

**BERKELEY CITY COUNCIL AGENDA COMMITTEE
SPECIAL MEETING**

BERKELEY CITY COUNCIL SPECIAL MEETING

MONDAY, JANUARY 7, 2019

2:30 P.M.

2180 Milvia Street, 6th Floor – Redwood Room

Committee Members:

Mayor Arreguin, Councilmember Sophie Hahn, and Vacant
(Alternate: Councilmember Ben Bartlett)

AGENDA

1. Roll Call
2. Public Comment
3. Approval of Minutes: November 26, 2018
4. Review and Approve draft agendas:
 - a. 1/22/19 – 6:00 p.m. Regular City Council Meeting
 1. Selection of item for the Berkeley Considers online engagement portal
 - b. Adjournments in memory of –
5. Council Items:
 - a. Council Worksessions
 - b. Council Referrals to Agenda Committee
 - c. Land Use Calendar
 - d. Discussion and Feedback from Councilmembers on the Guidelines for Developing & Writing Agenda Items (draft guidelines in agenda packet)
6. Adjournment – next meeting Monday, January 14, 2019

Additional items may be added to the draft agenda per Council Rules of Procedure.

Rules of Procedure as adopted by Council resolution, Article III, C3c - Agenda - Submission of Time Critical Items

Time Critical Items. A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or council member is received by the City Clerk after established deadlines and is not included on the Agenda Committee's published agenda.

The City Clerk shall bring any reports submitted as Time Critical to the meeting of the Agenda Committee. If the Agenda Committee finds the matter to meet the definition of Time Critical, the Agenda Committee may place the matter on the Agenda on either the Consent or Action Calendar.

The City Clerk shall not accept any item past the adjournment of the Agenda Committee meeting for which the agenda that the item is requested to appear on has been approved.

This is a meeting of the Berkeley City Council Agenda Committee. Since a quorum of the Berkeley City Council may actually be present to discuss matters with the Council Agenda Committee, this meeting is being noticed as a special meeting of the Berkeley City Council as well as a Council Agenda Committee meeting.

Written communications addressed to the Agenda Committee and submitted to the City Clerk Department by 5:00 p.m. the Friday before the Committee meeting, will be distributed to the Committee prior to the meeting. After the deadline for submission, residents must provide 10 copies of written communications to the City Clerk at the time of the meeting.

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, 981-6900.

COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

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

Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.



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I hereby certify that the agenda for this special meeting of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 3, 2019.

Mark Numainville, City Clerk

**BERKELEY CITY COUNCIL AGENDA COMMITTEE
SPECIAL MEETING MINUTES**

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

MONDAY, NOVEMBER 26, 2018

2:30 P.M.

2180 Milvia Street, 6th Floor – Redwood Room

Committee Members:

Mayor Arreguin, Councilmembers Linda Maio and Sophie Hahn
(Alternate: Councilmember Ben Bartlett)

1. Roll Call: 2:36 p.m. All present.
2. Public Comment: 0 speakers.
3. M/S/C (Maio/Hahn) to approve the Minutes of Nov. 19, 2018. All Ayes.
4. Review and Approve draft agendas:
 - a. 12/11/18 – 6:00 p.m. Regular City Council Meeting
M/S/C (Arreguin/Maio) to request an amendment from the author of Item 26 to revise the item to be a referral to the City Manager. All Ayes.
M/S/C (Maio/Hahn) to approve the agenda of 12/11/18 Regular Meeting with the revisions noted below. All Ayes.
 - *Ceremonial Items – 1) Judith Montell; 2) Berkeley High African American Studies*
 - *Item Added – Street Level Advisors Contract (City Manager)*
 - *Item 16 Martin Luther King, Jr. Celebration (Arreguin) – Councilmembers Davila and Bartlett added as co-sponsors*
 - *Item 17 United Against Hate (Arreguin) – Councilmember Bartlett added as a co-sponsor*
 - *Item 18 Traffic Circles (Arreguin) – Councilmembers Davila, Bartlett, and Droste added as co-sponsors*
 - *Item 19 Sutter Health (Arreguin) – Councilmembers Hahn, Harrison, and Droste added as co-sponsors*
 - *Item 20 AATCL (Davila) – Revised item submitted*
 - *Item 21 Flavored Tobacco (Davila) – Revised item submitted*
 - *Item 22 Recreational Vehicles (Harrison) – Revision to fiscal year in recommendation*
 - *Item 23/24 Authors Dinner (Wengraf, Hahn, Droste) – Revised and consolidated item submitted*
 - *Item 25a and 25b Single Use Foodware (ZWC and City Manager) – Items moved to Consent Calendar*
 - *Item 26 Housing Pipeline Report (Harrison) – Revised item submitted; requested edits by Agenda Committee*
 - *Item 27 Single Use Foodware (Hahn) – Revised item submitted*

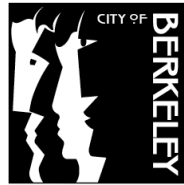
1. Selection of item for the Berkeley Considers online engagement portal
 - Selected Item 27 regarding single use foodware
- b. Adjournments in memory of – None
5. Council Items:
 - a. Council Worksessions - received
 - b. Council Referrals to Agenda Committee - received
 - c. Land Use Calendar - received
 - d. Council Policy Committees – Direction on Focus Areas of Committees
M/S/C (Hahn/Maio) to recommend the policy committee focus areas as printed in the Agenda Committee packet to the full council on Nov. 27. All Ayes.
 - e. Draft Guidelines for Developing & Writing Agenda Items
6. Adjournment - M/S/C (Maio/Hahn) to adjourn the meeting. All Ayes.

Adjourned at 3:10 p.m.



Mark Numainville, City Clerk

DRAFT AGENDA



BERKELEY CITY COUNCIL MEETING

Tuesday, January 22, 2019

6:00 PM

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

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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, 981-6900.

The City Council may take action related to any subject listed on the Agenda. The Mayor may exercise a two minute speaking limitation to comments from Councilmembers. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call:

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

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

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

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.” 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. Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses

From: City Manager

Recommendation: Adopt second reading of Ordinance No. 7,635-N.S. amending the Berkeley Municipal Code to streamline and clarify the permitting process for small businesses in commercial districts by: 1. Reducing the amount of parking required for businesses moving into existing commercial spaces; 2. Simplifying food service categories by reducing them from three to one; 3. Reducing permitting time and costs for small businesses that request a change of use in existing commercial spaces; 4. Clarifying the permit process for new business types that may not be specifically defined in the City’s zoning rules; 5. Making ‘commercial recreation’ uses (such as bowling alleys, miniature golf courses or ping pong clubs) easier to permit in commercial districts; and 6. Streamlining the permit process and providing clear performance standards for restaurants that wish to serve beer and wine.

The ordinance would amend Berkeley Municipal Code Chapters 23E.16, 23E.36, 23E.40, 23E.44, 23E.48, 23E.52, 23E.56, 23E.60, 23E.64, 23E.68, and 23E.98.

First Reading Vote: All Ayes.

Financial Implications: See report

Contact: Timothy Burroughs, Planning and Development, 981-7400; Jordan Klein, Economic Development, 981-7530

Consent Calendar

- 2. Referral Response: Reclassifying the zoning and the General Plan and West Berkeley Plan designations at 1050 Parker Street / 2621 Tenth Street, with associated Environmental Review**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,638-N.S.: a. Rezoning a portion of the project site from Mixed Use – Light Industrial (MU-LI) to West Berkeley Commercial (C-W) (Amendments affect APNs 054-1763-001-03 and 054-1763-010-00); and b. Amending the C-W District development standards to allow for a 4-story / 50-foot tall building on the subject property (Amendments affect APNs 054-1763-001-03, 054-1763-010-00, and 054-1763-003-03).
First Reading Vote: Ayes - Kesarwani, Bartlett, Wengraf, Robinson, Droste, Arreguin; Noes - Davila, Harrison, Hahn.
Financial Implications: See report
Contact: Timothy Burroughs, Planning and Development, 981-7400
- 3. Minutes for Approval**
From: City Manager
Recommendation: Approve the minutes for the Council meetings of November 26, 2018 (special closed), November 27, 2018 (regular), December 4, 2018 (regular), December 6, 2018 (special), and December 11, 2018 (regular).
Financial Implications: None
Contact: Mark Numainville, City Clerk, 981-6900
- 4. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on January 22, 2019**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: Various Funds - \$9,078,600
Contact: Henry Oyekanmi, Finance, 981-7300
- 5. Authorize Memorandum of Understanding with Alameda County for Winter Relief Program**
From: City Manager
Recommendation: Authorize the City Manager to enter into a Memorandum of Understanding (MOU) through April 30, 2019 with Alameda County for a Winter Relief Program.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, 981-5400

Consent Calendar

- 6. Revenue Contract: Community Services Block Grant for Calendar Year 2019**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to accept the Community Services Block Grant (CSBG) Contract Number 19F-4001 for the amount of \$265,860 to provide services for low-income people for the period January 1, 2019 to December 31, 2019.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, 981-5400
- 7. Revenue Grant Agreement: Medi-Cal Administrative Activities Funding from the State of California to Conduct Public Health Promotion Services**
From: City Manager
Recommendation: Adopt a resolution authorizing the City Manager to submit grant agreements to the State of California, to accept the grants, and execute any resultant revenue agreements and amendments to conduct public health promotion for Medi-Cal Administrative Activities (MAA) Program for an amount not to exceed \$3,000,000 for period of the agreement, Fiscal Years 2020 through 2022.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, 981-5400
- 8. Grant Application: California Affordable Housing and Sustainable Communities Infrastructure and Agreements in Connection with Proposed Berkeley Way Project**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to negotiate, enter into and cause the City to perform its obligations under one or more agreements (including amendments) with the BRIDGE Housing Corporation, Berkeley Food and Housing Project (BFHP), and/or their affiliates (including BRIDGE Berkeley Way LP and BFHP Hope Center LP), relating to a grant application to the California Affordable Housing and Sustainable Communities (AHSC) Program for Berkeley Way project-related transportation and infrastructure improvements, for a total amount up to \$3,800,000 for City-projects, and to accept and perform the grant if awarded.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, 981-5400; Phillip Harrington, Public Works, 981-6300

Consent Calendar

- 9. Salary: Public Works Maintenance Superintendent and Equipment Superintendent**
From: City Manager
Recommendation: Adopt a Resolution amending Resolution No. 68,710-N.S. Classification and Salary Resolution for Public Employees Union - Local One, to increase the salary range for Public Works Maintenance Superintendent and Equipment Superintendent 6.3% and 6.0% respectively, to an hourly salary range of \$55.7482 - \$67.3564 effective January 22, 2019.
Financial Implications: See report
Contact: LaTanya Bellow, Human Resources, 981-6800
- 10. Fee Assessment – State of California Self-Insurance Fund (Workers’ Compensation Program)**
From: City Manager
Recommendation: Adopt a Resolution amending Resolution 68,696-N.S. to authorize payment to the State of California Department of Industrial Relations for Fiscal Year 2019 for administering the Workers’ Compensation Program for an additional amount of \$4,041.84 with a total amount not to exceed of \$223,041.84.
Financial Implications: See report
Contact: LaTanya Bellow, Director of Human Resources, 981-6807
- 11. Contract: Siegel & Strain Architects for Design Services for the Cazadero Camp Jensen Dormitory Replacement Design**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Siegel & Strain Architects in an amount not to exceed \$158,000 to provide design services for the Cazadero Camp Jensen Dormitory Replacement Design Project.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700
- 12. Adopt a Mitigated Negative Declaration for the Berkeley Tuolumne Camp Permit (46690) Project**
From: City Manager
Recommendation: Adopt a Resolution adopting the Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Plan (MMRP) for the Berkeley Tuolumne Camp Permit (46690) Project.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700

Consent Calendar

13. Community Conservation Centers, Inc.'s Contractual Relief of its Revenue Share Obligation to the City for the Sale of Recyclable Commodities

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to provide contractual relief to Community Conservation Centers, Inc. (CCC) Recyclable Processing Services Contract, Exhibit B. Section 3.1 "Contractor shall pay City 7.5 percent of annual gross revenue on a monthly basis." The remaining obligation per this Contract is \$1,123,591.87.

Financial Implications: See report

Contact: Phillip Harrington, Public Works, 981-6300

14. Contract: Ghilotti Construction Company for Panoramic Hill Rehabilitation Project

From: City Manager

Recommendation: Adopt a Resolution approving plans and specifications for the Panoramic Hill Rehabilitation Project, Specification No. 18-11180-C (Re-Issued); accepting the bid of Ghilotti Construction Company as the lowest responsive and responsible bidder; and authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications in an amount not to exceed \$5,054,873.

Financial Implications: Various Funds - \$5,054,873

Contact: Phillip Harrington, Public Works, 981-6300

15. Contract: TranSystems Corporation for Preliminary Engineering and Environmental Clearance for the Railroad Crossing Safety Improvement/Quiet Zone Project

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with TranSystems Corporation for Preliminary Engineering and Environmental Clearance for the Railroad Crossing Safety Improvement/Quiet Zone project, for a not-to-exceed amount of \$436,000, plus an additional not-to-exceed amount of \$64,000 for any as-needed additional project-related services as directed by the City, for a total not-to-exceed contract amount of \$500,000, for the period February 1, 2019 through December 31, 2019.

Financial Implications: Capital Project Grant Fund - Local - \$500,000

Contact: Phillip Harrington, Public Works, 981-6300

Consent Calendar

- 16. Contracts: On-Call Architectural Services: ELS Architecture and Urban Design; Noll & Tam Architects; and Siegel & Strain Architects**
From: City Manager
Recommendation: Adopt three Resolutions authorizing the City Manager to execute contracts and any amendments with the following firms for on-call architectural design services in support of the City's annual Facilities CIP program, each from February 1, 2019 through June 30, 2022:
1. ELS Architecture and Urban Design (ELS), for an amount not to exceed \$1,700,000.
 2. Noll & Tam Architects (N&T), for an amount not to exceed \$1,700,000.
 3. Siegel & Strain Architects (SSA), for an amount not to exceed \$1,700,000.
- Financial Implications:** See report
Contact: Phillip Harrington, Public Works, 981-6300
- 17. Authorization for Additional Civic Arts Commission Meeting in 2019**
From: Civic Arts Commission
Recommendation: Adopt a Resolution authorizing one additional meeting of the Civic Arts Commission in 2019
Financial Implications: None
Contact: Jennifer Lovvorn, Commission Secretary, 981-7530

Council Consent Items

- 18. Support a Green New Deal**
From: Mayor Arreguin
Recommendation: Adopt a Resolution supporting the development of a Green New Deal, a federal economic stimulus program to address climate change and transform the economy. Send a copy of the Resolution to U.S. Senators Dianne Feinstein and Kamala Harris, Congresswoman Barbara Lee and Governor Gavin Newsom.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, 981-7100
- 19. Support of SB 18 – Keep Californians Housed Act**
From: Mayor Arreguin
Recommendation: Adopt a Resolution in support of Senate Bill (SB) 18, the Keep Californians Housed Act, introduced by Senator Nancy Skinner. Send a copy of the Resolution to Senator Skinner, Assemblymember Buffy Wicks, and Governor Gavin Newsom.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, 981-7100

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.

Action Calendar

The Presiding Officer will request that persons wishing to speak line up at the podium 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 – Old Business

- 20. Refer to the City Manager to consider boycotting Amazon for its role in tracking immigrants in cooperation with ICE and abusive working conditions and its labor practices toward its employees** *(Continued from November 27, 2018. Item contains revised material.)*

From: Councilmembers Worthington and Davila

Recommendation: Refer to the City Manager to consider the City of Berkeley boycotting Amazon and refrain from using its services to purchase goods for city use.

Financial Implications: Minimal

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

- 21a. Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Properties** *(Continued from December 11, 2018. Item contains supplemental material.)*

From: Community Environmental Advisory Commission

Recommendation: Since the drought-storm-flooding cycle is predicted to get worse, refer to the City Manager to develop and implement measures to help reduce runoff from private property when rain exceeds two inches in a 24-hour period. The City Manager and staff should consider the following: - Comply beyond the State and Alameda County current requirements; -Encourage the treating and detaining of runoff up to approximately the 85th per-centile of water deposited in a 24-hour period; -Establish site design measures that include minimizing impervious surfaces; -Require homeowners to include flooding offsets in preparing properties for sale; - Offer option(s) for property owners to fund in-lieu centralized off-site storm-water retention facilities that would hold an equivalent volume of runoff; -Require abatements for newly paved areas over a specific size; -Make exceptions for properties that offer significantly below-market rent or sale prices; -Authorize a fee for all new construction or for title transfer to cover the cost of required compliance inspections. -Incorporate these measures for private property with similar measures for Public Works, while coordinating with EBMUD, BUSD, UCB and LBNL.

Financial Implications: See report

Contact: Viviana Garcia, Commission Secretary, 981-7460

Action Calendar – Old Business

21b. Companion Report to Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Properties *(Continued from December 11, 2018.)*

From: City Manager

Recommendation: Express appreciation for the intent of the Community Environmental Advisory Commission (CEAC) recommendation to develop and implement measures to help reduce runoff from private property when rain exceeds two inches in a 24-hour period, and allow staff to continue existing efforts to implement Municipal Regional Stormwater Permit regulations in coordination with the 14 other local governments and agencies that participate in the Alameda Countywide Clean Water Program.

Financial Implications: See report

Contact: Timothy Burroughs, Planning and Development, 981-7400; Phillip Harrington, Public Works, 981-6300

22a. Referral Response: Berkeley Single Use Foodware and Litter Reduction Ordinance *(Continued from December 11, 2018.)*

From: Zero Waste Commission

Recommendation: Review the results of the Zero Waste Commission's community outreach and analysis provided in response to Council's referral and consider incorporating the Zero Waste Commission recommendations for improvements into the referred draft proposed Berkeley Single Use Foodware and Litter Reduction Ordinance

Financial Implications: See report

Contact: Heidi Obermeit, Commission Secretary, 981-6300

22b. Companion Report: Referral Response: Proposed Single Use Foodware and Litter Reduction Ordinance *(Continued from December 11, 2018.)*

From: City Manager

Recommendation: Staff appreciates the Zero Waste Commission's diligent and thoughtful work and requests that Council refer their recommendations for the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance to the City Manager to review, to quantify the potential impacts, and to report back to Council with an analysis.

Financial Implications: See report

Contact: Phillip Harrington, Public Works, 981-6300

Action Calendar – Old Business

- 23. Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program** *(Continued from December 11, 2018.)*
From: Councilmembers Bartlett, Worthington, and Davila
Recommendation: That the Council provides requested direction to the Planning Department on how to proceed with the Equity Program recommended by the Cannabis Commission in the October 9, 2018 staff report. Recommending allowing 4 equity applicants and 2 non-equity applicants to apply and be processed by the City within 2 years.
Financial Implications: Minimal
Contact: Ben Bartlett, Councilmember, District 3, 981-7130
- 24. Single Use Disposable Foodware and Litter Reduction Ordinance** *(Continued from December 11, 2018. Item contains revised material.)*
From: Councilmember Hahn and Mayor Arreguin
Recommendation:
1. Adopt a first reading of the Single Use Foodware and Litter Reduction Ordinance.
2. Refer to the City Manager to: a. Establish a mini-grant program administered and funded either directly by the City or by community partners to help Prepared Food Vendors with one-time costs associated with conversion to Reusable Foodware for eating on the premises (“eating-in”). b. Establish a program administered and funded either directly by the City or by community partners to provide technical assistance to Prepared Food Vendors implementing Reusable Foodware requirements for eating on the premises. c. Create a Reusable Takeout Foodware program for launch three years after the effective date of the Single Use Disposable Foodware and Litter Reduction Ordinance, in collaboration with community partners such as the Ecology Center, Rethink Disposables and StopWaste. d. Prior to launch of the Reusable Takeout Foodware program, draft for approval amendments to the Single Use Disposable Foodware and Litter Reduction Ordinance to implement the Reusable Takeout Foodware program as an alternative to Compostable Takeout Foodware, and impose a charge, similar to or the same as the Disposable Cup charge, on other Disposable Foodware containers. e. Create a program to expand and support composting, to ensure Single Use Disposable Foodware is actually composted. f. Prior to January 1, 2022 report to the City Council on progress towards full implementation of and compliance with the Single Use Disposable Foodware and Litter Reduction Ordinance and these referrals.
3. Refer to the City Manager to determine funding and staffing needs and sources of funds to implement each program/phase. Consider and suggest implementation alternatives to achieve similar results at lower cost to the City, if any. Submit recommended alternatives to the Zero Waste Commission and City Council for consideration, and funding allocations or requests to the budget process.
Financial Implications: See report
Contact: Sophie Hahn, Councilmember, District 5, 981-7150

Action Calendar – New Business

25. **Effective Enforcement of Safe Lead-Paint Practices**

From: Community Environmental Advisory Commission

Recommendation: Direct the City Manager to prepare two ordinances as described below and return them for vote of the City Council within two months, so that when passed the city staff can effectively intervene when painters ignore safe practices they have agreed to uphold in removing lead paint from structures built before 1978:

1. An ordinance adding safe lead-paint practices (already mandated by the state and federal governments) to the City Code so that such practices can be regularly enforced as part of code enforcement; [this ordinance could follow the wording of an ordinance proposed in the City of Emeryville in 2017.

2. An ordinance in accord with California law that allows the city to be reimbursed for costs (staff time) for enforcement efforts (thus making it cost-effective for the City staff to engage in enforcement) and to automatically add fines up to \$1,000 for each day of failing to comply with orders to cease unlawful practices. This ordinance could apply generally to all municipal code violations, in addition to lead paint cleanup, to fund and reimburse stronger enforcement efforts by the City.

Financial Implications: See report

Contact: Viviana Garcia, Commission Secretary, 981-7460

26a. **Resolution Declaring City of Berkeley Will Not Contract With or Invest City funds in Any Entity Involved in the Production or Upgrading of Weapons**

From: Peace and Justice Commission

Recommendation: Adopt resolution submitted by the Peace and Justice Commission declaring City of Berkeley will not contract with or invest City funds in any entity involved in the production or upgrading of weapons.

Financial Implications: None

Contact: Shallon Allen, Commission Secretary, 981-7071

26b. **Companion Report: Resolution Declaring City of Berkeley Will Not Contract with or Invest City Funds in Any Entity Involved in the Production or Upgrading of Weapons**

From: City Manager

Recommendation: Continue to support the City of Berkeley's existing investment policy which prohibits investments in gun manufacturers.

Financial Implications: None

Contact: Paul Buddenhagen, City Manager's Office, 981-7000

Action Calendar – New Business

27a. Allocation of \$4.75 Million Over Two Years, FY20 and FY21, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs) From: Sugar Sweetened Beverage Product Panel of Experts

Recommendation:

1. Adopt a Resolution allocating \$4.75 million from the General Fund in FY20 (July 1, 2019 through June 30, 2020) and FY21 (July 1, 2020 through June 30, 2021) that shall be invested in a grant program administered and coordinated by the Berkeley Public Health Division consistent with the SSBPPE's goals to reduce the consumption of sugar sweetened beverages (SSB) in Berkeley and to address the effects of SSB consumption. The total of \$4.75 million will be distributed in two installments of \$2.375 million per year for FY20 and FY21. In each of these years, the funds will be distributed as follows: a. Direct the City Manager to award up to 40% of the allocated funds to Berkeley Unified School District (BUSD) through a grant proposal to reduce the consumption of sugar-sweetened beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs. The BUSD funding process is separate from the RFP process for the general community-based organization funding process and shall be guided by the SSBPPE Commission's Criteria for BUSD Funding. b. Direct the City Manager to award at least 40% of the allocated funds through a RFP process managed by the Public Health Division for grants to community-based organizations consistent with the SSBPPE's goals to reduce the consumption of SSBs and to address the effects of SSB consumption. The community-based organization funding RFP process is separate from the BUSD funding process and shall be guided by the SSBPPE Commission's Criteria for Community Agency Grants.

2. Direct the City Manager to utilize 20% of the allocated funds to support the Berkeley Public Health Division (BPHD) to coordinate and monitor the grant process, coordinate the overall program evaluation, and produce an annual report that disseminates process and outcome data resulting from the SSBPPE funding program. A comprehensive and sustainable media campaign that coordinates with all regional soda tax efforts will be managed by the BPHD with 10% of this portion of the allocation.

Financial Implications: See report

Contact: Dechen Tsering, Commission Secretary, 981-5300

27b. Companion Report: Allocation of \$4.75 Million Over Two Years, FY20 and FY21, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs).

From: City Manager

Recommendation: Accept the Sugar Sweetened Beverage Product Panel of Experts (SSBPPE) report with the clarifications outlined in the report considered.

Financial Implications: See report

Contact: Kelly Wallace, Housing and Community Services, 981-5400

Action Calendar – Policy Committee Track Items

- 28. 2019 City Council Committee and Regional Body Appointments**
From: Mayor Arreguin
Recommendation: Adopt a Resolution approving the appointment of Council representatives to City Council Standing Policy Committees, Partnership Committees, Regional Bodies, and Council Liaisons for a one-year term from January 2019 to January 2020.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, 981-7100
- 29. RFP for Development of West Berkeley Service Center Site**
From: Mayor Arreguin and Councilmembers Kesarwani and Wengraf
Recommendation: Direct the City Manager to issue an RFP for the development of the West Berkeley Service Center site into a senior housing and services project consistent with Age Friendly Berkeley recommendations.
Financial Implications: Staff time
Contact: Jesse Arreguin, Mayor, 981-7100
- 30. Resolution Reaffirming the City of Berkeley’s Commitment to Roe v. Wade**
From: Councilmember Wengraf
Recommendation: Adopt a Resolution reaffirming the City of Berkeley’s commitment to Roe v. Wade, and honor the 46th anniversary of its passage with a proclamation.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, 981-7160

Information Reports

- 31. LPC NOD: 1 and 5 Canyon Road, #LMIN 2018-0005**
From: City Manager
Contact: Timothy Burroughs, Planning and Development, 981-7400
- 32. LPC NOD: 2415 Blake Street, #LMIN 2018-0004**
From: City Manager
Contact: Timothy Burroughs, Planning and Development, 981-7400
- 33. Referral Response: Removing Plastic Microfibers from the Water Supply**
From: Community Environmental Advisory Commission
Contact: Viviana Garcia, Commission Secretary, 981-7460
- 34. City Auditor’s Office 2018 Peer Review Results**
From: Auditor
Contact: Jenny Wong, Auditor, 981-6750

Public Comment – Items Not Listed on the Agenda

Adjournment

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

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

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Civic Arts Commission

CONSENT CALENDAR

January 22, 2019

To: Honorable Mayor and Members of the City Council  
 From: Civic Arts Commission  
 Submitted by: Kim Anno, Chairperson, Civic Arts Commission  
 Subject: Authorization for Additional Civic Arts Commission Meeting in 2019

RECOMMENDATION

Adopt a Resolution authorizing one additional meeting of the Civic Arts Commission in 2019.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The Civic Arts Commission requests approval to hold a Special Meeting on February 9, 2019 as a retreat in order to have dedicated time to review progress on the *City of Berkeley Arts & Culture Plan 2018-2027 Update* and the *Civic Arts Commission 2018-2019 Work Plan*. Submission of this report for authorization of the additional meeting was approved by the Civic Arts Commission at its November 28, 2018 meeting (M/S Blecher / Passmore; Yes: Anno, Blecher, Bullwinkel, Ozol, Passmore, Slattery, Tamano; No: none; Absent: Jackson, Ross).

BACKGROUND

Resolution No. 68,705–N.S. governs the number of meetings for boards and commissions and authorizes the Civic Arts Commission to meet ten times per year. In 2019, the Civic Arts Commission plans to hold its ten regular meetings in addition to this Special Meeting.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental impacts or opportunities associated with this report.

RATIONALE FOR RECOMMENDATION

The additional meeting requested for February 2019 will provide an opportunity for the Commission to have uninterrupted time to focus on the review of progress on the previously approved *Arts and Culture Plan* and *Annual Work Plan* and to discuss activities for 2019 in furtherance of the goals and objectives outlined in these plans.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

CONTACT PERSON

Jennifer Lovvorn, Secretary to the Civic Arts Commission, (510) 981-7533

Attachments:

1: Resolution

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

AUTHORIZING ADDITIONAL MEETING FOR THE CIVIC ARTS COMMISSION

WHEREAS, Resolution No. 68,705–N.S. stipulates how many annual meetings are allowed for Berkeley’s commissions and authorizes the Civic Arts Commission to meet ten times per year.; and

WHEREAS, the Civic Arts Commission plans to hold an additional meeting in February 2019 to review progress on the *City of Berkeley Arts & Culture Plan 2018-2027 Update* and the *Civic Arts Commission 2018-2019 Work Plan*.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Civic Arts Commission is authorized to hold one additional meeting in 2019.





Office of the Mayor

CONSENT CALENDAR  
January 22, 2019

To: Members of the City Council  
From: Mayor Jesse Arreguín  
Subject: Support a Green New Deal

### RECOMMENDATION

Adopt a Resolution supporting the development of a Green New Deal, a federal economic stimulus program to address climate change and transform the economy. Send a copy of the Resolution to U.S. Senators Dianne Feinstein and Kamala Harris, Congresswoman Barbara Lee and Governor Gavin Newsom.

### BACKGROUND

A report published in October 2018 by the UN Intergovernmental Panel on Climate Change warns that we have a twelve year window to avoid cataclysmic climate change by preventing global temperatures from increasing beyond 1.5°C of pre-industrial levels. The report emphasizes the scale and speed of transformation at all levels of the economy that will be required, including rapid and far-reaching transitions in land, energy, industry, buildings, transport, and cities. Global net human-caused emissions of CO<sup>2</sup> would need to decrease approximately 45 percent from 2010 levels by 2030, reaching 'net zero' by 2050. This means that any remaining emissions would need to be balanced by removing CO<sup>2</sup> from the atmosphere.<sup>1</sup>

The City of Berkeley and its residents are deeply committed to sustainability and addressing climate change. Voters overwhelmingly approved Measure G in 2006, leading to the adoption of the Berkeley Climate Action Plan in 2009 - setting the goal of reducing greenhouse gas emissions by 33% of 2000 levels by 2020, and 80% by 2050. Building on this plan, the award-winning Berkeley Resiliency Strategy was developed in 2016, in part to ensure that Berkeley is "resilient and prepared for the impacts of global warming". In June 2018, the Berkeley City Council unanimously declared a climate emergency, and this past November, nearly 85 percent of voters approved Measure R, to develop a long-term sustainable infrastructure plan known as Vision 2050.

Despite all the work already accomplished and in the pipeline, much of our infrastructure – streets, roads, sidewalks, storm drains, parks, the marina and waterfront

<sup>1</sup><https://www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments/>

– were constructed more than 70 years ago during the Works Projects Administration. Although the \$100 million-dollar Measure T1 infrastructure bond was approved by voters on November 8, 2016, and will be used to repair, renovate, replace or reconstruct aging infrastructure and facilities, our restoration needs far exceed what this bond can achieve. At the same time, we are faced with rapidly changing technologies and exponentially worsening predictions of climate change impacts.

Through Vision 2050 – a 30-year plan to identify and guide implementation of climate-smart, technologically-advanced, integrated and efficient infrastructure - Berkeley's infrastructure will be transformed, mirroring the scale of what was accomplished during the original New Deal. However, it will be much more challenging to accomplish this effort through local and regional funding strategies that compete against numerous municipal needs. Undoubtedly, a Green New Deal as outlined below would accelerate the work already underway in our city, moving us closer to a resilient and sustainable vision that our community supports. Replacing our infrastructure in this manner also provides a historic opportunity to create jobs, community wealth and address historically rooted racial and gender inequities.

A Green New Deal is a framework for an evolving set of policies and programs that aims to both tackle climate change and also transform the economy. A groundswell of momentum has emerged amongst newly elected Democratic leaders and activists. Led by Congresswoman Alexandria Ocasio-Cortez and the Sunrise Movement, by the end of November 2018, eighteen Democratic members of Congress, including Congresswoman Barbara Lee, have co-sponsored a proposed House Select Committee on a Green New Deal.

The Green New Deal is the only plan, or framework to develop one, that meets the scale and scope of transformation that science and justice demand. The primary environmental goals for a Green New Deal are<sup>2</sup>:

- 1) Dramatically expanding existing renewable power sources and deploy new production capacity with the goal of meeting 100% of national power demand through renewable sources;
- 2) Building a national, energy-efficient, “smart” grid;
- 3) Upgrading every residential and industrial building for state-of-the-art energy efficiency, comfort and safety;
- 4) Eliminating greenhouse gas emissions from the manufacturing, agricultural and other industries, including by investing in local-scale agriculture in communities across the country;
- 5) Eliminating greenhouse gas emissions from, repairing and improving transportation and other infrastructure, and upgrading water infrastructure to ensure universal access to clean water;
- 6) Funding massive investment in the drawdown of greenhouse gases;

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<sup>2</sup> <https://ocasio2018.com/green-new-deal>



- 7) Making “green” technology, industry, expertise, products and services a major export of the United States, with the aim of becoming the undisputed international leader in helping other countries transition to greenhouse gas neutral economies, and bringing about a global Green New Deal.

The framework also recognizes that, “a national, industrial, economic mobilization of this scope and scale is a historic opportunity to virtually eliminate poverty in the United States and to make prosperity, wealth and economic security available to everyone participating in the transformation”<sup>3</sup>. To this end, it includes a job guarantee program, the diversification of local and regional economies, strong labor enforcement, a just transition for all, protection of tribal and indigenous lands, and the mitigation of racial and gender wealth gaps.

The objectives outlined for a Green New Deal not only reflect Berkeley’s ongoing efforts to mitigate climate change, but also our commitment to social, economic and racial justice. Examples of overlap include support for economic development programs and policies such as those supporting worker ownership, a public bank, initiatives supporting our homeless, and efforts to construct more affordable housing. Supporting a Green New Deal is in alignment with Berkeley’s continuous efforts to strive for equality, diversity, affordability, and our efforts to prevent climate catastrophe.

#### FINANCIAL IMPLICATIONS

None.

#### ENVIRONMENTAL SUSTAINABILITY

Supporting a plan for a Green New Deal will further the goals set forward in the Climate Action Plan and Resiliency Strategy by providing massive federal investment in our city, region and nation’s efforts responding to climate change impacts and actualizing a more resilient city.

#### CONTACT PERSON

Mayor Jesse Arreguín

510-981-7100

Attachments:

1. Resolution

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<sup>3</sup> Ibid

RESOLUTION NO. #####  
EXPRESSING BERKELEY'S SUPPORT FOR A SELECT COMMITTEE FOR A  
GREEN NEW DEAL

WHEREAS, human activities have warmed the Earth enough to end the 12,000-year period of climate stability that allowed agriculture and human civilization to develop; and

WHEREAS, the world came together in December 2015 to address the end to this period of climate stability due to global warming, agreeing to keep warming to "well below 2°C above pre-industrial levels" and to "pursue efforts to limit the temperature increase to 1.5°C"; and

WHEREAS, in 2017 the global surface temperature was over 1°C warmer than the pre-industrial base period; and

WHEREAS, global warming has already set in motion catastrophic changes to the Earth system, including accelerating ice mass loss from the Greenland and West Antarctic Ice Sheets and the thawing of the borders of the vast Arctic permafrost, which holds twice as much stored carbon as the entire atmosphere; and

WHEREAS, according to the latest climate projections, humanity is on track to warm the Earth a sustained average of 1.5°C above pre-industrial levels as soon as 2026; and

WHEREAS, the Greenland Ice Sheet, which is likely to completely collapse at 1.6°C warming, which NASA scientists have concluded would lead to 23 feet of sea-level rise, billions of climate refugees, and a "global-scale catastrophe"; and

WHEREAS, it is estimated that sustained 1.5°C warming could cause a long-term, "continuous thaw" of the Arctic permafrost, which could turn the tundra from a carbon sink into source in the 2020s; and

WHEREAS, such tipping points must be avoided at all costs, as they will have positive feedback effects on the climate system, causing further and increasingly uncontrollable global warming; and

WHEREAS, over 19,000 scientists have signed a Second Warning to Humanity proclaiming that "a great change in our stewardship of the Earth and the life on it is required, if vast human misery is to be avoided"; and

WHEREAS, climate-fueled droughts, famines, and diseases have already killed millions of people in the Global South, and displaced millions more; and

WHEREAS, indigenous and low-income communities and communities of color in the United States and abroad have suffered the gravest consequences of the extractive economy since its inception; and

WHEREAS, according to the National Centers for Environmental Information (NCEI), in 2017, "the U.S. was impacted by 16 separate billion-dollar disaster events tying 2011 for the record number of billion-dollar disasters for an entire calendar year," with a cumulative cost of \$309.5 billion, shattering the previous U.S. annual record cost of \$219.2 billion in 2005 due to Hurricanes Dennis, Katrina, Rita and Wilma; and

WHEREAS, the UN Intergovernmental Panel on Climate Change warns that there is a twelve-year window for global warming to be kept to a maximum threshold of 1.5C increase above pre-industrial levels; and

WHEREAS, we cannot wait for more devastating floods, heatwaves, fires, droughts, rising sea levels, and public health and humanitarian crises that threaten local residents, ecologies, businesses, and the broader Bay Area population to begin the necessary emergency response; and

WHEREAS, the City of Berkeley is deeply committed to sustainability and addressing climate change; and

WHEREAS, voters overwhelmingly approved Measure G in 2006, and the Berkeley Climate Action Plan was adopted in 2009 - setting the goal of reducing greenhouse gas emissions by 33% of 2000 levels by 2020, and 80% by 2050; and

WHEREAS, the award-winning Berkeley Resilience Strategy was developed in 2016, building upon one of the Climate Action Plan goals to ensure Berkeley is "resilient and prepared for the impacts of global warming"; and

WHEREAS, in declaring a Climate Emergency the City of Berkeley resolved to call on the United States of America to initiate a just national emergency mobilization effort to reverse global warming, which ends national greenhouse gas emissions as quickly as possible and immediately initiates an effort to safely draw down carbon from the atmosphere; and

WHEREAS, much of our infrastructure – streets, roads, sidewalks, storm drains, parks, the marina and waterfront – that is foundational were constructed more than 70 years ago during the Works Projects Administration; and

WHEREAS, in the face of these challenges we need to have infrastructure that is more sustainable and resilient; and

WHEREAS, we also have technology that is rapidly changing and infrastructure systems must be flexible and adaptable to future needs. Emerging technologies are becoming available that will affect the way we build and use our future infrastructure; and

WHEREAS, Berkeley needs integrated and long-lasting infrastructure to provide multiple benefits, and be environmentally and financially sustainable; and

WHEREAS, Berkeley voters overwhelmingly approved Measure R in November 2018 to create 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; and

WHEREAS, replacing our infrastructure in this manner also provides a historic opportunity to create jobs, community wealth and address historically rooted racial and gender inequities; and

WHEREAS, a plan for a Green New Deal is the only plan, or framework to develop one, that meets the scale and speed that the climate and justice demand; and

WHEREAS, the plan for a Green New Deal reflects Berkeley’s climate and environmental commitments, as well as other elements of its economic development efforts such as the promotion of worker ownership, public banking, labor protections, and job training; and

WHEREAS, the Green New Deal calls for a nationwide investment in renewable energy infrastructure that would procure 100% of the national power demand from renewable sources, and create a national smart grid; and

WHEREAS, if passed the Green New Deal would accelerate current efforts underway county-wide through the creation of the East Bay Community Energy Authority, and local efforts to expand local renewable development, making existing and new buildings energy efficient and carbon neutral; and

WHEREAS, if passed a Green New Deal would expedite and enhance the important work already underway in Berkeley and provide much needed additional funding to allow our city to go farther and faster in these efforts.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports the formation of a House Select Committee on a Green New Deal and the development of a Green New Deal economic stimulus plan; and

BE IT FURTHER RESOLVED the City Council thanks Congresswoman Barbara Lee for her endorsement of a Green New Deal and calls on all leaders in Congress to endorse such a plan; and

BE IT FURTHER AND FINALLY RESOLVED that copies of this Resolution be sent to U.S. Senators Dianne Feinstein and Kamala Harris, Congresswoman Barbara Lee and Governor Gavin Newsom.





Office of the Mayor

CONSENT CALENDAR

January 22, 2019

To: Members of the City Council

From: Mayor Jesse Arreguín

Subject: Support of SB 18 – Keep Californians Housed Act

RECOMMENDATION

Adopt a Resolution in support of Senate Bill (SB) 18, the Keep Californians Housed Act, introduced by Senator Nancy Skinner. Send a copy of the Resolution to Senator Skinner, Assemblymember Buffy Wicks, and Governor Gavin Newsom.

BACKGROUND

California is facing a rental housing crisis. According to an analysis by the National Low Income Housing Coalition, the State has only 22 affordable and available rental homes for every 100 extremely low-income households. About 29 percent of California renters spend more than one-half of their income on rent, which can make it difficult for families to afford basic items like food, clothing, transportation, and health care. In 2015, more than four in 10 households had housing costs that exceeded 30 percent of household income.

Due to the lack of supply and subsidized housing, rents in California cities are some of the highest in the nation. According to the most recent Market Median Report by the Berkeley Rent Board, the median for a 1-bedroom apartment in 2017 was \$2,027 and \$2,800 for a 2-bedroom apartment. Rents in Berkeley have increased by 50-67% in the last five years. These rates do not reflect market rents in newly constructed buildings.<sup>1</sup>

Rising housing costs and the lack of affordable housing has resulted in a displacement crisis in the Bay Area. According to the UC Berkeley Urban Displacement Project, large parts of Berkeley, Oakland, Richmond San Francisco are facing Ongoing Displacement, and in some census tracts Advanced Gentrification.<sup>2</sup>

There are a variety of reasons why we are seeing an increase in displacement, including the lack of available and affordable housing, speculative evictions, and circumstances which affect an individual's ability to pay rent (illness, death in family, job loss, and/or sudden rent increase). The limited supply of affordable housing, rising

<sup>1</sup> [https://www.cityofberkeley.info/uploadedFiles/Rent\\_Stabilization\\_Board/Level\\_3\\_-\\_General/INFO\\_Market%20Medians%20report%20through%20Q4\\_2017.pdf](https://www.cityofberkeley.info/uploadedFiles/Rent_Stabilization_Board/Level_3_-_General/INFO_Market%20Medians%20report%20through%20Q4_2017.pdf)

<sup>2</sup> "Mapping Displacement and Gentrification in the San Francisco Bay Area", UC Berkeley Urban Displacement Project, <http://www.urbandisplacement.org/map/sf>

rental prices, deepening income inequality and increasing pressure by property owners to evict tenants in order to achieve higher rents have all exacerbated the problem.

The displacement of tenants has also deepened the region's homeless crisis. For example, according to the 2017 Berkeley Point-In-Time Homeless Count, 76% of those surveyed had previously resided in Alameda County. The majority of our city's homeless population are also chronically homeless, meaning they have been unhoused for one year or more.

Helping tenants who are at risk of displacement is one of the most effective ways in preventing homelessness. Once a person becomes homeless, breaking that cycle can be costly, stress inducing, and time consuming.

In recognition of this growing displacement crisis, in June 2017, the Berkeley City Council through adoption of its biennial budget allocated \$650,000 in both Fiscal Year 2018 and Fiscal Year 2019 towards eviction defense, emergency rental assistance and housing retention programs from Measure U1 tax receipts.

Alameda County also increased its financial commitments to such services last year providing Boomerang Funds for a country-wide legal defense program. This year Oakland Mayor Libby Schaaf announced a \$9 million dollar privately-funded program to provide eviction defense and rental assistance. While these programs have been effective in preventing homelessness, the scale of the displacement crisis requires significantly more funding.

A statewide approach is needed to provide legal support for renters facing displacement to level the playing field. If a renter receives an Unlawful Detainer and is unaware of their rights and responsibilities or is unable to appear in court, they lose their housing. Low-income renters need additional legal support to help them navigate the court system and remain housed.

Senate Bill 18 (SB 18), introduced by State Senator Nancy Skinner would create a statewide Homelessness Prevention and Legal Aid fund, which would provide funding for legal defense for tenants facing eviction and displacement. The bill would also create a guide of laws relating to landlord-tenant relations, allowing people to more easily understand their rights.

SB 18 is an important step to ensure that tenants throughout the state can defend themselves from eviction, supplementing local efforts to provide anti-displacement resources. Through the adoption of SB 18 and a state budget appropriation, we can significantly increase the number of tenants served through legal defense services.

The Berkeley Rent Stabilization Board voted to support the concepts provided in the bill as written at its December 17, 2018 meeting.

#### FINANCIAL IMPLICATIONS

None.



Support of SB 18 – Keep Californians Housed Act

CONSENT CALENDAR  
January 22, 2019

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

CONTACT PERSON

Mayor Jesse Arreguín

510-981-7100

Attachments:

1: Resolution

2: Text of SB 18

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

SUPPORTING SB 18 – THE KEEP CALIFORNIANS HOUSED ACT

WHEREAS, California is facing a rental housing crisis. According to an analysis by the National Low Income Housing Coalition, the State has only 22 affordable and available rental homes for every 100 extremely low-income households; and

WHEREAS, about 29 percent of California renters spend more than one-half of their income on rent, which can make it difficult for families to afford basic items like food, clothing, transportation, and health care. In 2015, more than four in 10 households had housing costs that exceeded 30 percent of household income; and

WHEREAS, due to the lack of supply and subsidized housing, rents in California cities are some of the highest in the nation; and

WHEREAS, according to the most recent Market Median Report by the Berkeley Rent Board, the median for a 1-bedroom apartment in 2017 was \$2,027 and \$2,800 for a 2-bedroom apartment. Rents in Berkeley have increased by 50-67% in the last five years; and

WHEREAS, rising housing costs and the lack of affordable housing has resulted in a displacement crisis in the Bay Area; and

WHEREAS, there are a variety of reasons why we are seeing an increase in displacement, including the lack of available and affordable housing, speculative evictions, and circumstances which affect an individual's ability to pay rent (illness, death in family, job loss, sudden rent increase); and

WHEREAS, if a renter receives an Unlawful Detainer and is unaware of their rights and responsibilities or is unable to appear in court, they lose their housing. Low-income renters need additional legal support to help them navigate the court system and remain housed; and

WHEREAS, the displacement of tenants has also deepened the region's homelessness crisis. According to the 2017 Berkeley Point-In-Time Homeless Count, 76% of those surveyed had previously resided in Alameda County. The majority of our city's homeless population are also chronically homeless, meaning they have been unhoused for one year or more; and

WHEREAS, helping tenants who are at risk of displacement is one of the most effective ways in preventing homelessness. Once a person becomes homeless, breaking that cycle can be costly, stress inducing, and time consuming; and

WHEREAS, in recognition of this growing displacement crisis, in June 2017, the Berkeley City Council allocated \$650,000 in both Fiscal Year 2018 and Fiscal Year 2019 towards eviction defense, emergency rental assistance and housing retention programs from Measure U1 tax receipts; and

WHEREAS, while these programs have been effective in preventing homelessness, the scale of the displacement crisis requires significantly more funding. A statewide approach is needed to provide legal support for renters facing displacement to level the playing field.

WHEREAS, Senate Bill 18, introduced by State Senator Nancy Skinner would create a statewide Homelessness Prevention and Legal Aid fund, which would provide funding for legal defense for tenants facing eviction and displacement. The bill would also create a guide of laws relating to landlord-tenant relations, allowing people to more easily understand their rights; and

WHEREAS, SB 18 is an important step to ensure that tenants throughout the state can defend themselves from eviction, supplementing local efforts to provide anti-displacement resources.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports SB 18, the Keep Californians Housed Act; and

BE IT FURTHER AND FINALLY RESOLVED that copies of this Resolution be sent to Senator Nancy Skinner, Assemblymember Buffy Wicks, and Governor Gavin Newsom.

**SENATE BILL**

**No. 18**

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**Introduced by Senator Skinner**  
**(Coauthors: Senators Beall and Wiener)**  
(Coauthors: Assembly Members Bonta and Wicks)

December 3, 2018

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An act to add Sections 50467 and 50490.6 to, and to add Chapter 4 (commencing with Section 50570) to Part 2 of Division 31 of, the Health and Safety Code, relating to housing, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 18, as introduced, Skinner. Keep Californians Housed Act.

Existing law establishes the Department of Housing and Community Development and requires, among other things, that it update and provide a revision of the California Statewide Housing Plan to the Legislature every 4 years, as provided.

This bill, no later than January 1, 2021, would require the department to develop and publish on its Internet Web site, and to annually update, a guide to all state laws pertaining to landlords and the landlord-tenant relationship. The bill would also require the department to survey each city in this state to determine which cities, if any, provide resources or programs to inform landlords of their legal rights and obligations and to post on its Internet Web site a list of those cities which, in the judgment of the department, have the most robust resources and programs.

Existing law requires the department to administer, among other housing programs, the California Emergency Solutions and Housing Program. Under that program, the department allocates grants to administrative entities, as defined, to be used for specified eligible activities, including rental assistance and housing relocation and

SB 18

— 2 —

stabilization services to ensure housing affordability to people experiencing homelessness or at risk of homelessness.

