 7:00 a.m. of each workday.
- c. **Day shift** means any authorized work schedules between the hours of 7:00 a.m. and 5:00 p.m.

### 12.4 Classes during Shift Assignments

If an employee assigned to the swing or graveyard shift wishes to attend classes during the day, the employee shall notify the first non-bargaining supervisor of his or her intention to enroll in classes during the day and the completion date of the classes. The City will review the work program and advise the employee within 14 days whether or not the day classes will interfere with the shift assignments. If no conflict exists, the City will not change the shift assignment until after the semester ends provided that the employee continues to be actively enrolled in the class.

### 12.5 Rest Period

Each employee shall be entitled to a rest period of fifteen (15) minutes during each one-half ( $\frac{1}{2}$ ) shift worked.

### 12.6 Daylight Saving Time

12.6.1 **Spring:** In the Spring when transitioning to Daylight Saving Time (DST), employees working during the one (1) hour transition from Standard Time to DST will be paid only for actual hours worked. Employees working on a shift which includes the one (1) hour transition may be granted an option by the Department Head or his or her designee, to work an additional hour or use compensatory time, floating holiday, or vacation to make up the lost work hour.

12.6.2 **Fall:** In the Fall when transitioning from DST, employees working during the one (1) hour transition will be paid for all hours worked including overtime at one and one-half ( $1\frac{1}{2}$ ) times the straight-time rate of pay for hours worked in excess of the regular workweek as set forth in Section 13 (Overtime) of this Agreement.

## **SECTION 13: OVERTIME**

Employees required to work in excess of their basic work week or in excess of 8 hours in one day (excepting voluntary regular schedules of 9 or 10 hours) during any one week shall be compensated for such overtime services as follows:

### **13.1 Rate**

The overtime rate shall be one and one-half (1½) times the regular hourly salary for the first four (4) hours of such excess and at two (2) times the regular hourly salary for the balance of such excess.

### **13.2 Department Head Discretion**

Whether an employee shall be compensated for overtime by compensatory time off or by payment shall be at the sole discretion of the employee's department head.

**13.2.1 Compensatory Time Off:** Compensatory time off may be earned in lieu of overtime pay at the rate of one and one-half (1½) hours for each overtime hour worked up to a maximum of sixty (60) hours of such compensatory time. Accumulation of compensatory time off in excess of sixty (60) hours may be allowed at the discretion of the department head. Utilization of compensatory time shall be at the discretion of the employee's department head. The times during the calendar year at which an employee shall take his or her compensatory time off shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of the service. As used herein, sixty (60) hours is equivalent to ninety (90) hours of time off work.

### **13.3 Payoff of Overtime**

In the event that an employee resigns or is terminated, he or she shall be entitled to compensation for his or her accumulated overtime.

### **13.4 FLSA Workweek**

For the purpose of computing overtime, the work week shall be defined as beginning at 12:01 a.m. Sunday and ending at 12:00 midnight Saturday. Any applied benefited leave shall be included in the calculation of overtime.

### **13.5 Emergency Overtime**

Employees who are called from their living quarters for emergency work or duty on days other than normal workdays, or on normal workdays outside of their regular work hours, shall be paid emergency overtime compensation for actual time worked;



provided, however, that in any case of emergency overtime as herein provided the minimum time for which such overtime compensation shall be paid shall be four (4) hours; and provided further that if such overtime work is performed prior to the beginning of the regularly scheduled work period and such overtime continues into such regularly scheduled work period without a break in service, compensation shall be paid only for the actual time worked.

#### **13.5.1 Overtime Earned Rest Period**

If an employee has worked four (4) hours or more of overtime between the hours of 10:30 p.m. and 6:30 a.m. preceding the beginning of his/her regular work hours on a workday, he/she shall be entitled, except in an emergency, to a rest period to include two (2) hours of his/her workday without loss of his/her regular straight-time pay. If the overtime work period extends for six (6) hours or more of overtime between the hours of 10:30 p.m. and 6:30 a.m. preceding the beginning of his/her regular work hours on a workday, he/she shall be entitled, except in an emergency, to a rest period to include five (5) hours of his/her workday without loss of his/her regular straight-time pay. In the event that an employee, due to operational need, is required to work during an earned rest period during regular work hours, the employee will be paid for the earned rest period in addition to wages earned for hours worked.

#### **13.6 Meals**

The City will provide meals to employees during emergency assignments and when the employees work continuously for two (2) or more hours immediately before or after their regular shift of eight (8) or nine (9) hours for a total of ten (10) or eleven (11) hours. The employee shall earn an additional meal for every four (4) hours of continuous work after the first meal is earned or taken.

The City will reimburse the employees for the costs of the meal up to twenty five dollars (\$25) if no meals are provided.

#### **13.7 Standby Pay**

An employee assigned to standby shall receive ten (10) hours of overtime compensation in addition to any overtime worked while on standby.

**13.7.1 Standby Week:** For the purpose of this Section 13.7.1 (Standby Week), a week shall mean the seven (7) consecutive calendar days following assignment to standby service. In the case of emergencies, the Senior Supervisor or Superintendent may assign another employee to complete the standby week for the originally assigned employee. In that case, the ten (10) hours standby compensation will be pro-rated between the employees.

13.7.2 **Missed Assignment while on Standby:** If an employee misses an overtime assignment while on standby duty, he or she will not receive the standby pay for that day. If he or she misses a second call during the same standby period, he or she will forfeit all the standby pay for that period.

13.7.3 **Consequences:** If an employee develops a pattern of failing to perform the service when called, they will be subject to disciplinary action and the Union reserves the right to appeal any action.

13.7.4 **Standby Vehicle:** The City will provide the employee on standby duty with a vehicle. Said employee shall be responsible for taking all reasonable steps to insure the safety of the tools and equipment on that vehicle.

### 13.8 Emergency Overtime Assignments

All emergency overtime assignments including calling an employee other than the employee on scheduled standby status will be paid the minimum overtime compensation as defined in Section 13.5 (Emergency Overtime). In the event that the employee on scheduled standby is not called, and another employee has been called to perform the emergency overtime assignment, both the employee who performed the assignment and the employee on scheduled standby status will receive the minimum overtime compensation.

13.8.1 **Scheduled Overtime during Standby:** The employee who is on scheduled standby status may perform scheduled overtime tasks on a voluntary basis. The standby premium shall not be pro-rated. If an emergency call occurs during the time that the employee is performing scheduled overtime tasks that call shall be paid at the time and one-half rate and not at the call back rate set forth in Section 13.5 (Emergency Overtime). If other City electrical employees are concurrently performing scheduled overtime tasks, the Senior Electrical Supervisor may, at his or her discretion, assign the work to electrical employees present within the City performing the scheduled overtime tasks at the regular overtime rate of pay. The employee who is on scheduled standby status who chooses to perform scheduled overtime shall defer to other employees who choose schedule overtime assignments pursuant to Section 13.9 (Overtime Offers).

### 13.9 Overtime Offers

The Department will offer Scheduled Overtime on a voluntary basis to employees with the least amount of overtime worked in accordance with the following provisions:

13.9.1 **Posting of Overtime:** The Department will post a Scheduled Overtime Sign-up List on the Division's bulletin board once every two weeks.

Employees who wish to be considered for scheduled overtime during that time period must sign the list.

13.9.2 **Scheduled Overtime Definition:** Scheduled Overtime shall be defined as an overtime assignment scheduled at least 24 hours in advance.

13.9.3 **Overtime Report:** The Department will prepare and post a Report of Overtime Worked for employees on a calendar year basis beginning with a zero balance on January 1. The report will be updated after each pay period.

13.9.4 **Overtime Assignments:** As scheduled overtime assignments occur, the Department will offer the assignment to individuals on the list for the applicable time period beginning with the person on the sign-up list with the least amount of overtime worked during the calendar year. Notification of scheduled overtime assignments shall be made during work hours at the work place, and employees must be present at the work place to receive the overtime work assignment.

13.9.5 **Overtime Assignment Tie Breaker:** If employees have equal amounts of overtime, the scheduled overtime assignment shall be offered to employees in the same order as their names appear on the sign-up list.

## **SECTION 14:   SHIFT DIFFERENTIAL**

### **14.1 Swing Shift**

Employees who regularly work a full shift of seven and a half (7½) hours or more on swing shift as defined in Section 12.3.1 (Types of Shifts), which includes more than four (4) hours between the hours of 5:00 p.m. and 12:00 midnight, shall be paid their regular salary plus seven and a half percent (7½%) of their regular monthly salary per month.

### **14.2 Night Shift**

Employees who regularly work a full shift of seven and a half (7½) hours or more on night shift as defined in Section 12.3.1 (Types of Shifts), which includes more than four (4) hours between the hours of 12:00 midnight and 7:00 a.m. (night shift), shall be paid their regular salary plus ten percent (10%) of their regular monthly salary per month; provided, however, that in the case of any such employee who is regularly assigned to such night-shift work for less than an entire work week, the additional payment shall be made only for the portion of the work week worked on the night-shift assignment.

## **SECTION 15: NATURAL DISASTER/DECLARED EMERGENCY**

If an emergency is formally declared by the City, county, state or national authority:

### **15.1 Call Outside Normal Working Hours**

If an employee is called outside of normal working hours, the employee gets time and one-half (1½) the normal rate of pay for the first whole shift regardless of the number of hours worked. If the employee is not called from home the regular rules apply (i.e., overtime for hours worked above eight in a day).

### **15.2 Shift Differential**

Thereafter, the first eight hours at regular rate and 7½% for hours worked between 5:00 p.m. and midnight; 10% for hours worked from midnight to 7:00 a.m. For hours greater than eight in a shift, the employee gets time and one-half (1½) the normal rate of pay but no shift differential on those hours above eight.

### **15.3 Reduction in Hours**

There will be no reduction in the number of hours in the regular work week schedule.

### **15.4 Change in Assignments**

If an employee is at work during the day when an emergency is declared and is assigned to work a night shift and is sent home, the employee will be compensated as follows:

15.4.1 If an employee has been at work for up to but not more than two (2) hours the employee will be paid for two (2) hours at the straight time rate.

15.4.2 If an employee has been at work for more than two (2) hours but not more than four (4) hours the employee will be paid for four (4) hours at the straight time rate.

15.4.3 If an employee has been at work for more than four (4) hours the employee will be paid for eight (8) hours at the straight time rate.

### **15.5 Hours Worked in Excess of 12-hours**

An employee working more than twelve (12) hours in one continuous shift will be compensated at two (2) times the normal hourly rate.

## **ARTICLE 3 - LEAVES**

**SECTION 16:    VACATION**

**16.2 Vacation Approval**

The times during the calendar year at which an employee shall take his or her vacation shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of the service. Wherever practical, employees working in the same classifications within a division shall be given preference of vacation time by seniority. If the requirements of the service are such that a department head cannot permit an employee within his or her department to take an annual vacation leave or any part of such leave within a particular calendar year, the City Manager may permit such employee to take the deferred vacation during the following year.

**16.3 Use of Incremental Vacation**

Employees may, with advance supervisory approval, use vacation leave in increments of one hour.

**16.4 Accrual Rate as of December 8, 1987**

Effective December 8, 1987, the vacation accrual rate shall be modified as follows:

<b>Vacation Accrual Schedule</b>	<b>Authorized Annual Workweeks of Vacation</b>	<b>Vacation Leave Credits in Work Days per Month of Service</b>	<b>Vacation Leave Credits in Hours Earned per Month of Service</b>
Through the first three (3) calendar years of service (except as provided in Section 16.4 (Accrual Rates as of December 8, 1987) and 16.5	2 work weeks	0.833	6.667
Fourth (4 <sup>th</sup> ) through eleventh (11 <sup>th</sup> ) calendar years of service (except as provided in Section 16.5 below)	3 work weeks	1.25	10.00
Twelfth (12 <sup>th</sup> ) through seventeenth (17 <sup>th</sup> ) calendar years (except as provided in Section 16.5	4 work weeks	1.667	13.33
Eighteenth (18 <sup>th</sup> ) through twenty-fourth (24 <sup>th</sup> ) calendar years (except as provided in Section 16.5	5 work weeks	2.083	16.667
Twenty-fifth (25 <sup>th</sup> ) and subsequent calendar years (except as provided in Section 16.5	6 work weeks	2.5	20.00

The authorized annual vacation leave for prior years is set forth in Exhibit D attached hereto and made a part hereof.

### **16.5 Accrual, Use, and Limitation for Employees with Less than 6-Months of Service**

Each employee, during that portion of the calendar year in which he or she is originally appointed and during the next succeeding year, shall be entitled to vacation leave credits at the rate of 0.833 work days for each calendar month of service. Each such employee shall be entitled to take during these two (2) calendar years only such annual vacation leave as he or she earns.

### **16.6 Vacation Eligibility for Part-time, Intermittent, Leave Without Pay or Reemployed Employees**

For an employee who has worked on a part-time or intermittent basis or who has been on leave of absence without pay for a total of six (6) months or more or who has been terminated and subsequently reemployed, the actual years of service with the City shall be used for the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5) and six (6) weeks' rate.

**16.6.1 Prorated Vacation for Intermittent or Part-Time Employees:** Employees working on an intermittent or part-time basis who have worked half-time or more in the preceding calendar year without termination of employment shall be entitled to a prorated vacation leave based upon the actual years of service with the City and upon the actual amount of time worked in the preceding calendar year.

**16.6.2 Effect of Military Leave on Vacation Eligibility:** For the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5) or six (6) weeks' rate, time spent on extended military leave shall be counted as time spent in the service of the City.

### **16.7 Maximum Vacation Accumulation**

Employees may accrue vacation earned up to a maximum cumulative total of 320 hours. Once an employee accrues 320 hours vacation, the employee shall not accrue any additional vacation leave hours until his or her vacation leave balance is below the maximum 320 hours. Under no circumstances will an employee be allowed to accrue more than 320 hours vacation leave. As provided below, the City will advise employees and their supervisors when the employee has attained an accumulation of 280 hours. Supervisors should be flexible in granting vacation requests from employees who reach 280 hours. Provided further that with regard to employees who have reached 280 hours, no vacation request by such employee shall be unreasonably denied. No employee shall be denied vacation leave such that it causes him or her to reach the 320 hour limit.

**Notification:** To assist employees to remain below the 320 hours vacation leave maximum accumulation, the parties agree that no later than October 1 of each

year of this Agreement, the City will provide the Union and Department Heads with a report identifying accumulated vacation hours of all employees. The City also agrees to notify all employees who have accrued 280 hours of vacation leave, as of this date, that they must take vacation leave to reduce their vacation leave to avoid reaching the 320 hour maximum accrual.

**16.8 Prorated Vacation due to Extended Absence, Reemployment or Reinstatement**

An employee who has returned from extended military leave or any other extended leave of absence without pay or who has been reemployed or reinstated shall be entitled, during the calendar year in which he or she returns to the City service, to a prorated vacation based upon the total years of service with the City and upon the total number of months of actual service with the City during the said calendar year. For succeeding calendar years, his or her vacation leave shall be as provided elsewhere in this Section 16 (Vacation).

An employee who is granted a leave of absence without pay and who is off the payroll for less than one hundred sixty (160) consecutive hours shall be entitled to a full vacation. If such an employee is off the payroll for one hundred sixty (160) consecutive hours, his or her vacation shall be as provided in the preceding paragraph of this Section 16.8 (Prorated Vacation due to Extended Absence, Reemployment or Reinstatement) or Section 16.9 (Payment of Vacation upon Termination or Extended Leave after Six Months of Service).

**16.9 Payment of Vacation upon Termination or Extended Leave after Six Months of Service**

If an employee, is terminated, or is granted an extended military leave or other extended leave of absence without pay, such employee, or his or her estate, shall be paid for vacation credits in excess of the actual amount of vacation leave taken or such employee, or his or her estate, shall reimburse the City for the actual amount of vacation leave taken in excess of vacation leave credits, as the case may be.

**16.10 Calculation and Payment or Reimbursement of Vacation Credits upon Termination or Extended Leave**

Upon termination, extended military leave, or other extended leave of absence without pay, vacation leave credits shall be totaled, and the actual amount of vacation leave taken, including any that may have been taken during the year in which the termination, extended military leave, or other extended leave of absence without pay occurs, shall be deducted from the total credits. If the credits exceed the actual amount of vacation leave taken, such employee, or his or her estate, shall be paid for the excess of credits on the basis hereinafter set forth. If the actual amount of vacation leave taken exceeds the credits, such employee, or his or her estate, shall reimburse the City on the same basis.

The basis for such payment by the City or for such reimbursement to the City shall be as follows:

The employee's hourly pay rate at date of termination, extended military leave, or other extended leave of absence without pay, multiplied by the excess of credits over vacation leave actually taken or excess of vacation leave actually taken over credits, as the case may be.

#### **16.11 Lump Sum Payment of Vacation**

Upon termination, extended military leave or other extended leave of absence without pay, payment for excess of vacation leave credits shall be made in one lump sum at time of termination, extended military leave, or other extended leave of absence without pay, or as soon thereafter as possible; provided, however, that an employee may elect to use excess vacation leave credits prior to termination, extended military leave, or other extended leave of absence without pay, to the extent permitted by this Section 16 (Vacation), and receive a lump sum payment for the balance of leave credits, if any. An employee, or his or her estate, shall not be paid for vacation leave credits in excess of eight (8) calendar weeks. Notwithstanding the foregoing, accumulated but unearned vacation credit at the time of retirement shall be paid off in a lump sum.

#### **16.12 Calculation of Vacation Based on Actual Paid Hours**

All vacation benefits shall be calculated upon actual paid hours of work. This provision shall go into effect immediately upon implementation of necessary data processing and programming changes.

#### **16.13 Vacation Accounting Procedures**

The City may revise vacation accumulation provisions in order to standardize accounting procedures without effect on the amount of employees' vacation, subject to review and approval by the union.

#### **16.14 Voluntary Time Off**

The City will implement a voluntary time off (VTO) program, which may include a year-end holiday closure. It is understood by the parties that employee participation is completely voluntary and that employees who wish to work during such periods will be permitted to do so.

## **SECTION 17: HOLIDAYS**

### **17.1 Holidays**

Recognized holidays for employees in Representation Unit C shall be:



- 17.1.1 New Year's Day
- 17.1.2 Martin Luther King's Birthday (3rd Monday of January)
- 17.1.3 Lincoln's Birthday
- 17.1.4 Washington's Birthday (observed on the third Monday in February)
- 17.1.5 Malcolm X's Birthday (observed on Monday or Friday nearest May 19th)
- 17.1.6 Memorial Day (observed on the last Monday in May)
- 17.1.7 Juneteenth National Independence Day – observed on the Monday or Friday nearest June 19
- 17.1.8 Independence Day
- 17.1.9 Labor Day (observed on the first Monday in September)
- 17.1.10 Indigenous Peoples' Day (observed on the second Monday in October)
- 17.1.11 Veteran's Day
- 17.1.12 Thanksgiving Day
- 17.1.13 Day after Thanksgiving Day
- 17.1.14 Christmas Day
- 17.1.15 Effective January 9, 2000, each employee shall be granted three (3) floating holidays each calendar year.

## 17.2 Floating Holidays

Any employee shall be granted three (3) floating holidays each calendar year. The days selected shall be by mutual agreement between the employee and the department head (or his or her designee). In the event mutual agreement cannot be reached on the selection of floating holidays, the employee shall have the three (3) days added to his or her accrued vacation time. Employees may take Floating Holidays in one (1) hour increments.

### 17.2.1 Additional Floating Holidays

For employees who were required to remain in the workplace from March 17, 2020 - June 1, 2020, the City will provide 8 hours of floating holidays for every 40 hours of regularly scheduled hours worked in the workplace up to a maximum of 32 hours of floating holiday. The City will credit these floating holiday hours in the first full pay period after adoption of the MOU.

City will use a specific pay code for the additional floating holiday, hours will be available June 30, 2021. These additional 32 hours of floating holiday shall have no cash value and may not roll over to vacation if not used by June 30, 2021.

## 17.3 Floating Holiday Accrual upon Employment

In the first calendar year of employment, an employee hired before May 1 shall be entitled to three (3) floating holidays; and an employee hired on or after May 1, but before September 1, shall be entitled to two (2) floating holidays; and an employee hired

on or after September 1, shall be entitled to one (1) floating holiday in that first calendar year.

#### **17.4 Limitations**

No monetary award shall be authorized for unused accumulated Floating Holidays for employees who terminate employment prior to the completion of six (6) months of continuous City service.

#### **17.5 Holidays for Employees whose Work Week is Other than Monday through Friday**

Employees whose work week is Monday through Friday shall be allowed all holidays with pay which fall within such work week. Those employees whose work week is other than Monday through Friday shall be entitled to the same number of holidays, with pay, during each calendar year as are allowed to employees whose work week is Monday through Friday. The procedure for allowing holidays for employees whose workweek is other than Monday through Friday shall be established by the City Manager. The provisions of this Section 17.5 (Holidays for Employees whose Work Week is Other than Monday through Friday) are not applicable to intermittent employees.

#### **17.6 Work during a Holiday**

An employee required to work on any day which is a holiday for employees whose work week is Monday through Friday shall be paid for the number of hours worked during such day at the rate of one and one-half (1½) times the straight-time rate, based upon his or her regular monthly salary, or shall be granted compensatory time off in an amount equal to one and one-half (1½) times the number of hours worked on such holiday. Any employee who works on Christmas day or Thanksgiving Day shall be paid double time for that day. The hours worked on such holiday and paid at the rate herein provided shall not be credited in computing the hours worked in the week for overtime purposes.

The holiday pay provided for shall be in addition to an employee's regular salary. In the event that the time worked on such a holiday is also overtime, as provided in Section 13 (Overtime) of this Memorandum Agreement, payment will be made for the hours worked either as overtime under said Section 13 (Overtime), or as holiday pay under this Section 17 (Holidays), but will not be made under both Sections.

#### **17.7 Holidays for Part-Time Employees**

Regularly scheduled part-time employees 1) who are assigned to a regular schedule of twenty (20) or more hours per week; 2) who have worked for the City as regular or part-time employees for one (1) or more years; and 3) who during such period of time have worked a minimum of 1,000 hours shall be entitled to the holiday pay for the number of hours which such employee would have worked had the holiday not

occurred, provided such holiday occurs on a day which such employee is regularly scheduled to work.

## **SECTION 18: SICK LEAVE**

### **18.1 Eligibility**

Any employee shall be entitled to take sick leave with full pay in case of sickness, disability, or serious illness within the immediate family of the employee in accordance with the provisions of Sections 18.2 (Sick Leave Accrual) to 18.12 (Cessation of Accrual).

### **18.2 Sick Leave Accrual**

Each employee shall be credited with one (1) working day of sick leave with full pay for each month of service.

For the purposes of this Section 18 (Sick Leave), a month of service shall mean thirty (30) consecutive calendar days in the case of employees working on a fulltime or part-time basis, and shall mean 163 hours of work in the case of employees working on an intermittent basis.

### **18.3 Pro-rated Sick Leave for Part-Time Employees**

An employee working on a part-time basis shall be entitled to use earned sick leave only on a pro rata basis; for example if an employee works half-time, he or she shall be paid for time off on sick leave on a half-time basis.

### **18.4 Sick Leave for Intermittent Employees**

An employee who works on an intermittent basis shall be entitled to use earned sick leave only for those days on which he or she would have worked if he or she had not been sick; provided, however, that an employee working on an intermittent basis who works only when called shall be entitled to use earned sick leave only when he or she becomes sick after reporting to work in response to such call.

### **18.5 Maximum Accumulation**

Such sick leave as provided in Section 18.2 (Sick Leave Accrual), when not used, shall be cumulative; but the accumulated unused period of sick leave shall not exceed two hundred (200) working days, regardless of the length of service. When the maximum of two hundred (200) working days has been reached, and thereafter part of said maximum has been used, the used part of said maximum may subsequently be replenished at the applicable rate provided in Section 18.2 (Sick Leave Accrual).

### **18.6 Payment upon Retirement/Termination**

All accumulated sick leave shall be canceled when an employee terminates or is terminated, except as provided below for employees hired on or before June 30, 2013.

**18.6.1 Employees Hired on or Before June 30, 2013:** For employees hired on or before June 30, 2013 who retire or voluntarily terminate with a vested pension, and with between twenty (20) years and twenty-eight (28) years of benefited service shall be entitled to receive payment in an amount equal to thirty eight percent (38%) of their accrued sick leave days up to a maximum of the two hundred (200) day maximum accumulation. Provided further that any employee retiring on permanent disability arising out of and incurred in the course and scope of his employment with the City shall be entitled to receive payment at retirement for thirty eight percent (38%) of accumulated unused sick leave days but not, in any event, more than thirty eight percent (38%) of the two hundred (200) day maximum accumulation.

**18.6.2 Payment After 28 Years of Service for Employees Hired on or Before June 30, 2013:** Employees who were hired on or before June 30, 2013, who terminate with at least twenty-eight (28) years of benefited City of Berkeley service or employees retiring on permanent disability arising out of and incurred in the course and scope of their employment with the City with at least twenty-eight (28) years of benefited service shall be entitled to receive payment in an amount equal to fifty percent (50%) of their accrued sick leave days up to a maximum of two hundred (200) unused sick leave days.

**18.6.3 Sick Leave Payout to 401(a) Plan for Employees Hired on or Before June 30, 2013:** The City and the Union have met and conferred on an Internal Revenue Code Section 401(a) plan and trust agreement to address the liquidation of sick leave at time of retirement. This plan and trust agreement was originally negotiated with the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 and has been submitted to the Internal Revenue Service for a Determination Letter and a Private Letter Ruling which are pending. If the City receives a positive response from the Internal Revenue Service, the plan and trust agreement will be extended to the employees in the bargaining unit. This will provide the employees with an irrevocable option to defer accrued but unused sick leave at time of retirement into a 401(a) plan or be paid out the balance of the accrued but unused sick leave less withholding of applicable federal and state taxes.

**18.7 Annual Payment for Hours in Excess of Maximum for Employees Working Half-Time or More for Employees Hired on or Before June 30, 2013**

Employees who regularly work one-half ( $\frac{1}{2}$ ) time or more and who have attained the one hundred fifty (150) day maximum sick leave accumulation shall be entitled to receive payment for one-third ( $\frac{1}{3}$ ) of the first twelve (12) days of sick leave for which they become eligible but do not use and would otherwise forfeit because of the one hundred fifty (150) day maximum limitation. Determination of eligibility for such payment shall be made on an annual calendar year basis, and payment for such sick leave for any calendar year shall be made not later than January 22 of the following year. Such payment shall be made at the employee's salary rate in effect on the preceding December 31 and shall be made only in units of whole days and not for any fraction of a day.

**18.8 Restoration of Sick Leave if Reemployed within Two Years**

Accumulated sick leave, which has been canceled by reason of an employee's termination, shall be credited back to such employee if the employee returns to City employment within two (2) years of such termination.

**18.9 Sick Leave Use/Family Illness**

Sick leave shall not be considered as a privilege which an employee may use at his or her discretion but shall be allowed only in case of his or her sickness or disability or in the case of serious illness within the immediate family of the employee. Not more than fifteen (15) working days in any calendar year may be taken as sick leave because of the illness of a member of the employee's immediate family, except for serious medical conditions covered under the provisions of Administrative Regulation 2.4 (Family Care Leave). The immediate family of an employee, for the purpose of this Section, shall be defined as: spouse, domestic partner, son, daughter, parent or dependent.

**18.10 Prohibition for Use with Outside Employment**

No sick leave shall be allowed for time off for an injury incurred while working for another employer, provided that such injury is covered by the Workers' Compensation laws of the State of California, or other provision for payment for time off because of such injury is made by such other employer. In the event such injury is not covered by the Workers' Compensation laws of the State of California and no other provision for payment for time off because of injury is made by such other employer, sick leave in accordance with the provisions of this Section shall be allowed only if such outside employment has been approved by the City.

**18.11 Notification Requirement**

In order to receive compensation while absent on sick leave, the employee shall notify his department head prior to or within four (4) hours after the time set for beginning his or her daily duties, or as may be approved by the head of his or her department. The Union and the City recognize it is advantageous to both parties that calls should normally be made prior to the beginning of the work shift. Leave for non-

emergency doctors' appointments shall be requested in advance. In specific instances the City may by written notice require an employee (s) to call in prior to the beginning of their shift in order to be eligible for sick leave.

### **18.12 Cessation of Accrual**

An employee who is granted a leave of absence without pay and who is off the payroll for less than one hundred-sixty consecutive hours shall receive his or her earned sick leave credit. If the employee is off the payroll for one hundred-sixty (160) consecutive hours or more, he or she shall not earn sick leave credit for each two successive pay periods that he or she is off the payroll.

### **18.13 Workers' Compensation**

All probationary and permanent employees of the City and provisional employees who have worked a total of four (4) months or more for the City, who have suffered any disability arising out of and in the course of their employment as defined by the Worker's Compensation Insurance and Safety Act of the State of California, and who are receiving or shall receive compensation from the insurance carrier for such disability, and during the first seven (7) days after such disability when compensation is not paid by the insurance carrier shall be entitled to remain absent from duty with pay until such time as they are able to return to duty or some other final disposition is made of their case; provided, however, that provisional employees who have worked a total of four (4) months or more for the City shall be entitled to remain absent from duty with pay for the period they would have been permitted to remain provisional employees under their employment at the time of injury.

All employees, other than probationary and permanent employees and provisional employees who have worked a total of four (4) months or more, shall be entitled to such compensation as may be allowed them by the Workers' Compensation Insurance and Safety Act of the State of California.

**18.13.1 Workers' Compensation Payments:** Payments from the insurance carrier for disability arising out of and in the course of employment shall be paid to the employee. The amount of such payment or payments shall be deducted from the monies, which the employee received from the City. Payments from the insurance carrier, plus the monies paid to the employee by the City, shall be equivalent to the employee's regular full pay.

**18.13.2 Workers' Compensation Leave and Salary Continuation:** Payments under the Workers' Compensation law for temporary disability, or a recurrence thereof, arising out of and in the course of employment shall be paid for a period not to exceed 365 days at a maximum payment of the employee's pre-disability net pay but shall not exclude any salary

adjustments to which the employee is entitled. Thereafter, the employee will continue to receive only the temporary disability payments provided under state law, and the City will cease to pay the difference. However, salary continuation payments above the statutorily required temporary disability payments shall not be reported by the City to CalPERS as compensation. No time worked shall be part of the 365 calendar days of salary supplement paid by the City. This change shall not affect employees who are currently off the job with a work-related injury which occurred prior to July 1, 1979.

**18.13.3 Calculation:** The City shall continue to calculate salary continuation at pre-disability gross pay. The City may calculate salary continuation payments at pre-disability net pay at such time when they develop the capacity to administer it equitably. Any change in calculation shall not reduce employees' combination of disability payments and salary continuation payments below employees' pre-disability net pay.

The change in calculation shall not affect employees who are off the job with a work-related injury prior to the new calculation method being implemented.

**18.13.4 Workers' Compensation Related Absence of Less than Four (4) Hours:** An employee who is absent from work for a medical appointment or physical therapy for less than four (4) hours will have ½ day charged against his or her 365 day maximum period for receipt of salary continuation pre-disability net pay.

**18.13.5 Workers' Compensation Related Absence of Four (4) Hours or More:** An employee who is absent from work for a medical appointment or physical therapy for 4 hours or more will have 1 day charged against his or her 365 day maximum period for receipt of salary continuation pre-disability net pay.

**18.13.6 Calculation Based on Actual Paid Hours:** All sick leave benefits shall be calculated upon actual paid hours.

#### **18.14 Light Duty**

Assignments for temporarily disabled employees.

An employee who is absent by reason of industrial disability may be returned to work and given temporary light duties within his or her ability to perform. The duration of any such period of temporary work should be determined by the City. Employees should be compensated at the rate of pay of their regular classification while

engaged in such temporary duties, and such work assignments are to incorporate the following provisions:

18.14.1 **Modified Duty Accommodation:** The City shall accommodate, when feasible, employees covered by this memorandum under the provisions of workers' compensation, and such work assignments are to incorporate the following provision:

18.14.1.1 The assignment shall be consistent with medical limitations as determined by the physician of record.

18.14.1.2 The Assignment shall be within the City of Berkeley and may include hours and days of work other than the employee's regular assignment.

18.14.2 **Modified Duty Accommodation for Non-Industrial Disabilities:** The City may accommodate an employee disabled with a non-industrial disability by providing a modified work assignment in that employee's classification. To be eligible for such a modified assignment, the employee must provide the Human Resources Department with a medical statement from his or her treating physician that clearly states the medical limitations and abilities of the employee. If modification of that position does not serve the best interests of the City, other classifications may be considered, subject to the approval of the Human Resources Director. Compensation will be provided at the level of the classification in which the temporarily disabled employee works during the disability. The employee must meet standards of satisfactory performance for the duration of the work assignment.

18.14.3 **Modified Duty for Pregnancy-Related Disability:** In the case of a medically certified, pregnancy-related disability, in which the normal duties clearly threaten the health and safety of the employee or the unborn child, the Human Resources Department will endeavor to place the employee in a position which best serves the interest of the City with no loss of pay, but in no event will such placement exceed 5 months in duration.

18.14.4 **Light Duty Assignments:** Availability of light duty job assignments shall be discussed upon request at the monthly Labor-Management Meetings.

### 18.15 Control Program for Sick Leave Use

The City may establish a reasonable program for the control of abuse of sick leave and absenteeism, subject to Union review and comment.



### **18.16 Bonus Time for Unused Sick Leave**

For every six (6) months of perfect sick leave attendance the employee will receive eight (8) hours of bonus time. A leave of absence from work pursuant to workers' compensation is counted as an absence from work in the same manner as sick leave for the purpose of this bonus. This bonus time will be prorated for part-time employees. Such bonus time can be used for any leave purpose covered by this Memorandum Agreement. Such bonus time shall be counted as vacation leave credits for purposes of determining eligibility for carry-over and cash payment.

### **18.17 State Disability Insurance**

Except as provided in 18.17.1.3 below, any employee who is absent due to personal illness for more than 7 calendar days (or for any period of time if hospitalized) may apply for State Disability Insurance Benefits.

**18.17.1 State Disability Integration:** After such employee has been absent from work due to personal illness for six (6) consecutive work days, if the employee applies and is eligible for State Disability Insurance, the City shall integrate the employee's pay with the employee's State Disability benefits in the following way:

18.17.1.1 The City will determine the weekly SDI benefit amount based on the amount of wages earned with the City of Berkeley in the SDI base period.

18.17.1.2 The weekly SDI benefit will be subtracted from the employee's normal weekly wages and the amount necessary to bring the total of State Disability plus wages to 100% will be deducted from any accumulated sick leave, vacation leave and compensatory time available to the employee. The integration with vacation leave and compensatory time is optional but will be automatically implemented after sick leave has expired unless written notification is received from the employee, as discussed below.

18.17.1.3 The employee must notify the payroll clerk, in writing, to stop integration of State Disability Insurance payments with vacation leave or compensatory time. Upon receipt of notification, the payroll clerk will cease integration of any future leave for that incident of illness.

18.17.1.4 The employee must show the State of California form (Disability Insurance Notice of Computation) to his or her payroll clerk to verify dates covered by SDI and the amount to

be paid. The employee must inform their payroll clerk of all SDI payments. Any employee entitled to State Disability Insurance shall receive in addition thereto such portion of his or her accumulated leave as will meet, but not exceed, the standard earnings of the employee for his or her normal workweek, up to a maximum of five (5) days.

## **SECTION 19: FUNERAL LEAVE**

In the case of death within the immediate family of an employee (who is not excluded from such benefit pursuant to Chapter 4.04.120 of the Berkeley Municipal Code (Personnel Ordinance) which is attached hereto as Exhibit C (City of Berkeley Municipal Code Chapter 4.04.120) and made a part hereof, such employee shall be entitled to remain absent from duty with pay in order to attend the funeral or memorial service for a period not exceeding three (3) working days or, in the case of a funeral or memorial service conducted out of the State of California, for a period not exceeding five (5) working days. For the purpose of this Section, the immediate family of an employee shall be defined as: husband, wife, domestic partner, mother, father, sister, brother, child, grandmother, grandfather, grandchildren, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-inlaw, and daughter-in-law, step-parent, step-sibling, step-child, aunts and uncles, nieces and nephews.

Leave of absence with pay because of death in an employee's immediate family is allowed for the purpose of attending the funeral or memorial services, and such leave shall not be charged against vacation or sick leave that an employee may be entitled to but shall be in addition thereto. Employees may request, and the City will make reasonable efforts to accommodate requests, for employees to supplement bereavement leave by using accrued vacation, compensatory time, or floating holiday. All accrued leave (and/or sick leave, if applicable) shall be utilized prior to taking a leave of absence without pay.

**Funeral Leave for Persons Other than Immediate Family:** In special cases, with the approval of the department head, the City Manager may grant a death leave to allow an employee to attend funeral or memorial services because of a death of a person not included within the definition of the immediate family.

## **SECTION 20: MILITARY AND MARITIME LEAVE**

Military and Maritime Leave shall be governed by the provisions of the Federal Uniformed Services Employment and Reemployment Rights Act (USERRA) and any regulations promulgated to implement the Act and the California Military and Veteran's Code.

If an employee voluntarily extends his or her military leave in excess of two (2) weeks, the amount of pay received by the employee for his or her military duty shall be deducted from his or her regular pay for such period.

## **SECTION 21: PARENTAL LEAVE**

### **21.1 Eligibility:**

Employees with one (1) or more years of employment with the City (or equivalent in the case of part-time employees) shall be entitled to parental leave as follows:

A continuous parental leave of up to one year will be granted to any employee with one year (full-time) or more years of employment with the City (or equivalent in the case of part-time employees) upon the birth of a child or the legal adoption of a child who is five years or younger, provided that:

**21.1.1 Commencement of Parental Leave:** The one year parental leave must commence no later than 13 months from the date of birth or adoption and must expire no later than 25 months from the date of birth or adoption, and.

**21.1.2 Notice Requirement:** Employees exercising their rights under this provision must provide the City at least 45 calendar days notice prior to the anticipated commencement date of the parental leave, unless a shorter notice is approved for good cause.

**21.1.3 Use of Sick Leave:** The employee, at his or her option, may request that all or any portion of sick leave (up to a maximum of two hundred (200) days) or vacation leave that he or she has accumulated be paid in the same manner as it would if he or she had been absent due to illness or on vacation during the leave. In the event both parents are employed by the City, nothing in the Personnel Rules and Regulations shall prohibit both employees from taking simultaneous parental leave.

**21.1.4 Verification Requirement:** The foregoing leave shall be granted upon medical certification of pregnancy or the presentation of legal evidence of adoption.

**21.1.5 Life and Health Insurance Coverage Upon Exhaustion of Leave:**

During approved parental leave, after all earned leaves are exhausted, (except sick leave) the City agrees to maintain life and health insurance coverage for duration of the approved leave subject to any regular participation requirement of the employee. Thereafter the City agrees to continue coverage for the employee at the employee's expense.

## **SECTION 22: LEAVE OF ABSENCE WITHOUT PAY**

### **22.1 Department Head Authority**

Upon the request of the employee, a department head may grant a leave of absence to an employee within his or her department without pay for a period not to exceed fifteen (15) working days. No leave without pay shall be granted for more than fifteen (15) working days except upon the written request of an employee and approval of the City Manager. Failure on the part of an employee on leave to report promptly at its expiration shall be cause for discharge.

### **22.2 Union Sponsored Training**

A leave of absence without pay shall be granted at the request of an employee and the Union for the purpose of the employee's attending a training course sponsored by the Union. The maximum duration of such leave shall not exceed two (2) consecutive payroll periods in a calendar year.

### **22.3 Exhaustion of Accrued Time**

Leaves of absence without pay shall be granted only after the employee has utilized all accrued vacation and any other time owed to the employee, except sick leave.

## **SECTION 23: JURY DUTY LEAVE**

An employee who is called or required to serve as a trial juror shall be entitled to be absent from work with pay during the period of jury service or while required to be present in court as a result of a call to jury duty. An employee is required to be present at work when not serving as a trial juror or as a member of a jury selection panel. An employee will notify his or her supervisor of any unusual constraints (e.g., time to call in, time to report for jury service) made by the court that affect the employee's ability to simultaneously fulfill his or her jury duty service and employment obligations; and the supervisor will attempt to accommodate the employee based on the operational needs of the department. Absence from work to perform jury duty service shall apply to employees who work swing and graveyard shifts for those days on jury duty. An employee who serves jury duty on his or her day off shall be granted an equivalent number of days off during his or her normal workweek. Employees are required to submit a written proof of jury duty service issued

by the court in order to receive payment for Jury Duty Leave. The employee will keep any payment received for jury service including mileage reimbursement.

### **23.1 Court Time**

The City will guarantee a minimum of three (3) hours pay for every court appearance required by an employee in the conduct of official City of Berkeley job duties on the employee's scheduled day off and three (3) hours minimum if on a workday but outside scheduled working hours. In addition, employees assigned to court phone standby in the conduct of official City of Berkeley job duties will be compensated by earning compensatory time as follows: Duty day, outside of scheduled working hours, one hour minimum compensatory time and hour for hour thereafter. Day off, two-hour minimum compensatory time and hour for hour thereafter.

## **ARTICLE 4 - HEALTH AND WELFARE BENEFITS**

### **SECTION 24: HOSPITAL-MEDICAL, DENTAL, AND VISION COVERAGE**

#### **24.1 Medical Coverage**

The City shall pay the cost of health insurance coverage for employees who are not excluded from such benefit pursuant to Chapter 4.04.120 of the Berkeley Municipal Code (Personnel Ordinance) which is attached hereto as Exhibit C (City of Berkeley Municipal Code Chapter 4.04.120) and made a part hereof, and who have such coverage under any group health insurance plan authorized by the City Council. The present level of benefits under the Kaiser Plan shall be maintained at City expense for the duration of this Memorandum Agreement. Medical benefits are extended to full-time employees, spouse of the employee or domestic partner, and IRS dependent up to age 26.

The City is committed to providing at least one fully paid employer provided health insurance option for employees and eligible dependents. The Union acknowledges the City's policies as stated above.

#### **24.2 Maximum Medical Premium Payments**

24.2.1 Effective January 1, 2003, the City will transfer employees who chose to maintain Kaiser medical plan coverage from the Kaiser V-5 Plan into the Kaiser S-1 Plan. Effective January 1, 2003, the City will transfer employees who chose to maintain Health Net HMO coverage from the Health Net W-2 Plan to the Health net C9A Plan.

24.2.2 For employees hired on or after January 1, 2003, the maximum amount the City shall be required to pay for medical insurance premiums shall be the applicable Kaiser rate (i.e., single party, two-party, or family) regardless of the City sponsored health plan selected by the employee.

24.2.3 For employees in a probationary or career benefited status as of January 1, 2003, the City will continue to pay 100% of the health care premium costs (employee and any dependents) for the health plan the employee is enrolled in as of this date as long as the employee remains employed in the bargaining unit. After January 1, 2003, if the employee transfers health coverage to a different health plan, the employee will assume responsibility for paying the difference, if any, between the Kaiser monthly premium rate (i.e., single-party, two-party, or family) and the plan chosen by the employee from that date forward.

24.2.4 Effective January 1, 2009, the amount the City contributes each calendar year toward the payment of health insurance premiums, in accordance with Section 24.2 (Maximum Medical Premium Payment), will increase by the lesser of twenty percent (20%) (single, two-party, family) or the amount of the Kaiser HMO premium amount (single, twoparty, family) in effect on that date.

24.2.5 Effective January 1, 2014, for those employees who are enrolled on October 31, 2012 in the Health Net Point of Service (POS) health plan (Payroll Benefit Code Description HJ, HK, and HL) the City shall pay medical insurance premiums at the applicable rate for the Health Net HMO plan (i.e., single; 2-party, or family). If the employee chooses to remain enrolled in the Health Net POS Plan on or after January 1, 2014, the employee will assume responsibility for paying the difference between the Health Net POS and the Health Net HMO monthly premium rate (single; 2-party, or family). Provided further that if at any time after January 1, 2014 the employee transfers health coverage from Health Net POS to the Kaiser health plan, the maximum amount the City shall be required to pay for medical insurance premiums shall be the applicable Kaiser rate (i.e., single 2-party; or family) even if the employee subsequently enrolls in a different City sponsored health plan.

24.2.6 **Meet & Confer:** The Parties agree to meet and confer with the City, commencing no sooner than January 1, 2017. The negotiations shall be on developing comparable and less expensive health plan options as a means of reducing or ensuring that the City shall not be required to pay any penalties associated with the Excise Tax. This meet and confer process will be subject to normal rules of collective bargaining, including applicable impasse, strike or lock-out procedures.

Any changes resulting from a review of employee health insurance or other health related benefits will be subject to meet and confer between the Union and the City, except as otherwise provided in Section 24.5 (Change in Insurance Carrier).

### **24.3 Dental Coverage**

The City shall provide a dental care program for employees who are not excluded from such benefit by Chapter 4.04.120 of the Berkeley Municipal Code (Personnel Ordinance) which is attached hereto as Exhibit C (City of Berkeley Municipal Code Chapter 4.04.120) and made a part hereof. The present level of benefits under the Dental Program shall be maintained at City expense for the duration of this Memorandum. Dental benefits are extended to full-time employees, spouse of the employee or domestic partner, and IRS dependents up to age 26.