This bill would appropriate an unspecified sum from the General Fund to the department, to be used to provide statewide competitive grants for rental assistance under the California Emergency Solutions and Housing Program, as provided. The bill would also establish the Homelessness Prevention and Legal Aid Fund and require moneys in the fund to be used, upon appropriation, to provide legal aid to tenants facing eviction or displacement in the form of competitive grants awarded by the department, as provided.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. This act shall be known, and may be cited, as the
- 2 Keep Californians Housed Act.
- 3 SEC. 2. The Legislature finds and declares the following:
- 4 (a) California is experiencing a rental housing crisis. According
- 5 to analysis by the National Low Income Housing Coalition,
- 6 California has only 22 affordable and available rental homes for
- 7 every 100 extremely low income households.
- 8 (b) Due in part to lack of supply, California cities have some
- 9 of the highest rents in the nation. San Francisco’s rent is the most
- 10 expensive in the country, averaging \$3,300 per month for a
- 11 one-bedroom unit, and San Jose, Oakland, Los Angeles, and
- 12 Anaheim are all in the top 10 for highest rents in the nation.
- 13 (c) About 29 percent of California renters spend more than
- 14 one-half of their income on rent, which can make it difficult for
- 15 families to afford basic items like food, clothing, transportation,
- 16 and health care. In 2015, more than four in 10 households had
- 17 housing costs that exceeded 30 percent of household income.
- 18 (d) The housing crisis harms families across California and has
- 19 resulted in higher levels of homelessness or displacement of
- 20 previously housed individuals and families. One quarter of the
- 21 nation’s homeless population, and half of the nation’s unsheltered
- 22 homeless, now live in California.
- 23 (e) Providing emergency financial assistance and legal aid to
- 24 keep residents from being evicted will prevent evictions and
- 25 potentially break the cycle of poverty.

1 SEC. 3. Section 50467 is added to the Health and Safety Code,  
2 to read:

3 50467. (a) (1) No later than January 1, 2021, the department  
4 shall develop and publish on its Internet Web site a guide to all  
5 state laws pertaining to landlords and the landlord-tenant  
6 relationship. The department shall update the guide annually  
7 thereafter.

8 (2) In developing the guide required by this subdivision, the  
9 department shall include a template for cities and counties to add  
10 information pertaining to their ordinances regulating the  
11 landlord-tenant relationship. The department shall make the guide,  
12 along with the template required by this paragraph, available to  
13 each city and each county in this state in a form that allows for a  
14 city or county to add information pertaining to its ordinances.

15 (b) The department shall survey each city in this state to  
16 determine which cities, if any, provide resources or programs to  
17 inform landlords of their legal rights and obligations. The  
18 department shall publish on its Internet Web site a list of those  
19 cities which, in the judgment of the department, have the most  
20 robust resources and programs.

21 SEC. 4. Section 50490.6 is added to the Health and Safety  
22 Code, to read:

23 50490.6. (a) In addition to any other moneys made available  
24 for purposes of the program, the sum of \_\_\_\_ dollars (\$\_\_\_\_) is  
25 hereby appropriated, notwithstanding Section 13340 of the  
26 Government Code and without regard to fiscal year, from the  
27 General Fund to the department to be used as provided in this  
28 section.

29 (b) The department shall distribute funds made available  
30 pursuant to subdivision (a) to administrative entities in the form  
31 of grants awarded on a competitive basis. In administering this  
32 competitive grant program, the department shall award funds to  
33 administrative entities based on demonstrated need and ensure  
34 geographic diversity in the distribution of grant funds. Grants  
35 awarded to administrative entities pursuant to this section shall  
36 supplement, and shall not supplant, moneys otherwise allocated  
37 to them pursuant to subdivision (a) of Section 50490.2.

38 (c) An administrative entity that receives a grant pursuant to  
39 this section shall use the funds awarded pursuant to this section

SB 18

— 4 —

1 exclusively for those eligible activities described in paragraph (1)  
2 of subdivision (a) of Section 50490.4.

3 SEC. 5. Chapter 4 (commencing with Section 50570) is added  
4 to Part 2 of Division 31 of the Health and Safety Code, to read:

5

6 CHAPTER 4. HOMELESSNESS PREVENTION AND LEGAL AID

7

8 50570. (a) There is hereby created in the State Treasury the  
9 Homelessness Prevention and Legal Aid Fund.

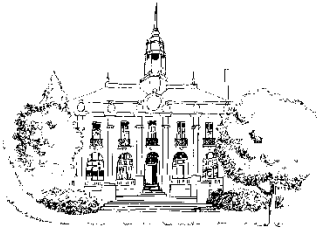
10 (b) Upon appropriation by the Legislature, all moneys in the  
11 fund shall be used for the purpose of providing legal aid to tenants  
12 facing eviction, including by means of an unlawful detainer action  
13 pursuant to Chapter 4 (commencing with Section 1159) of Title 3  
14 of Part 3 of the Code of Civil Procedure, or displacement.

15 (c) The department shall distribute funds made available for  
16 purposes of this chapter in the form of grants awarded on a  
17 competitive basis, including grants to cities and counties to  
18 establish their own tenant legal aid programs, as provided by law.

O







## Kriss Worthington

Councilmember, City of Berkeley, District 7  
2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
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### CONSENT CALENDAR

November 27th, 2018

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kriss Worthington  
Subject: Refer to the City Manager to consider boycotting Amazon for its role in tracking immigrants in cooperation with ICE and abusive working conditions **and its labor practices toward its employees.**

### RECOMMENDATION

Refer to the City Manager to consider the City of Berkeley boycotting Amazon and refrain from using its services to purchase goods for city use.

### BACKGROUND

This referral is requested to be considered along to be with the Sanctuary Contracting Ordinance and the Resolution declaring City of Berkeley will not contract with or invest City funds in any entity involved in the production or upgrading of weapons.

A recent report released by several Latin and immigration nonprofits including Mijente, The National Immigration Project, Immigrant Defense Project, and Empower LLC has implicated the tech giant Amazon in playing a central role in the Trump administration's effort to track and detain immigrants. Amazon has done this by providing federal agencies such as ICE and DHS use of its cloud storage to host data collected by Palantir, another company named in the report which designed the Investigative Case Management system crucial to ICE's operations by using a vast ecosystem that combines public and private data making it easier to track immigrants and deport them. Little information is known about the inner workings of this software or how ICE uses it but after its implementation arrests increased 42% compared to the previous year. While it is not the only company to store and manage data for ICE's use according to the report Amazon has the most federal authorizations for government data out of them all.

By profiting off the Trump Administration's campaign against immigrants by allowing ICE to use its services, Amazon is picking a side whether it wants to admit it or not. While Page 1 of 2 Palantir is exclusively a software business, Amazon still relies on much of its profits being generated by sales of physical merchandise and originally made a name for itself as the convenient one stop market place for everything.

Moreover, Amazon has come under fire recently for its labor practices which involve using surveillance technology to monitor its warehouse employees and punishes them if they do not meet their targets in time. On top of this, Amazon has tried to prevent its workers from unionizing. Recently, Elizabeth Warren and Bernie Sanders have sent a letter to CEO Jeff Bezos asking him to look into allegations of his company deliberately distributing anti-union materials.

Therefore, the City of Berkeley should consider that it will boycott Amazon and not use its services to purchase goods either for city use or for official events and commit to finding ethical alternatives. Setting this example will hopefully encourage other cities to follow suit sending a message to Amazon to prioritize human lives over money.

FINANCIAL IMPLICATIONS:

Minimal

ENVIRONMENTAL SUSTAINABILITY:

No negative impact and consistent with city standards.

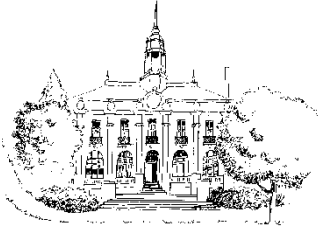
MORE INFORMATION

1. <https://mijente.net/2018/10/23/whos-behind-ice-the-tech-companies-fueling-deportations/>
2. <http://www.nydailynews.com/news/national/ny-news-amazon-tech-companies-transforming-immigration-enforcement-20181023-story.html?fbclid=IwAR3Pk9XQWZviN-5gNm-bYIpaVZrX5J9zvoLjsoV7KYaB8AGOG6YF2z52Hck>
3. <https://www.technologyreview.com/s/612335/amazon-is-the-invisible-backbone-behind-ices-immigration-crackdown/>
4. [https://www.washingtonpost.com/business/2018/10/17/bernie-sanders-elizabeth-warren-target-amazon-over-labor-practices/?noredirect=on&utm\\_term=.546918a7150f](https://www.washingtonpost.com/business/2018/10/17/bernie-sanders-elizabeth-warren-target-amazon-over-labor-practices/?noredirect=on&utm_term=.546918a7150f)
5. <https://www.pastemagazine.com/articles/2017/12/7-examples-how-amazon-treats-their-90000-warehouse.html>
6. <https://www.theguardian.com/commentisfree/2018/jul/08/amazon-jeff-bezos-unionize-working-conditions>

CONTACT PERSON:

Councilmember Kriss Worthington  
Raja Sutherland

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## Kriss Worthington

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### ACTION CALENDAR

January 22, 2019

*(Continued from November 27, 2018)*

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kriss Worthington and Councilmember Cheryl Davila  
Subject: Refer to the City Manager to consider boycotting Amazon for its role in tracking immigrants in cooperation with ICE

### RECOMMENDATION

Refer to the City Manager to consider the City of Berkeley boycotting Amazon and refrain from using its services to purchase goods for city use.

### BACKGROUND

This referral is requested to be considered along to be with the Sanctuary Contracting Ordinance and the Resolution declaring City of Berkeley will not contract with or invest City funds in any entity involved in the production or upgrading of weapons.

A recent report released by several Latin and immigration nonprofits including Mijente, The National Immigration Project, Immigrant Defense Project, and Empower LLC has implicated the tech giant Amazon in playing a central role in the Trump administration's effort to track and detain immigrants. Amazon has done this by providing federal agencies such as ICE and DHS use of its cloud storage to host data collected by Palantir, another company named in the report which designed the Investigative Case Management system crucial to ICE's operations by using a vast ecosystem that combines public and private data making it easier to track immigrants and deport them. Little information is known about the inner workings of this software or how ICE uses it but after its implementation arrests increased 42% compared to the previous year. While it is not the only company to store and manage data for ICE's use according to the report Amazon has the most federal authorizations for government data out of them all.

By profiting off the Trump Administration's campaign against immigrants by allowing ICE to use its services, Amazon is picking a side whether it wants to admit it or not. While Palantir is exclusively a software business, Amazon still relies on much of its profits being generated by sales of physical merchandise and originally made a name for itself as the convenient one stop market place for everything. Therefore, the City of Berkeley should consider that it will boycott Amazon and not use its services to purchase goods either for city use or for official events and commit to finding ethical alternatives. Setting this example will hopefully encourage other cities to follow suit sending a message to Amazon to prioritize human lives over money.

FINANCIAL IMPLICATIONS:

Minimal

ENVIRONMENTAL SUSTAINABILITY:

No negative impact and consistent with city standards.

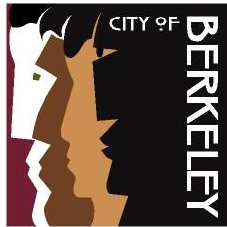
MORE INFORMATION

1. <https://mijente.net/2018/10/23/whos-behind-ice-the-tech-companies-fueling-deportations/>
2. <http://www.nydailynews.com/news/national/ny-news-amazon-tech-companies-transforming-immigration-enforcement-20181023-story.html?fbclid=IwAR3Pk9XQWZviN-5gNm-bYIpaVZrX5J9zvLjsoV7KYaB8AGOG6YF2z52Hck>
3. <https://www.technologyreview.com/s/612335/amazon-is-the-invisible-backbone-behind-ices-immigration-crackdown/>

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Office of the Mayor

## SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

**Meeting Date:** December 11, 2018

**Item Number:** Fa

**Item Description:** Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Projects

**Submitted by:** Mayor Jesse Arreguín

On September 15, 2015, the City Council referred Item 39 “Mandatory Green Stormwater Infrastructure in New Developments” to the City Manager, Planning Commission and Community Environmental Advisory Committee (see attachment). The proposal was modeled after ordinances adopted in San Francisco and Seattle requiring the instillation of stormwater infrastructure in larger projects.

The CEAC has brought its recommendations back to the City Council in response to this referral. Many of the recommendations proposed by CEAC are worth further study, however a key question is what projects should they apply to? My original referral only recommended that these requirements apply to projects of 100 units or more, or commercial developments that result in 5,000 square feet of new or replaced impervious surface.

I am proposing a modification to the CEAC recommendation as follows:

**Refer to the City Manager and Planning Commission to develop measures to incorporate Green Stormwater Infrastructure and water conservation features in new projects. The regulations should apply to large residential developments of 50 units or more or commercial developments that result in 5,000 square feet of new or replaced impervious surface. The City Manager and Planning Commission should consider the legislation adopted in San Francisco and Seattle and the following recommendations from the CEAC:**

- **Comply beyond the State and Alameda County current requirements;**

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- **Encourage the treating and detaining of runoff up to approximately the 85th percentile of water deposited in a 24-hour period;**
- **Establish site design measures that include minimizing impervious surfaces;**
- **Offer option(s) for property owners to fund in-lieu centralized off-site storm-water retention facilities that would hold an equivalent volume of runoff;**
- **Require abatements for newly paved areas over a specific size;**
- **Make exceptions for properties that offer significantly below-market rent or sale prices;**
- **Incorporate these measures for private property with similar measures for Public Works [City projects], while coordinating with EBMUD, BUSD, UCB and LBNL.**



Jesse Arreguín  
City Councilmember, District 4

CONSENT CALENDAR  
September 15, 2015

To: Honorable Mayor and Members of the City Council  
From: Councilmember Jesse Arreguín  
Subject: Mandatory Green Stormwater Infrastructure in New Developments

RECOMMENDATION

Refer to the City Manager and Planning and Community Environmental Advisory Commissions to develop an ordinance requiring large residential developments of 100 units or more or commercial developments that result in 5,000 square feet of new or replaced impervious surface, to incorporate Green Stormwater Infrastructure (GSI) and water conservation features into new projects.

BACKGROUND

Green Stormwater Infrastrucutre (GSI) is a form of drainage control that uses infiltration, evapotranspiration, or stormwater reuse. Examples of this include permeable pavement, bio swales, green roofs, rain gardens, cisterns and other rain catchment systems.

Cities such as San Francisco and Seattle (which like Berkeley, are bordered by a body of water) have regulations requiring the treatment of stormwater onsite. In April 2010, San Francisco passed an ordinance requiring developments that disturb 5,000 square feet of surface to include stormwater management controls (San Francisco Public Works Code, Article 4.2, Section 147-147.6). Seattle's Stormwater Code (Seattle Municipal Code Section 22.800-22.808) requires the implementation of GSI on developments that add or replace 2,000 square feet of impervious surfaces to the maximum extent possible with the purpose of infiltration, retention, and dispersal.

The City of Berkeley has already taken some steps to promote the use of Green Infrastructure as a way to mitigate negative impacts to our City's watersheds. On June 23, 2009, the City Council passed Resolution No. 64,507, which implemented Bay-Friendly Landscaping policies under the Alameda County Waste Management Authority. The City also complies with the Alameda County Clean Water Program, as passed in Resolution No. 66,004 on February 5, 2013, which aims at reducing pollutants from urban storm runoff. In addition, Measure M funds have supported a number of publicly-funded green infrastructure projects throughout the city. However in order to make a measurable difference to reduce storm water runoff and to conserve water, and to better implement the city's adopted Watershed Management Plan, private developments should install green infrastructure features at the time of construction.

Requiring GSI in developments will help the City better achieve these goals and help mitigate environmental impacts on our watersheds and Bay.

FINANCIAL IMPLICATIONS

Staff Time

ENVIRONMENTAL SUSTAINABILITY

Green Stormwater Infrastructure is a necessity given California's historic drought and West Berkeley's flooding experiences during any sizeable storm. GSI helps in preserving the natural flow of storm runoff which is often obstructed in urban areas. GSI has the ability to retain water, prevent runoff which leads to flooding, and remove pollutants among other environmentally beneficial factors.

CONTACT PERSON

Jesse Arreguin, Councilmember, District 4      510-981-7140

Attachments:

- 1: San Francisco Public Works Code, Article 4.2, Section 147-147.6
- 2: Seattle Municipal Code Section 22.800-22.808



83-10

FILE NO. 100102

ORDINANCE NO.

[Requiring the Development and Maintenance of Stormwater Management Controls]

Ordinance amending the San Francisco Public Works Code by repealing Article 4.2, sections 140 – 149.4, and adding Article 4.2, sections 147 – 147.6, requiring the development and maintenance of stormwater management controls for specified activities that disturb 5,000 square feet or more of the ground surface, and are subject to building, planning and subdivision approvals.

Note: Additions are single-underline italics Times New Roman; deletions are ~~strikethrough italics Times New Roman~~. Board amendment additions are double underlined. Board amendment deletions are ~~strikethrough-normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Environmental Findings. The Planning Department has determined that the actions contemplated in this Ordinance are in compliance with the California Environmental Quality Act (California Public Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 100102 and is incorporated herein by reference.

Section 2. The San Francisco Public Works Code is hereby amended by repealing Sections 140 – 149.4 of Article 4.2.

Section 3. The San Francisco Public Works Code is hereby amended by adding Sections 147 – 147.6, to Article 4.2, to read as follows:

Article 4.2. SEWER SYSTEM MANAGEMENT.

Section 147. Stormwater Management

(a) The intent of Sections 147 – 147.6 is to protect and enhance the water quality in the City and County of San Francisco's sewer system, stormwater collection system and receiving

1 waters pursuant to, and consistent with Federal and State laws, lawful standards and orders  
2 applicable to stormwater and urban runoff control, and the City's authority to manage and  
3 operate its drainage systems.

4 (b) Urban runoff is a significant cause of pollution throughout California. Pollutants of  
5 concern found in urban runoff include sediments, non-sediment solids, nutrients, pathogens,  
6 oxygen-demanding substances, petroleum hydrocarbons, heavy metals, floatables, polycyclic  
7 aromatic hydrocarbons (PAHs), trash, and pesticides and herbicides.

8 (c) During urban development, two important changes occur. First, where no urban  
9 development has previously occurred, natural vegetated pervious ground cover is converted  
10 to impervious surfaces such as paved highways, streets, rooftops, and parking lots. Natural  
11 vegetated soil can both absorb rainwater and remove pollutants, providing a very effective  
12 purification process. Because pavement and concrete can neither absorb water nor remove  
13 pollutants, the natural purification characteristics of the land are lost. Second, urban  
14 development creates new pollutant sources, including vehicle emissions, vehicle maintenance  
15 wastes, pesticides, household hazardous wastes, pet wastes, trash, and other contaminants  
16 that can be washed into the City's stormwater collection systems.

17 (d) A high percentage of impervious area correlates to a higher rate of stormwater  
18 runoff, which generates greater pollutant loadings to the stormwater collection system,  
19 resulting in turbid water, nutrient enrichment, bacterial contamination, toxic compounds,  
20 temperature increases, and increases of trash or debris.

21 (e) When water quality impacts are considered during the planning stages of a project,  
22 new development and redevelopment projects can more efficiently incorporate measures to  
23 protect water quality.

1 (f) Sections 147 – 147.6 protect the health, safety and general welfare of the City's  
2 residents by:

3 (1) minimizing increases in pollution caused by stormwater runoff from development  
4 that would otherwise degrade local water quality;

5 (3) controlling the discharge to the City's sewer and drainage systems from spills,  
6 dumping or disposal of pollutants; and

7 (4) reducing stormwater run-off rates, volume, and nonpoint source pollution  
8 whenever possible, through stormwater management controls, and ensuring that  
9 these management controls are safe and properly maintained.

10 Section 147.1. Definitions.

11 In addition to the definitions provided in section 119 of Article 4.1 of this Code, the  
12 following definitions shall apply:

13 (a) Best management practices or "BMPs." Structural devices, measures, or programs  
14 used to reduce pollution in stormwater runoff. BMPs manage the quantity and improve the  
15 quality of stormwater runoff in accordance with the Guidelines and applicable state and  
16 federal regulatory requirements.

17 (b) Department. The San Francisco Public Utilities Commission. With regard to  
18 stormwater management in areas of the City under the jurisdiction of the Port Commission,  
19 "Department" means the San Francisco Port Commission until the Port Commission adopts  
20 its own standards and procedures.

21 (c) Development Project. Any activity disturbing 5,000 square feet or more of the  
22 ground surface, measured cumulatively from the effective date of this Article. Activities that  
23 disturb the ground surface include, but are not limited to, the construction, modification,  
24 conversion, or alteration of any building or structure and associated grading, filling,  
25

1 excavation, change in the existing topography, and the addition or replacement of impervious  
2 surface. All sidewalks, parking, driveways, and landscaped and irrigated areas constructed in  
3 conjunction with the Development Project are included in the project area. Development  
4 Projects do not include interior remodeling projects, maintenance activities such as top-layer  
5 grinding, repaving, and re-roofing, or modifications, conversions or alterations of buildings or  
6 structures that does not increase the ground surface footprint of the building or structure.

7 (d) Development runoff requirements. The performance standards set forth in the  
8 Guidelines to address both the construction and post-construction phase impacts of new  
9 Development Projects on stormwater quality.

10 (e) General Manager. The General Manager of the Public Utilities Commission of the  
11 City, or a designated representative of the General Manager. With regard to stormwater  
12 management in areas of the City under the jurisdiction of the Port Commission, the Executive  
13 Director of the San Francisco Port Commission or a designated representative of the  
14 Executive Director shall have the same authority under this Article as the General Manager  
15 until the Port Commission adopts it own standards and procedures regarding stormwater  
16 management in all areas under Port Commission jurisdiction.

17 (f) Guidelines. The Stormwater Design Guidelines adopted by the San Francisco Public  
18 Utilities Commission or the San Francisco Port Commission. The Guidelines contain  
19 requirements pertaining to the type, design, sizing, and maintenance of post-construction  
20 stormwater BMPs.

21 (g) Low Impact Design (LID). A stormwater management approach that promotes the  
22 use of ecological and landscape-based systems that mimic pre-development drainage  
23 patterns and hydrologic processes by increasing retention, detention, infiltration, and  
24 treatment of stormwater at its source.

1 (h) Non-Stormwater Discharge. Any discharge to the City's Stormwater Collection  
2 System that is not composed entirely of Stormwater.

3 (i) Pollutant. Any substance listed in sec. 119(aa) of Article 4.1 of the Public Works  
4 Code or any substance described as a pollutant in the Guidelines.

5 (j) Separate Stormwater/sewer System. Stormwater and sanitary sewage collection  
6 facilities that convey, treat and discharge stormwater and sewage in separated catchbasins,  
7 pipelines, treatment facilities, outfalls, and other facilities, and do not combine stormwater and  
8 sewage in the same facilities.

9 (k) Stormwater. Water that originates from atmospheric moisture (rainfall or snowfall)  
10 and that falls onto land, water or other surfaces.

11 (l) Stormwater Collection System. All City facilities operated by the San Francisco  
12 Public Utilities Commission or the Port of San Francisco for collecting, transporting, treating  
13 and disposing of stormwater. For purposes of this Article, the Stormwater Collection System  
14 includes facilities owned and operated by public entities other than the City, where such  
15 facilities direct stormwater into the Stormwater Collection System and are subject to the  
16 jurisdiction of the San Francisco Public Utilities Commission or the Port of San Francisco as  
17 defined by law, contract, or interjurisdictional agreement.

18 (m) Stormwater Control. A device designed to remove pollution in stormwater runoff  
19 through detention, retention, filtration, direct plant uptake, or infiltration.

20 (n) Stormwater Control Plan. A plan that meets all applicable criteria, performance  
21 standards and other requirements contained in this Article and the Guidelines.

22 Section 147.2. Stormwater Control Plan

23 (a) Development Projects. Every application for a Development Project , including, but  
24 not limited to, a building or encroachment permit conditional use permit, variance, site permit,  
25

1 or design review, shall be accompanied by a Stormwater Control Plan that meets the  
2 stormwater control criteria provided by the Guidelines. No City department shall approve or  
3 issue a conditional use permit, variance, site permit, design review approval, building or  
4 encroachment permit unless and until a Stormwater Control Plan developed in accordance  
5 with this Article and the Guidelines has been approved by the General Manager. All projects  
6 subject to the stormwater management requirements of Chapter 13C of the San Francisco  
7 Building Code shall comply with the requirements of the Guidelines.

8 (b) Subdivision Approvals.

9 (1) Parcel Map or Tentative Subdivision Map Conditions. The Director of Public  
10 Works shall not approve a tentative subdivision map or a parcel map for any property unless  
11 a condition is imposed requiring compliance with all applicable Stormwater Control Plans to  
12 serve the potential uses of the property covered by the parcel map or tentative subdivision  
13 map, as may be further specified in the provisions of this Article or the Guidelines.

14 (2) Subdivision Regulations. The Director of Public Works shall adopt regulations  
15 as necessary, consistent with and in furtherance of this Article, to ensure that all subdividers  
16 of property subject to the provisions of this ordinance provide a Stormwater Control Plan in  
17 compliance with this Article and the Guidelines.

18 (3) Final Maps. The Director of Public Works shall not endorse and file a final map  
19 for property within the boundaries of the City and County of San Francisco without first  
20 determining whether:

21 (A) The subdivider has complied with the conditions imposed on the tentative  
22 subdivision map or parcel map, pursuant to this Article and the Guidelines; and  
23  
24  
25

1 (B) For any such conditions not fully satisfied prior to the recordation of the final  
2 map, the subdivider has signed a certificate of agreement and/or improvement agreement, to  
3 ensure compliance with such conditions.

4 (4) This Subsection (b) shall not apply to tentative subdivision maps or parcel  
5 maps submitted solely for the purposes of condominium conversion, as defined in San  
6 Francisco Subdivision Code Section 1308(d).

7 Sec. 147.3. Limitations and Prohibited Discharges.

8 (a) The establishment, use, maintenance or continuation of any unauthorized drainage  
9 connections to the Stormwater Collection System is prohibited.

10 (b) The discharge of Pollutants and Non-stormwater Discharges into the stormwater  
11 collection facilities located in the Separate Stormwater/sewer System portions of the  
12 Stormwater Collection System is prohibited, except as provided in this section.

13 (c) The following discharges are exempt from the prohibitions set forth subsection (b)  
14 above if the Regional Water Quality Control Board approves the exempted category under  
15 section C. 11. of the City's NPDES permit: uncontaminated pumped groundwater, foundation  
16 drains, water from crawl space pumps, footing drains, air conditioning condensate, irrigation  
17 water, landscape irrigation, lawn or garden watering, planned and unplanned discharges from  
18 potable water sources, water line and hydrant flushing, individual residential car washing,  
19 discharges or flows from emergency fire fighting activities, dechlorinated swimming pool  
20 discharges.

21 Section 147.4. Compliance with Maintenance and Inspection Requirements.

22 (a) All Stormwater Controls shall be maintained according to the Guidelines and the  
23 operation and maintenance plan included in the approved Stormwater Control Plan. The  
24 person(s) or organization(s) responsible for maintenance shall be designated in the plan.  
25

1 Those persons responsible for maintenance shall inspect the Stormwater Controls at least  
2 annually and shall maintain the Stormwater Controls as required by the Guidelines and  
3 described in the Stormwater Control Plan.

4 (b) Operation and Maintenance Inspection and Certificates. Every person who owns,  
5 leases or operates any Stormwater Control or Controls must provide annual self-certification  
6 for inspection and maintenance, as set forth in the Guidelines.

7 (c) The General Manager may perform routine or scheduled inspections, as may be  
8 deemed necessary in the General Manager's sole discretion to carry out the intent of this  
9 Article and the Guidelines, including, but not limited to, random sampling or sampling in areas  
10 with evidence of Stormwater contamination, evidence of the discharge of Non-stormwater to  
11 the Stormwater Collection System, or similar activities.

12 (d) Authority to Sample and Establish Sampling Devices. The General Manager may  
13 require any person discharging Stormwater to the Stormwater Collection System to provide  
14 devices or locations necessary to conduct sampling or metering operations.

15 (e) Notification of Spills. All persons in charge of the Stormwater Controls shall  
16 provide immediate notification to the General Manager of any suspected, confirmed or  
17 unconfirmed release of pollutants creating a risk of non-stormwater discharge into the  
18 Stormwater Collection System. Such persons shall take all necessary steps to ensure the  
19 detection and containment and clean up of such release. This notification requirement is in  
20 addition to and not in lieu of other required notifications.

21 (f) Requirement to Test or Monitor. The General Manager may require that any person  
22 responsible for Stormwater Controls undertake such monitoring activities or analysis and  
23 furnish such reports as the General Manager may specify.

24 Section 147.5 Enforcement and Cost Reimbursement.  
25



1 Any violation of this Article may be enforced by the General Manager pursuant to section 132  
2 of Article 4.1 of the Public Works Code. Persons violating any provision of this Article, the  
3 Guidelines, or department regulations may be subject to penalties and abatement in  
4 accordance with the Guidelines and sections 133 and 134 of Article 4.1 of the Public Works  
5 Code.

6 Section 147.6 Severability

7 If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this  
8 Article, is for any reason held to be unconstitutional, invalid or ineffective by any court of  
9 competent jurisdiction, such decision shall not affect the validity or effectiveness of the  
10 remaining portions of this Article. The Board of Supervisors declares that it would have  
11 passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this  
12 Article irrespective of the fact that any one or more sections, subsections, subdivisions,  
13 paragraphs, sentences, clauses, or phrases could be declared unconstitutional, invalid or  
14 ineffective.

17 APPROVED AS TO FORM:  
18 DENNIS A. HERRERA, City Attorney

19 By:   
20 JOHN RODDY  
21 Deputy City Attorney



City and County of San Francisco  
Tails  
Ordinance

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

File Number: 100102

Date Passed: April 13, 2010

Ordinance amending the San Francisco Public Works Code by repealing Article 4.2, Sections 140 - 149.4, and adding Article 4.2, Sections 147 - 147.6, requiring the development and maintenance of stormwater management controls for specified activities that disturb 5,000 square feet or more of the ground surface, and are subject to building, planning and subdivision approvals.

April 06, 2010 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 10 - Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

Excused: 1 - Alioto-Pier

April 13, 2010 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

File No. 100102

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 4/13/2010 by the Board of Supervisors of the City and County of San Francisco.

Mayor Gavin Newsom

  
Angela Calvillo  
Clerk of the Board

4/22/2010

Date Approved

Subtitle VIII. - Stormwater Code<sup>[17]</sup>

Footnotes:

--- (17) ---

**Cross reference**— For provisions regarding emergency control of drainage problems, mud flows and earth slides, see Chapter 10.06 of this Code.

## Chapter 22.800 - TITLE, PURPOSE, SCOPE AND AUTHORITY

Sections:

### 22.800.010 - Title

This subtitle, comprised of Chapters 22.800 through 22.808, shall be known as the "Stormwater Code" and may be cited as such.

(Ord. 123105, § 2, 2009.)

### 22.800.020 - Purpose

- A. The provisions of this subtitle shall be liberally construed to accomplish its remedial purposes, which are:
1. Protect, to the greatest extent practicable, life, property and the environment from loss, injury and damage by pollution, erosion, flooding, landslides, strong ground motion, soil liquefaction, accelerated soil creep, settlement and subsidence, and other potential hazards, whether from natural causes or from human activity;
  2. Protect the public interest in drainage and related functions of drainage basins, watercourses and shoreline areas;
  3. Protect receiving waters from pollution, mechanical damage, excessive flows and other conditions in their drainage basins which will increase the rate of downcutting, streambank erosion, and/or the degree of turbidity, siltation and other forms of pollution, or which will reduce their low flows or low levels to levels which degrade the environment, reduce recharging of groundwater, or endanger aquatic and benthic life within these receiving waters and receiving waters of the state;
  4. Meet the requirements of state and federal law and the City's municipal stormwater National Pollutant Discharge Elimination System ("NPDES") permit;
  5. To protect the functions and values of environmentally critical areas as required under the state's Growth Management Act and Shoreline Management Act;
  6. To protect the public drainage system from loss, injury and damage by pollution, erosion, flooding, landslides, strong ground motion, soil liquefaction, accelerated soil creep, settlement and subsidence, and other potential hazards, whether from natural causes or from human activity; and
  7. Fulfill the responsibilities of the City as trustee of the environment for future generations.
- B. It is expressly the purpose of this subtitle to provide for and promote the health, safety and welfare of the general public. This subtitle is not intended to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by its terms.
- C. It is expressly acknowledged that water quality degradation can result either directly from one discharge or through the collective impact of many small discharges. Therefore, the water quality protection measures in this subtitle are necessary to protect the health, safety and welfare of the residents of Seattle and the integrity of natural resources for the benefit of all and for the purposes of this subtitle. Such water quality protection measures are required under the federal Clean Water Act, 33 U.S.C. Section 1251, et seq., and in response to the obligations of the City's municipal

stormwater discharge permit, issued by the State of Washington under the federal National Pollutant Discharge Elimination System program.

(Ord. 123105, § 2, 2009.)

22.800.030 - Scope and Applicability

This subtitle applies to:

- A. All grading and drainage and erosion control, whether or not a permit is required;
- B. All land disturbing activities, whether or not a permit is required;
- C. All discharges directly or indirectly to a public drainage system;
- D. All discharges directly or indirectly into receiving waters within or contiguous to Seattle city limits;
- E. All new and existing land uses; and
- F. All real property.

(Ord. 123105, § 2, 2009.)

22.800.040 - Exemptions, Adjustments, and Exceptions

A. Exemptions.

- 1. The following land uses are exempt from the provisions of this subtitle:
  - a. Commercial agriculture, including only those activities conducted on lands defined in RCW 84.34.020(2), and production of crops or livestock for wholesale trade; and
  - b. Forest practices regulated under Title 222 Washington Administrative Code, except for Class IV general forest practices, as defined in WAC 222-16-050, that are conversions from timber land to other uses.
- 2. The following land disturbing activities are not required to comply with the specific minimum requirements listed below.
  - a. Maintenance, repair, or installation of underground or overhead utility facilities, such as, but not limited to, pipes, conduits and vaults, and that includes replacing the ground surface with in-kind material or materials with similar runoff characteristics are not required to comply with Section 22.805.080 (Minimum Requirements for Flow Control) or Section 22.805.090 (Minimum Requirements for Treatment), except as modified as follows:
    - 1) Installation of a new or replacement of an existing public drainage system, public combined sewer, or public sanitary sewer in the public right-of-way shall comply with Section 22.805.060 (Minimum requirements for Roadway Projects) when these activities are implemented as publicly bid capital improvement projects funded by Seattle Public Utilities; and
    - 2) Installation of underground or overhead utility facilities that are integral with and contiguous to a road-related project shall comply with Section 22.805.060 (Minimum requirements for Roadway Projects).
  - b. Road maintenance practices limited to the following activities are not required to comply with Section 22.805.060 (Minimum requirements for Roadway Projects), Section 22.805.080 (Minimum Requirements for Flow Control), or Section 22.805.090 (Minimum Requirements for Treatment):
    - 1) Pothole and square cut patching;
    - 2) Overlaying existing asphalt or concrete or brick pavement with asphalt or concrete without expanding the area of coverage;

- 3) Shoulder grading;
  - 4) Reshaping or regrading drainage ditches;
  - 5) Crack sealing; and
  - 6) Vegetation maintenance.
3. Sites that produce no runoff as determined by a licensed civil engineer using a continuous runoff model approved by the Director are not required to comply with Section 22.805.080 (Minimum Requirements for Flow Control).
  4. When a portion of the site being developed discharges only to the public combined sewer, that portion is not required to comply with the provision of subsection 22.805.020.K (Install Source Control BMPs) unless the Director determines that these activities pose a hazard to public health, safety or welfare; endanger any property; adversely affect the safety and operation of city right-of-way, utilities, or other property owned or maintained by the City; or adversely affect the functions and values of an environmentally critical area or buffer.
  5. Residential activities are not required to comply with the provision of subsection 22.805.020.K (Install Source Control BMPs) unless the Director determines that these activities pose a hazard to public health, safety or welfare; endanger any property; adversely affect the safety and operation of city right-of-way, utilities, or other property owned or maintained by the City; or adversely affect the functions and values of an environmentally critical area or buffer.
  6. With respect to all state highway right-of-way under WSDOT control within the jurisdiction of the City of Seattle, WSDOT shall use the current, approved Highway Runoff Manual (HRM) for its existing and new facilities and rights-of-way, as addressed in WAC 173-270-030(1) and (2). Exceptions to this exemption, where more stringent stormwater management requirements apply, are addressed in WAC 173-270-030(3)(b) and (c).
    - a. When a state highway is located in the jurisdiction of a local government that is required by Ecology to use more stringent standards to protect the quality of receiving waters, WSDOT shall comply with the same standards to promote uniform stormwater management.
    - b. WSDOT shall comply with standards identified in watershed action plans for WSDOT rights-of-way, as required by WAC 400-12-570.
    - c. Other instances where more stringent local stormwater standards apply are projects subject to tribal government standards or to the stormwater management-related permit conditions imposed under Chapter 25.09 to protect environmentally critical areas and their buffers (under the Growth Management Act), an NPDES permit, or shoreline master programs (under the Shoreline Management Act). In addition, WSDOT shall comply with local jurisdiction stormwater standards when WSDOT elects, and is granted permission, to discharge stormwater runoff into a municipality's stormwater system or combined sewer system.
- B. Adjustments.
1. The Director may approve a request for adjustments to the requirements of this subtitle when the Director finds that:
    - a. The adjustment provides substantially equivalent environmental protection; and
    - b. The objectives of safety, function, environmental protection, and facility maintenance are met, based on sound engineering practices.
  2. During construction, the Director may require, or the applicant may request, that the construction of drainage control facilities and associated project designs be adjusted if physical conditions are discovered on the site that are inconsistent with the assumptions upon which the approval was based, including but not limited to unexpected soil and/or water conditions, weather generated problems, or changes in the design of the improved areas.

3. A request by the applicant for adjustments shall be submitted to the Director for approval prior to implementation. The request shall be in writing and shall provide facts substantiating the requirements of subsection 22.805.080.B1, and if made during construction, the factors in subsection B2. Any such modifications made during the construction of drainage control facilities shall be recorded on the final approved drainage control plan, a revised copy of which shall be filed by the Director.

C. Exceptions.

1. The Director may approve a request for an exception to the requirements of this subtitle when the applicant demonstrates that the exception will not increase risks in the vicinity and/or downstream of the property to public health, safety and welfare, or to water quality, or to public and private property, and:
  - a. The requirement would cause a severe and unexpected financial hardship that outweighs the requirement's benefits, and the criteria for an adjustment cannot be met; or
  - b. The requirement would cause harm or a significant threat of harm to public health, safety and welfare, the environment, or public and private property, and the criteria for an adjustment cannot be met; or
  - c. The requirement is not technically feasible, and the criteria for an adjustment cannot be met; or
  - d. An emergency situation exists that necessitates approval of the exception.
2. An exception shall only be granted to the extent necessary to provide relief from the economic hardship, to alleviate the harm or threat of harm, to the degree that compliance with the requirement becomes technically feasible, or to perform the emergency work that the Director determines exists.
3. An applicant is not entitled to an exception, whether or not the criteria allowing approval of an exception are met.
4. The Director may require an applicant to provide additional information at the applicant's expense, including, but not limited to an engineer's report or analysis.
5. When an exception is granted, the Director may impose new or additional requirements to offset or mitigate harm that may be caused by granting the exception, or that would have been prevented if the exception had not been granted.
6. Public notice of an application for an exception and of the Director's decision on the application shall be provided in the manner prescribed for Type II land use decisions, as set forth in Chapter 23.76.
7. The Director's decision shall be in writing with written findings of fact. Decisions approving an exception based on severe and unexpected economic hardship shall address all the factors in subsection 22.805.080.C.8.
8. An application for an exception on the grounds of severe and unexpected financial hardship must describe, at a minimum, all of the following:
  - a. The current, pre-project use of the site; and
  - b. How application of the requirement(s) for which an exception is being requested restricts the proposed use of the site compared to the restrictions that existed prior to the adoption of this current subtitle; and
  - c. The possible remaining uses of the site if the exception were not granted; and
  - d. The uses of the site that would have been allowed prior to the adoption of this subtitle; and

- e. A comparison of the estimated amount and percentage of value loss as a result of the requirements versus the estimated amount and percentage of value loss as a result of requirements that existed prior to adoption of the requirements of this subtitle; and
  - f. The feasibility of the owner or developer to alter the project to apply the requirements of this subtitle.
9. In addition to rights under Chapter 3.02 of the Seattle Municipal Code, any person aggrieved by a Director's decision on an application for an exception may appeal to the Hearing Examiner's Office by filing an appeal, with the applicable filing fee, as set forth in Section 23.76.022. However, appeals of a Notice of Violation, Director's order, or invoice issued pursuant to this subtitle shall follow the required procedure established in Chapter 22.808 of this subtitle.
10. The Hearing Examiner shall affirm the Director's determination on the exception unless the examiner finds the determination is clearly erroneous based on substantial evidence. The applicant for the exception shall have the burden of proof on all issues related to justifying the exception.
11. The Director shall keep a record, including the Director's written findings of fact, on all approved requests for exceptions.

(Ord. [124758](#), § 1, 2015; Ord. 123105, § 2, 2009.)

#### 22.800.050 - Potentially Hazardous Locations

- A. Any site on a list, register, or data base compiled by the United States Environmental Protection Agency or the Washington State Department of Ecology for investigation, cleanup, or other action regarding contamination under any federal or state environmental law shall be a potentially hazardous location under this subtitle. When EPA or Ecology removes the site from the list, register or data base, or when the Director of DPD determines the owner has otherwise established the contamination does not pose a present or potential threat to human health or the environment, the site will no longer be considered a potentially hazardous location.
- B. The following property may also be designated by the Director of DPD as potentially hazardous locations:
  - 1. Existing and/or abandoned solid waste disposal sites;
  - 2. Hazardous waste treatment, storage, or disposal facilities, all as defined by the federal Solid Waste Disposal Act, 42 U.S.C. section 6901, et seq.

(Ord. 123105, § 2, 2009.)

#### 22.800.060 - Compliance With Other Laws

- A. The requirements of this subtitle are minimum requirements. They do not replace, repeal, abrogate, supersede or affect any other more stringent requirements, rules, regulations, covenants, standards, or restrictions. Where this subtitle imposes requirements that are more protective of human health or the environment than those set forth elsewhere, the provisions of this subtitle shall prevail. When this subtitle imposes requirements that are less protective of human health or the environment than those set forth elsewhere, the provisions of the more protective requirements shall prevail.
- B. Approvals and permits granted under this subtitle are not waivers of the requirements of any other laws, nor do they indicate compliance with any other laws. Compliance is still required with all applicable federal, state and local laws and regulations, including rules promulgated under authority of this subtitle.
- C. Compliance with the provisions of this subtitle and of regulations and manuals adopted by the City in relation to this subtitle does not necessarily mitigate all impacts to the environment. Thus, compliance with this subtitle and related regulations and manuals should not be construed as mitigating all drainage water or other environmental impacts, and additional mitigation may be

required to protect the environment. The primary obligation for compliance with this subtitle, and for preventing environmental harm on or from property, is placed upon responsible parties as defined by this subtitle.

(Ord. 123105, § 2, 2009.)

22.800.070 - Minimum Requirements for City Agency Projects

A. Compliance. City agencies shall comply with all the requirements of this subtitle except as specified below:

1. City agencies are not required to obtain permits and approvals under this subtitle, other than inspections as set out in subsection B of this section, for work performed within a public right-of-way or for work performed for the operation and maintenance of park lands under the control or jurisdiction of the Department of Parks and Recreation. Where the work occurs in a public right-of-way, it shall also comply with Seattle Municipal Code Title 15, Street and Sidewalk Use, including the applicable requirements to obtain permits or approvals.
2. A City agency project, as defined in Section 22.801.170, that is not required to obtain permit(s) and approval(s) per subsection 22.800.070.A.1 and meets all of the conditions set forth below, is not required to comply with Section 22.805.080 (Minimum Requirements for Flow Control) or Section 22.805.090 (Minimum Requirements for Treatment).
  - a. The project begins land disturbing activities within 18 months of the effective date of this subtitle, and;
  - b. The project complies with subsections 22.802.015.C.4, 22.802.016. B.1, and 22.802.016.B.2 of the Stormwater, Grading and Drainage Control Code that was made effective July 5, 2000 by Ordinance 119965, and
  - c. The project meets one or more of the following criteria:
    - 1) Project funding was appropriated as identified in Ordinance 122863 titled, "An ordinance adopting a budget, including a capital improvement program and a position list, for the City of Seattle for 2009"; or
    - 2) Project received or will receive voter approval of financing before January 1, 2009; or
    - 3) Project received or will receive funds based on grant application(s) submitted before January 1, 2009.

B. Inspection.

1. When the City conducts projects for which review and approval is required under Chapter 22.807 (Drainage Control Review and Application Requirements) the work shall be inspected by the City agency conducting the project or supervising the contract for the project. The inspector for the City agency shall be responsible for ascertaining that the grading and drainage control is done in a manner consistent with the requirements of this subtitle.
2. A City agency need not provide an inspector from its own agency provided either:
  - a. The work is inspected by an appropriate inspector from another City agency; or
  - b. The work is inspected by an appropriate inspector hired for that purpose by a City agency; or
  - c. The work is inspected by the licensed civil or geotechnical engineer who prepared the plans and specifications for the work; or
  - d. A permit or approval is obtained from the Director of DPD, and the work is inspected by the Director.



- C. Certification of Compliance. City agencies shall meet the same standards as non-City projects, except as provided in subsection 22.800.070.A, and shall certify that each individual project meets those standards.

(Ord. 123105, § 2, 2009.)

#### 22.800.075 - Compliance by Public Agencies

Whether or not they are required to obtain permits or submit documents, public agencies are subject to the substantive requirements of this subtitle, unless adjustments or exceptions are granted as set forth in Section 22.800.040 (Exemptions, Adjustments, and Exceptions) or the requirements have been waived under subsection 22.807.020.A.3.

(Ord. 123105, § 2, 2009.)

#### 22.800.080 - Authority

- A. For projects not conducted in the public right-of-way, the Director of DPD has authority regarding the provisions of this subtitle pertaining to grading, review of drainage control plans, and review of construction stormwater control plans, and has inspection and enforcement authority pertaining to temporary erosion and sediment control measures.
- B. The Director of SPU has authority regarding all other provisions of this subtitle pertaining to drainage water, drainage, and erosion control, including inspection and enforcement authority. The Director of SPU may delegate authority to the Director of DPD or the Director of Seattle Department of Transportation regarding the provisions of this subtitle pertaining to review of drainage control plans, review of erosion control plans, and inspection and enforcement authority pertaining to temporary erosion and sediment control measures for projects conducted in the public right-of-way.
- C. The Directors of DPD, SDOT and SPU are authorized to take actions necessary to implement the provisions and purposes of this subtitle in their respective spheres of authority to the extent allowed by law, including, but not limited to, the following: promulgating and amending rules and regulations, pursuant to the Administrative Code, Chapter 3.02 of the Seattle Municipal Code; establishing and conducting inspection programs; establishing and conducting or, as set forth in Section 22.802.040, requiring responsible parties to conduct monitoring programs, which may include sampling of discharges to or from drainage control facilities, the public drainage system, or receiving waters; taking enforcement action; abating nuisances; promulgating guidance and policy documents; and reviewing and approving, conditioning, or disapproving required submittals and applications for approvals and permits. The Directors are authorized to exercise their authority under this subtitle in a manner consistent with their legal obligations as determined by the courts or by statute.
- D. The Director of SPU is authorized to develop, review, or approve drainage basin plans for managing receiving waters, drainage water, and erosion within individual basins. A drainage basin plan may, when approved by the Director of SPU, be used to modify requirements of this subtitle, provided the level of protection for human health, safety and welfare, the environment, and public or private property will equal or exceed that which would otherwise be achieved. A drainage basin plan that modifies the minimum requirements of this subtitle at a drainage basin level must be reviewed and approved by Ecology and adopted by City ordinance.
- E. The Director of SPU is authorized, to the extent allowed by law, to develop, review, or approve an Integrated Drainage Plan as an equivalent means of complying with the requirements of this subtitle, in which the developer of a project voluntarily enters into an agreement with the Director of SPU to implement an Integrated Drainage Plan that is specific to one or more sites where best management practices are employed such that the cumulative effect on the discharge from the site(s) to the same receiving water is the same or better than that which would be achieved by a less integrated, site-by-site implementation of best management practices.
- F. The Director of SPU is authorized, to the extent allowed by law, to enter into an agreement with the developer of a project for the developer to voluntarily contribute funds toward the construction of one

or more drainage control facilities that mitigate the impacts to the same receiving water that have been identified as a consequence of the proposed development.