24.3.1 Effective January 1, 2000, the dental plan is improved from 90% coverage to 100% coverage.

24.3.2 Effective January 1, 2003, the annual maximum dental benefit will be increased to \$4000 per year, the lifetime maximum orthodontia benefit will be increased to \$4000, and the annual cleanings will be increased from two (2) to four (4). Effective January 1, 2016, the number of annual cleanings will be decreased from four (4) to three (3).

**24.4 Vision Coverage**

Effective January 1, 2003, the City shall provide a Vision Care Program for employees covered by this Agreement. The annual maximums for this benefit are as follows:

Benefit	Benefit Frequency
Exam	12-Months
Lenses	12-Months
Frames	24-Months
Contact Lenses**	12-Months
**Note: Benefits for Contact Lenses are in lieu of benefits for lenses and frames.	

The maximum amount the City shall be required to pay for the Vision Care Program shall be the applicable Vision Services Plan (\$25 Plan B) rate (i.e., employee only, employee plus spouse, employee plus one (1) child; employee plus family).

If during the term of this Agreement the premiums for such Vision Care Program are increased, the amount the City contributes shall increase no more than five percent (5%) above the previous calendar year’s contribution amount towards the payment of the monthly premium.

Recognizing that the “vision exam” portion of the Vision Care Program duplicates existing benefit provided under Medical Coverage Section 24.1 (Medical Coverage) and 24.2 (Maximum Medical Premium Payments), the Union and the City agree to revisit the Vision Care Program during the term of this Agreement with the expectation that it may be possible to identify a plan that provides a “Hardware Only” benefit (Lenses every 12-months; Frames every 24-months). Such “Hardware Only” plan shall be at a lower City and employee cost than the present Vision Services Plan (\$25 Plan B).

**24.5 Change in Insurance Carrier**

Before the City acts to change an insurance carrier during the term of this Agreement, the City shall give the Union thirty (30) days notice of its intention to change carriers and shall, upon written request, meet with the Union to discuss the reasons for



such change. The final determination of insurance carriers shall be at the sole discretion of the City.

#### **24.6 Domestic Partner Coverage**

If an employee chooses to complete and submit an Affidavit of Domestic partnership and sign up for medical and/or dental benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

#### **24.7 Part-Time Employees and Prorated Benefits**

All career and grant-funded, benefited employees working less than full time shall receive prorated rather than full fringe benefits and shall pay, by payroll deduction, a pro rata portion of the health and dental insurance premiums.

#### **24.8 Commencement of Medical, Dental, and Vision Benefits**

Medical, dental, and vision benefits shall begin the first day of the calendar month following the date of hire, and end the last day of the month an employee is in pay status.

#### **24.9 Health Insurance In-Lieu Payments**

Effective January 1, 2019, for employees who show proof of alternate medical coverage, the City will compensate the employee \$576.00 per month, prorated for less than full-time employees, as provided in Section 24.7 (Part-Time Employees and Prorated Benefits). In order to include in-lieu payments in the regular rate of pay for the correct overtime calculation, the City must provide in-lieu payments on the bi-weekly payroll cycle. This benefit shall be frozen at this amount for the term of this agreement.

#### **24.10 Group Life Insurance**

Effective January 1, 2016, the City shall provide group life insurance, by a carrier of the City's choice, in the amount of \$100,000 which shall include a standard accidental death and dismemberment provision of a like amount. In addition, the employee may purchase additional life insurance up to a maximum of \$300,000 at a rate offered by the City's insurance carrier and subject to any medical exam as required by the insurance carrier. Life insurance shall become effective the first day of the calendar month following the date of hire, and shall continue until the last day of the calendar month in a pay status.

#### **24.11 Pre-Tax Status**

When employees are required to contribute to the cost for medical, dental, or vision insurance, those contributions will continue to qualify as pre-tax expenses under the provisions of IRS Section 125.

## **SECTION 25: RETIREE MEDICAL COVERAGE**

The City and Union have agreed that the City will make available retiree health insurance coverage under certain terms and conditions described below. The retiree medical benefit described below is the plan tentatively agreed to during multi-union bargaining during the summer of 1998. The terms and conditions of this benefit shall be set forth in a separate document which shall contain a full plan description and shall control the administration of the retiree medical plan.

The City will begin to provide the retiree medical coverage set forth in this Section on July 1, 1998. An employee's entitlement to any and all benefits provided by the City under this retiree medical cover plan are subject to the funding limitations set forth in sub-Section 25.8 (City Funding of Retiree Health Benefit).

### **25.1 Amendment of Retiree Health Premium Assistance Plan III, effective January 23, 1998, Restated and Amended effective March 22, 2011**

Employees who retire on or after June 21, 2015, shall be permitted, at their discretion, to enroll in non-City sponsored health plans. After Council approval of the successor Memorandum of Understanding, the City shall amend the Retiree Health Premium Assistance Plan III as soon as practicable to allow enrollment in non-City sponsored health plans. In the event a retiree elects to enroll in a non-City sponsored health plan, the City shall make medical insurance premium payments directly to the health insurance provider in an amount equal to what the City would contribute to the City sponsored health plan. Retiree shall be solely responsible for all aspects of the requirements to enroll in a non-City sponsored health plan and maintain eligibility for such a plan; the City's sole obligation is to pay the medical insurance premium contribution required under this Section, as directed by the retiree to a non-City sponsored health plan. The City shall not be responsible for any excess cost differentials associated with the direct payment of premiums to non-City sponsored plans. The City will only make payments through its third party administrator to provide medical insurance premium payments for an individual plan and will not make payments for a group plan. The retiree and/or surviving spouse or domestic partner that enroll in non-City sponsored health plans shall be solely responsible for paying the administrative set up fee, the monthly administrative fee, and/or any other fees established by the third party administrator, and said fees will be deducted directly from the retiree's monthly contribution. No cash payments will be paid directly to the retiree and/or the retiree's spouse/domestic partner. There shall be no cash in lieu payments made under this benefit.

The City and the Union agree that the City will also amend the Retiree Premium Assistance Plan III to allow eligible retirees who retired prior to June 21, 2015 to enroll in a non-City sponsored health plan.

**25.2 Eligibility**

An employee is eligible for the retiree health insurance coverage set forth in subSection 26.2 (Provisional Appointments to a Higher Classification) below if he or she meets all the following criteria:

- 25.2.1 retires on or after July 1, 1998,
- 25.2.2 is vested with CalPERS,
- 25.2.3 has at least eight (8) years of CalPERS qualifying service with the City,
- 25.2.4 is at least age 55.

**25.3 Pre Age 65 Retiree Health Insurance**

**25.3.1 Beginning July 1, 1998:** The City shall make available health insurance coverage to the employee and his or her spouse or domestic partner. The City will pay on the employee’s behalf no more than \$166.26 per month for an employee electing single party health coverage and no more than \$332.52 per month for an employee electing two party coverage. The actual monthly amount of money the City will contribute on the employee’s behalf will be based on the employee’s total years of CalPERS service as provided in the following chart:

<b>Years of CalPERS Qualifying Service</b>	<b>Percent of City Contribution</b>
8	30%
9	40%
10	50%
11	58%
12	66%
11	58%
12	66%
13	74%
14	82%
15	90%
16	92%
17	94%
18	96%
19	98%
20	100%

The employee will pay the difference between the City’s monthly contribution and the actual monthly insurance premium charged by the health plan he or she has elected for retiree medical coverage. If during the term of this Agreement, the premiums for such health insurance are increased, the

amount the City contributes shall increase no more than 4.5% above the previous year's contribution. No increases in the amount the City contributes shall occur before July 1, 1999. Thereafter, any increase in the amount contributed by the City will occur on July 1 each year thereafter.

- 25.3.2 **Effective June 28, 2009:** For employees who retire on or after June 28, 2009, the City will pay on the employee's behalf no more than \$358.19 per month for an employee electing single party health coverage and no more than \$716.38 per month for an employee electing two party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.
- 25.3.3 **Effective June 27, 2010:** For employees who retire on or after June 27, 2010, the City will pay on the employee's behalf no more than \$424.31 per month for an employee electing single party health coverage and no more than \$848.61 per month for an employee electing two party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.
- 25.3.4 **Effective June 26, 2011:** For employees who retire on or after June 26, 2011, the City will pay on the employee's behalf no more than \$468.40 per month for an employee electing single party health coverage and no more than \$936.80 per month for an employee electing two party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.
- 25.3.5 **Effective June 24, 2012:** For employees who retire on or after June 24, 2012, the City will pay on the employee's behalf no more than \$589.48 per month for an employee electing single party health coverage and no more than \$1,178.96 per month for an employee electing two-party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.
- 25.3.6 **Effective June 23, 2013:** For employees who retire on or after June 23, 2013, the City will pay on the employee's behalf no more than \$666.00 per month for an employee electing single party health coverage and no more than \$1,332.01 per month for an employee electing two-party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.

**25.3.7 Effective June 22, 2014:** For employees who retire on or after June 22, 2014, the City will pay on the employee's behalf no more than \$720.97 per month for an employee electing single party health coverage and no more than \$1441.94 per month for an employee electing two-party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the above-referenced chart.

**25.3.7.1 Retiree Health Premium Assistance Plan Benefit as of June 30, 2017:** As of June 30, 2017, the maximum amount the City will pay the health care service provider, which were increased in accordance with Section 25.3 (Pre Age 65 Retiree Health Insurance), total \$1,517.40 for two party coverage for the retiree and spouse or domestic partner or \$758.70 for single party coverage.

#### **25.4 Retiree Benefits for Employees Age 65 and Over**

Once an employee or retiree reaches age 65, he or she is eligible for Medicare. As a result his or her eligibility for the retiree medical benefits set forth in subsection 25.3 (Pre Age 65 Retiree Health Insurance) ceases. On reaching age 65, the City will make available health insurance coverage in addition to Medicare. When an employee or retiree reaches age 65, the City will contribute no more than \$50.00 per month on the employee's behalf for single party health insurance coverage and no more than \$100.00 per month for two party health coverage. If during the term of this Agreement, the premiums for such health insurance are increased, the amount the City contributes shall increase no more than 4.5% above the previous year's contribution.

The City will take such actions under the provisions of Section 218(g) of the Social Security Act to permit employees who are not currently paying employee portion of the Medicare Tax with a one-time opportunity to choose to be covered by the Medicare Tax. If the employee chooses to be covered by the Medicare Tax the choice cannot be revoked at a later date.

The City shall include in its next actuarial request, the impact on the City if the City were to amend its Retiree Health Premium Assistance Plan III to provide the following benefit levels:

Single Party Health:   \$200.00  
Two Party Health:     \$400.00

**25.4.1 Retiree Health Premium Assistance Plan Benefit as of June 30, 2017:** As of June 30, 2017, the maximum amount the City will pay the health care service provider, which were increased in accordance with Section 25.4

(Retiree Benefits for Employees Age 65 and Over), total \$62.59 for two party coverage for the retiree and spouse or domestic partner or \$31.30 for single party coverage.

### **25.5 Termination by City of Retiree Medical Benefit**

Failure of the retiree or surviving spouse to pay their monthly share of the health insurance premium will result in termination of the retiree medical benefit and relieve the City of any further obligation to provide any further benefits under this Section.

### **25.6 Retiree Medical Benefit for Employees Retiring Between the Ages of 50 and 55**

An employee who is at least 50 years of age, but less than 55, and has at least eight years of CalPERS qualifying employment with the City will retain eligibility for the retiree medical benefits provided in sub-Section 25.3 (Pre Age 65 Retiree Health Insurance) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his or her termination from City employment until the employee's 55th birthday. If for any reason the employee has a lapse in group health care coverage the employee forfeits his or her eligibility for the retiree health plan benefits upon reaching age 55 and the City has no further obligation to provide any benefits under this Section to the employee and/or his spouse or domestic partner.

### **25.7 Employees Retiring with a CalPERS Approved Disability Retirement**

If an employee retires from the City before age 55 with a CalPERS approved disability retirement, the employee will retain eligibility for the retiree medical benefits provided in sub-Section 25.3 (Pre Age 65 Retiree Health Insurance) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his or her termination from City employment until the employee's 55th birthday. If for any reason the employee has a lapse in health care coverage the employee forfeits his or her eligibility for the retiree health plan benefits upon reaching age 55 and the City has no further obligation to provide any benefits under this Section to the employee and/or his spouse or domestic partner.

### **25.8 City Funding of Retiree Health Benefit**

City contributions to the retiree medical benefit will begin on July 1, 1998. Funding of this benefit will be set aside in a trust to be established by the City.

The retiree medical benefit will be funded by a charge of 0.25% of payroll in each year of this Agreement, so that contributions are at 1% of the payroll in the fourth year of the Agreement. The City will fund the benefit at approximately 1% of the payroll for every year thereafter with the intent of achieving a funding level of 70% after 30 years. The funding will be ongoing to maintain a 70% funding level thereafter.

Effective June 28, 2009, a total charge of twenty six thousand, six hundred and forty (\$26,640) of employee payroll will be charged in the final three years of the Agreement so that contributions are at 1.764% in the final year of the Agreement. The purpose of the 0.764% increase in payroll contributions is to fund Pre Age 65 Retiree Health Insurance.

### **25.9 Actuarial Study**

The Union understands and acknowledges that the City conducted an actuarial study to determine the percentage of payroll it needed to set aside each year and the rate of return of 7% it must achieve to fund the retiree health benefit provided in this Section. The City will conduct an actuarial study by an outside actuary of the retiree medical plan prior to June 30, 2002. After that time, the City will conduct an actuarial study by the outside actuary of the retiree medical plan every two to three years to review the funding status of the program. The outside actuary will be selected by mutual agreement of the parties. The Union and City agree that if the Actuary concludes that the City's funding of this benefit by contribution of 1% of the payroll for all miscellaneous employees is insufficient to fully fund the retiree medical benefits, the City shall not be required to increase its funding for this benefit to more than 1% of the payroll for miscellaneous employees. In the event that there are insufficient funds in the trust to cover all retirees' monthly health premiums, the City and the Union agree to meet and confer regarding the City's distribution of its 1% contribution.

## **ARTICLE 5 – TERMS AND CONDITIONS OF EMPLOYMENT**

### **SECTION 26: PROBATIONARY PERIOD**

#### **26.1 Duration and Effect of Military Leave on Probationary Period**

Original and promotional appointments from employment lists shall be tentative and subject to a probationary period of: one (1) year (full time equivalent exclusive of all leave and light duty completed within 18 months) upon original appointment to the unit; employees promoted within the unit are subject to a probationary period of six (6) months (half time equivalent exclusive of all leave and light duty completed within one year); in addition, employees in trainee programs with specified training, evaluation or probation periods shall be governed by the applicable provisions of such program. Probationary employees who are granted military leaves of absence shall complete the balance of their probationary period within a period of six (6) months following their return to City service. No provision of this Section shall be interpreted to preclude the City from establishing new classifications, which may require a probationary period of more than six (6) months.

#### **26.2 Provisional Appointments to a Higher Classification**

If, before completing the required probationary period, an employee is provisionally appointed to a higher class in the same or a related series of classes, the time served in such higher class shall be counted toward completion of the probationary period in the lower class.

#### **26.3 Report Requirement**

If the service of the probationary employee has been satisfactory to the department head, the department head shall file with the Director of Human Resources a statement in writing to such effect and stating that the retention of such probationer in the service is desired. If such service has been unsatisfactory, the department head shall file with the Director of Human Resources such a statement in writing with the recommendation to the City Manager that the employee be rejected.

#### **26.4 Rejection during Probationary Period**

During the probationary period, an employee may be rejected at any time without right of appeal or hearing in any manner. An employee rejected from a position to which he has been promoted shall be reinstated to the position from which he was promoted unless charges are filed and he is discharged as provided in Section 31 (Discharge). Career City employees who are rejected during their probationary period in a promotional position or fail to complete the training requirements of a training program (academics or OJT) shall revert to their prior classification.



### **26.5 Rejections Subject to Disciplinary Appeal**

A promoted employee may not grieve his or her rejection from probationary period/training. However, an employee disciplined for cause while on promotional probationary period shall have access to the disciplinary appeal procedure.

### **26.6 Probationary or Temporary Employee Assignments**

No probationary or temporary employee will be assigned as the only ground worker with an Electrician until such employee has completed one (1) month of familiarization with aerial truck equipment.

## **SECTION 27: TRANSFER**

A transfer may be made at any time by the City Manager. Transfer shall not be used to effect a promotion, demotion, advancement, or reduction, each of which may be accomplished only as provided elsewhere in this Memorandum Agreement. No person shall be transferred to a position for which he or she does not possess the minimum qualifications. An employee with permanent status who is transferred from one class to another class shall assume permanent status in the class to which the employee is transferred.

## **SECTION 28: PROMOTION**

Insofar as practicable and consistent with the best interests of the service, all vacancies in the competitive service shall be filled by promotion from within the competitive service after a promotional examination has been given and a promotional list established.

If, in the opinion of the City Manager, the best interests of the service can be served by an open, competitive examination instead of a closed, promotional examination, and if there is not already a promotional list for the higher position, which list has not been abolished and from which the vacancy could be filled, then the City Manager may instruct the Director of Human Resources to call for applications for the vacancy and arrange for an open, competitive examination and for the preparation and publication of an eligibility list.

**Interview of Employees:** A City employee who is on a closed promotional or open competitive list shall have the option to interview for the vacancy. A City employee who is unsuccessful and who so requests shall be advised of steps he or she may take to increase his or her competitive standing for future promotional opportunities.

Employees who have qualified for promotional lists shall be considered for promotion based on the following factors: previous work performance, previous training and experience, merit, ability, and seniority.

## **SECTION 29: DEMOTION**

The City Manager may demote an employee who so requests it, or whose ability to perform his or her required duties falls below standard, or for disciplinary purposes. No employee shall be demoted to a class for which he does not possess the minimum qualifications as determined by the Director of Human Resources.

Notice of the demotion shall be given the employee not later than four (4) weeks prior to the effective date of demotion and a copy of said notice filed with the Director of Human Resources. Any employee who has been demoted shall be entitled to receive a written statement of the reasons for such action.

An employee with permanent status who is demoted shall assume permanent status in the class to which he or she is demoted.

Upon request of the employee, demotion may be made to a vacant position as a substitution for layoff. In such cases, the employee shall be restored to his or her former position without further examination whenever such position is again to be filled.

## **SECTION 30: SUSPENSION**

The City Manager may suspend an employee from his position at any time for the good of the service, for a disciplinary purpose, or for other just cause. Suspension without pay shall not exceed twenty (20) working days, nor shall any employee be penalized by suspension for more than twenty (20) days in any fiscal year. Any employee who has been suspended shall be entitled to receive a written statement of the reasons for such action.

For the good of the service, a department head may suspend an employee for not more than three (3) working days for any one offense. Such suspension shall be reported immediately to the City Manager.

## **SECTION 31: DISCHARGE**

An employee may be discharged at any time by the City Manager, but if the probationary period has been completed then such discharge must be for just cause. Any employee

who has been discharged shall be entitled to receive a written statement of the reasons for such action.

### **SECTION 32: RESIGNATION**

An employee wishing to leave the competitive service in good standing shall file with the department head, at least two (2) weeks before leaving the service, a written resignation stating the effective date and reasons for leaving. The resignation shall be forwarded to the Director of Human Resources with a statement by the department head as to the resigned employee's service performance and other pertinent information concerning the cause for resignation. Failure of the employee to give the notice required shall be entered on the service record of the employee and may be cause for denying future employment by the City. The resignation of an employee who fails to give notice shall be reported by the department head immediately.

### **SECTION 33: REINSTATEMENT**

A permanent or probationary employee who has resigned with a good record may be reinstated within two (2) years to his or her former position, if vacant, or to a vacant position in the same or comparable class without further competitive examination. This Section shall not be interpreted as a guarantee of reinstatement to an employee who has resigned with a good record and requests reinstatement within two (2) years.

### **SECTION 34: NOTICE OF TERMINATION**

Department head shall notify the Director of Human Resources of all terminations of employment before or within two (2) days after the termination has taken place. Such notice shall be on forms provided by the Director of Human Resources and shall indicate the effective date and reasons for termination and a statement certifying whether or not the employee's services have been satisfactory.

## **ARTICLE 6 - GRIEVANCE AND DISCIPLINARY APPEAL PROCEDURE**

### **SECTION 35: GRIEVANCES**

#### **35.1 Definition**

A grievance is any dispute which involves the interpretation or application of those rules, regulations, and resolutions which have been or may hereafter be adopted by the

City Council to govern personnel practices and working conditions, including such rules, regulations, and resolutions as may be adopted by the City Council to effect memorandum agreements which result from the meeting and conferring process.

A grievant may be any member of the bargaining unit covered by the terms of this Agreement, or the grievant may designate the Union to act on his or her behalf, or the Union itself may file a grievance on behalf of a member or group of members. Grievances must be filed in a timely manner. Grievances that are filed by the Union on behalf of a member or group of members, or when a grievant designates the Union to act on his or her behalf, are subject to settlement at any step of the grievance procedure at the Union's sole discretion.

A member of the bargaining unit that files a grievance where the Union is not representing or acting on the grievant's behalf, may only utilize this grievance procedure through step 3. The Union retains the sole discretion to refer which, if any, grievances to move to arbitration.

The parties agree that disclosure to the other party of all relevant information available to them is critical to the successful resolution of grievances at the lowest possible step of the grievance procedure. The parties therefore agree to disclose to each other the relevant information in their possession related to the grievance. Further, the parties agree to comply with reasonable grievance related information requests from the other party in a timely manner.

### **35.2 Procedure**

Grievances shall be processed in the following manner:

**35.2.1 Informal Step:** An employee who believes that he or she has a grievance (and / or the employee's steward or Union representative) may discuss the complaint with the Deputy Director of Public Works, or with such subordinate management official as the Deputy Director may designate. If the issue is not resolved informally, the formal procedures hereinafter specified may be invoked.

**35.2.2 First Formal Step:** Any informal grievance which has not been resolved by the Deputy Director of Public Works or his or her designee, must be filed in writing to the Deputy Director of Public Works within thirty (30) days from the date the informal discussion was initiated. The written grievance must state specific issues involved, the decision rendered at the informal step, and the remedy sought. The Deputy Director or his or her designee shall have five (5) days to respond in writing to the formal, written grievance.

35.2.3 **Second Formal Step:** Any formal grievance which has not been resolved by the Deputy Director of Public Works or his or her designee, may be referred to the Director of Public Works or his or her designee within thirty (30) days from the date of the Deputy Director's formal written response, or if more than five (5) days have elapsed since the grievance was presented at the Deputy Director's level.

35.2.3.1 **Referral to Department Director:** The grievance may be referred to the Director's level and shall include a copy of the original grievance, the decision rendered at the Deputy Director's level, and a clear, concise statement of the reasons for the referral.

The Director of Public Works may designate a personnel representative to investigate the merits of the complaint, to meet with the complaining employee (and/or the employee's steward or Union representative); if the grievant is not the Union itself, to meet with the officials of the Union; and to settle such grievance or to make recommendations thereon to the City Manager in his or her capacity as an employee relations officer. The Director of Public Works shall issue a formal written decision within five (5) days of receipt of the grievance or if a meeting is held with the employee and his or her Union, the meeting must be held within ten (10) days of receiving the referral. The Director of Public Works or his or her designee shall issue a written decision within five (5) days from his or her meeting with the complaining employee and/or Union representative. If the issue is not resolved the grievance may be referred to the Third Formal Step within thirty (30) days of receipt of the response from the Director of Public Works.

35.2.4 **Third Formal Step:** Any grievance which has not been resolved by the procedures hereinabove set forth may be referred to the City Manager by the grievant, the Union, or the Director of Public Works. Any such referral shall be in writing including a copy of the original grievance, the decision rendered at the Director's level, and a clear, concise statement of the reasons for the referral. The City Manager shall designate a Human Resources representative to investigate the merits of the complaint, and upon request from the employee or the union, that representative to meet with the complaining employee (and/or the employee's steward or Union representative), if the grievant is not the Union itself, to meet also with the officials of the Union, and to settle such

grievance or to make recommendations thereon to the City Manager in his or her capacity as an employee relations officer.

The City Manager shall issue a decision within ten (10) days of receipt of the grievance referral or within ten (10) days of the meeting, or if a meeting is held with the employee and/or the Union, the meeting must be held within ten (10) days of the referral. Grievances filed by a bargaining member where the Union is not representing or acting on the grievant's behalf, shall end at this step and no further right of appeal exists. The City Manager's decision shall be final.

**Union controlled grievances:** If the issue is not resolved, the grievance may be referred to Arbitration by the Union pursuant to Section 35.2.5 (Arbitration: The Union retains the sole discretion to move a grievance to arbitration) below within thirty (30) days of receipt of the City Manager's response. Provided further that the Union shall forward to the City the Union's portion of the State Mediation and Conciliation Services (SMCS) fee within sixty (60) days of receipt of the City Manager's response. Failure by the Union to meet this sixty (60) days deadline for both referral to Arbitration and payment of the SMCS fee shall be deemed as a full and complete waiver by the Union to appeal the City Manager decision to Arbitration and the City Manager decision shall be final and binding on all parties.

**35.2.5 Arbitration: The Union retains the sole discretion to move a grievance to arbitration.** Any grievance which has not been resolved by the procedures hereinabove set forth may be referred by the Union, or the City to an impartial arbitrator who shall be designated by mutual agreement between the Union and the City, using the State Mediation and Conciliation Services (SMCS) to provide a list of five (5) arbitrators. The City and the Union will alternately strike a name until one remains. The remaining name will be the arbitrator. The fees and expenses of the arbitrator, the State Mediation and Conciliation Services (SMCS) and of the court reporter shall be shared equally by the Union and the City. Each party, however, shall bear the cost of its own presentation, including preparation and post-hearing briefs, if any. Arbitrator decisions on matters properly before them shall be final and binding on both parties.

The arbitrator may hear testimony, receive written briefs, interview witnesses, and conduct any investigation she or he deems appropriate, and shall render a final and binding decision to the parties which will end the formal grievance process.

35.2.5.1 **Arbitrator Jurisdiction:** No arbitrator shall entertain, hear, decide, or make recommendations on any dispute involving a position over which a formally recognized employee organization has jurisdiction unless such dispute falls within the definition of a grievance as hereinabove set forth in Section 35 (Grievances).

35.2.5.2 **No Modifications:** Proposals to add to or change this Memorandum Agreement or written agreements or addenda supplementary hereto shall not be arbitrable, and no proposal to modify, amend, or terminate this Memorandum Agreement, nor any matter arising out of or in connection with such proposal, may be referred for arbitration under this Section; and no arbitrator shall have the power to amend or modify or recommend amendment or modification of this Memorandum Agreement or any written agreements or addenda supplementary hereto or to establish or recommend establishment of any new terms and conditions of employment.

35.2.5.3 **Timeliness of Award:** No arbitrator will be selected hereunder who does not agree to render an award not later than thirty (30) calendar days after the close of the hearing. By mutual agreement between the City and the Union, the arbitrator may render an award immediately upon the conclusion of the presentation of evidence.

### 35.3 EEO Complaints

Any grievance which in any way affects the implementation of the City's Equal Employment Opportunity Policy shall not be subject to arbitration. The decision as to whether or not implementation of the Equal Employment Opportunity Policy is in any way involved shall be made by the City Manager in his or her sole discretion. If, in his or her judgment, any grievance which involves the Equal Employment Opportunity Policy, the Equal Employment Opportunity and Diversity Officer shall notify the Union to that effect in writing within seven (7) days of the date upon which the grievance is received in the Human Resources Department and, in such notification, refer to that Section of the Equal Employment Opportunity Complaint Investigation & Resolution Procedure which is involved; provided, however, that such notice may come at any time prior to arbitration if additional factors come to the attention of the Equal Employment Opportunity and Diversity Officer on the basis of which he or she considers it appropriate to change his or her original determination.

### **35.4 Compensation Complaints**

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Director of Human Resources. In such cases, no adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed or thirty (30) days from the date when an employee may reasonably be expected to have learned of said claimed violation. Only grievants which allege that employees are not being compensated in accordance with the rules, regulations, and resolutions of the City Council or in accordance with the understanding contained in any Memorandum Agreement which has resulted from the meeting and conferring process shall be considered as grievances. Any other matters of compensation are to be resolved in the meeting and conferring process and, if not detailed in the memorandum agreement which results from such meeting and conferring process, shall be deemed withdrawn until the meeting and conferring process is next open for such discussion.

**35.4.1 Response Time Limits:** The Director of Human Resources or his or her designee shall issue a decision in writing within twenty (20) days from the time he or she received the compensation grievance in writing. The grievant or the Union may refer the decision to the Third Formal Step (Section 35.2.4 - Third Formal Step) of this Memorandum Agreement) within twenty (20) days of receipt of the written decision.

### **35.5 Changes or Interpretations**

No changes in this Memorandum Agreement or interpretation thereof (except interpretations resulting from arbitration proceedings hereunder) will be recognized unless agreed to by the City Manager and the Union.

### **35.6 Extension of Timelines**

Timelines noted in this Section may be extended for cause upon mutual agreement between the City and the Union.

### **35.7 Days**

All references in this Section 35 (Grievances) to "days" shall mean normal working days except as otherwise noted.

### **35.8 Grievances Challenging Disciplinary Action**

35.8.1 Any grievance involving any disciplinary action up to as three (3) day suspension will be filed at the Director level.

35.8.2 All grievances involving demotion, discharge, or suspension of greater than three (3) days will be filed at the City Manager's level of the grievance



procedure. If the issue is not resolved within fifteen (15) days of referral to this step, the procedures hereinafter specified may be invoked.

35.8.3 No grievance involving the suspension or discharge of an employee will be entertained unless it is filed in writing with the City Manager within five (5) working days of the time at which the affected employee was notified of such action in writing. If the City Manager, in pursuance of the procedures outlined in Section 35.2.4 (Third Formal Step) above, resolves a grievance which involves suspension or discharge, he or she may agree to payment for lost time or to reinstatement with or without payment for lost time.

35.8.4 Arbitrator decisions on matters properly before them which pertain to the suspension or discharge of an employee shall be final and binding on both parties, to the extent permitted by the Charter of the City.

## **ARTICLE 7 – GENERAL PROVISIONS**

### **SECTION 36: GENERAL PROVISIONS**

#### **36.1 Personal Conduct**

- 36.1.1 No employee shall accept appointment to the deputyship or assistantship of any county or state office or position, or otherwise incur an obligation of civil public service outside his or her regular municipal employment without first obtaining the recommendation of the head of his or her department and of the City Manager.
- 36.1.2 No employee shall be disciplined for off-the-job activities which do not affect his or her job performance.
- 36.1.3 Employees shall so arrange their personal financial affairs so that the demands of creditors and collection agencies shall not impose a recurring burden upon the offices of the City Manager, the department head, or the Director of Human Resources for the purpose of making collections.
- 36.1.4 Full-time City employees may not carry on concurrently with their public service any private business or undertaking, attention to which affects the time or quality of their work or which casts discredit upon or creates embarrassment for the City government.
- 36.1.5 No official or employee who wears a badge or other official insignia as evidence of his or her authority and identity shall permit such badge or insignia to be used or worn by any other person of the same or another department or otherwise to leave his possession without approval by the head of this department. The department head shall not grant such approval except as to persons regularly and formally appointed by the City Manager to the position designated by the badge or insignia.

#### **36.2 Rain Gear**

The City will provide rain gear for employees in Representation Unit C assigned to work in inclement weather.

#### **36.3 Tools**

Each employee shall continue to be responsible for providing tools of the trade or other equipment, but shall receive a flat annual tool replacement allowance each July 1.

New employees hired before or after July 1 will be entitled to a prorated tool replacement allowance payable the following July 1 after employment.

- 36.3.1 **Allowance:** Effective July 1, 2015, the tool replacement is five hundred dollars (\$500). Tool allowances shall be paid at the end of the fiscal year in which they are earned.

#### 36.4 Shoes

Effective June 18, 2017, all classifications covered by this MA shall be eligible for reimbursement of up to two hundred dollars (\$200.00) per fiscal year for the cost of safety shoes. Employees receiving this reimbursement must wear safety shoes on duty.

- 36.4.1 **Reimbursement:** Employees shall be required to submit a reimbursement request, along with receipts verifying the purchase of safety shoes within sixty (60) days of purchase. Reimbursements will be paid within forty-five (45) days of complete reimbursement requests.

#### 36.5 Training

- 36.5.1 **Responsibility:** Responsibility for developing training programs for employees shall be assumed by the City Manager. Such training programs may include lecture courses, demonstrations, assignment of reading matter, or such other devices as may be available for the purpose of improving the efficiency and broadening the knowledge of municipal employees in the performance of their duties. The City shall endeavor to provide training for all new technology purchased by the City and maintained by members of this Agreement.

- 36.5.2 **Advancement/Promotional Consideration for Special Training Courses:** Participation in and successful completion of special training courses may be considered in making advancements and promotions. Evidence of such activity shall be filed with the Director of Human Resources by the department head.

- 36.5.3 **Mileage and Tuition Reimbursement:** The City shall reimburse all employees for mileage and tuition expenses related for attendance at job-related courses. Provided that the employee must have prior authorization from his or her department head and the course has been approved by the City.

- 36.5.4 **Education Leave:** The City shall allow up to forty (40) hours off with pay per year to employees:

36.5.4.1 Who are required to obtain a license (excluding Class C driver's licenses) issued by the State of California and, in order to do so, must take courses which were not offered as a part of their basic curriculum or,

36.5.4.2 Who are required to obtain continuing education as a condition of license renewal; provided the license is required by the City for the employment or continued employment of the employee and that no more hours than are required by the State shall be granted. Employees seeking time off to take courses for an initial license must provide verification that the course was not offered as a part of their basic curriculum.

Employees who take classes during non-scheduled work hours in order to retain a job required license or to meet continuing education requirements shall be allowed time off from work on an hour-for-hour basis without loss of compensation or other benefits.

36.5.4.3 To obtain education and training related to job skills to enhance performance, or to qualify for promotion, at the discretion of the department head.

**36.5.5 Management/Union Meetings:** The City and Union agree that it is beneficial to both parties to discuss and develop training for all classifications. The Director of Public Works and the Union shall meet on a quarterly basis to discuss and review progress made in addressing initial employee orientation, new equipment training, and vendor training.

**36.5.6 Commercial Driver's License:** The City shall provide the necessary training for employees to obtain a California Class B driver's license when such license is a requirement of their job classification and a condition of employment. Employees who fail to obtain the required California Class B driver's license after training will be subject to rejection from the probationary period pursuant to Section 26.4 (Rejection during Probationary Period) of this Memorandum Agreement.

### **36.6 Use of Automobiles**

The City Manager shall govern the use of City-owned automotive equipment and privately-owned automotive equipment by such rules and regulations as he or she may establish. Compensation shall be given in the form of a cash allowance for the use of private-owned automobiles on City business if such use has been

authorized in advance by the City Manager. The cash allowance will be equal to the amount established by the Internal Revenue Service, and will change as necessary to comply with IRS Standard Mileage Rate.

### **36.7 Safety**

**36.7.1 Safety Committee:** The City and the Union will make every effort to maintain excellent health and safety standards. No employee shall be required to perform work with unsafe equipment or in situations which are injurious to his or her health or safety. To further these purposes, the City shall maintain an ongoing safety program which shall include committees comprised of representatives from the Union and appropriate supervisory personnel.

**36.7.2 Rainy Weather Assignments:** The City shall endeavor to avoid assigning non-emergency, routine work in rainy weather, which would constitute a safety hazard.

### **36.8 YMCA Group Membership**

The City shall offer employees a low or no-cost group membership in the Berkeley Central YMCA. As of July 1, 1999, the City will pay 75% of the membership fee. If the monthly fee is increased to more than \$60, the employee share will be capped at \$30 per month; the City will pay the balance. The amount the City contributes toward the employee's monthly membership fee is subject to federal and state income tax withholding.

Use of the YMCA membership by a City of Berkeley employee, as provided for in this Agreement, is non-compensable, is not a part of the employee's work-related duties, is not required for employment and is not condoned as part of a physical fitness program, or required to remain top physical conditioning for the employee's job performance.

The City of Berkeley or its Claims Administrator may not be liable for any injury that arises out of a City of Berkeley employee's participation in and use of a YMCA membership.

### **36.9 Annual Performance Evaluation**

The City may implement a program of annual performance evaluation. Such evaluations shall be conducted by the employee's immediate supervisor and reviewed by additional levels of supervision. Each employee may make written comments on the evaluation, which shall be made a part of the employee's personnel records.

## **ARTICLE 8 - PUBLIC EMPLOYEES RETIREMENT SYSTEM**

### **SECTION 37: PAYMENT OF EMPLOYEES' PERS CONTRIBUTIONS**

#### **37.1 Miscellaneous Designation**

The City shall continue participation under the Miscellaneous Employees Plan of the California Public Employees' Retirement System, (CalPERS).

#### **37.2 "Classic Employees" Definition**

Classic Employees are defined as current employees and future employees who do not qualify as "New Members" under the California Public Employees' Pension Reform Act of 2013 (PEPRA).

#### **37.3 "New Member" Definition**

"New Members are as defined in the Public Employees' Pension Reform Act of 2013 (PEPRA), Government Code Section 7522.04(f).

#### **37.4 CalPERS Retirement Formula for "New Members" as Defined Under the Public Employees' Pension Reform Act of 2013 (PEPRA)**

"New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the retirement formula set forth in PEPRA.

#### **37.5 CalPERS Retirement Formula and Employer Paid Member Contribution for Classic Employees (i.e. current employees and employees who do not qualify as "New Members" under PEPRA)**

Current employees and other employees who do not qualify as "New Members" under PEPRA shall continue to be entitled to the 2.7% at age 55 retirement formula benefit, and the City shall continue the contribution of eight percent (8%) to CalPERS on behalf of the employee.

#### **37.6 CalPERS New Members Normal Share of Cost**

New Members as defined by PEPRA who are hired on or after January 1, 2013 shall pay 50% of the normal share of cost required by PEPRA. New Members shall receive any other additional optional CalPERS benefits that the City provides to Classic Employees as allowed by PEPRA.

#### **37.7 Reporting of Contributions**

Effective July 3, 1994, contributions made pursuant to Section 37.5 above have been reported to CalPERS as "special compensation" as provided in Government Code Section 20636(c)(4) pursuant to Section 20691. Said contributions shall not apply in the case of temporary or provisional employees.

The member contributions made by the City shall not be considered as a part of an employee's salary for the purpose of computing straight time earnings, compensation for overtime worked, or education incentive pay; nor shall such contribution be taken into account in determining the level of any other benefit which is a function of or percentage of salary. Pursuant to California Government Code Section 20691, the City shall not increase, reduce or eliminate payments of the normal contributions on behalf of the employee without engaging in the meet and confer process with the Union.

The City will not treat these contributions as compensation subject to income tax withholding unless the Internal Revenue Service or Franchise Tax Board indicates that such contributions are taxable income subject to withholding. Each employee shall be solely and personally responsible for any federal, state or local tax liability of the employee that may arise out of the implementation of this Section or any penalty that may be imposed therefore.

### **37.8 City Contracts with CalPERS**

The City's contract with CalPERS includes the following optional benefits:

**37.8.1 Classic Employees – One Year of Final Compensation:** Classic Employees as defined in Section 37.2 ("Classic Employees" Definition) above and as provided in Government Code Section 20042 (July 9, 1978).

**37.8.2 New Members – Three Years Final Compensation:** Provided further that New Members as defined by PEPRA hired on or after January 1, 2013 shall be eligible to receive retirement allowance based on three (3) highest consecutive years of compensation under the plan as provided under the California Public Employees' Pension Reform Act of 2013, or as subsequently amended.

**37.8.3 Post Retirement Survivor Allowance** as provided in Sections 21624, 21626 and 21628 (December 16, 1973).

**37.8.4 Post Retirement Survivor Allowance to Continue after Remarriage** as provided in Section 21635 (July 18, 1986).

**37.8.5 Credit for Unused Sick Leave** as provided in Section 20965 (June 26, 1988).

**37.8.6 1959 Survivor Benefits to Surviving Spouse at Age 60** as provided in Section 21580 (December 16, 1973).

37.8.7 Third Level of 1959 Survivor Benefits as provided in Section 21573 (November 28, 1996).

37.8.8 2% @ 55 for Local Miscellaneous Members as provided in Section 21354 (June 30, 1992).

37.8.9 Military Service Credit as Public Service as provided in Section 21024 (April 9, 1999).

37.8.10 Public Service Credit for Peace Corps or AmeriCorps/VISTA Service as Provided in Section 21023.5 (April 14, 2000).

### **37.9 Index Level 1959 Survivor Benefit**

The City intends to amend its contract with CalPERS to provide the Indexed Level of the 1959 Survivor Benefit as provided in Section 21574.5 when administratively feasible.

### **37.10 Classic Members' Pension Contribution through 20516 a Contract Amendment**

37.10.1 **July 3, 2016:** Effective July 3, 2016, employees will contribute one and one-quarter percent (1.25%) toward the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allows such contributions via automatic payroll deduction on a pre-tax basis, in exchange for the City granting the salary increase set forth in Section 11.1.5 (July 3, 2016 - Salary/PERS Exchange) of this MA. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.

### **37.11 New Members' Pension Contributions through 20516 a Contract Amendment**

37.11.1 **July 3, 2016:** Effective July 3, 2016, in addition to the contributions in Section 37.4 (CalPERS Retirement Formula for "New Members" as Defined Under the Public Employees' Pension Reform Act of 2013 (PEPRA)), New Members will contribute one and one-quarter percent (1.25%) towards the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allows such contributions as pre-tax via automatic payroll deduction, in exchange for the City granting the salary increase set forth in Section 11.1.5 (July 3, 2016 - Salary/PERS Exchange) of this MA. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.

37.11.2 The parties recognize that the CalPERS 20516 amendment that allows employee contributions toward the employer rate is in addition to the



required 50% of the normal cost of “New Members” benefits and made in consideration of additional salary increases in Section 11.1.5 (July 3, 2016 - Salary/PERS Exchange) above (a total of 1% salary increases in exchange for employees paying a total of 1.25% towards CalPERS pension cost).

As soon as administratively possible, following council approval of this agreement, the additional contribution of 1.25%, as indicated in Section 37.11.1, shall be eliminated through a contract amendment with CalPERS. The start of the first full pay period following completion of the contract amendment shall be the effective date of the reduction.

### **SECTION 38: SUPPLEMENTAL RETIREMENT/DISABILITY INSURANCE PLAN**

Effective January 1, 1983, the majority of miscellaneous employees under the City's contract with the State of California Public Employees Retirement System who were covered by the integrated Social Security Program voted to withdraw from participation in the Federal Social Security Program. In lieu of Social Security payments, the City has agreed to pay an amount equal to that percent of individual pay (6.7% payable on the first \$32,400 of salary paid in the calendar year) which had been paid by the City to Social Security as of December 31, 1982 to a Supplemental Retirement and Income and Long Term Disability Insurance Plan for those employees previously covered under the integrated PERS/Social Security Plan. Provisions of this plan are described in Berkeley Municipal Code Chapter 04.36.101 (Supplemental Retirement and Income Plan I) as amended and Berkeley Municipal Code Chapter 04.38.101 (Supplemental Retirement and Income Plan II) as amended. All employees hired after July 22, 1988 are in SRIP II. All employees hired prior to July 22, 1988 are in SRIP I unless they chose to enroll in SRIP II prior to December 17, 1988.

## **ARTICLE 9 - LAYOFF PROCEDURE**

### **SECTION 39: LAYOFF**

The layoff policy for the City of Berkeley is intended to provide the maximum employment protection of the City staff should a layoff become necessary. The policy also aims to minimize the impact such a layoff might have on the City's affirmative action accomplishments.

#### **39.1 Announcement of Layoff**

**39.1.1 Notification:** The City Council, City Manager, and department head shall make every reasonable effort to manage and budget the City's resources effectively and to plan for the delivery of City services in a manner which will avoid the necessity of laying off career City employees. If a reduction in the work force for more than thirty (30) calendar days is necessitated by, but not limited to, the following: a material change in duties and organization, adverse working conditions, return of employee from leave of absence, or shortage of work or funds, the City Manager shall notify the Director of Human Resources of the intended action and the reason for the layoff.

**39.1.2 Freezing of Vacancies:** Immediately following a decision which may involve the potential layoff of career City employees, the City Manager shall freeze all current City vacancies in the competitive service in similar and related classifications to those likely to be targeted for layoff, as well as all related full-time, benefited, temporary positions which are expected to last six (6) months or more, and notify all department heads that such current and anticipated vacancies will be frozen until further notice in order to implement the provisions of Section 39.6 (Flexible Placement Program).

#### **39.2 Seniority Service Date**

**39.2.1** All service in the employ of the City shall be counted toward the establishment of an employee's seniority service date, including, for example, permanent, probationary, provisional, temporary (full-time and intermittent), seasonal, and exempt employment, as well as leaves of absence for obligatory military service while an employee of the City. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the seniority service date. Time off as a result of formal disciplinary action will be subtracted from the seniority service date.

- 39.2.2 The auditor's office will maintain up-to-date and current seniority dates for all City employees holding probationary and permanent appointments.

### **39.3 Establishment of Seniority Lists**

39.3.1 Whenever a layoff of one or more career employees becomes necessary, as defined above, such layoffs shall be made according to City-wide classification seniority lists. Upon receiving notification that the City Manager must proceed with a possible reduction in the work force, and following receipt of information concerning the specific positions, programs, and departments involved, the Human Resources Department will immediately establish separate probationary and permanent seniority lists for each classification targeted for layoff.

39.3.2 The names of all City employees holding permanent and probationary appointments in a given classification will be listed on the appropriate list in descending order by seniority service date. Employees on both lists shall be laid off on the basis of their seniority service date, i.e., employees with the least amount of total service shall be laid off first. All emergency, temporary, and provisional employees working in classifications similar to those identified for layoff must be terminated prior to the layoff of probationary or permanent employees. Employees on the probationary seniority list for a specific classification will be laid off prior to employees on the permanent seniority list for that classification.

39.3.3 Probationary or permanent employees temporarily acting out of classification and holding a provisional appointment in another classification will only be listed on a seniority list of the classification in which they hold permanent or probationary status targeted for layoff.

39.3.4 If two (2) or more employees on a seniority list have an identical seniority service date, the tie shall be broken in the following order:

39.3.4.1 Time in classification - the employee having least time in the classification shall be released first;

39.3.4.2 By lot.

### **39.4 Employee Retreat Rights**

- 39.4.1 Before an employee with permanent or probationary status may be released from employment with the City of Berkeley, the Human Resources Department must consider the employee's right to retreat to lower level classifications through which he or she was originally promoted or any subsequently created intermediate level career classification which provides normal progression through the classification series. Retreat rights shall also extend to employees who have not previously been promoted through a classification but for whom the classification is a natural progression or beginning in the classification series.
- 39.4.2 In the process of retreating, the same rules concerning the length of service, classification seniority lists, etc., apply as in the first stage of the layoff process. In order to retreat, the targeted employee must be higher on the seniority list for the classification into which he or she is retreating than at least one of the incumbents on the probationary or permanent seniority list for that classification.
- 39.4.3 If an employee is qualified for retreat into more than one classification with comparable salary ranges, or if a vacancy exists in a classification to which an employee is entitled to retreat, the options shall be discussed with the employee and due consideration shall be given to the employee's preferences. However, it is the prerogative of the City Manager to determine the final placement offer to the employee.
- 39.4.4 The retreating employee has a right to be retained in the highest salary range possible which is equal to or less than his or her present salary range. An employee involved in layoff does not have a right of mandatory placement to positions with a higher salary range, i.e., promotion.

### **39.5 Employee Notification**

- 39.5.1 Emergency, temporary, intermittent, seasonal, etc., employees shall be notified individually, in writing, of pending layoff as soon as possible, but no definite time period is required. However, at least two (2) weeks notification is desirable if possible.
- 39.5.2 Provisional employees shall be notified individually, in writing, of pending layoff as soon as possible, with no less than fifteen (15) calendar days notification if targeted for release or reassignment.
- 39.5.3 Permanent, probationary, and career-exempt employees should be notified individually in writing of pending layoffs as soon as possible, with no less

than thirty (30) calendar days notification if targeted for release or reassignment.

If an employee fails to accept a bona fide offer of reassignment within ten (10) calendar days after the offer has been made, he or she forfeits further right to employment retention. Acceptance of a reassignment does not remove the right of appeal under Section 39.9 (Appeal Procedure).

35.5.4 An employee who is transferred in lieu of layoff when his or her position has been eliminated shall have automatic return rights to the previous position if it is restored within one (1) year of the date of the transfer. If an employee with a full time position is offered a reduction in hours in that position or in a lower classification, the employee may elect to be targeted for layoff for purpose of consideration under Section 39.6 (Flexible Placement Program.) If there is no flexible placement available for the employee, the employee may accept the reduction in hours, in lieu of layoff.

### **39.6 Flexible Placement Program**

39.6.1 In order to minimize the negative impact of layoff, the City Manager will, as previously stated in Section 39.1.2 (Freezing of Vacancies), impose a citywide freeze on all appropriate vacancies as soon as it has been determined that a layoff of career City employees may be necessary.

39.6.2 Following the release of all emergency, temporary, and provisional employees in classes similar to those targeted for layoff, and as soon as employees targeted for layoff have been identified and the provisions under Sections 39.4 (Employee Retreat Rights) have been carried out, the Human Resources Department will review and identify the frozen vacant classifications into which employees ultimately targeted for layoff may be placed on the basis of total experience and education. In making this decision, a waiver of minimum qualification standards, and/or the substitution of related experience and education may be made, with an understanding on the part of management and supervisory personnel that adequate on-the-job training, which can be completed within no more than six (6) months, will be provided to facilitate job adjustment and to compensate for the waiver of qualification standards if that has occurred.

This shall be called the qualification period. The employee shall be advised of their progress after two months and four and six months in the new classification. If at the end of the qualification period the department head notifies the Human Resources Department that the employee is

unable to adequately perform the assignment or fails a test for the position administered by Human Resources then the employee shall be subject to the layoff process.

39.6.3 Assignments under the Flexible Placement Program shall be limited to positions in the same or lesser salary range as the classification from which the employee is to be laid off, except that the City Manager may authorize the offer of a flexible placement to position with a maximum salary of no more than five (5) percent above the salary range as the classification from which layoff is targeted, when it is in the best interest of the City service to do so. Whenever flexible placement is made to a classification with a greater salary range, the appointment shall be probationary, in accordance with the terms of that classification.

39.6.4 Offers to positions under the Flexible Placement Program shall be made according to seniority service date and in accordance with the probationary and permanent seniority list certification process outlined in Section 39.3 (Establishment of Seniority Lists). All offers and placements made under this provision of the layoff policy shall be documented in detail, with records available for audit and review at all times.

39.6.5 If an employee fails to accept a bona fide written offer of an alternative job within ten (10) calendar days after the offer has been made, he or she forfeits further rights to employment retention. Acceptance of an alternative job under the Flexible Placement Program in no way jeopardizes an employee's standing on the reemployment priority lists on which his or her name has been placed in accordance with Section 39.7 (Reemployment Lists).

### **39.7 Reemployment Lists**

39.7.1 The names of all probationary and permanent employees released from positions in the competitive service as a result of layoff must be placed on reemployment priority lists for those classifications from which they were separated, as well as all other classifications to which they have retreat rights in accordance with Section 39.4 (Employee Retreat Rights).

39.7.2 A reemployment priority list shall remain in effect for three (3) years.

39.7.3 Departments with vacancies in any classification for which there is an active reemployment priority list must use the reemployment priority list to fill their positions and may not use any other recruitment or appointment

method to fill a vacancy until appropriate reemployment lists have been exhausted.

39.7.4 When a vacancy occurs in a class for which there is a reemployment priority list, the name of the employee on the appropriate reemployment priority list with the highest seniority date shall be certified to the selecting official. Employees so certified from the reemployment priority list must be appointed to the existing vacancy.

39.7.5 If a former employee fails to accept a bona fide written offer of reemployment within fifteen (15) calendar days, his or her name will be removed permanently from the reemployment priority list from which the offer was made. Failure to accept an offer of reemployment to the classification with the highest salary range for which the employee is eligible for reemployment will result in automatic removal from all reemployment priority lists. However, the employee may decline (or accept) reemployment to lower salary range classifications without jeopardizing his or her standing on the reemployment priority list for the classification from which he or she was originally terminated.

39.7.6 Upon reappointment to the classification from which the employee was originally separated or demoted, the employee has the right to be placed at the step of the salary range which the employee held at the time of layoff or demotion.

### **39.8 Career Exempt Employees**

Only those employees holding full-time, benefited, exempt positions, who in the past have achieved permanent status and have been continuously employed without a break in service between their career and exempt appointment, have the right to retreat to previously held career classifications, placement on the reemployment priority lists, and all other provisions governing layoff procedures. For the purpose of layoff, such employees shall be referred to as "career-exempt."

### **39.9 Appeal Procedures**

Any permanent, probationary, or career-exempt employee who is laid off, demoted, or reassigned as a result of layoff who believes that the layoff procedure has been improperly administered as it pertains to the employee's case may appeal the action under Section 35 (Grievances). In addition, employees may, at all times before, during, and subsequent to layoff, review all records, including seniority lists, reemployment priority lists, documentation pertaining to appointments under the Flexible Placement Program, etc., which pertain to their classification and their rights under the provisions of the layoff policy.

### **39.10 Reemployment Priority Rights**

If it is determined that a vacancy has been filled by a non-reemployment priority list eligible in a classification for which a reemployment priority list existed and which included available applicants at the time, the former employee with reemployment rights shall be hired and given retroactive pay from the date that the vacancy occurred. The employee who was originally hired to fill the vacancy shall continue to be retained in City employment, provided he or she has completed the probationary period.



**SIGNATURE PAGE**

Executed this \_\_\_ day of \_\_\_\_\_, 2022, by the Employer and Employee representatives whose signatures appear below for their respective organizations.

FOR INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1245      FOR THE CITY OF BERKELEY

\_\_\_\_\_  
Bob Dean, Business Manager

\_\_\_\_\_  
Dee Williams-Ridley, City Manager

\_\_\_\_\_  
Charley Souders, Business Representative  
(Chief Negotiator)

\_\_\_\_\_  
Donald Ellison, Interim Director of  
Human Resources

\_\_\_\_\_  
Greg Marwick, Steward

\_\_\_\_\_  
Dawud Brewer, Employee Relations  
Manager (Chief Negotiator)

\_\_\_\_\_  
Ryan Schaffler, Negotiation Committee

\_\_\_\_\_  
Joy Brown, Operations Manager  
Public Works

\_\_\_\_\_  
Amani Manning, Assistant Human  
Resources Analyst

## EXHIBIT A - Hourly Salary Schedule

### As of August 7, 2022 (3.0% Salary Increase)

Job Code	Rep Unit	Classification Title	FLSA	Step 1	Step 2	Step 3	Step 4	Step 5
32020	C	COMMUNICATIONS TECHNICIAN	N	0	0	48.2945	50.6173	52.9270
52180	C	ELECTRICAL PARTS TECHNICIAN	N	0	35.3125	37.5934	39.5648	40.5647
51030	C	ELECTRICIAN	N	0	0	48.2945	50.6173	52.9270
51100	C	LEAD COMMUNICATION TECHNICIAN	N	0	0	51.6314	53.9685	56.5598
51080	C	LEAD ELECTRICIAN	N	0	0	51.6314	53.9685	56.5598

### As of July 7, 2023 (3.0% Salary Increase)

Job Code	Rep Unit	Classification Title	FLSA	Step 1	Step 2	Step 3	Step 4	Step 5
32020	C	COMMUNICATIONS TECHNICIAN	N	0	0	49.74.33	52.1358	54.5148
52180	C	ELECTRICAL PARTS TECHNICIAN	N	0	36.3719	38.7212	40.7517	41.7816
51030	C	ELECTRICIAN	N	0	0	49.7433	52.1358	54.5148
51100	C	LEAD COMMUNICATION TECHNICIAN	N	0	0	53.1803	55.5876	58.2566
51080	C	LEAD ELECTRICIAN	N	0	0	53.1803	55.5876	58.2566

**As of July 9, 2024 (1.0% Salary Increase)**

Job Code	Rep Unit	Classification Title	FLSA	Step 1	Step 2	Step 3	Step 4	Step 5
32020	C	COMMUNICATIONS TECHNICIAN	N	0	0	50.2407	52.6572	55.0599
52180	C	ELECTRICAL PARTS TECHNICIAN	N	0	36.7356	39.1084	41.1592	42.1994
51030	C	ELECTRICIAN	N	0	0	50.2407	52.6572	55.0599
51100	C	LEAD COMMUNICATION TECHNICIAN	N	0	0	53.7121	56.1435	58.8392
51080	C	LEAD ELECTRICIAN	N	0	0	53.7121	56.1435	58.8392

Note: Employee's monthly salary will depend upon the number of hours worked. Employees hired before January 9, 2000, have an option (discussed in detail in Exhibit E (Hours and Days of Work) to work either a 37.5-hour work week or a 40-hour work week. Employees hired after January 9, 2000 work a 40-hour per week schedule.

## EXHIBIT C

### CITY OF BERKELEY MUNICIPAL CODE CHAPTER 4.04.120

#### **4.04.120 Exemption from Career Service (At-Will Employees).**

The provisions of this chapter shall apply to all positions in the service of the city except:

- A. The city manager, assistant city manager, deputy city manager, assistant to the city manager, police review commission officer, police review commission investigator, and assistant to the mayor;
- B. Assistant, associate and senior management analyst when appointed to the city manager's department or to the Budget Unit of the Management and Administrative Services Agency; and secretary to the mayor, administrative secretary and secretary when appointed to the mayor's office;
- C. All department heads, health officer, and supervising psychiatrist;
- D. Persons employed seasonally in the summer camps;
- E. Persons employed as reserve or emergency employees during the period of national emergency as provided in the ordinance creating such employment;
- F. All persons who are paid at an hourly rate with the exception of library aides. Persons appointed as hourly Library Aides shall be part of the career service with the exception of those hired to fill temporary positions of six months or less.

Persons appointed to these positions which are exempt from the career service shall serve at the pleasure of the appointing authority and may be demoted, suspended, or otherwise rejected at any time without cause and without right of appeal or hearing in any manner. Except that, any employee in the career service promoted or transferred to a position not included in the career service and made exempt from the career service shall be reinstated to his or her career appointment from which he or she was promoted or transferred if within six months of appointment to a position not included in the career service, action is taken to dismiss him or her, unless charges are filed and the employee is discharged in accordance with this chapter and the rules established hereunder for positions in

the career service. All employments designated in this Section shall be entitled to only those benefits provided for at-will employees in the personnel rules and regulations or in applicable memoranda agreements.

**EXHIBIT D – Service Vacation Leave**

<b>Years During Which Service Rendered</b>	<b>Number of Years of Service</b>	<b>AUTHORIZED ANNUAL VACATION LEAVE (IN CALENDAR WEEKS)</b>
All years prior to 01/01/1950		2
01/01/1950 through 12/31/1956	First 10 years of service	2
	Years of service in excess of 10	3
01/01/1957 through 12/31/1961	First 5 years of service	2
	6 through 25 years of service	3
	Years in excess of 25	4
01/01/1962 through 12/31/1965	First 5 years of service	2
	6 through 20 years of service	3
	Years of service in excess of 20	4
01/01/1966 through 06/30/1970	First 5 years of service	2
	6 through 20 years of service	3
	21 through 25 years of service	4
	Years of service in excess of 25	5
Subsequent to 06/30/1970	First 5 years of service	2
	6 through 15 years of service	3
	16 through 25 years of service	4
	Years of service in excess of 25	5
Effective 01/01/1981	First 4 years of service	2
	5 through 12 years of service	3
	13 through 20 years of service	4
Effective 07/01/1984	First 3 years of service	2
	4 through 11 years of service	3
	12 through 17 years of service	4
	18 and subsequent years of service	5
Effective 12/08/1987	First 3 years of service	2
	4 through 11 years of service	3
	12 through 17 years of service	4
	18 through 24 years of service	5
	25 and subsequent years of service	6

## **EXHIBIT E - HOURS AND DAYS OF WORK**

The hours and days of work applicable to employees in Representation Unit C, as set by the City Manager, are presently as follows:

### **1. Hours per Day**

Field Operations: Working arrangements may vary as to daily schedules under the reduced workweek.

Flexible Hours: On a job-by-job basis, with prior approval of the Senior Electrical Supervisor, a crew may schedule a workday, or workdays, other than the normal workday schedule of 7:00 a.m. to 3:30 p.m.

### **2. Hours per Week (Basic)**

Field Operations: 40 hours. However, employees in Representation Unit C as of January 9, 2000 have the option of retaining a 37.5-hour per week work schedule. An employee will have an option to change his work schedule to 40 hour per week at the beginning of a payroll period. An employee will have a one-time option to revert to a 37.5 hour per week work schedule at the beginning of a payroll period. After exercising this one time option, if the employee chooses to change his work schedule to 40 hours per week, the employee must maintain this work schedule for the balance of his career in this Representation Unit. All persons hired on or after January 9, 2000 will work a 40-hour per week schedule and will not be permitted to change his or her work schedule to 37.5 hours per week.

The parties may agree in writing to alternative work schedules other than those set forth in this Agreement, such as a 9-80 work schedule which produces an 80-hour pay period with the hours worked in nine work days. The City will take into consideration its operational needs, including the impact of potential overtime, in deciding whether to approve an alternate work schedule. However, such alternate work schedule will not be unreasonably denied.

### **3. Work Week**

The work week will begin at 12:01 a.m., Sunday and end at Saturday midnight. Regular days off will be considered to be Saturday and Sunday.

## **EXHIBIT F - IMPLEMENTING THE REDUCED WORK SCHEDULE**

**NOTE:** This Exhibit F applies only to employees hired before January 9, 2000 who are permitted to work a 37.5 hour per week work schedule subject to the conditions set forth in Exhibit E (Hours and Days of Work).

The City and the Union agree that the implementation of the reduced work schedule which is to be effective June 29, 1986 will be as follows:

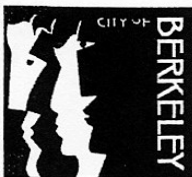
That one-fourth of the Electrical Division employees will be off every fourth Monday on a staggered basis. This time would be treated as a scheduled day off and could not be adjusted or moved. A yearly schedule would be set up at the beginning of the year so that each employee would know what days he would have off. Since the agreed upon reduced work schedule does not calculate evenly into one day off every four weeks, it is proposed that an additional day off (Friday) be given once every 16 weeks. This agreement very closely approximates the reduced work schedule. Any discrepancies would be credited to the employee's vacation at the end of the contract year.

For Fair Labor Standards Act purposes, the workweek is defined as 40 hours.

Sick leave, vacation, and other compensable leaves of absences shall be based on the 40 hour work week.

When a scheduled day off falls on a holiday, the next regularly scheduled work day shall be observed as the scheduled day off.





Office of the City Manager

## **EXHIBIT G**

### **DIRECTIVE PROHIBITING UNAUTHORIZED CONSTRUCTION**

July 31, 2001

To: Department Directors

From: Weldon Rucker, City Manager

Subject: **DIRECTIVE PROHIBITING UNAUTHORIZED CONSTRUCTION  
OR FACILITY MAINTENANCE WORK IN CITY FACILITIES**

It has come to my attention that some construction, building maintenance and electrical work is being improperly performed at various facilities that are either owned or leased by the City. Because this work can affect the health and safety of all City employees and can result in a significant potential liability for the City, it is absolutely essential that any such work be done by competent and experienced individuals. Even if licensed contractors are brought in to do the work, they may not be fully aware of how their work will impact other City projects or facilities. Furthermore, already scarce City funds are wasted when Public Works has to correct improper or hazardous work performed by unauthorized individuals or contractors. Accordingly, such construction and maintenance work must only be performed by properly trained and supervised Public Works maintenance staff or contractors selected by, and under the direction of, the Public Works Department.

Therefore, I am reminding and directing all department directors to ensure that absolutely no construction, building maintenance or electrical work be performed in any City owned or leased facilities by contractors or anyone else not under the direction of Public Works. All construction and facility maintenance work is to be referred to the Public Works Department.

For routine maintenance, minor repairs, or minor physical modifications, contact the Public Works Customer Service representative at 644-6620. For larger construction projects, contact Public Works Capital Improvement Projects at 981-6330. Public Works can then make appropriate decisions as to whether construction or maintenance work should be performed by City employees or by outside contractors, utilities, or agencies.

Thank you, in advance, for your full compliance with this direction.

cc: City Manager's Office

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

APPROVING A NEW CLASSIFICATION AND SALARY RESOLUTION FOR INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1245 AND RESCINDING RESOLUTION NO. 69,962-N.S.

WHEREAS, the City Council has approved a new three-year Memorandum Agreement with International Brotherhood of Electrical Workers, Local 1245 which includes salary increases; and

WHEREAS, it is necessary for the City Council to adopt a new Classification and Salary Resolution to reflect the salary adjustments reflected in the new Memorandum Agreement.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley adopts a new Classification and Salary Resolution for employees in Representation Unit C (Electrical Occupations) effective July 1, 2022 through June 30, 2025 to incorporate changes to the salary schedule as shown in Exhibit A (August 7, 2022) attached hereto and made a part thereof.

BE IT FURTHER RESOLVED that Resolution No. 69,962-N.S. is hereby rescinded.

Exhibit

A: International Brotherhood of Electrical Workers, Local 1245  
Classification/Salary Resolution Period: August 7, 2022 through June 30, 2025

**EXHIBIT A - Hourly Salary Schedule****As of August 7, 2022 (3.0% Salary Increase)**

Job Code	Rep Unit	Classification Title	FLSA	Step 1	Step 2	Step 3	Step 4	Step 5
32020	C	COMMUNICATIONS TECHNICIAN	N	0	0	48.2945	50.6173	52.9270
52180	C	ELECTRICAL PARTS TECHNICIAN	N	0	35.3125	37.5934	39.5648	40.5647
51030	C	ELECTRICIAN	N	0	0	48.2945	50.6173	52.9270
51100	C	LEAD COMMUNICATION TECHNICIAN	N	0	0	51.6314	53.9685	56.5598
51080	C	LEAD ELECTRICIAN	N	0	0	51.6314	53.9685	56.5598

**As of July 7, 2023 (3.0% Salary Increase)**

Job Code	Rep Unit	Classification Title	FLSA	Step 1	Step 2	Step 3	Step 4	Step 5
32020	C	COMMUNICATIONS TECHNICIAN	N	0	0	49.7433	52.1358	54.5148
52180	C	ELECTRICAL PARTS TECHNICIAN	N	0	36.3719	38.7212	40.7517	41.7816
51030	C	ELECTRICIAN	N	0	0	49.7433	52.1358	54.5148
51100	C	LEAD COMMUNICATION TECHNICIAN	N	0	0	53.1803	55.5876	58.2566
51080	C	LEAD ELECTRICIAN	N	0	0	53.1803	55.5876	58.2566

**As of July 9, 2024 (1.0% Salary Increase)**

Job Code	Rep Unit	Classification Title	FLSA	Step 1	Step 2	Step 3	Step 4	Step 5
32020	C	COMMUNICATIONS TECHNICIAN	N	0	0	50.2407	52.6572	55.0599
52180	C	ELECTRICAL PARTS TECHNICIAN	N	0	36.7356	39.1084	41.1592	42.1994
51030	C	ELECTRICIAN	N	0	0	50.2407	52.6572	55.0599
51100	C	LEAD COMMUNICATION TECHNICIAN	N	0	0	53.7121	56.1435	58.8392
51080	C	LEAD ELECTRICIAN	N	0	0	53.7121	56.1435	58.8392

**CITY OF BERKELEY / IBEW, Local 1245  
2022 MOU NEGOTIATIONS  
CITY COMPREHENSIVE PROPOSAL #1 – July 13, 2022**

The Parties have reached a Tentative Agreement on the terms below and agree that all other MOU provisions will remain the same. This Tentative Agreement is subject to the ratification of the IBEW, Local 1245 membership and adoption by the City Council.

**I. SALARIES**

**11.1 Salary Rates**

Salary rates for the period of ~~June 30, 2022~~ July 1, 2022 through June 30, 202~~5~~2, for all classes of positions in Representation Unit C shall be set according to the classifications and salary ranges assigned to those classifications listed in Exhibit "A" and attached hereto and made part hereof.

11.1.1 **Salary Increase upon Council Approval:** ~~Effective July 1, 2022, t~~ The salary ranges for these classification covered by this Agreement as listed in Exhibit A will receive a salary increase of eight percent (8.0%) and shall be show in Exhibit A as follows:

Effective the first full pay period following council approval, the salary ranges for the classification covered by this Agreement as listed in Exhibit A will receive a salary increase of three percent (3.0%).

Effective July 9, 2023, the salary ranges for the classification covered by this Agreement as listed in Exhibit A will receive a salary increase of three percent (3.0%).

Effective July 7, 2024, the salary ranges for the classification covered by this Agreement as listed in Exhibit A will receive a salary increase of one percent (1.0%).

11.1.2 **One-Time Payment:** A one-time non-pensionable lump sum payment of ~~\$1,000.00~~ 1000.00 for each career ~~bargaining unit~~ employee in this unit shall be ~~conferred and~~ paid the first full pay period after council approval [TBD] on July 13, 2022. Eligible employees must be current City employees in paid status for the full pay period this lump sum is conferred and shall not apply to unit members who are in unpaid status. Such payment shall be subject to required payroll tax deductions. ~~The parties agree that t~~ this lump sum provision does not create or bind the City to any precedent or past practice.

If during any fiscal year during the term of this agreement, the City reaches agreement with the largest bargaining unit or extends the unrepresented employees an across the board Cost of Living Adjustment (COLA) increase, wage increase, lump sum payment, or other benefit increase the City agrees to apply these same increases to the salary ranges and/or benefits for those classifications covered by this MA as listed in Exhibit B.

**II. State Electrician Certification Premium**

**11.20 State Certification Premium (New Section)**

An employee who possesses and maintains a "General Electrician" state certification from the Department of Industrial Relations shall receive an additional three percent (3%) to their base rate of pay. The City shall retain the right to add the general electrician state certification as a minimum qualification for the Electrician and Lead Electrician classifications. If the certification is made a minimum qualification, active employees, employed in classifications within this unit at the time of implementation, shall be exempt from this qualification for the remainder of their employment.

**III. 37.11 New Members' Pension Contributions through 20516 a Contract Amendment**

37.11.1 July 3, 2016: Effective July 3, 2016, in addition to the contributions in Section 37.4 (CalPERS Retirement Formula for "New Members" as Defined Under the Public Employees' Pension Reform Act of 2013 (PEPRA)), New Members will contribute one and one-quarter percent (1.25%) towards the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allows such contributions as pre-tax via automatic payroll deduction, in exchange for the City granting the salary increase set forth in Section 11.1.5 (July 3, 2016 - Salary/PERS Exchange) of this MA. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.

37.11.2 The parties recognize that the CalPERS 20516 amendment that allows employee contributions toward the employer rate is in addition to the required 50% of the normal cost of "New Members" benefits and made in consideration of additional salary increases in Section 11.1.5 (July 3, 2016 - Salary/PERS Exchange) above (a total of 1% salary increases in exchange for employees paying a total of 1.25% towards CalPERS pension cost).

As soon as administratively possible, following council approval of this agreement, the additional contribution of 1.25%, as indicated in Section 37.11.1, shall be eliminated through a contract amendment with CalPERS. The start of the first full pay period following completion of the contract amendment shall be the effective date of the reduction.

For the City of Berkeley

For IBEW, Local 1245

DocuSigned by:  
*Dawud Brewer* 7/20/2022  
4DCA20F24C90437...  
Dawud Brewer Date  
Employee Relations Manager

DocuSigned by:  
*Charley Souders* 7/20/2022  
55BE85F949B945G...  
Charley Souders Date  
Business Representative





Office of the City Manager

**02****Special Meeting Item**CONSENT CALENDAR

July 26, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, Interim City Manager

Submitted by: Don E. Ellison, Interim Director of Human Resources

Subject: Side Letter of Agreement – SEIU Local 1021 Maintenance and Clerical Chapters

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute and implement a Side Letter of Agreement with Service Employees International Union Local 1021 Maintenance and Clerical Chapters to modify Section 31.3 of the Memorandum Agreement regarding the Pre-Age 65 Retiree Health Insurance. Effective 7/1/2022 through 6/30/2023, the City shall contribute an additional \$200.00 toward both single and two-party rate for active employees who retire from city service and file such retirement within thirty (30) days of separation from the city with CalPERS. This enhanced retiree incentive shall continue until Section 31.4 become applicable.

FISCAL IMPACTS OF RECOMMENDATION

The Side Letter of Agreement will result in an expenditure of approximately \$139,294. The cost of the additional contribution can be absorbed in the current general fund.

CURRENT SITUATION AND ITS EFFECTS

As of July 19, 2022, there were approximately 447 employees in the SEIU Local 1021MC chapters in four (4) separate representational units (Unit D-Manual Operations; Unit J-Para-professional Employees – Police Department; Unit K1-Career Non-confidential Office and Clerical Employees; and K2-Supervisory Clerical Employees).

The SEIU Local 1021 MC Memorandum Agreement includes a provision that requires the City to pay on the employee's behalf no more than \$181.56 per month for an employee electing single party health coverage and no more than \$363.12 per month for an employee electing two-party coverage.

BACKGROUND

On July 21, 2021, Council approved Resolution No. 69,963-N.S. authorizing the City Manager to execute a new Memorandum Agreement for the period June 27, 2021 through June 26, 2024 with the SEIU Local 1021MC. The current Memorandum of Understanding SEIU Local 1021MC and the City of Berkeley includes a reopener stating the parties

agree that within 45 days of the implementation of the successor MOU, the City will request an actuarial analysis proposal as follows on July 1, 2022:

Effective 7/1/2022 through the end of the contract, the City shall contribute an additional \$200.00 toward both single and two-party rate. This enhanced incentive shall continue until Section 31.4 become applicable.

Upon receipt of the actuary, the parties agree to meet and confer over the Unions proposal to impasse.

The City met with representatives of the Union and reached tentative agreement on a Side Letter of Agreement.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

The City and the Union have developed a good working relationship over the years and both parties strive to resolve issues fairly and amicably to meet each other's mutual interest. The modifications set forth in this Side Letter of Agreement resolve issues important to the Union and the City, including treating employees fairly and equitably.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Don E. Ellison, Interim Director of Human Resources, 510-981-6807

Dawud Brewer, Employee Relations Manager, 510-981-6821

Attachments:

1: Resolution

Exhibit A: Side Letter of Agreement between the City of Berkeley and Service Employees International Union Local 1021 Maintenance and Clerical Chapters



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

SIDE LETTER OF AGREEMENT – SERVICE EMPLOYEES INTERNATIONAL UNION  
LOCAL 1021 MAINTENANCE AND CLERICAL CHAPTERS

WHEREAS, on July 26, 2022, the City Council adopted Resolution No. 69,963-N.S. that authorized the City Manager to execute and implement a three-year Memorandum Agreement with the Service Employees International Union Local 1021 Maintenance and Clerical Chapters that set forth the wages, hours and other terms and conditions of employment for employees represented by the Union; and

WHEREAS, Section 31.3.1 Effective 7/1/2022 through 6/30/2023, the City shall contribute an additional \$200.00 toward both single and two-party rate for active employees who retire from city service and file such retirement within thirty (30) days of separation from the city with CalPERS; and

WHEREAS, representatives of the City and representative of SEIU Local 1021 Maintenance and Clerical Chapters have met and conferred in good faith and have reached a tentative agreement on a Side Letter of Agreement to the Memorandum Agreement attached hereto as Exhibit A and made a part hereof.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute and implement the Side Letter of Agreement (Exhibit A), which is attached hereto and made a part of hereof with the SEIU Local 1021 Maintenance and Clerical Chapters pertaining to the specific sections set forth in the Side Letter of Agreement.

BE IT FURTHER RESOLVED that a copy of the executed Side Letter of Agreement will be filed in the Office of the City Clerk.

Exhibit A: Side Letter of Agreement between the City of Berkeley and SEIU Local 1021 Maintenance and Clerical Chapters



Human Resources Dept.

July 8, 2022

Sandra Lewis  
Vice President of Representation  
SEIU Local 1021  
100 Oak Street  
Oakland, CA 94607

**Re: Letter of Understanding – Pre-65 Retiree Healthcare Contribution**

Dear Ms. Lewis:

This is to confirm the agreement reached between the City of Berkeley (the “City”) and Service Employees International Union, Local 1021 Maintenance & Clerical Chapters (the “Union”), regarding the above referenced matter. In accordance with Section 31.3.1 of the current memorandum of understanding (MOU) the parties met and conferred concerning the union’s proposal as follows:

SEIU Local 1021 Maintenance and Clerical Chapters Effective 7/1/2022 through the end of the contract, the City shall contribute an additional \$200.00 toward both single and two-party rate. This enhanced retiree incentive shall continue until Section 31.4 become applicable. Upon receipt of the actuary, the parties agree to meet and confer over the Union’s proposal to impasse.

The City and Union agrees as follows:

1. Effective 7/1/2022 through 6/30/2023, the City shall contribute an additional \$200.00 toward both single and two-party rate for active employees who retire from city service, and file such retirement within thirty (30) days of separation from the city with CalPERS. This enhanced retiree incentive shall continue for those who retired in accordance with this enhanced benefit until Section 31.4 becomes applicable for that individual.

This Agreement does not establish a precedent, nor does it interpret any employee rights under the language of the Labor Agreements, the Personnel Rules and Regulations, or any applicable policies and procedures of City departments or the City of Berkeley, except as expressly stated herein.

This Agreement memorializes and constitutes the entire understanding between the parties as to all matters referred to or included herein and supersedes and replaces all prior negotiations, proposed discussion, whether written or oral.

If this is your understanding of the agreement reached, please sign as indicated below.

Sincerely,

Dawud Brewer  
Employee Relations Manager

WHEREFORE, the parties by and through their authorized agents and representatives agree to the terms of this Side Letter Agreement.

**AGREED TO FOR THE CITY:**

\_\_\_\_\_  
Dee Williams-Ridley  
City Manager

\_\_\_\_\_  
Dawud Brewer  
Employee Relations Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
James Chang  
Deputy City Attorney

**AGREED TO FOR THE UNION:**

\_\_\_\_\_  
Sandra Lewis  
Vice President of Representation

\_\_\_\_\_  
Peter Masiak  
East Bay Field Director

\_\_\_\_\_  
Jenny Seay  
Clerical Chapter President

\_\_\_\_\_  
Danny Walker  
Maintenance Chapter President





Susan Wengraf  
Councilmember District 6

ACTION CALENDAR

July 26, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Wengraf, Councilmember Kesarwani, Mayor Arreguin (Authors), Councilmember Taplin (Co-Sponsor)

Subject: Establishing Policy for Adequate Annual General Fund Contribution for Street Maintenance to Prevent Deterioration of Pavement Condition

RECOMMENDATION

Adopt a Resolution establishing a Council fiscal policy to allocate \$8 million annually in General Fund monies for street maintenance, adjusted annually for inflation. The allocation will augment the existing General Fund street paving budget of \$7.3 million, for a total of \$15.3 million annually, adjusted for inflation. The policy allows for suspension in any year in which there is a budget deficit or emergency under two circumstances (1) the City Council draws upon \$1 million (or more) from its Stabilization Reserve in order to adopt a final budget; or (2) a two-thirds vote of the City Council.

This policy is needed to ensure that deferred street maintenance is supported by an ongoing adequate General Fund contribution. Without adequate ongoing street maintenance funding, analysis shows that a one-time infusion of resources will only lead to a temporary improvement in the pavement condition.

FINANCIAL IMPLICATIONS

\$8 million in General Fund revenues annually, adjusted annually for inflation using the greater of the cost of living in the immediate San Francisco Bay Area or per capita personal income growth in the state, as verified by official United States Bureau of Labor statistics. Additional funding for street repaving should come from Excess Property Transfer Tax revenues above the baseline established in the City Council's Fiscal Policies.

BACKGROUND

On May 10, 2022, The City Council approved the *Strategic Asset Management Plan (SAMP)* and the *Asset Management Policy (AMP)*. The SAMP and AMP build on the recommendations of the Vision 2050 Task Force Report, *Sustainable and Resilient Infrastructure, Creating a Better Future for Berkeley* that City Council adopted on September 29, 2020. An important concept highlighted in the Vision 2050 report is that infrastructure, including streets, needs to be properly maintained.

On May 24, 2022, City Council approved Councilmember Kesarwani's Budget Referral for Street Maintenance for the biennial FY 2022-24 budget to fund an adequate allocation from the General Fund to prevent further deterioration of the City's streets.

Studies show that \$1 invested in pavement treatment early in the pavement's useful life can save \$8 spent on more expensive repairs later.<sup>1</sup> Yet the City's annual paving funding is far short of the needed amount to maintain our streets. To keep City streets at the current pavement condition index (PCI) requires increasing annual funding from approximately \$7.3 million to \$15 million.<sup>2</sup> With the current level of annual funding, Berkeley's PCI is expected to decline by 6 points (to a PCI of 51) in the next five years.<sup>3</sup> The City dedicates approximately \$7.3million 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 the current level of 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.<sup>4</sup>

The Metropolitan Transportation Commission rates Berkeley's PCI as the 15<sup>th</sup> worst out of 101 cities in the nine counties MTC covers. These pavement conditions put pedestrians and bicyclists at risk and are estimated to cost drivers over a thousand dollars annually in repair costs, disproportionately affecting lower-income residents who spend a greater percentage of their income on vehicle repairs.

Deferred street paving and repair is eight times more expensive than doing it on time. The City's deferred street maintenance is estimated at roughly \$268 million. Without the \$8 million annual increase, that deferred street maintenance is estimated to increase to \$396 million in five years; \$503 million in 10 years; and to a total of \$1.1 billion by 2050. The chart below demonstrates life cycle costs of pavement deterioration.

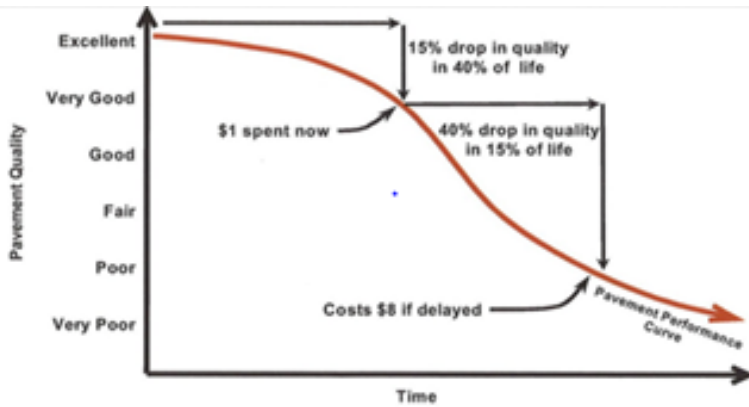
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<sup>1</sup> Garland, Liam, *Strategic Asset Management Plan*, April 2022, Vision 2050: Strategic Asset Management Plan and Asset Management Policy, (p.23 {28 of 56}) [Council Meeting Item 31](#), May 10, 2022

<sup>2</sup> *ibid*

<sup>3</sup> *ibid*

<sup>4</sup> *ibid*



*Pavement Deterioration and Life Cycle Costs*

ENVIRONMENTAL SUSTAINABILITY

Good street conditions will improve safety for pedestrians, cyclists, users of micro-mobility devices, and public transit.

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

1: Resolution

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

ESTABLISHING A FISCAL POLICY FOR A STREET MAINTENANCE ALLOCATION  
FROM THE GENERAL FUND

WHEREAS, the City of Berkeley's pavement condition index (PCI) is the 15<sup>th</sup> worst among its surrounding 101 cities; and

WHEREAS, inadequate street paving funding has led to \$268 million in deferred needs and is on track to increase to \$396 million in five years and to \$1.1 billion by 2050; and

WHEREAS, without increasing the City's annual street maintenance budget to at least \$15.3 million annually, our streets will continue to deteriorate; and

WHEREAS, unmaintained streets put all street users at risk and are estimated to cost Berkeley drivers an estimated thousand dollars of vehicle damage annually – hurting lower income residents disproportionately as their vehicle expenses comprise a larger proportion of their overall budget; and

WHEREAS, good roads support alternative modes of transportation which reduces greenhouse gases and supports Berkeley's Strategic Plan Priorities.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a fiscal policy is hereby established requiring the allocation of \$8 million dollars annually from the General Fund to the Street Maintenance Fund, in addition to the existing baseline \$7.3 million allocation, for a total amount of \$15.3 million to be adjusted annually for inflation using the greater of the cost of living in the immediate San Francisco Bay Area or per capita personal income growth in the state, as verified by official United States Bureau of Labor statistics.

BE IT FURTHER RESOLVED that this fiscal policy to fund street maintenance at a level of \$15.3 million (as adjusted for inflation) may be suspended in any year in which the City Council draws upon \$1 million (or more) from the Stabilization Reserve in order to adopt a final budget or a two-thirds vote of the City Council.

BE IT FURTHER RESOLVED that upon replenishment of the Stabilization Reserve or fiscal recovery, it is strongly recommended that the City Council seek to make up any funding differential between the \$15.3 million target level (as adjusted for inflation) and the actual street maintenance budget for the year(s) that this policy is suspended.





Office of the City Manager

ACTION CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Placing a General Obligation Bond Measure on the November 8, 2022 Ballot for Affordable Housing, Climate Change Resiliency, Wildfire Protection, and Other Public Infrastructure Improvements

RECOMMENDATION

1) Adopt a Resolution determining public interest and necessity for issuing a general obligation bond in the amount of \$300 million for affordable housing, climate change resiliency, wildfire protection, and other public infrastructure improvements, submitting to the Berkeley electorate on the November 8, 2022 ballot a measure to authorize a general obligation bond in that amount, and finding that the proposed measure is not a project under the California Environmental Quality Act.

2) Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

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

On April 27, 2021, City Council approved a referral to the City Manager to "explore various options for a future city bond measure in November 2022 to support the growing need for infrastructure investment, including street repaving, Complete Streets infrastructure that promotes bike and pedestrian safety, restoration of public buildings and facilities, and affordable housing citywide." On June 30, 2021, City Council adopted a budget that included Vision 2050 implementation and exploration of revenue measures for the November 2022 ballot. In partnership with dedicated Vision 2050 volunteers, staff completed meetings with 25+ City Commissions and community

organizations; conducted a scientific survey on infrastructure priorities in October 2021; updated City Council on progress on November 16, 2021; updated and gained City Council's direction at the January 20, 2022 work session; sent an informational brochure to all Berkeley residents inviting them to one of four large area public meetings; held those public meetings on March 30, April 6, April 13, and April 20; conducted this project's second scientific survey of Berkeley voters in late April; reported to City Council on the City's bond capacity on April 26, 2022; drafted a *Vision 2050 Program Plan* and incorporated public comments received between May 2 and May 12, 2022; submitted to City Council a Strategic Asset Management Plan and gained adoption of an Asset Management Policy on May 10, 2022; issued off agenda memos related to this project on October 4, 2021, December 13, 2021, March 28, 2022, and May 3, 2022; provided direction to staff at the May 31, 2022 City Council meeting; and had an in-depth discussion of the revenue measure at the June 21, 2022 City Council meeting.

At the June 21 meeting, City Council requested more details on the affordable housing component of the bond. While there are many variables to consider, staff estimate between 500-1,000 units can be produced with this level of investment. This range considers the City's experience creating new affordable housing units. For construction of new affordable housing units, the City has historically averaged loans between \$150,000-\$200,000 per unit over the past five years. For acquisition and rehabilitation (i.e., Small Sites), it has been approximately \$284,000 per unit, albeit from a sample of two projects.

Affordable housing units developed from bond funding would follow the City's Housing Trust Fund (HTF) Guidelines. The HTF Guidelines require eligible developers to designate at least 20% of new construction units for Extremely Low-Income households, which are 30% of area median income (AMI) and 40% to at least Low-Income Households (60% AMI). Projects leveraging tax credits (the most common funding source for affordable projects) must also average 60% AMI.

Historically, local new construction projects leverage additional subsidies to support Extremely-Low and Very-Low Income households, including Section 8 Project-Based Vouchers, Permanent Supportive Housing funding, and other population-specific subsidies for Transition-Aged Youth and people with disabilities. With dedicated local funding from sources such as the GO Bond, the City of Berkeley is at an advantage in competing for affordable housing funding.

While the Finance Department advises on a bond's specific disbursement schedule, staff anticipates that a bond approved in November could be allocated to support affordable housing at both the North Berkeley and Ashby BART given the current development timelines of between 10 to 15 years projected at both BART sites. The bond could also support other sites throughout the City over the course of the next ten years as the City's pipeline continues to grow.

Staff are confident there is sufficient demand for the bond. Measure O was completely allocated within three years of its adoption. In 2015, the City had eight projects in predevelopment or development. There are currently 20 projects in predevelopment or development at least in part due to Measure O.

Staff anticipates this bond will mirror the requirements of the Measure O Bond, which appropriated funding for the construction and acquisition of new construction affordable housing. The HTF Guidelines also establish standards for sustainability, accessibility, and labor in addition to the affordability requirements.

As to the question of affirmatively furthering fair housing and equitably locating projects in higher income and resource neighborhoods, it is often too difficult to control project locations as so much is reflective of the housing market. However, the scoring for competitive tax credit financing, the primary driver of new construction affordable projects, incentivizes development in high resourced areas. City Council may consider adopting a priority or tiebreaker for site locations according to such criteria. Staff also consider other factors in determining site locations including proximity to transit and other amenities including schools, community centers, and grocery stores.

As to the detail regarding the climate change resiliency, wildfire protection, and other public infrastructure improvements, staff updated the *Vision 2050 Program Plan* to include the detail provided by staff at the June 21 City Council meeting.

If this bond measure were placed on the ballot and approved by two-thirds of the voters, additional funds would be generated for affordable housing and climate change resiliency, wildfire protection, and other public infrastructure improvements. The average annual amount collected over the projected period the bonds are outstanding would be approximately \$130 for a home with the City's mean assessed valuation of \$647,972.

The measure permits the City to issue general obligation bonds to finance the acquisition and improvement of real property for affordable housing, including by the City directly, or indirectly through third parties, and to reimburse City funds for the prior acquisition and improvement of property to be used for affordable housing.

With respect to who can author arguments for measures placed on the ballot by the Council, Elections Code Section 9282(b) provides that the legislative body may submit an argument in favor of the measure. The City Council may authorize the Council as a whole, or certain members of the Council, to submit an argument in favor of the measure.