- G. The Director of SPU is authorized, to the extent allowed by law, to enter into an agreement with the developer of a project for the developer to voluntarily construct one or more drainage control facilities at an alternative location, determined by the Director, to mitigate the impacts to the same receiving water that have been identified as a consequence of the proposed development.
- H. If the Director of SPU determines that a discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, a private drainage system, or a receiving water within or contiguous to Seattle city limits, has exceeded, exceeds, or will exceed water quality standards at the point of assessment, or has caused or contributed, is causing or contributing, or will cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit, and cannot be adequately addressed by the required best management practices, then the Director of SPU has the authority, to the extent allowed by law, to issue an order under Chapter 22.808 requiring the responsible party to undertake more stringent or additional best management practices. These best management practices may include additional source control or structural best management practices or other actions necessary to cease the exceedance, the prohibited discharge, or causing or contributing to the known or likely violation of water quality standards in the receiving water or the known or likely violation of the City's municipal stormwater NPDES permit. Structural best management practices may include but shall not be limited to: drainage control facilities, structural source controls, treatment facilities, constructed facilities such as enclosures, covering and/or berming of container storage areas, and revised drainage systems. For existing discharges as opposed to new projects, the Director may allow 12 months to install a new flow control facility, structural source control, or treatment facility after the Director notifies the responsible party in writing of the Director's determination pursuant to this subsection and of the flow control facility, structural source control, or treatment facility that must be installed.
- I. Unless an adjustment per subsection 22.800.040.B or an exception per subsection 22.800.040.C is approved by the Director, an owner or occupant who is required, or who wishes, to connect to a public drainage system shall be required to extend the public drainage system if a public drainage system is not accessible within an abutting public area across the full frontage of the property.
- J. The Director of DPD has the authority, to the extent allowed by law, to require sites with addition or replacement of less than 5,000 square feet of impervious surface or with less than one acre of land disturbing activity to comply with the requirements set forth in Section 22.805.080 or Section 22.805.090 when necessary to accomplish the purposes of this subtitle. In making this determination, the Director of DPD may consider, but not be limited to, the following attributes of the site: location within an Environmentally Critical Area; proximity and tributary to an Environmentally Critical Area; and proximity and tributary to an area with known erosion or flooding problems.

(Ord. 123105, § 2, 2009.)

#### 22.800.090 - City Not Liable

- A. Nothing contained in this subtitle is intended to be nor shall be construed to create or form the basis for any liability on the part of the City, or its officers, employees or agents for any injury or damage resulting from the failure of responsible parties to comply with the provisions of this subtitle, or by reason or in consequence of any inspection, notice, order, certificate, permission or approval authorized or issued or done in connection with the implementation or enforcement of this subtitle, or by reason of any action or inaction on the part of the City related in any manner to the enforcement of this subtitle by its officers, employees or agents.
- B. The Director or any employee charged with the enforcement of this subtitle, acting in good faith and without malice on behalf of the City, shall not be personally liable for any damage that may accrue to persons or property as a result of any act required by the City, or by reason of any act or omission in the discharge of these duties. Any suit brought against the Director of DPD, Director of SPU or other

employee because of an act or omission performed in the enforcement of any provisions of this subtitle, shall be defended by the City.

- C. Nothing in this subtitle shall impose any liability on the City or any of its officers or employees for cleanup or any harm relating to sites containing hazardous materials, wastes or contaminated soil.

(Ord. 123105, § 2, 2009.)

## Chapter 22.801 - DEFINITIONS

### Sections:

#### 22.801.010 - General

For the purpose of this subtitle, the words listed in this chapter have the following meanings, unless the context clearly indicates otherwise. Terms relating to pollutants and to hazardous wastes, materials, and substances, where not defined in this subtitle, shall be as defined in Washington Administrative Code Chapters 173-303, 173-304 and 173-340, the Seattle Building Code or the Seattle Fire Code, including future amendments to those codes. Words used in the singular include the plural, and words used in the plural include the singular.

(Ord. 123105, § 2, 2009.)

#### 22.801.020 - "A"

"Agency" means any governmental entity or its subdivision.

"Agency, City" means "City agency" as defined in Section 25.09.520.

"Agency with jurisdiction" means those agencies with statutory authority to approve, condition or deny permits, such as the United States Environmental Protection Agency, the Washington State Department of Ecology or Public Health—Seattle & King County.

"Approved" means approved by the Director.

(Ord. 123668, § 1, 2011; Ord. 123105, § 2, 2009.)

#### 22.801.030 - "B"

"Basin plan" means a plan to manage the quality and quantity of drainage water in a watershed or a drainage basin, including watershed action plans.

"Basic treatment facility" means a drainage control facility designed to reduce concentrations of total suspended solids in drainage water.

"Best management practice (BMP)" means a schedule of activities, prohibitions of practices, operational and maintenance procedures, structural facilities, or managerial practice or device that, when used singly or in combination, prevents, reduces, or treats contamination of drainage water, prevents or reduces soil erosion, or prevents or reduces other adverse effects of drainage water on receiving waters. When the Directors develop rules and/or manuals prescribing best management practices for particular purposes, whether or not those rules and/or manuals are adopted by ordinance, BMPs prescribed in the rules and/or manuals shall be the BMPs required for compliance with this subtitle.

"Building permit" means a document issued by the Department of Planning and Development authorizing construction or other specified activity in accordance with the Seattle Building Code (Chapter 22.100) or the Seattle Residential Code (Chapter 22.150).

(Ord. 123105, § 2, 2009.)

#### 22.801.040 - "C"

"Capacity-constrained system" means a drainage system that the Director of SPU has determined to have inadequate capacity to carry drainage water.

"Cause or contribute to a violation" means and includes acts or omissions that create a violation, that increase the duration, extent or severity of a violation, or that aid or abet a violation.

"Certified Erosion and Sediment Control Lead (CESCL)" means an individual who has current certification through an approved erosion and sediment control training program that meets the minimum training standards established by the Washington State Department of Ecology.

"Civil engineer, licensed" means a person who is licensed by the State of Washington to practice civil engineering.

"City agency" means "City agency" as defined in Section 25.09.520.

"Combined sewer." See "public combined sewer."

"Construction Stormwater Control Plan" means a document that explains and illustrates the measures to be taken on the construction site to control pollutants on a construction project.

"Compaction" means the densification of earth material by mechanical means.

"Containment area" means the area designated for conducting pollution-generating activities for the purposes of implementing source controls or designing and installing source controls or treatment facilities.

"Contaminate" means the addition of sediment, any other pollutant or waste, or any illicit or prohibited discharge.

"Creek" means a Type 2-5 water as defined in WAC 222-16-031 and is used synonymously with "stream."

(Ord. 123105, § 2, 2009.)

#### 22.801.050 - "D"

"Damages" means monetary compensation for harm, loss, costs, or expenses incurred by the City, including, but not limited, to the following: costs of abating or correcting violations of this subtitle; fines or penalties the City incurs as a result of a violation of this subtitle; and costs to repair or clean the public drainage system as a result of a violation. For the purposes of this subtitle, damages do not include compensation to any person other than the City.

"Designated receiving water" means the Duwamish River, Puget Sound, Lake Washington, Lake Union, Elliott Bay, Portage Bay, Union Bay, the Lake Washington Ship Canal, and other receiving waters determined by the Director of SPU and approved by Ecology as having sufficient capacity to receive discharges of drainage water such that a site discharging to the designated receiving water is not required to implement flow control.

"Detention" means temporary storage of drainage water for the purpose of controlling the drainage discharge rate.

"Development" means land disturbing activity or the addition or replacement of impervious surface.

"Director" means the Director of the Department authorized to take a particular action, and the Director's designees, who may be employees of that department or another City department.

"Director of DPD" means the Director of the Department of Planning and Development of The City of Seattle and/or the designee of the Director of Planning and Development, who may be employees of that department or another City department.

"Director of SDOT" means the Director of Seattle Department of Transportation of The City of Seattle and/or the designee of the Director of Seattle Department of Transportation, who may be employees of that department or another City department.

"Director of SPU" means the Director of Seattle Public Utilities of The City of Seattle and/or the designee of the Director of Seattle Public Utilities, who may be employees of that department or another City department.

"Discharge point" means the location from which drainage water from a site is released.

"Discharge rate" means the rate at which drainage water is released from a site. The discharge rate is expressed as volume per unit of time, such as cubic feet per second.

"DPD" means the Department of Planning and Development.

"Drainage basin" means the tributary area or subunit of a watershed through which drainage water is collected, regulated, transported, and discharged to receiving waters.

"Drainage control" means the management of drainage water. Drainage control is accomplished through one or more of the following: collecting, conveying, and discharging drainage water; controlling the discharge rate from a site; controlling the flow duration from a site; and separating, treating or preventing the introduction of pollutants.

"Drainage control facility" means any facility, including best management practices, installed or constructed for the purpose of controlling the discharge rate, flow duration, quantity, and/or quality of drainage water.

"Drainage control plan" means a plan for collecting, controlling, transporting and disposing of drainage water falling upon, entering, flowing within, and exiting the site, including designs for drainage control facilities.

"Drainage system" means a system intended to collect, convey and control release of only drainage water. The system may be either publicly or privately owned or operated, and the system may serve public or private property. It includes constructed and/or natural components such as pipes, ditches, culverts, streams, creeks, or drainage control facilities.

"Drainage water" means stormwater and all other discharges that are permissible per subsection 22.802.030.A.

(Ord. 123105, § 2, 2009.)

22.801.060 - "E"

"Earth material" means any rock, gravel, natural soil, fill, or re-sedimented soil, or any combination thereof, but does not include any solid waste as defined by RCW 70.95.

"Ecology" means the Washington State Department of Ecology.

"Effective impervious surface" means those impervious surfaces that are connected via sheet flow or discrete conveyance to a drainage system.

"Enhanced treatment facility" means a drainage control facility designed to reduce concentrations of dissolved metals in drainage water.

"Environmentally critical area" means an area designated in Section 25.09.020.

"EPA" means the United States Environmental Protection Agency.

"Erosion" means the wearing away of the ground surface as a result of mass wasting or of the movement of wind, water, ice, or other geological agents, including such processes as gravitational creep. Erosion also means the detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

"Excavation" means the mechanical removal of earth material.

"Exception" means relief from a requirement of this subtitle to a specific project.

(Ord. 123105, § 2, 2009.)

22.801.070 - "F"

"Fill" means a deposit of earth material placed by artificial means.

"Flow control" means controlling the discharge rate, flow duration, or both of drainage water from the site through means such as infiltration or detention.

"Flow control facility" means a drainage control facility for controlling the discharge rate, flow duration, or both of drainage water from a site.

"Flow-critical receiving water" means a surface water that is not a designated receiving water as defined in this subtitle.

"Flow duration" means the aggregate time that peak flows are at or above a particular flow rate of interest.

(Ord. 123105, § 2, 2009.)

22.801.080 - "G"

"Garbage" means putrescible waste.

"Geotechnical engineer" or "Geotechnical/civil engineer" means a professional civil engineer licensed by The State of Washington who has at least four years of professional experience as a geotechnical engineer, including experience with landslide evaluation.

"Grading" means excavation, filling, in-place ground modification, removal of roots or stumps that includes ground disturbance, stockpiling of earth materials, or any combination thereof, including the establishment of a grade following demolition of a structure.

"Green stormwater infrastructure" means a drainage control facility that uses infiltration, evapotranspiration, or stormwater reuse. Examples of green stormwater infrastructure include permeable pavement, bioretention facilities, and green roofs.

(Ord. 123105, § 2, 2009.)

22.801.090 - "H"

"High-use sites" means sites that typically generate high concentrations of oil due to high traffic turnover or the frequent transfer of oil. High-use sites include:

1. An area of a commercial or industrial site subject to an expected average daily traffic (ADT) count equal to or greater than 100 vehicles per 1,000 square feet of gross building area;
2. An area of a commercial or industrial site subject to petroleum storage and transfer in excess of 1,500 gallons per year, not including routinely delivered heating oil;
3. An area of a commercial or industrial site subject to parking, storage or maintenance of 25 or more vehicles that are over 10 tons gross weight (trucks, buses, trains, heavy equipment, etc.);
4. A road intersection with a measured ADT count of 25,000 vehicles or more on the main roadway and 15,000 vehicles or more on any intersecting roadway, excluding projects proposing primarily pedestrian or bicycle use improvements.

(Ord. 123105, § 2, 2009.)

22.801.100 - "I"

"Impervious Surface" means any surface exposed to rainwater from which most water runs off. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, formal planters, parking lots or storage areas, concrete or asphalt paving, permeable paving, gravel surfaces subjected to vehicular traffic, compact gravel, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of stormwater. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for the purposes of

determining whether the thresholds for application of minimum requirements are exceeded. Open, uncovered retention/detention facilities shall be considered impervious surfaces for purposes of stormwater modeling.

Impervious surface, replaced. See "replaced or replacement of impervious surface."

"Infiltration" means the downward movement of water from the surface to the subsoil.

"Infiltration facility" means a drainage control facility that temporarily stores, and then percolates drainage water into the underlying soil.

"Integrated Drainage Plan" means a plan developed, reviewed, and approved per subsection 22.800.080.E.

"Interflow" means that portion of rainfall and other precipitation that infiltrates into the soil and moves laterally through the upper soil horizons until intercepted by a stream channel or until it returns to the surface.

"Inspector" means a City inspector, their designee, or licensed civil engineer performing the inspection work required by this subtitle.

(Ord. 123105, § 2, 2009.)

22.801.110 - "J"

"Joint project" means a project that is both a parcel-based project and a roadway project.

(Ord. 123105, § 2, 2009.)

22.801.130 - "L"

"Land disturbing activity" means any activity that results in a movement of earth, or a change in the existing soil cover, both vegetative and nonvegetative, or the existing topography. Land disturbing activities include, but are not limited to, clearing, grading, filling, excavation, or addition of new or the replacement of impervious surface. Compaction, excluding hot asphalt mix, that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices are not considered land disturbing activities.

"Large project" means a project including 5,000 square feet or more of new impervious surface or replaced impervious surface, individually or combined, or one acre or more of land disturbing activity.

"Listed creek basins" means Blue Ridge Creek, Broadview Creek, Discovery Park Creek, Durham Creek, Frink Creek, Golden Gardens Creek, Kiwanis Ravine/Wolfe Creek, Licton Springs Creek, Madrona Park Creek, Mee-Kwa-Mooks Creek, Mount Baker Park Creek, Puget Creek, Riverview Creek, Schmitz Creek, Taylor Creek, or Washington Park Creek.

(Ord. 123105, § 2, 2009.)

22.801.140 - "M"

"Master use permit" means a document issued by DPD giving permission for development or use of land or street right-of-way in accordance with Chapter 23.76.

"Maximum extent feasible" means the requirement is to be fully implemented, constrained only by the physical limitations of the site, practical considerations of engineering design, and reasonable considerations of financial costs and environmental impacts.

"Municipal stormwater NPDES permit" means the permit issued to the City under the federal Clean Water Act for public drainage systems within the City limits.

(Ord. 123105, § 2, 2009.)

22.801.150 - "N"

"Native vegetation" means "native vegetation" as defined in Section 25.09.520.

"Nutrient-critical receiving water" means a surface water or water segment that that has been listed as Category 5 (impaired) under Section 303(d) of the Clean Water Act for total phosphorus through the State of Washington's Water Quality Assessment program and approved by EPA.

"NPDES" means National Pollutant Discharge Elimination System, the national program for controlling discharges under the federal Clean Water Act.

"NPDES permit" means an authorization, license or equivalent control document issued by the United States Environmental Protection Agency or the Washington State Department of Ecology to implement the requirements of the NPDES program.

(Ord. 123105, § 2, 2009.)

22.801.160 - "O"

"Oil control treatment facility" means a drainage control facility designed to reduce concentrations of oil in drainage water.

"Owner" means any person having title to and/or responsibility for, a building or property, including a lessee, guardian, receiver or trustee, and the owner's duly authorized agent.

(Ord. 123105, § 2, 2009.)

22.801.170 - "P"

"Parcel-based project" means any project that is not a roadway project, single-family residential project, sidewalk project, or trail project.

"Person" means an individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust estate, firm, partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the State of Washington, political subdivision or agency of the State of Washington, public authority or other public body, corporation, limited liability company, association, society or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, and the United States or any instrumentality thereof.

"Pervious surface" means a surface that is not impervious. See also, "impervious surface".

"Phosphorus treatment facility" means a drainage control facility designed to reduce concentrations of phosphorus in drainage water.

"Plan" means a graphic or schematic representation, with accompanying notes, schedules, specifications and other related documents, or a document consisting of checklists, steps, actions, schedules, or other contents that has been prepared pursuant to this subtitle, such as a drainage control plan, construction stormwater control plan, stormwater pollution prevention plan, and integrated drainage plan.

"Pollution-generating activity" means any activity that is regulated by the joint SPU/DPD Directors' Rule titled, "Source Control Technical Requirements Manual" or activities with similar impacts on drainage water. These activities include, but are not limited to: cleaning and washing activities; transfer of liquid or solid material; production and application activities; dust, soil, and sediment control; commercial animal care and handling; log sorting and handling; boat building, mooring, maintenance, and repair; logging and tree removal; mining and quarrying of sand, gravel, rock, peat, clay, and other materials; cleaning and maintenance of swimming pool and spas; deicing and anti-icing operations for airports and streets; maintenance and management of roof and building drains at manufacturing and commercial buildings; maintenance and operation of railroad yards; maintenance of public and utility corridors and facilities; and maintenance of roadside ditches.

"Pollution-generating impervious surface" means those impervious surfaces considered to be a significant source of pollutants in drainage water. Such surfaces include those that are subject to:



vehicular use; certain industrial activities; or storage of erodible or leachable materials, wastes, or chemicals, and which receive direct rainfall or the run-on or blow-in of rainfall. Erodible or leachable materials, wastes, or chemicals are those substances which, when exposed to rainfall, measurably alter the physical or chemical characteristics of the drainage water. Examples include: erodible soils that are stockpiled; uncovered process wastes; manure; fertilizers; oily substances; ashes; kiln dust; and garbage dumpster leakage. Metal roofs are also considered to be PGIS unless they are coated with an inert, non-leachable material (e.g., baked-on enamel coating).

A surface, whether paved or not, shall be considered subject to vehicular use if it is regularly used by motor vehicles. The following are considered regularly-used surfaces: roads; unvegetated road shoulders; permeable pavement; bike lanes within the traveled lane of a roadway; driveways; parking lots; unfenced fire lanes; vehicular equipment storage yards; and airport runways.

The following are not considered regularly-used surfaces: paved bicycle pathways separated from and not subject to drainage from roads for motor vehicles; fenced fire lanes; and infrequently used maintenance access roads.

"Pollution-generating pervious surface" means any non-impervious surface subject to use of pesticides and fertilizers or loss of soil, and typically includes lawns, landscaped areas, golf courses, parks, cemeteries, and sports fields.

"Pre-developed condition" means the vegetation and soil conditions that are used to determine the allowable post-development discharge peak flow rates and flow durations, such as pasture or forest.

"Project" means the addition or replacement of impervious surface or the undertaking of land disturbing activity on a site.

"Public combined sewer" means a publicly owned and maintained system which carries drainage water and wastewater and flows to a publicly owned treatment works.

"Public drainage system" means a drainage system owned or used by the City of Seattle.

"Public place" means and includes streets, avenues, ways, boulevards, drives, places, alleys, sidewalks, and planting (parking) strips, squares, triangles and right-of-way for public use and the space above or beneath its surface, whether or not opened or improved.

"Public sanitary sewer" means the sanitary sewer that is owned or operated by a City agency.

"Public storm drain" means the part of a public drainage system that is wholly or partially piped, owned or operated by a City agency, and designed to carry only drainage water.

(Ord. 123105, § 2, 2009.)

#### 22.801.190 - "R"

"Real property" means "real property" as defined in Section 3.110.

"Receiving water" means the surface water or wetland receiving drainage water.

"Repeat Violation" means a prior violation of this subtitle within the preceding five years that became a final order or decision of the Director or a court. The violation does not need to be the same nor occur on one site to be considered repeat.

"Replaced impervious surface" or "replacement of impervious surface" means for structures, the removal and replacement of impervious surface down to the foundation. For other impervious surface, the impervious surface that is removed down to earth material and a new impervious surface is installed.

"Responsible party" means all of the following persons:

1. Owners, operators, and occupants of property; and,
2. Any person causing or contributing to a violation of the provisions of this subtitle.

"Right-of-way" means "right-of-way" as defined in Section 23.84A.032.

"Roadway" means "roadway" as defined in Section 23.84A.032.

"Roadway project" means a project located in the public right-of-way, that involves the creation of a new or replacement of an existing roadway, or that involves the creation of new or replacement of existing impervious surface.

"Runoff" means the portion of rainfall or other precipitation that becomes surface flow and interflow.

(Ord. 123105, § 2, 2009.)

22.801.200 - "S"

"SPU" means Seattle Public Utilities.

"Sanitary sewer" means a system that conveys wastewater and is not designed to convey stormwater.

"SDOT" means the Seattle Department of Transportation.

"Service drain" means "service drain" as defined in Section 21.16.030.

"Side sewer" means "side sewer" as defined in Section 21.16.030.

"Sidewalk" means "sidewalk" as defined in Section 23.84A.036.

"Sidewalk project" means a project that exclusively involves the creation of a new or replacement of an existing sidewalk, including any associated planting strip, curb, or gutter.

"Single-family residential project" means a project, that constructs one Single-family Dwelling Unit per Section 23.44.006.A located in land classified as being Single-family Residential 9,600 (SF 9600), Single-family Residential 7,200 (SF 7200), or Single-family Residential 5,000 (SF 5000) per Section 23.30.010, and the total new plus replaced impervious surface is less than 10,000 square feet and the total new plus replaced pollution-generating impervious surface is less than 5,000 square feet.

"Site" means the lot or parcel, or portion of street, highway or other right-of-way, or contiguous combination thereof, where a permit for the addition or replacement of impervious surface or the undertaking of land disturbing activity has been issued or where any such work is proposed or performed. For roadway projects, the length of the project site and the right-of-way boundaries define the site.

"Slope" means an inclined ground surface.

"Small project" means a project with:

1. Less than 5,000 square feet of new and replaced impervious surface; and
2. Less than one acre of land disturbing activities.

"SMC" means the Seattle Municipal Code.

"Soil" means naturally deposited non-rock earth materials.

"Solid waste" means "solid waste" as defined in Section 21.36.016.

"Source controls" mean structures or operations that prevent contaminants from coming in contact with drainage water through physical separation or careful management of activities that are known sources of pollution.

"Standard design" is a design pre-approved by the Director for drainage and erosion control available for use at a site with pre-defined characteristics.

"Storm drain" means both public storm drain and service drain.

"Stormwater" means that portion of precipitation and snowmelt that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes and other features of a drainage system into a receiving water or a constructed infiltration facility.

"Stream" means a Type 2-5 water as defined in WAC 222-16-031. Used synonymously with "creek."

(Ord. 123105, § 2, 2009.)

22.801.210 - "T"

"Topsoil" means the weathered surface soil, including the organic layer, in which plants have most of their roots.

"Trail" means a path of travel for recreation and/or transportation within a park, natural environment, or corridor that is not classified as a highway, road, or street.

"Trail project" means a project that exclusively involves creating a new or replacement of an existing trail, and which does not contain pollution-generating impervious surfaces.

"Treatment facility" means a drainage control facility designed to remove pollutants from drainage water.

(Ord. 123105, § 2, 2009.)

22.801.220 - "U"

"Uncontaminated" means surface water or groundwater not containing sediment or other pollutants or contaminants above natural background levels and not containing pollutants or contaminants in levels greater than City-supplied drinking water when referring to potable water.

(Ord. 123105, § 2, 2009.)

22.801.230 - "V"

"Vegetation" means "vegetation" as defined in Section 25.09.520.

(Ord. 123105, § 2, 2009.)

22.801.240 - "W"

"Wastewater" means "wastewater" as defined in Section 21.16.030.

"Water Quality Standards" means Surface Water Quality Standards, Chapter 173-201A WAC, Ground Water Quality Standards, Chapter 173-200 WAC, and Sediment Management Standards, Chapter 173-204 WAC.

"Watercourse" means the route, constructed or formed by humans or by natural processes, generally consisting of a channel with bed, banks or sides, in which surface waters flow. Watercourse includes small lakes, bogs, streams, creeks, and intermittent artificial components (including ditches and culverts) but does not include designated receiving waters.

"Watershed" means a geographic region within which water drains into a particular river, stream, or other body of water.

"Wetland" means a wetland designated under Section 25.09.020.

"Wetland function" means the physical, biological, chemical, and geologic interactions among different components of the environment that occur within a wetland. Wetland functions can be grouped into three categories: functions that improve water quality; functions that change the water regime in a watershed, such as flood storage; and functions that provide habitat for plants and animals.

"Wetland values" means wetland processes, characteristics, or attributes that are considered to benefit society.

(Ord. 123105, § 2, 2009.)

Chapter 22.802 - PROHIBITED AND PERMISSIBLE DISCHARGES  
Sections:

22.802.010 - General

- A. No discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, may cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.
- B. Every permit issued to implement this subtitle shall contain a performance standard requiring that no discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.

(Ord. 123105, § 2, 2009.)

22.802.020 - Prohibited Discharges

- A. Prohibited Discharges. The following common substances are prohibited to enter, either directly or indirectly, a public drainage system, a private drainage system, or a receiving water within or contiguous to Seattle city limits, including but not limited to when entering via a service drain, overland flow, or as a result of a spill or deliberate dumping:
  - 1. acids;
  - 2. alkalis including cement wash water;
  - 3. ammonia;
  - 4. animal carcasses;
  - 5. antifreeze, oil, gasoline, grease and all other automotive and petroleum products;
  - 6. chemicals not normally found in uncontaminated water;
  - 7. chlorinated swimming pool or hot tub water;
  - 8. chlorine;
  - 9. commercial and household cleaning materials;
  - 10. detergent;
  - 11. dirt;
  - 12. domestic or sanitary sewage;
  - 13. drain cleaners;
  - 14. fertilizers;
  - 15. flammable or explosive materials;
  - 16. food and food waste;
  - 17. gravel.
  - 18. herbicides;
  - 19. human and animal waste;
  - 20. industrial process wastewater,
  - 21. ink;
  - 22. laundry waste;
  - 23. metals in excess of naturally occurring amounts, whether in liquid or solid form;

24. painting products;
  25. pesticides;
  26. sand;
  27. soap;
  28. solid waste;
  29. solvents and degreasers;
  30. steam-cleaning waste; and,
  31. yard waste.
- B. Prohibited Discharges to Public and Private Drainage System. Except as provided in Section 22.802.030, any discharge to a public drainage system or to a private drainage system that is not composed entirely of stormwater is prohibited.
- C. Prohibited Discharges to Receiving Waters. Except as provided in Section 22.802.030, any discharge, either directly or indirectly to receiving waters within or contiguous to Seattle city limits or to a public drainage system that is not composed entirely of stormwater is prohibited.

(Ord. 123105, § 2, 2009.)

#### 22.802.030 - Permissible Discharges

Permissible Discharges to Drainage Systems and Receiving Waters. Discharges from the sources listed below are permissible discharges unless the Director of SPU determines that the type of discharge, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, whether singly or in combination with others, is causing or contributing to a violation of the City's NPDES stormwater permit or is causing or contributing to a water quality problem:

1. Discharges from potable water sources, including flushing of potable water lines, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the drainage system;
2. Discharges from washing or rinsing of potable water storage reservoirs, dechlorinated as above;
3. Discharges from surface waters, including diverted stream flows;
4. Discharges of uncontaminated groundwater, including uncontaminated groundwater infiltration (as defined at 40 CFR 35.2005(2), uncontaminated pumped groundwater, and rising ground waters;
5. Discharges of air conditioning condensation;
6. Discharges from springs;
7. Discharges of uncontaminated water from crawl space pumps;
8. Discharges from lawn watering;
9. Discharges from irrigation runoff, including irrigation water from agricultural sources that is commingled with stormwater and that does not contain prohibited substances;
10. Discharges from riparian habitats and wetlands;
11. Discharges from approved footing drains and other subsurface drains or, where approval is not required, installed in compliance with this subtitle and rules promulgated pursuant to this subtitle;
12. Discharges from foundation drains;

13. Discharges from swimming pools, hot tubs, fountains, or similar aquatic recreation facilities and constructed water features, provided the discharges have been de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenated if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the drainage control system;
  14. Discharges of street and sidewalk wash-water that does not use detergents or chemical additives;
  15. Discharges of water used to control dust;
  16. Discharges of water from routine external building washdown that does not use detergents or chemical additives;
  17. Discharges that are in compliance with a separate individual or general NPDES permit;
  18. Discharges that are from emergency fire fighting activities; and
  19. Other non-stormwater discharges, provided these discharges are in compliance with the requirements of an approved stormwater pollution prevention plan that addresses such discharges.
- B. Permissible Discharges to Sanitary Sewers. In consultation with the local sewage treatment agency, the Director of SPU may approve discharges of drainage water to a sanitary sewer if the discharging party demonstrates to the satisfaction of the Director of SPU that other methods of controlling pollutants in the discharge are not adequate or reasonable, the discharging party certifies that the discharge will not harm the environment, and the discharging party certifies that the discharge will not overburden or otherwise harm the sanitary sewer. Connections to the sanitary sewer shall be made in accordance with Chapter 21.16 (Side Sewer Code). The Director of SPU shall condition approval of such a discharge on compliance with local pretreatment regulations and on maintaining compliance with the required certifications given by the discharging party.
- C. Permissible Discharges to Public Combined Sewers. In consultation with the local sewage treatment agency, the Director of SPU may approve discharges of drainage water to a public combined sewer if the discharging party certifies that the discharge will not harm the environment, and the discharging party certifies that the discharge will not overburden or otherwise harm the public combined sewers. Connections to the public combined sewers shall be made in accordance with Chapter 21.16 (Side Sewer Code). The Director of SPU shall condition approval of such a discharge on compliance with local pretreatment regulations and on maintaining compliance with the required certifications given by the discharging party.

(Ord. 123105, § 2, 2009.)

#### 22.802.040 - Testing for Prohibited Discharges

When the Director of SPU has reason to believe that any discharge is a prohibited discharge, the Director of SPU may sample and analyze the discharge and recover the costs from a responsible party in an enforcement proceeding. When the discharge is likely to be a prohibited discharge on a recurring basis, the Director of SPU may conduct, or may require the responsible party to conduct, ongoing monitoring at the responsible party's expense.

(Ord. 123105, § 2, 2009.)

#### Chapter 22.803 - MINIMUM REQUIREMENTS FOR ALL DISCHARGES AND ALL REAL PROPERTY Sections:

##### 22.803.010 - General

- A. All responsible parties are required to comply with this chapter, even where no development is occurring.

- B. No discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, may cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.
- C. Every permit issued to implement this subtitle shall contain a performance standard requiring that no discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.

(Ord. 123105, § 3, 2009.)

22.803.020 - Minimum Requirements for All Discharges and Real Property

- A. Requirement to provide documentation. The owner is required to make plans, procedures, and schedules required by this subsection available to the Director of SPU when requested.
- B. Requirement to report spills, releases, or dumping. A responsible party is required to, at the earliest possible time, but in any case within 24 hours of discovery, report to the Director of SPU, a spill, release, dumping, or other situation that has contributed or is likely to contribute pollutants to a public drainage system, a private drainage system, or a receiving water. This reporting requirement is in addition to, and not instead of, any other reporting requirements under federal, state or local laws.
- C. Requirements to maintain facilities. All treatment facilities, flow control facilities, drainage control facilities, and drainage systems shall be maintained as prescribed in rules promulgated by the Director in order for these facilities and systems to be kept in continuous working order.
- D. Requirements for disposal of waste from maintenance activities. Disposal of waste from maintenance of drainage control facilities shall be conducted in accordance with federal, state and local regulations, including the Minimum Functional Standards for Solid Waste Handling, Chapter 173-304 WAC, guidelines for disposal of waste materials, and, where appropriate, Dangerous Waste Regulations, Chapter 173-303 WAC.
- E. Requirements to maintain records of installation and maintenance activities. When a drainage control facility is installed, the party having the facility installed shall make records of the installation and shall identify the party (or parties) responsible for maintenance and operations. The parties shall retain a continuous record of all maintenance and repair activities, and shall retain the records for at least ten years. If a transfer of ownership occurs, these records of installation, repair, and maintenance shall be transferred to the new property owner. These records shall be made available to the Director of SPU during inspection of the facility and at other reasonable times upon request of the Director of SPU.

(Ord. 123105, § 3, 2009.)

22.803.030 - Minimum Requirements for Source Controls for All Real Property

For all discharges, responsible parties shall implement and maintain source controls to prevent or minimize pollutants from leaving a site or property. Source controls that are required for all real property include, but are not limited to, the following, as further described in rules promulgated by the Director:

- A. Eliminate Illicit or Prohibited Connections to Storm Drains. It is the responsibility of the property owner to ensure that all plumbing connections are properly made and that only connections conveying stormwater or permissible discharges per Section 22.802.030 are connected to the drainage system.
- B. Perform Routine Maintenance for Stormwater Drainage System. All drainage system components, including, but not limited to catch basins, flow control facilities, treatment facilities, green stormwater infrastructure, and unimproved drainage pathways shall be kept in continuously working order.

- C. Dispose of Fluids and Wastes Properly. Solid and liquid wastes must be disposed of in a manner that minimizes the risk of contaminating stormwater.
- D. Proper Storage of Solid Wastes. Solid wastes must be stored of in a manner that minimizes the risk of contaminating stormwater.
- E. Spill Prevention and Cleanup. All property owners having the potential to spill pollutants shall take measures to the maximum extent feasible to prevent spills of pollutant and to properly clean up spills that may occur.
- F. Provide Oversight and Training for Staff. Train at least annually all employees responsible for the operation, maintenance, or inspection of BMPs.

(Ord. 123105, § 3, 2009.)

22.803.040 - Minimum Requirements for Source Controls For All Businesses and Public Entities

- A. Source controls shall be implemented, to the extent allowed by law, by all businesses and public entities for specific pollution-generating activities as specified in the joint SPU/DPD Directors' Rule, "Source Control Technical Requirements Manual," to the extent necessary to prevent prohibited discharges as described in subsection 22.802.020.A through subsection 22.802.020.C, and to prevent contaminants from coming in contact with drainage water. Source controls include, but are not limited to, segregating or isolating wastes to prevent contact with drainage water; enclosing, covering, or containing the activity to prevent contact with drainage water; developing and implementing inspection and maintenance programs; sweeping; and taking management actions such as training employees on pollution prevention.
- B. Spill prevention shall be required for all businesses and public entities, as further defined in rules promulgated by the Director:
  - 1. Develop and implement plans and procedures to prevent spills and other accidental releases of materials that may contaminate drainage water. This requirement may be satisfied by a Stormwater Pollution Prevention Plan prepared in compliance with an NPDES industrial stormwater permit for the site; and
  - 2. Implement procedures for immediate containment and other appropriate action regarding spills and other accidental releases to prevent contamination of drainage water; and
  - 3. Provide necessary containment and response equipment on-site, and training of personnel regarding the procedures and equipment to be used.

(Ord. 123105, § 3, 2009.)

Chapter 22.805 - MINIMUM REQUIREMENTS FOR ALL PROJECTS

Sections:

22.805.010 - General

- A. All projects are required to comply with this chapter, even where drainage control review is not required.
- B. No discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, may cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.
- C. Every permit issued to implement this subtitle shall contain a performance standard requiring that no discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits,



cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.

(Ord. 123105, § 3, 2009.)

22.805.020 - Minimum requirements for all projects

- A. Minimum Requirements for Maintaining Natural Drainage Patterns. For all projects, natural drainage patterns shall be maintained and discharges shall occur at the natural location to the maximum extent feasible and consistent with subsection 22.805.020.B. Drainage water discharged from the site shall not cause a significant adverse impact to receiving waters or down-gradient properties. Drainage water retained on the site shall not cause significant adverse impact to up-gradient properties.
- B. Minimum Requirements for Discharge Point. The discharge point for drainage water from each site shall be selected using criteria that shall include, but not be limited to, preservation of natural drainage patterns and whether the capacity of the drainage system is adequate for the flow rate and volume. For those projects meeting the drainage review threshold, the proposed discharge point shall be identified in the drainage control plan required by this subtitle, for review and approval or disapproval by the Director.
- C. Minimum Requirements for Flood-prone Areas. On sites within flood prone areas, responsible parties are required to employ procedures to minimize the potential for flooding on the site and to minimize the potential for the project to increase the risk of floods on adjacent or nearby properties. Flood control measures shall include those set forth in other titles of the Seattle Municipal Code and rules promulgated thereunder, including, but not limited to, Chapter 23.60 (Shoreline Master Program), Chapter 25.06 (Floodplain Development) and Chapter 25.09 (Environmentally Critical Areas) of the Seattle Municipal Code.
- D. Minimum Requirements for Construction Site Stormwater Pollution Prevention Control. Temporary and permanent construction controls shall be used to accomplish the following minimum requirements. All projects are required to meet each of the elements below or document why an element is not applicable. Additional controls may be required by the Director when minimum controls are not sufficient to prevent erosion or transport of sediment or other pollutants from the site.
  - 1. Mark Clearing Limits and Environmentally Critical Areas. Within the boundaries of the project site and prior to beginning land disturbing activities, including clearing and grading, clearly mark all clearing limits, easements, setbacks, all environmentally critical areas and their buffers, and all trees, and drainage courses that are to be preserved within the construction area.
  - 2. Retain Top Layer. Within the boundaries of the project site, the duff layer, topsoil, and native vegetation, if there is any, shall be retained in an undisturbed state to the maximum extent feasible. If it is not feasible to retain the top layer in place, it should be stockpiled on-site, covered to prevent erosion, and replaced immediately upon completion of the ground disturbing activities to the maximum extent feasible.
  - 3. Establish Construction Access. Limit construction vehicle access, whenever possible, to one route. Stabilize access points and minimize tracking sediment onto public roads. Promptly remove any sediment tracked off site.
  - 4. Protect Downstream Properties and Receiving Waters. Protect properties and receiving waters downstream from the development sites from erosion due to increases in the volume, velocity, and peak flow rate of drainage water from the project site. If it is necessary to construct flow control facilities to meet this requirement, these facilities shall be functioning prior to implementation of other land disturbing activity. If permanent infiltration ponds are used to control flows during construction, these facilities shall be protected from siltation during the construction phase of the project.
  - 5. Prevent Erosion and Sediment Transport from the Site. Pass all drainage water from disturbed areas through a sediment trap, sediment pond, or other appropriate sediment removal BMP

before leaving the site or prior to discharge to an infiltration facility. Sediment controls intended to trap sediment on site shall be constructed as one of the first steps in grading and shall be functional before other land disturbing activities take place. BMPs intended to trap sedimentation shall be located in a manner to avoid interference with the movement of juvenile salmonids attempting to enter off-channel areas or drainages.

6. Prevent Erosion and Sediment Transport from the Site by Vehicles. Whenever construction vehicle access routes intersect paved roads, the transport of sediment onto the paved road shall be minimized. If sediment is transported onto a paved road surface, the roads shall be cleaned thoroughly at the end of each day. Sediment shall be removed from paved roads by shoveling or sweeping and shall be transported to a controlled sediment disposal area. If sediment is tracked off site, roads shall be cleaned thoroughly at the end of each day, or at least twice daily during wet weather. Street washing is allowed only after sediment is removed and street wash wastewater shall be prevented from entering the public drainage system and receiving waters.
7. Stabilize Soils. Prevent on-site erosion by stabilizing all exposed and unworked soils, including stock piles and earthen structures such as dams, dikes, and diversions. From October 1 to April 30, no soils shall remain exposed and unworked for more than two days. From May 1 to September 30, no soils shall remain exposed for more than seven days. Soils shall be stabilized at the end of the shift before a holiday or weekend if needed based on the weather forecast. Soil stockpiles shall be stabilized from erosion, protected with sediment trapping measures, and be located away from storm drain inlets, waterways, and drainage channels. Before the completion of the project, permanently stabilize all exposed soils that have been disturbed during construction.
8. Protect Slopes. Erosion from slopes shall be minimized. Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Off-site stormwater run-on or groundwater shall be diverted away from slopes and undisturbed areas with interceptor dikes, pipes, and/or swales. Pipe slope drains or protected channels shall be constructed at the top of slopes to collect drainage and prevent erosion. Excavated material shall be placed on the uphill side of trenches, consistent with safety and space considerations. Check dams shall be placed at regular intervals within constructed channels that are cut down a slope.
9. Protect Storm Drains. Prevent sediment from entering all storm drains, including ditches that receive drainage water from the project. Storm drain inlets protection devices shall be cleaned or removed and replaced as recommended by the product manufacturer, or more frequently if required to prevent failure of the device or flooding. Storm drain inlets made operable during construction shall be protected so that drainage water does not enter the drainage system without first being filtered or treated to remove sediments. Storm drain inlet protection devices shall be removed at the conclusion of the project. When manufactured storm drain inlet protection devices are not feasible, inlets and catch basins must be cleaned as necessary to prevent sediment from entering the drainage control system.
10. Stabilize Channels and Outlets. All temporary on-site drainage systems shall be designed, constructed, and stabilized to prevent erosion. Stabilization shall be provided at the outlets of all drainage systems that is adequate to prevent erosion of outlets, adjacent stream banks, slopes, and downstream reaches.
11. Control Pollutants. Measures shall be taken to control potential pollutants that include, but are not limited to, the following measures:
  - a. All pollutants, including sediment, waste materials, and demolition debris, that occur onsite shall be handled and disposed of in a manner that does not cause contamination of drainage water and per all applicable disposal laws.
  - b. Containment, cover, and protection from vandalism shall be provided for all chemicals, liquid products, petroleum products, and other materials that have the potential to pose a threat to human health or the environment.

- c. On-site fueling tanks shall include secondary containment.
  - d. Maintenance, fueling, and repair of heavy equipment and vehicles involving oil changes, hydraulic system drain down, solvent and de-greasing cleaning operations, fuel tank drain down and removal, and other activities which may result in discharge or spillage of pollutants to the ground or into drainage water runoff shall be conducted using spill prevention and control measures.
  - e. Contaminated surfaces shall be cleaned immediately following any discharge or spill incident.
  - f. Wheel wash or tire bath wastewater shall be discharged to a separate on-site treatment system or to the sanitary sewer or combined sewer system with approval of the Director of SPU. Temporary discharges or connections to the public sanitary and combined sewers shall be made in accordance with Chapter 21.16 (Side Sewer Code).
  - g. Application of fertilizers and pesticides shall be conducted in a manner and at application rates that will not result in loss of chemical to drainage water. Manufacturers' label requirements for application rates and procedures shall be followed.
  - h. BMPs shall be used to prevent or treat contamination of drainage water by pH-modifying sources. These sources include, but are not limited to, bulk cement, cement kiln dust, fly ash, new concrete washing and curing waters, waste streams generated from concrete grinding and sawing, exposed aggregate processes, and concrete pumping and mixer washout waters. Construction site operators may be required to adjust the pH of drainage water if necessary to prevent a violation of water quality standards. Construction site operators must obtain written approval from Ecology prior to using chemical treatment other than carbon dioxide (CO<sub>2</sub>) or dry ice to adjust pH.
12. Control Dewatering. When dewatering devices discharge on site or to a public drainage system, dewatering devices shall discharge into a sediment trap, sediment pond, gently sloping vegetated area of sufficient length to remove sediment contamination, or other sediment removal BMP. Foundation, vault, and trench dewatering waters must be discharged into a controlled drainage system prior to discharge to a sediment trap or sediment pond. Clean, non-turbid dewatering water, such as well-point ground water, that is discharged to systems tributary to state surface waters must not cause erosion or flooding. Highly turbid or contaminated dewatering water shall be handled separately from drainage water. For any project with an excavation depth of 12 feet or more below the existing grade and for all large projects, dewatering flows must be determined and it must be verified that there is sufficient capacity in the public drainage system and public combined sewer prior to discharging.
13. Maintain BMPs. All temporary and permanent erosion and sediment control BMPs shall be maintained and repaired as needed to assure continued performance of their intended function. All temporary erosion and sediment controls shall be removed within five days after final site stabilization is achieved or after the temporary controls are no longer needed, whichever is later. Trapped sediment shall be removed or stabilized on site. Disturbed soil areas resulting from removal shall be permanently stabilized.
14. Inspect BMPs. BMPs shall be periodically inspected. For projects with 5,000 square feet or more of new plus replaced impervious surface or 7,000 square feet or more of land disturbing activity, site inspections shall be conducted by a Certified Erosion and Sediment Control Lead who shall be identified in the Construction Stormwater Control Plan and shall be present on-site or on-call at all times.
15. Execute Construction Stormwater Control Plan. Construction site operators shall maintain, update, and implement their Construction Stormwater Control Plan. Construction site operators shall modify their Construction Stormwater Control Plan to maintain compliance whenever there is a change in design, construction, operation, or maintenance at the site that has, or could have, a significant effect on the discharge of pollutants to waters of the state.

16. Minimize Open Trenches. In the construction of underground utility lines, where feasible, no more than 150 feet of trench shall be opened at one time, unless soil is replaced within the same working day, and where consistent with safety and space considerations, excavated material shall be placed on the uphill side of trenches. Trench dewatering devices shall discharge into a sediment trap or sediment pond.
  17. Phase the Project. Development projects shall be phased to the maximum extent feasible in order to minimize the amount of land disturbing activity occurring at the same time and shall take into account seasonal work limitations.
  18. Install Permanent Flow Control and Water Quality Facilities. Development projects required to comply with Section 22.805.080 (Minimum Requirements for Flow Control) or Section 22.805.090 (Minimum Requirements for Treatment) shall install permanent flow control and water quality facilities.
- E. Minimum Requirement to Amend Soils. Prior to completion of the project all new, replaced, and disturbed topsoil shall be amended with organic matter per rules promulgated by the Director to improve onsite management of drainage water flow and water quality.
  - F. Implement Green Stormwater Infrastructure. All Single-family residential projects and all other projects with 7,000 square feet or more of land disturbing activity or 2,000 square feet or more of new plus replaced impervious surface must implement green stormwater infrastructure to infiltrate, disperse, and retain drainage water onsite to the maximum extent feasible without causing flooding, landslide, or erosion impacts.
  - G. Protect Wetlands. All projects discharging into a wetland or its buffer, either directly or indirectly through a drainage system, shall prevent impacts to wetlands that would result in a net loss of functions or values.
  - H. Protect Streams and Creeks. All projects, including projects discharging directly to a stream or creek, or to a drainage system that discharges to a stream or creek, shall maintain the water quality in any affected stream or creek by selecting, designing, installing, and maintaining temporary and permanent controls.
  - I. Protect Shorelines. All projects discharging directly or indirectly through a drainage system into the Shoreline District as defined in Chapter 23.60A shall prevent impacts to water quality and stormwater quantity that would result in a net loss of shoreline ecological functions as defined in WAC 173-26-020 (11).
  - J. Ensure Sufficient Capacity. All large projects, all projects with an excavation depth of 12 feet or more below the existing grade, and all projects with an excavation depth of less than 12 feet located in an area expected to have shallow groundwater depths shall ensure that sufficient capacity exists in the public drainage system and public combined sewer to carry existing and anticipated loads, including any flows from dewatering activities. Capacity analysis shall extend to at least ¼-mile from the discharge point of the site. Sites at which there is insufficient capacity may be required to install a flow control facility or improve the drainage system or public combined sewer to accommodate flow from the site. Unless approved otherwise by the Director as necessary to meet the purposes of this subtitle:
    1. Capacity analysis for discharges to the public drainage system shall be based on peak flows with a 4% annual probability (25-year recurrence interval); and
    2. Capacity analysis for discharges to the public combined sewer shall be based on peak flows with a 20% annual probability (5-year recurrence interval).
  - K. Install Source Control BMPs. Source control BMPs shall be installed for specific pollution-generating activities as specified in the joint SPU/DPD Directors' Rule, "Source Control Technical Requirements Manual," to the extent necessary to prevent prohibited discharges as described in Section 22.802.020, and to prevent contaminants from coming in contact with drainage water. This requirement applies to the pollution-generating activities that are stationary or occur in one primary

location and to the portion of the site being developed. Examples of installed source controls include, but are not limited to, the following:

1. A roof, awning, or cover erected over the pollution-generating activity area;
  2. Ground surface treatment in the pollution-generating activity area to prevent interaction with, or breakdown of, materials used in conjunction with the pollution-generating activity;
  3. Containment of drainage from the pollution-generating activity to a closed sump or tank. Contents of such a sump or tank must be pumped or hauled by a waste handler, or treated prior to discharge to a public drainage system.
  4. Construct a berm or dike to enclose or contain the pollution-generating activities;
  5. Direct drainage from containment area of pollution-generating activity to a closed sump or tank for settling and appropriate disposal, or treat prior to discharging to a public drainage system;
  6. Pave, treat, or cover the containment area of pollution-generating activities with materials that will not interact with or break down in the presence of other materials used in conjunction with the pollution-generating activity; and
  7. Prevent precipitation from flowing or being blown onto containment areas of pollution-generating activities.
- L. Do not obstruct watercourses. Watercourses shall not be obstructed.
- M. Comply with Side Sewer Code.
1. All privately owned and operated drainage control facilities or systems, whether or not they discharge to a public drainage system, shall be considered side sewers and subject to Chapter 21.16 (Side Sewer Code), SPU Director's Rules promulgated under Title 21, and the design and installation specifications and permit requirements of SPU and DPD for side sewer and drainage systems.
  2. Side sewer permits and inspections shall be required for constructing, capping, altering, or repairing privately owned and operated drainage systems as provided for in Chapter 21.16. When the work is ready for inspection, the permittee shall notify the Director of DPD. If the work is not constructed according to the plans approved under this subtitle, Chapter 21.16, the SPU Director's Rules promulgated under Title 21, and SPU and DPD design and installation specifications, then SPU, after consulting with DPD, may issue a stop work order under Chapter 22.808 and require modifications as provided for in this subtitle and Chapter 21.16.

(Ord. [124105](#), § 7, 2013; Ord. 123105, § 3, 2009.)

#### 22.805.030 - Minimum Requirements for Single-Family Residential Projects

All single-family residential projects shall implement green stormwater infrastructure to the maximum extent feasible.

(Ord. 123105, § 3, 2009.)

#### 22.805.040 - Minimum Requirements for Trail and Sidewalk Projects

All trail and sidewalk projects with 2,000 square feet or more of new plus replaced impervious surface or 7,000 square feet or more of land disturbing activity shall implement green stormwater infrastructure to the maximum extent feasible.

(Ord. 123105, § 3, 2009.)

#### 22.805.050 - Minimum Requirements for Parcel-Based Projects

- A. Flow Control. Parcel-based projects shall meet the minimum requirements for flow control contained in Section 22.805.080, to the extent allowed by law, as prescribed below.

1. Discharges to Wetlands. Parcel-based projects discharging into a wetland shall comply with subsection 22.805.080.B.1 (Wetland Protection Standard) if:
  - a. The total new plus replaced impervious surface is 5,000 square feet or more; or
  - b. The project converts  $\frac{3}{4}$ -acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
  - c. The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site.
2. Discharges to Listed Creek Basins. Parcel-based projects discharging into Blue Ridge Creek, Broadview Creek, Discovery Park Creek, Durham Creek, Frink Creek, Golden Gardens Creek, Kiwanis Ravine/Wolfe Creek, Licton Springs Creek, Madrona Park Creek, Mee-Kwa-Mooks Creek, Mount Baker Park Creek, Puget Creek, Riverview Creek, Schmitz Creek, Taylor Creek, or Washington Park Creek shall:
  - a. Comply with subsection 22.805.080.B.2 (Pre-developed Forested Standard) if the existing impervious coverage is less than 35 percent and one or more of the following apply:
    - 1) The project adds 5,000 square feet or more of new impervious surface and the total new plus replaced impervious surface is 10,000 square feet or more; or
    - 2) The project converts  $\frac{3}{4}$  acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
    - 3) The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
    - 4) The project adds 5,000 square feet or more of new impervious surface and, through a combination of effective impervious surfaces and converted pervious surfaces, causes a 0.1 cubic feet per second increase in the 100-year recurrence interval flow frequency as estimated using a continuous model approved by the Director.
  - b. Comply with subsection 22.805.080.B.3 (Pre-developed Pasture Standard) if the criteria in subsection 22.805.050.A.2.a do not apply and the total new plus replaced impervious surface is 2,000 square feet or more.
3. Discharges to Non-listed Creek Basins. Parcel-based projects discharging into a creek not listed in subsection 22.805.050.A.2 shall:
  - a. Comply with subsection 22.805.080.B.2 (Pre-developed Forested Standard) if the existing land cover is forested and one or more of the following apply:
    - 1) The project adds 5,000 square feet or more of new impervious surface and the total new plus replaced impervious surface is 10,000 square feet or more; or
    - 2) The project converts  $\frac{3}{4}$  acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
    - 3) The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
    - 4) The project adds 5,000 square feet or more of new impervious surface and, through a combination of effective impervious surfaces and converted pervious surfaces, causes a 0.1 cubic feet per second increase in the 100-year recurrence interval flow frequency as estimated using a continuous model approved by the Director.

- b. Comply with subsection 22.805.080.B.3 (Pre-developed Pasture Standard) if the criteria in subsection 22.805.050.A.3.a do not apply and the total new plus replaced impervious surface is 2,000 square feet or more.
  - 4. Discharges to Small Lake Basins. Parcel-based projects discharging into Bitter Lake, Green Lake, or Haller Lake drainage basins shall comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 2,000 square feet or more.
  - 5. Discharges to Public Combined Sewer. Unless the Director of SPU has exercised its discretion to determine and has determined that the public combined sewer has sufficient capacity to carry existing and anticipated loads, parcel-based projects discharging into the public combined sewer shall comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 10,000 square feet or more.
  - 6. Discharges to a Capacity-constrained System. In addition to applicable minimum requirements for flow control in subsection 22.805.050.A.1 through subsection 22.805.050.A.5, parcel-based projects discharging into a capacity-constrained system shall also comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 2,000 square feet or more.
- B. Treatment. Parcel-based projects not discharging to the public combined sewer shall comply with the minimum requirements for treatment contained in Section 22.805.090, to the extent allowed by law, if:
- 1. The total new plus replaced pollution-generating impervious surface is 5,000 square feet or more; or
  - 2. The total new plus replaced pollution-generating pervious surfaces is  $\frac{3}{4}$  of an acre or more and from which there is a surface discharge in a natural or man-made conveyance system from the site.

(Ord. [124758](#), § 2, 2015; Ord. 123105, § 3, 2009.)

#### 22.805.060 - Minimum Requirements for Roadway Projects

- A. Flow Control. Roadway projects shall meet the minimum requirements for flow control contained in Section 22.805.080, to the extent allowed by law, as prescribed below.
- 1. Discharges to Wetlands. Roadway projects discharging into a wetland shall comply with subsection 22.805.080.B.1 (Wetland Protection Standard) if:
    - a. The total new plus replaced impervious surface is 5,000 square feet or more; or
    - b. The project converts  $\frac{3}{4}$  acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
    - c. The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site.
  - 2. Discharges to Listed Creek Basins. Roadway projects discharging into Blue Ridge Creek, Broadview Creek, Discovery Park Creek, Durham Creek, Frink Creek, Golden Gardens Creek, Kiwanis Ravine/Wolfe Creek, Licton Springs Creek, Madrona Park Creek, Mee-Kwa-Mooks Creek, Mount Baker Park Creek, Puget Creek, Riverview Creek, Schmitz Creek, Taylor Creek, or Washington Park Creek shall:
    - a. Comply with subsection 22.805.080.B.2 (Pre-developed Forested Standard) if the existing impervious coverage is less than 35 percent and one or more of the following apply:
      - 1) The project adds 5,000 square feet or more of new impervious surface and the total new plus replaced impervious surface is 10,000 square feet or more; or

- 2) The project converts  $\frac{3}{4}$  acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
  - 3) The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
  - 4) The project adds 5,000 square feet or more of new impervious surface and, through a combination of effective impervious surfaces and converted pervious surfaces, causes a 0.1 cubic feet per second increase in the 100-year recurrence interval flow frequency as estimated using a continuous model approved by the Director.
- b. Comply with subsection 22.805.080.B.3 (Pre-developed Pasture Standard) if the criteria in subsection 22.805.060.A.2.a do not apply and the total new plus replaced impervious surface is 10,000 square feet or more.
3. Discharges to Non-listed Creek Basins. Roadway projects discharging into a creek not listed in subsection 22.805.060.A.2 shall:
    - a. Comply with subsection 22.805.080.B.2 (Pre-developed Forested Standard) if the existing land cover is forested and one or more of the following apply:
      - 1) The project adds 5,000 square feet or more of new impervious surface and the total new plus replaced impervious surface is 10,000 square feet or more; or
      - 2) The project converts  $\frac{3}{4}$  acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
      - 3) The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
      - 4) The project adds 5,000 square feet or more of new impervious surface and, through a combination of effective impervious surfaces and converted pervious surfaces, causes a 0.1 cubic feet per second increase in the 100-year recurrence interval flow frequency as estimated using a continuous model approved by the Director.
    - b. Comply with subsection 22.805.080.B.3 (Pre-developed Pasture Standard) if the criteria in subsection 22.805.060.A.3.a do not apply and the total new plus replaced impervious surface is 10,000 square feet or more.
  4. Discharges to Small Lake Basins. Projects discharging into Bitter Lake, Green Lake, or Haller Lake drainage basins shall comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 10,000 square feet or more.
  5. Discharges to Public Combined Sewer. Unless the Director of SPU has exercised its discretion to determine and has determined that the public combined sewer has sufficient capacity to carry existing and anticipated loads, roadway projects discharging into the public combined sewer shall comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 10,000 square feet or more.
  6. Discharges to a Capacity-constrained System. In addition to applicable minimum requirements for flow control in subsection 22.805.060.A.1 through subsection 22.805.060.A.5, roadway projects discharging into a capacity-constrained system shall also comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 10,000 square feet or more.
- B. Treatment. Roadway projects not discharging to the public combined sewer shall, to the extent allowed by law:



1. If the site has less than 35 percent existing impervious surface coverage, and the project's total new plus replaced pollution-generating impervious surface is 5,000 square feet or more, comply with the minimum requirements for treatment contained in Section 22.805.090 for flows from the total new plus replaced pollution-generating impervious surface; and
2. If the site has greater than or equal to 35 percent existing impervious surface coverage and the project's total new pollution-generating impervious surface is 5,000 square feet or more, and
  - a. If the new pollution-generating impervious surface adds 50 percent or more to the existing impervious surfaces within the project limits, comply with the minimum requirements for treatment contained in Section 22.805.090 for flows from the total new plus replaced pollution-generating impervious surface. The project limits are defined by the length of the project and the width of the right-of-way; or
  - b. If the new pollution-generating impervious surface adds less than 50 percent to the existing impervious surfaces within the project limits, comply with the minimum requirements for treatment contained in Section 22.805.090 for flows from the total new pollution-generating impervious surface. The project limits are defined by the length of the project and the width of the right-of-way; and
3. If the total new plus replaced pollution-generating pervious surfaces is three-quarters of an acre or more and from which there is a surface discharge in a natural or man-made conveyance system from the site, comply with the minimum requirements for treatment contained in Section 22.805.090 for flows from the total new plus replaced pollution-generating pervious surface.

(Ord. [124758](#), § 3, 2015; Ord. 123105, § 3, 2009.)

#### 22.805.070 - Minimum Requirements for Joint Parcel-Based and Roadway Projects

The parcel-based portion of joint projects shall comply with the minimum requirements for parcel-based projects contained in Section 22.805.050. The roadway portion of joint projects shall comply with the minimum requirements roadway projects contained in Section 22.805.060. The boundary of the public right-of-way shall form the boundary between the parcel and roadway portions of the joint project for purposes of determining applicable thresholds.

(Ord. 123105, § 3, 2009.)

#### 22.805.080 - Minimum Requirements for Flow Control

- A. Applicability. The requirements of this subsection apply to the extent required in Section 22.805.050 to Section 22.805.070.
- B. Requirements. Flow control facilities shall be installed to the extent allowed by law and maintained per rules promulgated by the Director to receive flows from that portion of the site being developed. Post-development discharge determination must include flows from dewatering activities. All projects shall use green stormwater infrastructure to the maximum extent feasible to meet the minimum requirements. Flow control facilities that receive flows from less than that portion of the site being developed may be installed if the total new plus replaced impervious surface is less than 10,000 square feet, the project site uses only green stormwater infrastructure to meet the requirement, and the green stormwater infrastructure provides substantially equivalent environmental protection as facilities not using green stormwater infrastructure that receive flows from all of the portion of the site being developed.
  1. Wetland Protection Standard. All projects discharging to wetlands or their buffers shall protect the hydrologic conditions, vegetative community, and substrate characteristics of the wetlands and their buffers to protect the functions and values of the affected wetlands. The introduction of sediment, heat and other pollutants and contaminants into wetlands shall be minimized through the selection, design, installation, and maintenance of temporary and permanent controls. Discharges shall maintain existing flows to the extent necessary to protect the functions and values of the wetlands. Prior to authorizing new discharges to a wetland, alternative discharge

locations shall be evaluated and infiltration options outside the wetland shall be maximized unless doing so will adversely impact the functions and values of the affected wetlands. If one or more of the flow control requirements contained in 22.805.080.B.2 through 22.805.080.B.4 also apply to the project, an analysis shall be conducted to ensure that the functions and values of the affected wetland are protected before implementing these flow control requirements.

2. Pre-developed Forested Standard. The post-development discharge peak flow rates and flow durations must be matched to the pre-developed forested condition for the range of pre-developed discharge rates from 50% of the 2-year recurrence interval flow up to the 50-year recurrence interval flow.
  3. Pre-developed Pasture Standard. The post-development discharge peak flow rates and flow durations must be matched to the pre-developed pasture condition for the range of pre-developed discharge rates from 50% of the 2-year recurrence interval flow up to the 2-year recurrence interval flow.
  4. Peak Flow Control Standard. The post-development peak flow with a 4% annual probability (25-year recurrence flow) shall not exceed 0.4 cubic feet per second per acre. Additionally, the peak flow with a 50% annual probability (2-year recurrence flow) shall not exceed 0.15 cubic feet per second per acre.
- C. Inspection and Maintenance Schedule. Temporary and permanent flow control facilities shall be inspected and maintained according to rules promulgated by the Director to keep these facilities in continuous working order.

(Ord. 123105, § 3, 2009.)

22.805.090 - Minimum Requirements for Treatment.

- A. Applicability. The requirements of this subsection apply to the extent required in Section 22.805.050 to Section 22.805.070.
- B. Requirements. Water quality treatment facilities shall be installed to the extent allowed by law and maintained per rules promulgated by the Director to treat flows from the pollution generating pervious and impervious surfaces on the site being developed. When stormwater flows from other areas, including non-pollution generating surfaces (e.g., roofs), dewatering activities, and offsite areas, cannot be separated or bypassed, treatment BMPs shall be designed for the entire area draining to the treatment facility. All projects shall use green stormwater infrastructure the maximum extent feasible to meet the minimum requirements.
  1. Runoff Volume. Stormwater treatment facilities shall be designed based on the stormwater runoff volume from the contributing area or a peak flow rate as follows:
    - a. The daily runoff volume at or below which 91 percent of the total runoff volume for the simulation period occurs, as determined using an approved continuous model. It is calculated as follows:
      - 1) Rank the daily runoff volumes from highest to lowest.
      - 2) Sum all the daily volumes and multiply by 0.09.
      - 3) Sequentially sum daily runoff volumes, starting with the highest value, until the total equals 9 percent of the total runoff volume. The last daily value added to the sum is defined as the water quality design volume.
    - b. Different design flow rates are required depending on whether a treatment facility will be located upstream or downstream of a detention facility:
      - 1) For facilities located upstream of detention or when detention is not required, the design flow rate is the flow rate at or below which 91 percent of the total runoff volume for the simulation period is treated, as determined using an approved continuous runoff model.

- 2) For facilities located downstream of detention, the design flow rate is the release rate from the detention facility that has a 50 percent annual probability of occurring in any given year (2-year recurrence interval), as determined using an approved continuous runoff model.
- c. Infiltration facilities designed for water quality treatment must infiltrate 91 percent of the total runoff volume as determined using an approved continuous runoff model. To prevent the onset of anaerobic conditions, an infiltration facility designed for water quality treatment purposes must be designed to drain the water quality design treatment volume (the 91st percentile, 24-hour volume) within 48 hours.
2. Basic Treatment. A basic treatment facility shall be required for all projects. The requirements of subsection 22.805.090 B3 (Oil Control Treatment), subsection 22.805.090 B4 (Phosphorus Treatment), subsection 22.805.090.B.5 (Enhanced Treatment) are in addition to this basic treatment requirement.
3. Oil Control Treatment. An oil control treatment facility shall be required for high-use sites, as defined in this subtitle.
4. Phosphorus Treatment. A phosphorus treatment facility shall be required for projects discharging into nutrient-critical receiving waters.
5. Enhanced Treatment. An enhanced treatment facility for reducing concentrations of dissolved metals shall be required for projects discharging to a fish-bearing stream or lake, and to waters or drainage systems that are tributary to fish-bearing streams, creeks, or lakes, if the project meets one of the following criteria:
  - a. For a parcel-based project, the total of new plus replaced pollution-generating impervious surface is 5,000 square feet or more, and the site is an industrial, commercial, or multi-family project.
  - b. For a roadway project, the project adds 5,000 square feet or more of pollution-generating impervious surface, and the site is either:
    - 1) A fully controlled or a partially controlled limited access highway with Annual Average Daily Traffic counts of 15,000 or more; or
    - 2) Any other road with an Annual Average Daily Traffic count of 7,500 or greater.
6. Discharges to Groundwater. Direct discharge of untreated drainage water from pollution-generating impervious surfaces to ground water is prohibited.
- C. Inspection and Maintenance Schedule. Temporary and permanent treatment facilities shall be inspected and maintained according to rules promulgated by the Director to keep these facilities to be kept in continuous working order.

(Ord. 123105, § 3, 2009.)

#### Chapter 22.807 - DRAINAGE CONTROL REVIEW AND APPLICATION REQUIREMENTS

##### 22.807.010 - General

- A. No discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, may cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.
- B. Every permit issued to implement this subtitle shall contain a performance standard requiring that no discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.

(Ord. 123105, § 3, 2009.)

22.807.020 - Drainage control review and application requirements

A. Thresholds for Drainage Control Review. Drainage control review and approval shall be required for any of the following:

1. Standard drainage control review and approval shall be required for the following:
  - a. Any land disturbing activity encompassing an area of seven hundred fifty (750) square feet or more;
  - b. Applications for either a master use permit or building permit that includes the cumulative addition of 750 square feet or more of land disturbing activity and/or new and replaced impervious surface;
  - c. Applications for which a grading permit or approval is required per SMC 22.170;
  - d. Applications for street use permits for the cumulative addition of 750 square feet or more of new and replaced impervious surface and land disturbing activity;
  - e. City public works projects or construction contracts, including contracts for day labor and other public works purchasing agreements, for the cumulative addition of 750 square feet or more of new and replaced impervious surface and/or land disturbing activity to the site, except for projects in a City-owned right-of-way and except for work performed for the operation and maintenance of park lands under the control or jurisdiction of the Department of Parks and Recreation; or
  - f. Permit approvals and contracts that include any new or replaced impervious surface or any land disturbing activity on a site deemed a potentially hazardous location, as specified in Section 22.800.050 (Potentially Hazardous Locations);
  - g. Permit approvals that include any new impervious surface in a Category I peat settlement-prone area delineated pursuant to subsection 25.09.020; or
  - h. Whenever an exception to a requirement set forth in this subtitle or in a rule promulgated under this subtitle is desired, whether or not review and approval would otherwise be required, including but not limited to, alteration of natural drainage patterns or the obstruction of watercourses.
2. Large project drainage control review and approval shall be required for projects that include:
  - a. Five thousand square feet or more of new plus replaced impervious surface;
  - b. One acre or more of land disturbing activity;
  - c. Conversion of  $\frac{3}{4}$  acres or more of native vegetation to lawn or landscaped area;
  - d. Conversion of 2.5 acres or more of native vegetation to pasture.
3. The City may, by interagency agreement signed by the Directors of SPU and DPD, waive the drainage and erosion control permit and document requirements for property owned by public entities, when discharges for the property do not enter the public drainage system or the public combined sewer system.

B. Submittal Requirements for Drainage Control Review and Approval

1. Information Required for Standard Drainage Control Review. The following information shall be submitted to the Director for all projects for which drainage control review is required.
  - a. Standard Drainage Control Plan. A drainage control plan shall be submitted to the Director. Standard designs for drainage control facilities as set forth in rules promulgated by the Director may be used.
  - b. Construction Stormwater Control Plan. A construction stormwater control plan demonstrating controls sufficient to determine compliance with subsection 22.805.020.D

shall be submitted. The Director may approve a checklist in place of a plan, pursuant to rules promulgated by the Director.

- c. Memorandum of Drainage Control. The owner(s) of the site shall sign a "memorandum of drainage control" that has been prepared by the Director of SPU. Completion of the memorandum shall be a condition precedent to issuance of any permit or approval for which a drainage control plan is required. The applicant shall file the memorandum of drainage control with the King County Recorder's Office so as to become part of the King County real property records. The applicant shall give the Director of SPU proof of filing of the memorandum. The memorandum shall not be required when the drainage control facility will be owned and operated by the City. A memorandum of drainage control shall include:
  - 1) The legal description of the site;
  - 2) A summary of the terms of the drainage control plan, including any known limitations of the drainage control facilities, and an agreement by the owners to implement those terms;
  - 3) An agreement that the owner(s) shall inform future purchasers and other successors and assignees of the existence of the drainage control facilities and other elements of the drainage control plan, the limitations of the drainage control facilities, and of the requirements for continued inspection and maintenance of the drainage control facilities;
  - 4) The side sewer permit number and the date and name of the permit or approval for which the drainage control plan is required;
  - 5) Permission for the City to enter the property for inspection, monitoring, correction, and abatement purposes;
  - 6) An acknowledgment by the owner(s) that the City is not responsible for the adequacy or performance of the drainage control plan, and a waiver of any and all claims against the City for any harm, loss, or damage related to the plan, or to drainage or erosion on the property, except for claims arising from the City's sole negligence; and
  - 7) The owner(s)' signatures acknowledged by a notary public.
2. Information Required for Large Project Drainage Control Review. In addition to the submittal requirements for standard drainage control review, the following information is required for projects that include: one acre or more of land disturbing activities; 5,000 square feet or more of new and replaced impervious surface; conversion of  $\frac{3}{4}$  acres or more of native vegetation to lawn or landscaped area; or conversion of 2.5 acres or more of native vegetation to pasture.
  - a. Comprehensive Drainage Control Plan. A comprehensive drainage control plan, in lieu of a standard drainage control plan, to comply with the requirements of this subtitle and rules promulgated hereunder and to accomplish the purposes of this subtitle shall be submitted with the permit application. It shall be prepared by a licensed civil engineer in accordance with standards adopted by the Director of DPD.
  - b. Inspection and Maintenance Schedule. A schedule shall be submitted that provides for inspection of temporary and permanent flow control facilities, treatment facilities, and source controls to comply with Section 22.805.080 (Minimum Requirements for Flow Control) and Section 22.805.090 (Minimum Requirements for Treatment).
  - c. Construction Stormwater Control Plan. A construction stormwater control plan prepared in accordance with subsection 22.805.020.D shall be submitted.
3. Applications for drainage control review and approval shall be prepared and submitted in accordance with provisions of this subsection, with Chapter 21.16 (Side Sewer Code) and with associated rules and regulations adopted jointly by the Directors of DPD and SPU.

4. The Director of DPD may require additional information necessary to adequately evaluate applications for compliance with the requirements and purposes of this subtitle and other laws and regulations, including but not limited to Chapter 25.09 (Regulations for Environmentally Critical Areas) and Chapter 23.60A. The Director of DPD may also require appropriate information about adjoining properties that may be related to, or affected by, the drainage control proposal in order to evaluate effects on the adjacent property. This additional information may be required as a precondition for permit application review and approval.
  5. Where an applicant simultaneously applies for more than one of the permits listed in subsection 22.807.020.A for the same property, the application shall comply with the requirements for the permit that is the most detailed and complete.
- C. Authority to Review. The Director may approve those plans that comply with the provisions of this subtitle and rules promulgated hereunder, and may place conditions upon the approval in order to assure compliance with the provisions of this subtitle. Submission of the required drainage control application information shall be a condition precedent to the processing of any of the above-listed permits. Approval of drainage control shall be a condition precedent to issuance of any of the above-listed permits. The Director may review and inspect activities subject to this subtitle and may require compliance regardless of whether review or approval is specifically required by this subsection. The Director may disapprove plans that do not comply with the provisions of this subtitle and rules promulgated hereunder. Disapproved plans shall be returned to the applicant, who may correct and resubmit the plans.

(Ord. [124105](#), § 8, 2013; Ord. 123105, § 3, 2009.)

#### 22.807.090 - Maintenance and Inspection

- A. Responsibility for Maintenance and Inspection. The owner and other responsible party shall maintain drainage control facilities, source controls, and other facilities required by this subtitle and by rules adopted hereunder to keep these facilities in continuous working order. The owner and other responsible party shall inspect permanent drainage control facilities temporary drainage control facilities, and other temporary best management practices or facilities on a schedule consistent with this subtitle and sufficient for the facilities to function at design capacity. The Director may require the responsible party to conduct more frequent inspections and/or maintenance when necessary to ensure functioning at design capacity. The owner(s) shall inform future purchasers and other successors and assignees to the property of the existence of the drainage control facilities and the elements of the drainage control plan, the limitations of the drainage control facilities, and the requirements for continued inspection and maintenance of the drainage control facilities.
- B. Inspection by City. The Director of SPU may establish inspection programs to evaluate and, when required, enforce compliance with the requirements of this subtitle and accomplishment of its purposes. Inspection programs may be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the City's NPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other best management practices.
- C. Entry for Inspection and Abatement Purposes.
  1. New Installations and Connections. When any new drainage control facility is installed on private property, and when any new connection is made between private property and a public drainage system, sanitary sewer or combined sewer, the property owner shall grant, per subsection 22.807.020.B.1.c (Memorandum of Drainage Control), the City the right to enter the

property at reasonable times and in a reasonable manner pursuant to an inspection program established pursuant subsection 22.807.090.B, and to enter the property when the City has a reasonable basis to believe that a violation of this subtitle is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this subtitle.

2. Existing Real Property and Discharges. Owners of property with existing discharges or land uses subject to this subtitle who are not installing a new drainage control facility or making a new connection between private property and a public drainage system, sanitary sewer or combined sewer, shall have the option to execute a permission form for the purposes described above when provided with the form by the Director of SPU.

(Ord. 123105, § 3, 2009.)

## Chapter 22.808 - STORMWATER CODE ENFORCEMENT

### 22.808.010 - Violations

#### A. Civil Violations.

1. The following are civil violations of this subtitle, subject to a maximum civil penalty of up to \$5,000 per day for each violation.
  - a. General. It is a violation to not comply with any requirement of, or to act in a manner prohibited by, this subtitle, or a permit, approval, rule, manual, order, or Notice of Violation issued pursuant to this subtitle;
  - b. Aiding and Abetting. It is a violation to aid, abet, counsel, encourage, commend, incite, induce, hire or otherwise procure another person to violate this subtitle;
  - c. Alteration of Existing Drainage. It is a violation to alter existing drainage patterns which serve a tributary area of more than one acre without authorization or approval by the Director;
  - d. Obstruction of Watercourse. It is a violation to obstruct a watercourse without authorization or approval by the Director;
  - e. Dangerous Condition. It is a violation to allow to exist, or cause or contribute to, a condition of a drainage control facility, or condition related to grading, drainage water, drainage or erosion that is likely to endanger the public health, safety or welfare, the environment, or public or private property;
  - f. Interference. It is a violation for any person to interfere with or impede the correction of any violation, or compliance with any Notice of Violation, emergency order, stop work order, or the abatement of any nuisance;
  - g. Piecemeal of Projects. It is a violation for any person to knowingly divide a large project into a set of smaller projects specifically for the purpose of avoiding minimum requirements;
  - h. Altering a Posted Order. It is a violation for any person to remove, obscure, or mutilate any posted order of the Director, including a stop work or emergency order; and
  - i. Continuing Work. It is a violation for any work to be done after service or posting of a stop work order, except work necessary to perform the required corrective action, until authorization is given by the Director.

#### B. Criminal Violations.

1. The following are criminal violations, punishable upon conviction by a fine of not more than \$5,000 per violation or imprisonment for each violation for not more than 360 days, or both such fine and imprisonment:

- a. Failing to comply with a Notice of Violation or Director's order issued pursuant to this subtitle;
- b. Failing to comply with a court order;
- c. Tampering with or vandalizing any part of a drainage control facility or other best management practice, a public or private drainage system, monitoring or sampling equipment or records, or notices posted pursuant to this subtitle; and
- d. Anyone violating this subtitle who has had a judgment, final Director's order, or Director's review decision against them for a prior violation of this subtitle in the preceding five years.

(Ord. 123105, § 4, 2009.)

#### 22.808.020 - Liability and Defenses of Responsible Parties

- A. Who Must Comply. It is the specific intent of this subtitle to place the obligation of complying with its requirements upon the responsible parties, as defined in subsection 22.801.190. The City and its agencies are intended to have the same obligation for compliance when the City is a responsible party. No provision of this subtitle is intended to impose any other duty upon the City or any of its officers or employees.
  1. Joint and Several Liability. Each responsible party is jointly and severally liable for a violation of this subtitle. The Director may take enforcement action, in whole or in part, against any responsible party. All applicable civil penalties may be imposed against each responsible party.
  2. Allocation of Damages. In the event enforcement action is taken against more than one responsible party, recoverable damages, costs, and expenses may be allocated among the responsible parties by the court based upon the extent to which each responsible party's acts or omissions caused the violation. If this factor cannot be determined the court may consider:
    - a. Awareness of the violation;
    - b. Ability to correct the violation;
    - c. Ability to pay the damages, costs, and expenses;
    - d. Cooperation with government agencies;
    - e. Degree to which any impact or threatened impact on water or sediment quality, human health, the environment, or public or private property is related to acts or omissions by each responsible party;
    - f. Degree to which the responsible parties made good-faith efforts to avoid a violation or to mitigate its consequences; and
    - g. Other equitable factors.
- B. Defenses. A responsible party shall not be liable under this subtitle when the responsible party proves, by a preponderance of the evidence, one of the following:
  1. The violation was caused solely by an act of God;
  2. The violation was caused solely by another responsible party over whom the defending responsible party had no authority or control and the defending responsible party could not have reasonably prevented the violation;
  3. The violation was caused solely by a prior owner or occupant when the defending responsible party took possession of the property without knowledge of the violation, after using reasonable efforts to identify violations. But, the defending responsible party shall be liable for all continuing, recurrent, or new violations after becoming the owner or occupant; or
  4. The responsible party implemented and maintained all appropriate drainage control facilities, treatment facilities, flow control facilities, erosion and sediment controls, source controls, and best management practices identified in rules promulgated by the Director or in manuals



published by the State Department of Ecology, or as otherwise identified and required of the responsible party by the Director in writing.

(Ord. 123105, § 4, 2009.)

22.808.025 - Right of Entry for Enforcement

With the consent of the owner or occupant of a building, premises, or property, or pursuant to a lawfully issued warrant, the Director may enter a building, premises, or property at any reasonable time to perform the duties imposed by this code.

(Ord. 123105, § 4, 2009.)

22.808.030 - Enforcement Actions

A. Investigation. The Director may investigate any site where there is reason to believe that there may be a failure to comply with the requirements of this subtitle.

B. Notice of Violation.

1. Issuance. The Director is authorized to issue a Notice of Violation to a responsible party, whenever the Director determines that a violation of this subtitle has occurred or is occurring. The Notice of Violation shall be considered an order of the Director.
2. Contents.
  - a. The Notice of Violation shall include the following information:
    - 1) A description of the violation and the action necessary to correct it;
    - 2) The date of the notice; and
    - 3) A deadline by which the action necessary to correct the violation must be completed.
  - b. A Notice of Violation may be amended at any time to correct clerical errors, add citations of authority, or modify required corrective action.
3. Service. The Director shall serve the notice upon a responsible party either by personal service, by first class mail, or by certified mail return receipt requested, to the party's last known address. If the address of the responsible party cannot be found after a reasonable search, the notice may be served by posting a copy of the notice at a conspicuous place on the property. Alternatively, if the whereabouts of the responsible party is unknown and cannot be ascertained in the exercise of reasonable diligence, and the Director makes an affidavit to that effect, then service may be accomplished by publishing the notice once each week for two consecutive weeks in the City official newspaper.
4. Nothing in this subtitle shall be deemed to obligate or require the Director to issue a Notice of Violation or order prior to the initiation of enforcement action by the City Attorney's Office pursuant to subsection 22.808.030.E.

C. Stop Work and Emergency Orders.

1. Stop Work Order. The Director may order work on a site stopped when he or she determines it is necessary to do so in order to obtain compliance with or to correct a violation of any provision of this subtitle or rules promulgated hereunder or to correct a violation of a permit or approval granted under this subtitle.
  - a. The stop work notice shall contain the following information:
    - 1) A description of the violation; and
    - 2) An order that the work be stopped until corrective action has been completed and approved by the Director.

- b. The stop work order shall be personally served on the responsible party or posted conspicuously on the premises.
    2. Emergency Order.
      - a. The Director may order a responsible party to take emergency corrective action and set a schedule for compliance and/or may require immediate compliance with an emergency order to correct when the Director determines that it is necessary to do so in order to obtain immediate compliance with or to correct a violation of any provision of this subtitle, or to correct a violation of a permit or approval granted under this subtitle.
      - b. An emergency order shall be personally served on the responsible party or posted conspicuously on the premises.
      - c. The Director is authorized to enter any property to investigate and correct a condition associated with grading, drainage, erosion control, drainage water, or a drainage control facility when it reasonably appears that the condition creates a substantial and present or imminent danger to the public health, safety or welfare, the environment, or public or private property. The Director may enter property without permission or an administrative warrant in the case of an extreme emergency placing human life, property, or the environment in immediate and substantial jeopardy which requires corrective action before either permission or an administrative warrant can be obtained. The cost of such emergency corrective action shall be collected as set forth in subsection 22.808.060.
    3. Director's Review of Stop Work and Emergency Order. A stop work order or emergency order shall be final and not subject to a Director's review.
  - D. Review by Director.
    1. A Notice of Violation, Director's order, or invoice issued pursuant to this subtitle shall be final and not subject to further appeal unless an aggrieved party requests in writing a review by the Director within ten days after service of the Notice of Violation, order or invoice. When the last day of the period so computed is a Saturday, Sunday or federal or City holiday, the period shall run until 5:00 p.m. on the next business day.
    2. Following receipt of a request for review, the Director shall notify the requesting party, any persons served the Notice of Violation, order or invoice, and any person who has requested notice of the review, that the request for review has been received by the Director. Additional information for consideration as part of the review shall be submitted to the Director no later than 15 days after the written request for a review is mailed.
    3. The Director will review the basis for issuance of the Notice of Violation, order, or invoice and all information received by the deadline for submission of additional information for consideration as part of the review. The Director may request clarification of information received and a site visit. After the review is completed, the Director may:
      - a. Sustain the Notice of Violation, order, or invoice;
      - b. Withdraw the Notice of Violation, order or invoice;
      - c. Continue the review to a date certain for receipt of additional information; or
      - d. Modify or amend the Notice of Violation, order, or invoice.
    4. The Director's decision shall become final and is not subject to further administrative appeal.
  - E. Referral to City Attorney for Enforcement. If a responsible party fails to correct a violation or pay a penalty as required by a Notice of Violation, or fails to comply with a Director's order, the Director shall refer the matter to the City Attorney's Office for civil or criminal enforcement action. Civil actions to enforce a violation of this subtitle shall be exclusively in Municipal Court.
  - F. Appeal to Superior Court. Because civil actions to enforce Title 22 are brought exclusively in Municipal Court, notices of violation, orders, and all other actions made under this chapter are not subject to judicial review under chapter 36.70C RCW. Instead, final decisions of the Municipal Court

on enforcement actions authorized by this chapter may be appealed under the Rules of Appeals of Decisions of Courts of Limited Jurisdiction.

- G. Filing of Notice or Order. A Notice of Violation, voluntary compliance agreement or an order issued by the Director or court, may be filed with the King County Recorder's Office.
- H. Change of Ownership. When a Notice of Violation, voluntary compliance agreement, or an order issued by the Director or court has been filed with the King County Recorder's Office, a Notice of Violation or an order regarding the same violations need not be served upon a new owner of the property where the violation occurred. If no Notice of Violation or order is served upon the new owner, the Director may grant the new owner the same number of days to comply as was given the previous owner. The compliance period for the new owner shall begin on the date that the conveyance of title to the new owner is completed.

(Ord. 123105, § 4, 2009.)

#### 22.808.040 - Voluntary Compliance Agreement

- A. Initiation. Either a responsible party or the Director may initiate negotiations for a voluntary compliance agreement at any time. Neither has any obligation to enter into any voluntary compliance agreement.
- B. Contents. A voluntary compliance agreement shall identify actions to be taken by the responsible party that will correct past or existing violations of this subtitle. The agreement may also identify actions to mitigate the impacts of violations. The agreement shall contain a schedule for completion of the corrective actions and any mitigating actions. The agreement shall contain a provision allowing the Director to inspect the premises to determine compliance with the agreement. The agreement shall provide that the responsible party agrees the City may perform the actions set forth in the agreement if the responsible party fails to do so according to the terms and schedule of the agreement, and the responsible party will pay the costs, expenses and damages the City incurs in performing the actions, as set forth in Section 22.808.060.
- C. Effect of Agreement.
  - 1. A voluntary compliance agreement is a binding contract between the party executing it and the City. It is not enforceable by any other party. By entering into a voluntary compliance agreement, a responsible party waives the right to Director's Review of the Notice of Violation or order.
  - 2. Penalties may be reduced or waived if violations are corrected or mitigated according to the terms and schedule of a voluntary compliance agreement. If the responsible party fails to perform according to the terms and schedule of the voluntary compliance agreement, penalties for each violation addressed in the agreement may be assessed starting from the date the violation occurred, or as otherwise provided for in a Notice of Violation or Director's order.
- D. Modification. The terms and schedule of the voluntary compliance agreement may be modified by mutual agreement of the responsible party and either Director if circumstances or conditions outside the responsible party's control, or unknown at the time the agreement was made, or other just cause necessitate such modifications.

(Ord. 123105, § 4, 2009.)

#### 22.808.050 - Penalties and Damages

- A. Assessment of Penalties by the Director. The Director, after considering all available information, may assess a penalty for each violation of this subtitle based upon the Schedule of Civil Penalties.
- B. Schedule of Civil Penalties. The Director shall determine penalties as follows:
  - 1. Basic Penalty.

- a. **Maximum Penalty.** A violation of this subtitle is subject to a maximum civil penalty of up to \$5,000. Each day or portion thereof during which a violation of this subtitle exists is a separate violation of this subtitle.
- b. **Commencement Date.** The penalty shall commence on the date of the violation, unless otherwise provided for in a Notice of Violation or Director's order.
- c. **Assessment Matrix.** The penalty shall be assessed using a matrix of criteria and scored as defined in rules promulgated by the Director. The total score will equate with a penalty up to a maximum of \$5000 for each violation. The penalty shall be rated for severity by using the criteria listed below and by answering "No", "Possibly", "Probably", or "Definitely":
  - 1) Does the violation pose a public health risk;
  - 2) Does the violation cause environmental damage or adversely impact infrastructure;
  - 3) Was the responsible party willful or knowing of the violation;
  - 4) Was the responsible party unresponsive in correcting the violation;
  - 5) Was there improper operation or maintenance;
  - 6) Was there a failure to obtain necessary permits or approval;
  - 7) Does the violation provide economic benefit for non-compliance; and
  - 8) Was the violation a repeat violation.
- C. **Penalty for Significant Violation.** For violations causing significant harm to public health, safety, welfare, the environment, or private or public property, the Director may, as an alternative to the Basic Penalty, refer the matter to the City Attorney's Office for enforcement and request the City Attorney seek a penalty equivalent to the economic benefit the responsible party derived from the violation. Significant harm is damage or injury which cannot be fully corrected or mitigated by the responsible party, and which cannot be adequately compensated for by assessment of the Basic Penalty and costs, expenses, or damages under this subtitle. Economic benefit may be determined by savings in costs realized by the responsible party, value received by the responsible party, increased income to the responsible party, increase in market value of property, or any other method reasonable under the circumstances.
- D. **Damages.** Whoever violates any of the provisions of this subtitle shall, in addition to any penalties provided for such violation, be liable for any: investigation cost, cost to correct or any other cost expense; loss or damage incurred by the City; plus a charge of 15% for administrative costs. This subtitle does not establish a cause of action that may be asserted by any party other than the City. Penalties, damages, costs and expenses may be recovered only by the City.
- E. **Effect of Payment of Penalties.** The responsible party named in a Notice of Violation or order is not relieved of the duty to correct the violation by paying civil penalties.

(Ord. 123105, § 4, 2009.)

#### 22.808.060 - Collection of Costs and Penalties

- A. **Invoice and Demand for Payment of Investigation and Correction Costs.** The Director may issue an invoice and demand for payment of the City's costs and expenses when the Director has investigated or corrected a violation of this subtitle. The invoice shall include:
  1. The amount of the City's investigation and correction costs, which include, but are not limited to:
    - a. Billed cost including labor, administration, overhead, overtime, profit, taxes, and other related costs for a hired contractor to investigate and/or perform the abatement work;
    - b. Labor, administration, overhead, overtime, and other related costs for the City staff and crews to investigate and/or perform the abatement work;
    - c. Administrative costs to set up contracts and coordinate work;

- d. Time spent communicating with the responsible party, any other enforcing agencies, and the affected community;
  - e. Inspections for compliance with the Code, documentation of costs, and invoicing the responsible party;
  - f. Cost of equipment, materials, and supplies, including all related expenses for purchasing, renting, and leasing;
  - g. Laboratory costs and analytical expenses;
  - h. Cost of mobilization, disposal of materials, and cleanup, and
  - i. Any associated permit fees;
2. Either a legal description of the property corresponding as nearly as possible to that used for the property on the rolls of the King County Assessor or, where available, the property's street address;
  3. Notice that the responsible party may request a Director's review pursuant to subsection 22.808.030.D;
  4. Notice that if the amount due is not paid within 30 days, the unpaid amount may be collected in any of the manners identified in subsection 22.808.060.C; and
  5. Notice that interest shall accrue on the unpaid balance if not paid within 30 days after the invoice date.
- B. Invoice and Demand for Payment of Civil Penalties. The Director may issue an invoice and demand for payment of civil penalties when the responsible party has failed to pay a penalty by the deadline in a Notice of Violation or order and has failed to request a Director's review or file an appeal within the required time periods established in subsection 22.808.030.D. The invoice shall include:
1. The amount of the penalty;
  2. Either a legal description of the property corresponding as nearly as possible to that used for the property on the rolls of the King County Assessor or, where available, the property's street address;
  3. Notice that if the amount due is not paid within 30 days, the unpaid amount may be collected in any of the manners identified in subsection 22.808.060.C and
  4. Notice that interest shall accrue on the unpaid balance if not paid within 30 days after the invoice date.
- C. Collection Following a Judicial Review. If a court has issued an order or judgment imposing penalties, costs, damages, or expenses for a violation of this subtitle, and the court's order or judgment is not appealed within 30 days, the Director may:
1. Refer the matter to the City Attorney to initiate appropriate enforcement action;
  2. Refer, after consultation with the City Attorney, the matter to a collection agency; or
  3. Add a surcharge in the amount owed under the order to the bill for drainage and wastewater services to the site. If unpaid, the surcharge may become a lien on the property, may be foreclosed, and may accrue interest as provided by state law or Section 21.33.110.

(Ord. 123105, § 4, 2009.)

22.808.070 - Public Nuisance

- A. Abatement Required. A public nuisance affecting drainage water, drainage, erosion control, grading and other public nuisances set forth in this subsection are violations of this subtitle. A responsible party shall immediately abate a public nuisance upon becoming aware of its existence.

- B. **Dysfunctional Facility or Practice.** Any private drainage control facility or best management practice not installed or maintained as required by this subtitle, or otherwise found to be in a state of dysfunction creating, a threat to the public health, safety or welfare, the environment, or public or private property is a public nuisance.
- C. **Obstruction of Watercourse.** Obstruction of a watercourse without authorization by the Director, and obstruction in such a manner as to increase the risk of flooding or erosion should a storm occur, is a public nuisance.
- D. **Dangerous Conditions.** Any condition relating to grading, drainage water, drainage or erosion which creates a present or imminent danger, or which is likely to create a danger in the event of a storm, to the public health, safety or welfare, the environment, or public or private property is a public nuisance.
- E. **Abatement by the City.** The Director is authorized, but not required to investigate a condition that the Director suspects of being a public nuisance under this subtitle, and to abate any public nuisance. If a public nuisance is an immediate threat to the public health, safety or welfare or to the environment, the Director may summarily and without prior notice abate the condition. The Director shall give notice of the abatement to the responsible party as soon as reasonably possible after the abatement.
- F. **Collection of Abatement Costs.** The costs of abatement may be collected from the responsible party, including, a reasonable charge for attorney time, and a 15% surcharge for administrative expenses as set forth in subsection 22.808.050.D. Abatement costs and other damages, expenses and penalties collected by the City shall go into an abatement account for the department collecting the moneys. The money in the abatement account shall be used for abatements, investigations, and corrections of violations performed by the City. When the account is insufficient the Director may use other available funds.

(Ord. 123105, § 4, 2009.)

#### 22.808.080 - Additional Relief

In addition to any remedy provided in this subtitle, the Director may seek any other legal or equitable remedy to enjoin any acts or practice or abate any condition that or will constitute a violation of this subtitle or a public nuisance.

(Ord. 123105, § 4, 2009.)

#### 22.808.090 - Suspension or Revocation

Approvals or permits granted on the basis of inaccurate or misleading information may be suspended or revoked. Other permits or approvals interrelated with an approval suspended or revoked under this subsection, including certificates of occupancy or approvals for occupancy, may also be suspended or revoked. When an approval or permit is suspended or revoked, the Director may require the applicant take corrective action to bring the project into compliance with this subtitle by a deadline set by the Director, or may take other enforcement action.

(Ord. 123105, § 4, 2009.)

#### 22.808.100 - Fees

Fees for grading permits, drainage control plan review and approvals shall be as identified in the Fee Subtitle, Subtitle IX of Title 22, Seattle Municipal Code. Fees for record-keeping or other activities pursuant to this subtitle shall, unless otherwise provided for in this subtitle, be prescribed by ordinance.

(Ord. 123105, § 4, 2009.)

#### 22.808.110 - Financial Assurance and Covenants

As a condition precedent to issuance of any permit or approval provided for in this subtitle, the Director may require an applicant for a permit or approval to submit financial assurances as provided in this subsection.

A. Insurance.

1. The Director may require the property owners or contractor carry liability and property damage insurance naming the City as an additional insured. The amount, as determined by the Director, shall be commensurate with the risks.
2. The Director may also require the property owner maintain a policy of general public liability insurance against personal injury, death, property damage and/or loss from activities conducted pursuant to the permit or approval, or conditions caused by such activities, and naming the City as an additional insured. The amount, as determined by the Director, shall be commensurate with the risks. It shall cover a period of not more than ten years from the date of issuance of a certificate of occupancy or finalization of the permit or approval. A certificate evidencing such insurance shall be filed with the Director before issuing a certificate of occupancy or finalizing a permit for any single family dwelling or duplex.
3. The insurance policy shall provide that the City will be notified of cancellation of the policy at least 30 days prior to cancellation. The notice shall be sent to the Director who required the insurance and shall state the insured's name and the property address. If a property owner's insurance is canceled and not replaced, the permit or approval and any interrelated permit or approval may be revoked, including a certificate of occupancy or approval for occupancy.

B. Bonds, Cash Deposits or Instruments of Credit.

1. Surety Bond.

- a. The Director may require that the property owners or contractor deliver to the Director for filing in the Office of the City Clerk a surety bond, cash deposit or an instrument of credit in such form and amounts deemed by the Director to be necessary to ensure that requirements of the permit or approval are met. A surety bond may be furnished only by a surety company licensed to do business in The State of Washington. The bond shall be conditioned that the work will be completed in accordance with the conditions of the permit or approval, or, if the work is not completed, that the site will be left in a safe condition. The bond shall also be conditioned that the site and nearby, adjacent or surrounding areas will be restored if damaged or made unsafe by activities conducted pursuant to the permit or approval.
- b. The bond will be exonerated one year after a determination by the Director that the requirements of the permit or approval have been met. For work under a building permit, issuance of a certificate of occupancy or approval for occupancy following a final inspection shall be considered to be such a determination.

2. Assurance in Lieu of Surety Bond. In lieu of a surety bond, the owners may elect to file a cash deposit or instrument of credit with the Director in an amount equal to that which would be required in the surety bond and in a form approved by the Director. The cash deposit or instrument of credit shall comply with the same conditions as required for surety bonds.

C. Covenants.

1. The Director may require a covenant between the property owners and the City. The covenant shall be signed by the owners of the site and notarized prior to issuing any permit or approval in a potential landslide area, potentially hazardous location, flood prone zone, or other area of potentially hazardous soils or drainage or erosion conditions. The covenant shall not be required where the permit or approval is for work done by the City. The covenant shall include:

- a. A legal description of the property;
  - b. A description of the property condition making this subsection applicable;
  - c. A statement that the owners of the property understands and accepts the responsibility for the risks associated with development on the property given the described condition, and agrees to inform future purchasers and other successors and assignees of the risks;
  - d. The application date, type, and number of the permit or approval for which the covenant is required; and
  - e. A statement waiving the right of the owners, the owners' heirs, successors and assigns, to assert any claim against the City by reason of or arising out of issuance of the permit or approval by the City for the development on the property, except only for such losses that may directly result from the sole negligence of the City.
2. The covenant shall be filed by the Director with the King County Recorder's Office, at the expense of the owners, so as to become part of the King County real property records.