Staff recommends that the City Council make a finding that the proposed bond measure is not a project under the California Environmental Quality Act (California Public Resources Code, Sections 21000 et seq.) ("CEQA") or the related CEQA Guidelines (15 Cal. Code Regs. Title 14, Sections 15000 et seq.) ("CEQA Guidelines") because, as

contemplated by Section 15378(b)(4) of the CEQA Guidelines, the proposed bond measure involves the creation of a government funding mechanism and does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. The use of bond proceeds to finance any project or portion of any project will be subject to approval of the applicable decision-making body at that time, upon completion of planning and any further required environmental review under CEQA.

BACKGROUND

The City Manager is presenting this measure for addition to the November 8, 2022 ballot pursuant to the direction provided by the City Council at the May 31 and June 21, 2022 City Council meetings.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

The City Clerk is presenting this action in accordance with the direction given by the City Council at the May 31 and June 21, 2022 meetings.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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

Attachments:

1: Resolution

Exhibit A: Text of Measure

Exhibit B: Tax Rate Statement

RESOLUTION NO. -N.S.

DETERMINING THAT PUBLIC INTEREST AND NECESSITY DEMAND THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FINANCE THE ACQUISITION OR IMPROVEMENT OF REAL PROPERTY FOR AFFORDABLE HOUSING, AND CLIMATE CHANGE RESILIENCY, WILDFIRE PROTECTION, AND OTHER PUBLIC INFRASTRUCTURE AND FACILITIES, AND SUBMITTING TO THE BERKELEY ELECTORATE ON THE NOVEMBER 8, 2022 BALLOT A MEASURE TO AUTHORIZE GENERAL OBLIGATION BONDS FOR SUCH PROJECTS

WHEREAS, the accelerating impacts of climate change and growing need for affordable housing create new challenges for safety, resiliency, and sustainability within the City; and

WHEREAS, the City has identified over \$1 billion in infrastructure needs, including to reduce the City's environmental footprint, adapt to climate change, reduce the risk of flooding and wildfires, and better withstand the consequences of flooding and fires when they do occur; make the City's public spaces more attractive, vibrant, and green; and otherwise improve the City's infrastructure and make it more sustainable and resilient; and

WHEREAS, the *Vision 2050 Framework* and *Program Plan* are long-term plans to build, upgrade and repair Berkeley's aging infrastructure to be more sustainable and resilient in order to meet the serious challenges of the future, including climate change, and, to these ends, the City Council has determined that affordable housing and infrastructure are connected; and

WHEREAS, a regional housing needs assessment showed the City needed an additional 3,854 affordable housing units, a crisis affecting unhoused, low-income and working families and individuals, including, but not limited to, teachers, seniors, veterans, the homeless, students, people with disabilities, and other vulnerable populations; and

WHEREAS, the size and scale of local infrastructure need and affordable housing need show the challenge ahead despite the proactive steps taken to address these issues over the last decade; and

WHEREAS, existing funds and funding sources are inadequate for these infrastructure and affordable housing needs; and

WHEREAS, the City is authorized to issue general obligation bonds to finance municipal improvements pursuant to certain provisions of the California Government Code, including Article 1, commencing with Section 43600, of Chapter 4 of Division 4 of Title 4 or Article 4.5, commencing with Section 53506, of Chapter 3 of Part 1 of Division 2 of Title 5 (each, the "Bond Law"); and

WHEREAS, the City is authorized to issue general obligation bonds for the acquisition or

improvement of affordable housing projects, pursuant to the provisions of Section 7.64 of the Berkeley Municipal Code; and

WHEREAS, under the Bond Law and Chapter 7.64, the City intends to issue general obligation bonds (the “Bonds”) to finance the acquisition or improvement of real property for affordable housing (“Affordable Housing Improvements”), including the application of bond proceeds by the City directly, or indirectly through third parties as loans, grants, or other disbursements to qualified individuals, not-for-profit entities acting alone or together with tax credit investors, not-for-profit corporations, partnerships, associations, and government agencies, to acquire real property for the purpose of constructing, rehabilitating or preserving affordable housing, or to construct, rehabilitate or preserve affordable housing; including but not limited to supportive housing, nonprofit rental housing, and limited-equity housing cooperatives affiliated with community land trusts; and

WHEREAS, under the Bond Law and Chapter 7.64, the City further intends to issue the Bonds to finance the acquisition or improvement of real property for public infrastructure and facilities (“Infrastructure Improvements”; together with Affordable Housing Improvements, “Improvements”), including the City’s storm drains; above or on ground utilities, especially those that can be undergrounded; green infrastructure; retaining walls; park, recreation, and senior facilities; parks, natural areas, waterfront, marina, and other open space; public buildings; and other public infrastructure, including repair, renovation, replacement, or reconstruction so that the public can continue to benefit from Infrastructure Improvements as they become more resilient and sustainable, and the Infrastructure Improvements will include any public art integrated into the Infrastructure Improvements consistent with Berkeley Municipal Code Chapter 6.13; and

WHEREAS, the City may have the opportunity to leverage State and County of Alameda (“County”) funds allocated for these affordable housing and infrastructure needs if it issues the Bonds to address these needs; and

WHEREAS, fiscal accountability protections including public disclosure of all spending, annual audits and independent oversight help ensure funds will be spent as promised; and

WHEREAS, funding from the Bonds should be guided by the City’s adopted plans and policies, including the *Vision 2050 Framework* and *Program Plan*; and

WHEREAS, funding from the Bonds should be attentive to creating attractive, green spaces that invite walking and biking, and support community gathering; and

WHEREAS, by law, all funds must remain under local control in the City and cannot be taken away by the State or the County or used for other purposes; and

WHEREAS, the City Council recognizes the importance of ensuring adequate maintenance funding from existing sources for Infrastructure Improvements financed by

the Bonds and not supplanting existing City infrastructure funding with proceeds of the Bonds; and

WHEREAS, United States Income Tax Regulations section 1.150-2 provides generally that proceeds of tax-exempt debt are not deemed to be expended when such proceeds are used for reimbursement of expenditures made prior to the date of issuance of such debt unless certain procedures are followed, one of which is a requirement that prior to the payment of any such expenditure, the issuer declares an intention to reimburse such expenditure; and

WHEREAS, it is in the public interest and for the public benefit that the City declares its official intent to reimburse certain of the proposed expenditures referenced herein; and

WHEREAS, proceeds from the sale of the Bonds will be used to finance the Improvements, and all expenditures will be subject to annual independent financial audits and oversight by multiple City commissions; and

WHEREAS, the Council desires to submit the measure described herein to be placed upon the ballot at the November 8, 2022 Statewide General Election, consistent with the Council's Resolution No. 70,336-N.S., adopted on May 10, 2022, calling for a General Municipal Election to be consolidated with said statewide election; and

WHEREAS, the Council's Resolution No. 70,336-N.S., adopted on May 10, 2022, adopted the provisions of Elections Code Section 9285(a) providing for the filing of rebuttal arguments for city ballot measures, pursuant to Elections Code Section 9285(b).

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the public interest and necessity require the issuance of one or more series of general obligation bonds in the amount of \$300,000,000 to fund the Improvements, subject to completion of the proceedings required by the Bond Law.

BE IT FURTHER RESOLVED that this resolution is adopted pursuant to and in conformance with Chapter 7.64 of the Berkeley Municipal Code.

BE IT FURTHER RESOLVED that:

- A. A ballot measure authorizing the City to issue general obligation bonds to finance the acquisition and improvement of real property for the Improvements (the "Measure"), a copy of which is attached hereto as Exhibit A, shall be placed before the voters at the election on November 8, 2022.
- B. The estimated cost of the Affordable Housing Improvements to be funded by the Bonds is \$150,000,000, and the estimated cost for the Infrastructure Improvements to be funded by the Bonds is an additional \$150,000,000.

- C. The maximum rate of interest on the indebtedness shall not exceed twelve percent (12%) in accordance with Government Code Section 53531.
- D. The estimated cost of the Improvements may include legal and other fees, and the cost of printing the Bonds, and other costs and expenses incidental to or connected with the issuance and sale of the Bonds.
- E. Proceeds of the Bonds shall be used to finance the acquisition and construction of real property for the Improvements, and to pay any fees and costs in connection with issuance of the Bonds, including but not limited to, legal fees and bond printing costs.
- F. The Improvements will be completed as needed, and each is assumed to include its share of costs, including planning, program management and construction costs. The final cost of each Improvement will be determined as real property is purchased, plans are finalized, construction bids are awarded, or projects are completed. In addition, certain acquisition or improvement funds are expected from non-bond sources, including funds which have not yet been secured. Therefore, the City Council cannot guarantee that the Bonds will provide sufficient funds to allow completion of all needed Improvements.
- G. For the Affordable Housing Improvements, proceeds of the Bonds shall be used to finance the acquisition or improvement of real property for affordable housing, including the application of bond proceeds for the City directly, or indirectly through third parties as loans, grants, or other disbursements to qualified individuals, not-for-profit entities acting alone or together with tax credit investors, not-for-profit corporations, partnerships, associations and government agencies, to acquire real property for the purpose of constructing, rehabilitating or preserving affordable housing, or to construct, rehabilitate or preserve affordable housing; including but not limited to supportive housing, nonprofit rental housing, and limited-equity housing cooperatives affiliated with community land trusts.
- H. As part of the process to adopt a budget, the City Manager shall provide to the City Council a comprehensive report of funds received from any Bonds authorized by this Measure.
- I. The following commissions or their successors shall provide oversight by reporting to the City Council on an annual basis regarding projects funded by the Bonds and the expenditure of proceeds of the Bonds, whether those expenditures are consistent with the purposes of the Bonds set forth in this Resolution, and recommendations on projects proposed to be funded by the Bonds and proposed expenditures of the proceeds of the Bonds:



1. The Parks, Recreation, and Waterfront Commission shall provide oversight on Infrastructure Improvements related to properties and facilities identified in Municipal Code Section 3.26.040.A, including all parks, recreation, and waterfront improvements.
  2. The Transportation and Infrastructure Commission shall provide oversight on the Infrastructure Improvements related to transportation and other public infrastructure.
  3. The Housing Advisory Commission shall provide oversight on the Affordable Housing Improvements.
- J. All expenditures will be subject to an annual independent financial audit to confirm that expenditures of proceeds of the Bonds are consistent with the intent of this Resolution.

BE IT FURTHER RESOLVED that the City hereby declares that it reasonably expects (i) to pay certain costs of the acquisition and improvement of real property for the Improvements prior to the date of execution, delivery or issuance of the Bonds, and (ii) to use a portion of the proceeds of the Bonds for reimbursement of such expenditures that are paid before the date of execution, delivery or issuance of the Bonds.

BE IT FURTHER RESOLVED that, pursuant to California Elections Code sections 10002 and 10403, this City Council does hereby call an election on Tuesday, November 8, 2022, and requests that the Alameda County Board of Supervisors consolidate said election with the Statewide General Election on that same date in the manner and schedule established by Resolution No. 70,336-N.S., adopted on May 10, 2022, and submit to the qualified voters of the City, at said consolidated election, the Measure, such approval to constitute the authorization to issue the Bonds.

BE IT FURTHER RESOLVED that the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to 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.

BE IT FURTHER RESOLVED that the City proposes to issue and sell general obligation bonds of the City, in one or more series, in the maximum amount and for the objects and purposes set forth above, payable from and secured by ad valorem taxes levied and collected in the manner prescribed by laws of the State of California, all equally and ratably secured, without priority, by the taxing power of the City, if two-thirds of all qualified voters voting on the Measure vote in favor thereof.

BE IT FURTHER RESOLVED that said proposed Measure shall be placed on the ballot for the November 8, 2022 election with the statement of the Measure to be printed in the ballot in the following form:

<b>CITY OF BERKELEY GENERAL OBLIGATION BOND MEASURE</b>	
Shall the measure authorizing the City of Berkeley to issue \$300 million in general obligation bonds to fund affordable housing and improvements to public infrastructure, including utilities, parks, waterfront, marina, public buildings, and other improvements to increase sustainability and climate change resiliency, subject to oversight by City commissions and independent audits, be adopted?  Projected levy over expected 45-year period bonds are outstanding is approximately \$0.02 per \$100 of assessed value; raising approximately \$11,600,000 annually.	BONDS YES
	BONDS NO

BE IT FURTHER RESOLVED that at this time, the best estimate of the average and highest tax rates expected to be levied for debt service on the Bonds is set forth in the Tax Rate Statement attached hereto as Exhibit B.

BE IT FURTHER RESOLVED that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the Measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley, and that ballots for the election shall be provided in the form and in the number provided by law. Voters shall be provided an opportunity to vote for or against the Measure on the ballot, in accordance with procedures to be adopted by the authorized officers of the County.

BE IT FURTHER RESOLVED that the full text of the Measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California, and to file a certified copy of this Resolution, including all exhibits, no later than the close of business on August 12, 2022, with the County Registrar of Voters and the Clerk of the County Board of Supervisors.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that 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.

BE IT FURTHER RESOLVED that the City will reimburse the Registrar of Voters for the costs associated with placing the Measure on the ballot.

BE IT FURTHER RESOLVED that the Mayor, the City Manager, the Finance Director, the City Attorney and the City Clerk, and any of their designees, are hereby authorized to execute any documents and to perform all acts necessary to place the Measure on the ballot, and to make any changes to the text of the Measure, the statement of the measure or the Tax Rate Statement to conform to any legal requirements of the County Registrar, in order to cause the election to be held and conducted in the City.

BE IT FURTHER RESOLVED that the City Council directs the City Clerk to transmit a copy of the Measure to the City Attorney, who shall prepare an impartial analysis of the Measure showing the effect of the Measure on the existing law and the operation of the Measure. The impartial analysis shall be filed by the date set by the City Clerk for the filing of primary arguments.

BE IT FURTHER RESOLVED that the filing of ballot arguments shall conform to the manner and schedule established by Resolution No. 70,336-N.S., adopted on May 10, 2022.

BE IT FURTHER RESOLVED that the City Council, having reviewed the Measure, hereby finds that this action is not subject to the California Environmental Quality Act ("CEQA") because it involves the establishment of a government financing mechanism that does not involve any commitment to specific projects to be constructed with proceeds of the Bonds. The use of the proceeds of the Bonds to finance any project or portion of any project will be subject to approval of the applicable decision-making body at that time, upon completion of planning and any further required environmental review under CEQA.

BE IT FURTHER RESOLVED that this Resolution shall take effect from and after the date of its passage and adoption.

BE IT FURTHER RESOLVED that the City Clerk shall certify to the passage and adoption thereof.

Exhibits

A: Text of Measure

B: Tax Rate Statement

EXHIBIT A

**MEASURE TO BE SUBMITTED TO THE VOTERS AUTHORIZING THE CITY OF BERKELEY TO ISSUE GENERAL OBLIGATION BONDS TO FINANCE THE ACQUISITION OR IMPROVEMENT OF REAL PROPERTY FOR AFFORDABLE HOUSING, AND CLIMATE CHANGE RESILIENCY, WILDFIRE PROTECTION, AND OTHER PUBLIC INFRASTRUCTURE IMPROVEMENTS AND FACILITIES**

**Section 1. Findings.**

WHEREAS, the accelerating impacts of climate change and growing need for affordable housing create new challenges for safety, resiliency, and sustainability within the City; and

WHEREAS, the City has identified over \$1 billion in infrastructure needs, including to reduce the City's environmental footprint, adapt to climate change, reduce the risk of flooding and wildfires, and better withstand the consequences of flooding and fires when they do occur; make the City's public spaces more attractive, vibrant, and green; and otherwise improve the City's infrastructure and make it more sustainable and resilient; and

WHEREAS, the *Vision 2050 Framework* and *Program Plan* are long-term plans to build, upgrade and repair Berkeley's aging infrastructure to be more sustainable and resilient in order to meet the serious challenges of the future, including climate change, and, to these ends, the City Council has determined that affordable housing and infrastructure are connected; and

WHEREAS, the City Council recognizes the importance of ensuring adequate maintenance funding from existing sources for infrastructure improvements financed by the bonds and not supplanting existing City infrastructure funding with proceeds of the bonds; and

WHEREAS, a regional housing needs assessment showed the City needed an additional 3,854 affordable housing units, a crisis affecting the unhoused, low-income and working families and individuals, including, but not limited to, teachers, seniors, veterans, the homeless, students, people with disabilities, and other vulnerable populations; and

WHEREAS, the size and scale of local infrastructure need and affordable housing need show the challenge ahead despite the proactive steps taken to address these issues over the last decade; and

WHEREAS, existing funds and funding sources are inadequate for these infrastructure and affordable housing needs; and

WHEREAS, the City is authorized to issue general obligation bonds to finance municipal improvements pursuant to certain provisions of the California Government Code, including Article 1, commencing with Section 43600, of Chapter 4 of Division 4 of Title 4 or Article 4.5, commencing with Section 53506, of Chapter 3 of Part 1 of Division 2 of Title 5 (each, the “Bond Law”); and

WHEREAS, the City is authorized to issue general obligation bonds for the acquisition or improvement of affordable housing projects, pursuant to the provisions of Section 7.64 of the Berkeley Municipal Code; and

WHEREAS, under the Bond Law and Chapter 7.64, the City intends to issue general obligation bonds (the “Bonds”) to finance the acquisition or improvement of real property for affordable housing (“Affordable Housing Improvements”), including the application of bond proceeds by the City directly, or indirectly through third parties as loans, grants, or other disbursements to qualified individuals, not-for-profit entities acting alone or together with tax credit investors, not-for-profit corporations, partnerships, associations, and government agencies, to acquire real property for the purpose of constructing, rehabilitating or preserving affordable housing, or to construct, rehabilitate or preserve affordable housing; including but not limited to supportive housing, nonprofit rental housing, and limited-equity housing cooperatives affiliated with community land trusts;

WHEREAS, under the Bond Law and Chapter 7.64, the City further intends to issue the Bonds to finance the acquisition or improvement of real property for public infrastructure and facilities (“Infrastructure Improvements”; together with Affordable Housing Improvements, “Improvements”), including the City’s storm drains; above or on ground utilities, especially those that can be undergrounded; green infrastructure; retaining walls; park, recreation, and senior facilities; parks, natural areas, waterfront, marina, and other open space; public buildings; and other public infrastructure, including repair, renovation, replacement, or reconstruction so that the public can continue to benefit from Infrastructure Improvements as they become more resilient and sustainable, and the Infrastructure Improvements will include any public art integrated into the Infrastructure Improvements consistent with Berkeley Municipal Code Chapter 6.13; and

WHEREAS, the City may have the opportunity to leverage State and County of Alameda (“County”) funds allocated for these affordable housing and infrastructure needs if it issues the Bonds to address these needs; and

WHEREAS, fiscal accountability protections including public disclosure of all spending, annual audits and independent oversight help ensure funds will be spent as promised; and

WHEREAS, by law, all funds must remain under local control in the City and cannot be taken away by the State or the County or used for other purposes; and

WHEREAS, this resolution is adopted pursuant to and in conformance with Chapter 7.64 of the Berkeley Municipal Code; and

WHEREAS, the City Council has therefore determined that the public interest requires additional funding for the Improvements; and

WHEREAS, the People of the City of Berkeley find that the public interest requires the issuance of the Bonds in the amount of \$300,000,000 to fund the Improvements.

### **Section 2. Object and Purpose of Bonds.**

This measure (the “Measure”) authorizes the issuance of general obligation bonds (the “Bonds”), the object and purpose of which is to finance, by the City of Berkeley or a third party, as applicable, the acquisition or improvement of real property for the Improvements.

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

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

Proceeds of the Bonds may be used to reimburse the City for expenditures on the Improvements that are paid before the date of execution, delivery or issuance of the Bonds.

### **Section 3. Estimated Cost of Improvements.**

The estimated cost of the Affordable Housing Improvements to be funded by the Bonds is \$150,000,000, and the estimated cost for the Infrastructure Improvements to be funded by the Bonds is an additional \$150,000,000.

The estimated cost includes legal and other fees and the cost of printing the Bonds and other costs and expenses incidental to or connected with the authorization, issuance or sale of the Bonds. The cost of the Improvements include planning, programs management and construction costs.

**Section 4. Principal Amount of Bonds.**

The aggregate principal amount of Bonds to be issued shall not exceed \$300,000,000.

**Section 5. Maximum Interest Rate.**

The maximum rate of interest to be paid on the Bonds shall not exceed twelve percent (12%) per annum.

**Section 5. Accountability Requirements.**

The following accountability measures apply to the issuance of Bonds pursuant to this Measure:

- A. The specific purpose of the Bonds is to finance the acquisition or improvement of real property for the Improvements; and
- B. The proceeds from the sale of the Bonds will be used only for the purposes specified in this Measure, and not for any other purpose; and
- C. The proceeds of the Bonds will be deposited into an account to be created and held by the City; and
- D. The proceeds from the sale of the Bonds may be used to reimburse the City for amounts advanced from the general fund or other funds or accounts to acquire real property for Improvements, when such purchases are made prior to the availability of Bond proceeds; and
- E. As part of the process to adopt a budget, the City Manager shall provide to the City Council a comprehensive annual report of funds received from any bonded indebtedness authorized by this Measure, funds expended, and the status of the Improvements.
- F. The following commissions or their successors shall provide oversight by reporting to the City Council on an annual basis regarding projects funded by the bond and bond expenditures, whether those bond expenditures are consistent with the purposes of the bond, and recommendations on projects proposed to be funded by the bond and bond expenditures:
  - 1. The Parks, Recreation, and Waterfront Commission shall provide oversight on Infrastructure Improvements related to properties and facilities identified in Municipal Code Section 3.26.040.A, including all parks, recreation, and waterfront improvements.

2. The Transportation and Infrastructure Commission shall provide oversight on the Infrastructure Improvements related to transportation and other public infrastructure.
3. The Housing Advisory Commission shall provide oversight on the Affordable Housing Improvements.

G. All expenditures will be subject to an annual independent financial audit to confirm that Bond expenditures are consistent with the intent of this Measure.



**EXHIBIT B**

**TAX RATE STATEMENT**

An election will be held in the City of Berkeley (the “City”) on November 8, 2022, to authorize the sale of up to \$300 million in bonds of the City to finance the specific projects listed in the measure. If such bonds are authorized, the City expects to sell the bonds in one or more series. Principal and interest on the bonds will be payable solely from the proceeds of ad valorem tax levies made upon the taxable property in the City. The following information is provided in compliance with Sections 9400-9404 of the California Elections Code. Such information is based upon the best estimates and projections presently available from official sources, upon experience within the City, and other demonstrable factors.

Based upon the foregoing and projections of the City’s assessed valuation:

1. The best estimate of the average annual tax rate that would be required to be levied to fund the bond issue over the entire duration of the bond debt service, based on a projection of assessed valuations available at the time of filing of this statement is 2.00 cents per \$100 (or \$20.00 per \$100,000) of assessed valuation of all property to be taxed. The best estimate of the final fiscal year in which the tax is anticipated to be collected is 2067/68.
2. The best estimate of the highest tax rate that would be required to be levied to fund the bond issue, based on a projection of assessed valuations available at the time of filing this statement is 3.68 cents per \$100 (or \$36.77 per \$100,000) of assessed valuation of all property to be taxed. The best estimate of the first year in which the highest tax rate will apply is 2038/39.
3. The best estimate of the total debt service, including the principal and interest, that would be required to be repaid if all the bonds are issued and sold is \$520,000,000.

Voters should note that such estimated tax rates are specific to the repayment of bonds issued under this authorization and will be in addition to tax rates levied in connection with other bond authorizations approved or to be approved by the City or any other overlapping public agency.

Voters should note that the estimated tax rate is based on the ASSESSED VALUE of taxable property on Alameda County’s official tax rolls, not on the property’s market value. In addition, taxpayers eligible for a property tax exemption, such as the homeowner’s exemption, will be taxed at a lower effective tax rate than described above. Property owners should consult their own property tax bills to determine their property’s assessed value and any applicable tax exemptions.

Attention of all voters is directed to the fact that the foregoing information is based upon projections and estimates only, which amounts are not maximum amounts or durations and are not binding upon the City. The actual debt service amounts, tax rates and the years in which they will apply may vary from those presently estimated, due to variations from these estimates in the timing of bond sales, the amount of bonds sold and market interest rates at the time of each sale, and actual assessed valuations over the term of repayment of the bonds. The dates of sale and the amount of bonds sold at any given time will be determined by the City based on need for funds and other factors. The actual interest rates at which the bonds will be sold will depend on the bond market at the time of each sale. Actual future assessed valuation will depend upon the amount and value of taxable property within the City as determined by the Alameda County assessor in the annual assessment and the equalization process.

Dated: July \_\_, 2022

/s/ DEE WILLIAMS-RIDLEY  
City Manager, City of Berkeley



Office of the City Manager

ACTION CALENDAR  
 July 26, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Mark Numainville, City Clerk  
 Subject: Placing a Special Tax Measure on the November 8, 2022 Ballot to Fund Street Repairs, Sidewalk Repairs, and Traffic Safety Improvements; and Adopting the Vision 2050 Program Plan

RECOMMENDATION

1. Adopt a Resolution submitting a ballot measure to fund street repairs, sidewalk repairs, and traffic safety improvements to a vote of the electors at the November 8, 2022 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.
3. Adopt a Resolution adopting the *Vision 2050 Program Plan*.

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 Manager is presenting this measure for addition to the November 8, 2022 ballot pursuant to the direction provided by the City Council at the May 31 and June 21, 2022 City Council meetings.

Adoption of the resolution attached to this item will place the measure on the ballot. In addition, with respect to who can author arguments for measures placed on the ballot by the Council, Elections Code Section 9282(b) provides that the legislative body may submit an argument in favor of the measure. The City Council may authorize the Council as a whole, or certain members of the Council, to submit an argument in favor of the measure.

## BACKGROUND

On April 27, 2021, City Council approved a referral to the City Manager to “explore various options for a future city bond measure in November 2022 to support the growing need for infrastructure investment, including street repaving, Complete Streets infrastructure that promotes bike and pedestrian safety, restoration of public buildings and facilities, and affordable housing citywide.” On June 30, 2021, City Council adopted a budget that included Vision 2050 implementation and exploration of revenue measures for the November 2022 ballot. In partnership with dedicated Vision 2050 volunteers, staff completed meetings with 25+ City Commissions and community organizations; conducted a scientific survey on infrastructure priorities in October 2021; updated City Council on progress on November 16, 2021; updated and gained City Council’s direction at the January 20, 2022 work session; sent an informational brochure to all Berkeley residents inviting them to one of four large area public meetings; held those public meetings on March 30, April 6, April 13, and April 20; conducted this project’s second scientific survey of Berkeley voters in late April; reported to City Council on the City’s bond capacity on April 26, 2022; drafted a *Vision 2050 Program Plan* and incorporated public comments received between May 2 and May 12, 2022; submitted to City Council a Strategic Asset Management Plan and gained adoption of an Asset Management Policy on May 10, 2022; issued off agenda memos related to this project on October 4, 2021, December 13, 2021, March 28, 2022, and May 3, 2022; gained City Council direction at the May 31, 2022 City Council meeting; and had an in-depth discussion of the revenue measure at the June 21, 2022 City Council meeting.

At the June 21 meeting, City Council requested more information on several aspects of the parcel tax.

As to taxes paid by residential parcels for the parcel tax at 30 cents per square foot, the mean tax would be \$570 and the median tax would be \$579. The latter is based on a median parcel size of 1930 building square feet. If City Council chose a split roll parcel tax with a rate of \$0.26787 for residential parcels, the mean residential parcel would pay a tax of \$509 and the median residential parcel would pay a tax of \$517.

If City Council wished to keep the mean residential parcel’s tax under \$500 annually in the context of a split roll parcel tax, the residential parcel’s rate would be \$0.26315 per building square foot. To generate \$25M annually, commercial parcels’ tax rate would be \$0.42065 per building square foot.

As to application of the tax to parcels exclusively used for commercial parking, staff have compiled additional data. Staff estimate that between 30 and 98 parcels would be subject to the tax, although this is uncertain given the data has not been field verified. The proposed ordinance includes a per parcel tax of \$3,144 for parcels used exclusively for commercial parking. This \$3,144 amount is equal to the amount paid by the mean commercial parcel at 30 cents per building square foot. If the median commercial parcel

amount is preferred, that amount would be \$1,344 per parcel used exclusively for commercial parking. Projected revenue from the mean amount of \$3,144 is between \$94,000 and \$308,000, and from the median amount of \$1,344 is between \$40,000 and \$132,000.

As to more detail on the parcel tax spending and results, the *Vision 2050 Program Plan* has been updated to reflect the additional detail provided at the June 21 City Council meeting. It includes that street pavement condition will be increased to “good”, a pavement condition index between 70 and 79, and 97% of the City’s street miles paved. As to whether a percent could be applied to ensure paving had a minimum investment level, the *Program Plan* at page 34 has been revised to refer to a “roughly two-thirds [distribution] to paving condition and one-third to traffic safety and sidewalks.” While this is not a binding statement, it is consistent with City Council’s discussion and the public’s priorities revealed in this project’s extensive public process. The *Program Plan* at pages 34 and 48 also address the issue of General Fund support for infrastructure maintenance, including street maintenance.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Implementing Vision 2050 would result in more resilient public infrastructure that creates fewer greenhouse gases, and reduces conflict between our built and natural environment.

RATIONALE FOR RECOMMENDATION

The City Clerk is presenting this action in accordance with the direction given by the City Council at the May 31 and June 21, 2022 meetings.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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

Attachments:

- 1: Resolution
  - Exhibit A: Text of Measure
- 2: Resolution
  - Exhibit A: Vision 2050 Program Plan

RESOLUTION NO. ##,### –N.S.

SUBMITTING TO THE BERKELEY ELECTORATE ON THE NOVEMBER 8, 2022 GENERAL ELECTION BALLOT A MEASURE TO IMPOSE A SPECIAL PARCEL TAX TO PAY FOR STREET, SIDEWALK AND TRAFFIC SAFETY MAINTENANCE, UPGRADES AND REPAIRS

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 8, 2022 General Municipal Election, a special tax measure at a rate of

[OPTION 1 – SINGLE RATE]

[0.0300¢ per square foot of improvements, with a flat rate of [\$1,344<sup>1</sup> or \$3,144<sup>2</sup>] instead imposed on standalone non-residential parking facilities.]

or

[OPTION 2 – SPLIT RATE ALTERNATIVE]

[\$0.26787 per square foot of improvements for dwelling units, a flat rate of [\$1,344 or \$3,144] instead for standalone non-residential parking facilities and \$0.40504 per square foot for all other improvements.]

WHEREAS, 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

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services are to include all necessary services related to 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; and

WHEREAS, the Council desires to submit all measures to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

---

<sup>1</sup> If based on the median commercial parcel size.

<sup>2</sup> If based on the mean commercial parcel size.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a two-thirds vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code, and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that 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.

BE IT FURTHER RESOLVED that 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.

BE IT FURTHER RESOLVED that the City will reimburse the Registrar of Voters for the costs associated with placing the measure on the ballot.

BE IT FURTHER RESOLVED that said proposed Ordinance measure shall appear and be printed upon the ballots to be used at said election as follows:

<b>CITY OF BERKELEY SPECIAL TAX ORDINANCE MEASURE</b>	
<p><b>[OPTION 1 – SINGLE RATE]</b></p> <p>Shall the City of Berkeley’s measure to fund local street, sidewalk and traffic safety maintenance, upgrades and repairs by imposing a parcel tax on property improvements of 0.0300¢ per square foot, with a flat rate of [\$1,344 or \$3,144] instead imposed on standalone non-residential parking facilities, with exemptions, expected to generate \$25,000,000 annually, from January 1, 2023 to December 31, 2036, and increasing the City’s appropriations limit accordingly, be adopted?</p>	YES
<p><b>[OPTION 2 – SPLIT ROLL ALTERNATIVE]</b></p> <p>Shall the City of Berkeley’s measure to fund local street, sidewalk and traffic safety maintenance, upgrades and repairs by imposing a parcel tax on property improvements of \$0.26787 per square foot for dwelling units, a flat rate of [\$1,344 or \$3,144] instead imposed on standalone non-residential parking facilities, and \$0.40504 per square foot for all other improvements, with exemptions, expected to generate \$25,000,000 annually, from January 1, 2023 to December 31, 2036, and increasing the City’s appropriations limit accordingly, be adopted?</p>	NO

BE IT FURTHER RESOLVED that the text of the measure be shown as Exhibit A, attached hereto and made a part hereof.



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

**IMPOSING A SPECIAL TAX TO FUND STREET REPAIRS,  
SIDEWALK REPAIRS, AND TRAFFIC SAFETY IMPROVEMENTS**

The people of the City of Berkeley do ordain as follows:

Section 1. Findings and declarations.

The People of the City of Berkeley find and declare as follows:

A. Much of Berkeley's public infrastructure was built over 75 years ago and is in need of repair.

B. The City has identified \$248 million in deferred street repairs and Berkeley's pavement is currently in an "at risk" condition as identified by the Metropolitan Transportation Commission. Failure to make timely street repairs only leads to costlier repairs later.

C. The City has identified an additional \$122 million in unfunded traffic safety improvements from adopted plans, including improvements to help keep pedestrians, bicyclists, transit users, and drivers safe and eliminate the deaths or serious injuries associated with the City's transportation network.

D. The *Vision 2050 Framework* and *Program Plan* are long-term plans to build, upgrade and repair Berkeley's aging infrastructure to be more sustainable and resilient in order to meet the serious challenges of the future.

E. The *Vision 2050 Framework* and *Program Plan* focus on building safe, attractive, green, and sustainable streets; improved streetscapes including maintenance, rehabilitation and resurfacing of failed streets; improvements for pedestrian, bicycle, and transit users; and streetscape/landscape improvements associated with paving projects and unassociated with paving projects.

F. The City Council has committed to providing sufficient annual funding of street maintenance from the General Fund and revenue sources other than this special tax so that the improved pavement condition resulting from this special tax will be maintained.

G. A stable and consistent source of funding for street repairs and traffic safety is needed, and the City's adopted plans and policies, including the *Vision 2050 Program Plan*; pavement management system; and adopted transportation, bicycle, and pedestrian plans will guide how special tax funds are spent.

H. A special parcel tax within the City provides an equitable mechanism for funding capital investments and ongoing maintenance of streets, sidewalks, bike and pedestrian infrastructure, transit infrastructure, streetscapes and landscapes, and traffic safety features.

I. An exemption from the tax for low-income homeowners will help ensure the cost of the measure is not a burden for residents on fixed or limited incomes.

J. Fiscal accountability protections including public disclosure of all spending, annual audits and independent oversight help ensure funds will be spent as promised.

K. By law, all funds must remain under local control in Berkeley and cannot be taken away by the State or County or used for other purposes.

L. The City Council has therefore determined that the public interest requires additional funding for the improvements.

Section 2. Municipal Code Amendment.

A new Chapter 7.86 is hereby added to the Berkeley Municipal Code to read as follows:

**Chapter 7.86  
Street Repair and Traffic Safety Tax**

**7.86.010 Special Tax.**

**7.86.020 Tax Authorized – Tax rate – Adjustments for Inflation.**

**7.86.030 Definitions.**

**7.86.040 Exemptions.**

**7.86.050 Duties and Authority of the City Manager.**

**7.86.060 Collection with Property Tax – Penalties and Interest.**

**7.86.070 Collection.**

**7.86.080 Refunds.**

**7.86.090 Savings clause – Severability.**

**7.86.100 Violation – Penalty.**

**7.86.110 Oversight.**

**7.86.010 Special Tax.**

A. A special tax for the purpose of funding street repairs, sidewalk repairs, and traffic safety, including, but not limited to, maintaining and upgrading the City's streets, sidewalks, and traffic safety features is hereby authorized to be imposed on all Parcels of real property in the City of Berkeley containing Improvements, including Parking Facilities, as set forth in this Chapter.

B. The City Council may impose the tax authorized by this Chapter at the rate and subject to the inflation adjustments set forth in Section 7.86.020.

C. This special tax is imposed under Article XIII A, Section 4, of the California Constitution and the City's constitutional authority as a charter city under Article XI, Section 5 of the California Constitution.

D. The proceeds of the tax imposed by this Chapter shall be placed in a special fund to be used only for the purpose of maintaining, upgrading, and improving streets,

sidewalks, streetscapes, and traffic safety features by funding the following throughout the City of Berkeley:

1. Installation, upgrade, maintenance and improvement of paving, sidewalks, streets, streetscapes, associated support structures, including retaining walls, and associated landscaping;
  2. Installation, upgrade, maintenance and improvement of traffic safety features, including those improving the safety of and ease of use for pedestrians, bicyclists, transit, and other street users.
- E. The proceeds of the tax imposed by this Chapter may be used for public art pursuant to Chapter 6.13, as may be later amended by the City Council, provided such public art is affixed to or otherwise constructed or displayed on or in conjunction with projects funded by the proceeds of this tax under Section 7.86.010(D).

**7.86.020 Tax Authorized – Tax rate – Adjustments for Inflation.**

**[OPTION 1 – SINGLE RATE]**

A. The City Council is hereby authorized to impose a special tax annually on the Square Footage of all Improvements in the City of Berkeley as follows:

1. For all Parcels with Improvements, the tax shall be imposed at the rate of 0.0300¢ per Square Foot of Improvements.
  - a. For the sake of this subsection 1, Improvements shall not include Parking Facilities other than New Construction Parking Facilities.
2. For Parcels used exclusively for Parking Facilities, the tax shall be imposed at the rate of [\$1,344 or \$3,144] per Parcel.

**[OPTION 2 – SPLIT ROLL ALTERNATIVE]**

A. The City Council is hereby authorized to impose a special tax annually on the Square Footage of all Improvements in the City of Berkeley as follows:

1. For all Dwelling Units, the tax shall be imposed at the rate of \$0.26787 per Square Foot of Improvements.
2. For Parcels used exclusively for Parking Facilities, the tax shall be imposed at the rate of [\$1,344 or \$3,144] per Parcel.
3. For all other Improvements, the tax shall be imposed at the rate of \$0.40504 per Square Foot of Improvements.
  - a. For the sake of this subsection 3, Improvements shall not include Parking Facilities other than New Construction Parking Facilities.

B. Annually in May, the City Council may increase the previous year's tax by up to the greater of the cost of living in the immediate San Francisco Bay Area, as verified by the California Department of Finance, or per capita personal income growth in the State of California, as verified by the United States Bureau of Labor Statistics. If either index referred to above is discontinued, the City shall use any successor index specified by the applicable agency, or if there is none, the most similar existing index then in existence.

**7.86.030 Definitions.**

For purposes of this chapter, the following terms shall be defined as set forth below:

- A. "Building" shall mean any Structure having a roof supported by columns or by walls and designed for the shelter or housing of any person, chattel or property of any kind. The word "Structure" includes the word "Building."
- B. "Dwelling Unit" shall mean a building or portion of a building designed for or occupied by persons living as one Family.
- C. "Family" shall mean one or more persons, whether related or unrelated, who are living together in a single Dwelling Unit and maintaining a common household.
- D. "Improvements" shall mean all Buildings or Structures erected or affixed to the land.
- E. "New Construction" shall, for the sake of this Chapter alone, mean any construction for which a permit or other entitlement was issued on or after January 1, 2023.

- F. "Parcel" shall mean a unit of real estate in one ownership as shown on the most current official assessment roll of the Alameda County Assessor
- G. "Parking Facility" shall mean any Building or Structure, or any outdoor space, plot, place, lot, Parcel, yard, enclosure, or any portion thereof, where motor vehicles may be parked, stored, housed or kept.
1. "Parking Facility" shall not include any such facilities on Parcels for which the only other Improvements are Dwelling Units, or Parking Facilities on separate parcels whose sole purpose is to provide parking for Dwelling Units.
- H. "Square Footage" shall mean the total gross horizontal areas of all floors, including usable basement and cellars, below the roof and within the outer surface of the main walls of Buildings (or the center lines of party walls separating such Buildings or portions thereof) or within lines drawn parallel to and two feet within the roof line of any Building or portion thereof without walls (which includes, notwithstanding paragraph 3 below, the Square Footage of all porches), and including pedestrian access walkways or corridors, but excluding the following:
1. Areas used for off-street parking spaces or loading berths and driveways and maneuvering aisles relating thereto, except to the extent such areas are included in New Construction Parking Facilities.
  2. Areas which are outdoor or semi-outdoor areas included as part of the Building to provide a pleasant and healthful environment for the occupants thereof and the neighborhood in which the building is located. This exempted area is limited to stoops, balconies and to natural ground areas, terraces, pools, and patios which are landscaped and developed for active or passive recreational use, and which are accessible for use by occupants of the building.
  3. Arcades, porticoes, and similar open areas which are located at or near street level, which are accessible to the general public, and which are not designed or used as sales, display storage, service, or production areas.
- I. "Structure" shall mean anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

**7.86.040 Exemptions.**

- A. The following Parcels and Improvements shall be exempt from the tax imposed by this Chapter:
1. Parcels and Improvements owned by federal or state governmental agencies;
  2. Parcels and Improvements owned by local governmental agencies; and

3. Parcels and Improvements exempt from taxation by the City pursuant to the laws or constitutions of the United States and the State of California.

B. The tax imposed by this Chapter shall not apply to any property owned and occupied by any person whose total personal income, from all sources, for the previous calendar year, does not exceed that level which shall constitute "very low-income," as may be established by resolution of the City Council. Any taxpayer claiming the exemption under this section shall be required to demonstrate their entitlement thereto annually by submitting an application and supporting documentation to the City Manager or their designee in the manner and at the time established in regulations and/or guidelines hereafter promulgated by the City Manager subject to review by the City Council in its discretion. Such applications shall be on forms provided by the City Manager, or their designee, and shall provide and/or be accompanied by such information as the City Manager shall require, including but not limited to, federal income tax returns and W-2 forms.

C. Any person or entity claiming an exemption from the tax imposed by this Chapter shall file a verified statement of exemption on a form prescribed by the City Manager prior to June 30th of the first fiscal year for which the exemption is sought

**7.86.050 Duties and Authority of the City Manager.**

It shall be the duty of the City Manager to collect and receive all taxes imposed by this Chapter and to keep an accurate record thereof. The City Manager is charged with the enforcement of this Chapter, except as otherwise provided herein, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter, including provisions for the re-examination and correction of returns and payments.

**7.86.060 Collection with Property Tax – Penalties and Interest.**

The special tax imposed by this Chapter shall be due in the same manner, on the same dates, and subject to the same penalties and interest as established by law for other charges and taxes fixed and collected by the County of Alameda on behalf of the City of Berkeley. The special tax imposed by this Chapter, together with all penalties and interest thereon, shall constitute a lien upon the Parcel upon which it is levied until it has been paid, and shall constitute a personal obligation of the owners of the Parcel on the date the tax is due.

**7.86.070 Collection.**

The amount of any tax, penalty, or interest imposed under the provisions of this chapter shall be deemed a debt to the City. Any person owing money under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount. The City shall be entitled to reasonable attorneys' fees and its costs of suit in any such action.

**7.86.080 Refunds.**

Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the City under this

chapter, it may be refunded as provided in Chapter 7.20 of the Berkeley Municipal Code or any such successor chapter.

**7.86.090 Savings clause – Severability.**

The provisions of this chapter shall not apply to any person, association, corporation, entity, or property as to whom or which it is beyond the power of the City of Berkeley to impose the tax herein provided. If any sentence, clause, section, or part of this chapter, or any tax against any individual or any of the several groups specified herein is found to be unconstitutional, illegal, or invalid, such sentence, clause, section or part shall be severable and such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section, or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or other parts of this chapter. It is hereby declared to be the intention of the City Council and the People of the City of Berkeley that this chapter would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

**7.86.100 Violation – Penalty.**

Any person who fails to perform any duty or obligation imposed by this chapter shall be guilty of an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code. The penalties provided in this section are in addition to the several remedies provided in this chapter.

**7.86.110 Oversight.**

- F. The Transportation and Infrastructure Commission, or its successor, shall function as the oversight committee for expenditures of the proceeds from this tax. For this purpose, and in addition to its other powers, the Commission may:
  - 1. Request and review expenditure plans for tax proceeds to ensure consistency with this special tax's purpose;
  - 2. Make recommendations to the City Council on how tax proceeds should be spent; and
  - 3. Obtain reports on actual expenditures.
- G. The City Manager shall cooperate with the Transportation and Infrastructure Commission in its oversight capacity.
- H. The City Manager shall ensure annual independent audits to ensure funds are spent consistent with the purposes of the measure; and shall report to the City Council regarding the amount of funds collected and expended, and the status of any project funded pursuant to this Chapter.

Section 3. Increase appropriations limit. Pursuant to California Constitution Article XIII B, the appropriation limit for the City of Berkeley is hereby increased by the aggregate sum authorized to be levied by this special tax for each of the four fiscal years from 2023-24 through 2026-27.

Section 4. Duration and Renewal of Tax. The tax imposed by this Chapter shall be operative from January 1, 2023 through December 31, 2036 unless reauthorized or extended by the voters.

Section 5. Amendment, repeal, and reenactment. The City Council may repeal this ordinance, or amend it in any manner that does not result in an increase in the tax imposed herein, or add or modify exemptions, without further voter approval. If the City Council repeals this ordinance, it may subsequently reenact it without voter approval, as long as the reenacted ordinance does not result in an increase in the tax imposed herein.