(Ord. 123105, § 4, 2009.)

#### 22.808.140 - Severability

The provisions of this subtitle are declared to be separate and severable and the invalidity of any clause, sentence, paragraph, subdivision, section or portion of this subtitle, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this subtitle or the validity of its application to other persons or circumstances.

(Ord. 116425 § 2(part), 1992.)





ACTION CALENDAR

January 22, 2019

*(Continued from December 11, 2018)*

To: Honorable Mayor and Members of the City Council  
From: Community Environmental Advisory Commission (CEAC)  
Submitted by: Michael Goldhaber, Chair, CEAC  
Subject: Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Properties

RECOMMENDATION

Since the drought-storm-flooding cycle is predicted to get worse, refer to the City Manager to develop and implement measures to help reduce runoff from private property when rain exceeds two inches in a 24-hour period. The City Manager and staff should consider the following:

- Comply beyond the State and Alameda County current requirements;
- Encourage the treating and detaining of runoff up to approximately the 85th percentile of water deposited in a 24-hour period;
- Establish site design measures that include minimizing impervious surfaces;
- Require homeowners to include flooding offsets in preparing properties for sale;
- Offer option(s) for property owners to fund in-lieu centralized off-site storm-water retention facilities that would hold an equivalent volume of runoff;
- Require abatements for newly paved areas over a specific size;
- Make exceptions for properties that offer significantly below-market rent or sale prices;
- Authorize a fee for all new construction or for title transfer to cover the cost of required compliance inspections.
- Incorporate these measures for private property with similar measures for Public Works, while coordinating with EBMUD, BUSD, UCB and LBNL.

SUMMARY

Current climate-change predictions for California suggest severe droughts combined with extreme storms, causing dangerous erosion, flooding, and increased Bay pollution. According to Berkeley's watershed management plan, in a 10-year storm or greater, both the Codornices and Potter Creek watersheds have a propensity to flood, and climate change increases the probability and severity of storms. BART and the city currently run pumps to mitigate the flow underground.

In order to prevent flooding, there is an urgent need for the City to offset impermeable surfaces and detain stormwater. Impermeable surfaces generate faster stormwater flows of more intensity (volume per duration), therefore creating greater flooding threats. In addition, stormwater flows carries trash, pathogens, pesticides, fertilizer, metals, motor vehicle related contaminants to the creeks and the Bay. Stormwater detention can help mitigate this pollution.

On June 14, 2018, the Commission voted to adopt the Mandatory and Recommended Green Storm Water Infrastructure in New and Existing Redevelopments and send them to council. [Motioned/Seconded: Hetzel/Kapla. Carried: Unanimously (Liz Varnhagen, Fred Hetzel, Robb Kapla, Michael Goldhaber (chair), Ben Gould, and Kristina Lim). Absent: Carla Ticconi, Holly Williams]

#### FISCAL IMPACTS OF RECOMMENDATION

If inspection fees are adequate, there should be no net costs to the City, except for staff time to firm up the plan. With widespread implementation of features that promote stormwater detention, treatment, and infiltration, overall flood damage within the City should decrease, which in turn could result in increased property values and higher tax revenues.

#### CURRENT SITUATION AND ITS EFFECTS

This report responds to Referral #2016-21, which originally appeared on the agenda of the September 15, 2015 Council meeting and was sponsored by then-Councilmember Arreguin.

The State stormwater discharge permit requires the City of Berkeley to use Low Impact Design (LID) and Green Infrastructure (GI) to comply with stormwater management requirements, which is in keeping with Berkeley's goals for promoting sustainable development.

Currently, the City does seem to be enforcing rules requiring mitigation when 2,500 square feet or more of new impermeable surface is added to a property. Required mitigation typically takes up an area of approximately 4% of the total new impermeable area and is therefore a very fair and feasible requirement. However, smaller areas, especially pavement, ought to require similar mitigation as they increase runoff.

At present, permits are not required for adding new pavement unless these impinge on the street-property boundary. As a result, the City and its inspectors are not aware of most small projects that add new pavement. Requiring permits for all (most) (re)paving over permeable surfaces will help ensure that the City is aware, can ask for appropriate mitigation, or can recommend permeable paving that will reduce runoff. Requiring permits for paving beyond a very small threshold area is an essential part of preventing the cumulative effects of increased stormwater runoff.

All these requirements can be met by using on- or off-site strategies to manage the quantity and quality of stormwater runoff. The approach integrates stormwater into the urban environment to achieve multiple goals. It reduces stormwater pollution and restores natural hydrologic function to the City's watersheds. It can also provide wildlife habitat and contribute to the gradual creation of a greener city.

A crucial aspect of identifying and implementing effective mitigation, also mandated by law, is within a comprehensive Watershed Management Plan, which we understand the City is committed to complete. This should include both water from private properties, the topic of this CEAC message, and the City's contributions from public properties including streets and parks.

### BACKGROUND

A recent UCLA study ["Increasing precipitation volatility in twenty-first-century California", Daniel L. Swain, Baird Langenbrunner, J. David Neelin & Alex Hall, *Nature Climate Change* 8, 427–433 (2018)] ... "found that over the next 40 years, the state will be 300 to 400 percent more likely to have a prolonged storm sequence as severe as the one that caused a now-legendary California flood more than 150 years ago.

"The Great Flood of 1862 filled valleys with feet of water and washed gold rush miners and their equipment out of the mountains. In the Central Valley, floodwaters stretched up to 300 miles long and as wide as 60 miles across." [*UCLA Newsroom*]

When there are heavy storms in Berkeley such as 10-year or greater, stormwater that is not absorbed runs downhill towards the Bay and collects in low elevation areas. As the movement of stormwater slows, it can result in flooding if drainage channels become overwhelmed, unless there are means of capturing the water for irrigation or other beneficial uses. It can also pick up pollutants that then will be carried into streams and eventually the Bay.

Urban development has caused two important changes in the nature and volume of stormwater. First, natural, vegetated permeable ground cover is converted to impermeable surfaces such as paved highways, streets, rooftops, and parking lots. Vegetated soil can both absorb rainwater and remove pollutants, providing a very effective natural purification process. This benefit is lost when pavement, or buildings are constructed. With the construction of more impermeable surface, stormwater runoff increases in intensity with higher flows of shorter duration, increasing the chance of overwhelming drainage channels and flooding in flood prone areas.

In addition, urban development creates pollution sources as urban population density increases. The contamination of urban stormwater comes from many and various sources including pathogens from both pet and human waste, solid waste from litter and trash, pesticides from both residential and commercial uses, fertilizers from

landscaping, and heavy metals and other contaminants from the operation of motor vehicles. All these pollutants and others can be deposited on paved surfaces, rooftops, and other impervious surfaces as fine airborne particles, thus yielding stormwater - runoff pollution that is unrelated to the activity associated with a given project site.

As a result of these two changes, stormwater discharges into the Bay from the developed urban area is significantly greater in volume, velocity and contaminants than the same area experienced prior to its conversion into an urban environment.

Additionally, increased flows and volumes of stormwater discharged from new impermeable surfaces resulting from new development and redevelopment can physically modify the natural aquatic ecosystems in our creeks, through bank erosion and deepening and widening of channels, elevating turbidity and sediment loads to the Bay.

Pollutants of concern in stormwater include heavy metals, excessive sediment production from erosion, petroleum hydrocarbons from sources such as motor vehicles, microbial pathogens of domestic sewage origin from illicit or accidental discharges, pesticides and herbicides, nutrients (from fertilizers), and trash.

Effective mitigation to offset the unpredictable and sometimes intense behavior of urban stormwater becomes increasingly necessary. Other cities, including San Francisco, Emeryville, and the North Bay Counties (Marin, Sonoma, Napa and Solano), as well as the Alameda County clean water program, of which the City of Berkeley is a member, have put together comprehensive requirements that are available as guides. Berkeley, given our pioneering status in green issues, should wish to be even more forward looking and develop our own comprehensive green infrastructure program. In addition, Berkeley should continue to work on a comprehensive water management plan, seeking input and cooperation from EBMUD, surrounding cities, UCB, LBNL and BUSD.

Berkeley's program should include requirements for construction projects to implement appropriate source control, site design, and stormwater treatment measures to address water quality, and to prevent increased intensity stormwater runoff volumes.

#### ENVIRONMENTAL SUSTAINABILITY

The proposed recommendation will improve the sustainability of new construction and redevelopment, increase the City's resiliency to climate change, 10-year storms, and flooding, while helping mitigate pollution from stormwater runoff.

RATIONALE FOR RECOMMENDATION

Berkeley's drought-storm cycle is likely to get worse as Climate change has more effecting the coming years and decades. Therefore, more efforts to control flooding and prevent pollution are needed. In addition, unless mitigated, increased paving on private property increases the stormwater runoff and related problems.

ALTERNATIVE ACTIONS CONSIDERED

CEAC considered City Council Referral #2016-21 from September 15, 2015 to develop an ordinance requiring large residential developments of 100 units or more or commercial developments that result in 5,000 square feet of new or replaced impervious surface, to incorporate Green Stormwater Infrastructure (GSI) and water conservation features into new projects.

CITY MANAGER

See companion report.

CONTACT PERSON

Viviana Garcia, Secretary, Toxics, (510) 981 7460





Zero Waste Commission

ACTION CALENDAR

January 22, 2019

*(Continued from December 11, 2018)*

To: Honorable Mayor and Members of the City Council

From: Zero Waste Commission

Submitted by: Chrise de Tournay Birkhahn, Chairperson, Zero Waste Commission

Subject: Referral Response: Berkeley Single Use Foodware and Litter Reduction Ordinance

RECOMMENDATION

Review the results of the Zero Waste Commission's community outreach and analysis provided in response to Council's referral and consider incorporating the Zero Waste Commission recommendations for improvements into the referred draft proposed Berkeley Single Use Foodware and Litter Reduction Ordinance (Attachment 1).

SUMMARY

The Zero Waste Commission was tasked by Council to invite input from the public and key stakeholders, including restaurants, food retailers, the disabled community, and other City commissions on the proposed Ordinance. This report includes results of the community and business outreach, including analysis and recommendations for improvements to the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance.

FISCAL IMPACTS OF RECOMMENDATION

The added cost of the referral is staff time to review recommendations, including health codes and operations.

CURRENT SITUATION AND ITS EFFECTS

This report responds to referral that originally appeared as item 34 on the agenda of the April 24, 2018 Council meeting. This referral was sponsored by Councilmember Sophie Hahn and Mayor Jesse Arreguin, and Councilmembers Linda Maio and Susan Wengraf.

At the City Council meeting on April 24, 2018 the City Council approved the following recommendation:

1. Refer the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance to the Zero Waste Commission to invite input from key stakeholders, including restaurants and other food retailers and zero waste, plastics, oceans

and other environmental experts, and hold public meetings to obtain input on the proposed Ordinance; and

2. Refer to the Zero Waste Commission to report back to the City Council results of the Commission's community outreach and analysis, and provide recommendations for improvements to the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance.

The Zero Waste Commission held seven public input sessions, two of which were part of the extended public comment period at monthly Zero Waste Commission meetings. The meetings were held on different days of the week, at different times, and in different geographic locations around the City. The Zero Waste Commission has compiled a report of recommendations (Attachment 1) and public comments (Attachment 2) from these listening sessions and from written comments submitted by the public and stakeholders.

#### BACKGROUND

Single-use disposable foodware and packaging (SUDs) is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions. The practice of providing food and beverage packaging free-of-charge fails to incorporate the environmental and social costs of these products into the price of the products.

SUDs are costly and challenging to divert from landfill. Non-recyclable food and beverage packaging is costly to remove from the waste stream and reduces the quality and value of recyclables. In order for Berkeley to reach its Zero Waste goals, the City must reduce use of unnecessary single-use food and beverage packaging.

The Zero Waste Commission approved their recommendations for improvements to the Berkeley Single Use Foodware and Litter Reduction Ordinance at the September 24, 2018 regular meeting of the Zero Waste Commission. Motion: Sharenko; Second: Stein; Vote: 7 Ayes: de Tournay, Twu, Poliwka, Sharenko, McKinstry, Stein, Whitney; Noes: None; Abstain: None; Absent: Watson, Clark.

#### ENVIRONMENTAL SUSTAINABILITY

The production, consumption and disposal of single use food and beverage packaging is a major contributor to litter in our streets, plastic in landfills, pollution in waterways and oceans, greenhouse gas emissions, and harm to wildlife. The ordinance represents a step forward in reducing the use of disposable foodware in Berkeley, fulfilling Berkeley's Zero Waste and Climate Action Goals, reducing greenhouse gas emissions, and meeting State trash load level mandates.

#### RATIONALE FOR RECOMMENDATION



Referral Response:  
Berkeley Single Use Foodware and Litter Reduction Ordinance

ACTION CALENDAR  
January 22, 2019

The Zero Waste Commission recommendations are based on an analysis of the gathered public and stakeholder feedback. Incorporation of the recommendations will lead to an improved Ordinance.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

See companion report.

CONTACT PERSON

Heidi Obermeit, Recycling Program Manager, Zero Waste Commission Secretary,  
Department of Public Works, 510-981-6357

Attachments:

- 1: Zero Waste Commission Recommendations for the Proposed Berkeley Single Use Foodware and Litter Reduction Ordinance
- 2: Public and Stakeholder Comments Collected
- 3: April 24, 2018 City Council Referral Report and Draft Proposed Berkeley Single Use Foodware and Litter Reduction Ordinance

## Zero Waste Commission Recommendations for the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance

*Note that comments may not be verbatim, and that “recyclable” materials refer ONLY to those accepted in the City’s Curbside Recycling Collection Program.*

### **TOPIC: Requiring Durable/Reusable Foodware for DINING-IN**

Comments received:

- Space concerns for installing washing machines/water usage/reusable ware
- Durable foodware poses a safety threat to employees if used as projectiles (comment from Top Dog)
- Labor costs to train and require employees to wash durable food ware

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Provide free technical assistance to help food establishments plan operations and equipment changes
- Provide small grants or loans to help defray the up-front costs of purchasing reusable foodware and re-configuring kitchens
- Allow private off-site washing/cleaning services to provide service in lieu of on-site cleaning.
- Exempt certain establishments from the 100% reusable requirement on a case-by-case basis, if they can prove it was impossible to implement all requirements due to unique considerations, so long as a good faith effort is made to do the most possible to achieve goals of ordinance.
- Compostable items used in any case where use of reusables are determined non-implementable by City.
- City-wide funded education program for businesses to transition to requirements of ordinance.
- Provide fact-sheet/FAQ for businesses

### **TOPIC: Collection and Documentation of SUD Charge-Added complexity/logistics**

Comments Received:

- Multiple business owners expressed concern about how to implement the SUD charge.
- Need clarification on how to enter line item(s) for SUD charges? (Ex: Does a customer who orders a soup, salad, and sandwich need three SUD line items, each item to be documented?)
- Limited/low quality of labor and high cost of business makes this a real issue
- Many people do not request a receipt - is this non-compliant with ordinance requiring public notification of charge?

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Clarify requirements for reporting line-item charges on receipts (virtual or hardcopy)
- Provide fact-sheet/FAQ for businesses

**TOPIC: Ordinance targets prepared/served food produced in-house for take-out, while exempting other waste generating food-serving establishments (ex: pre-packaged take-out food from grocery stores, coffee chains, movie theaters).**

Comments:

- Food that is trucked in (examples: Trader Joe's salads, to-go prepared food at grocery stores, coffee chains) can be packed in any container with no fee, thus targeting small, local businesses.
- Similarly, will a fountain drink in a SUD is subject to a charge, but not a can of soda.
- Movie theaters do not have kitchens, cannot be expected to convert to reusables, request exemption from SUD charges.

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Phased approach to charge for take-out food ware, to ensure equity across businesses in Berkeley
- Examine ways to require compostable containers for prepared foods from other establishments besides those that produce food on-site for take-out (ex: grocery stores, coffee store chains)
- Include movie theaters for conversion to compostables if reusables are not possible.

**TOPIC: Availability of alternative compostable containers to contain all foods for take-out.**

Comments:

- No compostable containers exist that can hold items at 180F degrees
- No acceptable alternatives to plastic are currently available for all types of food condiments

Suggestion:

- Exempt items with no reasonable alternatives until acceptable/compliant items are available in the market Alternatives should be compostable or recyclable.
- City should work with recognized industry organizations for accepted standards of "best" items that comply with compostability and health concerns (ex: BPI) in order to develop approved list of compliant items

**TOPIC: Ordinance does not ensure compostable/recyclable SUD items will end up in proper source-separated stream.**

Comments:

- If SUDs are required to be compostable or recyclable, it is still likely these items will end up in landfill, based on consumer behavior and availability of recycle/compost collection containers. Suggest a focus on downstream user, as it is a known issue that waste streams are often poorly sorted.
- Overseas markets are no longer accepting our plastics, and they are harming the environment with litter and chemicals/degradation

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Funded City-wide program to educate consumers on proper sorting of waste and ordinance (FAQ)
- Improve collection through increased service and quantity of city bins in high-traffic food take-out establishments
- All items should be required to be compostable (no recyclable plastics), due to changing overseas markets
- Require customer-facing in-store compost bins for collection

**TOPIC: Charges for take-out containers when consumers have no alternative to BYO (affects consumer)**

Comments:

- Many restaurants are prohibited from in-house dining, and thus can only offer take out options.
- Results in customer complaints for being charged for take-out containers with no alternatives available.
- As customers have no choice, charge will not lead to a positive behavior change (*this issue is in contrast to the bag fee, where customers always have the choice to bring their own bags*).
- Take-out is an essential life factor for many customers.
- Punishing people for using such is regressive.
- Many businesses will not allow BYO take-out container to fill for sanitary concerns or health violations.
- With minimum wage increase, this ordinance would add just another increase in prices and be hard for consumers to swallow.
- Reusable cups brought in by customers have been relatively acceptable and exhibits positive behavior change
- Affects low-income stakeholders that may have no access to washing their BYO containers
- Incentives for discount for BYO instead of charges

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Create a guidance document and feasibility study on “Bring Your Own...”
- Develop a pilot program for standardized reusable to-go container system.
- Implement phased-approach to charge: phase one for hot beverage containers/lids, phase two later for food containers after analyzing results of phase one implementation and pilot program
- Assess impacts of any charge on low-income, transient stakeholders
- Consider incentives for BYO as part of overall ordinance strategy
- Clarify in the ordinance language that there is no requirement for businesses to charge additional fees for disposables; the SUD fee must simply be itemized. (i.e. if a business currently charges \$10 for a meal, they can still charge \$10, but they need to itemize on the receipt the \$9.75 for meal + \$.0.25 for the disposable container.)

**TOPIC: BYO containers need to be acceptable to businesses for portion sizing and cleanliness/compliance with health codes. (affects Businesses)**

Comments:

- Many restaurants are prohibited from in-house dining, and thus can only offer take out options.
- Results in customer complaints for being charged for take-out containers with no alternatives available.
- As customers have no choice, charge will not lead to a positive behavior change
- Will potentially drive customers to neighboring cities lacking such an ordinance (*in contrast to bag fee, where BYOB is available*).
- Cleanliness of BYO brought in by customers is an issue
- Consider incentives for BYO as part of overall ordinance strategy

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Work with local health code departments for clarity on acceptable containers
- Work with businesses to support conditions of BYO containers provided by customers (beverage containers)
- Establish City-wide reusable container program (funding likely necessary)
- Consider pilot-program for reusable container program
- Implement phased-approach to charge: phase one for hot beverage containers/lids, phase two later for food containers after analyzing results of phase one implementation and pilot program

**TOPIC: Acceptable straws that meet ordinance requirements yet effectively serve disabled stakeholders.**

Comments:

- Disabled community has been left out of conversation
- Disabled stakeholders need straws that will not degrade or pose a choking hazard
- Other stakeholders that are not disabled may need straws (children, older people)

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Assess and study best alternatives available that are deemed acceptable for the disabled community.
- Bio-Plastic certified compostable straws could be exempted for said special uses/stakeholders, with recommendation that businesses have them available and provided upon request.
- For general use, specify compostable paper straws only, on request or self-service
- Possible: City purchase of reusable silicone straws to be distributed by City through disabled groups, commission, and other sanctioned methods (City of Alameda).

**Topic: Coordinate with existing laws/ordinances and seek support from the Alameda County Waste Management Authority (StopWaste).**

Comments:

- Replace “Disposable Food Packaging” with “Disposable Foodware” (StopWaste)
- Waivers: What would a partial waiver include? What happens after 3 years? What constitutes “make every effort to become compliant”? What type of activities/efforts would the city consider? What types of thresholds would be considered allowable under “space constraints?” (StopWaste)
- Clarify language of ordinance, including waivers, time frame, space constraints, free of added Fluorinated Chemicals
- If “to go” meal is served in a compliant reusable bag, an additional minimum \$0.10 will need to be charged to comply with Ordinance 2016-2, which could increase total “Takeout Meal” charges to be greater than \$0.25. There is no charge for carryout food given to customers in compliant paper bags. (StopWaste)

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Coordinate with ACWMA (StopWaste) to ensure language is consistent with existing ordinances
- Examine best practices of local communities in County and cities bordering City.
- Review Bag Ban ordinance for compliance and consideration of charge amount.

**The Commission recommends taking note of the following issues that should to be addressed:**

- Recyclability of most “plastic” foodware
- Difficulty to tell the difference between compostable bio-plastic utensils and plastic utensils
- Importance of City-approved list for acceptable materials for take-out containers
- Which food waste-generating establishments are exempted (ex. theaters)
- No plastic ware should be accepted, in spite of language in current City Curbside Recycling Collection Program accepted materials, due to market instability and environmental concerns.
- Amount of proposed charge (\$0.20 v. \$0.25) to balance customer behavior change with businesses concerns of loss of sales due to minimum wage hike and proposed charge.

June 16, 2018

**Special Meeting of the Zero Waste Commission Foodware Subcommittee to solicit public input**

**21 members of the public attended; 17 public comments.**

**Summary of Spoken Comments:**

**Peter Levitt**

Owner, Saul's Deli

I have a restaurant Saul's Deli so obviously I think the goals are admirable, I am just unclear about whether you are attacking the most used materials.

I am always concerned about going at the lowest hanging fruit especially when it pertains to the mom and pop.

And I have a deep concern, again once I have confidence that you have used the garbage cans widely enough in other words are we looking at the household mix in the resident?

How do the four Safeway's, the Trader Joe's, and the two whole foods the waste stress compared to our mom and pop restaurant, that is a big concern that we have.

I don't know if you are aware of what we have done at Saul's. But we have gone 10 years without straws

We thought it was the right move a long time ago, and inconvenient.

We do glass mason jars for soup, we now use sippy cups for children instead of the single use plastic glass. We haven't used straws, well we used paper straws for about 6 or 7 years then moved to stainless steel straws. So we now almost purchase almost no straws.

For us this was low hanging fruit, no one asked us to do it we just did it. I am just concerned with that we are going to end incurring costs that will be difficult for us especially in the climate of having minimum wage going up all of the time

And really do t love the idea of having a single line item on every invoice. I actually do not know how to implement it. Each and every customer is different. Does an employee have to enter a single button every time? What is a customer comes in for a soup salad and sandwich does the employee have to hit the button 3 times?

It's going to open up Pandora's Box and I do not see the solutions are and it is of great concern to us that we won't be able to hit the button or

The difficulty we are already having with labor and quality of labor

And the last thing I will say is that you do have your work cut out for you because every time you raise minimum wage restaurants like ours disappear and smaller hole in the wall type restaurants with few employees with no place come into existence. It's getting harder and harder. No one will reopen Saul's in this town. If we go away one day, we will be replaced by two smaller stores, and they will use straws and it will be a takeout environment.



**Lisa Brenners**

Farmer, Berkeley Farmers Market

My name is Lisa

I am from Berkeley, I am currently a farmer and I sell at the ecology farmer's market in downtown Berkeley on Saturdays. So I know firsthand, how much this kind of use of packaging demand is customer driven.

I stand at the market. My stuff is loose I have paper bags, but I know there is a segment of the population that will not pick up my fruit. But if I put it in this little red mesh bag that 20% increase in sells. I am comfortable with the bags, but there are people who will just not buy something that is not in a bag. So this is demand driven and the restaurants feel this.

Umm so I am going to go really fast I have a lot of points here. I think there might be a flaw if your goal is to reduce waste. You're changing the packaging, mandating it and charging for it. But the customer is still taking it home. They are responsible for disposable. If they do not dispose of it properly then it's in the landfill anyway. So that's just procedural thing. If the goal is that how have we improved?

The second point is that the ordinance may be unintentionally calls out and targets food that is produced on premises, locally if food is not produced locally it is trucked in... free pass. It's free and you can put it in anything you want. But if it is produced here're you having the rules there is a clarification I would like about conforming food ware. If a person used reusable food ware must they both meet the regulations and charge?

And the doggy bag loophole which I shouldn't mention because you will probably try to close it up, but right now it seems that if you go and have something on premises then ask for a doggy bag you can have any container you want and it is free.

So will the city commit to disposing properly of all these newly mandated disposable ware items?

**Jim Maser**

Owner, Picante

Hi my name is Jim and I own picante

In Berkeley on 6<sup>th</sup> street I have been there for 24 years, my colleague Peter couldn't make it, ditto on everything he has to say.

Since I am having a question-answer session, but it is one sided I am just going to throw some questions out there.

In regards to the containers themselves, has a container been come up with that can take a 180 degree food, because that's my biggest challenge. Peter has met it with glass bottle I am unable to meet that with chili rellenos or .. or anything that came off of the stove at 180 degrees it burns through anything tested and right into the upholstery of my guests cars.

The receipt issue. I want to reiterate what Peter said, using social guilt on that is works, it worked in SF for our colleagues for health programs for our colleagues over there. However the cost benefit analyses. I am not sure what business were looked at, where the dishwashers were bought from. But we look at that 25 cents as the differential between the products that you are going to recommend and conventional products that are used now and that is not going to bridge the gap for the increased cost. These 25 cents does not drop to the bottom line it is taxed and if you take the 35 percent tax out we really are going to end up with 16 cents and will that really be differential. I have tried to use the highest quality products that are available and with minimum wage hitting us the way it has been we have had to make compromises that doesn't sit well with my heart.

For all the big gulps, is theater popcorn being charged, but the one it get for coca cola will not because it is not manufactured in the theater?

The ordinance is very confusing in regards to who it is going to apply to. My recommendations are that from your test study at café Strada that you use disposable cups and .....

I want to finish up, if paper cups are major problem implement the charge for the cups also please do the straw ordinance right away, other cities in California have already done, the restaurant association is going to do it, and it's a small step towards curbing our reliance on these convenience products which we will hopefully contribute to the change of attitudes and usage but please take one step at a time, regardless of the request of the city council, that seems lazy because in my book change takes time.

### **Heliya Izadpanah**

#### **Cal Dining Services**

So I work at Cal Dining on waste reduction, and over the past year I've been trying to get more reusable products in our campus that are breaking down. We just switched to paper straws, and PLA clamshells that aren't breaking down.

I am curious to how this policy is going to impact our campus and if it still pertains to it, also curious about the utensils that need to be either compostable or recyclable, because in my experience compostable utensils do not actually break down because their plastic is too thick at our local facilities. And if they are recyclable, people do not want to sort them out of the rest of the food waste and containers and so the recycling bin gets contaminated or the compost gets contaminated.

### **Helen Walsh**

Disability Commission

My name is Helen Walsh, I'm on the commission of disability Berkley. I am speaking on the behalf of the diverse community with people with disability, people with medical conditions and anyone with a disability.

So my focus here is the ordinance of single straws and utensils, which would have to be compostable and be provided only by request. Persons with disabilities who use straws, are also deeply committed to protecting the environment, I am one. Disability rights and environmental protection have long been compatible. People with disabilities want to save the planet but they also need to be able to drink and eat, our food is pureed sometimes. As more and more cities are banning straws, they do not think about the unintended consequences these bans will have on people with disabilities. How will we drink if straws are no longer available? Some might have suggested providing reusable or compostable straws as answers, however metal and wood straws can be dangerous, uncomfortable or ineffective with people with disabilities.

For example, metal and bamboo straws can be dangerous to people with Parkinson's disease because they are too strong, likewise paper straws become soggy over time and can become a choking hazard. Useable straws are generally more expensive than plastic ones. Which is import to note became poverty is more prevalent with people with disabilities. In 2016, nearly 27% of people with disabilities lived below the federal poverty level compared to 10% of none disabled people according to the census bureau.

Until someone creates an appropriate alternative to plastic straws, they must continue to be made available to people with disabilities. They are a simple but necessary accommodation.

### **Elizabeth Jordan**

Recently Peet's started offering reusable cups, no straw needed and there less than \$3 and they can also be used at Starbucks. But what they're doing, they're offering discount so every time you go to Peet's and buy something there is a 10 cent discount at the downtown Peets and now it changed. Peet's at the downtown is changing more than the other Peet's, and depending on the neighborhood prices go up or down, so depending on the Peet's you'll get a 5 or 10 cent discount. So I guess why not work on something that will benefit you.

### **Clark Mosher**

Hi everyone i was a volunteer and I want to thank everyone for being here. The one concern I have from business owners is that how will they track this, I think there was an assumption that might be refunded by the city, but I think this is just an amazing chance for Berkeley has a chance to lead because our leaders aren't leading. Trump just refuse to sign the G 7 this week I believe which over rules the plastic in the ocean. The midline estimate is 5.3-14 million plastic waste in our ocean each year the visualization that hit home was, imagine 5 plastic grocery bags filled with trash sitting on every foot coast of the world, that's how much plastic is going to into the ocean. Berkley is trying to eliminate any plastic that uses from an average from 0 to 20 min, and I think about all the plastic utensils that we don't even use.

So I'm going to end on a positive note, McDonald's yesterday, announced that its getting rid of all the plastic straws in the UK and Ireland this year, and change is coming. I'm really happy Berkeley has a chance to lead.

**Floy Andrews**

Bay Area CoRoasters & CoRo Coffee Room

I am the CEO of a little company called Bay Area coRoasters & CoRo Coffee Room. We are opening next week, on 5th St. Our cafe is aesthetically beautiful, and so there are a few things that occur to me with this proposal, first I want to say that CoRo is very focused on stability and the goals that the council is working on we totally support. Just sort of listing to the comments, there are a few things I would like to comment on, in high end coffee it's about the amazing coffee flavor and aesthetics of presentation, when you go in and order your drink, the barista is going to do beautiful latte art or pour over or watch them make it, it's all about the full experience. So I don't think that if you're bringing in your mug or Peet's cup or whatever, you'll not be getting the coffee experience that we are providing. I also want to talk about the signage, as we build out this restaurant all these plastic signs that don't really go with what they call exit or here's the all gender bathroom, so the fewer the required signs the better. I also want to ask about is there any outreach to Oakland because I can imagine consumers saying "oh am I going to Berkeley or Oakland for coffee this morning." I do think that plastic is something that we as a species need to tackle for sure, I am wondering if the compostable coffee cups stops the ability to do beautiful latte art, is really the piece of trash that is stopping us to do beautiful latte art?

**Aladdin Sammakieh**

Owner of both Berkeley McDonald's locations (1:14:00)

I'm Aladdin Sammakieh, I recently purchased the two McDonalds restaurants in Berkeley. So I first would like to say your right about the plastic straws In McDonalds in Europe. We are trying to that in the US as well. McDonalds can push the entire industry in one direction, like what they did with cage free eggs, and Styrofoam.

**Frances Schultz**

Indivisible Berkeley

It's clear that we have a plastic crisis, both globally and locally that our plastic footprint in the world is much bigger than we deserve. I support wholeheartedly the efforts of the city, the ecology center, the big water action, everything that you're doing to put together a local solution to that and hopefully one that can be a model for different places that can be used in other places. I applaud the work that you've done already to work with businesses and get their input, I appreciate the input from the businesses that are here today, I know none of these changes are going to be easy for any of us and particularly with businesses, and these are places that are important to us as Berkeley Like local restaurants and stuff. But I also feel confident, with everyone's input we can come up with something that will be minimally difficult for all of us but it can make a big difference in our environment. I really am here to support the effort wholeheartedly, thank you.

**Michael Goldhopper**

Chair of the community Environmental Advisory commission

Hi my name is Michael Goldhopper, I'm the Chair from the community Environmental Advisory commission

We didn't have a good look at this, but on Thursday we had our regular meeting we did approve a letter that has come out to you indicating our support. However personally listening to some of the items and thinking it through, I have a couple thoughts the first one is purely administrative, I think some folks on the panel spoke way too long and this is a very educated group, and knows what's going on, it was unnecessary to give such long introductions. Secondly, I do think that there's a problem, with the fee as it is presently constructed. I know that Alameda County passed the grocery bag fee, which gives everyone the opportunity not having to pay the fee very clearly if they bring something or don't use a bag at all. It is less clear in this ordinance if you choose to not use a cup or whatever that you will have to pay 25 cents, also there is a problem about having it on a receipt because receipts are something that the environmental and others would like to get rid of because they contain PCP, and the danger is especially the workers that have to use them are in jeopardy because they have to use it. Let's put an end to receipts. People mostly throw away or don't want is a sensible solution. I do think that it has to be rethought based on what has said so far including eliminating the requirements in the case of items that cannot be properly handled because they're too hot. I think trying to get larger restaurants to use reusable's should be absolutely mandatory for in-house dining and should be the main thing that you should start with obviously using compostable materials when they are affordable is a good idea but the details of the charge has to be rethought I think.

**Victoria**

I came in a little late so I don't know if this was addressed. I shop at Berkeley Bowl and Whole Foods, and I don't know if this ordinance takes this to account but what's the point of going to the market and bringing a reusable bag and filling it up with 20 plastic bags? I just feel like somehow that has to be addressed. I mean no one really talks about that, I see it all the time. And I don't know if this hearing addresses it or not when you go to the restaurant and they throw in those packets of condiments, little plastic spoons and hot sauce and I have so many of those I don't know what to do with them. I am asking to kind of open your minds to addressing some other things that are really important plastic bags and peoples groceries carts are incredible.

**Anet Howard**

Hi my name is Anet Howard.

15 years ago I went to a trip to the Bahamas. Every single beach was totally clear and beautiful. I never saw one piece of trash and I spent a couple years there. A lot of wonderful places to explore, not one piece of trash. Well it is pretty discouraging when I looked in a magazine and found this article about purging plastic in the Bahamas. They now have a movement called "Bahamas plastic movement" and what they're doing is getting volunteers and all the beaches are cluttered with plastic and they're trying to get rid of it. There gathering and trying to do something with it, but we really need to do something about it. I came across this article, in Japan they have this machine, which distributes to different islands in Japan, and what you do is shove the plastic in the machine and it turns it into gas, then there's this

tube that goes out of it into a tank of water, well that cools the gas and the gas turns into oil. What I'm saying is, it might be easier for us to take all this plastic, heat it up and make oil and somehow make something else with it. Plastic comes in different shapes, sizes, weights and colors, outs really hard to get rid of and I think we need to try to do something about it. That's all I have to say.

**Eun-soo yin**

County of San Mateo

Hello everybody. My name is Eun Soo Yin, I'm actually here representing the county of San Mateo.

I heard about what you guys are doing, congratulations, I commend you on your efforts you guys are doing amazing things. The county is kind of researching about how to dispose of plastic but straws in particular, and so I started doing research about what other cities in the Bay Area are doing. Berkeley came on top of the list as always. Alameda is doing something great, County of Santa Cruz, City of Santa Cruz, Davis, so a lot of movement in this area. Berkeley is definitely not alone but you guys are pioneers in all of ways. And there's a reason I think why a lot of local governments are addressing these issues, as a lot of you guys already know, these are critical issues that we have to really address. So I wanted to come up here to commend you guys and I'm really looking forward to seeing how the ordinance rolls out and I really appreciate the feedback that the public sacrificed your Saturday morning to come here to listen to everyone speak, it was an eye-opening experience for me.

**Danielle Bafone**

Hi my name is Danielle, I'm from Berkeley and lived here for about 25 years. I've had 2 businesses, one a shop and one a school. The last 4 years, I transitioned my work teaching to learning about the marine environment and I do plastic free advocacy, and it feels wild to speak to residents to hear from them what their concerns were. I wanted to thank the City of Berkeley zero waste commission and the ecology center where I've been leading a once a month book group on plastic free and many people know were moving into plastic free world next month. The streets are pretty clean around here but this is still something I was able to pick up. What I wanted to say was, I want to find a way to promote Berkeley zero waste coordinates and my goal as a community is to move towards that, I think this is a individual thing for people to say I don't want use plastic but I think we need to understand as a community that this is a mandate think we're working towards, and not an option thing. This is what's expected of us as citizens. Arguing over paper and plastic straws is not going to be the answer but we all just need to move on.

**Molly Hicks**

Hi my name is Molly Hicks, I'm sorry I missed most of the meeting, all my kids are sick, but I've been doing a lot of volunteer work in the schools about reducing their packaging. Both of my kids go to the newly renamed Silvia Mendes school formerly Le Conte and I've bought in that magazine over there and set up a green team for the kids to work on reducing the amount of plastic, educating each other. So one of the prizes they got was from that same website, I think it says landfill, I gave them a metal cup and a metal straw because kids love to use straws and a lot of the kids told me that they use them, they bring them to the restaurants and show them that we don't want to use plastic, it makes me feel good

that these kids are getting the message and it's so quick for them to understand that they see all the trash on the school yard, they try to clean it up and teach each other. But I don't know if, I just wanted to make everyone aware that the Berkeley schools I feel like are kind of separated from the zero waste ordinances, they don't necessarily comply with the plastic free message. There twice a week, they get cereal individual proportion in plastic cereal bowls, most schools don't even recycle them, and our school got 25,000 this year and that's 1 out of the 11 elementary schools. So my daughter went and filled out an entire bag, one of those large garbage bags in one day and she brought it to the school board on Wednesday and showed them and told them "we don't want this anymore" and explained that can't we just use regular bowls? we can wash them ourselves or even at best use paper and so getting the plastic message its slower because I feel like there's a disconnection that the school board can put a little more pressure on the schools themselves. The custodians kind of feel like it's not their job to do this extra work that they see and were trying to help make the kids see that yes we all have some extra work to do, but it's worth it, because I don't know if that is something you guys already discussed when I was gone, the restaurants for sure but the schools are putting a lot of trash into Berkeley, the plastic cream cheese containers they get every Friday, littering around too, that's all recyclable that's just the little message I wanted to say, thank you.

**Peter Schultze-Allen**

My name is Peter I work in the stormwater field.

Sorry I'm late. Have you already talked about the litter requirement tonight?.... (1:35:01)

That's a big regulation that most of the cities in the Bay Area have to deal with. It's from the Regional Water Board stormwater permit and it says that all the cities have to reduce the amount of litter that's going out into ocean by 2022. The permit is just one of the drivers for the city - it has to do more. The City has installed trash capture devices and has banned plastic bags and Styrofoam so this is another thing that is pushing the City to do more.

I also wanted to mention that I helped draft the ordinance that you all have in front of you, so all this summer we were trying to do outreach to the business community and talk to them about it in various different ways; the survey was a very big effort. I talked to just one business - a cafe owner in Berkeley who also serves coffee at the farmers market. He says that he pays 30 cents for each of these special disposable and compostable hot cups and that he wanted these cups because they are the best; it is a double walled cup with a compostable bio-plastic liner so it's basically the top level, most compostable, disposable paper cup that you can get but it's very expensive - 30 cents each. So since this ordinance can help him cover the expense for these cups, he was in favor for the ordinance. Of course he prefers everyone to drink the coffee in the store where he can provide a reusable ceramic and washable cup. He doesn't want people using the to-go cup - the in-house dining option is more sustainable. If other businesses are paying 5 cents for a non-compostable single use paper cup, that's not sustainable and they are kind of getting away with that right now. Under the proposed ordinance there would be a level playing field because everyone would have to use a similar compostable to-go cup, so I think that's one of the benefits.

## Written Public Comment on the proposed Single Use Foodware and Litter Reduction Ordinance

**From:** Thomas Gregory

**Sent:** Thursday, June 14, 2018 2:01 PM

**Subject:** Re: Public Input Session Hosted by the Zero Waste Commission's Foodware Subcommittee re Single-use, Disposable Foodware

Hi Heidi,

The Center for Independent Living (TheCIL) is the Title-VII-of-the-Rehab-Act disability services and advocacy agency whose federally designated catchment is northern Alameda County.

Approximately one year ago, my boss (TheCIL's executive director, Stuart James) sent a message to each of Berkeley's City Council Members containing the language pasted immediately below. I'm now sending you the same message hoping that it will inform any deliberations/actions by the Zero Waste Commission.

Best,  
Thomas

Thomas Gregory  
Deputy Director  
Center for Independent Living

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Dear Berkeley City Council Members:

On behalf of the Center for Independent Living (TheCIL) and the disability community we serve, I am writing in regards to the drinking straw proposal highlighted in this Berkeleyside article: <http://www.berkeleyside.com/2017/06/06/know-berkeley-straw-ban-proposal/>.

The board and staff of TheCIL applaud your ongoing efforts to protect environments in Berkeley and elsewhere. Just like responsible citizens without disabilities, responsible people with disabilities recognize the importance of maintaining (or, better yet, increasing) our planet's health. In fact, the disability community arguably has a heightened interest in environmental integrity as toxic environments can exacerbate disability-related medical conditions and can even, in some cases, lead to the acquisition of disabilities. So we appreciate the City's consideration of a city-wide plan to reduce or eliminate the use of disposable plastic straws. We also appreciate that the City is inquiring into the impacts of an anti-straw measure before implementing such a measure.



It's important to recognize that, for some people, the use of straws is a necessity. Due to deficits in manual dexterity and various other factors, a significant number of folks require straws to drink beverages. It is important that Berkeley, as it moves forward with any plan, remember the needs of its disabled residents and to accommodate those needs. Specifically, I am urging the City to ensure that any measures implemented will involve restaurateurs and other beverage vendors providing straws to those who purchase beverages and need a straw to independently access a beverage. We at TheCIL feel that it is essential that people who rely on straws (including those who do not happen to have a straw in their possession at any given time) be able to access beverages while out in the community and be able to do so with the same degree of convenience as everyone else.

As the Berkeleyside article makes clear, there are various ways that Berkeley could reduce or eliminate the use of disposable plastic straws while simultaneously accommodating the needs of those for whom straws are not a luxury. "Soft bans," biodegradable disposable straws, and reusable steel straws are some potential solutions mentioned in the article. Although we are not currently advocating any particular solution, we are urging the City to ensure that those who need straws will continue to have access to them.

Again, thank you for your efforts, and if there is any way that TheCIL could assist the City in its approach to this issue, please do not hesitate to contact us for any input you might desire.

Sincerely,

Stuart, Executive Director at TheCIL

**Community Environmental Advisory Commission (CEAC) Written Comment on the proposed Single Use Foodware and Litter Reduction Ordinance**

**From:** Michael Goldhaber

**Sent:** Friday, June 15, 2018 1:54 PM

**Subject:** CEAC support for Proposed Ordinance on Foodware

To all concerned,

At its meeting last night, CEAC voted unanimously to support the ordinance prepared by the special subcommittee of the Zero Waste Commission.

While it may need minor modifications, we believe the proposed ordinance does an excellent job of balancing environmental and public needs in a way largely fair to all.

Best,

Michael

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Michael H. Goldhaber, Chair, CEAC

## Written Public Comment on the proposed Single Use Foodware and Litter Reduction Ordinance

**From:** Michael Goldhaber

**Date:** June 16, 2018 at 3:53:13 PM PDT

**Subject:** comments on ZWC proposed food-container ordinance

Dear ZWC, Councilmember Hahn, and Mayor Arreguin,

I attended today's public hearing on ZWC's proposed Berkeley Single-Use Foodware and Litter Reduction ordinance. As I wrote to Councilmember Hahn and Mayor Arreguin, CEAC voted last Thursday to favor the ordinance.

However, after listening carefully to the presentations and especially the public comments at the meeting, I have revised my personal views as follows:

1. The plastic waste problem must be solved. That is vitally important. Berkeley has an opportunity to set a wide example.
2. The current draft ordinance approach, while seemingly sensible, is in fact not properly thought through at all. It puts the burden on restaurants in the city, but not on larger entities that send pre-packaged food into the city nor on consumers or garbage collectors to do a proper job collecting and sorting waste. Even with compostable utensils, as the waste stream is presently constituted, the burden is on each citizen to be ecologically aware, to take the time to understand the different categories of waste and to make the proper separations. It goes without saying that, while many will do their best to comply, some of those will make mistakes much of the time, and others will not even bother to take on the added responsibility, rather than tossing waste, if not willy-nilly, then into the wrong containers. My own wife, for example, while always trying to comply, is simply not nerdy or compulsive enough to do it right a good percentage of the time. Many others simply refuse to spend the time.

The solution is for the city and the ecology center to take on more of the job of waste separation. This may be an added burden on the city, but it would ultimately simplify collection and improve the waste stream. It is unrealistic to expect many citizens to bother with the three (or really, four) bins as it is. Martin Bourque, the Ecology Center Executive Director, at the meeting, himself pointed out that consumers largely ignore waste categories when taking the trouble to dispose of items even right in restaurants, even when there are illustrative pictures present to guide them. I have often observed

the same with regard to the too-rare garbage cans the city provides on streets and in parks.

3. Another proposal in the ordinance that was not thought through is the \$.25 charge for disposables that restaurants are to tack onto bills and receipts. Is a dish for a single scoop of ice cream rationally to be considered equal to an entire take-out meal in multiple containers? Further, the analogy with Alameda County's single-use grocery bag charge does not actually work. People who normally carry around capacious knapsacks or purses would be able to carry a coffee cup or the like, but others who travel lighter are unlikely to have a cup with them should they decide they need a beverage. Carrying one's own reusable utensils or meal containers becomes even more problematic, including sanitary concerns. The increasing number of delivery services for restaurant food also can hardly be expected to operate without disposables; there is already a substantial charge for such services, so a disposable charge wouldn't be noticed.

4. A little more about pre-packagers outside the city: As some of the commenters at the meeting noted, the current draft doesn't have any way of policing those suppliers who ship snacks and meals into Berkeley from beyond city limits. Almost every grocery store or deli is full of such items, and so are many chain restaurants. If local businesses are not to suffer unduly, that inequity needs confronting.

5. Because restaurant receipts, as presently offered, mostly contain biphenyls that are suspected of causing endocrine disruption, we should not encourage their use. As it is, many customers don't even take or glance at them anyway. A better educational device is needed.

6. Finally, let me repeat what I said at the meeting: When holding a public hearing on a proposal that is likely to attract only those already well-informed on the substance, lengthy introductory lectures are not needed. People's attention is a valuable resource that the publicly minded should try not to misuse.

Thanks for your attention to this.

Best,

Michael H. Goldhaber, Berkeley Resident

## Written Public Comment on the proposed Single Use Foodware and Litter Reduction Ordinance

Submitted by Helen Walsh, Diverse Disability Media  
June 16, 2018

### Plastic Straws and persons with Disabilities (PWDs):

- Area of concern for PWDs on the Berkeley Draft Ordinance: **Single use straws, utensils, and stirrers (which will have to be compostable) be provided only “by request.**
- Persons with disabilities who use straws are also deeply committed to protecting the environment.
- Disability rights and environmental protection — have long been compatible.
- People with disabilities want to save the planet. We also need to be able to drink and eat.

As more and more cities and states seek to ban straws and have, It is concerning about the unintended consequences these bans have on people with disabilities.

- How will PWDs drink and eat if straws are no longer available or accessible and safe for us to use?
- How will businesses in the city of Berkeley serve PWDs if they are not informed about accessible cost effective straws that PWDs can utilize safely and successfully?
- Some have suggested providing reusable or compostable straws as the answer. However, “metal, wood, or glass straws can be dangerous, uncomfortable, or ineffective for [some people with disabilities].” PWDs are very concerned about this issue now because PWDs in areas plastic straws are banned are being excluded from the community they participate and work in.

For example, metal and bamboo straws can be dangerous for people with Parkinson's disease because they are too strong. Likewise, paper straws become soggy over time, which can become a choking hazard.

Reusable and compostable straws are generally more expensive than plastic ones, which is important to note, because poverty is more prevalent among people with disabilities; in 2016, nearly 27 percent of people with disabilities lived below the federal poverty level compared with 10 percent of non-disabled people, according to the U.S. Census Bureau.

- Until someone creates an appropriate alternative to plastic straws, we cannot ban plastic straws.
- Including persons with disabilities in every step of the process will provide full inclusion of the community as well as provide the city of Berkeley to be the leader of what it means to be an inclusive and accessible city.

The city of Berkeley has the opportunity to be inventive in regards to an environmentally accessible inclusive and cost effective straw.

- Straws are a simple but necessary accommodation. That said, we should not and cannot give up on trying to reduce our plastic use, and I fully support cutting down on our use of plastics.
- People with disabilities want to save the planet. We also need to be able to drink. These two positions do not have to be mutually exclusive. Banning plastic straws prior to providing an accessible/inclusive straw is not a solution to the plastic waste issue.
- Including PWDs in the process will benefit all. PWDs have an ability to provide the city of Berkeley information or invent the straw that is both cost effective and accessible/inclusive. Our "wheels are needed" at your table. You'll like the "way we roll" beside during Ed Roberts time the city of Berkeley did :)

**Written Public Comment on the proposed  
Single Use Foodware and Litter Reduction Ordinance**

**From:** Laura K Fujii

**Sent:** Sunday, June 17, 2018 4:15 PM

**Subject:** PASS and IMPLEMENT the Berkeley Disposable Foodware and Litter Reduction Ordinance

Dear Berkeley City Council and Zero Waste Commission:

I care deeply about the significant threat to our health and the health of our environment from the local and global plastics crisis. There is both a local and global plastics crisis. We must do more to remove single-use plastics from the waste stream, encourage the use of biodegradable and reusable products, and strongly discourage excessive packaging.

Berkeley should be a leader. As a consumer and as someone who cares about the oceans, wildlife, and the safety of our food and water, I strongly support the proposed Disposable Foodware and Litter Reduction Ordinance.

Funds earned from the charge of \$0.25 for every disposable beverage cup and disposable food container provided by vendors should be used to fund a Berkeley Zero Waste Campaign and Education program and to help support implementation of the Ordinance.

I urge you to pass and implement this urgently needed environmental and health ordinance.

Thank you.

Laura Fujii

Berkeley, CA. 94706

**Public Comments on the Single Use Foodware and Litter Reduction Ordinance heard at the regular meeting of the Zero Waste Commission on June 25, 2018**

**8 Public Comments.**

**Notes summarizing the spoken public comments:**

1. Sheera Leeder – Berkeley Resident
  - Has a disability that requires her to use straws and cups with lids
  - Many people with disabilities are on a low income and can't afford extra charges
  - Possible solutions: reusable straws, compostable straws, paper straws
  - Supports an on request ordinance
  - Note: Sheera submitted written public comments to the Secretary to elaborate on her concerns, and to provide possible solutions, regarding plastic straws and cups with lids
  
2. Farhad Salehian – DishJoy (Dishwashing Service)
  - Dishwashing and delivery company
  - They provide intelligent solution to world problems – reduce disposables by utilizing dishwashing of reusables
  - Supports ordinance
  - This ordinance can make Berkeley a model for the world
  
3. Max – Urban Ore
  - Opportunity for UC Berkeley outreach/education
  
4. Miriam Gordon - UpStream
  - Need to consider how to create an easier BYOC system
  - Pilot program on Telegraph – TBID
  - Need guidance document and feasibility study for BYOC program
  - Consider possible tax break for providing a reusable program
  - Need best management practices for refilling containers
  - Possibly a phased approach to charge for foodware
  
5. Martin Bourque – Ecology Center
  - Provided an update on plastics (relevant to plastic foodware)
  - Non-bottle mixed plastics are problematic: #5 PP dairy tubs have the most valuable
  - Currently no market to recycle PETg plastic clamshells (brittle/thermoform)
  
6. Jack Macy – SF Department of the Environment
  - Strong support for ordinance
  - This is a way to deal with the tsunami of disposable plastics
  - This is a logical next step after the plastic bag reforms. Providing items on request can reduce use by 50-90%



- Businesses can potentially save money
- The market responded to the Styrofoam ban
- 75% of businesses supported charging if they can keep the money
- 75% support from customers
- \$0.25 is the threshold for behavior change
- This is something that can work
- Jack offered to be a resource to help

7. Helen Walsh

- Has a disability
- People with disabilities are environmentalists
- Need to include the disability community
- Cost effective solutions are available
- Inclusivity is important
- The disability community can help solve the problem

8. Thu hà - Cheeseboard Collective

- They are looking for alternatives to landfill disposables
- They would like assistance to find good compostable products

Written Public Comment on the proposed Single Use Foodware and Litter Reduction Ordinance Received at the June 25, 2018 Zero Waste Commission Meeting

## Zero Waste Commission Public Comments on Its Planned Ordinance Banning Plastic Straws and Charging 25 cent for Cups and Lids

My name is Shira Leeder and I am long-time disability advocate and Berkeley resident. I am here to discuss my concerns and solutions regarding plastic straws and cups with lids.

Most people with disabilities live on a low fixed income, such as Social Security Disability, so 25 cent per cup and lid adds up to a punishing percentage of their monthly budget. My biggest objection, however, is not the cost. People with certain disabilities cannot eat, drink, or take medications without the help of straws. Children and the elderly also rely on straws.

I am one of those people whose disability requires me to use straws and cups with lids.

If I have to carry a reusable cup with a lid, I will be less independent in my daily life, because I will have to either ask a stranger to help me fill up the cup, or I will have to pay someone to stay with me all day to make sure my reusable cup is filled up at all times. Of course, the cost of the latter course is prohibitive.

While I am all for creating an environmentally conscious City of Berkeley and reducing the amount of plastic that land and sea animals are exposed to, I do not want to do so at a cost to the disabled, the elderly, and children. It is simply not realistic to expect these groups to carry plastic straws with them at all times. We at the Center for Independent Living therefore feel that it is essential that plastic straws continue to be available at coffee shops and restaurants.

As the article in Berkeleyside makes clear, there are various ways that Berkeley could reduce or eliminate disposable plastic straws while simultaneously accommodating the needs of those for whom straws are not a luxury. "Soft bans," new biodegradable disposable straws, and reusable steel straws are some possible solutions mentioned by Berkeleyside. Also worth considering is the old-fashioned paper straw (assuming these are still being manufactured).

Perhaps coffee shops and restaurants could make plastic straws available only on request, as they did with glasses of water during the drought.

Thank you all for listening and thinking over this important issue.

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Sincerely,

Shira Leeder

Disability Advocate and Berkeley Resident

More Alternative Solutions:

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### **Reusable Plastic Straws:**

For those for whom it is practical to carry around a straw, it's time to bring back the curly, brightly colored plastic straw from your childhood. Cleaned and stored properly, they can last for years.

### **Collapsible reusable straw: £14.35, lifetime use**

Some of us already have our own glass or paper straws at home, but what happens when you're out and about?

Created by Emma Cohen and Miles Pepper of Canada, the FinalStraw is the world's first collapsible, reusable straw that folds down into a case small enough to fit on your keychain.

## Written Public Comment on the proposed Single Use Foodware and Litter Reduction Ordinance

**From:** Michael Katz

**Sent:** Friday, June 22, 2018 12:23 PM

**To:** Obermeit, Heidi <hobermeit@cityofberkeley.info>; Berkeley Mayor's Office  
<mayor@cityofberkeley.info>

**Subject:** Single-use food container ordinance: Please exempt compostable containers from surcharges

Dear Mayor Arreguin, Councilmember Hahn, and City Staff,  
I've received several invitations for "input" sessions and opportunities regarding this proposed ordinance, but almost no details from the City on what would be considered "disposable." Here's my best attempt to respond with usable input:

I strongly support incentives that would discourage the distribution of materials that cannot be composted or recycled. Plastic straws definitely fall into this category. To my knowledge, so do most plastic lids for take-out containers: Although they're stamped with plastic grades (like "/1\" or "/6\"), this is misleading, because they're too flimsy for recyclers to process.

(The above information comes from a friend who used to run a plastics-recycling company. Please excuse any errors.)

I urge caution in establishing incentives rewarding "compostable coffee stirrers." Wooden coffee stirrers make some contribution to deforestation, and I have that (given cost pressures) many are sourced from tropical hardwoods. If there's a corn-based compostable alternative here, that's what Berkeley should really be encouraging.

Most importantly, I strongly oppose the prospect of a \$.25 charge on compostable take-out containers. Given contemporary pressures on working people's time (from always-on employers, housing costs, etc.), take-out food containers have become a de-facto necessary part of our lives.

It's not practical to expect people to have the forethought or carrying space bring their own take-out containers to restaurants. People doing so might also trigger sanitary concerns or violations for the restaurants. (I'm saying this as someone who used to routinely bring my own plastic "Chinese take-out box" to my favorite take-out spot, and who gradually talked them into filling it instead of a single-use container.)

For these reasons, I think it's valuable for the City to create incentives for single-use containers to be compostable. But slapping a \$.25 charge on compostable containers strikes me as the kind of action that exposes Berkeley to ridicule rather than respect: It would change hardly anyone's behavior, except to perhaps discourage patronizing Berkeley restaurants. But it would impose one more regressive tax on people who are already economically stressed.

Thank you for considering these comments.

Respectfully yours,  
Michael Katz  
Berkeley, 94709

## Written Public Comment on the proposed Single Use Foodware and Litter Reduction Ordinance

**From:** Christina Tarr  
**Sent:** Tuesday, July 03, 2018 9:30 PM  
**To:** Obermeit, Heidi <hobermeit@cityofberkeley.info>  
**Subject:** single use plasticware

Dear Commissioner,

I am writing to express my strong support of the proposed Disposable Foodware and Litter Reduction Ordinance

I oppose disposable plastic food ware because globally, single-use disposable foodware is contributing to plastic pollution in the world's [oceans](#), [drinking water](#), and [food](#). According to the Ecology Center, 80% of plastic found in the ocean comes from land-based sources. [Shoreline Cleanup](#) volunteers collected 5,826 food wrappers; 2,156 straws and stirrers; 1,577 forks, knives, and spoons; and 3,269 foam packaging items from Berkeley, Albany, and Emeryville shorelines in 2016. The [World Economic Forum](#) estimates that 150 million tons of plastic are already floating in the world's oceans – with an additional eight million tons entering the water each year. It is [estimated](#) that by 2050 there will be more plastic than fish in our oceans by weight. Worldwide, single-use packaging is the biggest source of trash found in or near bodies of water, according to the Ocean Conservancy, which also says that plastics are believed to threaten at least [600 different wildlife species](#). Ninety percent of seabirds, including albatross and petrels, are now eating plastics on a regular basis. By 2050, that figure is expected to [rise to 100 percent](#). In addition, evidence suggests that humans are consuming plastics through the seafood we eat.

In addition, plastic is created from petroleum products, and to combat climate change, the less petroleum we use, the better.

The proliferation of plastic is a horrible problem, and in this case, completely unnecessary. There is no need to use plasticware for dine-in use, and for take-out, compostable is available. Many restaurants I frequent have already implemented this, so clearly it is possible.

With the current federal administration, we need to step up our game at the state and local levels. We can't count on the federal government to lead the way, and we also can not afford to wait for a better administration. We need to act quickly to protect our environment.

Thank you very much,

Christina Tarr  
Berkeley, 94709

## Written Public Comment on the proposed Single Use Foodware and Litter Reduction Ordinance

**From:** Rainbow Rubin

**Sent:** Tuesday, July 03, 2018 9:57 PM

**To:** cdetournay@comcast.net; Obermeit, Heidi <hobermeit@cityofberkeley.info>; City Clerk <clerk@cityofberkeley.info>

**Subject:** Ban Single Use Plastic

Dear Sir or Madam,

There is both a local and global plastics crisis. We must do more to remove single-use plastics from the waste stream, and Berkeley should be a leader. As a consumer and as someone who cares about the oceans, wildlife and the safety of our food and water, I support the proposed Disposable Foodware and Litter Reduction Ordinance.

Thank you,  
Rainbow Rubin

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Rainbow Rubin, PhD MPH  
Berkeley, CA 94703

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**From:** Linda Zagula

**Sent:** Wednesday, July 04, 2018 11:05 AM

**To:** Obermeit, Heidi <hobermeit@cityofberkeley.info>

**Subject:** Support Single-use Foodware and Litter Reduction Ordinance

Hello,

We are in the midst of both a local and global plastics crisis. It's crucial that we do more to remove single-use plastics from the waste stream, and Berkeley should be a leader. As a consumer and as someone who cares about the oceans, wildlife and the safety of our food and water, I support the proposed Disposable Foodware and Litter Reduction Ordinance.

Thank you,

Linda Zagula  
Berkeley, 94702

## Written Public Comment on the proposed Single Use Foodware and Litter Reduction Ordinance

**From:** Janet Byron  
**Sent:** Sunday, July 08, 2018 8:13 AM  
**To:** Obermeit, Heidi <hobermeit@cityofberkeley.info>  
**Subject:** Reducing single-use food waste

Hi Heidi,  
I strongly support the proposed ordinance.  
Thank you for receiving my opinion.  
Janet Byron  
Berkeley, CA

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Sent from Gmail Mobile

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-----Original Message-----

**From:** Victoria K. Williams  
**Sent:** Monday, July 09, 2018 2:06 PM  
**To:** Obermeit, Heidi <hobermeit@cityofberkeley.info>  
**Subject:** Support Disposable Foodware and Litter Reduction Ordinance

Dear Heidi Obermeit,

I'm writing to you as Secretary of the Zero Waste Commission say that there is both a local and global environmental crisis because of the persistence of plastics in our rivers and oceans. We must do more to remove single-use plastics from the waste stream, and Berkeley should be a leader in this effort. As a consumer and as someone who cares about the oceans, wildlife, and the safety of our food and water, I urge you to support the proposed Disposable Foodware and Litter Reduction Ordinance.

Thank you,

Victoria K. Williams  
Berkeley and Richmond

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On Jul 9, 2018, at 12:44 PM, Lisa Dietz <[lgdietz@yahoo.com](mailto:lgdietz@yahoo.com)> wrote:

Dear Chairperson,

I wanted to let you know that I support this ordinance. I am unable to attend Thursday's meeting to tell you this in person, but I would be very happy to pay more for compostable take out foodware and would hope that Berkeley could be one of the leaders in this endeavor to stop the explosion of plastic waste.

We all learned how to bring our bags with us to the grocery store. I think we can learn to carry our sporks in a pocket and wipe them clean with a (small) paper napkin.

Lisa Dietz  
Berkeley, 94705



## Written Public Comment on the proposed Single Use Foodware and Litter Reduction Ordinance

**From:** RICK MOTAMEDI

**Sent:** Tuesday, July 10, 2018 10:31 AM

**To:** Obermeit, Heidi <hobermeit@cityofberkeley.info>; City Clerk <clerk@cityofberkeley.info>;  
cdetournay@comcast.net

**Subject:** In SUPPORT of the Disposable Foodware and Litter Reduction Ordinance.

Ms. Obermeit and Ms. De Tournay,

We are writing in support of a ban on single-use plastic products. There is both a local and global plastics crisis and most of these plastic products are convenience items that are not necessary. We must do more to remove single-use plastics from the waste stream, and Berkeley should be a leader. As consumers who will support Berkely businesses who step up and as parents who care about the oceans, wildlife and the safety of our food and water, we support the proposed Disposable Foodware and Litter Reduction Ordinance.

Thank you,

Richard & Carrie Motamedi

June 9, 2018

City of Berkeley  
Zero Waste Commission  
Berkeley, CA

Dear Commissioners,

The California Restaurant Association is the definitive voice of the food service industry in California and is the oldest restaurant trade association in the nation. On behalf of our restaurant members in Berkeley, we respectfully submit this letter to voice our strong concerns regarding a proposed ordinance to ban all single-use food ware for dine-in patrons.

Not allowing food service establishments to use disposable food service ware would negatively impact the ability of restaurants, cafeterias, delis, coffee houses, and other food/beverage establishments to offer many recyclable or compostable options for food ware. We believe this ordinance could result in unintended environmental impacts. Presumably, with increased use of reusable food service ware we would then see an increase in other utility usage and associated costs. Since reusable food service ware must be cleaned and sanitized, this results in increased water and energy usage.

Furthermore, encouraging the use of reusable food packaging poses serious health and safety concerns. If a customer were to bring in a reusable cup, straw, or Tupperware container to a restaurant that isn't properly sanitized, it encourages the transfer of foodborne illnesses through these products and can spread throughout the entire restaurant.

In this ordinance, there is a clause that grants a restaurant with space limitations for installing extra dishwashing and sanitizing appliances a three-year grace period to accommodate the necessary appliances to handle a change in dishwashing and sanitizing. Most restaurants operating in the City of Berkeley are small businesses that lease older buildings with limited square footage. Square footage of established buildings will not change, no matter how much time is granted. Since square footage is fixed and cannot fluctuate, attention must be paid to those who do not have room to install extra appliances.

In addition, imposing a take-out tax on cups and to-go containers is a regressive tax with larger implications for consumers. A take-out tax will negatively affect low income residents of Berkeley which sets a concerning precedent in a forward-thinking City Council.

We agree that manufactures and end users of disposable food service products certainly play an important role in reducing waste and addressing litter abatement. However, once the product leaves the restaurant establishment, it is up to the consumer to ensure that it is disposed of – or recycled/composted properly. A shared responsibility approach is necessary if the City of Berkeley is to make a real and lasting impact on the amount of material that is used.

Thank you for considering these points. Should you have any questions regarding our objections to elements of this proposal, please contact me at (650) 288-8235 or [apiccoli@calrest.org](mailto:apiccoli@calrest.org).

Sincerely,

Alison Piccoli

A handwritten signature in black ink that reads "Alison Piccoli". The signature is written in a cursive, flowing style with a large loop at the end.

Director, Local Government Affairs – Bay Area Region  
California Restaurant Association

July 12, 2018

**Special Meeting of the Foodware Subcommittee to solicit public input on the proposed Single Use Foodware and Litter Reduction Ordinance**

**11 members of the public attended; 6 public comments.**

**Notes summarizing the spoken public comments:**

1. Anonymous Commenter (note taker didn't catch name)
  - In favor of the proposed ordinance
  - Current system is unacceptable
  - City-wide approach is best – more efficient/faster than relying on individuals
  - People are busy and wont always remember to bring reusables
  - The fee helps people realize that the disposable foodware item takes resources and creates waste that ends up in the landfill
  - Will promote social change in how people see disposables
  - It will make it less weird to Bring Your Own Container (BYOC); it normalizes it
  
2. Helen Walsh
  - People with disabilities agree with the environmental approach
  - There is a difference between convenience and a tool when it comes to persons w/disabilities, the elderly, children, people that have medical issues
  - Should make a consideration in regards to straws for people with disabilities
  - Important to provide businesses with alternatives
  - Compostable straws put businesses at a disadvantage
  - There is no current solution
  - Work with the disability community – engage with people with disabilities
  - We are environmentalists with disabilities
  
3. Alison Piccoli – California Restaurant Association
  - Concern from restaurants regarding the ability to sanitize customer's containers if BYOC
  - Concern regarding germs transferring to serving utensils
  - Concern about fee for disposable foodware
  
4. Meri Sol - StopWaste.org
  - Concern about the inclusion of bags in the definition of “disposable foodware” because there are discrepancies in the language between the County's Reusable Bag Ordinance and the City's proposed Single Use Foodware and Litter Reduction Ordinance
  - This is the most forward thinking policy on reducing foodware out there
  - It is groundbreaking to insist on reusables for dine-in
  - Charges will encourage behavior change

- Should consider how to take the burden off of individuals to BYOC
- It would be better to have reusable containers available for customers
- If reusables are available in the restaurant, it wont slow down the serving line as could happen with customers bringing their own containers
- It needs to be easy for customers to drop off dirty reusables (cups and containers)
- Meri mentioned after the meeting that she will provide detailed written recommendations prior to the Sept. 24 meeting

5. Annie Farman – Plastic Pollution Coalition

- In favor of ordinance
- It is groundbreaking
- Impact would be similar to plastic bag ban
- Support a city-wide reusable container program
- Lots of businesses have cited operational concerns with BYOC
- Consider tax breaks for reusable container system

6. Jessica – GreenFire Law

- In favor of ordinance
- Should include a separate provision to include an education component/include educational funding in the Ordinance language

**Written Public Comment on the proposed Single Use Foodware and Litter Reduction Ordinance**

**From:** stuart@telegraphberkeley.org [mailto:Stuart@telegraphberkeley.org]  
**Sent:** Thursday, August 30, 2018 4:47 PM  
**To:** Obermeit, Heidi <hobermeit@cityofberkeley.info>  
**Subject:** Summary of comments to the proposed ordinance

Hi Heidi,

Here you go Comment, followed by author: We received 4 comments in addition to Marlem's from Taco Sinaloa--which you have.

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I want to prioritize voices from the disabled community in this discourse that were [systematically silenced in the implementation of equivalent straw bans across the country](#).

Otherwise, no particular qualms either way — this is clearly a patchwork solution and needs to be paired with larger-scale reforms minimizing Berkeley's impact and emphasizing our community's voice in the larger conversation about systemic climate solutions.



Jeff Noven, Executive Director [ED2](#) (he/him)  
Berkeley Student Food Collective  
2440 Bancroft Way #102  
Berkeley, CA 94704

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Fully against this ordinance, labor cost is already killing us and these additional costs to us or the customers will not sit well

Danny Rodriguez  
[danny@smokespoutinerie.com](mailto:danny@smokespoutinerie.com)

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We echo what others are saying. Recently we increased our prices due to anticipated increase in minimum wage and rising food cost. More pass on of cost to customers will significantly impact our business. We think that adding/having a compost bin would be a better solution!

Thank you for considering!  
Sharon Chung  
Poke Bar Berkeley

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The City should research ways to help the merchants not set them back. Before us merchants add anymore cost to our operations. The city should focus on providing a clean and safe public area. One of our vendors parked over by peoples park and got their car window broken. We had some guy sit in front of our store wrap his arm and shoot up drugs into his arm. A BPD was driving by saw what was happening and kept driving. We have bigger issues. Processing waste for merchants is already extremely expensive. If anything merchants should be receiving some sort of financial support from the cities waste management especially since Berkeley merchants can't outsource waste services. I will be attending the meeting.

Does the City have any sort of Merchant support program? The reason I ask is simply because I personally don't see any sort of assistance towards merchants.

- Rents are extremely high
- Labor is high
- Parking is extremely expensive if you operate a business.
- Parking tickets are a joke & 20 minute yellow parking is a bigger JOKE! – Parking plus parking tickets = about \$26k annual for our team.
- Waste disposal cost are insane. Just for refuge services we spent around \$36k annually. This is not including \$4k we spend on composable garbage bags. We cant even get a second quote for refuge because the only refuge service allowed in Berkeley is its own (can we be the only pizza in Berkeley?) which is BS.
- The City itself is failing apart with an increase number in street people, human waste, paraphernalia, garbage, and it is not safe. Who would want to bring their families to spend a weekend in Berkeley? Just getting off the freeway on University is embarrassing for the City. It is so difficult as a merchant to produce a sale. Now try doing it under these conditions. Its mind boggling to me how North Berkeley does not have any of the issue I list about or at least to the extreme we see it on a daily. When we call 911 their reaction is negative as if we are a nuisance and don't take our calls seriously. We have had street people spit on us, vandalize our store, vomit and shit in our restrooms, threaten to kill our employees, etc.. But again, I don't see these issues in North Berkeley. I would love for someone at the city to analyze the difference and explain.
- And lets not touch on the process of permitting within the City (insane!)

So, back to my original question. What does the City of Berkeley do for its Merchants?

Eduardo Perez  
Sliver Pizza

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**Written Public Comment on the proposed  
Single Use Foodware and Litter Reduction Ordinance**

Tacos Sinaloa

2384 Telegraph Ave Berkeley

[tacossinaloaberkeley@gmail.com](mailto:tacossinaloaberkeley@gmail.com)

August 25, 2018

Dear Zero Waste Commission,

I am writing with some concerns in response to the proposed waste reduction ordinance. Although Tacos Sinaloa fully supports initiatives to reduce waste there are some concerns I would like for Zero Waste commission to consider in the drafting of the ordinance.

**Concern:1 Take out Restaurants /small restaurants**

**Food consumed onsite: reusable dishes**

Will the proposal exclude take out restaurants ?

Will the proposal exclude small restaurants who don't have the space to accommodate high volume dish washing (no space for dishwashing appliances or an additional sinks)

**Concern : 2 Cost to invest on reusable dishes**

**Concern: 3 Timing of the ordinance**

With minimum wage set to increase to \$15 in October,2018 having restaurants invest in reusable dishes, appliances, need for additional employees to perform dish washing duties will pose an economical burden on small businesses .

**Concern 3: cost to customers**

Telegraph restaurants like ours who serve mainly college students would like to avoid passing on an additional charge to customers.

**Concern 4:** encouraging customers to bring reusable containers and cups pose a food safety concern that can negatively increase mislead food contamination complaints. Without the ability for restaurants to control dinnerware sanitation restaurants cannot control for food contamination.

I recommend the city helps find vendors that can provide inexpensive compostable dinnerware instead of encouraging the use of reusable dinnerware from home. Having a list or contract with vendors will assist restaurants in the transition of using compost only takeout dinnerware.

Sincerely,

Marlem Bueno, Tacos Sinaloa Manager





# Friends of Five Creeks

*Volunteers preserving and restoring watersheds of  
North Berkeley, Albany, Kensington, south El Cerrito and Richmond since 1996  
1236 Oxford St., Berkeley, CA 94709  
510 848 9358 f5creeks@gmail.com www.fivecreeks.org*

August 29, 1918

Heidi Obermeit, Recycling Program Manager  
Members of the Berkeley Zero Waste Commission  
Berkeley City Clerk, Members of the Berkeley City Council

Members of the Zero Waste Commission, City Clerk, City Council, and Ms. Obermeit:

Friends of Five Creeks, a 22-year-old all-volunteer group supporting watersheds and nature in the East Bay, strongly supports the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance. Litter and pollution remain serious problems in local waterways, and this ordinance will be a major milestone in reducing our dependence on disposable goods.

In our 22 years of work as community volunteers restoring and caring for our creeks, we have seen first-hand the persistent amounts of harmful litter along our creeks and their outfalls into the Bay, largely due to food containers and to-go materials. On 2017's Coastal Cleanup Day, volunteers picked up 3,761 lbs. of trash, including 24,284 small plastic pieces, 7,241 food wrappers, 2,505 straws and stirrers, and other litter, along the shorelines of Emeryville, Berkeley and Albany, where birds and fish feed. In turn, as of 2017- 18 there is more microplastic pollution in SF Bay than in many other US bodies of water (three times concentrations in Lake Erie).

Even the seemingly less harmful manufacture of paper cups nationally produces 2.2 billion tons of waste and 4 billion tons of CO2. At the same time, recycling has become less possible or cost-effective. As the Center for Environmental Health states, "single-use foodware is ... a non-sustainable option even if the materials are compostable or recyclable." This measure, and future possible increases in its coverage, would significantly return to re-use practices.

Many community members are as concerned about this problem as we are, and welcome ways to begin to tackle it. This ordinance will do just that. Many local businesses also support this measure; the \$.25 charge for disposable foodware seems fair and feasible.

Friends of Five Creeks looks forward to joining with the City of Berkeley on Coastal Cleanup Day on September 15, 2018 -- and to seeing how much this ordinance achieves in reducing litter and pollution in urban runoff, local creeks, and the Bay next year.

Sincerely,

Susan Schwartz, President, Friends of Five Creeks

*Friends of Five Creeks is a partner project of 501(c)3 Berkeley Partners for Parks*

## Written Public Comment on the proposed Single Use Foodware and Litter Disposal Ordinance

Sent: Tuesday, July 17, 2018 11:16 AM  
Subject: My family's support for the proposed Single-use Foodware and Litter Reduction Ordinance

Dear Ms. Hobermeit,

Just wanted to you to know that although I am rehabbing from surgery and couldn't attend the July 12 meeting, my family and I still strongly support the proposed ordinance.

Yours truly,

Melanie Lawrence  
Allston Way

---

**Sent:** Saturday, July 28, 2018 10:06 PM  
**Subject:** City of Berkeley Single Use Foodware and Litter Reduction Ordinance

Hello,

Very happy to see this effort happening and it also seems like a particularly easy problem to solve. I will suggest my obvious solutions mostly

as reinforcement for what is probably already on the minds of many other people. Only paper based materials used (yes paper comes from trees

but it is a rapidly renewing resource and usually compostable or recyclable and not a pollutant in landfills). Any plastic for forks, spoons etc. must

be of the compostable/recyclable variety. The city should approve manufacturers of these goods and make a list available of supply companies who are interested in providing the goods for merchants.

Merchants should also be encouraged to allow customers to bring in their own containers to pick up take out food. Customers should be encouraged to start

or continue cooking at home to save money, resources such as packing materials and to likely cut down on automobile traffic. Perhaps cooking programs at local community colleges can be enhanced and expanded.

Thank you for your efforts and allowing people to provide input and encouragement.

**Kasra Kamooneh**, President / CTO  
Certified Green Building Professional

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**Sent:** Sunday, July 29, 2018 10:43 AM

**Subject:** Re: September 6th @ 6pm - Invitation to provide input on the proposed City of Berkeley Single Use Foodware and Litter Reduction Ordinance

Hi!

I am a former restaurant owner in Berkeley. I would say I am definitely an environmentalist. My companies have been certified green for the last 10 years by the county of Alameda.

The restaurant business is under siege right now with limited labor availability, rising labor costs, and rising food costs. Many restaurants are on the verge of closing or have already closed.

Do not pick on restaurants right now. The timing is horrible. If anything, offer some kind of tax credit or incentive for following these guidelines rather than a law that puts more financial pressure on restaurants.

Sincerely,  
Hugh Groman

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**The Hugh Groman Group**

Office: 510-647-5165

Phil's Sliders: 510-845-5060

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[www.hughgromancatering.com](http://www.hughgromancatering.com)

[www.philssliders.com](http://www.philssliders.com)

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**Sent:** Tuesday, July 31, 2018 12:50 PM

**Subject:** plastics

I don't know much about what is being proposed, but generally speaking, I think it is crucial for Berkeley to take the lead in promoting less plastic usage in all areas of life/living, business!

Thanks  
Karen weil  
1209 Bonita avenue,  
berk. 94709

## Written Public Comment on the proposed Single Use Foodware and Litter Reduction Ordinance

**Sent:** Tuesday, September 04, 2018 12:08 AM

**To:** [hobermeit@CityofBerkeley.info](mailto:hobermeit@CityofBerkeley.info); Sophie Hahn; Jesse Arreguin

**Cc:** Berkeley City Council; Berkeley City Council

**Subject:** Foodware Subcommittee and Zero Waste Commission - Single Use Disposable Food Containers

Dear Foodware Subcommittee Members, Zero Waste Commission, Mayor Arreguin and Sophie Hahn Councilmember,

There are really two problems with the littering of single use food containers. One is the single use containers and the other is trash including single use containers strewn in the streets, sidewalks, yards, really across Berkeley.

### Durham, North Carolina Green ToGo

It was disappointing in reading the proposed ordinance and materials for decreasing waste and single use containers that the Durham, North Carolina Green ToGo Reusable Takeout Container Service was not mentioned nor seemed to be considered as an option in decreasing single use containers. There are a number of articles about the Green ToGo program which can be easily found through internet search, it was even featured on PBS Newshour August 21, 2018.

**Here are two links:**

<https://www.pbs.org/newshour/show/this-restaurant-takeout-service-swaps-styrofoam-for-sustainable>

<http://clarioncontentmedia.com/2016/11/durham-green-togo-reusable-takeout-container-service/>

### Trash

As I noted in the public comment period to City Council on return from travel in the midwest there was a sharp contrast between leaving Berkeley, the Oakland Airport and arriving in Minneapolis/St. Paul, MN. The Oakland Airport was filthy, the Minneapolis St Paul Airport was immaculate. The night I arrived and stayed in Bloomington, MN, the local news had a special on the best school custodian and the recognition given by the custodian to the students with the cleanest classroom. As I traveled across the mid-west streets, sidewalks, parks, nature preserves even city centers were pleasant and absent of scattered trash. I was struck over and over how nice it was not to see trash scattered everywhere. Trash cans were conveniently located and people used them. Contrast that with Berkeley. It only takes a short walk outside.

Kelly Hammargren

Resident

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Date: Mon, Sep 3, 2018 at 3:43 PM

Subject: Proposed Berkeley City litter reduction ordinance

To: [stuart@telegraphberkeley.org](mailto:stuart@telegraphberkeley.org) <[stuart@telegraphberkeley.org](mailto:stuart@telegraphberkeley.org)>

Cc: ryan <[ryan.piscovich@icloud.com](mailto:ryan.piscovich@icloud.com)>, [ryan@yogurtpark.com](mailto:ryan@yogurtpark.com) <[ryan@yogurtpark.com](mailto:ryan@yogurtpark.com)>

Hi Stuart,

I am the owner of Yogurt Park, Berkeley, (41 yrs. and counting)! I would like to address the new city ordinance proposal to charge a .25 cent surcharge to customers to reduce waste/litter for cup/containers that are used in or taken out of our business. I am not sure if I understand the scope of this ordinance, but would like to give some thoughts for consideration.

We have 3 specific sizes of Yogurt Park logo cups/containers that are priced by-the-cup size (mini-6.oz./small-12oz./large-16oz.). We cannot allow customers to bring in their own reusable cups/containers as our 3 YP size choices reflect the price of each sale. Additionally, we feel customers who would bring back our YP cups to have refilled could cause health/sanitary issues, as our yogurt product contains live yogurt cultures/milk and if not sanitized properly, could cause customers to become ill, which would directly reflect on our business. Essentially, all of our sales are considered take-out, as customers may or may not choose to sit on our limited bench seating for a short time after purchasing our product at the counter. Adding .25 cents to every cup/container sale would have a tremendous negative effect on our customers, as there is a product/cup price that becomes "too pricey" for a cup of yogurt. The student market is very conscientious of pricing, as well they should be (we already offer a lower cash discount). Oct. 1, we must increase our pricing as Berkeley's employee living wage law becomes effective. By adding the .25 cent cup surcharge would make purchasing our product a negative one. We have not been able to raise our prices in years to cover increases in food costs/ taxes/ rents/ wages/ compostable cups....to list a few.

I encourage the City of Berkeley to again put the small business community back on it's radar....I feel they have "taken their eye off the ball" on the South side. As an example, until recently there were 4 yogurt permits/businesses within 1 1/2 blocks of my long established location (the 3 other stores have gone out of business). Competition can be good for consumers, when not overdone. Also, it seems there are more chain stores being issued permits on the South side than were allowed many years ago....which again does not help the small business establishments.

Stuart, thank you for your help. I may not be able to attend the Thurs. meeting, but if you have any questions of me, I can be reached. I would appreciate any information you receive from the meeting if I cannot attend.

Sincerely,  
Marty Piscovich, owner  
Yogurt Park

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**Sent:** Thursday, September 06, 2018 6:59 PM

**To:** Obermeit, Heidi <hobermeit@cityofberkeley.info>

**Subject:** Please ban plastic silverware and single use take out meal containers

Ms. Heidi Obermeit (Zero Waste Commission) Berkeley Recycling Program Manager

I advocate for Berkeley to step forward with a law to reduce "food served with a side of garbage". Please ban single-use plastic items like plastic silverware, plastic beverage cups, plastic condiment or dip cups, and plastic salad containers, and the cardboard surrounding grilled cheese type sandwich that gets greasy.

67% of Bay Area street litter is disposable foodware. I support reusables and I want to help restaurants feel supported in knowing that this can, and does work!

I support making reuse the norm and reducing throwaway items when eating out.

I much prefer using a steel fork and spoon which is sturdy and reuseable, I would prefer also dip or condiments served in dishes that can be used many times by many customers. And I much prefer drinking from glass glasses which can be washed and reused.

On a global basis, only 14% of plastic is collected for recycling. The reuse rate is terrible compared to other materials -- 58% of paper and up to 90% of iron and steel gets recycled.

Research shows there will be [more plastic than fish by weight in the world's oceans](#) by 2050, which has spurred policy makers, individuals and companies into action.

Last month 40 companies including Coca-Cola ([KO](#)), Nestle ([NSRGF](#)), Unilever ([UL](#)) and Procter & Gamble ([PG](#)) [pledged to slash the amount of plastic](#) they use and throw away in the United Kingdom.

It is time for Berkeley to take a similar pledge to reduce throw away plastic silverware and meal containers.

--

Beth Schmaltz,  
1006 High St.,  
Madison, WI . 53715

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Melissa Hatheway  
Director of Marketing and Community Relations  
Rialto Cinemas @ Elmwood  
Berkeley's Best Neighborhood Movie Theater

2966 College Avenue at Ashby  
Berkeley, CA 94705  
Tel 707 829-3456  
[mhatheway@rialtocinemas.com](mailto:mhatheway@rialtocinemas.com)

Thank you to the City of Berkeley, this commission and all the organizations that have been working on this ordinance. We agree wholeheartedly with its goals but the hardship that this ordinance would present to us is onerous.

We are the only independently-owned movie theatre in Berkeley. We are also a movie theatre without a kitchen nor any room for a kitchen. Our more than 100-year-old building has limited space. We have 275 seats – on a Friday or Saturday night let's say we have three sets of close to sold out shows – and half those folks purchase a drink or popcorn we'd need to have 400+ cups in 3 sizes to keep up as well as the same number of bowls in three sizes. We will never have enough room for a dishwasher nor the storage space necessary. Additionally, this would add to our overhead and therefore our ticket prices. Our patrons are cost conscious and would travel to Emeryville, Piedmont and even farther afield. Complying with this program will put us at a great business disadvantage due to the cost.

Again, we applaud the spirit of this ordinance but it is our opinion that it needs to consider the users and how they do business.

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**Sent:** Thursday, September 06, 2018 6:14 PM  
**To:** Obermeit, Heidi <hobermeit@cityofberkeley.info>  
**Subject:** Berkeley Commission on Disability Letter to Zero Waste Commission with related attachments

Hi Heidi,

I have been sent here tonight by the Berkeley Commission on Disability.

Our Statement follows along with attached letter and documents.

Helen Walsh  
Berkeley Commission on Disability

Creating an environmentally conscious place for all  
cities across the state of California, including San

Francisco and Berkeley, the Commission on Disability recognizes that single use plastic cause hazardous effects to our plants and animals on land and in the ocean.

However, we also recognize that people who are in hospice care, seniors, small children, and those with disabilities depend on straws to drink, eat, take medications, etc. in daily use.

A straw is a tool not a convenience.

Many people with disabilities, have a clear need for straws as tools to drink beverages at home and in restaurants. By leaving this community out of the conversation, commissioners are making decisions that may dramatically impact quality of life without gathering input on impacts, recommendations and alternatives from the very group that is most affected by access to straws (or lack thereof).

The disability communities voice therefor should be considered and included in the conversation.

The Berkeley Commission on Disability is requesting that the Zero Waste Commission take proactive efforts to reach the disability community, host a forum or specific meeting session, and continually gather input



from disability stakeholders before finalizing any ordinances and proposing them to City Council.

We are submitting this letter to the Zero Waste subcommittee that will provide both recommendations and information to support a more inclusive process.

Thank you.

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Sent: Friday, September 07, 2018 2:00 PM

To: Obermeit, Heidi <hobermeit@cityofberkeley.info>; Martin Bourque <martin@ecologycenter.org>; Arreguin, Jesse L. <JArreguin@cityofberkeley.info>; Hahn, Sophie <SHahn@cityofberkeley.info>  
Subject: Proposed City of Berkeley Single Use Foodware and Litter Reduction Ordinance

Heidi, Martin, Jesse, Sophie,

Sorry to be late to be meeting yesterday at Sports Basement

I am writing for myself, and not the DBA (which has not taken position on issue.)

Personally, I support the 25 cent charge on coffee/beverage cups, but think it should be done as a Phase 1.

I think the City should wait to do a Phase 2. Take-out food container should come later after we have some experience re coffee/beverage cups in Phase 1 and figured logistics for returning food containers.

Specifically, I do quite a bit of take-out for dinners where I call ahead and food is waiting for me to pick up. I always wash out and save plastic containers but have not figured out how to return them.

Martin, thanks for telling me about GO-BOX which look promising. Perhaps we could a voluntary pilot program and see how it works?

Cheers, John

John Caner  
2215 Roosevelt Ave.  
Berkeley CA 94703

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**Sent:** Friday, September 07, 2018 4:32 PM  
**To:** Obermeit, Heidi <hobermeit@cityofberkeley.info>  
**Subject:** Disposable-free dining!

Hello,

I just wanted to write in support of this. My family spent this summer learning how to life without buying single-use plastic, or things wrapped in single-use plastic, and once you've set up some new routines it's really not that hard. Grocery shopping and eating out were the biggest two hurdles. I understand that citizens can be resistant to having ideas imposed upon them, but I really think the situation is already so awful that we need regulation to make significant shifts in consumer and company behaviour. I wholeheartedly support this and would be happy to help in whatever way would be useful.

I also wrote about my family's [plastic-free mission](#) for the Chronicle a few weeks ago, if that's useful.

All the best,

Jemima

--

Jemima Kiss // [jemimakiss.com](http://jemimakiss.com)

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September 6, 2018

**Special Meeting of the Foodware Subcommittee to solicit public input on the proposed Single Use Foodware and Litter Reduction Ordinance**

**30 members of the public attended; 14 public comments.**

**Summary of Public Comments:**

1. Jim Trevor – Artichoke Basille’s Pizza

- The proposed Ordinance is well-intentioned
- Our business only serves to-go; they do not have a dine-in option due to City regulations
- A \$0.25 fee shouldn’t be imposed on restaurants that aren’t allowed by the City to accommodate a dine-in option
- We do not want to produce more trash from disposable foodware
- Health Department frowns upon individuals bringing their own containers (BYOC)
- It is important to consider the impact of this proposed Ordinance to local businesses

2. Paul – GoBox SF Bay Area

- GoBox offers reusable cups and containers
- Vendor resources should be made available to businesses
- There should be incentives for use of reusable to-go containers
- There should be incentives for businesses to get a dishwasher
- The City could bundle vendor services/resources for businesses
- To support BYOC, I suggest itemizing the “charge” for BYOC with a “\$0.00” on the receipt so customers see that the financial benefit of bringing their own container instead of paying the \$0.25.

3. Melissa Hatheway - Rialto Cinemas Elmwood

- We are the only independently owned theater in Berkeley
- We are in a 100yr old building; they do not have a kitchen or have room for a kitchen
- We do not have room for a dishwasher or storage space for reusables
- We have 275 seats; we don’t have the capacity to collect, wash or store that many cups or dishes
- Patrons are cost conscious
- NOTE: Melissa submitted written comments

4. Helen Walsh – representing the City of Berkeley Commission on Disability

- Single Use Disposables impact the environment

- People with medical issues, in hospice, seniors, and children may depend on straws to eat or take medication
- Straws are a tool, not a convenience
- NOTE: The Commission on Disability submitted written comments

5. Jamie Smith – Clean Water Action

- Through Clean Water Action’s ReThink Disposable Program, over 100 Bay Area businesses have collectively:
  - saved an average of \$3,000/year
  - prevented 122,000 pounds of waste
  - eliminated the use of over 10 million pieces of trash
- Businesses accomplished this feat by switching to reusable foodware for on-site dining
- Although some businesses voluntarily eliminate/reduce use of disposables, it will take leadership of this City Council to make an effective impact.
- Cost of increased water use from washing reusables is a common concern from businesses; in reality, the increase in cost is insignificant.
- The use of disposables wastes water; the water used to produce, distribute and manage disposables is significantly greater than the water needed to wash a reusable item thousands of times.
- I ask City Council to adopt this Ordinance

6. Sam – Third Culture Bakery

- I am a Business Owner and UCB graduate with an Environmental Science background
- Support intent of proposed Ordinance
- Not sure how this will work in practice at a bakery with sauces, whipped cream, etc.
- Hygiene/safety is a big concern
- Have seen problems with people BYOC when he worked for a coffee shop; people would bring in moldy cups and cups containing spoiled milk
- Need a balanced approach
- Need to have health department and other stakeholders involved
- Most logical progression would be to promote compostables
- Disappointed that compost isn’t emphasized
- Recommend the City rethinks the Ordinance and moves in a more natural progression

7. Business Owner from Top Dog

- Recommends compostable containers be adequate to dodge the to-go fee
- The fee is an administrative hassle
- BYOC is problematic – have to comply with Health Department regulations
- We do not have space for a dishwasher

- Concern about reusables (especially glass or porcelain) being used as projectiles
- We currently bolt everything down (napkin holders, etc.) because this has been a problem; it is dangerous/a safety concern for his staff.

8. UC Berkeley Student

- The work Clean Water Action is doing is very important
- Should inform businesses about compost bins/encourage participation in the compost program
- Is 9 auditors enough? Should encourage Clean Water Action to work with local groups and hire more auditors or interns
- Information is going to be very important in this process

9. Tom – Farm Burger

- We are in Berkeley because we care about Berkeley
- Sales volume in Berkeley is 30% of our East Coast locations
- Our business has been using compostable foodware
- It is important to consider unintended consequences
- Worried businesses will move away from compostable foodware
- Staff live on tips; concerned that the impact of the fee will be a reduction in tips for staff
- The minimum wage law is already a major impact
- I support inclusion of health inspector in this process
- Businesses spend a lot of time figuring out how to comply with health regulations

10. Farhad Salehian – DishJoy

- Our company seeks to profit off of the problems raised tonight (i.e. lack of dishwasher capability)
- The only solution is to share dishwashing services
- We already do it for corporate campuses and we could easily transition to help businesses

11. Ed - Super Duper Burger

- Ask that the City helps business owners with costs
- The City should work with manufacturers of disposables to purchase compliant foodware in bulk so businesses can pass savings on to consumers

12. John Hanscom – Berkeley resident

- It is not enough to say, “go recyclable” or “go compostable”. It is important to figure out how to reduce waste, not focus on how to recycle and compost the waste that is generated.

- There is an excess of plastics when ordering food to-go. You often end up with a handful of utensils, straws, etc. put in the bag.
- We need to be more thoughtful about what is going out the door.

13. Jack Macy – Berkeley Resident

- Appreciate all the comments from businesses
- It is much more environmentally preferable to use reusables over compostables
- If using fiber, half is going to be released as carbon dioxide in the compost process
- PLA often gets screened out at the compost facility or doesn't fully break down
- There is a huge difference in resources used with disposables vs. reusables.
- Businesses are saving money by switching to reusables; it is a win/win
- SF just passed a similar law
- This is a model that will spread to other cities
- Health Department doesn't say that businesses can't refill containers; they just need to follow certain handling practices.
- It can work; I fully support this ordinance.

14. Miriam Gordon – UpStream

- Has researched the health code extensively re: BYOC and created a fact sheet
- CA Department of Health controls local health inspectors
- Health Dept allows refilling of containers, but requires contamination-free practices
- UpStream is working on a guidance document for how to refill customer's BYOCs
- There is a hardship exemption for businesses in the proposed Ordinance; businesses can make the case if they don't have the ability to wash dishes onsite.
- \$0.25 creates a level playing field
- There is cost savings for businesses if not purchasing disposables
- Need a reliable external system for to-go containers to make this easier for businesses and customers

To: To the Secretary and to the members of the Zero Waste Commission  
From: Commission on Disability  
Submitted by: Commission on Disability, Chairperson: Leeder  
Subject: Plastic Straws Recommendations

RECOMMENDATION

Conduct a public hearing and Inviting people with disabilities / Medical conditions from the Public to a stakeholder meeting partnered with the Zero Waste Commission for further recommendations regarding plastic straws. We, the Commission on Disability request that both the Zero Waste Commission and our Commission hold sessions with community members, similar to the meeting that the San Francisco Mayor’s Office on Disability hosted along with SF Environment Department.

SUMMARY: Creating an environmentally conscious place for all cities across the state of California, including San Francisco and Berkeley, the Commission on Disability recognizes that plastic straws and plastic cups with lids cause hazardous effects to our plants and animals on land and in the ocean. However, we also recognize that people who are in hospice care, seniors, small children, and those with disabilities depend on straws to drink, eat, take medications, etc. in daily use. While some might think the answer is simply to ditch plastic straws altogether, small children or people with certain disabilities rely on them to drink and even eat. It is important to engage this community as a whole (and not just individual agencies or nonprofits) when developing ordinances around single-use plastics and plastic straws specifically, because these ordinances may dramatically impact the independence, health, and quality-of-life for people who require straws to drink. We are requesting that the Zero Waste Commission take proactive efforts to reach the disability community, host a forum or specific meeting session, and continually gather input from disability stakeholders before finalizing any ordinances and proposing them to City Council.

FISCAL IMPACTS OF RECOMMENDATION: Minimal.

CURRENT SITUATION AND ITS EFFECTS:

The Berkeley’s Zero Waste Commission is tasked with writing up an ordinance to finding an alternative solution to using plastic straws to recommend to the city council. In general, Berkeley’s Zero Waste Commission held public meetings geared toward

environmental and business stakeholders, but did not specifically engage with stakeholders with disabilities. Many people with disabilities, though, have a clear need for straws as tools to drink beverages at home and in restaurants. By leaving this community out of the conversation, commissioners are making decisions that may dramatically impact quality of life without gathering input on impacts, recommendations and alternatives from the very group that is most affected by access to straws (or lack thereof).