Section 6. California Environmental Quality Act Requirements. This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., under, including without limitation, Public Resources Code section 21065 and CEQA Guidelines sections 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment and pursuant to Public Resources Code section 21080, subdivision (b)(8), and CEQA Guidelines section 15273 as the approval of government revenues to fund existing services.

Section 7. Special Tax; Two Thirds Vote Requirement. This Ordinance imposes a special tax for restricted general revenue purposes and shall be effective only if approved by two-thirds of the voters voting thereon.



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

VISION 2050 PROGRAM PLAN

WHEREAS, in November 2018, Berkeley voters overwhelmingly approved Measure R asking for 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;

WHEREAS, the City Council approved the *Vision 2050 Framework* on September 29, 2020, which recommended the development of a *Program Plan*;

WHEREAS, the *Vision 2050 Program Plan* is a long-term plan to build, upgrade and repair Berkeley's aging infrastructure to be more sustainable and resilient, reduce the City's environmental footprint, adapt to climate change, reduce the risk of flooding and wildfires, better withstand the consequences of flooding and fires when they do occur, make the City's public spaces more attractive, vibrant, and green, and otherwise improve the City's infrastructure to meet the serious challenges of the future; and

WHEREAS, the *Program Plan* provides a high-level funding approach, outcomes, program elements and measures, an approach to implementation, and oversight and reporting; and

WHEREAS, the *Program Plan* was developed after incorporating input from 25+ meetings with Commissions and community organizations; two scientific community surveys on infrastructure priorities; four public meetings held after an informational brochure and invitation to the meetings was mailed to all Berkeley residents; and City Council discussion and direction on January 20, May 31, and June 21, 2022; and

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley adopts the *Vision 2050 Program Plan*.



# VISION 2050 PROGRAM PLAN

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# TABLE OF CONTENTS

## INFRASTRUCTURE PROGRAM PLAN

<b>01 THE INFRASTRUCTURE PROGRAM PLAN: OVERVIEW . . . . .</b>	<b>4</b>
1.1 The Vision 2050 Initiative . . . . .	5
1.2 What is an Infrastructure Program Plan? . . . . .	7
1.3 Core Values and Principles Guide our Planning . . . . .	7
<b>02 INFRASTRUCTURE NEEDS AND COMMUNITY PRIORITIES . . . . .</b>	<b>10</b>
2.1 Infrastructure Needs . . . . .	11
2.2 Community Input and Priorities . . . . .	13
<b>03 INTRODUCING THE 30-YEAR PROGRAM PLAN . . . . .</b>	<b>16</b>
3.1 Outcomes of the Program Plan . . . . .	17
3.2 Work Prioritization and Phasing . . . . .	27
<b>04 THE PLAN'S FUNDING, RESULTS, AND TAX IMPACT . . . . .</b>	<b>30</b>
4.1 Funding Sources . . . . .	31
4.2 Funding Alternatives . . . . .	32
4.3 Review of Tax Implications . . . . .	35
4.4 Other Benefits of Infrastructure Spending . . . . .	37
<b>05 PROGRAM DELIVERY . . . . .</b>	<b>38</b>
5.1 Current Organization and Measure T1 Implementation . . . . .	39
5.2 Research on Other Programs . . . . .	40
5.3 Recommendations for Vision 2050 Implementation . . . . .	42
<b>06 SUPPORTING STRATEGIES . . . . .</b>	<b>44</b>
6.1 Performance Indicators . . . . .	45
6.2 Equity . . . . .	46
6.3 Reporting and Oversight . . . . .	46
6.4 Lifecycle Maintenance . . . . .	47
6.5 General Fund Support for Infrastructure Maintenance . . . . .	48
<b>07 APPENDICES . . . . .</b>	<b>49</b>
<b>Appendix A:</b> Acknowledgements . . . . .	49
<b>Appendix B:</b> Glossary of Terms and Abbreviations . . . . .	50
<b>Appendix C:</b> Reference Documents . . . . .	51

## Tables

---

<b>Table 1:</b> Updated Infrastructure Funding Needs . . . . .	<b>12</b>
<b>Table 2:</b> Prioritization Score Card . . . . .	<b>27</b>
<b>Table 3:</b> Summary of Priority Scoring . . . . .	<b>28</b>
<b>Table 4:</b> Funding Mechanisms . . . . .	<b>33</b>
<b>Table 5:</b> Existing Debt Service and Tax Impact . . . . .	<b>35</b>
<b>Table 6:</b> Debt Service Comparison . . . . .	<b>35</b>
<b>Table 7:</b> Summary of Tax Impacts . . . . .	<b>36</b>
<b>Table 8:</b> Cities Interviewed and Their Capital Programs . . . . .	<b>40</b>
<b>Table 9:</b> Vision 2050 Key Program Performance Indicators . . . . .	<b>45</b>

## Figures

---

<b>Figure 1:</b> Street Corner View from Vision 2050 . . . . .	<b>5</b>
<b>Figure 2:</b> Vision 2050 Principles, Strategies and Recommended Actions . . . . .	<b>6,8</b>
<b>Figure 3:</b> Timeline for Vision 2050 initiative . . . . .	<b>6</b>
<b>Figure 4:</b> Example Infrastructure Needs . . . . .	<b>8</b>
<b>Figure 5:</b> Vision 2050 Core Values . . . . .	<b>9</b>
<b>Figure 6:</b> Infrastructure Funding Needs by Vision 2050 Outcome Objective . . . . .	<b>13</b>
<b>Figure 7:</b> Outcomes of the Program Plan . . . . .	<b>17</b>
<b>Figure 8:</b> Vision 2050 Streets . . . . .	<b>18</b>
<b>Figure 9:</b> Marina Community Vision . . . . .	<b>25</b>
<b>Figure 10:</b> Project Approval Process . . . . .	<b>29</b>
<b>Figure 11:</b> Vision 2050 Funding Sources . . . . .	<b>31</b>
<b>Figure 12:</b> Historical & Projected Property Tax . . . . .	<b>36</b>
<b>Figure 13:</b> Public Art in Berkeley . . . . .	<b>37</b>

# 01

## THE INFRASTRUCTURE PROGRAM PLAN: OVERVIEW

This section provides an overview of the Vision 2050 Initiative and describes the Program Plan.



## 1.1 The Vision 2050 Initiative

The Vision 2050 initiative was introduced by Mayor Arreguin at his 2017 State of the City address. He described a complex network of pipes, streets, utility wires, bikeways, and transportation systems that are old and have suffered from historic disinvestment, neglect, and poor maintenance. As our infrastructure ages, we need a plan to make sure our systems are resilient to handle a growing population and climate change, including sea-level rise, more flooding, and wildfires. As technological innovations emerge and the condition of our infrastructure declines, we have an enormous and exciting opportunity to reimagine our streets and public spaces. This initiative is about building a future for Berkeley that provides essential services for future generations.

In November 2018, Berkeley voters approved Measure R. 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 40-member residents’ task force was formed and the team analyzed quality of life, environmental and technology trends, and funding issues. To help keep focus on the future, the team imagined being on a street corner in Berkeley in the year 2050. What will Berkeley be like then? Figure 1 shows a street corner view from 2050.

The task force worked diligently for 18 months and developed the principles, strategies and

recommended actions shown on Figure 2.

Community engagement was at the center of Vision 2050. Outreach began early in 2018 with four information nights across Berkeley. Outreach continued in an effort to reach people where they already congregate, including neighborhood and faith-based groups and community organizations. From September 2018 to July 2019, the Mayor’s Office presented at thirteen community organization meetings in conversations that ranged from a handful to one hundred people. Community feedback was used to develop the principles, strategies, and recommended actions.



▲ **Figure 1:** Street Corner View from Vision 2050 report

## VISION 2050

The Vision 2050 Framework focused on better coordination, integrated project delivery, utilizing new financing mechanisms, and broad principles and strategies for our infrastructure needs. The Framework was approved by Berkeley's City Council in September 2020. The City Manager then turned to implement the recommendations and assigned the Public Works Department to lead the effort. A timeline for the Vision 2050 initiative is shown below.

- 2017**  
Mayor Arreguin announces Vision 2050 Initiative
- November 2018**  
Measure R approved by voters
- 2018-2019**  
Residents task force conducted analysis
- September 2020**  
City Council approves Vision 2050 Framework
- Current**  
Implementation led by City Manager

▲ **Figure 3:** Timeline for Vision 2050 Initiative



## 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 2:** Vision 2050 Principles, Strategies, and Recommended Actions Page 239

## 1.2 What is an Infrastructure Program Plan?

This Infrastructure Program Plan (Plan) is the City of Berkeley's roadmap to rebuild our public infrastructure over the next 30 years. This Plan supports the Vision 2050 principles and provides information on outcome objectives, program elements, community input, the funding plan, program implementation, and program oversight and reporting. The Plan serves as a roadmap to guide the many infrastructure decisions that will be required throughout the next three decades. The Plan is flexible and adaptable, so the City can anticipate and address new challenges that we will face in the future. Why prepare a Plan now?

Improving the City's infrastructure requires new funding and a revenue measure or measures, which voters may consider on the November 2022 ballot. This Plan is prepared to provide the public with an understanding of the "big picture" for Vision 2050 in advance of voting for new funding. This approach is an advancement from prior measures. The Plan describes the work at the asset category level—streets, stormwater, parks, waterfront, etc. It is not a project-by-project prioritization. That will happen if voters approve funding, after which a project and program team will be formed and an oversight committee designated.

## 1.3 Core Values and Principles Guide our Planning

Berkeley's streets, storm drains, sewers, and water lines date back to the early decades of the 20th century. Critical systems are simply wearing out. Recent budgets have been insufficient to address these infrastructure needs, let alone modernize our systems or improve their resilience. As defined in the City's resilience strategy, resilience is the capacity of individuals, communities, institutions, businesses, and systems within a city to survive, adapt, and grow no matter what kinds of chronic stresses and acute shocks they experience.

The growing backlog of aging infrastructure leaves the community vulnerable to unplanned failure and service interruptions. For residents, workers, and businesses, this can translate to unsafe conditions, increased cost, and impediments to quality of life. Examples of infrastructure needs are shown in Figure 4.

As we begin to grapple with Berkeley's unfunded infrastructure needs, new challenges are emerging. The local impacts of the global climate crisis pose a major threat to our aging infrastructure. Extreme storm events, wildfires, heat waves, drought, groundwater, and sea level rise will challenge streets, pipes, and open spaces that were designed for a more benign environment. These vulnerabilities are layered upon other acute risks such as a major earthquake, and chronic challenges such as inequity. If our city is to survive and thrive, we must increase our resilience to these challenges.



### PRINCIPLE ONE

SUPPORT VIBRANT AND SAFE COMMUNITIES

Infrastructure shall take equity into account and improve the quality of life of all Berkeley residents, including having green open spaces, safe modes of mobility, and being prepared for fires and earthquakes.

### PRINCIPLE TWO

HAVE EFFICIENT, INSPIRED AND WELL MAINTAINED INFRASTRUCTURE

Infrastructure shall be long lasting, use advanced technologies, and be maintained to provide efficient service.

### PRINCIPLE THREE

FACILITATE A GREEN BERKELEY AND CONTRIBUTE TO SAVING OUR PLANET

Infrastructure shall accelerate the transition to carbon neutrality and include electrification, develop natural streetscapes using green infrastructure, and prioritize human-powered and public transportation.

▲ **Figure 2:** Vision 2050 Principles

As we rebuild our infrastructure and, at the same time, reimagine a landscape for a changing future, our infrastructure decisions must remain flexible, yet grounded in a set of clear values. For this reason, the Vision 2050 Framework identified four core values as shown in Figure 5. These values will guide implementation of Vision 2050.



**Street Pavement Damage**



**Sidewalk Repair**



**Deteriorated Marina Dock**

▲ **Figure 4:** Example Infrastructure Needs

## CORE VALUES FOR INFRASTRUCTURE DEVELOPMENT



### EQUITY

The benefits of improved infrastructure must be distributed equitably throughout the entire community. Equity should mean that disadvantaged citizens with more pressing needs experience benefits sooner than others and receive benefits particularly tailored to their unique needs.



### STRONG LOCAL ECONOMY

A strong local economy provides resources to Berkeley citizens and creates an opportunity to build local skills and employment opportunities that support the city's diverse community.



### PUBLIC HEALTH AND SAFETY

This core value considers safe and convenient access to greenspaces, public services, clean air, and social support networks, all of which can have a big impact on people's emotional and physical health.



### RESILIENCY AND SUSTAINABILITY

Resilience requires systems and structures that are able to recover quickly from temporary and, sometimes, catastrophic events. Sustainability refers to the ability to minimize our impacts on the environment while still providing core services.

▲ **Figure 5:** Vision 2050 Core Values



# 02

## INFRASTRUCTURE NEEDS AND COMMUNITY PRIORITIES

This section provides an update on the City's infrastructure funding needs and the community's infrastructure priorities.



## 2.1 Infrastructure Needs

The City has an extensive portfolio of capital assets and infrastructure, including 216 miles of streets, more than 300 miles of sidewalks, 255 miles of sewers, 78 miles of underground storm drains, 95 public buildings, 52 parks, 2 pools, and 3 camps. In addition, the City operates and maintains the Berkeley Waterfront and its related facilities, including the pier, docks, pilings, channel, streets, pathways, parking lots, buildings, trails, Adventure Playground, and 1,000 berth marina.

A City budget is prepared every two years and it includes a Capital Improvement Program (CIP). The City's ability to fund its CIP is limited by the total available resources that are competing with other community priorities. CIP funding resources include the General Fund, a number of special revenue funds, grants, and loans. The CIP attempts to identify all known CIP projects, categorizing them as baseline (annual, recurring program), one-time (special allocations, grants, loans), and unfunded (funding source has yet to be identified).

The FY2022 CIP identified an infrastructure capital funding need of more than \$1 billion in Berkeley. However, these infrastructure needs are constantly changing due to increased construction costs and new planning studies that result in updated cost estimates. Past estimates also focused primarily on "fix it first" type repairs rather than the transformational infrastructure sought by the Vision 2050 Framework.

For this reason, Table 1 provides an updated list of infrastructure needs. This list includes updates from prior estimates and advances Vision 2050 in several significant ways. It adds asset categories

that are more than simply fixing or repairing an asset and are about the ultimate use and safety of the asset. For example, instead of solely identifying the deferred maintenance in our pavement, the list includes the cost of fully implementing our adopted Bicycle and Pedestrian Plans, which would keep our streets safe for all users, especially bicyclists and pedestrians. Instead of focusing solely on traditional infrastructure, it includes trees as an important infrastructure category and begins to address the climate crises by building in the cost of undergrounding the City's evacuation routes.

Some of these categories have existing, dedicated funding for which an increase is necessary to cover these needs. Others categories may require multiple revenue sources, such as the General Fund, grants, State and Federal funding, developer contributions, user rates, and new revenue sources. An estimate of potential revenue from these funding sources is provided in Section 4.

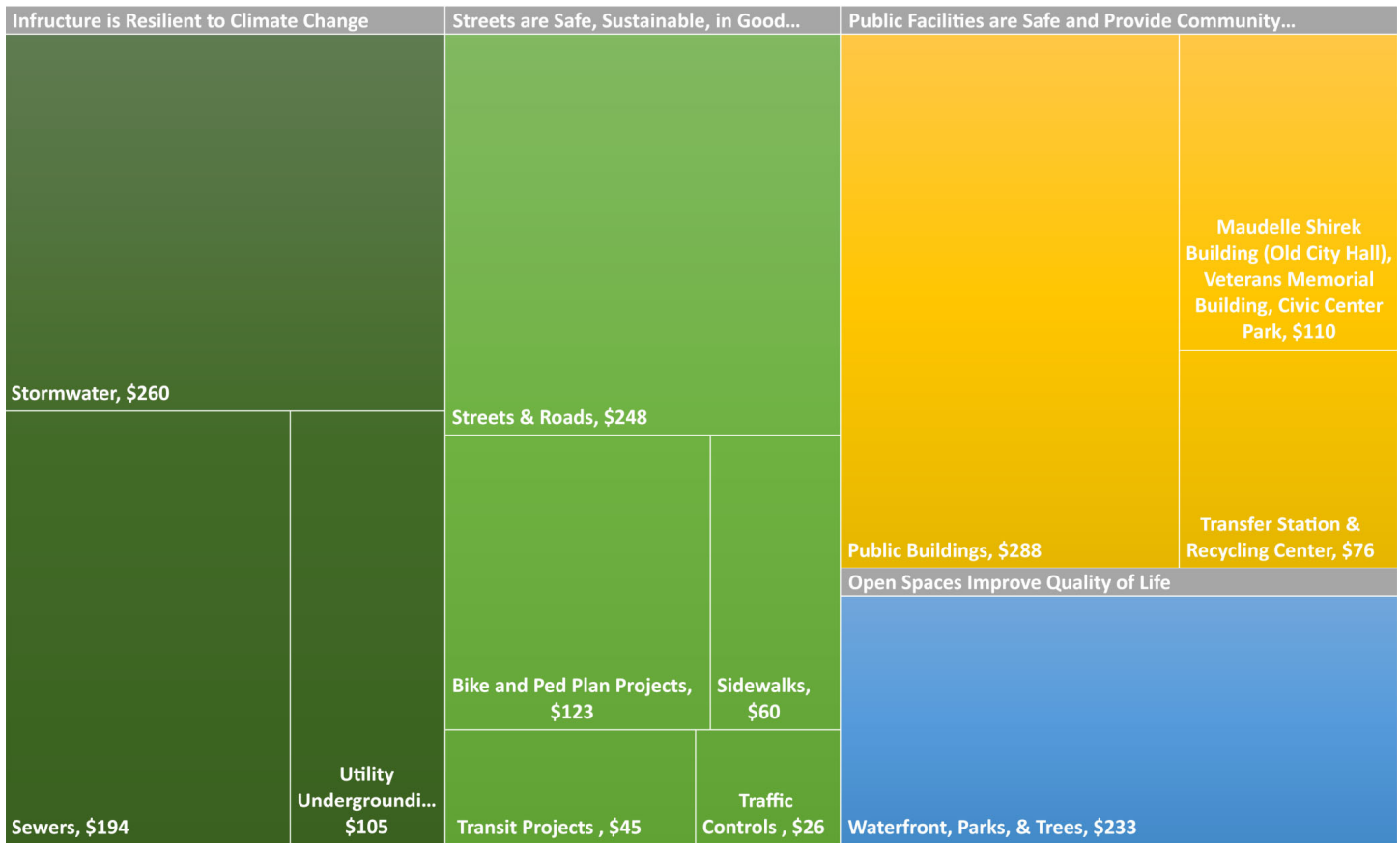
Figure 6 summarizes these same needs, grouped by asset category within each of the four Vision 2050 Program outcomes discussed in Section 3. If these needs are addressed, then Vision 2050's goal of resilient and sustainable infrastructure will be reached.

**TABLE 1**  
**INFRASTRUCTURE FUNDING NEEDS**  
 (These are updated on an ongoing basis)

Asset Category	Infrastructure Funding Needs, in 2022 dollars
<b>More immediate needs</b>	
Parks, camps, and pools	\$116,000,000
Waterfront	\$131,000,000
Public buildings	\$288,000,000
Sidewalks	\$60,000,000
Streets	\$248,000,000
Sewers	\$194,000,000
Stormwater	\$259,500,000
Traffic Controls, Streetlights, and Parking	\$26,000,000
<b>Longer-term needs</b>	
Bike and Pedestrian plan projects	\$122,500,000
Maudelle Shirek Building (Old City Hall), Veterans Memorial Building, Civic Center Park	\$110,000,000
Transfer station and recycling center	\$76,000,000
Transit projects	\$45,000,000
Trees	\$21,000,000
Utility Undergrounding	\$105,000,000
<b>Total Average</b>	<b>\$1,802,000,000</b>

Table 1's cost estimates are largely work that would be capital funded. In some cases, such as with streets and roads, the estimate includes recurring annual costs to keep the asset performing at the

expected level and without deterioration. The requirement to fund the annual maintenance of assets is addressed in the Asset Management Program discussed in Section 6.



▲ **Figure 6:** Infrastructure Funding Needs by Vision 2050 Outcome Objective

## 2.2 Community Input and Priorities

To better understand the community’s infrastructure priorities, the following was completed in winter 2021 through spring 2022:

- › Two statistically-reliable surveys of a representative sample of 500 Berkeley voters
- › Meetings with over 25 commissions and local community organizations
- › An online public survey that received over 1,000 responses
- › An informational mailer to all Berkeley residents
- › Development of a Vision 2050 website [BerkeleyVision2050.org](https://BerkeleyVision2050.org)
- › Four virtual large area public meetings

All of these efforts have been instrumental in sharing information and gaining input in the development of this Program Plan.

A survey in October 2021 of a random, representative sample of 500 Berkeley voters elicited respondents’ infrastructure priorities and found that voters’ top priorities included:

- › Increasing affordable housing for low-income and homeless residents (79% rated as “important”)
- › Upgrading storm drains, green infrastructure, and watersheds to keep pollution from the Bay (79% important)
- › Developing climate change resiliency, including protecting against sea level rise, wildfires and drought (78% important)
- › Undergrounding utilities to reduce the risk of wildfire (73% important)
- › Repairing deteriorating streets (73% important)

An online survey was also conducted and a total of 1,024 responses were received. For the most part, the results from the online survey aligned with the scientific survey. More so than the scientific survey, street repair stood out as a clear top priority followed by affordable housing. The top five ranked priorities are listed below, with percentages indicating the number of respondents who ranked the particular item as top priority:

- › 28.5% - Street repair
- › 19.2% - Affordable housing
- › 8.3% - Bike lanes/safety
- › 7.5% - Climate change resiliency
- › 6.8% - Pedestrian safety

Input on this Program Plan was gained from four large area public meetings held on March 30, April 6, April 13, and April 20 and the following Commissions: Environment and Climate, Disaster and Fire Safety, Disabilities, Parks and Waterfront, Public Works, and Transportation. Berkeley residents brought their questions, input, and comments, a summary of which can be found at [BerkeleyVision2050.org](http://BerkeleyVision2050.org).

This program plan reflects input gathered from these meetings and City Council meetings on May 31 and June 21, 2022:

- › More detail on possible climate and street investments
- › Adding regular five-year updates
- › Address overall vision
- › Incorporate trees as public infrastructure assets
- › Include indicator on tree canopy and diversity
- › Address sidewalks
- › Address equity and reference existing equity-based plans
- › Include transit
- › Explain why affordable housing is being considered for the revenue measure(s)
- › Include developers' fees as source of revenue
- › Address General Fund commitments to maintaining public infrastructure
- › Include public art
- › Revise indicators on EVs, sidewalks, and micromobility
- › Revise Program Delivery section to address paving, traffic safety, and a multi-benefit approach
- › Include more on climate change, e.g., resilience and electrification in buildings
- › Include reference to the San Pablo Park pool
- › Include coordination of programs/projects for multiple benefits







03

# INTRODUCING THE 30-YEAR PROGRAM PLAN



The City's infrastructure systems are very complex, are in daily use, and can't be improved all at once. This Plan proposes making the improvements over a 30-year planning period in order to achieve a sustainable and resilient infrastructure. This is a reasonable time frame given the need to balance the work priority, the funding required, tax impacts, and the ability to deliver the projects. This also allows time for incorporating new technologies as they develop.

This 30-year Program Plan provides the following information:

- › The major outcomes from implementing the Plan
- › Implementing the Plan over 30 years in phases
- › Possible results from the first phase

## 3.1 Outcomes of the Program Plan

This Plan includes visible outcomes. Four major outcomes have been identified that incorporate and advance Vision 2050 principles and core values, and

incorporate community input received to date. The outcomes are shown in Figure 7 and the related infrastructure components are described below.



▲ **Figure 7:** Outcomes of the Program Plan

# Outcome 1 - Have Safe and Good Quality Streets

## Streets are Safer, More Sustainable, Improved to a Good Condition, and Maintained

Having streets and streetscapes that are safer, greener, vibrant and enjoyable, use sustainable technologies, and are in “good” or better condition is a top priority from the community input, has been a subject of City audits, and is a priority of the Council. The asset categories to achieve this outcome are described below.

### Asset Category 1 - Street Surface

The poor condition of Berkeley’s streets has been documented by the City Auditor’s report *Rocky Road: Berkeley Streets at Risk and Significantly Underfunded*, by residents’ complaints, and by an overall low Pavement Condition Index (PCI). On a scale of 0 to 100, streets in a “good” condition have a PCI between 70 - 79. Berkeley’s streets are “at risk” with an overall average PCI of 57 and, without more funding, will continue to deteriorate. From a community survey conducted in the fall of 2021, improving the condition of Berkeley’s streets is one of the community’s highest infrastructure priorities. The target is to improve Berkeley’s streets to a PCI of more than 70.

Berkeley’s streets in 2050 will look much different than today. Personal automobiles will be rarer, and public transit, ride sharing services, bicycling, and walking more common. Streets will better serve all users, and include visible engineering improvements that make bicycling and walking safer. These streets will make transit easier, safer, faster, and more reliable to access and use. Work in our streets will also require a coordinated approach to the infrastructure above, both at and below the street surface. This will require planning that is integrated and uses concepts such as “Dig Once”.

We also will use other street surface technologies that are long lasting, help absorb stormwater and reduce pollution, reduce surface temperatures and the “urban heat island” effect, and reduce our dependence on asphalt paving, the production of which generates greenhouse gas emissions.

The expected outcome is for Berkeley’s street surface to be in an overall “good” condition, to move toward using sustainable technologies, and to have Vision Zero and Dig Once policies fully implemented.

#### Reimagine Streets:

- › Implement Multi modal Streets with Protected Sidewalks and Bike Lanes
- › Introduce Pervious and/or Cool Pavement
- › Reclaim Street Parking for Trees and Vegetation
- › Promote transit use



▲ **Figure 8:** Vision 2050 Streets

### Asset Category 2 - Sidewalks

Most Berkeley residents use a sidewalk daily, and many of us much more. Sidewalks in 2050 will be an even more important part of the transportation network. They will accommodate and promote the City’s trees and healthy urban forest, serve users



of all levels of ability and accessibility, and use materials that help filter stormwater and reduce surface temperatures. At present, the City faces a backlog of thousands of sidewalk repairs that have been requested by residents. While Measure T1 has significantly reduced that backlog, the backlog is about to grow again as City staff complete the first proactive assessment of the City's sidewalks to identify repair locations. This proactive assessment is being conducted as part of the City's update to its Americans with Disabilities (ADA) Transition Plan. The City addresses sidewalk repairs with short-term grinding and filling of problem areas and long-term replacement of damaged sidewalks. Where conflicts with the urban forest exist, tools like meandering sidewalks are used to reduce or resolve those conflicts and make tree removal a last resort.

The expected outcome is for the backlog of Berkeley's sidewalk repairs to be completed and to have adequate resources to address future repair needs.

### Asset Category 3 - Bicycle and Pedestrian Plans

Eighty percent of the collisions that result in deaths or severe injuries on our streets involve someone riding a bike or walking. Making our streets safer means prioritizing bicycle and pedestrian safety. This is especially important to help more residents and workers choose these fossil fuel-free active transportation modes, and is why Berkeley's vision for the future of its transportation network is to be

multi-modal, fossil-fuel free, and equitably accessed. The City has adopted the 2017 Bicycle Plan and the 2020 Pedestrian Plan, and has identified projects to help to bring the City closer to these safe and accessible multi-modal goals.

The City is transforming the City's bicycle network into a low-stress experience with a goal of reducing motor vehicle conflicts and connecting cyclists with the most utilized portions of the City. At the end of the program, over 50 miles of city streets will comprise bikeways, with 15.8 miles of these streets being full bicycle boulevards that criss-cross the City.

Walking is also a core mode of transportation in Berkeley. Improving walkability makes Berkeley safer, more inclusive, and more connected. As the most accessible and affordable form of transportation, walking lies at the core of an equitable mobility network and a healthy community. In addition to enhancing Berkeley's quality of life, improving walking will help the City to achieve its Vision Zero Policy goal of zero traffic deaths and severe injuries.

The Berkeley Pedestrian Plan includes an infrastructure inventory and an assessment of pedestrian demand and safety. The plan identifies ten priority street segments requiring projects to improve pedestrian safety and walkability. Projects provide improved street design, upgraded pedestrian crossings, installed speed management and traffic calming, and improved sidewalk maintenance and accessibility.

The expected outcome is for Berkeley's Bicycle and Pedestrian plans to be fully implemented.



## Asset Category 4 - Traffic Controls, Streetlights, and Parking

In support of creating safe, accessible, and easy to use streets, the City of Berkeley is planning upgrades to existing traffic signals, including detection at 67 locations, ADA accessibility, pedestrian push buttons at 103 locations, and battery back-ups at 124

locations. Public Works maintains 8,011 streetlights and is planning replacements and upgrades of 2,100 parking meters and 240 pay stations.

The expected outcome is for these traffic controls, streetlights, and parking needs to be addressed.

## Outcome 2 - Protect the Environment

### Infrastructure is Resilient, Protects the Environment, and is Adapted to Climate Change Impacts

Global warming is a significant threat to communities globally and to the City of Berkeley. Berkeley's 2009 Climate Action Plan, 2016 Resilience Strategy, and 2019 Local Hazard Mitigation Plan establish city-wide actions to reduce greenhouse gas emissions and adapt to climate change impacts. The message is clear that the City's infrastructure must be resilient to prepare the City for these risks. Key goals of the City's climate action plans are to use energy more efficiently, transition to renewable energy as a power source for both buildings and transportation, improve access to sustainable transportation modes, recycle our waste, and build local food systems. The asset categories to achieve this outcome are described below.

### Asset Category 1 - Stormwater and Watershed Management

The 2012 Watershed Management Plan (WMP) identified projects to improve storm drains, restore creeks, attenuate peak flows and to reduce pollutants entering San Francisco Bay. That project modelled the Potter and Codornices watersheds. The City is in the process of updating the WMP. The updated plan will consider flooding and drought caused by extreme storm events, sea level, and groundwater rise, implementation of the Green Infrastructure Plan, and modelling of all the watersheds. Infrastructure improvements will include storm drains, flow attenuation basins, permeable surfaces, bio-swales, and improvements at Aquatic Park.

The expected outcome is to have a stormwater system that addresses future climate impacts, reduces impervious surfaces, minimizes flooding, meets the City's stormwater discharge permit into San Francisco Bay, prevents pollution from reaching the San Francisco Bay, and revitalizes the urban watershed.

### Asset Category 2 - Sewers

The City's wastewater collection system includes approximately 254 miles of City-owned sanitary



sewers, 7,200 manholes and other sewer structures, seven pump stations, and approximately 31,600 service laterals. The City is responsible for maintenance and repair of the lower portion of the service laterals (located within the public right-of-way) from the property line cleanout to the connection to the City's sewer main. Wastewater generated in the City's collection system is conveyed to the East Bay Municipal Utility District (EBMUD) wastewater interceptor system and is treated at EBMUD's Main Wastewater Treatment Plant.

During the 1980s, EBMUD and the seven Satellite agencies conducted studies to address the problem of overflows and bypasses of untreated wastewater that occurred during large wet weather events due to excessive infiltration and inflow (I/I) into the collection systems. These studies resulted in a long-term program of construction of collection system relief sewers and sewer rehabilitation. The City has rehabilitated or replaced over 200 miles of its gravity sewers and associated lower laterals over the past 30 years. Since 2006, the City has also implemented a private sewer lateral (PSL) certification program requiring the inspection and/or repair or replacement of private (upper) sewer laterals at the time of property transfer or major building remodel.

The seven Satellites and EBMUD are in a Consent Decree with the U.S EPA, the State Water Resources Control Board, and the Regional Water Quality Control Board, which establishes requirements for achieving the elimination of untreated wastewater overflows and bypasses over the next 20 to 25 years.

The expected outcome is to comply with the City's requirements in the Consent Decree and seal the sewer system from storm water intrusion, thereby reducing the risk of untreated sewage reaching the Bay during wet weather. This will become even more important as storms intensify due to the climate crisis.

### Asset Category 3 - Undergrounding Overhead Utility Wires

The City of Berkeley's stated goal, as outlined in the General Plan, Disaster Preparedness and Safety Element, is to ensure the City's disaster related efforts are directed toward preparation, mitigation, response and recovery from disaster shocks. The Berkeley Local Hazard Mitigation Plan states that our two greatest disaster challenges are a Hayward Fault rupture and Wildland Urban Interface (WUI) fire. The climate crisis will result in periods of drought followed by very wet winters, producing heavy vegetation, dry summers, and hot easterly winds in the late summer. These conditions are known to create significant fires such as the 1991 Oakland Hills Tunnel Fire and fires in many parts of California in the past five years.

Methods to reduce the threat of overhead wires creating WUI fires include aggressive vegetation management and other fire hardening techniques. Overhead power lines, more so than undergrounded wires, can exacerbate unsafe conditions either by contributing to the disaster itself or hampering public safety efforts and evacuations. Earthquakes and landslides can knock over utility poles creating a special hazard. In an earthquake,



poles have a tendency to sway in opposite directions causing wires to snap and throw sparks. Some of California’s biggest fires have started because of live wires in contact with combustible fuel.

The Public Works Commission led a three-phase study to underground overhead utility wires in Berkeley. The Phase 3 report recommended undergrounding along evacuation routes to support public safety through ingress of first responders and egress of community members in the event of a major disaster.

The expected outcome is to implement the Phase 3 study recommendations to underground overhead utility wires along Berkeley’s evacuation routes and to support neighborhoods in fire zones that choose to underground.

### Asset Category 4 - Electrification of Buildings Neighborhoods and Transportation

A major goal of Vision 2050 is to decrease the City’s overall climate impact. This effort requires both the reduction of City-wide energy use and transition away from fossil fuels to renewable energy. The Existing Buildings Electrification Strategy in 2021 transitions existing buildings in Berkeley from natural gas appliances to all-electric alternatives in a way that benefits all residents, especially members of historically marginalized communities. As identified in the City’s Resilience Strategy and Climate Action Plan, Berkeley seeks an energy system that, by 2045, is carbon neutral and delivers carbon-free electricity across a highly distributed system. Multifaceted changes to existing infrastructure and its uses are required to achieve carbon neutrality. Improvements to the existing energy grid may include, among other items:

- › Increasing electricity distribution capacity to accommodate neighborhood electrification and mobility charging, in coordination with streets and other infrastructure improvements
- › Improving or expanding access to transformers, vaults, and switchgears
- › Seeking opportunities to decommission gas pipes in areas where buildings or neighborhoods are transitioning to all-electric
- › Supporting solar energy and storage for critical facilities that prioritizes renewable backup power over diesel generators, including mobile batteries and electric vehicle-to-building connections
- › Increasing electric vehicle infrastructure for municipal fleet and distributed mobility charging for residents

The expected outcome is to achieve the City’s goal of becoming a fossil fuel-free city as soon as possible.

### Asset Category 5 - Urban Forest

The City’s municipal forest includes approximately 42,000 street, park, and median trees. These are often referred to as “city trees” or “public trees.”

#### CLIMATE EQUITY FUND PILOT PROGRAMS

In 2021, the Berkeley City Council allocated \$600,000 for Climate Equity Fund Pilot Programs that provide decarbonization and resilience programs for low income community members to retrofit homes, increase access to electric bikes or other forms of electric micro mobility, and gain access to resilience measures and other electrification measures.

They are maintained by the Parks, Recreation, and Waterfront's Urban Forestry Unit, which performs pruning, removing, and planting trees. These trees are hard at work. They remove pollutants and carbon dioxide from the air, help cool the City during the summer, absorb stormwater during storms, and help the City stay green and support a high quality of life. However, there are approximately 10,000 vacant tree locations and many of these locations are in areas with higher proportions of low-income residents of color. The expected outcome is to increase our City's tree canopy by planting thousands more trees for the purpose of enhancing our urban forest, sequestering carbon, addressing equity, mitigating urban heat island impacts, and improving quality of life.

### Asset Category 6 - Specific Resilience Infrastructure Assets

While limiting City-wide climate impact is necessary, the effects of global warming are already testing traditional infrastructure and will continue to push our resources to their limits. Worsening drought conditions, increased risk of extreme weather events such as flooding and sea level rise create major challenges for our water supplies, watershed management, and resilience of our underground infrastructure systems. These events also have implications on the safety, health, and well-being of the community. The City has identified several new technologies and infrastructure to build while working towards climate adaptation and resilience. Some of the new infrastructure and adaptation strategies include:

- › Develop rainwater catchments, expanding the use of gray water and expanding the distribution and use of EDMUD recycled water (purple pipe) for landscaping irrigation.
- › Use natural green infrastructure solutions including infiltration basins, wetlands, bioswales, permeable paving, etc. to mitigate

flooding from the combined effects of groundwater, sea level rise, and extreme rain events.

- › Increase the urban forestry canopy and use cool paving technologies to protect against extreme heat.
- › Upgrade Community Resilience Centers and Resilience Hubs to ensure respite and evacuation capacity.
- › Identify and manage urban - wildland forest canopy to mitigate wildfire risks.
- › Install technologies such as air filtration to mitigate wildfire smoke impacts.
- › Use "cool" paving and reduce dark asphalt street surfaces to combat urban heat island effects.
- › Improve seismic safety systems in City facilities to reduce impacts from future earthquakes.





## Outcome 3 - Promote Quality of Life

### Open Space, Parks, and Recreation Improve Our Quality of Life

A key outcome of the Vision 2050 initiative is to improve our overall quality of life through the promotion of open spaces, parks, and recreational opportunities. The asset categories to achieve this outcome are described below.

#### Asset Category 1 - Parks

The City has 52 parks that contain 15 athletic fields, 49 sports courts (basketball and tennis), and 63 play areas. Many parks need significant improvements to pathways, lighting, irrigation systems, play structures, and athletic fields. The expected outcome is to implement these improvements.



#### Asset Category 2 - Pools

The City has two swimming pools, one by King Middle School and the other at West Campus. The pools require improvements to the locker rooms and office areas, and improvements to piping, decking, tiling, and roofs. While the King pool has a 30-year lease, the West Campus site has a five-year lease with the possibility that a new pool will be built at San Pablo Park that serves south and west Berkeley residents.

#### Asset Category 3 - Park Buildings and Restrooms

The City has four community centers, 2 clubhouses, 29 restrooms, and outbuildings. Many of the

required improvements have been made with funding from Measure T1. Future improvements include seismic/deferred maintenance at some park buildings, renovation of existing restrooms, and construction of new restrooms. The expected outcome is to implement the required improvements, including electrification, elimination of natural gas connections, and the addition of solar and battery storage, where feasible.

#### Asset Category 4 - Camps

The City of Berkeley's non-resident camps include Cazadero Camp located off the Russian River, Echo Lake Camp located just above South Lake Tahoe, and Berkeley Tuolumne Camp located just east of Yosemite Park. These camps include hundreds of facilities, amphitheaters, bridges, pathways, water systems, and swimming pools.

There are two significant camp projects in progress. The rebuilding of Berkeley Tuolumne Camp is nearly completed and is scheduled to reopen in the summer of 2022. At Cazadero Camp, the Jensen Dorm, which was destroyed by a landslide in 2016, has been reconstructed. These projects are primarily funded by insurance.

The expected outcome is to complete the construction at the camps and to have them back in operation.

#### Asset Category 5 - Waterfront

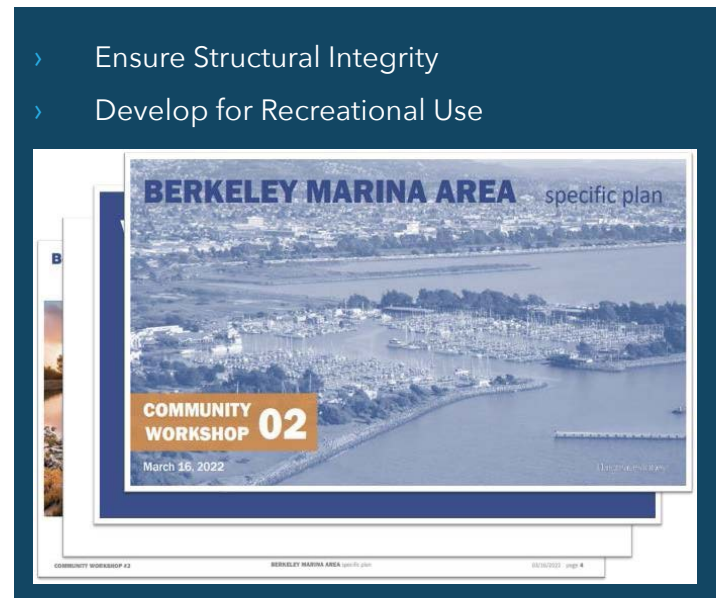
The Waterfront is the largest public marina in the Bay Area located on 125 acres of land and 50 acres of water, and includes approximately 1,040 berths, public access docks, pilings, channels, streets, pathways, parking lots, buildings, restrooms, buildings, and small boat launch ramps.

There are many funding needs at the Waterfront, where many of the facilities have reached the end of their useful life and are starting to fail. As documented in multiple reports, there is a diminishing ability to pay for the pressing capital needs in the Waterfront. The Marina Fund is the City's mechanism for managing all Waterfront revenues and expenditures. 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 (Figure 9)– to establish the community's vision for the Waterfront and to plan for making the Marina Fund viable and stable. There is still a need to address 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.

The expected outcome is to make the urgent repairs, complete the Berkeley Marina Area Specific Plans, and to return the Marina Fund to solvency.



▲ Figure 9: Marina Community Vision

## Outcome 4 – Have Safe Public Facilities

### Public Facilities are Safe, Resilient, and Provide Community Placemaking

The City is responsible for maintenance of 95 facilities, not including Library facilities and facilities leased to other entities. These facilities include 39 facilities in the Parks, Recreation, and Waterfront inventory and 56 facilities in the Public Works inventory. These facilities house City staff and are places where residents receive public services. These facilities need to be safe, healthy, and resilient, and provide community placemaking, where the connection between people and these places is strengthened. The asset categories to achieve this outcome are described below.

#### Asset Category 1 – Public Buildings

In 2013, staff retained a consultant to perform

assessments and provide updated condition reports and cost estimates for the City's facility inventory. The recommended improvements are extensive. All projects included in these assessments are considered either major maintenance or capital projects. Despite support from a variety of City funds, the cost for routine maintenance, major maintenance, and capital improvements far exceeds currently existing sources of funds.

The expected outcome is that condition assessments of the City's public buildings will be conducted regularly, and necessary improvements identified and completed. These improvements include electrification, elimination of natural gas

connections, and addition of solar and battery storage, where feasible.

### Asset Category 2 - Civic Center

The Civic Center comprises portions of the area surrounding Martin Luther King Jr. Civic Center Park including the Maudelle Shirek Building “Old City Hall” (1909) and the Veterans Memorial Building (1928). Presently, the historic buildings have decades of accumulated deferred maintenance and are seismically unsound. As part of the city’s Measure T1 program, the Veterans Memorial Building and Old City Hall were slated for structural analysis and visioning of possible conceptual design alternatives, in concert with Civic Center Park. A consultant was retained to conduct a community outreach strategy, perform an assessment of the existing infrastructures, identify programs and functions for the two buildings, develop concepts for improvements for the Park. The consultant completed this work and presented a suite of financing and revenue generation strategies for the facility. City Council approved the following vision:

#### CIVIC CENTER VISION

The Civic Center will be the heart of Berkeley’s community. Civic Center will be the prime space for civic life, culture, and the arts. It will reflect the city’s diverse identities, celebrating its history, and contributing to shaping its future. A place of shared resources and a platform for free expression accessible to all, Civic Center aims to manifest the city’s values, advance social justice, and demonstrate the power of true public space.

The expected outcome is to design and construct a Civic Center consistent with this vision and to provide placemaking.

### Asset Category 3 - Transfer Station and Recycling Center

The city’s current solid waste transfer station was opened in 1983. In the late 1980s, Berkeley’s recycling operations relocated to the site to be operated by the Community Conservation Center. In the 1990s, the residential recyclable collection operator, the Ecology Center, was allocated an area at the site for its operations yard and office building. These facilities are not integrated and operations are not coordinated in a way that provides customers ease of use, access, or efficient drop-off of materials. These facilities do not meet current seismic requirements, have not been upgraded or improved since constructed, exceed their serviceable life, and cannot help meet the city’s Zero Waste Goal. The city retained a consultant to conduct a feasibility study to build a new solid waste transfer and recycling facility. Through active collaboration and community participation between November 2018 to May 2019, the city has developed a consensus around two conceptual facility designs.

The expected outcome is that the CEQA analysis and design of the approved project will be completed and a replacement facility constructed that helps the city achieve its Zero Waste goal.



**Award Winning Remodel of the Mental Health Building**

## 3.2 Work Prioritization and Phasing






The Vision 2050 program is planned to be implemented over 30 years in approximately three, 10-year phases. Due to the work’s complexity and volume, an understandable prioritization process is needed to sequence the work. The Program Plan uses a scoring system based on these components and weighting:

- › Envision criteria, 60% weighting
- › Community input criteria, 40% weighting

The Vision 2050 report recommended the use of multi-criteria decision-making and suggested using the Envision criteria as prioritization tool. Envision is a program that is organized by the Institute for Sustainable Infrastructure and provides an objective framework of criteria designed to help identify ways in which sustainable approaches can be used to plan, design, construct, and operate individual infrastructure projects.

The Envision framework includes 64 sustainability and resilience indicators organized around five categories: quality of life, leadership, resource allocation, natural world, and climate and resilience. Envision is now widely applied to civil infrastructure projects akin to LEED certification. This criteria is given a weighting of 60%.

The other criteria comprises community input from the surveys, online feedback and community meetings. What the community wants for Berkeley is important and this criteria is given a weighting of 40%. The resulting criteria and score sheet is shown on Table 2.

TABLE 2: PRIORITIZATION SCORE CARD	
Envision Criteria (Weight 60%)	
<b>Quality of Life</b> 	
	Public Health and Safety
	Equity
	Public Space
<b>Leadership</b> 	
	Integrated Planning
	Lifecycle Maintenance
	Local Economy
<b>Resource Allocation</b> 	
	Sustainable and Durable Materials
	Reduces Energy Use
	Preserves Water Resources
	Ready to Implement
<b>Natural World</b> 	
	Green Infrastructure
	Open Space and Habitats
<b>Climate and Resilience</b> 	
	Reduces Greenhouse Gas Emissions
	Extreme Climate Impacts
	Resilience Strategy
	<b>Total Envision Points</b>
Community Input Criteria (Weight 40%)	
	Complies with Community Survey Input
	Complies with Commissions and Public Input
	<b>Total Community Input Points</b>



Each asset category was rated using the score sheet, and initial scoring was completed by managers in the Public Works and Parks, Recreation and Waterfront departments. A summary of the scoring results is shown on Table 3. This rating is intended as a general guideline for resource allocation. It does not dictate when the works gets done as there may be other project requirements.

For planning purposes, the work can be placed in three priority groups as shown in Table 3. This can serve as a start for the planning of a 30-year program. More details of the 3-phase program will be developed by the program team, should voters approve new funding for the program. Ultimately, the City Council will select the projects to fund and their timing.

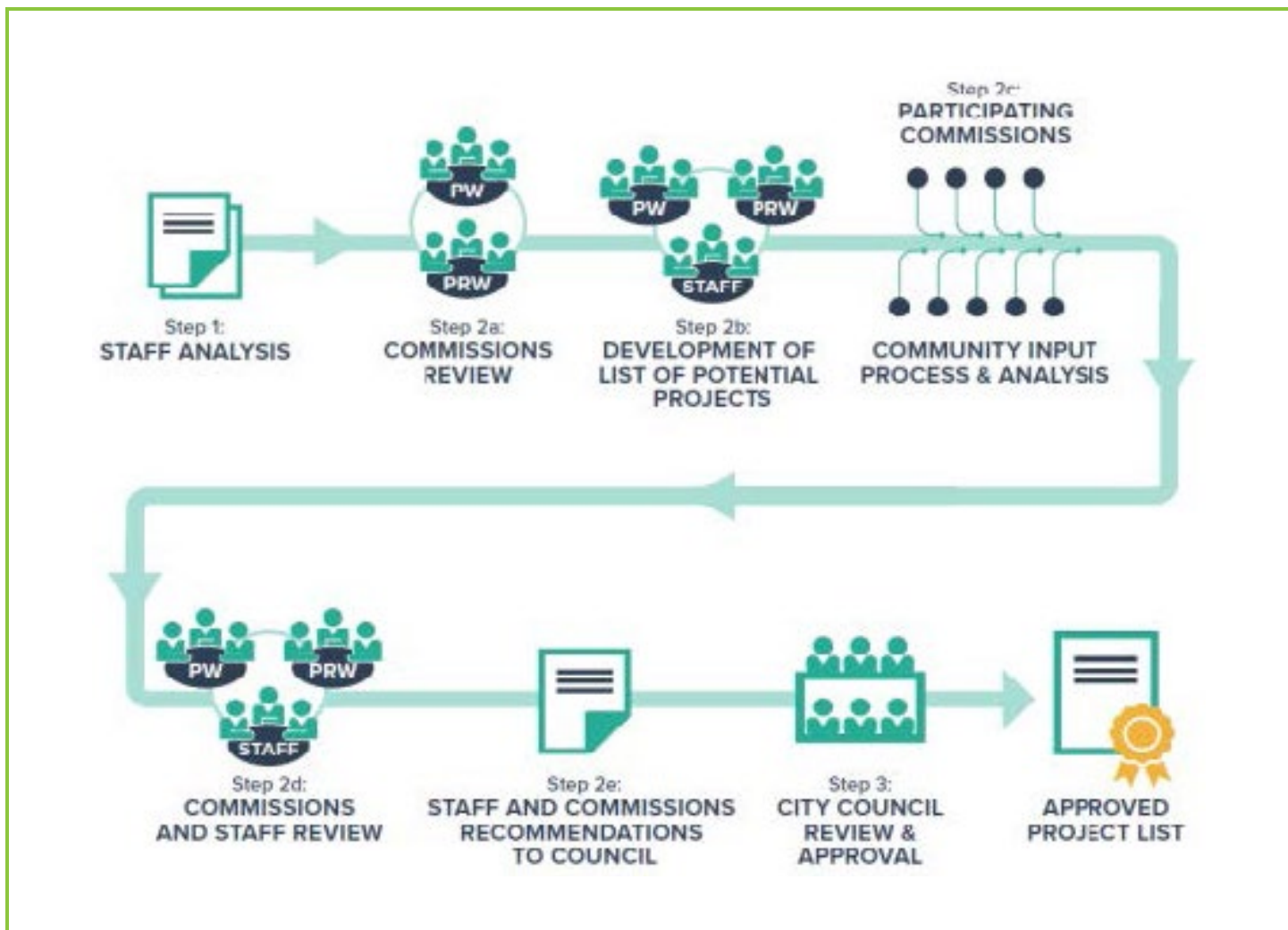
**TABLE 3**  
**SUMMARY OF PRIORITY SCORING**

Priority	Asset Category by Score
<b>1</b>	Streets
	Bicycle and Pedestrian Plan projects
	Sidewalks
<b>2</b>	Undergrounding
	Stormwater
	Parks
	Trees
	Waterfront
<b>3</b>	Traffic Controls, Streetlights, and Parking
	Transit projects
	Civic center
	City buildings
	Transfer station
	Sewer

The Program Plan’s goal is to ensure all of these asset categories become Priority 1 well before 2050. Asset categories in Priorities 1 and 2 are most aligned to resilience and sustainability measures in the criteria and are closest to being able to move into construction. Many of the asset categories in Priorities 2 and 3 require more public process, planning, and/or engineering, some of which may be supported by a revenue measure or measures.

Some of these asset categories, such as sewer, have sufficient, dedicated funding sources that make them unnecessary to prioritize for new revenue funding.

When sufficient funding mechanisms and the project team are in place, the work of selecting projects will begin. The process will be carried out separately for each 10-year program phase. The project selection process is shown on Figure 10. This process is being used successfully on the second phase of the Measure T1 program. Projects that are identified as high priority for implementation within each 10-year phase will move forward to final acceptance after staff analysis, community and Commission input, and City Council review and approval. The prioritization of the projects will use the scorecard shown on Table 2, or as updated at the time.



▲ **Figure 10:** Project Approval Process

# 04

## THE PLAN'S FUNDING, RESULTS, AND TAX IMPACT

This section describes a high-level funding approach to achieving resilient and sustainable infrastructure by 2050, the various sources of funds available for this work, results that could be delivered, and a review of the tax impacts on residents for implementing a Vision 2050 program.

MARTIN LUTHER KING JR  
CIVIC CENTER

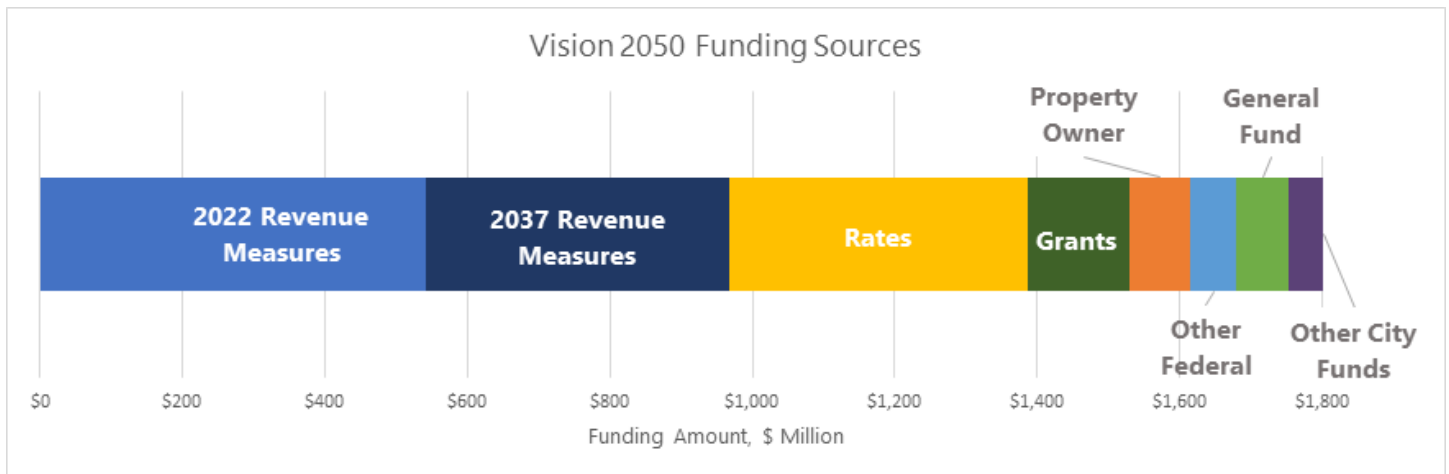
2180  
Milvia Street

## 4.1 Funding Sources

Achieving a resilient and sustainable infrastructure by 2050 will require new revenue from a variety of sources, including new voter-approved measures. Adjustment to user fees and rates that are dedicated to certain services will be another important source of infrastructure funding. For example, Berkeley’s sewer system is operated and maintained through user fees charged to customers. Through financial analysis, staff have determined that the \$194 million needed in the city’s sewer systems can be addressed in the next decade or so with cost-of-living adjustments to existing rates. Other services have dedicated funding sources (or rates), but that funding falls short. This is true of the city’s

stormwater fee and a special parcel tax for parks and trees. Other sources of funds include grants (federal, state, and other), developer fees, city funds (including the General Fund), and property owner fees, e.g., 50/50 sidewalk repairs.

Figure 11 shows the anticipated funding sources that will be available to complete each of the four Program outcomes and deliver sustainable and resilient infrastructure by 2050. This is a high-level projection with many assumptions yet to be proven, but is offered to show a funding path to the Vision 2050 destination and its dependence on a variety of revenue sources.



▲ **Figure 11:** Vision 2050 Funding Sources





## 4.2 Funding Alternatives

For the November 2022 ballot, two types of infrastructure revenue measures are being considered: a General Obligation Bond (or Infrastructure Bond) and Parcel Tax.

**General Obligation Bonds** (GO Bonds) are paid by an ad valorem property tax based on taxable property assessed value and can only be used to fund capital improvements (no maintenance, operations or services). GO Bonds are considered the most secure type of municipal debt and carry the lowest interest rates given the taxing power for repayment of the debt service. GO Bonds can also be structured to match the life expectancy of the infrastructure improvements and be issued in independent series as required based on project costs and timing. This phasing can allow for a better alignment of infrastructure utilization and repayment of the debt. Also, bond measures are generally considered progressive forms of taxation since they are based on the assessed value of properties.

The city has historically managed its GO Bond program for each authorization (Measures G, S, I, FF, M, T1 and O) through the issuance of individual bond series calculated to meet the capital funding requirements of the projects. Bonds were issued in amounts that minimized the impact on the tax rate required to make debt service payments. Since 1992, the city has maintained annual tax rates below original projections represented to voters for each of the GO Bond authorizations.

A **Parcel Tax** is a property tax that generates annual special revenues for capital, operations, maintenance and services. State law provides for

a number of different tax formulas for levies to all properties (residential and commercial) including per parcel, building square footage or land use. A parcel tax cannot be based on property value. A parcel tax based on building square feet is generally considered a progressive form of taxation since larger properties pay more than smaller properties, exemptions for seniors and low-income property owners are allowed.

Given the scale of the infrastructure need, the Program Plan assumes two 2022 Revenue Measures. First, a parcel tax of \$0.30 per building square foot for 14 years, raising approximately \$25 million annually, that is dedicated to streets, sidewalks, and traffic safety as described under Outcome Number 1. Second, an infrastructure bond of \$300 million with \$150 million to address affordable housing for low-income persons and the unhoused and \$150 million to improve resilience to climate change, wildfire prevention and protection, and to improve other select public infrastructure, as described in Outcome Numbers 2, 3, and 4.

These measures fund the community's top priorities voiced in the public outreach: affordable housing, street repair, and resilience to climate change. Multiple measures provide more flexible sources of funding that could address maintenance needs in addition to capital improvements. Street repair, sidewalk repair, and traffic safety are also top needs identified by online survey respondents, and is supported by the city's prioritization using the Vision 2050/Envision scorecard. These measures would significantly reduce the city's risk related to infrastructure unfunded liabilities, and improve the City's streets for all users.

**TABLE 4**  
**FUNDING MECHANISMS**

Type	GO Bond	Parcel Tax
<b>TAX BASIS</b>	Assessed Value (AV)	Building square footage
<b>USE OF FUNDS</b>	Capital only	Capital + Maintenance
<b>TAX PROGRESSIVITY</b>	Progressive	Progressive
<b>EXEMPTIONS</b>	None	Low income/senior
<b>PROS</b>	Relative tax burden decreases as total AV increases	Fixed payments with cost of living adjustments, funds capital and maintenance
<b>CONS</b>	Cannot pay for maintenance or operations Does not adjust for future costs	Increases tax burden if building square footage increases

### **Why is affordable housing included in these possible revenue measures?**

The Vision 2050 Framework focused on infrastructure, not affordable housing. However, on April 27, 2021, City Council approved exploring revenue measures that addressed both infrastructure and affordable housing, given both were top priorities for residents. Housing and infrastructure are connected. Ensuring affordable housing in a city such as Berkeley reduces greenhouse gas emissions because it affords lower and middle-income residents an opportunity to live closer to where they work, which means less emissions getting to work. At the same time, ensuring affordable housing is an important tool for ensuring a diverse and equitable city, which is an important priority of our community and City Council.

## Results

Per Section 4.1, these results assume:

- › The City continues its track record of successfully leveraging state, federal, and regional grants.
- › City Council allocates a total of \$15 million to annual paving from non-revenue measure sources in order to ensure proper ongoing maintenance of the City's streets, as accomplished for FY 2024.
- › Parcel tax revenue of \$25M annually is distributed roughly two-thirds to paving condition and one-third to traffic safety and sidewalks.
- › GO bond revenue is distributed roughly 60% to climate change, resiliency, and wildfire protection projects; and 40% to public realm and other infrastructure projects.

These investments would:

- › Improve streets to good paving condition and repave 97% of street mileage across the City.
- › Implement 100% of adopted traffic safety plans (bike/ped) and achieve Berkeley's vision of a low-stress bike network
- › Begin to underground the City's evacuation routes to enable emergency responders' ingress and evacuating residents' egress in the event of a wildfire, earthquake, or other disaster
- › Complete selected sea level rise projects at the Waterfront
- › Replace and improve Aquatic Park, storm drain, and green infrastructure citywide to prevent pollution from reaching the Bay and improve the City's resiliency from climate-infused storms
- › Assist in advancing the city's park and public realm projects, e.g., Waterfront, Civic Center Renovation, and San Pablo Park pool



## 4.3 Review of Tax Implications

Property tax rates for Berkeley property owners are comparable to neighboring cities. After accounting for ad valorem taxes, city voter-approved taxes and assessments, school district taxes, and other fixed charges, FY 2021 tax rates in Berkeley (1.58%) were on par with Oakland (1.54%) and lower than in Albany (1.89%).

The city's prior bond issuances include Measure FF (neighborhood libraries), Measures G, S, and I (public safety, main library/seismic retrofit, animal shelter), Measure O (affordable housing), Measure M (streets and watershed), and Measure T1 (infrastructure and public facilities). Debt service from prior bond measures constitutes only 3.2% of the average property owner's tax bill.

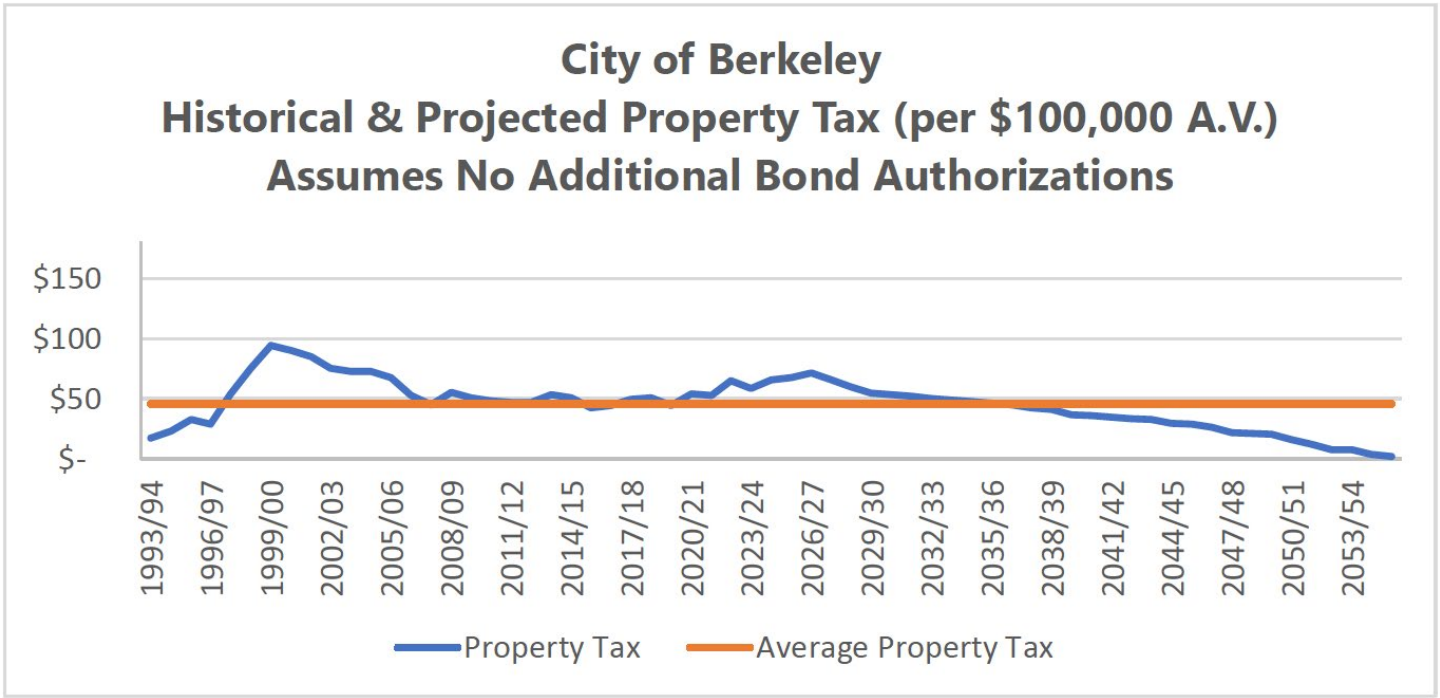
The city has a current debt service of \$52.90 per \$100,000, which is low compared to nearby cities and their school districts, as shown in the table below. Even after implementation of a \$300M GO bond, the city's debt service will continue to be lower than nearby cities and school districts.

<b>2021/22 Tax Rates</b>	<b>Total GO Bond Tax Burden</b>
Per \$100,000	\$52.90
Average Tax (based on assessed property value of \$647,972)	\$342.78

<b>City or District</b>	<b>Debt Service per \$100,000 of Assessed Value</b>
City of Oakland	\$201.10
Albany School District	\$195.00
Berkeley School District	\$145.10
City of Albany	\$130.30
Oakland School District	\$120.20
City of Berkeley plus \$300M bond	\$79.75 (average)
City of Berkeley (current)	\$52.90 (average)

The city has historically maintained low GO Bond tax rates as shown in Figure 12. This represents the previously approved bond measures including the remaining bonds for Measures T1 and O to be issued over the next four years.

If voters approved a \$300 million GO bond, the average tax required for the new bond authorization will be \$27 per \$100,000 of assessed value. Assuming the existing GO bond authorization capacity are issued as scheduled, the cumulative debt service on all GO Bonds will increase through 2036, and then begin to decrease as prior bonds are paid off.



▲ **Figure 12:** Historical & Projected Property Tax

Assuming average developed property size of 1,900 square feet, a parcel tax of 30 cents per square foot would add \$570 annually to the average property owner’s tax bill, which is comparable to the annual cost of refuse service based on a 32-gallon cart.

Below is a summary of the tax impacts on an average property, assumed to be an average valued house at \$647,972 (assessed value) with 1,900 sq ft.

TABLE 7 SUMMARY OF TAX IMPACTS	
	\$300M GO Bond + Parcel Tax
Tax Rate (\$100,000 A.V.)	Avg Bond = \$27 Parcel = 30 cents per sq. ft.
Tax (Avg Home: \$647,972; 1,900 sq ft)	Avg Bond = \$166 Parcel = \$570 Total = \$736

## 4.4 Other Benefits of Infrastructure Spending

Infrastructure spending has other benefits. It creates jobs. The U.S. Department of Transportation has found that for every \$1 billion in infrastructure investment, 13,000 jobs are created. In a place like Berkeley, which follows both state law on public works expenditures and local law via a Community Workforce Agreement, this means jobs that pay prevailing wages and benefits.

Infrastructure spending also can add art to our public spaces. If 1 percent of a revenue measure is dedicated to local public art, as was the case with Measure T1, or City Council commits an annual General Fund allotment of a similar amount, then Berkeley's public spaces will get more public art. Public art plays an integral role in improving our community's wellbeing by creating inspired spaces that reflect the unique character of our city. Public art breathes life into the built environment, engages the community with creative art experiences, and fosters a sense of belonging.



Art Installation at Civic Center Garage



Statue of William Byron Rumford



Art Installation at Shattuck & Center

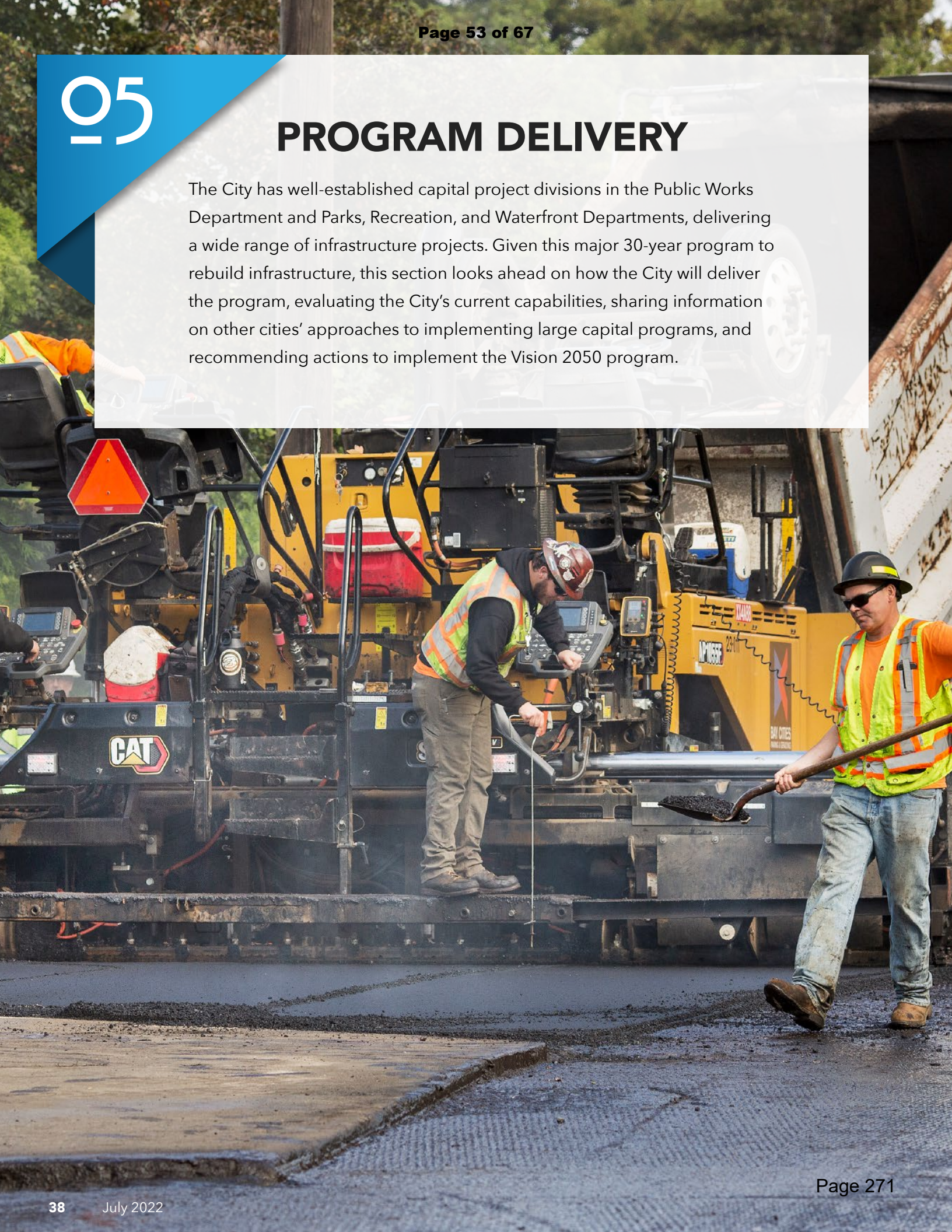


▲ **Figure 13:** Public Art in Berkeley  
Page 270

# 05

## PROGRAM DELIVERY

The City has well-established capital project divisions in the Public Works Department and Parks, Recreation, and Waterfront Departments, delivering a wide range of infrastructure projects. Given this major 30-year program to rebuild infrastructure, this section looks ahead on how the City will deliver the program, evaluating the City's current capabilities, sharing information on other cities' approaches to implementing large capital programs, and recommending actions to implement the Vision 2050 program.



## 5.1 Current Organization and Measure T1 Implementation

Capital projects are delivered by the Engineering and Transportation Divisions in the Public Works Department, and Capital Projects Division of the Parks, Recreation and Waterfront Department. Most of this work is based on regular, annual contributions from special funds, including ratepayer funds (sewer, stormwater, and streetlight) and a parks-focused parcel tax.

As shown in the table below, capital investments have more than doubled in the last decade.

Year	Capital Program
2010	\$41.6 million
2020	\$114.5 million

This growth has largely been driven by Measure T1 and the large project to rebuild Tuolumne Camp. In November of 2016, Berkeley voters passed Measure T1, authorizing the city to sell \$100 million of General Obligation Bonds to repair, renovate, replace, or reconstruct portions of the city's aging infrastructure.

The City of Berkeley has managed all T1 projects internally with a team that includes administrative, financial, and project management staff from the Public Works and Parks, Recreation, and Waterfront Departments. Five full-time equivalent positions were allocated across 11 staff within PW and PRW. One of the five FTEs is a T1 Associate Management Analyst. While projects are managed by city staff, the planning, design, and construction management of projects are largely completed by consultants.

As a part of preparing this Program Plan, interviews were conducted with the T1 Management Team and project managers to learn what has worked well and how things can be done better in the future.

### Positive outcomes of T1 implementation:

- › The City has completed nearly all of the 39 projects in Phase 1. Phase 2 projects are approved and are on track to be completed by 2026
- › Interdepartmental collaboration has been very effective with regular meetings and open communications
- › Community messaging has been regular and recurring, with ongoing updates to the website and email distribution lists, periodic reporting to Council, and a January 2022 informational brochure mailed to residents
- › The program team has been able to staff up and retain staff during the program
- › Staff costs have been kept to a minimum, i.e., less than 12% of project costs
- › Meetings are held at the conclusion of each project to discuss challenges, successes, and lessons learned
- › The project teams have largely been able to keep up with the project schedules



**Ideas for future improvements:**

- › Reduce the time it takes to hire staff
- › Increase IT and legal support to match the program size
- › Add consultants to help with certain tasks in project management
- › Improve tools to aid in project management

- › Streamline contracting policies, including bid protest procedures and purchasing policies

It is important to note there will be overlap with the T1 team completing the Phase 2 projects and the Vision 2050 team ramping up. The future organization will need to account for this to ensure the success of both programs.

## 5.2 Research on Other Programs

The City and its consultants conducted interviews with three cities implementing large capital programs. Interview topics included organization, tools, implementation, and accountability.

Successes, challenges, and lessons learned were discussed with each group, too. Table 8 summarizes the cities and their programs.

TABLE 8		
CITIES INTERVIEWED AND THEIR CAPITAL PROGRAMS		
City	Program Description	Budget and Staff
<p><b>City of Oakland</b></p> <ul style="list-style-type: none"> <li>› Measure KK’s funding allocations are a) \$350 million for streets and roads, b) \$150 million for facilities and c) \$100 million for anti-displacement and affordable housing</li> <li>› CIP projects are delivered through Public Works (PW) and Transportation (OakDOT). PW delivers non-transportation projects, such as sewer, drainage, and parks. OakDOT delivers transportation projects through two divisions: a) Great Streets (large projects) and b) Safe Streets (street repairs)</li> <li>› Program management is primarily done with City staff with some consultant support. There are about 20 dedicated staff members for program management</li> <li>› Staffing vacancies have been as high as 25%</li> </ul>		<p>\$87M / 20 employees = ~\$4.4M per employee.</p>

<p><b>City of Oakland (cont.)</b></p> <ul style="list-style-type: none"> <li>› Oakland’s PCI was 53 in 2019 and increased to 58 in 2021. They are using \$100 M of Measure KK funds over 3 years to improve 350 miles of street surface</li> <li>› Measure KK has a 9 member Public Oversight Committee. The members were appointed by the Mayor and report to the City Council</li> </ul>	
<p><b>City of Sunnyvale</b></p> <ul style="list-style-type: none"> <li>› The Public Works Engineering Division delivers all capital projects through four groups: a) special projects, b) project design, c) construction management, and d) land development</li> <li>› The special projects group manages very large capital projects, e.g., \$1 billion wastewater treatment plant re-build. Consultants handle the day-to-day project management but do not have monetary authority</li> <li>› There are 8 staff in the project design group, who manage the smaller on-going capital projects</li> <li>› The City uses e-Builder software</li> <li>› Staffing vacancies are a problem</li> <li>› City Council’s target PCI is 80. Their current PCI is about 76</li> </ul>	<p>\$176.5M / 30 employees = ~\$5.9M per employee.</p>
<p><b>City of San Diego</b></p> <ul style="list-style-type: none"> <li>› The City delivers capital projects through two departments: a) Capital Projects and b) Strategic Capital Projects. Capital Projects perform projects that are \$5 to 20 million in size, the work is long-term and they have about 700 staff. The Strategic Capital department works on projects over \$100 million in size, the work requires special expertise, there are about 50 staff and there is a high reliance on consultants</li> <li>› The current 5-year CIP has a funding need of \$8.4 billion</li> <li>› The City uses OCI (overall condition index) instead of PCI. The City’s target for OCI is 70</li> <li>› Staff vacancies range from 15 - 20%</li> <li>› A State of CIP Report is provided to City Council twice per year</li> <li>› San Diego is a participant in a California multi-agency benchmarking group</li> </ul>	<p>\$830M / 750 employees = ~\$1.1M per employee</p>

While Berkeley uses City staff for project management and consultants for planning, design, and construction management, by comparison, the larger programs are managed by a combination of City staff and consultants. Berkeley's 5 full time equivalent employees are handling \$45 million projects at present, a higher ratio than these other cities. City staff make all financial decisions, manage City processes, and complete repeatable tasks. Consultants assist City staff with a wide variety of tasks involving project planning, design, construction management, and execution, and provide necessary specialized expertise and knowledge. Some program teams include a

dedicated group who administer grant funding. Challenges experienced during large program implementation include difficulty in recruiting and retaining a talented workforce, having sufficient administrative and support services, and having effective and efficient hiring and on-boarding processes, including a continuous recruitment process.

These issues could be addressed in part by including dedicated financial and recruiting staff that are funded through the revenue measure, and developing program-specific hiring policies and procedures.

## 5.3 Recommendations for Vision 2050 Implementation

The recommendations presented in the section below build off the successes and lessons learned from implementation of Measure T1 and the City's regular capital program, and from the three cities we interviewed and researched. These recommendations will help in delivering a more significant investment in the city's infrastructure:

- › **Responsible organization** - A Vision 2050 program management team should be formed and report to the Public Works Director for the first phase of improvements, given this phase's focus is likely within the right of way, which is Public Works' responsibility. This team would be multi-discipline, meaning the team would be responsible for implementing all aspects of the Vision 2050 program, including projects outside of the normal purview of Public Works. In future phases, as determined by future Vision 2050 priorities, this program management team could report either to Directors of Public Works or Parks, Recreation, and Waterfront, a Deputy City Manager, or the City Manager.

- › **Multiple Benefits** - The Vision 2050 Framework recommended infrastructure improvements that have multiple benefits. Given this Plan's initial focus on streets and traffic safety, the program management team will ensure projects are delivered that, to the extent feasible, combine paving, traffic safety, and green infrastructure improvements. Recent annual paving projects demonstrated progress in this regard, as they have included paving, green infrastructure, and various traffic safety features such as traffic circles, traffic diverters, and pedestrian islands. Given this plan prioritizes the co-benefits of street paving and traffic safety, staff have modeled how to meet both goals simultaneously. By dedicating two-thirds of streets-focused investments to paving and one-third to traffic safety, this Plan's goals can be met in ten years or so.

- › **Program management team and staffing** - The City should initiate a recruitment for a new full-time position, Vision 2050

Program Manager. The manager should have an administrative support person and project managers (the number to be determined prior to implementation). The City team would ideally include dedicated staff in lieu of 3-year limited term positions, given the duration of the work. In addition, the city team should include both an in-house construction inspector and a project coordinator to assist with time-intensive tasks such as compiling budget data, preparing public outreach materials, and coordinating meetings. Outreach support should be included on this team as well. The Program Manager should also have a mix of staff and consultant support in a blended team. Consultant support may include: a) preparation of a project management manual, b) project cost tracking, c) performance indicator tracking, and d) management of special projects.

- › **Engineering functions** - As discussed above, the engineering and capital delivery divisions in the Public Works and Parks, Recreation and Waterfront Departments will continue to deliver ongoing projects. These include aspects of street paving, sidewalk repairs, sewer rehabilitation, and park and playground improvements.

- › **Special projects** - Projects that are not normally handled by the City's engineering

divisions should be managed by the program management team or assigned to a consultant. Examples of these projects may include utility undergrounding, seismic improvement to public buildings, public realm projects, etc

- › **Supporting departments** - Advanced planning needs to be held with the City's procurement, legal, human resources and information technology departments. Challenges experienced during large program implementation include difficulty in recruiting and retaining a talented workforce and having effective on-boarding processes. In addition, the City's procurement procedures need updating and improvement. The ideal Vision 2050 organization may include dedicated recruitment and financial staff, as well as new policies that are developed specifically for the program. For example, the City of Oakland cut 500 staff hours and months from project timelines by reducing the number of project and procurement approvals.

- › **Tools, software and procedures** - An evaluation of current and new tools will be made for delivering the program. This will include: a) procurement tools for goods and services, b) project scheduling and tracking software, c) document management, and d) reporting.



# 06

## SUPPORTING STRATEGIES

This section describes the performance monitoring, oversight and reporting and on-going maintenance that will be a part of implementing a successful Vision 2050 program.



## 6.1 Performance Indicators

A large complex program like Vision 2050 can benefit from identifying Key Performance Indicators (KPIs) to track progress. An initial list of KPIs is shown on Table 9 and are organized around the four Vision 2050 outcome objectives. The indicators go beyond the traditional tracking of cost and schedule progress and incorporate indicators that reflect sustainability and resilience goals.

It will be important to update these KPIs at the beginning of each phase of this thirty-year program, and more frequently in some areas, in order to incorporate changing conditions, new technologies, and new priorities.

TABLE 9

### VISION 2050 KEY PROGRAM PERFORMANCE INDICATORS

1. Streets are Safer, More Sustainable, Improved to a Good Condition, and Maintained	
Paving condition	% of sidewalks in safe condition
Three year average of severe injuries/fatalities	% of Bicycle, Pedestrian, and ADA Transition Plans implemented
% of 2020 pavement surface converted to pervious surface	Public satisfaction with right of way
% of commute trips by solo occupant vehicle	% of trips by walking, micro mobility or transit
2. Infrastructure is Resilient, Protects the Environment, and is Adapted to Climate Change Impacts	
Citywide GHG reductions	% of public buildings fossil-fuel free
Citywide natural gas consumption	% of automobiles that are EV citywide
% of Stormwater and GI plans implemented	% of sea level rise, undergrounding, and evacuation route projects completed
% of target acres treated by Green Infrastructure	% of 2022 vacant street tree sites planted
% of public buildings seismically retrofitted	
3. Open Space, Parks, and Recreation Improve our Quality of Life	
% of Backlog Addressed Annually	Diversity of the Urban Forest
# of Street Trees/Tree Canopy Ratio	Public satisfaction at Parks and open spaces
4. Public Facilities are Safe and Provide Community Placemaking	
% of public realm/placemaking opportunities implemented	% of Backlog Addressed
% of ADA Transition Plan implemented in buildings	Public satisfaction in public spaces
% of public buildings with battery storage	

## 6.2 Equity

Incorporating equity into infrastructure is a core value of the Vision 2050 Framework, and is something Berkeley residents want. Three-fourths of voters said an infrastructure measure should incorporate equity.

Poorly maintained infrastructure is inherently inequitable, as it is more detrimental to Berkeley's most vulnerable residents. Those with mobility impairments can find potholes, deficient sidewalks, failing hand rails, or out-of-service elevators as insurmountable challenges. Those on bikes or walking, instead of in vehicles, are more at risk of death or serious injury on streets with potholes, failing pavement markings, and lacking traffic safety controls. As reported by the city auditor, low-income residents who depend on their automobile to get to work face greater risk from the estimated annual \$1,049 repair bill attributable to poorly maintained streets. The state of our parks, recreation and senior

centers has a serious impact on the programs and services delivered to children of color and lower income seniors.

In implementing equity into Vision 2050, Berkeley will build on recent progress. The City's transportation plans prioritize projects in historically underinvested neighborhoods in Berkeley, including improvements like bus bulbouts and dedicated bus lanes which help lower income residents more likely to use transit. Many capital projects approved in Measure T1 implementation advanced equity. These projects include the African American Holistic Resource Center, South Berkeley Senior Center, the Martin Luther King Jr. Youth Services Center, and public restrooms citywide approved as part of Measure T1, Phase 2. In addition, Phase 1 projects such as paving and park improvements at San Pablo Park and 10 play structures in West Berkeley also advance equity.

## 6.3 Reporting and Oversight

A Vision 2050 program team will prepare a Program Management Manual. The manual will include the performance indicators and a format for reporting progress. Typically, performance monitoring reports are prepared on a semi-annual basis. The reports will be provided to Council and will be available to the public via the Vision 2050 website.

To ensure accountability, independent oversight for the revenue measures will be provided by two of the City's Commissions: Transportation and Infrastructure, and Parks, Recreation, and Waterfont. These Commissions will review expenditures

for conformance with the measure's purposes, propose how future revenue measures proceeds are spent, and monitor progress toward Vision 2050's outcomes and performance indicators.

## 6.4 Lifecycle Maintenance

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.

A Strategic Asset Management Plan (SAMP) was recently submitted to City Council and the Council adopted an Asset Management Policy. The SAMP develops policy guidance, reviews the city's current maintenance practices, and prepares a roadmap of key initiatives for implementing a full Asset Management Program (AMP) in Berkeley's Public Works and Parks, Recreation & Waterfront Departments. 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. An AMP is needed to manage our infrastructure assets throughout their useful life.

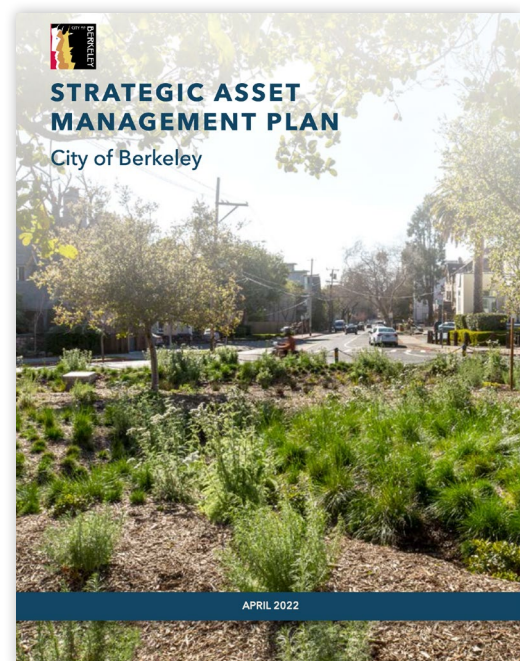
The city retained a consultant to assess the city's current asset management practices against a global standard benchmark on Asset Management in six areas: asset strategy and planning, asset management decision-making, lifecycle delivery, asset information, organization and people, and risk assessment. 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's 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
- › Prepare the strategies, procedures and analyses to implement an AMP

The SAMP conducted an asset-by-asset review of annual infrastructure maintenance funding and found that some asset categories such as streets and city buildings had insufficient maintenance funding by a wide margin, while other assets like sewer and streetlights had adequate maintenance funding. Assets such as stormwater have sufficient maintenance funding now. However, climate change and green infrastructure might make current funding commitments insufficient in future years.

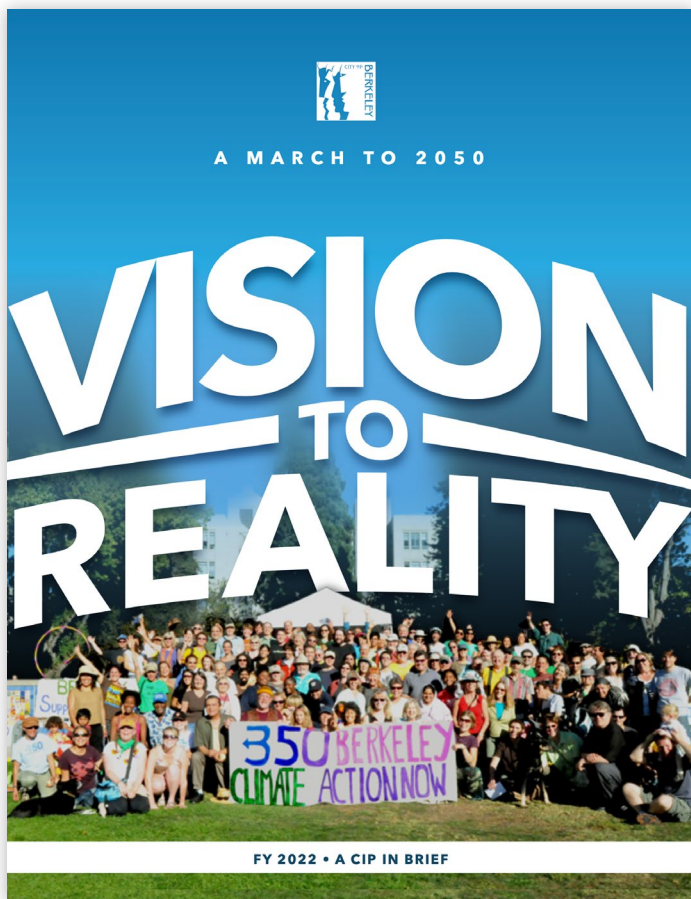




## 6.5 General Fund Support for Infrastructure Maintenance

The level of General Fund contribution for public infrastructure in the last 12 years has remained flat in nominal terms. Given escalating annual costs, this led to a decline in General Fund support for infrastructure. A common theme from community engagement has been to grow General Fund support for infrastructure and, at the very least, that revenue from any new measures not replace existing General Fund commitments to infrastructure.

In recognition of the need for more infrastructure funding, the City Council has revamped its capital budget and allocated an additional \$14M+ for street maintenance, \$5M+ for the Waterfront and Parks, and \$4M+ for other infrastructure. If these investments become a new “floor” for the City’s infrastructure, the City will be on track to achieve a resilient and sustainable infrastructure by 2050.