Some of the reasons why straws are so important for people with disabilities include:

- “It’s important to recognize that, for some people, the use of straws is a necessity. Due to deficits in manual dexterity and various other factors, a significant number of folks require straws to drink beverages” (ref. CIL letter to the Zero Waste Commission 06/2018, attached)
- For these people with disabilities, straws are not a “convenience” for drinking beverages, but rather a “tool” to do so.
- Lack of access to beverages is not just frustrating – it can impact independence as well as health. If individuals cannot drink water or other beverages with food, they may have trouble swallowing and then choose to avoid eating out altogether. If they are in the community during the day and get thirsty or dehydrated, a lack of access to beverages (using straws as tools) threatens dehydration and related health impacts. There are many other concerns which could be brought up by the community during forums and communication with the Zero Waste Commission.
- People with disabilities choosing to avoid Berkeley’s businesses because they cannot drink beverages may have a negative impact on those businesses’ economic success, as well.
- Some alternatives to straws that have been suggested to people with disabilities are unreasonable or impossible to do reliably. For example, the suggestion that people use coffee cups (as they have handles) still does not work for many with limited strength or dexterity, and many businesses also do not carry cups with handles. Asking a friend or personal care attendant to hold a cup may result in spills and violates the very principles of independence for many people with disabilities. Other alternatives pose similar problems.
- Certain alternatives to *plastic* straws specifically have their own issues. For example, paper straws may begin to dissolve in hot or carbonated beverages and can even lead to choking for people with existing difficulty swallowing. Businesses providing reusable straws and then cleaning them is also unreliable and potentially unhealthy, especially as the most widely-used type of reusable straws (Silicone) are porous and have concerns about cleanliness.
- Asking people with disabilities to purchase their own straws (whether single-use or “reusable”) and bring them to restaurants presents an undue burden toward simply being able to have beverages outside the home. Somebody may forget a straw and be unable to drink beverages during the day, and cleaning reusable



straws can be unreliable or difficult to do midday (especially for individuals with dexterity difficulties). Purchasing straws is yet another financial burden for a community that is disproportionately low income, many of whom rely on Supplemental Security Income (SSI) payments under \$1000 per month.

- Proposals to charge extra for straws at restaurants themselves similarly place a financial burden on individuals who require them to drink. Even \$.25 per item – similar to the charges suggested in the Disposable Foodware and Litter Reduction Ordinance draft for to-go cups and containers – could add up to easily \$20 or \$30 per month, or more. Individuals on SSI may have well under \$100 in flexible disposable monthly income, so this is significant.

The Commission on Disability recognizes that environmental concerns in general are extremely important. As the Center for Independent Living noted in its letter,

“Just like responsible citizens without disabilities, responsible people with disabilities recognize the importance of maintaining (or, better yet, increasing) our planet’s health. In fact, the disability community arguably has a heightened interest in environmental integrity as toxic environments can exacerbate disability-related medical conditions and can even, in some cases, lead to the acquisition of disabilities.”

However, we remain concerned that people with disabilities have not been provided sufficient opportunity to give input on Disposable Foodware and Litter Reduction Ordinance or similar measures. Nonprofits such as CIL are already inundated with existing work supporting individuals’ independent living needs and cannot be expected to be the go-to advocates in city proceedings, as it goes beyond their scope of work. The Zero Waste Commission and related Subcommittees should take concerted efforts to reach community stakeholders with disabilities at all levels, gather input through forums or other means, and take those considerations into effect when drafting any policy. The members of the Commission on Disability are open to assisting in these efforts.

#### **BACKGROUND:**

California restaurants could only provide plastic straws to customers upon request if Gov. Jerry Brown signs a measure now headed to his desk. Assembly Bill 1884 covers full-service dining, but not takeout establishments like fast-food restaurants. Further information on this bill is available

at: [https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill\\_id=201720180AB1884](https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201720180AB1884)

Either way, as California is currently working on passing the bill above, now each city within the State of California has to come up with its own ordinance with taking a stance on plastic straws and other plastic containers.

As others have noted (see attached Berkeleyside pieces from June 2017 and April 2018, and CIL's letter), there are multiple options – but regardless, it is imperative that any City stakeholders include everybody who may be affected by disposable foodware ordinances. We generally agree with CIL's following statement:

“As the [June 2017] Berkeleyside article makes clear, there are various ways that Berkeley could reduce or eliminate the use of disposable plastic straws while simultaneously accommodating the needs of those for whom straws are not a luxury. ‘Soft bans,’ biodegradable disposable straws, and reusable steel straws are some potential solutions mentioned in the article. Although we are not currently advocating any particular solution, we are urging the City of Berkeley to ensure that those who need straws will continue to have access to them.”

A few suggestions include:

- The city of Berkeley and other cities must make some expectation for those individuals who really rely on straws on a daily basis.
- Perhaps coffee shops and restaurants could make plastic straws available only on request – just like when California had a water drought crisis and people asked for a cup or glass of water upon request.
- The cities could give out reusable plastic straws to those who need them and have these people keep these reusable straws in order to reuse them over and over again. As noted earlier, though, cleaning and reusing straws may be difficult for some of our community members.

## ENVIRONMENTAL SUSTAINABILITY

This community involvement strives to protect the environment while either making an exception for individuals with disabilities and medical chronic conditions upon request or come up with an alternative solution to using plastic straws that works for everyone.

ALTERNATIVE ACTIONS CONSIDERED: Get the business community and members of the disability community from various Bay Area cities to partner and create a subcommittee between the Zero Waste Commission, the Commission on Disability and groups such the Ecology Center to come up with solutions that fits everyone's needs. Berkeley could also sponsor an “innovation competition” to come up with straw alternatives that meet people with disabilities' needs as well as environmental concerns.

## CONTACT PERSON

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Public Works, Engineering  
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### Attachments:

- 1: Statement from Center on Independent Living (CIL) on plastic straws and people with disabilities. (Zero Waste Commission Agenda Packet Regular Meeting June 25, 2018, pages 24-25)
- 2: Berkeleyside NOSH - "What you should know about the Berkeley straw band proposal" (June 6, 2017)
- 3: Berkeleyside NOSH - Berkeley considers charging restaurant customers a fee for disposable foodware (April 26, 2018)



StopWaste is the Alameda County Waste Management Authority, the Alameda County Source Reduction and Recycling Board, and the Energy Council operating as one public agency.

Member Agencies:

- Alameda County
- Alameda
- Albany
- Berkeley
- Dublin
- Emeryville
- Fremont
- Hayward
- Livermore
- Newark
- Oakland
- Piedmont
- Pleasanton
- San Leandro
- Union City
- Castro Valley Sanitary District
- Oro Loma Sanitary District

September 5, 2018

Ms. Heidi Obermeit  
City of Berkeley  
2180 Milvia Street,  
Berkeley, Ca 94704

RE: Comments on City of Berkeley Single Use Foodware and Litter Reduction Ordinance

Dear Heidi,

Thank you for giving us the opportunity to provide comments to the City of Berkeley’s forward thinking Single Use Foodware and Litter Reduction Ordinance. Below are our comments based on our experience in adopting and implementing various ordinances, including the Reusable Bag Ordinance (Ordinance 2016-2, attached here as a reference). We also based our comments on our work in the food reduction and recovery areas.

**Section 1**

1C. Definition of “Takeout Meal”

Includes several different entrée/item configurations and “up to three disposable Food Containers”. If the intent is to charge \$.25 for every 3 disposable containers, these charges could be difficult to interpret and implement by food vendors, complicated to monitor for enforcement, and confusing to customer.

Would Reusable Cups and Reusable Containers have their own separate definitions?

1E. Disposable Foodware Definition– includes all bags, sacks, wrappers.

We recommend removing the word *bags* from the definition of Disposal Foodware to avoid confusion between the [Countywide Reusable Bag Ordinance 2016-2](#) and the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance.

Including *bags* in the definition of Disposable Foodware creates a conflict with the Alameda County Reusable Bag Ordinance 2016-2. The definition for a compliant reusable bag under [Ordinance 2016-2](#) is different from the standards set forth in Section 3 under the Disposable Foodware Standards. The Foodware Standards in Section 3 in the proposed ordinance allow for compostable bags; however, the majority of non-paper compostable bags will not meet the durability standards set forth in Ordinance 2016-2 and therefore the two ordinances conflict. Removing bags from the definition resolves the conflict.

**Section 2**

2A. Consider phasing in the requirements for utilizing Reusable Foodware and compliant Disposable Foodware. These are two significant changes for a business to comply with at the same time.

2C. Request of Waivers

Waivers may be granted for up to three years – some questions to consider:

What would a partial waiver include?

What happens after 3 years?

What constitutes “make every effort to become compliant”? What type of activities/efforts would the city consider?

What types of thresholds would be considered allowable under “space constraints?”

Who will review/approve waivers? Will there be an online system set up?

Consider requiring Prepared Food Vendors that do request a waiver to, at a minimum, place all disposables in dispensers that are designed to limit consumption such as straws napkins, etc. ReThink Disposable has found that this practice helped reduce waste.

With over 500 restaurants in the City of Berkeley, many who currently are not using reusable ware, the City may have many requests for waivers. You might want to consider creating a specific webpage that clearly outlines the process, allowances and some type of database/electronic system to handle requests.

2E - There is a reference: “to meet the Disposable Food Packaging Standards in Section 3. There is no definition of Disposable Food Packaging in Section 3 or in the definition section of the proposed ordinance. Consider referencing Disposable Foodware instead.

**Section 3. Disposable Foodware Standards**

3A – City to maintain list of approved Disposable Foodware source and types and where physically available.

Consider referring to organizations that maintain regularly updated lists of products that meet ordinance requirements. With the rapidly changing products in the market, creating and updating a list can be a very time consuming activity for staff; and this type of list can become outdated very quickly if only updated annually.

3Bai Will Prepared Food Vendors have the adequate infrastructure (front of the house) for patrons to compost and/or recycle the foodware required by the ordinance?

3Bb Disposable Foodware approved by the City shall meet the following standards:

Confirming requirement 3Bb “Free of all intentionally added Fluorinated Chemicals as certified by the Biodegradable Product Institute (BPI) or other third party certifying agency “ aligns with BPI’s schedule to certify these products. Per the BPI website:

<https://www.bpiworld.org/Fluorinated-Chemicals> a complete list of these certified products will not be available until December 2019.

**Section 4 Disposable Foodware Charges.**

Customers shall be charged for Disposable Foodware used for dining off premises.

4A and 4B. Please note, if the “to go” meal is served in a compliant reusable bag, an additional minimum \$0.10 will need to be charged to comply with Ordinance 2016-2, which could increase total “Takeout Meal” charges to be greater than \$0.25. There is no charge for carryout food given to customers in compliant paper bags.

4B –Lack of alternatives (to disposable foodware) might not change consumer behavior in the way that the ordinance intended, e.g. consumers will still have to pay for containers that may end up in the trash can.

4C – Income from charges shall be retained by the Prepared Food Vendor. However, Section 6C stated that the City Manager will collect and receive all fees imposed by this section. While we understand that Section 6 relates specifically to enforcement, it might benefit from some clarification.

4D – Under Ordinance 2016-2, carry out of leftover food given to customers in a bag (“doggie bag”) are subject to a minimum \$0.10 charge if the bag is a reusable bag (which can be a thick, durable plastic bag compliant with Ordinance 2016-2). There is no charge for carryout food given to customers in compliant paper bags.

4F – If the intent of the language is to require vendors to provide a line item for both cups and foodware on the receipt, please note that requiring separate line items with charges can be problematic for a vendor as many cash registers are not able to create specific line items for these types of additional charges.

The Reusable Bag Ordinance implementation shows that many cash registers do not have the capacity to make individual line item descriptions. The Reusable Bag Ordinance requires a minimum \$.10 per compliant reusable bags distributed at eating establishments and that charge needs to be itemized on the receipts. However, we allow the utilization of a general category such as Misc. with the appropriate charges to make implementation feasible for affected entities.

**A note regarding consumer’s reusable containers.**

Consider potential concerns regarding consumers wanting to bring their own reusable containers for takeout food to avoid charges (and protect the environment).

In our experience, food service operators are wary of health code violations that will result in a citation if they allow anything beyond reusable cups, which can be sanitized with hot water before filling. Many restaurants will not accept reusable containers brought from home for take-out food, which in essence requires a patron to pay for disposable foodware despite bringing their own container. Vendors cite health code violations that stem from Code ambiguity described below:

[The Current California Retail Food Code](#) is clear on the allowance of consumer’s reusable cups (Article 7 114075 if 2018 Code) for beverages and use of consumer’s personal reusable containers for leftovers *from consumer’s plates*. Where the code is not clear is regarding the use of reusable food containers from home for food to go. Specifically in the scenario where a bring your own (BYO) container passes from customer over the counter to back of kitchen to be filled with food and handed back to customer. Has the Berkeley Environmental Health Dept. confirmed that consumers are allowed to bring their own containers from home to be used for take-out food? If the City Health Dept. determines this type of activity is permitted, consider providing food vendors with outreach materials confirming these activities are allowed by law.

**Section 5 Signage Requirements for Takeout Food Vendors**

5A – Require vendors to post signage. Consider providing small postcard sized signage, as many vendors do not have space to post signage. Experience with Reusable Bag Ordinance shows less than a quarter of the affected eating establishments posted outreach materials provided by ACWMA, which should be a consideration if this is the main outreach vehicle for the City to notify customers of the law.

We hope that these comments are helpful. Please do not hesitate to contact us if you have any questions.

Regards,



Meri Soll  
Senior Program Manager

5 Gyres ♦ Algalita Marine Research Foundation ♦ Break Free From Plastic  
Californians Against Waste ♦ Center for Environmental Health ♦ Clean Water Action  
♦ Judith Enck ♦ Global Alliance for Incinerator Alternatives ♦ Institute for Local Self  
Reliance ♦ Plastic Pollution Coalition ♦ Seventh Generation Advisors ♦ Story of Stuff  
♦ Surfrider ♦ UPSTREAM ♦ Zero Waste USA

September 17, 2018

Berkeley Zero Waste Commission  
2180 Milvia Street  
5th Floor Berkeley, CA 94704

Re: Single Use Foodware Reduction Ordinance- STRONG SUPPORT

Dear Zero Waste Commission:

The undersigned organizations applaud the proposed ordinance (Item #34, introduced April 24, 2018) to reduce single use food-ware and litter. This measure will help Berkeley reduce plastic and packaging waste in food service and ensure disposable food-ware is safer for health and the environment. It represents a brave step forward in tackling a tough problem.

**We are at a pivotal moment in time.** The China National / Green Sword is leaving many U.S. cities without options for recycling mixed paper and plastic. Meanwhile, the petrochemical industry is putting in place infrastructure aimed at increasing plastics production by 400% over the next 30 years.<sup>1</sup> Cities all across the U.S. are drowning in single use packaging, primarily plastic, that is hard to recycle and compost. These are products- typically used in a manner of minutes- that have huge environmental impact, regardless of whether they are made from petroleum based plastic, bio-plastic, paper, or agricultural waste. From the devastation caused by extraction of natural resources or industrial agricultural production, to the energy, toxic chemicals, water use, and pollution associated with production, to the greenhouse gas emissions and pollution in the environment when they are disposed, single use products - no matter what materials they are made of- significantly harm the environment and human health.

**It's time to choose the 2Rs- Reduce and Reuse.** It's clear that we can't recycle and compost our way out of this deluge of plastic and packaging waste. Berkeley is wise to seek solutions at the top of the waste management hierarchy (Reduce, Reuse, Recycle) to drive reduction and reuse. If local government is to reach the 75% diversion from landfill goal of AB 341, it will have to do more than recycle and compost. Similarly, to achieve the storm-water permit requirements established by the state and regional water boards, Berkeley and other jurisdictions will need to

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<sup>1</sup> Geyer, R., Jambeck, J., Law, K.L. Production, use, and fate of all plastics ever made, *Science Advances* (2017), Vol. 3, no. 7, e1700782.



do more than capture and cleanup trash. In both cases, a prevention / source reduction approach is needed.

Local jurisdictions should prioritize food and beverage packaging reduction because packaging represents a quarter of the solid waste stream, as does plastic,<sup>2</sup> and because food and beverage packaging is 67% of the trash on Bay Area streets.<sup>3</sup> This ordinance represents a comprehensive approach to tackling the disposable food packaging problem. It folds in the increasingly-popular straws and utensils on request policies being enacted at the local and national levels, with more forceful measures to evolve from a throw-away culture to one where reusable, durable products are used to deliver food and beverages.

**We support reusables for on-site dining**, as it makes a lot of sense. Too many restaurants nowadays are serving customers on-site with disposables, thanks to the fast food model, brought to us by fast food leaders like McDonalds. This throw-away culture doesn't fit in communities seeking to be climate-friendly and zero waste. We must push these industries to find a more sustainable way to provide fast food without a big pile of garbage generated with each meal. We know that McDonald's CAN do this. They are already providing reusables on site in *McCafes* all across Europe. If they can cater to European taste for croissants served on a real plate, they need to be pushed to serve Americans our burgers on real plates too.

**We support charging customers for take-out in disposables, with a delay on charges for food containers, and city support for innovation.** Charging for disposables to encourage the reusable alternative works, as evidenced by government-mandated bag charges in jurisdictions all across the globe. We've seen a 60-90% reduction in single bag use and plastic bag litter in these jurisdictions. It's not difficult for customers to Bring Your Own (BYO) reusable cup. For food containers, BYO isn't a great way to introduce reusables, since customers are unlikely to carry the containers with them and we understand that BYO containers can significantly slow down operations during a busy lunch or dinner rush. Therefore, we believe it is important to create a reusable container system that restaurants can provide to their customers and would support a delayed implementation period for the charge on disposable food containers. Furthermore, we urge the City to consider supporting the development of innovation in developing reusables systems that are convenient and lower cost than the container charge.

**We support banning PFAS substances in disposable food packaging.** There is ample packaging<sup>4</sup> to provide moisture and grease-proof barriers, are among the most health and food environment-threatening, persistent, and indestructible chemicals currently in use. They migrate out of the package, into our food and beverages, leach into ground and surface water,

<sup>2</sup> Id.

<sup>3</sup> <https://www.mercurynews.com/2011/06/19/survey-pinpoints-sources-of-trash-in-san-francisco-bay/>

<sup>4</sup> Blum A, et al, 2015. [The Madrid statement on poly- and perfluoroalkyl substances \(PFASs\). Environ Health Perspect 123:A107–A111](#); Schaidler LA, et al, Fluorinated compounds in U.S. fast food packaging. *Environ Sci Technol Lett.* 2017; 4(3): 105-111; Trier X, Granby K, Christensen Polyfluorinated surfactants (PFS) in paper and board coatings for food packaging. *Environ Sci Pollut Res.* 2011; 18: 1108-1120; Begley TH, Hsu W, Noonan G, Diachenko Migration of fluorochemical paper additives from food-contact paper into foods and food simulants. *Food Addit Contam Part A Chem Anal Control Expo Risk Assess.* 2008; 25(3): 384-390. .

contaminate compost, and can be up-taken by crops. Banning their use in food packaging is essential.

Thank you for the opportunity to provide input on this important measure.

Sincerely,

Miriam Gordon  
Program Director  
UPSTREAM

Judith Enck  
Former EPA Regional Administrator

Leslie Mintz Tamminen  
Oceans Director  
Seventh Generation Advisors

Sue Chiang  
Pollution Prevention Program Director  
Center for Environmental Health

Ruth Abbe  
President  
Zero Waste USA

Shilpy Chhotray  
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Angela T. Howe, Esq.  
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Surfrider Foundation

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Clean Water Action, California

Eva Holman  
Rise Above Plastics Program Lead  
Surfrider San Francisco Chapter

Anna Cummins  
Founder and CEO  
5 Gyres

Kelly McBee  
Policy Analyst  
Californians Against Waste

Stiv Wilson  
Director of Campaigns  
Story of Stuff

Michael Doshi  
Youth Leadership Programs Manager  
Algalita Marine Research & Education

Brenda Platt  
Co-Director  
Institute for Local Self Reliance

Dianna Cohen  
Executive Director  
Plastic Pollution Coalition  
Incinerator Alternatives

Monica Wilson  
Research and Policy Coordinator  
Global Alliance for



Chrise De Tournay, Chair  
Zero Waste Commission  
City of Berkeley

September 20, 2018

Re: Strong Support for Disposable Foodware and Litter Reduction Ordinance

Dear Chair and Commissioners,

As you know, the Ecology Center is an originator of curbside recycling and the long-term operator of the City of Berkeley's Residential Curbside Recycling Collection Program. We have worked with the Commission, City Staff, and City Council members to address the growing problems associated with disposable food ware in our city and across our waterways, oceans, and planet.

We believe that the approach developed in collaboration with a broad and experienced group of experts in this arena and referred by Council for review to the Zero Waste Commission is the most comprehensive ordinance yet proposed by any city. As proposed we are convinced this ordinance would dramatically reduce single-use disposable foodware and the related impacts on our streets, storm drains, creeks, and shoreline. We also believe it can reduce ocean pollution both here and internationally. We see immediate benefits for improving our shopping districts, cutting costs to the Business Improvement Districts for street clean up and allowing them to focus on events, promotions, and other priorities. We also see immediate benefits to the City in reducing waste collection costs, storm water clean up, and of course to recycling and compost programs by lowering direct expenses and contamination.

Expert opinion and field experience shows that some of the key elements of this program, while individually challenging for some businesses, will be achievable and produce net savings and an increase in revenue for local businesses. We sincerely appreciate the thorough, open, and inclusive work of the Foodware Subcommittee and have benefited from participating in all meetings as well as numerous related calls, meetings, and other communications which have given us greater insights to the business impacts of the proposals.

We have the following recommendations to further improve on the proposed ordinance:

- 1) Make an exception for plastic straws that allows and encourages restaurants to provide them without condition, upon request, such that people who need them for medical or other reasons have full and easy access to them as needed;**
- 2) Include direction to health department staff to develop guidance for a contamination-free process for serving food in customer-owned foodware**
- 3) Include funding for free citywide technical support to businesses through a third party provider;**
- 4) Include funding to pilot a reusable takeout foodware program;**
- 5) Require all takeout foodware be compostable in accordance with the city's program;**
- 6) Phase in the container fee following the implementation of the cup fee to give more time for businesses and customers to adapt.**

Thank you for all your hard work and consideration of this proposal.  
Sincerely,



Martin Bourque  
Executive Director

## M E M O R A N D U M

**Date:** 12 September 2018

**To:** The Zero Waste Commission

**From:** The Parks and Waterfront Commission

**Subject:** Responding to request for feedback on draft of the Single Use Foodware and Litter Reduction Ordinance

The Parks and Waterfront Commission would like to commend the Zero Waste Commission for its work in helping to develop a Single Use Foodware and Litter Reduction Ordinance (Attachment A). We support the Ordinance, which will reduce waste from single use food containers in Berkeley through the development of disposable foodware standards, fees of \$0.25 per cup or container for disposable items and mandatory educational signage at the point of sale. We are pleased that extensive outreach was done to craft the legislation (including surveying 59 local businesses) and that several local case studies have demonstrated the economic benefits and feasibility of the ordinance<sup>1,2</sup>. We are also pleased that the Ordinance makes some accommodations, including fee exemptions for customers using WIC or SNAP and allowing biodegradable (paper) straws “on request”.

The Ordinance will help reduce waste in Berkeley’s parks and along the waterfront, which is badly needed. The 2017 Coastal Cleanup Day in Berkeley, Albany and Emeryville picked up 4,300 lbs of trash and recyclables, including 7,241 food wrappers, 2,217 foam packaging items, 2,505 straws and stirrers, 1,891 plastic bags and 1,577 plastic utensils.<sup>3,3a</sup> This waste detracts from residents’ enjoyment of the coast and harms bay-loving species. The Ocean Conservancy says that single-use packaging is the biggest source of trash found in or near oceans and bays, that over 600 species are threatened from the ingestion of plastics, and that 90 percent of seabirds are eating plastics on a regular basis.<sup>4</sup> There will be a transition period and some push-back to the Ordinance at first, but the need to significantly reduce single-use packaging is real. Berkeley can help lead the way to a healthier future for our planet and local waterfront.

## Footnotes:

- (1) <http://reusablebagsac.org/news/successful-results-bag-ordinance>
- (2) <https://serc.berkeley.edu/paying-the-price-of-disposable-cups-at-caffe-strada/>
- (3) <https://www.cityofberkeley.info/shorelinecleanup/>. See also (3a) [www.cleanwateraction.org/files/publications/ca/Curr\\_CA\\_12%2012%2011final.pdf](http://www.cleanwateraction.org/files/publications/ca/Curr_CA_12%2012%2011final.pdf); California Coastal Cleanup Results 1989- 2014 showing Food and Beverage packaging items are 7 out of the top 10 items collected and account for 34% of the total trash <https://www.coastal.ca.gov/publiced/ccd/history.html#top10>; BanList 2.0 shows food and beverage packaging items are 74% of top 20 littered items among 6 different beach cleanup datasets <https://upstreampolicy.org/ban-list-20>
- (4) <https://oceanconservancy.org/our-work/marine-debris/2015-data-release/2015-data-release-pdf.pdf>

To Whom it May Concern:

Waste is an out of sight, out of mind problem. The average person doesn't think about how much waste they're throwing away, but there is no "away". All of the non-recyclable and non-compostable take-out containers from food establishments we've ever had is still on Earth. All the single-use plastic that we used for 30 minutes has hurt wildlife, contributed to air and water pollution, and increased greenhouse gases. We cannot afford to not think about it any longer.

Strong action is necessary and this Ordinance is a great step in the right direction. In ten years, it will be common sense that all take-out containers are recyclable or compostable and that "for here" items are reusable, just as it is common sense now to have curbside recycling. Berkeley has been a leader in waste by being the first municipality to ban single-use polystyrene. We should continue to lead by passing this Ordinance. This can be the groundbreaking policy that represents Berkeley's progressive and forward-thinking ideals.

For the reasons above, CALPIRG UC Berkeley Chapter has voted to endorse the Single Use Foodware and Litter Reduction Ordinance. Our waste problem is mounting, and we have the power, and duty, to do something about it.

Sincerely,



Nicole Haynes  
Zero Waste Co-Campaign Coordinator  
CALPIRG UC Berkeley Chapter

At a regular meeting of the Parks and Waterfront Commission on Wednesday, September 12, 2018, the commission took action to send this communication and appendix to the Zero Waste Commission (M/S/C: Fogel/Lee): Ayes: McKay, Brostrom, McGrath, Fogel, Lee, Kamen, Kawczynska, Diehm; Noes: None; Abstain: None; Absent: None).

October 3, 2018

Honorable Mayor and City Council members:

I would like to propose these additional changes to the draft ordinance:

1. If businesses are given exemptions from the requirement to provide reusable foodware for in-house dining, they should have to comply with the section of the ordinance that requires them to charge customers for the single use foodware – beverage and meal containers - for in-house dining. As the ordinance is currently drafted they only have to comply with the compostable/recyclable foodware section and I think the requirement to provide straws and other items upon request only. My suggestion is that these exempted businesses should still have to comply with the other aspects of the ordinance.

2. But if my recommendation in #1 is incorporated into the draft ordinance, the council should also consider the fiscal implications of the proposed change in #1 - the taxable sales implication if they cannot use all of the increased revenue from the collected charges (this increased revenue could be significant for a business that only sells food in single use to-go foodware packaging and does not offer in-house dining or has no way of washing any foodware for in-house dining) for implementing the requirements of the ordinance such as education of customers on composting, increased cost of providing compliant compostable to-go containers, signage etc. Perhaps these exempt businesses could be required to use some of those increased charge-related income to fund a city-wide pilot or a reusable foodware system on their own – their choice – which could be considered a form of EPR – extended producer responsibility or in this case Extended Retailer Responsibility - ERR. Perhaps non-exempt businesses could also be required to do this as well as part of their required uses of the increased income from the collected foodware charges. I've added an item (d) in #3 below for this reason.

3. The following language should be considered for inclusion to ensure that the charges collected by the businesses are not considered taxable by the state board of equalization:

**“All moneys collected pursuant to this article shall be retained by the store and may be used only for the following purposes:**

**(a) Costs associated with complying with the requirements of this article.**

**(b) Actual costs of labor, equipment and materials for washing foodware and providing customers with washable foodware; costs of providing customers with compliant compostable single-use foodware; costs for reducing litter; and other costs associated with reducing the use of single-use foodware and litter.**

**(c) Costs associated with a store’s educational materials or educational campaign for reducing and/or encouraging the reduction of single-use foodware and litter.**

**(d) Costs associated with supplying customers with reusable to-go foodware that can be returned to the business for washing or as part of a city-wide system of reusable to-go foodware.**

Sincerely,  
Peter Schultze-Allen



**Peter Schultze-Allen, CPSWQ, QSP/QSD, Bay-Friendly QP, LEED-AP**  
Senior Scientist



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Berkeley City Council  
2180 Milvia Street, 5th Floor  
Berkeley, CA 94704

ACTION CALENDAR

April 24, 2018

To: Honorable Mayor and Members of the City Council

From: Councilmember Sophie Hahn and Mayor Jesse Arreguin, and  
Councilmembers Linda Maio and Susan Wengraf

Subject: Referral to the Zero Waste Commission:  
Berkeley Single Use Foodware and Litter Reduction Ordinance

RECOMMENDATION

1. Refer the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance to the Zero Waste Commission to invite input from key stakeholders, including restaurants and other food retailers and zero waste, plastics, oceans and other environmental experts, and hold public meetings to obtain input on the proposed Ordinance.
2. Refer to the Zero Waste Commission to report back to the City Council results of the Commission's community outreach and analysis, and provide recommendations for improvements to the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance.

FINANCIAL IMPLICATIONS

The only added cost of the referral, beyond normal staff time to support the Zero Waste Commission's review of the proposed ordinance, is potential staffing of one or more community meetings to obtain stakeholder and other public input.

Reducing use and disposal of products that make up the majority of Berkeley's street and storm-drain litter has the potential to significantly lower City expenses including costs related to collection of debris from over 400 city trash receptacles, from clearing of clogged stormwater intakes city-wide, and from daily street sweeping and litter management.

BACKGROUND

Single use disposable foodware and packaging (SUDs) - including plastic bottles, caps, lids, straws, cups, and containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions. The use of disposable foodware has grown exponentially over the past few decades. The practice of providing

food and beverage packaging free of charge fails to incorporate the environmental and social costs of these products into the price of food and beverage service. As a result, customers and food business operators pay little attention to the quantity of single use packaging products consumed and quickly thrown away. Reducing the use of SUDs in the City of Berkeley is a key strategy to achieve the City's Zero Waste and Climate Action goals, and to address the many environmental impacts and costs associated with the use and disposal of single-use foodware and packaging.

### ***Environmental Impacts of Single-Use Disposables***

The production, consumption, and disposal of SUDs contributes significantly to the depletion of natural resources. It is a major component of litter on streets and in waterways, and of the plastic polluting our air, food, drinking water and oceans.

- Food and beverage SUDs make up approximately 25% of all waste produced in California<sup>1</sup>
- Bay Area litter studies have found that food and beverage packaging comprises the majority of street litter, half of which comes from fast food and take-out food establishments<sup>2</sup>
- Eighty percent of marine plastic pollution originates from trash in urban runoff<sup>3</sup>
- In the year 2000, half of all plastic packaging in the UK was comprised of SUDs<sup>4</sup>
- Nearly 700 species of marine wildlife are impacted by ingestion and entanglement of plastics, causing starvation, disease, and death<sup>5</sup>
- Without dramatic systems change, by 2050, there will be more plastic in the ocean than fish<sup>6</sup>
- Based on Berkeley's population of approximately 120,000 people, it is estimated that almost 40 million single use cups are used in the City of Berkeley every year
- Paper cups alone generate 2.2 billion pounds of waste per year nationwide, consuming over 11 million trees, resulting in 4 billion pounds of carbon dioxide emissions, and requiring the consumption of 35 billion gallons of water to manufacture<sup>7</sup>

<sup>1</sup> <https://www.wastedive.com/news/are-the-packaging-wars-coming-to-california/508491/>

<sup>2</sup> See Clean Water Action's "Taking out the Trash" Bay Area Litter study (2011) [http://www.cleanwateraction.org/files/publications/ca/Curr\\_CA\\_12%2012%2011final.pdf](http://www.cleanwateraction.org/files/publications/ca/Curr_CA_12%2012%2011final.pdf) ; California Coastal Cleanup Results 1989-2014 showing Food and Beverage packaging items are 7 out of the top 10 items collected and account for 34% of the total trash - <https://www.coastal.ca.gov/publiced/ccd/history.html#top10> ; BanList 2.0 shows food and beverage packaging items are 74% of top 20 littered items among 6 different beach cleanup datasets- <https://upstreampolicy.org/ban-list-20>

<sup>3</sup> 80% from land based sources: U.S. Department of Commerce, NOAA, Office of Public and Constituent Affairs, (1999) "Turning to the Sea: America's Ocean Future," p.5. Re: most of land-based ocean litter comes from trash in urban runoff: *Trash TMDLs for the Los Angeles River Watershed*, (September 19, 2001):17.

<sup>4</sup> Hopewell, et Al. Royal Society Biological *Sciences Philos Trans R Soc Lond B Biol Sci*. 2009 Jul 27; 364(1526): 2115–2126.

<sup>5</sup> Gall & Thompson, The Impact of Marine Debris on Marine Life, *Marine Poll Bull*, 2015 Mar 15:93(1-2);170-179

<sup>6</sup> Ellen MacArthur Foundation (2016)

<sup>7</sup> Clean Water Action Disposable vs. Reusable Cups Fact Sheet

Most SUDs are used for just a few minutes before becoming waste, while the plastics many are made of last for hundreds and even thousands of years, and have broad, long-lasting negative impacts. Plastics in waterways and oceans break down into smaller pieces (but do not biodegrade) and are present in most of the world's oceans, at all levels (surface, water column, and bottom).<sup>8</sup> Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater<sup>9</sup>, which can transfer to fish, other seafood, and salt that is eventually sold for human consumption.<sup>10</sup> Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health effects including kidney and testicular cancer, thyroid disruption, delayed puberty and obesity.<sup>11</sup>

### ***Berkeley as a Zero Waste Leader***

The City of Berkeley has a long history of leadership in sustainability and environmental protections including the adoption of an ambitious Climate Action Plan in 2009, with a goal of achieving Zero Waste by 2020; the nation's first curbside recycling program and styrofoam foodware ban; and one of the first commercial organics collection programs. 75% of the City's discarded material is diverted from landfill, and there has been a 50% reduction in solid waste disposal between 2000 to 2013<sup>12</sup>. Despite these achievements, Berkeley has not addressed the significant increase in takeout food packaging littering city streets, filling storm drains, requiring management in the waste stream, polluting our waterways, Bay and ocean, and threatening both human and animal health.

In addition, SUDs are particularly costly and challenging to divert from landfill. Non-recyclable food and beverage packaging is costly to remove from the waste stream and reduces the quality and value of recyclables, while non-compostable food packaging (some of which is advertised as "compostable") contaminates compost, adding costs and reducing the quality of compost<sup>13</sup>. With China's recent rejection of mixed recycled plastic imports, the value of recyclable plastics has dropped sharply and the final destination for these plastic SUDs is uncertain. This adds significant costs to the City's collection, sorting, and processing of compostables and recyclables. To reach its Zero

<sup>8</sup> D. Barnes et al, 2009, *Accumulation and fragmentation of plastic debris in global environments*, Phil. Trans. R. Soc. B., 364-1985-98.

<sup>9</sup> Rochman, C.M., et al., 2013, Long-Term Field Measurement of Sorption of Organic Contaminants to Five Types of Plastic Pellets: Implications for Plastic Marine Debris. *Environmental Science and Technology*. 47, 1646-1654.

<sup>10</sup> Rochman C Met al, 2015a Anthropogenic debris in seafood: plastic debris and fibers from textiles in fish and bivalves sold for human consumption *Sci. Rep.* 5 14340.

<sup>11</sup> In 2015, the FDA barred from use three such fluorinated chemicals from food contact materials due to safety risks associated with cancer, toxicity, and other health effects; other fluorinated chemicals have similar chemical structures and pose similar risk.

<sup>12</sup> Berkeley Climate Action Plan: Tracking our Progress Waste Reduction & Recycling – Total Landfilled, [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/PDF%20total%20landfilled%20final.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/PDF%20total%20landfilled%20final.pdf)

<sup>13</sup> Clean Water Action, *What's in the Package?* 2016 <https://www.cleanwateraction.org/features/what%E2%80%99s-package>

Waste goals, the City must reduce use of unnecessary single-use food and beverage packaging.

### **Strategies to Regulate SUDs**

Alameda County implemented its reusable bag ordinance in January 2013, and has seen dramatic results. Countywide, bag purchases by affected retail stores have declined by 85 percent. The number of shoppers bringing a reusable bag to affected stores, or not using a bag at all, has more than doubled during this time<sup>14</sup>. Globally, a number of strategies have been implemented to reduce the use of SUDs. Charges for single-use plastic bags have proven to decrease plastic bag consumption. When Ireland instituted a “Plas-Tax” in 2002 equivalent to about 20 cents per bag, plastic bag use declined by 90% and litter from plastic bags declined by 40%<sup>15</sup>. Similar charges have been implemented in Taiwan, Washington D.C., and the United Kingdom, resulting in decreases in plastic bag use of up to 80%. A 2016 plastic bag ban in California reduced the number of plastic bags found on beaches by half.<sup>16</sup> Studies have also shown that customers in areas with taxes on single use bags were more likely to use reusable bags.<sup>17</sup>

There appears to be growing support for reducing the use of other single use disposables. Ireland is considering banning single use coffee cups, with 50% of the population surveyed in support.<sup>18</sup> The European Union announced in 2018 that it is implementing a policy for all plastic packaging to be recyclable or reusable by 2030.<sup>19</sup> Taiwan will be imposing charges for straws, plastic shopping bags, disposable utensils, and beverage cups by 2025, and will impose a complete ban on single-use plastic items, including straws, cups, and shopping bags, by 2030.<sup>20</sup>

### **Economic Advantages for Businesses**

Businesses in the Bay Area spend between \$0.25 and \$0.85 per meal on disposable foodware.<sup>21</sup> Reducing the use of SUDs can provide significant cost savings, even

<sup>14</sup> “Successful Results from Bag Ordinance”, 2014, Alameda County Waste Management authority, <http://reusablebagsac.org/news/successful-results-bag-ordinance>

<sup>15</sup> Mauro Anastasio and James Nix, Plastic Bag Levy in Ireland, Institute European Environmental Policy, 2016. <https://ieep.eu/uploads/articles/attachments/7f91cb97-8cb7-49c39cf0d34062a9192e/IE%20Plastic%20Bag%20Levy%20conference%20draft.pdf?v=63673818840>

<sup>16</sup> <http://www.latimes.com/opinion/editorials/la-ed-plastic-bag-ban-anniversary-20171118-story.html>

<sup>17</sup> T. A. Homonoff, *Can Small Incentives Have Large Effects? The Impact of Taxes versus Bonuses on Disposable Bag Use* National Tax Association Proceedings, Princeton University- <http://ntanet.org/wp-content/uploads/proceedings/2012/008-homonoff-can-small-incentives-2012-nta-proceedings.pdf>

<sup>18</sup> <http://www.thejournal.ie/coffee-cups-poll-3642333-Oct2017/>

<sup>19</sup> European Commission, EU Plastics Strategy-[http://ec.europa.eu/environment/waste/plastic\\_waste.htm](http://ec.europa.eu/environment/waste/plastic_waste.htm)

<sup>20</sup> “Taiwan to ban disposable plastic items by 2030,” February 22, 2108- <https://phys.org/news/2018-02-taiwan-disposable-plastic-items.html>

<sup>21</sup> Id.

considering the costs associated with making the transition to reusables. The *Rethink Disposable* program of the Clean Water Fund, in partnership with STOP WASTE in Alameda County, has conducted a number of case studies showcasing businesses that have voluntarily minimized SUDs and incorporated reusables<sup>22</sup>. These businesses saw annual net cost savings (after accounting for costs of reusables, dishwashing, etc.) from \$1,000 - \$22,000 per year.<sup>23</sup>

In addition, recent surveys completed by the City of Berkeley's Office of Economic Development found that neighborhood cleanliness, including trash collection, was a major concern of business owners interviewed. Business Improvement Districts (BIDs) and the Clean Cities Program work to keep Berkeley's business districts clean, but at great expense. The Telegraph Business Improvement District (TBID), for example, reported collecting over 22 tons of street litter in one year.

### ***Reducing SUDs in the City of Berkeley***

Through the leadership of Berkeley's Ecology Center, working closely with UpStream, Clean Water Action, the Clean Water Fund, Story of Stuff, Surfrider Foundation, GAIA (Global Alliance for Incinerator Alternatives), the Green Science Policy Institute, Excellent Packaging, and numerous active residents and volunteers, a proposed Berkeley Single Use Foodware and Litter Reduction Ordinance has been drafted. This visionary Ordinance combines proven strategies for reducing SUDs including promotion of reusable foodware, fees when SUDs are used, and creation of a list of approved, truly compostable or recyclable SUDs for use City-wide.

The Ecology Center and Clean Water Action also undertook an extensive research and public outreach process, including surveys of local food businesses, discussions with business owners and environmental experts, and assessment of a charge-based cup reduction pilot project completed by Telegraph Green and Cafe Strada<sup>24</sup>. This level of research, outreach and field testing represents study and consultation of an intensity and duration rarely undertaken in conjunction with new proposals in Berkeley, and has resulted in a proposed ordinance incorporating extensive expert, community and real-world data.

The survey, conducted in 2017-2018 by Clean Water Action, the Ecology Center, and other partners, covers 59 Berkeley food businesses (about 10% of affected food businesses) of various sizes and service styles, and includes respondents from all of

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<sup>22</sup> <https://cleanwater.org/publications/participating-business-testimonials>

<sup>23</sup> Data provided by Clean Water Action's *ReThink Disposable* program, March 2018. See attached fact sheet.

<sup>24</sup> <https://serc.berkeley.edu/paying-the-price-of-disposable-cups-at-caffe-strada/>

the City's commercial districts. Of these businesses, 58% would support a customer charge for cups, and 67% would support a charge for disposable food containers.

These and other findings inform the proposed ordinance, which was written to be both aspirational and achievable. More complex proposals and bans were rejected in favor of a simplified set of recommendations that offer cost savings for restaurants and small businesses, a stream of revenue for the City to implement and enforce the ordinance, and a major step forward in reducing pollution and litter, and in meeting the City's Zero Waste and Climate Action Goals.

### ***Proposed Ordinance Elements***

The purpose of the proposed Ordinance is to reduce litter and waste associated with single use food and beverage packaging in the City of Berkeley. The proposal requires that food consumed on-site be served in reusable, durable dishes, cups, and utensils. Foil, wrappers, and tray liners are still allowed, and provision is made for waivers under specific circumstances.

The ordinance also provides that food businesses charge customers for take-out cups, clamshells and other take-out foodware, similar to the charge for paper bags associated with California's plastic bag ban (SB 270). Charges for disposables will encourage customers to bring their own reusable cups and containers. \$0.25 will be charged for disposable cups, and \$0.25 for food containers. Food establishments will keep the proceeds from these charges, and the City will collect an "at cost" fee for administration of the program. As with charges for bags, customers using SNAP & WIC will be excluded from paying these fees. The ordinance also provides that single use straws, utensils, and stirrers (which will have to be compostable) be provided only "by request".

Finally, the policy will require that all disposable foodware be free of certain highly toxic chemicals known to migrate into food and beverages, and be recyclable or compostable in the City's waste management programs.

The City will be responsible for creating and updating an accessible list of approved foodware so that food retailers can easily identify products that conform to requirements. This will protect public health and the environment from some of the most toxic and persistent chemicals used in food and beverage packaging, and ensure that "compostables" furnished in Berkeley are actually compostable within the City's program. The City will be responsible for administration and enforcement.

## ENVIRONMENTAL SUSTAINABILITY

The production, consumption and disposal of single use food and beverage packaging is a major contributor to litter in our streets, plastic in landfills, pollution in waterways and oceans, GHG emissions, and harm to wildlife. This environmental ordinance represent a huge step forward in reducing the use of disposable foodware in Berkeley, fulfilling Berkeley's Zero Waste and Climate Action Goals, reducing greenhouse gas emissions 80% by 2050, and meeting State trash load level mandates.

## CONTACT

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## ATTACHMENTS

1. Draft Berkeley Single Use Foodware and Litter Reduction Ordinance
2. CaseStudy: Caravaggio Gelateria Italiana
3. Clean Water Action Disposable vs Reusable Cups Fact Sheet

## Single Use Foodware and Litter Reduction Ordinance

ORDINANCE AMENDING THE XXXX CITY CODE BY ADOPTING CHAPTER XXXX SECTIONS XXXX TO REDUCE SINGLE USE DISPOSABLE FOODWARE

### Findings and Purpose

The council finds and declares as follows:

[ ]

### Section 1. Definitions

- A. **"Prepared Food"** means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing and which require no further preparation to be consumed. "Prepared Food" does not include raw uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed or raw uncooked meat products.
- B. **"Takeout Food"** means Prepared Food requiring no further preparation which is purchased to be consumed off a Prepared Food Vendor's premises. Takeout Food includes Prepared Food delivered by a Prepared Food Vendor or by a third party delivery service.
- C. **"Takeout Meal"** means Takeout Food consisting of an entree, or a full size salad, or a breakfast, lunch or dinner item (such as a sandwich, burrito, pizza, soup) served in up to three Disposable Food Containers.
- D. **"Prepared Food Vendor"** means any establishment located within the City of Berkeley, including a Bakery, Cafeteria, Drive In, Food Products Store, Food Service Establishment (Carry Out, Quick Service, Full Service), Drugstore or Theater, as defined in BMC 23F.04, Mobile Food Facility, Temporary Food Facility (CA Health and Safety Code Sections 113831 and 113920), bar and other similar establishment, selling Prepared Food to be consumed on and/or off its premises.
- E. **"Disposable Foodware"** means all bags, sacks, wrappers, paper or foil liners, containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids and any other food contact items used to hold, serve, eat, or drink Prepared Food, which are designed for single use and in which Prepared Food is placed or packaged on a Prepared Food Vendor's premises.
- F. **"Disposable Food Container"** is a container designed for single use that holds 16 oz. or more (for containers with lids) or is 62 cubic inches or larger (for boxes and clamshells).
- G. **"Disposable Cup"** is a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks, alcoholic beverages and other drinks.



- H. **“Reusable Foodware”** shall mean all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.
- I. **“Plastic”** means a synthetic material made from fossil fuel based polymers such as polyethylene, polystyrene, polypropylene, and polycarbonate that can be molded or blown into shape while soft and then set into a rigid or slightly elastic form.
- J. **“Fluorinated Chemicals”** means perfluoroalkyl and polyfluoroalkyl substances or fluorinated chemicals, which for the purposes of food packaging are a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

**Section 2. Reusable Foodware for Dining on the Premises (i.e. “Eating-in”)**

This section applies to Prepared Food served for consumption on the premises of a Prepared Food Vendor.

- A. As of [Effective Date], Prepared Food Vendors shall only sell or provide food and beverages for consumption on the premises using Reusable Foodware, except as provided in Section 2(C).
- B. Prepared Food Vendors offering Takeout Food shall ask customers whether they will consume their purchased food or beverage on the premises (i.e. “for here”) or off the premises (i.e. “to go”). If the purchased food or beverage is intended for consumption on the premises, the Prepared Food Vendor shall serve such food or beverage in Reusable Foodware.
- C. Prepared Food Vendors that do not have on-site or off-site dishwashing capacity to wash, rinse and sanitize Reusable Foodware in compliance with the California Health Code may request a full or partial waiver from the requirements of Section 2(A) if they can demonstrate inability to comply due to space constraints and financial hardship, such as investments and costs that take more than a year to be paid for through savings. Waivers may be granted for up to three years, during which time the Prepared Food Vendor shall make every effort to become complaint. If a waiver is granted, all Disposable Foodware used for eating on the premises must conform to the Disposable Food Packaging Standards in Section 3.
- D. As of [Date - 1 year after Effective Date?], new zoning permits and business licenses for Prepared Food Vendors shall only be granted to Prepared Food Vendors that have adequate onsite or offsite dishwashing capacity to comply with section 2(A).

- E. Disposable food wrappers, foil sheets, napkins and paper or foil basket and tray liners shall be allowed for dining on the premises so long as they meet the Disposable Food Packaging Standards in Section 3.

**Section 3. Disposable Foodware Standards**

This section provides standards for the types of Disposable Foodware that may be used for Takeout Food, or for Prepared Food eaten on the premises of a Prepared Food Vendor with a valid waiver, as provided for in Section 2(C).

- A. The City shall maintain a list of approved Disposable Foodware sources and types that shall be available at [physical location] and on the City's website. The City shall update annually the list of approved Disposable Foodware types and sources. No other Disposable Foodware may be used by any Prepared Food Vendor.
- B. Disposable Foodware approved by the City shall meet the following standards:
  - a. Beginning [Date], all Disposable Foodware used to serve or package Prepared Foods that are prepared in the City of Berkeley:
    - i. Must be accepted by City of Berkeley composting or recycling municipal collection programs, and
    - ii. If compostable, must be certified compostable by the Biodegradable Product Institute or another independent third party certifying organization or agency recognized by the City.
  - b. Beginning [Date - one year from Effective Date], compostable Disposable Foodware containing paper or other natural fiber material shall be free of all intentionally added Fluorinated Chemicals as certified by the Biodegradable Product Institute or other third party certifying organization or agency recognized by the City.
  - c. The City may adopt regulations that require Disposable Foodware to have minimum post-consumer recycled content, and any other Disposable Foodware specifications that support the goals of this Ordinance.