The FY 2022 CIP in Brief was the beginning of melding Vision 2050 into the City’s capital budget

# APPENDICES

## A. Acknowledgements

### City of Berkeley

Paul Buddenhagen, Deputy City Manager

Liam Garland, Director, Public Works

Scott Ferris, Director, Parks, Recreation and Waterfront

Ray Yep, Vision 2050 Implementation Team Member (volunteer)

Margo Schueler, Vision 2050 Implementation Team Member (volunteer)

Gordon Wozniak, Vision 2050 Implementation Team Member (volunteer)

Andrew Brozyna, Deputy Director, Public Works

Christina Erickson, Deputy Director, Parks, Recreation and Waterfront

Farid Javandel, Deputy Director, Public Works

Joe Enke, Manager of Engineering, Public Works

Input from the Leadership Teams in the Public Works and Parks, Recreation and Waterfront Departments

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### Consultant Team

V.W. Housen and Associates: Vivian Housen, Project Manager

Morgan DeAngelis, Project Engineer

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Woodward & Curran: Dave Richardson, Principal

Daniel Windsor

Josh Uecker

Stephanie Hubli

## B. GLOSSARY OF TERMS AND ABBREVIATIONS

Terminology	Definition
<b>ADA</b>	Americans with Disabilities Act
<b>AMP</b>	Asset Management Program
<b>Asset categories</b>	A logical grouping of similar assets or equipment types used to categorize, organize, and manage the asset portfolio.
<b>Asset management</b>	Data driven planning that improves operational, maintenance and capital forecasting of potential needs, and optimization of investments to realize the greatest value from assets while operating over their lifecycle.
<b>CEQA</b>	California Environmental Quality Act
<b>CIP</b>	Capital Improvement Program
<b>City</b>	City of Berkeley
<b>Council</b>	City Council of Berkeley
<b>EBMUD</b>	East Bay Municipal Utility District
<b>Envision</b>	Developed by the Institute for Sustainable Infrastructure and Harvard University, Envision provides industry-wide sustainability metrics for all types and sizes of infrastructure to help users assess and measure the extent to which their project contributes to conditions of sustainability across the full range of social, economic, and environmental indicators.
<b>KPI</b>	Key Performance Indicator
<b>General obligation bond</b>	A General Obligation bond is a common type of municipal bond that is secured by a government's pledge to use legally-available resources, including tax revenues, to repay bondholders.
<b>Parcel tax</b>	The parcel tax is a tax on parcels of real property collected as part of a property tax bill. Unlike the property tax, the parcel tax cannot be based on property value. To impose a parcel tax, governments must win support from two-thirds of voters.
<b>PCI</b>	Pavement Condition Index, which is a scale of 0 to 100 (with 100 being the best) that indicates the condition of an asphalt street surface.
<b>Program plan</b>	A structured approach to organizing a long term complex array of subcomponents. The plan typically describes the project components, schedule, outcomes, funding, and reporting.
<b>SAMP</b>	Strategic Asset Management Plan. This is a high level plan that reviews an organization's policies, assesses its maturity on maintenance, and develops a roadmap to implement a lifecycle maintenance management program.
<b>U.S. EPA</b>	United States Environmental Protection Agency
<b>Vision 2050</b>	An initiative of Berkeley's Mayor Jesse Arreguin to take a long term approach to improving Berkeley's aging infrastructure. The approach incorporates sustainability and resiliency and anticipating a future world with climate impacts.
<b>WMP</b>	Watershed Management Plan

## C. Reference Documents

1. Information on Vision 2050 can be found on its website: [BerkeleyVision2050.org](http://BerkeleyVision2050.org).
2. Reference documents referenced in this program plan can be found on the City of Berkeley website ([BerkeleyCA.gov](http://BerkeleyCA.gov)) using the search feature
3. Information on Berkeley's Measure T1 program can be found on its website: [BerkeleyCA.gov/your-government/our-work/ballot-measures/measure-t1](http://BerkeleyCA.gov/your-government/our-work/ballot-measures/measure-t1).
4. Information on the Envision process can be found on the Institute for Sustainable Infrastructure's website: [SustainableInfrastructure.org](http://SustainableInfrastructure.org).

MEET YOUR COUNCILMEMBERS



**MAYOR**  
**JESSE ARREGUIN**

*Term Expires 11/30/2024*



**DISTRICT 1**  
**RASHI KESARWANI**

*Term Expires 11/30/2022*



**DISTRICT 2**  
**TERRY TAPLIN**

*Term Expires 11/30/2024*



**DISTRICT 3**  
**BEN BARTLETT**

*Term Expires 11/30/2024*



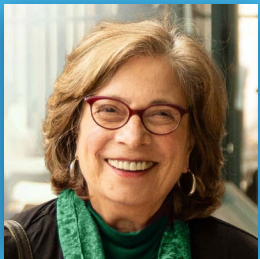
**DISTRICT 4**  
**KATE HARRISON**

*Term Expires 11/30/2022*



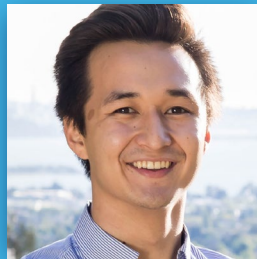
**DISTRICT 5**  
**SOPHIE HAHN**

*Term Expires 11/30/2024*



**DISTRICT 6**  
**SUSAN WENGRAF**

*Term Expires 11/30/2024*



**DISTRICT 7**  
**RIGEL ROBINSON**

*Term Expires 11/30/2022*



**DISTRICT 8**  
**LORI DROSTE**

*Term Expires 11/30/2022*





Office of the City Manager

ACTION CALENDAR

July 26, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Placing a General Tax Measure on the November 8, 2022 Ballot to Tax Vacant Residential Units

RECOMMENDATION

1. Adopt a Resolution submitting a ballot measure to tax vacant residential units to a vote of the electors at the November 8, 2022 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

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

See attached report submitted by Vice Mayor Harrison, and Councilmembers Robinson and Bartlett (Attachment 1).

BACKGROUND

The City Manager is presenting this measure for addition to the November 8, 2022 ballot pursuant to the direction provided by the City Council at the June 14, 2022 regular City Council meeting.

Adoption of the resolution attached to this item will place the measure on the ballot. In addition, with respect to who can author arguments for measures placed on the ballot by the Council, Elections Code Section 9282(b) provides that the legislative body may submit an argument in favor of the measure. The City Council may authorize the Council as a whole, or certain members of the Council, to submit an argument in favor of the measure.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

The City Clerk is presenting this action in accordance with the direction given by the City Council at the June 14, 2022 meeting.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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

Attachments:

- 1: Report submitted by Vice Mayor Harrison, and Councilmembers Robinson and Bartlett
- 2: Resolution  
    Exhibit A: Text of Measure
- 3: Previously submitted information, submitted by Vice Mayor Harrison





Kate Harrison  
Vice Mayor, District 4

ACTION CALENDAR  
July 26, 2022

To: Honorable Mayor and Members of the City Council  
From: Vice Mayor Harrison, and Councilmembers Robinson and Bartlett  
Subject: Placing an Empty Homes Tax Ordinance on the November 8, 2022 Ballot

RECOMMENDATION

Submit an Ordinance to a vote of the electors at the November 8, 2022 General Municipal Election adding Chapter 7.54 to the Berkeley Municipal Code taxing property owners for keeping housing units vacant for more than 182 days in a single year, for units that 1) are not under permitted renovation or in probate, and 2) are in multi-unit buildings or are single family homes or condominiums whose owners are not natural persons or family trusts.

CURRENT SITUATION AND RATIONALE FOR RECOMMENDATION

The City of Berkeley is experiencing a historic housing crisis. Between 2005 and 2019 gross median rent increased by over 50%. This has been particularly burdensome in a city where 58% of residents are renters.<sup>1</sup> While in recent years Berkeley has met its RHNA goals for those earning above 120% Area Median Income (AMI), it has failed to build sufficient housing for everyone else. Further, housing at the >120% AMI category has not significantly improved affordability for lower income residents and has increased displacement in low-income neighborhoods.<sup>2</sup> The extraordinary gap between the housing needs of residents and the availability of housing can only be bridged through the use of numerous policy interventions, including a vacancy tax intended to incentivize owners of housing property to bring units back on the market and discourage speculation.

In a recent poll of top policy priorities among Berkeley voters, increasing affordable housing for low-income and homeless residents received by far the most support, at 58%.<sup>3</sup> While Berkeley is actively building new affordable units, siting and constructing

<sup>1</sup> Anti-Eviction Mapping Project: Densifying Berkeley: Potential Impacts on Displacement and Equity, 2022, <https://www.berkeleyside.org/wp-content/uploads/2022/04/AEMP-UpzoningReport-Draft4-3.pdf>

<sup>2</sup> Ibid.

<sup>3</sup> City of Berkeley Community Survey, Live Phone and Text to Online, April 28-May 3, 2022, <https://berkeleyca.gov/sites/default/files/documents/2022-05-31%20Item%2037%20Discussion%20and%20Direction%20Regarding.pdf>.

new units is a longer-term process, and it is incumbent on the City to maximize the availability of *existing units* that are already built and could be available for rent or sale.

Unfortunately, Alameda County's housing remains unaffordable for many of its residents, and this burden does not fall evenly across income and racial groups. While 47% of renters in Alameda County are rent burdened, the rate is 58% for Black renters and 87% for extremely low-income renters.<sup>4</sup> Meanwhile, as this crisis continues to unfold, Berkeley Rent Stabilization Board data indicates that 1,128 fully or partially regulated<sup>5</sup> units have been classified by their owners as not available to rent (NAR).<sup>6</sup> Around 40% of the 1,128 NAR units are in properties that are completely vacant, and almost 80% of NAR units are in properties that are half or more empty. A few of these are actively being renovated but the majority are not. Many have not been occupied for some time or actually are rented but not reported as being so to the Rent Board. Based on a review of Rent Board data and Google Street View, approximately 100 of these units are in buildings that are entirely vacant and dilapidated. This contributes to neighborhood blight and requires costly vector control and fire inspections. Thus, much of the vacancies in the city are not due to natural turnover.

A recent report examining vacancies in San Francisco found that there is no single force driving the vacancies<sup>7</sup>. It also found that vacancies were disproportionately in multi-family apartment complexes and tended to be in areas with older housing stock and higher rates of new construction— suggesting that property owners are holding older units vacant to capitalize on new construction. Notably, in interviews with numerous landlords, the report found that landlords contradictorily listed rent control as a reason for both low and high vacancy rates<sup>8</sup>. In other words, landlords themselves did not agree there is a clear connection between rent control and vacancy rates.

Oakland and Vancouver, both experiencing their own challenges with housing unaffordability, use a vacant housing tax to encourage owners of vacant units to find tenants or sell to those who will. In 2016, Vancouver passed a measure that placed a surcharge on the assessed value of vacant units. Within two years of its implementation, 21.2% of vacant units returned to occupancy and the city generated

<sup>4</sup> California Housing Partnership Housing Needs Dashboard, 2019,

<https://chpc.net/housingneeds/?view=37.405074,-119.26758,5&county=California,Alameda&group=housingneed&chart=shortfall|current,cost-burden|current,cost-burden-re|current,homelessness,historical-rents,vacancy,asking-rents|2022,budgets|2021,funding|current,state-funding,lihtc|2010:2021:historical,rhna-progress,multifamily-production>

<sup>5</sup> Partially regulated units are only partially covered by the rent ordinance, while fully regulated are completely covered by the ordinance

<sup>6</sup> Berkeley Rent Stabilization Board. There are also units classified as “vacant”, for which property owners are actively seeking tenants.

<sup>7</sup> Paige Dow, Unpacking the Growth in San Francisco's Vacant Housing Stock, 2018,

[https://turnercenter.berkeley.edu/wp-content/uploads/2020/08/CR\\_Final\\_2.3.19-1.pdf?fbclid=IwAR1a\\_6T8DJR-p6qZ05u-oeIplpBzfeTabdxNeG\\_-l39vQ-vNIBwe6FT7D8A&fs=e&s=cl](https://turnercenter.berkeley.edu/wp-content/uploads/2020/08/CR_Final_2.3.19-1.pdf?fbclid=IwAR1a_6T8DJR-p6qZ05u-oeIplpBzfeTabdxNeG_-l39vQ-vNIBwe6FT7D8A&fs=e&s=cl)

<sup>8</sup> Ibid.

Placing an Empty Homes Tax Ordinance on the November 8, 2022 Ballot	ACTION CALENDAR July 26, 2022
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\$46 million Canadian dollars. Oakland enacted a vacant property tax of \$3,000 to \$6,000, varying based on property type. In its first year of implementation, the city collected over \$7 million in revenue.<sup>9</sup> San Francisco voters will consider a vacant housing tax measure on the November ballot.

Addressing vacant units is a critical part of addressing Berkeley’s housing crisis. Every year that a significant percentage of Berkeley’s housing stock remains vacant exacerbates the housing affordability and displacement crises. This item includes a modified version of San Francisco’s proposed tax adapted to Berkeley. It is in the public interest to refer to the City Attorney and City Manager to prepare and submit a resolution taxing empty homes that would be submitted to a vote of the electors at the November 8, 2022 General Municipal Election.

**BACKGROUND**

Berkeley’s housing challenges are significant, requiring numerous policy interventions across many years to remediate. However, of the units that were built as part of the 2023 RHNA goals, the majority have been unaffordable to most residents.<sup>10</sup>

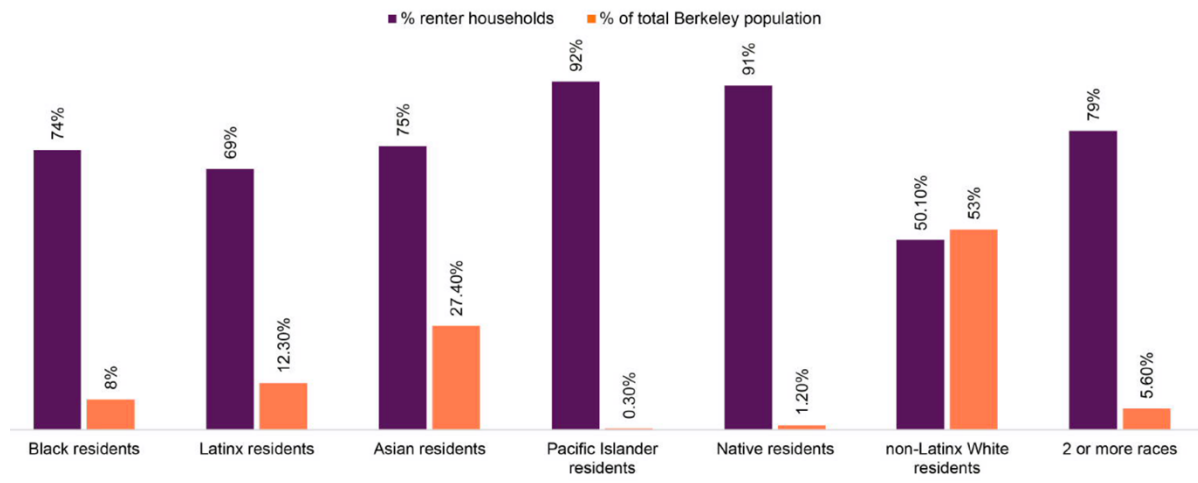
Income Category	Total RHNA (2014- 2023)	Net Units Created (2015- 2020)	Balance Remaining	Percent of RHNA Achieved
Very Low Income	532	173	359	32.5%
Low Income	442	60	382	13.6%
Moderate Income	584	0	584	0%
Above Moderate Income	1,401	2,476	0	176.7%
<b>Total</b>	<b>2,959</b>	<b>2,709</b>	<b>1,325</b>	<b>55.2%</b>

In 2019 the City’s median rent was \$3,165, making it affordable to only households earning over \$130k annually. Median rents have also increased by greater than 50% between 2005 and 2019. Rising rents in the city are of particular concern given that the City has a high renter population, and the impact of high rents falls disproportionately on BIPOC residents<sup>11</sup>.

<sup>9</sup> San Francisco Budget and Legislative Analyst’s Office: Residential Vacancies in San Francisco, 2022, [https://56a418ca-94d2-476c-9a45-f491ca4a0387.usrfiles.com/ugd/56a418\\_74b82803e4fb434bb1b13010828a4c01.pdf](https://56a418ca-94d2-476c-9a45-f491ca4a0387.usrfiles.com/ugd/56a418_74b82803e4fb434bb1b13010828a4c01.pdf)

<sup>10</sup> 2020 General Plan APR: City of Berkeley, Table 2

<sup>11</sup> Anti-Eviction Mapping Project: *Densifying Berkeley: Potential Impacts on Displacement and Equity*, 2022, <https://www.berkeleyside.org/wp-content/uploads/2022/04/AEMP-UpzoningReport-Draft4-3.pdf>

**Percent Renter Occupancy vs. Percent Berkeley Population, 2019<sup>12</sup>**

Fortunately, the City of Berkeley has taken numerous steps in recent years to tackle its affordable housing crisis, including issuing a \$100 million affordable housing bond, permitting Berkeley residents (outside of the fire zones) to receive near-automatic approval to build certain types of ADUs, and rezoning BART stations to allow significant affordable housing. A potential 2022 affordable housing bond is under consideration.

While these efforts will increase the supply of housing in Berkeley, it will take years for the City to reap the benefits. Developments still need to be proposed, approved, and then constructed. Berkeley's large supply of vacant homes presents a unique opportunity for the City to immediately provide new units to renters, as there are no approval processes or lengthy construction timelines.

Additionally, hot housing markets often attract real estate speculation. Redfin data shows that 13% of homes in Oakland were purchased by an institutional investor or business in the fourth quarter of 2021, a 16.9% increase over the year before. In San Francisco, 18% were acquired by institutional investors. This follows a concerning nation-wide trend where large institutional investors have since the beginning of the pandemic purchased an enormous number of homes; over 75% of these offers are in all cash,<sup>13</sup> and many without any inspections, pricing prospective homeowners out of the real estate market. Large financial institutions, like Blackrock, are now some of the largest owners of real estate in the country. However, unlike traditional homeowners, they treat homes as a commodity to build wealth. This is made clear by private equity-backed landlords being 18% more likely than non-equity backed corporate landlords to evict tenants, who are themselves more likely to do so than small landlords. In a

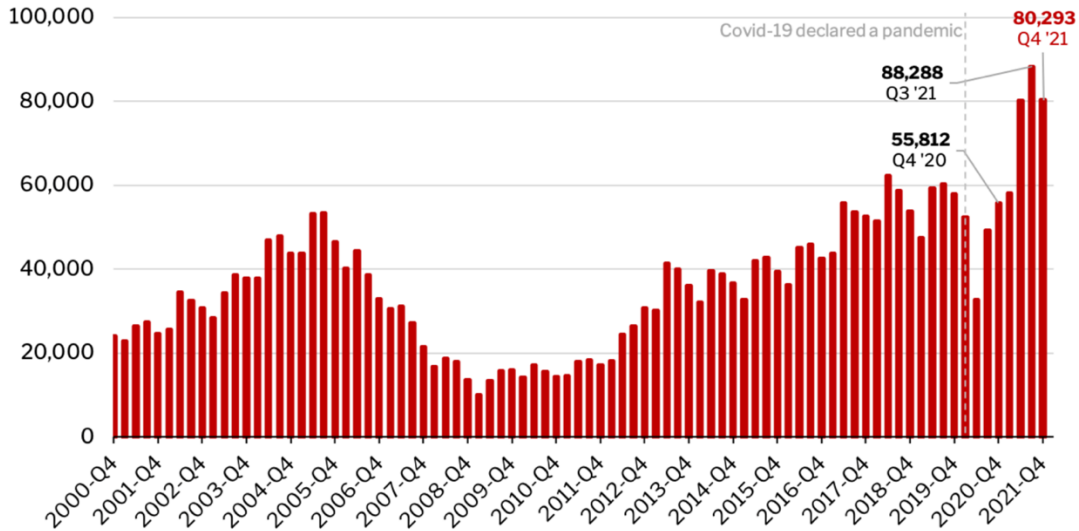
<sup>12</sup> Ibid.

<sup>13</sup> Route Fifty: Governments Begin Pushing Back on Investors Snatching Up Homes, 2022, <https://www.route-fifty.com/infrastructure/2022/07/while-investors-are-snatching-homes-governments-fight-save-properties-residents/368927/>

particularly acute instance of the commoditization of housing, one company packaged rental *debt* from 3,000 homes and sold it to investors for \$500 million,<sup>14</sup> similar to what happens with mortgage debt.

### Investors Home Purchases Just Shy of Record in Fourth Quarter of 2021

Number of U.S. homes bought by investors



Source: Redfin analysis of county records



In Berkeley, it is likely that some vacant units are in buildings purchased for the sole purpose of accruing more wealth, with no intention of housing tenants. For instance, there is one property owner who owns 9 units, across 4 properties of two or fewer units in the city—of these, 8 are listed as not available to rent. While the extent of this is unknown, applying a tax on vacant homes will discourage this practice that, in aggregate, raises rents and home prices for everyone else. The proposed Measure fulfills one of the key anti-speculation recommendations of the 2022 report by the Anti-Eviction Mapping Project (*Densifying Berkeley: Potential Impacts on Displacement and Equity*).

Using the assumptions made in the San Francisco Budget Analyst report on a prospective vacancy tax, and Berkeley Rent Board data on length of vacancies, it is estimated that Berkeley will generate between \$5.8 million and \$8.7 million in revenue annually and that several hundred vacant units could become occupied within two

<sup>14</sup> Tech Equity Collaborative: Sold to the Highest Bidder: How Tech is Cashing in on the American Dream, 2022, <https://techequitycollaborative.org/2022/06/29/sold-to-the-highest-bidder-how-tech-is-cashing-in-on-the-american-dream/>

Placing an Empty Homes Tax Ordinance on the November 8, 2022 Ballot	ACTION CALENDAR July 26, 2022
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years.<sup>15</sup> This is likely a conservative estimate as it only includes units that have been registered as NAR with the Berkeley Rent Board—other vacant units are not included. The Finance Department has confirmed that the methodology behind these numbers is valid and logical and will affirm them for the ballot statement.

POTENTIAL REVENUES FROM BERKELEY VACANCY TAX						
Applicable Units	Small Properties*		Large Properties		TOTAL	
	Year 1	Two + Years**	Year 1	Two + Years**	Year 1	Two + Years**
Years since implementation						
Units Subject to Tax	249	187	841	631	1090	818
Revenue	\$747,000	\$1,120,500	\$5,046,000	\$7,569,000	\$5,793,000	\$8,689,500

\*Excluding 38 single family homes owned by non-corporate owners of less than 3 single-family homes

\*\*Assumes 75% of buildings remain vacant after one year

Small properties have 1 - 2 units

Large properties have more than 2 units

Berkeley’s proposed vacancy tax is built off San Francisco’s 2022 proposed Empty Home Tax proposal. The San Francisco vacancy tax applies only to owners of properties with three or more units when at least one has been unoccupied for more than 182 days in a year. Single family homes and two-unit properties are exempt, and the vacancy tax increases for larger properties and units that have been empty for longer. The proposed vacancy tax for Berkeley would likewise be imposed when a unit is left vacant for more than 182 days in a calendar year, providing time extensions for units under active reconstruction or in probate. It will also contain the following exemptions:

- Owners of up to two single family homes and/or condominiums so long as they are owned by natural persons or family trusts. Single family homes and/or condominiums owned by corporations, real estate trusts, and LLCs would not be exempt. Additionally, single family homes with an ADU or JADU will be classified as “one unit”;
- Duplexes, triplexes, and quadplexes where one unit is owner occupied and the owner indicates that another unit is not available to rent due to owner or family use for no compensation;
- A property of four or fewer units whose owner is over 65, makes under 80% of the Area Median Income, and resides in the property;
- Organizations that are exempt from paying property taxes in California, such as non-profit organizations and religious institutions;
- The Empty Homes Tax will be suspended if an eviction moratorium is in place in Berkeley.

<sup>15</sup> These estimates are calculated using Berkeley Rent Board data

The exemption for very low-income owners over the age of 65 has not been included in these estimates as only around 100 of all 30,000 Berkeley residences use this exemption for City parcel taxes. The Berkeley Department of Finance found that, given the low number of property owners who would qualify for and use this exemption, revenues will not be materially impacted.

The tax rate would vary between \$3,000 and \$6,000 depending on the type of unit. Non-exempt condos, duplexes, townhomes and single family homes would pay \$3,000 per year. Remaining units would pay \$6,000 annually. Both tiers of fees double, to \$6,000 and \$12,000 annually, respectively, for units vacant for more than two years.

The tax would go into effect on January 1, 2024, and a home will only be considered vacant if it remains vacant for at least 182 days of the year. As such, the vacancy tax provides time for property owners to return units to occupancy or inform the city that a property is exempt before any tax comes into effect.

The vacancy tax in Berkeley would have numerous benefits. It will almost immediately increase the City's housing stock while complimenting more time-consuming approval and construction processes. Further, the tax has the potential to bring hundreds of units online within a year and generate millions in affordable housing revenue as a byproduct. A vacancy tax will also disincentivize property owners from engaging in real estate speculation, which will help limit rent and housing price increases across the City. Finally, units that are occupied will be brought in line with the city's housing regulations.

The City has much data related to properties that assist in applying the vacancy tax. Measure MM requires owners to register partially covered units and Measure U1 taxes owners of more than four units. In addition, Berkeley's long-standing rent registration for fully covered units has provided the city with extensive data on the housing stock in the City.

The draft Measure is currently drafted as a general tax. If passed, funds would be placed into the general fund with the non-binding intention of putting all revenue into the Housing Trust Fund. The Housing Trust Fund supports the following activities:

- Construction of new affordable housing, including by providing pre-development to non-profit affordable housing developers, for households with an income of 80% or less of Area Median Income;
- The acquisition and rehabilitation of multi-unit buildings for affordable housing, and the operation of such buildings acquired and/or rehabilitated for households with an income of 80% or less of Area Median Income;
- The administration of the Empty Homes Tax and administration of the Housing Trust Fund.

### ALTERNATIVES CONSIDERED

The authors considered expanding the existing owner-occupied low-income senior exemption for properties of four or fewer units to all seniors regardless of income. This alternative would respond to the fact that certain seniors may have purchased property decades ago and may no longer be able rent units in the property. The City does not have specific data for properties of owner-occupied four or fewer units that are owned by seniors. However, according to census data, there are around 19,000 seniors in the city. Using the Rent Board's NAR data, it is reasonable to expect such an exemption would impact far fewer than 74 NAR units in buildings of four or fewer units estimated to be owned and occupied by seniors.

The authors did not include this alternative because there is already a similar exemption in Section 7.54.030 M. providing owners exemption for a unit that is kept vacant for use by owner or a family member for no compensation.

### ENVIRONMENTAL SUSTAINABILITY

Existing buildings embody carbon. Maximizing utilization of existing units is a prudent use of embodied carbon.

### FISCAL IMPACTS OF RECOMMENDATION

Staff time will be necessary for a legal review and to prepare a Council item placing the ordinance on the ballot. However, significant savings are anticipated as the ordinance and resolution are already drafted and included as part of this referral.

### CONTACT PERSON

Councilmember Kate Harrison, Council District 4, 510-981-7140



RESOLUTION NO. -N.S.

SUBMITTING TO THE BERKELEY ELECTORATE AN ORDINANCE ADDING CHAPTER 7.54 TO THE BERKELEY MUNICIPAL CODE TO IMPOSE AN EXCISE TAX ON KEEPING RESIDENTIAL PROPERTY VACANT TO FUND GENERAL MUNICIPAL SERVICES

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 8, 2022 General Municipal Election, a measure adding Chapter 7.54 to the Berkeley Municipal Code imposing an “Empty Homes Tax” on property owners who keep residential properties vacant, to fund general municipal services; and

WHEREAS, residential vacancies are an ongoing concern in Berkeley. According to the 2020 Decennial Census, 9% of Berkeley’s housing units, or a total of 4,725 units, sat vacant at the time of the Census; and

WHEREAS, of total vacancies, the Berkeley Rent Stabilization Board data from 2022 indicates that 1,128 fully or partially regulated units in buildings with more than two units have been classified by their owners as not available to rent. Returning these units to the housing market is a key strategy for ensuring long-term affordability; and

WHEREAS, prolonged vacancy restricts the supply of available housing units and runs counter to the City’s housing objectives. Prolonged vacancies can also decrease economic activity in neighborhoods and lead to blight; and

WHEREAS, the housing affordability crisis has created an urgent need to pay for additional services and programs including, but not limited to, construction of new affordable housing for households with a household income of 80% or less of Area Median Income, including by providing pre-development funding to non-profit affordable housing developers, and the acquisition and rehabilitation of multi-unit buildings for affordable housing, and the operation of such buildings acquired and/or rehabilitated; and

WHEREAS, Berkeley is also working to ensure all public funds available to build affordable housing are being maximized, from the City, Alameda County, State and Federal governments; and

WHEREAS, even with the addition of City, County, State, and Federal resources, Berkeley is unable to house all of its residents; and

WHEREAS, the increased costs of meeting the challenges of the housing crisis have impacted Berkeley’s General Fund; and

WHEREAS, the City needs new funds to pay for municipal services. The Empty Homes Tax is intended to disincentivize prolonged vacancies, thereby increasing the number of housing units available for occupancy, while also raising funds for municipal services,

including but not limited to constructing, acquiring, and rehabilitating affordable housing; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at the November 8, 2022 Statewide General Election, consistent with the Council's Resolution No. 70,336-N.S., adopted on May 10, 2022, calling for a General Municipal Election to be consolidated with said statewide election; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that this resolution is hereby adopted and a ballot measure adding Chapter 7.54 to the Berkeley Municipal Code imposing an "Empty Homes Tax" on property owners who keep residential properties vacant, to fund general municipal services, shall be placed before the voters at the election on November 8, 2022.

BE IT FURTHER RESOLVED that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that, pursuant to California Elections Code sections 10002 and 10403, this City Council does hereby call an election on Tuesday, November 8, 2022, and requests that the Alameda County Board of Supervisors consolidate said election with the Statewide General Election on that same date in the manner and schedule established by Resolution No. 70,336-N.S., adopted on May 10, 2022, and submit the Measure to the qualified voters of the City at said consolidated election.

BE IT FURTHER RESOLVED that the City Council acknowledges that the consolidated election will be held and conducted in the manner prescribed in Elections Code Section 10418.

BE IT FURTHER RESOLVED that the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to 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; and

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that 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.

BE IT FURTHER RESOLVED that 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.

BE IT FURTHER RESOLVED that the City will reimburse the Registrar of Voters for the costs associated with placing the measure on the ballot.

BE IT FURTHER RESOLVED that said proposed Ordinance measure shall appear and be printed upon the ballots to be used at said election as follows:

<b>CITY OF BERKELEY ORDINANCE</b>	
Shall the measure to tax property owners who keep residential units vacant more than 182 days per year, \$3,000 for each condominium, duplex, single family dwelling, or townhouse vacant in the first year, increasing to \$6,000 for each subsequent year, and \$6,000 for all other residential units vacant in the first year, increasing to \$12,000 for each subsequent year, with exceptions, from January 1, 2024 to December 31, 2034, estimated to generate between \$5,800,000 and \$8,700,000 annually, be adopted?	YES
	NO

BE IT FURTHER RESOLVED that the text of the Ordinance be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits

A: Text of Ordinance

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

ADDING CHAPTER 7.54 TO THE BERKELEY MUNICIPAL CODE TO IMPOSE AN  
EXCISE TAX ON KEEPING RESIDENTIAL PROPERTY VACANT TO FUND GENERAL  
MUNICIPAL SERVICES

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

Section 1. That Chapter 7.54 of the Berkeley Municipal Code is added to read as follows:

**Chapter 7.54**

**Empty Homes Tax**

**Sections:**

**7.54.010 Short Title.**

**7.54.020 Findings and Purpose.**

**7.54.030 Definitions.**

**7.54.040 Imposition of Tax.**

**7.54.050 Returns; Presumption of Vacancy.**

**7.54.060 Exemptions and Exclusions.**

**7.54.070 Administration; Penalties.**

**7.54.080 Housing Trust Fund; Deposit of Proceeds.**

**7.54.090 Technical Assistance to the City Manager; Annual Reports.**

**7.54.100 Authorization and Limitation on Issuance of Bonds.**

**7.54.110 Severability.**

**7.54.120 Savings Clause.**

**7.54.010 Short Title.**

This Chapter shall be known as the “Empty Homes Tax Ordinance,” and the tax it imposes shall be known as the “Empty Homes Tax.”

**7.54.020 Findings and purpose.**

The People of the City of Berkeley find and declare as follows:

A. Residential vacancies are an ongoing concern in Berkeley. According to the 2020 Decennial Census, 9% of Berkeley’s housing units, or a total of 4,725 units, sat vacant at the time of the Census.

B. Of total vacancies, the Berkeley Rent Stabilization Board data from 2022 indicates that 1,128 fully or partially regulated units in buildings with more than two units have been classified by their owners as not available to rent. Returning these units to the housing market is a key strategy for ensuring long-term affordability.

C. Prolonged vacancy restricts the supply of available housing units and runs counter to the City’s housing objectives. Prolonged vacancies can also decrease economic activity in neighborhoods and lead to blight.

D. The housing affordability crisis has created an urgent need to pay for additional services and programs including, but not limited to, construction of new affordable housing for households with a household income of 80% or less of Area Median Income, including by providing pre-development funding to non-profit affordable housing developers, and the acquisition and rehabilitation of multi-unit buildings for affordable housing, and the operation of such buildings acquired and/or rehabilitated.

E. Berkeley is also working to ensure all public funds available to build affordable housing are being maximized, from the City, Alameda County, State and Federal governments.

F. Even with the addition of City, County, State, and Federal resources, Berkeley is unable to house all of its residents.

G. The increased costs of meeting the challenges of the housing crisis have impacted Berkeley's General Fund.

H. The City needs new funds to pay for municipal services. The Empty Homes Tax is intended to disincentivize prolonged vacancies, thereby increasing the number of housing units available for occupancy, while also raising funds for municipal services, including but not limited to constructing, acquiring, and rehabilitating affordable housing.

**7.54.030 Definitions.**

Unless otherwise defined in this Chapter, the terms used in this Chapter shall have the meanings given to them in Chapters 2.44 and 9.04, of the Municipal Code, as amended from time to time. For purposes of this Chapter, the following definitions shall apply:

A. "Affiliate" means an entity under common majority ownership or common control, whether that ownership or control is direct or indirect, with any other person or entity, including but not limited to a person or entity that majority owns or controls, or is majority owned or controlled by, any other person or entity.

B. "Building Permit Application Period" means the period following the date that an application for a building permit for repair, rehabilitation, or construction with respect to a Residential Unit is filed with the City through the date the Planning Department or its successor agency grants or denies that application, not to exceed one year. Notwithstanding the preceding sentence, if more than one building permit application is filed by or on behalf of one or more persons in the Owner's Group for the same Residential Unit, the Building Permit Application Period shall mean only the applicable period following the date the first application is filed with the City by or on behalf of anyone in the Owner's Group. In the case of an owner qualifying for the Disaster Period in subsection D, the Building Permit Application Period may be extended beyond one year if the owner makes a good faith effort, as determined by the building official, to obtain a building permit.

C. "Rehabilitation Period" means the two-year period following the date that the City issues a building permit for repair, or rehabilitation, with respect to a Residential Unit, provided that if the City issues multiple building permits to or for the benefit of one or more persons in the Owner's Group for the same Residential Unit, the Rehabilitation

Period shall mean only the two-year period following the issuance of the first building permit to or for the benefit of anyone in the Owner's Group.

D. "Disaster Period" means the two-year period following the date that a Residential Unit was severely damaged and made uninhabitable or unusable due to fire, natural disaster, or other catastrophic event.

E. "Homeowners' Exemption Period" means the period during which a Residential Unit is the principal place of residence of any owner of that Residential Unit and for which such owner validly has claimed either the homeowners' property tax exemption under Section 218 of the California Revenue and Taxation Code or the disabled veterans' exemption under Section 205.5 of that Code, as those sections may be amended from time to time.

F. "Lease Period" means the period during which any owner of a Residential Unit or any person in the Owner's Group of that owner leases that Residential Unit to one or more tenants under a bona fide lease intended for occupancy, but not including any lease or rental of that Residential Unit to anyone in the Owner's Group or to travelers, vacationers, or other transient occupants.

G. "New Construction Period" means the one-year period following the date that the City issues a certificate of final completion and occupancy with respect to a Residential Unit in a newly erected building or a newly added Residential Unit in an existing building.

H. "Owner Death Period" means, with respect to a co-owner or decedent's estate, heirs, or beneficiaries, the period during which a Residential Unit is unoccupied, uninhabited, or unused because of the death of any owner of a Residential Unit who was the sole occupant of that Residential Unit immediately prior to such owner's death, provided that such period shall not exceed the longer of two years or the period during which the Residential Unit is subject to the authority of a probate court.

I. "Owner In Care Period" means the period during which a Residential Unit is unoccupied, uninhabited, or unused because all occupants of the Residential Unit who used that Residential Unit as their principal residence are residing in a hospital, long term or supportive care facility, medical care or treatment facility, or other similar facility.

J. "Owner's Group" means for each owner of a Residential Unit, with respect to each Residential Unit, the owner, any current or former co-owner, and any Related Person or Affiliate of the owner or any current or former co-owner.

K. "Related Person" means a spouse, domestic partner, child, parent, or sibling.

L. "Residential Unit" means a house, an apartment, a mobile home, a group of rooms, or a single room that is designed as separate living quarters, other than units occupied or intended for occupancy primarily by travelers, vacationers, or other transient occupants. Separate living quarters are those in which the occupants live and eat separately from any other persons in the building and which have a kitchen and direct access from the outside of the building or through a common hall. For purposes of this Chapter, a Residential Unit shall not include a unit in a currently operational nursing home, residential care facility, or other similar facility, or any unit that is fully exempt from property tax under the welfare exemption under Section 214(g) of the California Revenue and Taxation Code, as may be amended from time to time.

M. "Vacancy Exclusion Period" means the Building Permit Application Period, Rehabilitation Period, Disaster Period, Homeowners' Exemption Period, Lease Period, New Construction Period, Owner Death Period, or Owner In Care Period, or where the owner has affirmatively indicated through filings with the Rent Board that a single unit in an owner-occupied duplex, triplex, or quadplex is being used by the owner or a family member for no consideration.

N. "Vacant" means unoccupied, uninhabited, or unused, for more than 182 days, whether consecutive or nonconsecutive, in a calendar year.

**7.54.040 Imposition of Tax.**

A. Except as otherwise provided in this Chapter, the City imposes an annual Empty Homes Tax on each person that owns a Residential Unit for keeping that Residential Unit Vacant.

B. The tax on an owner keeping a Residential Unit Vacant shall be as follows:

1. For the first calendar year that the Residential Unit is Vacant, the tax shall be \$3,000 per vacant condominium, duplex, single family dwelling, or townhouse unit under separate residential unit ownership and \$6,000 per any other vacant Residential Unit.
2. For the second consecutive calendar year and each subsequent calendar year thereafter that the Residential Unit is Vacant, the tax shall be \$6,000 per vacant condominium, duplex, single family dwelling, or townhouse unit under separate residential unit ownership and \$12,000 per any other vacant Residential Unit.

C. The rates set forth in subsection B. of this Section shall be adjusted annually in accordance with the increase in the Consumer Price Index: All Urban Consumers for the San Francisco/Oakland/San Jose Area for All Items as reported by the United States Bureau of Labor Statistics, or any successor to that index, as of December 31st of the preceding year, beginning with the 2025 calendar year.

D. The Empty Homes Tax shall be payable by the owner or owners of the Residential Unit kept Vacant. Not more than one tax per Residential Unit shall be imposed under this Section for a calendar year by reason of multiple liable owners. If there are multiple liable owners, each owner shall be jointly and severally liable for the tax, which shall be the highest amount of tax payable by any owner for that Residential Unit for that calendar year.

E. A person shall be liable for the Empty Homes Tax only if that person, while owning a Residential Unit, has kept or is deemed to have kept that Residential Unit unoccupied, uninhabited, or unused, for more than 182 days, whether consecutive or nonconsecutive, in a calendar year. In determining whether an owner has kept a Residential Unit Vacant during a calendar year, days within any Vacancy Exclusion Period shall be disregarded if that Vacancy Exclusion Period applies to that owner for that Residential Unit, as shall days in which the Residential Unit was not owned by the owner, but the owner shall be deemed to have kept the Residential Unit unoccupied, uninhabited, or unused on all other days that such Residential Unit is unoccupied, uninhabited, or unused during the calendar year.

F. The Empty Homes Tax shall take effect on January 1, 2024. The Empty Homes Tax shall expire on December 31, 2034, unless reauthorized by the voters prior to such date.

G. The Empty Homes Tax shall be suspended for as long as the Berkeley COVID-19 Residential Eviction Moratorium is in effect pursuant to BMC 13.110 and shall resume upon expiration.

**7.54.050 Returns; Presumption of Vacancy.**

A. Each person that is required to pay the Empty Homes Tax shall file a return in the form and manner prescribed by the City Manager.

B. Each person that owns a Residential Unit at any time during a calendar year and that is not exempt from the Empty Homes Tax with respect to that Residential Unit under any one of subsections A. through E. of Section 7.54.060 shall file a return for that calendar year in the form and manner prescribed by the City Manager. A person that fails to file the return required by this subsection B. for a Residential Unit shall be presumed to have kept that Residential Unit Vacant for the calendar year for which such return is required. The person who fails to file the required return may rebut the presumption by producing satisfactory evidence that such person did not keep the Residential Unit Vacant during the calendar year for which the return is required.

**7.54.060 Exemptions and Exclusions.**

A. For only so long as and to the extent that the City is prohibited by the Constitution or laws of the State of California or the Constitution or laws of the United States from imposing the Empty Homes Tax on any person that person shall be exempt from the Empty Homes Tax.

B. Any organization that is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, shall be exempt from the Empty Homes Tax.

C. The City, the State of California, and any county, municipal corporation, district, or other political subdivision of the State shall be exempt from the Empty Homes Tax, except where any constitutional or statutory immunity from taxation is waived or is not applicable.

D. A natural person or family trust that is the owner of no more than two Single Family Dwellings or condominiums shall be exempt from the Empty Homes Tax for Single Family Dwelling Residential Units or condominiums. For purposes of this subsection D. only, "Single Family Dwelling" is inclusive of a single accessory dwelling unit and a junior accessory dwelling unit. Additionally, for the purposes of this subsection D. only, the "owner" of such Rental Property shall not be any of the following set forth under California Civil Code Section 1947.12(d)(5)(A)(i)-(iii) ("AB 1482"): a real estate investment trust, as defined in Section 856 of the Internal Revenue Code; a corporation; or a limited liability company.

E. The tax imposed by this Chapter shall not apply to a property of four or fewer units which is owner-occupied and whose owner (1) is sixty-five (65) years of age or older and



(2) whose combined family income, from all sources for the previous year, is at or below the income level qualifying as eighty percent (80%) of area median income for a Family of such size under Section 8 of the United States Housing Act of 1937 (42 U.S.C.A. Sections 1437 et. seq.), or successor legislation, for such year. Any taxpayer claiming the exemption under this section shall be required to demonstrate their entitlement thereto annually by submitting an application and supporting documentation to the City Manager or their designee in the manner and at the time established in regulations and/or guidelines hereafter promulgated by the City Manager subject to review by the City Council in its discretion. Such applications shall be on forms provided by the City Manager, or their designee, and shall provide and/or be accompanied by such information as the City Manager shall require, including but not limited to, federal income tax returns and W-2 forms.

**7.54.070 Administration; Penalties**

A. The City Manager shall enforce the provisions of this Chapter and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter. The City Manager shall cause all moneys collected pursuant to this chapter to be deposited to the credit of the general fund.

B. The tax required by this Chapter is delinquent if not received by the tax administrator on or before February 28 of each year.

C. Any person who fails to pay the tax required by this Chapter to the City or any amount of tax required to be collected and paid to the City within the time required shall pay a penalty of ten percent of the tax or amount of the tax, in addition to the tax or amount of tax, plus interest at the rate of one percent per month from the date on which the tax or the amount of tax required to be collected became due and payable to the City until the date of payment.

D. Transactions with the principal purpose of avoiding or evading all or a portion of the Empty Homes Tax shall be disregarded for purposes of determining the amount of the Empty Homes Tax and whether the Empty Homes Tax is due. Any owner determined to have engaged in one or more transactions with the principal purpose of avoiding or evading all or a portion of the Empty Homes Tax shall be liable for the Empty Homes Tax and also liable for a penalty in an amount equal to the Empty Homes Tax.

E. Any tax required to be paid by an owner under the provisions of this chapter shall be deemed a debt owed by the owner to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount, along with any collection costs incurred by the City as a result of the person's noncompliance with this chapter, including, but not limited to, reasonable attorneys' fees, plus interest and penalties as herein provided.

**7.54.080 Housing Trust Fund; Deposit of Proceeds.**

A. The Council may deposit any portion of the general revenue purposes proceeds generated by the Empty Homes Tax into the Housing Trust Fund, subject to its operating rules.

**7.54.090 Technical Assistance to the City Manager; Annual Reports.**

A. The Department of Public Works, the Planning Department, and the Rent Board, shall provide technical assistance to the City Manager, upon the City Manager's request, to administer the Empty Homes Tax.

B. Commencing with a report filed no later than February 15, 2026, covering the fiscal year ending June 30, 2025, the City Manager shall file annually with the Council, by February 15 of each year, a report containing the amount of monies collected from the tax during the prior fiscal year.

**7.54.100 Authorization and Limitation on Issuance of Bonds.**

The City shall be authorized to pledge revenues generated by the Empty Homes Tax to the repayment of limited tax bonds or other forms of indebtedness authorized under this Section. The Council shall by ordinance or resolution, as applicable, establish the terms of any limited tax bonds or other forms of indebtedness authorized hereby, including but not limited to, the amount of the issue, date, covenants, denominations, interest rate or rates, maturity or maturities, redemption rights, tax status, manner of sale, and such other particulars as are necessary or desirable.

**7.54.110 Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this ordinance, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley hereby declare that they would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

**7.54.120 Savings Clause.**

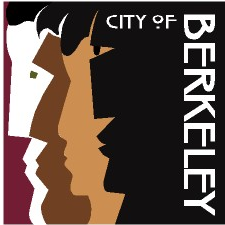
No section, clause, part, or provision of this Chapter shall be construed as requiring the payment of any tax that would be in violation of the Constitution or laws of the United States or of the Constitution or laws of the State of California.

Section 2. Increase Appropriations Limit. Pursuant to California Constitution Article XIII B and applicable laws, for four years from November 8, 2022, the appropriations limit for the City shall be increased by the aggregate sum collected by the levy of the general tax imposed under this ordinance.

Section 3. California Environmental Quality Act Requirements. This Ordinance is

exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., under, including without limitation, Public Resources Code section 21065 and CEQA Guidelines sections 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment and pursuant to Public Resources Code section 21080, subdivision (b)(8), and CEQA Guidelines section 15273 as the approval of government revenues to fund existing services.

Section 4. General Tax; Majority Vote Requirement. This Ordinance imposes a general tax for general revenue purposes and shall be effective only if approved by a majority of the voters voting thereon.



Kate Harrison  
Vice Mayor, District 4

## REVISED AGENDA MATERIAL

**Meeting Date:** July 12, 2022

**Item #:** 16

**Item Description:** **Placing a Special Tax Measure on the November 8, 2022 Ballot to Tax Vacant Residential Units to Fund Construction, Acquisition and Rehabilitation of Affordable Housing**

**Submitted by:** Vice Mayor Harrison

This revised agenda material regarding the Empty Homes Tax includes an updated background document and ordinance for informational purposes, reflecting Council comments and feedback at the May 31 Council meeting.

Pursuant to the May 31 referral to the City Attorney and City Manager, Vice Mayor Harrison continues to work with the departments to prepare a finalized and legally sound draft for Council consideration before the Council recess.

*Summary of substantial changes in the updated measure:*

- Expand Vacancy Exclusion Period to include instances where the owner has affirmatively indicated through filings with the Rent Board that a single unit in an owner-occupied duplex is being used by owner or family members for no consideration;
- Clarify that the tax shall expire on January 1, 2034, unless reauthorized by voters prior to such date.
- Add condominiums to the natural person/family trust exemption;
- Add exemption for own-occupied properties of three or fewer units where the owner (1) is sixty-five (65) years of age or older and (2) whose combined family income, from all sources for the previous year, is at or below the income level qualifying as eighty percent (80%) of area median income.
- Added clarification that the tax would not apply during periods of emergency.

*Summary of changes in the background document:*

- Information showing that a significant number of vacant properties in Berkeley are entirely or mostly vacant. This provides further evidence that much of the vacancies in the city are not due to natural turnover;
- Data showing that institutional investor purchases of homes are at an all-time high nationally. In Oakland and SF 13% and 18% were acquired by institutional investors respectively and an example from Berkeley added;
- Updated revenue projections to a range of \$4.8 million and \$7.2 million, excluding units that indicated to be for use by owner. Clarify that this is likely a conservative estimate given only units that have registered as not available to rent (NAR) with the rent board are used;
- Exemptions detailed in the above section;
- Information clarifying the long period to prepare for the vacancy tax, as it will not take effect until 2024 and will only be applied at the end of that calendar year if units remain vacant.



Kate Harrison  
Vice Mayor, District 4

ACTION CALENDAR  
July ~~12~~ 14, 2022

To: Honorable Mayor and Members of the City Council

From: Vice Mayor Kate Harrison

Subject: Placing a Special Tax Measure on the November 8, 2022 Ballot to Tax Vacant Residential Units to Fund Construction, Acquisition and Rehabilitation of Affordable Housing Refer to the City Attorney and City Manager an Empty Homes Tax Ordinance for the November 8, 2022 Ballot

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RECOMMENDATION

~~Refer to the City Attorney and City Manager to prepare and submit a resolution~~  
Submitting an Ordinance adding Chapter 7.54 to the Berkeley Municipal Code taxing housing units that 1) have remained vacant for more than one year, 2) are not under permitted renovation or in probate and 3) are in multi-unit buildings or are single family homes or condominiums whose owners are not natural persons or family trusts to a vote of the electors at the November 8, 2022 General Municipal Election.

CURRENT SITUATION AND RATIONALE FOR RECOMMENDATION

The City of Berkeley is experiencing a historic housing crisis. Between 2005 and 2019 gross median rent increased by over 50%. This has been particularly burdensome in a city where 58% of residents are renters.<sup>1</sup> While in recent years Berkeley has met its RHNA goals for those earning above 120% Area Median Income (AMI), it has failed to build sufficient housing for everyone else. Further, housing at the >120% AMI category has not significantly improved affordability for lower income residents and has increased displacement in low-income neighborhoods.<sup>2</sup> The extraordinary gap between the housing needs of residents and the availability of housing can only be bridged through the use of numerous policy interventions, including a vacancy tax intended to incentivize owners of housing property to bring units back on the market and discourage speculation.

In a recent poll of top policy priorities among Berkeley voters, increasing affordable housing for low-income and homeless residents received by far the most support, at

<sup>1</sup> Anti-Eviction Mapping Project: Densifying Berkeley: Potential Impacts on Displacement and Equity, 2022, <https://www.berkeleyside.org/wp-content/uploads/2022/04/AEMP-UpzoningReport-Draft4-3.pdf>  
<sup>2</sup> Ibid.

Refer to the City Attorney and City Manager an Empty Homes Tax Ordinance for the November 8, 2022 Ballot

ACTION CALENDAR  
July ~~ne~~-124, 2022

58%.<sup>3</sup> While Berkeley is actively building new affordable units, siting and constructing new units is a longer-term process, and it is incumbent on the City to maximize the availability of *existing units* that are already built and could be available for rent or sale.

Unfortunately, Alameda County’s housing remains unaffordable for many of its residents, and this burden does not fall evenly across income and racial groups. While 47% of renters in Alameda County are rent burdened, the rate is 58% for Black renters and 87% for extremely low-income renters.<sup>4</sup> Meanwhile, as this crisis continues to unfold, Berkeley Rent Stabilization Board data indicates that 1,128 fully or partially regulated<sup>5</sup> units have been classified by their owners as not available to rent (NAR).<sup>6</sup> Around 40% of the 1,128 NAR units are in properties that are completely vacant, and almost 80% of NAR units are in properties that are half or more empty. —A few of these are actively being renovated but the majority are not. Many have not been occupied for some time or actually are rented but not reported as being so to the Rent Board. Based on a review of Rent Board data and Google Street View, approximately 100 of these units are in buildings that are entirely vacant and dilapidated. This contributes to neighborhood blight and requires costly vector control and fire inspections. Thus, much of the vacancies in the city are not due to natural turnover.

Oakland and Vancouver, both experiencing their own challenges with housing unaffordability, use a vacant housing tax to encourage owners of vacant units to find tenants or sell to those who will. In 2016, Vancouver passed a measure that placed a surcharge on the assessed value of vacant units. Within two years of its implementation, 21.2% of vacant units returned to occupancy and the city generated \$46 million Canadian dollars. Oakland enacted a vacant property tax of \$3,000 to \$6,000, varying based on property type. In its first year of implementation, the city

<sup>3</sup> City of Berkeley Community Survey, Live Phone and Text to Online, April 28-May 3, 2022, <https://berkeleyca.gov/sites/default/files/documents/2022-05-31%20Item%2037%20Discussion%20and%20Direction%20Regarding.pdf>.

<sup>4</sup> California Housing Partnership Housing Needs Dashboard, 2019, <https://chpc.net/housingneeds/?view=37.405074.-119.26758,5&county=California,Alameda&group=housingneed&chart=shortfall|current,cost-burden|current,cost-burden-re|current,homelessness,historical-rents,vacancy,asking-rents|2022,budgets|2021,funding|current,state-funding,lihtc|2010:2021:historical,rhna-progress,multifamily-production>

<sup>5</sup> Partially regulated units are only partially covered by the rent ordinance, while fully regulated are completely covered by the ordinance

<sup>6</sup> Berkeley Rent Stabilization Board. There are also units classified as “vacant”, for which property owners are actively seeking tenants.

Refer to the City Attorney and City Manager an Empty Homes Tax Ordinance for the November 8, 2022 Ballot

ACTION CALENDAR  
July ~~no~~-124, 2022

collected over \$7 million in revenue.<sup>7</sup> San Francisco is actively considering placing a vacant housing tax measure on the November ballot.

Addressing vacant units is a critical part of addressing Berkeley’s housing crisis. Every year that a significant percentage of Berkeley’s housing stock remains vacant exacerbates the housing affordability and displacement crises. This item includes a modified version of San Francisco’s proposed tax adapted to Berkeley. It is in the public interest to refer to the City Attorney and City Manager to prepare and submit a resolution taxing empty homes that would be submitted to a vote of the electors at the November 8, 2022 General Municipal Election.

**BACKGROUND**

Berkeley’s housing challenges are significant, requiring numerous policy interventions across many years to remediate. However, of the units that were built as part of the 2023 RHNA goals, the majority have been unaffordable to most residents.<sup>8</sup>

Income Category	Total RHNA (2014- 2023)	Net Units Created (2015- 2020)	Balance Remaining	Percent of RHNA Achieved
Very Low Income	532	173	359	32.5%
Low Income	442	60	382	13.6%
Moderate Income	584	0	584	0%
Above Moderate Income	1,401	2,476	0	176.7%
<b>Total</b>	<b>2,959</b>	<b>2,709</b>	<b>1,325</b>	<b>55.2%</b>

In 2019 the City’s median rent was \$3,165, making it affordable to only households earning over \$130k annually. Median rents have also increased by greater than 50% between 2005 and 2019. Rising rents in the city are of particular concern given that the City has a high renter population, and the impact of high rents falls disproportionately on BIPOC residents<sup>9</sup>.

**Percent Renter Occupancy vs. Percent Berkeley Population, 2019<sup>10</sup>**

<sup>7</sup> San Francisco Budget and Legislative Analyst’s Office: Residential Vacancies in San Francisco, 2022, [https://56a418ca-94d2-476c-9a45-f491ca4a0387.usrfiles.com/ugd/56a418\\_74b82803e4fb434bb1b13010828a4c01.pdf](https://56a418ca-94d2-476c-9a45-f491ca4a0387.usrfiles.com/ugd/56a418_74b82803e4fb434bb1b13010828a4c01.pdf)

<sup>8</sup> 2020 General Plan APR: City of Berkeley, Table 2

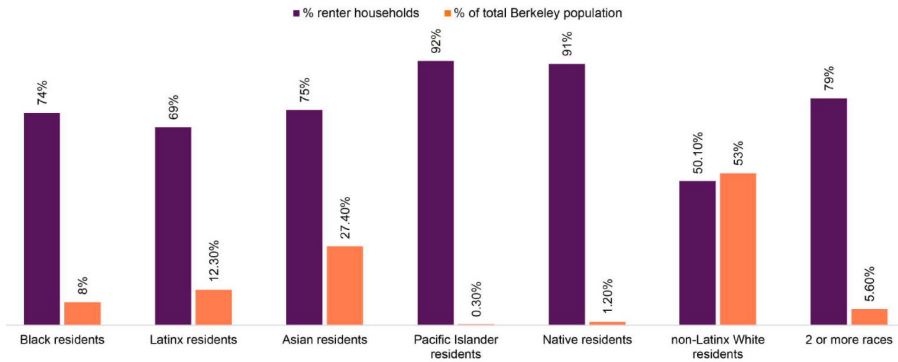
<sup>9</sup> Anti-Eviction Mapping Project: Densifying Berkeley: Potential Impacts on Displacement and Equity, 2022, <https://www.berkeleyaside.org/wp-content/uploads/2022/04/AEMP-UpzoningReport-Draft4-3.pdf>

<sup>10</sup> Ibid.



Refer to the City Attorney and City Manager an Empty Homes Tax Ordinance for the November 8, 2022 Ballot

ACTION CALENDAR  
July ~~11~~ 12, 2022



Fortunately, the City of Berkeley has taken numerous steps in recent years to tackle its affordable housing crisis, including issuing a \$100 million affordable housing bond, permitting Berkeley residents (outside of the fire zones) to receive near-automatic approval to build certain types of ADUs, and rezoning BART stations to allow significant affordable housing. A potential 2022 affordable housing bond is under consideration.

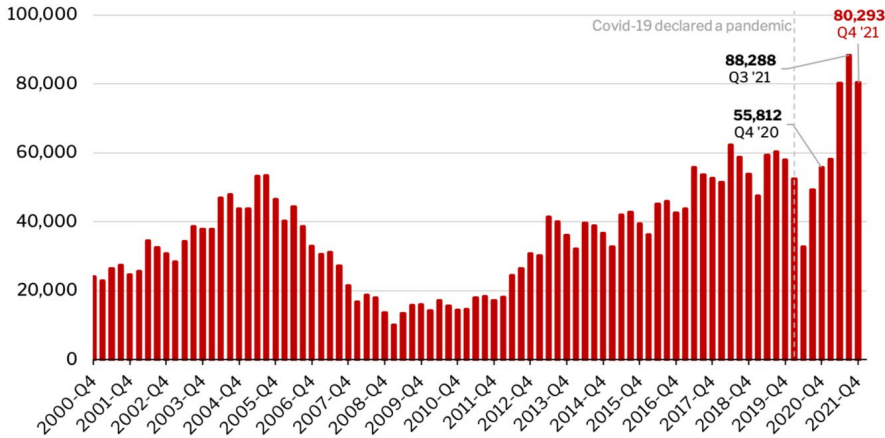
While these efforts will likely dramatically increase the supply of housing in Berkeley, it will take years for the City to reap the benefits. Developments still need to be proposed, approved, and then constructed. Berkeley’s large supply of vacant homes presents a unique opportunity for the City to immediately provide new units to renters, as there are no approval processes or lengthy construction timelines.

Additionally, hot housing markets often attract real estate speculation. [Redfin data shows that 13% of homes in Oakland were purchased by an institutional investor or business in the fourth quarter of 2021, a 16.9% increase over the year before. In San Francisco, 18% were acquired by institutional investors. Nationally, investor purchases of homes are at an all-time high.](#)

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ACTION CALENDAR  
July ~~11~~ 12, 2022

### Investors Home Purchases Just Shy of Record in Fourth Quarter of 2021 Number of U.S. homes bought by investors



Source: Redfin analysis of county records



In Berkeley, it is likely that some vacant units are in buildings purchased for the sole purpose of accruing more wealth, with no intention of housing tenants. An example is one property owner who owns 9 units, across 4 properties of two or fewer units in the city—of these, 8 are listed as not available to rent. While the extent of this is unknown, applying a tax on vacant homes will discourage this practice that, in aggregate, raises rents and home prices for everyone else. The proposed Measure fulfills one of the key anti-speculation recommendations of the 2022 report by the Anti-Eviction Mapping Project (*Densifying Berkeley: Potential Impacts on Displacement and Equity*).

Using the assumptions made in the San Francisco Budget Analyst report on a prospective vacancy tax, and Berkeley Rent Board data on length of vacancies, it is estimated that Berkeley will generate between \$4.8 million and \$7.2 million in revenue annually and that several hundred vacant units could become occupied within two years.<sup>11</sup> This is likely a conservative estimate as it only includes units that have been registered as NAR with the Berkeley Rent Board—other vacant units are not included. Revenues projected here assume that units for owner use are predominately in one and two unit buildings, therefore, we are only calculating likely revenues from properties with three or more units.

<sup>11</sup> The ~~se~~ low-end estimates are calculated by using Berkeley Rent Board data

Refer to the City Attorney and City Manager an Empty Homes Tax Ordinance for the November 8, 2022 Ballot

ACTION CALENDAR  
July ~~11~~-124, 2022

POTENTIAL REVENUES FROM BERKELEY VACANCY TAX						
Applicable Units Years since Impelmentation	Properties with 3 or more units*		Properties with 4 or more units		Properties with 5 or more units	
	Year 1	Two + Years**	Year 1	Two + Years**	Year 1	Two + Years**
Units Subject to Tax	806	605	650	488	534	401
Revenue	\$4,836,000	\$7,254,000	\$3,900,000	\$5,850,000	\$3,204,000	\$4,806,000

\*Excluding 322 "Owner use" units (for storage, family, friends) distributed between 1, 2 and 3 unit buildings  
 \*\*Assumes 75% of buildings remain vacant after one year

Berkeley's proposed vacancy tax is built off San Francisco's 2022 proposed Empty Home Tax proposal. The San Francisco vacancy tax applies only to owners of buildings with three or more units when at least one has been unoccupied for more than 182 days in a year. Single family homes and two-unit properties are exempt, and the vacancy tax increases for larger properties and units that have been empty for longer. The proposed vacancy tax for Berkeley would instead be imposed after a year of vacancy, providing time extensions for units under active reconstruction or in probate. It will also contain the following exemptions:

- Owners of up to two single family homes and/or condominiums so long as they are owned by natural persons or family trusts. Single family homes and/or condominiums, owned by corporations, real estate trusts, and LLCs would not be exempt. Additionally, single family homes with an ADU or JADU will be classified as "one unit" for the purposes of determining how many units are owned.
- Duplexes where one unit is owner occupied if the owner indicates that the other unit is not available to rent
- A property of three or fewer units whose owner is over 65, makes under 80% of the Area Median Income, and resides in the property,
- Organizations that are exempt from paying property taxes in California, such as non-profit organizations and religious institutions
- The Empty Homes Tax will be suspended if an eviction moratorium is in place in Berkeley,

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-The tax rate would vary between \$3,000 and \$6,000 depending on the type of unit. Condos, duplexes, townhomes and Single Family Homes not exempt as described above would pay \$3,000 per year. Remaining units would pay \$6,000 annually. Both tiers of fees double, to \$6,000 and \$12,000 annually, respectively, for units vacant for more than two years.

The tax would go into effect on January 1, 2024, and a home will only be considered vacant if it remains vacant for the entire year. As such, the vacancy tax provides a long

Refer to the City Attorney and City Manager an Empty Homes Tax Ordinance for the November 8, 2022 Ballot

ACTION CALENDAR  
July ~~no~~-124, 2022

runway for property owners to return units to occupancy or inform the city that a property is exempt before any tax comes into effect.

The vacancy tax in Berkeley would have numerous benefits. It will almost immediately increase the City’s housing stock while complimenting more time-consuming approval and construction processes. Further, the tax has the potential to bring hundreds of units online within a year and generate millions in affordable housing revenue as a byproduct. A vacancy tax will also disincentivize property owners from engaging in real estate speculation, which will help limit rent and housing price increases across the City. Finally, units that are actually occupied will be brought in line with the city’s housing regulations.

The draft Measure is currently drafted as a special tax. If passed, Council and City would be required to spend proceeds as specified. While the primary purpose of the proposed tax is to bring vacant units back into the housing market, the proposed Measure includes a Housing Trust Fund supporting the following activities:

- Construction of new affordable housing, including by providing pre-development to non-profit affordable housing developers, for households with an income of 80% or less of Area Median Income;
- The acquisition and rehabilitation of multi-unit buildings for affordable housing, and the operation of such buildings acquired and/or rehabilitated for households with an income of 80% or less of Area Median Income;
- The administration of the Empty Homes Tax and administration of the Housing Trust Fund.

The referral calls on the Author to submit the measure to the City Attorney for legal review.

ENVIRONMENTAL SUSTAINABILITY

Existing buildings embody carbon. Maximizing utilization of existing units is a prudent use of embodied carbon.

FISCAL IMPACTS OF RECOMMENDATION

Staff time will be necessary for a legal review and to prepare a Council item placing the ordinance on the ballot. However, significant savings are anticipated as the ordinance and resolution are already drafted and included as part of this referral.

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, 510-981-7140

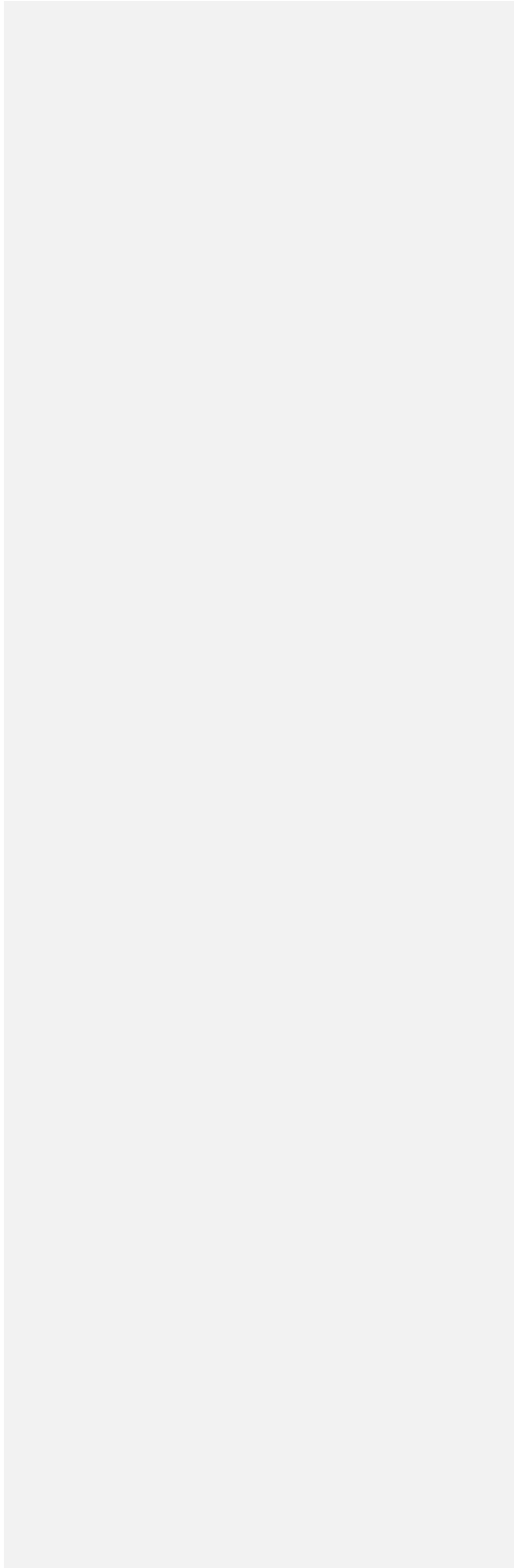
Attachments:

- 1: Draft Resolution

Placing an Empty Homes Tax Ordinance on the November 8, 2022 Ballot

ACTION CALENDAR  
May 31, 2022

Exhibit A: Draft Text of Measure



RESOLUTION NO. -N.S.

SUBMITTING TO THE BERKELEY ELECTORATE AN ORDINANCE ADDING  
CHAPTER 7.54 TO THE BERKELEY MUNICIPAL CODE TAXING EMPTY HOMES ON  
THE NOVEMBER 8, 2022 BALLOT

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 8, 2022 General Municipal Election, a measure adding Chapter 7.54 to the Berkeley Municipal Code taxing empty homes; and

WHEREAS, 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

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to 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; and

WHEREAS, the Regional Housing Needs Assessment requires the City of Berkeley to permit the construction of 3,854 affordable housing units in the next eight years.

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a two-thirds vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that 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.

BE IT FURTHER RESOLVED that 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.

BE IT FURTHER RESOLVED that the City will reimburse the Registrar of Voters for the costs associated with placing the measure on the ballot.

BE IT FURTHER RESOLVED that said proposed Ordinance measure shall appear and be printed upon the ballots to be used at said election as follows:

CITY OF BERKELEY ORDINANCE	
Shall the measure <input type="checkbox"/>	YES
	NO

BE IT FURTHER RESOLVED that the text of the Ordinance be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits  
A: Text of Ordinance

Exhibit A

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

ADDING CHAPTER 7.54 TO THE BERKELEY MUNICIPAL CODE TO TAX EMPTY HOMES

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

Section 1. That Chapter 7.54 of the Berkeley Municipal Code is added to read as follows:

**Chapter 7.54**

**Empty Homes Tax**

**Sections:**

- 7.54.010 Short Title.**
- 7.54.020 Findings and Purpose.**
- 7.54.030 Definitions.**
- 7.54.040 Imposition of Tax.**
- 7.54.050 Returns; Presumption of Vacancy.**
- 7.54.060 Exemptions and Exclusions.**
- 7.54.070 Administration; Penalties.**
- 7.54.080 Housing Trust Fund; Deposit of Proceeds.**
- 7.54.090 Expenditure of Proceeds.**
- 7.54.100 Technical Assistance to the Finance Department.**
- 7.54.110 Authorization and Limitation on Issuance of Bonds**
- 7.54.120 Amendment of Ordinance.**
- 7.54.130 Severability.**
- 7.54.140 Savings Clause.**

**7.54.010 Short Title.**

This Chapter shall be known as the "Empty Homes Tax Ordinance," and the tax it imposes shall be known as the "Empty Homes Tax."

**7.54.020 Findings and purpose.**

The Council of the City of Berkeley finds and declares as follows:

- A. Residential vacancies are an ongoing concern in Berkeley. According to the 2020 Decennial Census, 9% of Berkeley's housing units, or a total of 4,725 units, sit vacant.
- B. Of total vacancies, the Berkeley Rent Stabilization Board data from 2022 indicates that 1,128 fully or partially regulated units in buildings with more than two units have been classified by their owners as not available to rent. Returning these units to the housing market is a key strategy for ensuring long-term affordability.
- C. Prolonged vacancy restricts the supply of available housing units and runs counter to the City's housing objectives. Prolonged vacancies can also decrease economic activity in neighborhoods and lead to blight.



D. The Empty Homes Tax is intended to disincentivize prolonged vacancies, thereby increasing the number of housing units available for occupancy, while also raising funds for rent subsidies and affordable housing.

**7.54.030 Definitions.**

Unless otherwise defined in this Chapter, the terms used in this Chapter shall have the meanings given to them in Chapter 2.44 and 9.04, of the Municipal Code, as amended from time to time. For purposes of this Chapter, the following definitions shall apply:

A. "Affiliate" means a person under common majority ownership or common control, whether that ownership or control is direct or indirect, with any other person, including but not limited to a person that majority owns or controls, or is majority owned or controlled by, any other person.

B. "Building Permit Application Period" means the period following the date that an application for a building permit for repair, rehabilitation, or construction with respect to a Residential Unit is filed with the City through the date the Planning Department or its successor agency grants or denies that application, not to exceed one year.

Notwithstanding the preceding sentence, if more than one building permit application is filed by or on behalf of one or more persons in the Owner's Group for the same Residential Unit, the Building Permit Application Period shall mean only the applicable period following the date the first application is filed with the City by or on behalf of anyone in the Owner's Group. In the case of an owner qualifying for the Disaster Period in subsection D., the Building Permit Application Period may be extended beyond one year if the owner makes a good faith effort, as determined by the building official, to obtain a building permit.

C. "Rehabilitation Period" means the two-year period following the date that the City issues a building permit for repair, or rehabilitation, with respect to a Residential Unit, provided that if the City issues multiple building permits to or for the benefit of one or more persons in the Owner's Group for the same Residential Unit, the Rehabilitation Period shall mean only the two-year period following the issuance of the first building permit to or for the benefit of anyone in the Owner's Group.

D. "Disaster Period" means the two-year period following the date that a Residential Unit was severely damaged and made uninhabitable or unusable due to fire, natural disaster, or other catastrophic event.

~~E. "Accessory Dwelling Unit," and "Single Family Dwelling," shall have the same meanings as defined in Section 23F.04.010.~~

~~F-E.~~ "Homeowners' Exemption Period" means the period during which a Residential Unit is the principal place of residence of any owner of that Residential Unit and for which such owner validly has claimed either the homeowners' property tax exemption under Section 218 of the California Revenue and Taxation Code or the disabled veterans' exemption under Section 205.5 of that Code, as those sections may be amended from time to time.

~~G-F.~~ "Lease Period" means the period during which any owner of a Residential Unit or any person in the Owner's Group of that owner leases that Residential Unit to one or more tenants under a bona fide lease intended for occupancy, but not including any lease or rental of that Residential Unit to anyone in the Owner's Group or to travelers, vacationers, or other transient occupants.

H.G. “New Construction Period” means the one-year period following the date that the City issues a certificate of final completion and occupancy with respect to a Residential Unit in a newly erected building or a newly added Residential Unit in an existing building.

H. “Owner Death Period” means, with respect to a co-owner or decedent’s estate, heirs, or beneficiaries, the period during which a Residential Unit is unoccupied, uninhabited, or unused because of the death of any owner of a Residential Unit who was the sole occupant of that Residential Unit immediately prior to such owner’s death, provided that such period shall not exceed the longer of two years or the period during which the Residential Unit is subject to the authority of a probate court.

J.I. “Owner In Care Period” means the period during which a Residential Unit is unoccupied, uninhabited, or unused because all occupants of the Residential Unit who used that Residential Unit as their principal residence are residing in a hospital, long term or supportive care facility, medical care or treatment facility, or other similar facility.

K.J. “Owner’s Group” means for each owner of a Residential Unit, with respect to each Residential Unit, the owner, any current or former co-owner, and any Related Person or Affiliate of the owner or any current or former co-owner.

L.K. “Related Person” means a spouse, domestic partner, child, parent, or sibling.

M.L. “Residential Unit” means a house, an apartment, a mobile home, a group of rooms, or a single room that is designed as separate living quarters, other than units occupied or intended for occupancy primarily by travelers, vacationers, or other transient occupants. Separate living quarters are those in which the occupants live and eat separately from any other persons in the building and which have a kitchen and direct access from the outside of the building or through a common hall. For purposes of this Chapter, a Residential Unit shall not include a unit in a currently operational nursing home, residential care facility, or other similar facility, or any unit that is fully exempt from property tax under the welfare exemption under Section 214(g) of the California Revenue and Taxation Code, as may be amended from time to time.

N.M. “Vacancy Exclusion Period” means the Building Permit Application Period, Rehabilitation Period, Disaster Period, Homeowners’ Exemption Period, Lease Period, New Construction Period, Owner Death Period, or Owner In Care Period, or where the owner has affirmatively indicated through filings with the Rent Board that a single unit in an owner-occupied duplex is being used by owner or family members for no consideration.

O.N. “Vacant” means an unoccupied, uninhabited, or unused rental unit as defined in Chapter 4(g) for at least more than one tax year.

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**7.54.040 Imposition of Tax.**

A. Except as otherwise provided in this Chapter for the purposes described in Section 7.54.090, the City imposes an annual Empty Homes Tax on each person that owns a Residential Unit for keeping that Residential Unit Vacant.

B. The tax on an owner keeping a Residential Unit Vacant for a single tax year in 2024 and subsequent single tax years shall be shall as follows:

1. \$3,000 per vacant condominium, duplex, single family dwelling, or townhouse unit under separate residential unit ownership;
2. \$6,000 per other vacant Residential Unit.

C. The tax on an owner keeping a Residential Unit Vacant for the 2025 tax year or subsequent tax years, if that owner has kept that Residential Unit Vacant in the immediately preceding tax year, shall be as follows:

1. \$6,000 per vacant condominium, duplex, single family dwelling, or townhouse unit under separate residential unit ownership;
2. \$12,000 per other vacant Residential Unit.

D. The rates set forth in subsections B. of this Section shall be adjusted annually in accordance with the increase in the Consumer Price Index: All Urban Consumers for the San Francisco/Oakland/San Jose Area for All Items as reported by the United States Bureau of Labor Statistics, or any successor to that index, as of December 31st of the preceding year, beginning with the 2025 tax year.

E. The Empty Homes Tax shall be payable by the owner or owners of the Residential Unit kept Vacant. Not more than one tax per Residential Unit shall be imposed under this Section for a tax year by reason of multiple liable owners. If there are multiple liable owners, each owner shall be jointly and severally liable for the tax, which shall be the highest amount of tax payable by any owner for that Residential Unit for that tax year.

F. A person shall be liable for the Empty Homes Tax only if that person, while owning a Residential Unit, has kept or is deemed to have kept that Residential Unit unoccupied, uninhabited, or unused, for ~~more than~~ at least one tax year.

~~G. The Empty Homes Tax shall take effect on January 1, 2024. The Empty Homes Tax shall expire on January 1, 2034, unless reauthorized by voters prior to such date. ~~expire on December 31, 2053.~~~~

~~G.H. The Empty Homes Tax shall be suspended for as long as the Berkeley COVID-19 Residential Eviction Moratorium is in effect pursuant to BMC 13.110 and shall resume on upon expiration.~~

#### **7.54.050 Returns; Presumption of Vacancy.**

A. Each person that is required to pay the Empty Homes Tax shall file a return in the form and manner prescribed by the Finance Department.

B. Each person that owns a Residential Unit at any time during a tax year and that is not exempt from the Empty Homes Tax with respect to that Residential Unit under any one of subsections A. through E. of Section 7.54.060 shall file a return for that tax year in the form and manner prescribed by the Finance Department. A person that fails to file the return required by this subsection B. for a Residential Unit shall be presumed to have kept that Residential Unit Vacant for the tax year for which such return is required. The person who fails to file the required return may rebut the presumption by producing satisfactory evidence that such person did not keep the Residential Unit Vacant during the tax year for which the return is required.

#### **7.54.060 Exemptions and Exclusions.**

A. For only so long as and to the extent that the City is prohibited from imposing the Empty Homes Tax, any person upon whom the City is prohibited under the Constitution or laws of the State of California or the Constitution or laws of the United States from imposing the Empty Homes Tax shall be exempt from the Empty Homes Tax.

B. Any organization that is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, shall be exempt from the Empty Homes Tax.

C. The City, the State of California, and any county, municipal corporation, district, or other political subdivision of the State shall be exempt from the Empty Homes Tax, except where any constitutional or statutory immunity from taxation is waived or is not applicable.

D. A natural person or family trust that owns no more than two ~~s~~Single ~~f~~Family ~~d~~Dwellings ~~or condominiums~~ shall be exempt from the Empty Homes Tax for ~~s~~Single ~~f~~Family ~~d~~Dwelling Residential Units ~~or condominiums~~. For purposes of subparagraph D only, "Single Family Dwellings" is inclusive of a single ~~a~~Accessory ~~d~~Dwelling ~~u~~Unit ~~or~~ ~~and~~ a junior ~~a~~Accessory ~~d~~Dwelling ~~u~~Unit. Additionally, for the purposes of subparagraph D only, the "Owner" of such Rental Property shall not be any of the following set forth under California Civil Code Section 1947.12(d)(5)(A)(i)-(iii) ("AB 1482"): a real estate investment trust, as defined in Section 856 of the Internal Revenue Code; a corporation; or a limited liability company.

E. For each Residential Unit qualifying for any Vacancy Exclusion Period in a tax year, an owner shall be exempt from the Empty Homes Tax for that Residential Unit.

F. The tax imposed by this Chapter shall not apply to a property of three or fewer units which is owner-occupied and whose owner (1) is sixty-five (65) years of age or older and (2) whose combined family income, from all sources for the previous year, is at or below the income level qualifying as eighty percent (80%) of area median income for a Family of such size under Section 8 of the United States Housing Act of 1937 (42 U.S.C.A. Sections 1437 et. seq.), or successor legislation, for such year. Any taxpayer claiming the exemption under this section shall be required to demonstrate their entitlement thereto annually by submitting an application and supporting documentation to the City Manager or their designee in the manner and at the time established in regulations and/or guidelines hereafter promulgated by the City Manager subject to review by the City Council in its discretion. Such applications shall be on forms provided by the City Manager, or their designee, and shall provide and/or be accompanied by such information as the City Manager shall require, including but not limited to, federal income tax returns and W-2 forms.

#### **7.54.070 Administration; Penalties**

A. Except as otherwise provided under this Chapter, the Empty Homes Tax shall be administered pursuant to Chapter 2.44 and 9.04.

B. Transactions with the principal purpose of avoiding or evading all or a portion of the Empty Homes Tax shall be disregarded for purposes of determining the amount of the Empty Homes Tax and whether the Empty Homes Tax is due. In addition to the Empty Homes Tax due as a result of this subsection B., any owner liable for any Empty Homes Tax as a result of this subsection B. shall be liable for a penalty in an amount equal to the Empty Homes Tax due as a result of this subsection B.

#### **7.54.080 Housing Trust Fund; Deposit of Proceeds.**

A. Establishment of Fund. The Empty Homes Fund ("Fund") is hereby established as a special purpose fund, and shall receive all taxes, penalties, interest, and fees collected from the Empty Homes Tax imposed under this Chapter.

B. The Fund will operate as a subsidiary fund within the Housing Trust Fund and be subject to its operating rules.

C. Use of Fund. Subject to the budgetary and fiscal provisions of the Charter, monies in the Fund shall be used exclusively for the purposes described in Section 7.54.090.

D. Administration of Fund. Commencing with a report filed no later than February 15, 2026, covering the fiscal year ending June 30, 2025, the Finance Director shall file annually with the Council, by February 15 of each year, a report containing the amount of monies collected in and expended from the Fund during the prior fiscal year, the status of any project required or authorized to be funded by Section 7.54.090, and such other information as the Finance Director, in the Finance Director's sole discretion, deems relevant to the operation of Chapter.

E. All monies collected under the Empty Homes Tax Ordinance shall be deposited to the credit of the Fund, established in subsection A. of this Section. The Fund shall be maintained separate and apart from all other City funds and shall be subject to appropriation. Any balance remaining in the Fund at the close of any fiscal year shall be deemed to have been provided for a special purpose and shall be carried forward and accumulated in the Fund for the purposes described in Section 7.54.090.

**7.54.090 Expenditure of Proceeds.**

Subject to the budgetary and fiscal provisions of the Charter, monies in the Housing Trust Fund shall be appropriated on an annual or supplemental basis and used exclusively for the following purposes:

A. To the Finance Department and other City Departments, for administration of the Empty Homes Tax and administration of the Housing Trust Fund, limited, each year, to 10% of annual proceeds.

B. Refunds of any overpayments of the Empty Homes Tax, including any related penalties, interest, and fees.

C. All remaining amounts to provide funding, including administrative costs, for Eligible Programs, 1% of which shall be used for the programs described in subsection 7.54.090 C.(1)(a) and 1% of which shall be used for the programs described in subsection 7.54.090 C.(1)(b). The voters intend that these remaining amounts be spent on Eligible Programs at levels in addition to amounts currently spent on such Eligible Programs and that such remaining amounts not be used to supplant existing expenditures.

1. For purposes of this Section 7.54.090, "Eligible Programs" means:
  - a. Construction of new affordable housing, including by providing pre-development funding to non-profit affordable housing developers. Buildings subject to expenditures under this subsection 7.54.090 C.(1)(B) shall be restricted through a recorded deed restriction or restrictions mandated for the useful life of the building to households with an household income of 80% or less of Area Median Income.
  - b. The acquisition and rehabilitation of multi-unit buildings for affordable housing, and the operation of such buildings acquired and/or rehabilitated. Buildings subject to expenditures under this subsection 7.54.090 C.(1)(B) shall be restricted through a recorded deed restriction or restrictions mandated for the useful life of the building to households with an household income of 80% or less of Area Median Income.
2. For purposes of this Section 7.54.090, "Area Median Income" means the median income as published annually by the City Manager pursuant to Chapter 23.328.080

(Administrative Regulations), derived in part from the income limits and area median income determined by the United States Department of Housing and Urban Development, or its successor agency, for the Alameda County metro fair market rent area, adjusted solely for household size, but not for high housing cost area. The Council may modify this definition of Area Median Income solely for purposes of subsection 7.54.090 C.(1)(b) to determine area median income by zip code area.

**7.54.100 Technical Assistance to the Finance Department.**

The Department of Public Works, the Planning ~~Department of Building Inspection~~, the Rent Board, ~~and the Assessor-Recorder's Office~~ shall provide technical assistance to the Finance Department, upon the Finance Department's request, to administer the Empty Homes Tax.

**7.54.110 Authorization and Limitation on Issuance of Bonds.**

The City is hereby authorized to issue from time to time limited tax bonds or other forms of indebtedness to finance the costs of the projects described in Section 7.54.090. The City shall be authorized to pledge revenues generated by the Empty Homes Tax to the repayment of limited tax bonds or other forms of indebtedness authorized under this Section. The Council shall by ordinance or resolution, as applicable, establish the terms of any limited tax bonds or other forms of indebtedness authorized hereby, including but not limited to, the amount of the issue, date, covenants, denominations, interest rate or rates, maturity or maturities, redemption rights, tax status, manner of sale, and such other particulars as are necessary or desirable.

**7.54.120 Amendment of Ordinance.**

The Council may amend this ordinance in any manner by two-thirds vote, including reducing any applicable tax rates or adding or modifying exemptions that does not result in an increase in the tax imposed herein without further voter approval except as limited by Articles XIII A and XIII C of the California Constitution. If the City Council repeals this ordinance, it may subsequently reenact it without voter approval, as long as the reenacted ordinance does not result in an increase in the tax imposed herein.

**7.54.130 Severability.**

Severability. If any word, phrase, sentence, part, section, subsection, or other portion of this ordinance, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley hereby declare that they would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

**7.54.140 Savings Clause.**

No section, clause, part, or provision of this Chapter shall be construed as requiring the payment of any tax that would be in violation of the Constitution or laws of the United States or of the Constitution or laws of the State of California.

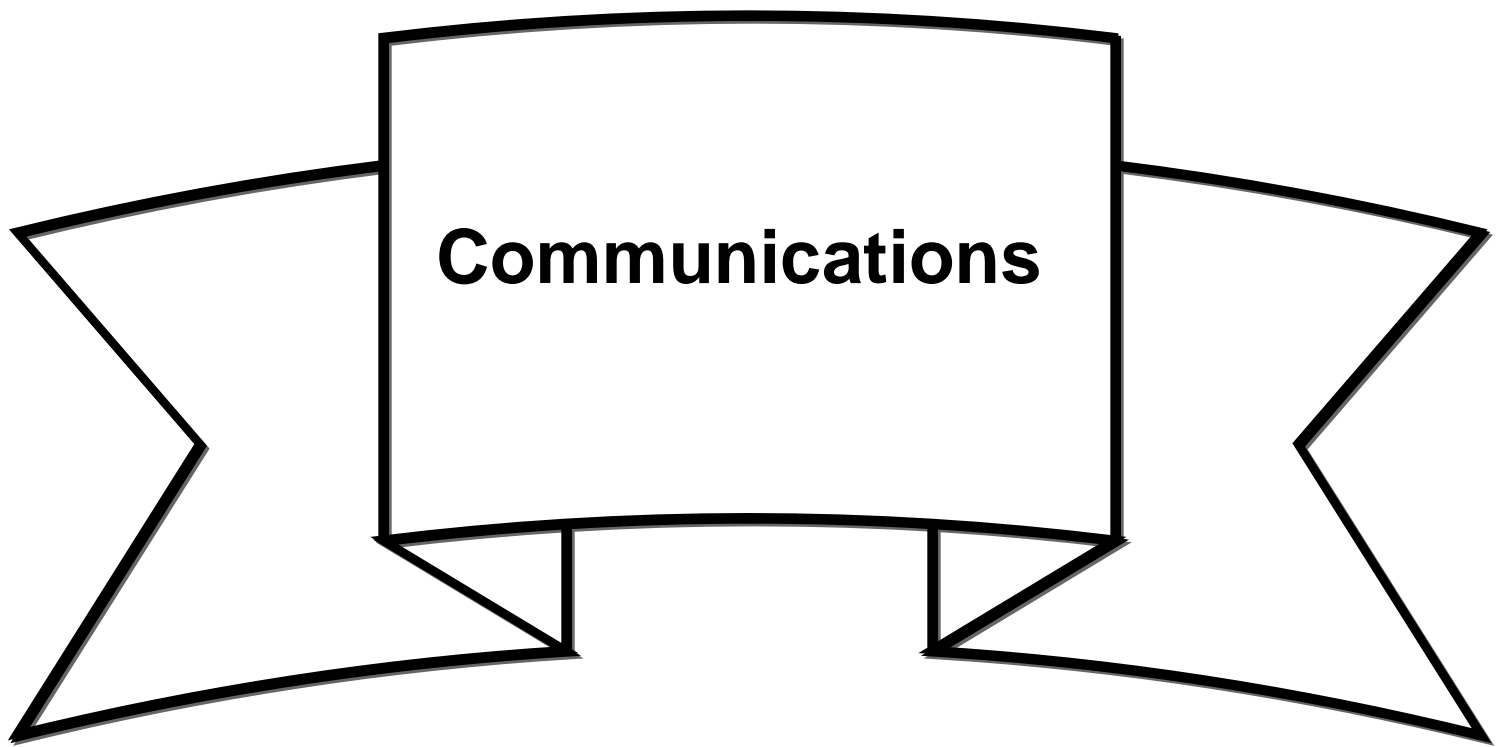
Section 2. Increase Appropriations Limit. Pursuant to California Constitution Article XIII B and applicable laws, for four years from November 8, 2022, the appropriations limit for the City shall be increased by the aggregate sum collected by the levy of the tax imposed under this ordinance.

Section 3. California Environmental Quality Act Requirements. This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., under, including without limitation, Public Resources Code section 21065 and CEQA Guidelines sections 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment and pursuant to Public Resources Code section 21080, subdivision (b)(8), and CEQA Guidelines section 15273 as the approval of government revenues to fund existing services.

Section 4. Special Tax; Two Thirds Vote Requirement. This Ordinance imposes a Special tax for special revenue purposes and shall be effective only if approved by two thirds of the voters voting thereon.







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**

<https://records.cityofberkeley.info/>

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