**Section 4. Disposable Foodware Charges**

Customers shall be charged for Disposable Foodware used for dining off the premises.

- A. Beginning [Effective Date] , Prepared Food Vendors selling Takeout Food shall charge a customer twenty five cents (\$0.25) for every Disposable Cup provided.
- B. Beginning [Effective Date], Prepared Food Vendors selling Takeout Food shall charge a customer twenty five cents (\$0.25) per Disposable Food Container and no more than twenty-five-cents (\$0.25) per Takeout Meal.
- C. Income from charges for Disposable Cups and Disposable Food Containers shall be retained by the Prepared Food Vendor.
- D. The charges set forth in A and B apply to all Takeout Food and Takeout Meals prepared and sold in the City of Berkeley and served in Disposable Food Containers and Disposable Cups, except for Prepared Food Vendors providing Disposable Food

Containers and Disposable Cups for carry-out of leftovers from Prepared Food eaten on the premises (i.e. “doggie bags”).

- E. All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code, or an electronic benefit transfer card issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the charges specified in this Section.
- F. Charges for Disposable Cups, Disposable Food Containers and Takeout Meals shall be identified separately on any receipt provided to the customer.
- G. Disposable straws, stirrers, cup spill plugs, napkins, condiment packets, utensils and other similar Disposable Foodware accompanying Disposable Cups, Disposable Food Containers and Takeout Meals shall be provided free of charge, and only upon request by the customer or at self-serve stations.

#### **Section 5. Signage Requirements for Takeout Food Vendors**

- A. The City shall provide text explaining Disposable Foodware Charges and specifications for signage that Takeout Food Vendors must post in plain view of customers at the point of sale.
- B. Takeout Food Vendors shall also include Disposable Foodware Charges on their printed and electronically available menus.
- C. Takeout Food Vendors shall inform customers of Disposable Foodware Charges for orders taken by telephone.
- D. Third-party delivery services shall include on their electronic platforms text pursuant to subsection A explaining Disposable Foodware Charges and include Disposable Foodware Charges on their menus and billing interfaces.

#### **Section 6. Duties, Responsibilities and Authority of the City of Berkeley**

- A. The City Manager is hereby charged with the enforcement of this Chapter, except as otherwise provided herein, and shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this Chapter.
- B. The Master Fee Schedule shall be amended to include a fee to cover City expenses of inspection and enforcement of this ordinance.
- C. It shall be the duty of the City Manager to collect and receive all fees imposed by this Section, and to keep an accurate record thereof.
- D. Within three years of the effective date of this Ordinance, the City shall evaluate and report to City Council on the effectiveness of this ordinance.

# CASE STUDY: Caravaggio Gelateria Italiana

**ReThink  
Disposable**  
STOP WASTE BEFORE IT STARTS

## BUSINESS PROFILE

**Name:** Caravaggio Gelateria Italiana

**Business Type:** Gelato Shop

**Location:** Berkeley, CA

**On-site dining:** 22 seats

**Take-out:** Yes

**Ware washing:** Dishwasher purchased during implementation

**Employees:** 4

**Caravaggio Gelateria** is an authentic Italian Gelateria located in North Berkeley that makes all of their Gelatos in house and also serves Italian Panini sandwiches, coffee and espresso. About 50% of their orders are dine-in. They employ four staff and do anywhere between 100 and 200 transactions per day.



*Four efficient napkin dispensers replaced the old dispensers.*

up cost to implement the program \$2,411. The high up-front cost of the dishwasher made the payback period for each item longer, yet there is still a significant annual cost savings of \$2,301 after the payback period was met to cover and exceed the set-up costs in the future.

## Packaging Practices prior to Rethink Disposable:

- ➔ All gelato and beverages served in disposable packaging
- ➔ Disposable tasting spoons used for samples
- ➔ Individually wrapped sugar packets used for coffee service

Emiliano, the owner of Caravaggio, is from Italy and strove to replicate many practices in his shop that one can find in his home country — everything except for the disposable products he was using, like the 91,250 disposable spoons used every year for tastings and the 24,333 individually wrapped sugar packets to cater to the “to-go” coffee service culture. The owner believes that the taste of the handmade gelato is much improved by eating it with a real spoon from a real glass bowl.



## Recommendations Implemented:

- ➔ Reusable water cups, gelato bowls and spoons for on-site dining
- ➔ Reusable spoons utilized for gelato tastings
- ➔ Napkin dispensers and bulk sugar for coffee service
- ➔ Purchased and installed a dishwasher to save water and reduce labor costs

Implementing **ReThink Disposable** recommendations helped significantly reduce waste and achieved Emiliano’s goal to elevate the experience of eating handmade gelato and the ambiance in the shop. Emiliano purchased an efficient ware washing machine that provided energy and water savings, reduced labor time, and created a sanitary work environment. The new dishwasher and set-up cost \$2,100, which made the full set-



*Reusable spoons for tastings and on-site dining replaced 75% of disposable spoons that were used.*

**Emiliano Cecchetti, owner:** “Eating our gelato from a paper cup is like drinking champagne from a paper cup! The idea to change to reusables started with a *ReThink Disposable* visit.”

**Results:**

| Recommendation                                                   | Product Replaced or Minimized | % Disposable Reduction | Payback Period (including dishwasher) | Payback Period (excluding dishwasher) | Annual Savings (after payback period) | Annual Waste Reduction |
|------------------------------------------------------------------|-------------------------------|------------------------|---------------------------------------|---------------------------------------|---------------------------------------|------------------------|
| Implement a reusable gelato cup for dine-in customers            | 6 oz Gelato paper cup         | 67%                    | 7.6 months                            | 3 months                              | \$608                                 | 73 lbs.                |
| Implement a reusable spoon for tasting and for dine-in customers | Plastic tasting spoons        | 75%                    | 4.1 months                            | 21 days                               | \$821                                 | 137 lbs.               |
| Implement an efficient napkin dispenser                          | Napkins                       | 50%                    | 2.7 months                            |                                       | \$183                                 | 146 lbs.               |
| Implement a bulk sugar dispenser                                 | Sugar packets                 | 75%                    | 12 days                               |                                       | \$365                                 | 218 lbs.               |
| Replace disposable water cups with a reusable glass              | 7 oz Water cups               | 100%                   | 9.2 months                            | 18 days                               | \$324                                 | 91 lbs.                |
| <b>TOTAL</b>                                                     |                               |                        |                                       |                                       | <b>\$2,301</b>                        | <b>665 lbs.</b>        |

**THE BOTTOM LINE**

- 151,577 disposable items reduced per year
- \$2,301 annual savings after payback period
- 655 pounds of annual waste reduction
- Improved presentation
- Increased customer satisfaction
- No additional labor required



*Disposable spoons and paper cups were replaced by metal spoons and glass bowls for on-site dining.*

ReThink Disposable is a Clean Water Fund program conducted in partnership with local businesses and government agencies. Generous support for the program is provided by a changing list of public and private funders. To learn more about the program, its partners, and funders, visit: [www.rethinkdisposable.org](http://www.rethinkdisposable.org).



Tel. 415.369.9174  
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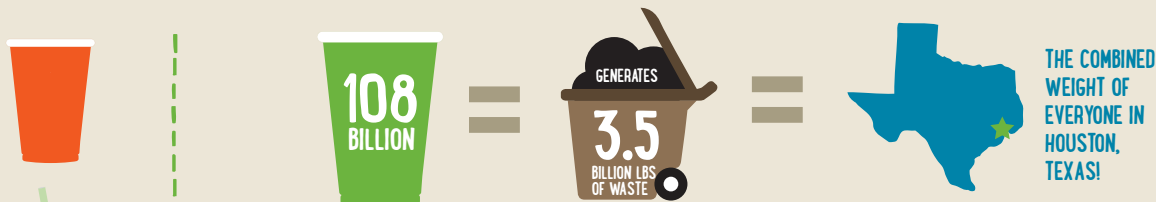


 CLEAN WATER ACTION

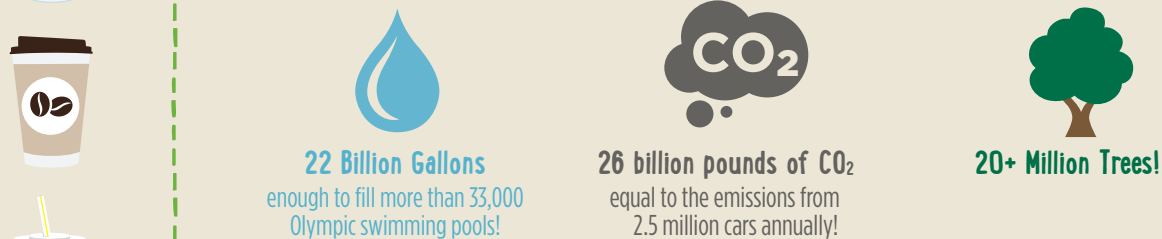
**108,000,000,000**  
disposable cups are used by Americans each year



Placed end to end these could circle the equator almost 300 times!



Annually the American disposable cup habit uses:



**MOST CUPS AREN'T RECYCLED:** almost all disposable cups are made of non-recyclable materials like plastic-coated paper or foam food ware



**LET'S COMPARE**

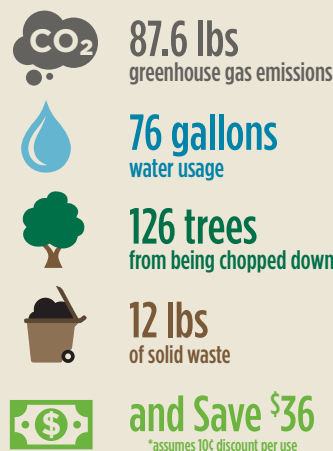
What happens if you replace one disposable cup a day with a reusable mug for one year?



VS.



By replacing one disposable cup every day for one year you prevent:

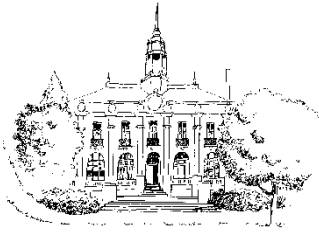


ReThink Disposable is a project of Clean Water Action and Clean Water Fund in coordination with City of Cupertino Department of Public Works, City of Oakland Department of Public Works, City of Sunnyvale Environmental Services Department, County of San Mateo Department of Public Works, San Francisco Department of the Environment, San Jose Department of Environmental Services, South San Francisco Department of Public Works, and StopWaste. Support for ReThink Disposable has been provided by the Altamont Education Advisory Board, Klean Kanteen, the Lisa and Douglas Goldman Fund, the Santa Clara Valley Water District, STOP WASTE, and the U.S. Environmental Protection Agency.

[http://www.internationalpaper.com/documents/EN/Foodservice/ecotainer\\_FAQ\\_Brochu.pdf](http://www.internationalpaper.com/documents/EN/Foodservice/ecotainer_FAQ_Brochu.pdf)  
<http://www.epa.gov/region9/psa/psa-usecups.html>    <http://www.thebetacup.com/about/>



[www.rethinkdisposable.org](http://www.rethinkdisposable.org)



## Ben Bartlett

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### ACTION CALENDAR

January 22, 2019

*(Continued from December 11, 2018)*

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Ben Bartlett, Kriss Worthington & Cheryl Davila  
 Subject: Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program

### RECOMMENDATION

That the Council provides requested direction to the Planning Department on how to proceed with the Equity Program recommended by the Cannabis Commission in the October 9, 2018 staff report. Recommending allowing 4 equity applicants and 2 non-equity applicants to apply and be processed by the City within 2 years.

### BACKGROUND

At the City Council special meeting on October 9, 2018, the Planning and Development Department and the City Manager requested direction from the Council on six main issues: quotas, buffers, discretion, equity, retail nurseries, and residential collectives. There were clear recommendations for many of the options presented by staff that work to complete Berkeley's comprehensive cannabis ordinances for Council consideration.

However, at the special meeting, the City Council did not provide specific recommendations regarding the creation of the proposed Equity Program and the number of equity and non-equity applicants that are able to apply.

On March 15, 2018, the Cannabis Commission held a meeting and made recommendations for the implementation of the City's Equity Program for Cannabis retailers. Recommendation No.1 outlines a clear need for an "Equity-based selection process." This will "prioritize businesses that are at least 51% owned by equity candidates" and ensure that those negatively affected by past Cannabis prohibition have a chance to enter the Berkeley Cannabis business and reap the benefits of the growing industry. This selection process will provide access to a group of business owners that would otherwise face significant barriers.

On October 9, 2018, the Planning Department and City Manager recommended slight changes to the Cannabis Commission's considerations while defining equity candidates in the same way as in the Commission proposal:

“Staff recommends an equity program that would prioritize businesses that at are at least 40% owned by equity candidates... These candidates would be selected through a lottery and allowed time to identify and secure locations before applications from non-equity candidates would be considered.”

Firstly, this item seeks to support the Planning Department and the City Manager’s recommendation on the issue of equity. Berkeley is well behind the curve on using a specific equity process in the selection of retailers. Other cities such as Oakland and San Francisco have already implemented policies that prioritize equity candidates in their selection processes, which seek to allow impacted and historically disenfranchised groups to enter the Cannabis industry with little to no barriers. To bridge the gap between our City and others, the Council should move forward with the Cannabis Commission’s proposal for an Equity Program as amended by the Planning Department and City Manager.

Secondly, this item also provides the Council with the opportunity to provide a more clear direction on how to proceed with the number of Cannabis retail establishments. The clear direction being that the Council allows four equity and two non-equity applicants to apply to become storefront Cannabis retailers and that the City processes these applicants within 2 years of their application.

FISCAL IMPACTS OF RECOMMENDATION:

Minimal.

ENVIRONMENTAL SUSTAINABILITY:

No significant impact.

CONTACT PERSON:

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Malik Diaw

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ATTACHMENTS:

1. Equity Program Staff Report, Cannabis Commission Meeting 3-15-18
2. Options for Cannabis Regulations and Cannabis Business Selection Process Staff Report, City Council Special Meeting 10-09-18



Attachment 1

Cannabis Commission  
March 15, 2018

1 of 8

TO: Berkeley Cannabis Commission

FROM: Commissioner Brewster

RE: Berkeley Equity Program

**Task:** We have been asked to make a recommendation to the City Council regarding the City's Equity Program including defining language and recommendations for implementation. Specifically, I was tasked with working on the language of our Equity criteria for presentation to the Commission.

**Considerations:** it has become apparent that Berkeley is well behind the curve on addressing Equity as related to Cannabis. Jurisdictions including Oakland, San Francisco, and Portland have comprehensive (although arguably flawed) policies on the books. Municipalities that do not, Seattle for example, are feeling the negative effects. As a progressive City that supports inclusion and progressive values, it is incumbent on us to put forth clear and comprehensive language that demonstrates our support for the promotion of diversity within the Cannabis industry.

It is also apparent after speaking with other local jurisdictions, that Berkeley must devote additional effort (man-power) into getting the City's Equity program off the ground in a timely fashion. Cannabis is a multi-million-dollar industry and the City of Berkeley needs an "Office of Cannabis," and/or a "Cannabis Director," (or some other titled) City Administrator to exclusively oversee these efforts. Such a position may be created and funded from the revenue created from the Recreational Cannabis tax revenue and it is my strong suggestion that the Cannabis Commission immediately recommend the City Council create and fund such a position as soon as possible.

In terms of the Equity Program, I have approached it from the top-down and have endeavored to define our goals on a large scale and then move into the specifics. I have also included "recommendations" and "notes on recommendations," so that the Commission may consider my reasoning.

### Equity Statement

The City recognizes that certain communities have been disproportionately and generationally affected through law enforcement actions including: detentions, arrests, and convictions for cannabis, and cannabis *related* (see "*Related*" below) offenses. These communities also regularly and continually suffer economic disparities. The City intends to recognize and identify programmatic opportunities to address issues of equity by creating the NAME. The NAME will address these past disparities in the cannabis industry by:

- Identifying and minimizing barriers of entry into the emerging Cannabis industry for these affected individuals;
- *Recommendation No. 1 (ADD) and*
- *Dedicate a portion (1%?) of the recreational sales tax revenue towards investment into communities disproportionately impacted by Cannabis prohibition.*

To support this effort, the City will:

1. Develop an Equity based selection process to ensure that individuals who were directly, and generationally affected by previous Cannabis prohibition enforcement efforts, participate and are supported in the City's Cannabis industry. This process will identify applications in which 50% or more of owners can demonstrate that they, or their parent/guardian were directly impacted by the War on

Drugs. Applicants may demonstrate this personal impact when they meet criteria (A) or (B). Criteria (C) will be considered a preferential factor.

- A. Any conviction within the state of California, prior to January 2017, for a cannabis offense
    - **Recommendation No. 2 (ADD) or** a cannabis related offense including both non-violent felonies and misdemeanors; OR
  - B. Three (3) more citations or arrests within the State of California, prior to January 2017, for a cannabis, or cannabis related offense;
    - o To qualify as a related offense pursuant to this section, the applicant must demonstrate to the satisfaction of the City that the citation, arrest, or conviction, was directly attributable to a cannabis offense. The applicant may demonstrate that the offense was Cannabis related by submitting a personal statement which shall be supported by admissible official documentation. Examples of related offenses could include: Health & Safety Code violations: 11350, 11351.5, 11352, 11364, or Penal Code Sections 148(a) or 69.
    - o Driving Under the Influence (DUI) shall not be considered a related offense for purposes of this section.
  - C. The following documentation (or any combination thereof) may satisfy sections (A) & (B): Department of Justice Criminal History Summary, local agency police record, local agency police report, local agency citation, Municipal/Superior Court charging document, or any certified record of a court of competent jurisdiction;
    - **Recommendation No. 3** treat the Low-Income Threshold as a preferential, but not qualifying factor.
  - D. The applicants who demonstrate that they meet the Low-Income Threshold will be given additional preference in the application process when 50% or more of the principal applicants earned <80% AMI in the year immediately preceding the application.
    - o The following documentation (or any combination thereof) will satisfy this section: Tax Returns, CalFresh, Housing Vouchers ....
2. **Recommendation No. 4:** Develop a Community Equity Fund (CEF) which will be funded by a portion of the recreational sales tax revenue (1%?) and by voluntary contributions from General Cannabis Stakeholders during the licensing and renewal process. This fund will be used to support Equity Cannabis Business owners through fee waivers, low-interest loans, training, as well as investment in community programs directly benefiting larger populations impacted by past Cannabis prohibition enforcement actions.

**Notes:**

**Recommendation No. 1:** We must address the inequity created by the War on Drugs on more than one front. Solely implementing an Equity based selection process alone, may provide access in the most basic sense, but it fails to support ongoing efforts to attract and sustain businesses which are substantially owned by a diverse group. In light of the reality that the very definition of the equity applicant positively considers past challenges with criminal and social justice, we must acknowledge that these applicants will lack the resources necessary to successfully participate in an industry replete with well-funded stakeholders. Therefore, the City must do more than simply articulate an Equity policy. We must put our resources where our heart is. We must dedicate no less than 1% of our recreational tax revenue to supporting Equity based businesses. Some examples of where funding could be utilized include: licensing and permitting fees for equity applicants, community Cannabis business training programs, funding of expungement efforts, mentorship programs, etc.

#### 4. How can Berkeley integrate equity considerations into its cannabis regulations?

Current situation: There was no specific equity process in the most recent selection process for retailers in Berkeley. Other cities (Oakland and San Francisco) have adopted equity programs in order to address the effect of disproportionate enforcement of drug laws in historically disenfranchised communities.

##### Considerations:

- Individuals who have been arrested or incarcerated for growing or selling cannabis often lack the financial, real estate and other resources necessary to participate in the now-legal industry.
- An equity program could assist equity candidates (who meet certain criteria) by reducing barriers to entry into the cannabis industry, giving priority in a selection process, or creating a fund to assist communities that have been affected by disproportionate enforcement of drug laws.
- A cannabis business selection process that costs applicants significant time or money will harm those that are not well capitalized.
- There are substantial costs to the City to develop and run an equity program, especially one with on-going responsibilities such as collecting and distributing funds (like the Soda Tax) or monitoring business activities (like an incubator program).

Other cities: Oakland and San Francisco both have equity programs. Both programs give equity candidates priority in cannabis permit selection processes. Both programs also have options which prioritize non-equity businesses that assist (incubate) an equity business through provision of tenant space and/or sharing of business and technical expertise. San Francisco also waives permit fees for equity candidates and has a fund to provide money to equity candidates for business consulting, capital improvements and legal services. Oakland will develop a fund for equity candidates from cannabis tax revenue. Existing cannabis retailers, regardless of equity status, must submit plans to the city to demonstrate how they will further the city's equity goals. See Attachment 6 for the staff recommendation.

Commission recommendations: The Cannabis Commission recommended an equity program that would prioritize businesses that are at least 51% owned by equity candidates. Equity candidates would be defined as individuals who have been impacted either directly or generationally by the War on Drugs in one of two ways: incarcerated for cannabis crimes, or a history of arrests related to cannabis. The Cannabis Commission also suggested setting aside some of the taxes from cannabis businesses to establish a fund to support equity based businesses. See Attachment 6 for the Cannabis Commission recommendation.

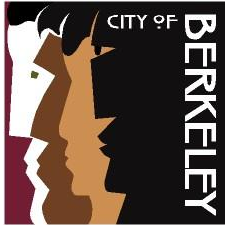
The Community Health Commission recommended that if additional retailers are permitted, they be limited to a small number (1 or 2) and be restricted to equity candidates. The Planning Commission is focused on the zoning elements of Berkeley's cannabis regulations and therefore was not asked to comment on an equity program.

Staff recommendation: Staff recommends an equity program that would prioritize businesses that are at least 40% owned by equity candidates. Equity candidates would be defined in the same way as in the Cannabis Commission proposal. Half of the retail and large cultivation businesses permitted by the city moving forward would be reserved for equity candidates. These candidates would be selected through a lottery and allowed time to identify and secure locations before applications from non-equity candidates would be considered.

##### Other options:

- Develop an Equity Fund, funded by all cannabis businesses, to be administered by the City to fund programs and services designed to advance equity in Berkeley. Medical cannabis retailers would be exempt from this requirement since they are already required to donate the equivalent of 2% of all product sold to low-income patients.





Sophie Hahn  
Councilmember District 5

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

**Meeting Date:** December 11, 2018

**Item Number:** 27

**Item Description:** **Single Use Disposable Foodware and Litter Reduction Ordinance**

**Submitted by:** **Councilmember Sophie Hahn**

Incorporates further clarifying changes from the City Manager, Deputy City Manager, Public Works Department, the Ecology Center and other community partners.

Adds referral to the City Manager, requesting a report prior to January 2022 on implementation of the Single Use Disposable Foodware and Litter Reduction Ordinance and other referred programs.



## ITEM 27

Supplemental 2

### ACTION CALENDAR

December 11, 2018

To: Honorable Mayor and Members of the City Council  
From: Councilmember Sophie Hahn and Mayor Jesse Arreguín  
Subject: Single Use Disposable Foodware and Litter Reduction Ordinance

### RECOMMENDATION

1. Adopt a first reading of the Single Use Foodware and Litter Reduction Ordinance.
2. Refer to the City Manager to:
  - a. Establish a mini-grant program administered and funded either directly by the City or by community partners to help Prepared Food Vendors with one-time costs associated with conversion to Reusable Foodware for eating on the premises (“eating-in”).
  - b. Establish a program administered and funded either directly by the City or by community partners to provide technical assistance to Prepared Food Vendors implementing Reusable Foodware requirements for eating on the premises.
  - c. Create a Reusable Takeout Foodware program for launch three years after the effective date of the Single Use Disposable Foodware and Litter Reduction Ordinance, in collaboration with community partners such as the Ecology Center, Rethink Disposables and StopWaste.
  - d. Prior to launch of the Reusable Takeout Foodware program, draft for approval amendments to the Single Use Disposable Foodware and Litter Reduction Ordinance to implement the Reusable Takeout Foodware program as an alternative to Compostable Takeout Foodware, and impose a charge, similar to or the same as the Disposable Cup charge, on other Disposable Foodware containers.
  - e. Create a program to expand and support composting, to ensure Single Use Disposable Foodware is actually composted.
  - f. Prior to January 1, 2022 report to the City Council on progress towards full implementation of and compliance with the Single Use Disposable Foodware and Litter Reduction Ordinance and these referrals

3. Refer to the City Manager to determine funding and staffing needs and sources of funds to implement each program/phase. Consider and suggest implementation alternatives to achieve similar results at lower cost to the City, if any. Submit recommended alternatives to the Zero Waste Commission and City Council for consideration, and funding allocations or requests to the budget process.

### FINANCIAL IMPLICATIONS

Reducing use and disposal of products that make up the majority of Berkeley's street and storm-drain litter has the potential to significantly lower City expenses including costs related to collection of debris from over 400 city trash receptacles, from clearing of clogged stormwater intakes city-wide, and from daily street sweeping and litter management. Even for "recyclable" items that are properly placed in a recycling bin, these items are costly to sort and process and have limited markets resulting in additional costs to the City. Many of these items result in contamination to the composting program which increase the cost of composting.

Staff time will be required to launch programs related to the Single Use Foodware and Litter Reduction Ordinance. Some programs and services may be provided by community partners at relatively low cost. Once launched, staff time for administration and enforcement of the Ordinance will be limited.

Costs, sources of funding and community partnerships to be determined by the City Manager.

### BACKGROUND

Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, "clamshells" and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions. The use of disposable foodware has grown exponentially over the past few decades. Because the environmental costs of these products is largely hidden to the business operator and consumer, little attention is paid to the quantity of packaging consumed and quickly thrown away. Reducing the use of SUDs in the City of Berkeley is a key strategy to achieve the City's Zero Waste and Climate Action goals, and to address the many environmental impacts and costs associated with the use and disposal of single-use foodware and packaging. SUDs often become litter therefore minimizing their use will assist the City with achieving stormwater program requirements and could reduce costs for maintenance of full trash capture devices that the City has installed in stormdrains.

### ***Environmental Impacts of Single-Use Disposables***

The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources. It is a major component of litter on streets and in waterways, and of the plastic polluting our air, food, drinking water and oceans.

- Food and beverage SUDs make up approximately 25% of all waste produced in California.<sup>1</sup>
- Bay Area litter studies have found that food and beverage packaging comprises the majority of street litter.<sup>2</sup>
- Without dramatic systems change, by 2050, there will be more plastic in the ocean than fish.<sup>3</sup>
- Based on Berkeley's population of approximately 120,000 people, it is estimated that almost 40 million single use cups are used in the City of Berkeley every year.

Most SUDs are used for just a few minutes before becoming waste, while most are made to last for hundreds and even thousands of years, and have broad, long-lasting negative impacts. Plastics in waterways and oceans break down into smaller pieces (but do not biodegrade) and are present in most of the world's oceans, at all levels (surface, water column, and bottom).<sup>4</sup>

Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater<sup>5</sup>, which can transfer to fish, other seafood, and salt that is eventually sold for human consumption.<sup>6</sup> Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health effects including kidney and testicular cancer, thyroid disruption, delayed puberty and obesity.<sup>7</sup>

### ***Strategies to Regulate SUDs***

Alameda County implemented its reusable bag ordinance in January 2013, and has seen dramatic results. Countywide, bag purchases by affected retail stores have

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<sup>1</sup> <https://www.wastedive.com/news/are-the-packaging-wars-coming-to-california/508491/>

<sup>2</sup> See Clean Water Action's "Taking out the Trash" Bay Area Litter study (2011) [http://www.cleanwateraction.org/files/publications/ca/Curr\\_CA\\_12%2012%2011final.pdf](http://www.cleanwateraction.org/files/publications/ca/Curr_CA_12%2012%2011final.pdf) ; California Coastal Cleanup Results 1989-2014 showing Food and Beverage packaging items are 7 out of the top 10 items collected and account for 34% of the total trash - <https://www.coastal.ca.gov/publiced/ccd/history.html#top10> ; BanList 2.0 shows food and beverage packaging items are 74% of top 20 littered items among 6 different beach cleanup datasets- <https://upstreampolicy.org/ban-list-20>

<sup>3</sup> Ellen MacArthur Foundation (2016)

<sup>4</sup> D. Barnes et al, 2009, *Accumulation and fragmentation of plastic debris in global environments*, Phil. Trans. R. Soc. B., 364-1985-98.

<sup>5</sup> Rochman, C.M., et al., 2013, Long-Term Field Measurement of Sorption of Organic Contaminants to Five Types of Plastic Pellets: Implications for Plastic Marine Debris. *Environmental Science and Technology*. 47, 1646-1654.

<sup>6</sup> Rochman C Met al, 2015a Anthropogenic debris in seafood: plastic debris and fibers from textiles in fish and bivalves sold for human consumption *Sci. Rep.* 5 14340.

<sup>7</sup> In 2015, the FDA barred from use three such fluorinated chemicals from food contact materials due to safety risks associated with cancer, toxicity, and other health effects; other fluorinated chemicals have similar chemical structures and pose similar risk.



declined by 85 percent. The number of shoppers bringing a reusable bag to affected stores, or not using a bag at all, has more than doubled during this time<sup>8</sup>. Globally, a number of strategies have been implemented to reduce the use of SUDs. Charges for single-use plastic bags have proven to decrease plastic bag consumption. When Ireland instituted a “Plas-Tax” in 2002, equivalent to about 20 cents per bag, plastic bag use declined by 90% and litter from plastic bags declined by 40%<sup>9</sup>. Similar charges have been implemented in Taiwan, Washington D.C., and the United Kingdom, resulting in decreases in plastic bag use of up to 80%. A 2016 plastic bag ban in California reduced the number of plastic bags found on beaches by half.<sup>10</sup> Studies have also shown that customers in areas with taxes on single use bags were more likely to use reusable bags.<sup>11</sup>

There is growing support for reducing the use of other single use disposables. Ireland is considering banning single use coffee cups, with 50% of the population surveyed in support.<sup>12</sup> The European Union announced in 2018 that it is implementing a policy for all plastic packaging to be recyclable or reusable by 2030.<sup>13</sup> Taiwan will be imposing charges for straws, plastic shopping bags, disposable utensils, and beverage cups by 2025, and will impose a complete ban on single-use plastic items, including straws, cups, and shopping bags, by 2030.<sup>14</sup>

### ***Reducing SUDs in the City of Berkeley***

The City of Berkeley has a long history of leadership in sustainability and environmental protections including the adoption of an ambitious Climate Action Plan in 2009, with a goal of achieving Zero Waste by 2020; the nation’s first curbside recycling program and styrofoam foodware ban; and one of the first commercial organics collection programs. The city reached a height of 78% waste diversion by AB 939 standards, and there has been a 50% reduction in solid waste disposal between 2000 to 2013<sup>15</sup>. Despite these achievements, Berkeley has not addressed the significant increase in takeout food

<sup>8</sup> “Successful Results from Bag Ordinance”, 2014, Alameda County Waste Management authority, <http://reusablebagsac.org/news/successful-results-bag-ordinance>

<sup>9</sup> Mauro Anastasio and James Nix, Plastic Bag Levy in Ireland, Institute European Environmental Policy, 2016. <https://ieep.eu/uploads/articles/attachments/7f91cb97-8cb7-49c39cf0d34062a9192e/IE%20Plastic%20Bag%20Levy%20conference%20draft.pdf?v=63673818840>

<sup>10</sup> <http://www.latimes.com/opinion/editorials/la-ed-plastic-bag-ban-anniversary-20171118-story.html>

<sup>11</sup> T. A. Homonoff, *Can Small Incentives Have Large Effects? The Impact of Taxes versus Bonuses on Disposable Bag Use* National Tax Association Proceedings, Princeton University- <http://ntanet.org/wp-content/uploads/proceedings/2012/008-homonoff-can-small-incentives-2012-nta-proceedings.pdf>

<sup>12</sup> <http://www.thejournal.ie/coffee-cups-poll-3642333-Oct2017/>

<sup>13</sup> European Commission, EU Plastics Strategy-[http://ec.europa.eu/environment/waste/plastic\\_waste.htm](http://ec.europa.eu/environment/waste/plastic_waste.htm)

<sup>14</sup> “Taiwan to ban disposable plastic items by 2030,” February 22, 2108- <https://phys.org/news/2018-02-taiwan-disposable-plastic-items.html>

<sup>15</sup> Berkeley Climate Action Plan: Tracking our Progress Waste Reduction & Recycling – Total Landfilled, [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/PDF%20total%20landfilled%20final.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/PDF%20total%20landfilled%20final.pdf)

packaging littering city streets, filling storm drains, requiring management in the waste stream, polluting our waterways, Bay and ocean, and threatening both human and animal health.

In addition, SUDs are particularly costly and challenging to divert from landfill. Non-recyclable food and beverage packaging is costly to remove from the waste stream and reduces the quality and value of recyclables, while non-compostable food packaging (some of which is advertised as “biodegradable” or “made from plants” which misleads consumers to believe it is compostable) contaminates compost, adding costs and reducing the quality of compost<sup>16</sup>. With China’s recent rejection of mixed recycled plastic imports, the value of recyclable plastics has dropped sharply and the final destination for these plastic SUDs is uncertain. This adds significant costs to the City’s collection, sorting, and processing of compostables and recyclables. To reach its Zero Waste goals, the City must reduce use of single-use food and beverage packaging.

Thanks to the leadership of Berkeley’s Ecology Center, working closely with UpStream, Clean Water Action, the Clean Water Fund, Story of Stuff, Surfrider Foundation, GAIA (Global Alliance for Incinerator Alternatives), the Green Science Policy Institute, Excellent Packaging, and numerous active residents and volunteers, the City Council unanimously referred a proposed Single Use Disposable Foodware and Litter Reduction ordinance to the Zero Waste Commission on April 24, 2018.

The Zero Waste Commission was tasked with review of the proposed ordinance and the conduct of community meetings to gather feedback on the proposed ordinance, and make recommendations. Since that time, the Zero Waste Commission Foodware Subcommittee conducted 4 community meetings between June and September of 2018, and collected comments from over 60 restaurateurs, environmental advocates, members of the disability community, and other community members. Meetings were held on different days and times of the day, at locations throughout Berkeley, and were noticed to the restaurant and food service community with the help of the City’s Economic Development staff. The Commission analyzed comments received in writing and through public testimony, and on September 24, 2018 unanimously referred their findings to the City Council (Attachment 2).

In addition, Councilmember Hahn met on-site with the owners of three restaurants that expressed concerns about implementation of the proposed ordinance, reviewing their current practices and challenges. All three have already implemented important measures to reduce the use of harmful Single Use Disposables, and shared important insights.

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<sup>16</sup> Clean Water Action, *What’s in the Package?* 2016 <https://www.cleanwateraction.org/features/what%E2%80%99s-package>

### ***Ordinance Elements***

The attached ordinance (Attachment 1) incorporates many of the Zero Waste Commission's recommendations and makes a number of changes to accommodate concerns and questions that were discussed as part of the Commission's public process. Changes include:

- Phasing-in elements of the ordinance, to allow Prepared Food Vendors time to adjust practices.
- Opportunities for limited exemptions, based on demonstrated hardship or extraordinary circumstances.
- Establishment of mini-grant and technical assistance programs, to help Prepared Food Vendors transition to Reusable and Compostable Foodware.
- Elimination of charges for all Single Use Disposable Foodware, except for cups, pending establishment of a Reusable Takeout Foodware program.
- Addition of standards for Prepared Food Vendors to reject customer-supplied cups that appear inappropriate or unsanitary.
- Addition of a recommendation that Prepared Food Vendors customarily offering straws keep a supply of compostable bioplastic straws for use by individuals specifically requesting "plastic" straws.
- Enforcement with notice and opportunities to cure, either by adopting practices or obtaining a waiver, if warranted, prior to imposition of fines or other penalties.

### ***City Manager Referral Components***

To complement the roll out of the Single Use Disposable Foodware and Litter Reduction Ordinance, the Zero Waste Commission recommends a number of City-sponsored programs to support implementation of the Ordinance's requirements, including:

- A mini-grant program to help cover one-time costs associated with the transition to Reusable Foodware for on-site dining;
- Technical assistance to support implementation of ordinance requirements.

Both programs must be operative by June 2019, six months before the key elements of the ordinance take effect.

It is incumbent upon the City to further expand composting resources – potentially including compost receptacles - for residents and customers. Many restaurants do provide composting receptacles in-store currently, but many residential countertop kitchen pails are too small to accommodate a significant increase in compostable foodware which is expected with widespread adoption of the Single Use Foodware and

Litter Reduction Ordinance. The expansion of composting collection efforts also supports the goals and requirements of AB1826 and SB1383 to divert organics from the landfill. .

#### ENVIRONMENTAL SUSTAINABILITY

The production, consumption and disposal of single use food and beverage packaging is a major contributor to litter in our streets, plastic in landfills, pollution in waterways and oceans, GHG emissions, and harm to wildlife. This environmental ordinance represent a huge step forward in reducing the use of disposable foodware in Berkeley, fulfilling Berkeley's Zero Waste and Climate Action Goals, reducing greenhouse gas emissions 80% by 2050, and meeting State trash load level mandates.

#### CONTACT PERSON

Councilmember Sophie Hahn, District 5, (510) 981-7150  
Mayor Jesse Arreguín, (510) 981-7100

#### Attachments

1. Single Use Foodware and Litter Reduction Ordinance, amended to incorporate Zero Waste Commission recommendations
2. Zero Waste Commission recommendations to City Council, September 24, 2018
3. Referral to the Zero Waste Commission: Berkeley Single Use Foodware and Litter Reduction Ordinance, April 24, 2018

ORDINANCE NO. -N.S.

ADDING CHAPTER 11.64 TO THE BERKELEY MUNICIPAL CODE TO ADOPT A  
SINGLE USE FOODWARE AND LITTER REDUCTION ORDINANCE

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

Section 1. That a new Chapter 11.64 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 11.64

SINGLE USE FOODWARE AND LITTER REDUCTION

Sections:

- 11.64.010 Findings and Purpose
- 11.64.020 Definitions
- 11.64.030 Accessory disposable foodware items
- 11.64.040 Reusable customer cups
- 11.64.050 Compostable disposable foodware
- 11.64.060 Reusable foodware for dining on the premises
- 11.64.070 Disposable foodware standards
- 11.64.080 Separate disposable foodware waste receptacles
- 11.64.090 Waivers
- 11.64.100 Regulations applicable to all prepared food vendors
- 11.64.110 Duties responsibilities and authority of the City of Berkeley
- 11.64.120 City of Berkeley: purchases prohibited
- 11.64.130 Liability and enforcement
- 11.64.140 Severability
- 11.64.150 Chapter supersedes existing laws and regulations

**11.64.010 Findings and Purpose.**

The Council of the City of Berkeley finds and declares as follows:

- A. Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, “clamshells” and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions.

- B. The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources. Plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world's oceans.
- C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health conditions.
- D. Food and beverage SUDs make up approximately 25% of all waste produced in California. In the Bay Area, food and beverage packaging comprises the majority of street litter, and is a significant contributor to the total amount of waste entering the waste stream.
- E. It is in the interest of the health, safety and welfare of all who live, work and do business in the City that the amount of litter on public streets, parks and in other public places be reduced.
- F. The City of Berkeley must eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. Reduction of single-use food and beverage packaging furthers this goal.
- G. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan, as amended, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

**11.64.020 Definitions.**

- A. "Prepared Food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing and which require no further preparation to be consumed. Prepared Food does not include raw uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed, or raw uncooked meat products.
- B. "Takeout Food" means Prepared Food which is purchased to be consumed off a Prepared Food Vendor's premises. Takeout Food includes Prepared Food carried out by the customer or delivered by a Prepared Food Vendor or by a Takeout Food Delivery Service.

- C. "Prepared Food Vendor" means any establishment located within the City of Berkeley, including a Bakery, Cafeteria, Drive In, Food Products Store, Food Service Establishment (Carry Out, Quick Service, Full Service), Drugstore or Theater, as defined in BMC 23F.04, Mobile Food Facility, Temporary Food Facility (CA Health and Safety Code Sections 113831 and 113930 and as amended), bar and other similar establishment, selling Prepared Food to be consumed on and/or off its premises.
- D. "Disposable Foodware" means all containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids, sleeves, condiment containers, spill plugs, paper or foil wrappers, liners and any other items used to hold, serve, eat, or drink Prepared Food, which are designed for single use and in which Prepared Food is placed or packaged on a Prepared Food Vendor's premises.
- E. "Disposable Cup" is a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks and alcoholic beverages.
- F. "Accessory Disposable Foodware Item" means any Disposable Foodware item such as straws, stirrers, napkins and utensils; condiment cups and packets; cup sleeves, tops, lids, and spill plugs; and other similar accessory or accompanying Disposable Foodware items used as part of food or beverage service or packaging.
- G. "Reusable Foodware" means all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.
- H. "Takeout Food Delivery Service" is a third party delivery service which picks up Takeout Food from a Prepared Food Vendor and delivers it to the customer for consumption off the premises.

**11.64.030 Accessory Disposable Foodware Items**

- A. Accessory Disposable Foodware items shall be provided only upon request by the customer or at self-serve stations, except that Disposable Cups for delivery by a Prepared Food Vendor or a Takeout Food Delivery Service may include tops, spill plugs and sleeves without request.

- B. Prepared Food Vendors and Takeout Food Delivery Services must provide options for customers to affirmatively request Accessory Disposable Foodware Items separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person.
- C. Prepared Food Vendors that customarily offer straws are encouraged to maintain a small supply of plastic-type straws which meet the Disposable Foodware Standards set forth in Section 11.64.070, which may be provided to customers upon specific request for a “plastic” straw.
- D. Prepared Food Vendors offering condiments are encouraged to use dispensers rather than pre-packaged disposable condiment packets.

**11.64.040 Reusable Customer Cups**

- A. Except as provided in Chapter 11. Temporary Food Facilities of the California Health and Safety Code, Section 114353, customers may provide their own Reusable Foodware cups for beverage service in accordance with California State Health Code 114075(e) and as amended. Prepared Food Vendors may refuse, at their sole discretion, any customer-provided Reusable Foodware cup that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage, or that appears to be excessively soiled or unsanitary, and instead require use of a Reusable Foodware cup for a beverage consumed on the premises, or a Disposable Cup for a beverage to be consumed off the premises, with any charge required pursuant to Section 11.64.050.D.

**11.64.050 Compostable Disposable Foodware**

Effective January 1, 2020:

- A. Takeout Food shall only be served in Disposable Foodware that conforms to the Disposable Foodware Standards in Section 11.64.070.
- B. Accessory Disposable Foodware Items shall conform with the Disposable Foodware Standards in 11.64.070.
- C. Takeout Food Delivery Services shall only deliver Takeout Food from a Prepared Food Vendor that is served in Disposable Foodware and with Accessory Disposable Foodware Items, if any, that conform to the Disposable Foodware Standards in 11.64.070.
- D. Prepared Food Vendors shall charge customers twenty five cents (\$0.25) for every Disposable Cup provided.



1. Income from the Disposable Cup charge shall be retained by the Prepared Food Vendor and used for the purposes set forth in Section 11.64.100.C.
  2. All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and as amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the Disposable Cup charge.
  3. Charges for Disposable Cups shall be identified separately on menus, ordering platforms and menu boards and on any receipt provided to the customer. Customers placing orders by telephone shall be informed verbally of Disposable Cup charges.
- E. Notwithstanding the requirements at Section 11.64.050, subsections A-C, a Prepared Food Vendor may request a waiver or waivers pursuant to Section 11.64.090 for specific Disposable Foodware items. To obtain a waiver for a Disposable Foodware item, the Prepared Food Vendor must demonstrate that:
1. No Disposable Foodware item exists with substantially similar size, performance and/or utility that conforms with the Disposable Foodware Standards in Section 11.64.070 or, if such an item exists, that costs of using such item would cause undue financial hardship, and;
  2. The non-conforming Disposable Foodware item to be used in lieu of a conforming item is recyclable in the City of Berkeley recyclable collection program.
  3. The Prepared Food Vendor must provide documentation of efforts to obtain a substantially similar compliant item at a non-prohibitive price.
  4. Records of attempts to obtain a compliant item shall include:
    - a. Emails, letters or other correspondence with two or more vendors that furnish Compostable Disposable Foodware, seeking the compliant item.
    - b. Responses from such Compostable Disposable Foodware vendors including, where applicable, specifications and pricing for such item.
    - c. Specifications and pricing for the recyclable non-conforming item sought to be used, demonstrating its substantial superiority and/or affordability, and

- d. Any other records which demonstrate a good faith effort to comply with Disposable Foodware Standards for such item.
- 5. Reasonable added cost for a conforming item as compared to a substantially similar recyclable non-conforming item shall not by itself constitute adequate grounds to support a waiver for such item.

**11.64.060 Reusable Foodware for Dining on the Premises**

Effective July 1, 2020:

- A. Prepared Food served for consumption on the premises of a Prepared Food Vendor shall only be served using Reusable Foodware, except that disposable paper food wrappers, foil wrappers, paper napkins, straws and paper tray- and plate-liners shall be allowed for dining on the premises, so long as they meet the Disposable Foodware Standards in Section 11.64.070.
- B. Notwithstanding the requirements at Section 11.64.060.A, Prepared Food Vendors that do not have on-site or off-site dishwashing capacity or are unable to contract for services to wash, rinse and sanitize Reusable Foodware in compliance with the California Health Code may request a waiver or partial waiver pursuant to Section 11.64.090. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints and/or undue financial hardship.
- C. All Disposable Foodware used on the premises by Prepared Food Vendors that are operating under full or partial waivers obtained pursuant to 11.64.090 shall conform to the Disposable Foodware Standards in Section 11.64.070.

**11.64.070 Disposable Foodware Standards**

- A. Disposable Foodware must be accepted by City of Berkeley municipal compost collection programs and be free of all intentionally added fluorinated chemicals, as certified by the Biodegradable Product Institute or other independent third party certifying organization or agency recognized by the City, except that non-compostable foil wrappers that are accepted in the City of Berkeley recyclable collection program may be used for burritos, wraps, and other items that require foil to contain and form the food item.
- B. The City shall maintain on its website a list of suppliers that offer Disposable Foodware that complies with these Disposable Foodware Standards.

- C. Changes, if any, to Disposable Foodware Standards shall become effective on January 1 of the next calendar year, and the City of Berkeley shall provide notice of any such changes to Prepared Food Vendors at least 90 days prior.

**11.64.080 Separate Disposable Foodware Waste Receptacles**

All Prepared Food Vendors, except Full Service Restaurants as defined in Chapter 23F.04 of the Berkeley Municipal Code, must provide at least one set of three easily accessed receptacles for discarded items to be composted, recycled, and, if needed, to be landfilled or otherwise wasted.

- A. To the extent possible given space constraints, all three receptacles should be placed together in the same location.
- B. The City shall identify materials accepted for each collection program on the City's website, and signage must be posted on and/or above each receptacle, indicating the materials to be deposited into such receptacle. Receptacles and signage shall be color-coded as follows:
  - 1. Blue for recyclables
  - 2. Green for compostables
  - 3. Black or gray for items to be landfilled or otherwise wasted
- C. Prepared Food Vendors that share premises may share receptacles.

**11.64.090 Waivers**

- A. The City Manager shall prescribe and adopt rules, regulations and forms for Prepared Food Vendors to obtain full or partial waivers from any requirement of this ordinance that is explicitly subject to waiver.
- B. Waivers shall be granted by the City Manager or his or her agents, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.
- C. The City Manager or his or her agents shall act on a waiver application no later than 180 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.
- D. Waivers may be granted for a specified period of up to two (2) years. During the waiver period, the Prepared Food Vendor shall make diligent efforts to become compliant.
- E. Under extraordinary circumstances, should a Prepared Food Vendor demonstrate that, at the close of a granted waiver period, and with diligent efforts

to become compliant, compliance remains infeasible, additional waivers of up to two (2) years each may be granted. It shall be the Prepared Food Vendor's responsibility to apply for any subsequent waivers in a timely manner.

**11.64.100 Regulations applicable to all Prepared Food Vendors**

- A. Each Prepared Food Vendor shall maintain written records evidencing compliance with this Chapter.
- B. All records required by this Chapter shall be made available for inspection by the City Manager or his or her designated representative. It shall be unlawful for anyone having custody of such records to fail or refuse to produce such records upon request by the City Manager or his or her designated representative.
- C. All charges collected by the Prepared Food Vendor pursuant to Section 11.64.050 of this Chapter and retained by the Prepared Food Vendor may be used only for the following purposes:
  - 1. Costs associated with complying with the requirements of this Chapter.
  - 2. Actual costs of labor, equipment and materials for washing Reusable Foodware and providing customers with Reusable Foodware; costs of providing customers with compliant compostable Disposable Foodware; costs for reducing litter; and other costs associated with reducing the use of Disposable Foodware and litter.
  - 3. Costs associated with a store's educational materials or educational campaign for reducing and/or encouraging the reduction of Disposable Foodware and litter.

**11.64.110 Duties responsibilities and authority of the City of Berkeley**The City Manager shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter and is hereby authorized to take any and all actions reasonable and necessary to enforce this chapter including, but not limited to, inspecting any Prepared Food Vendor's premises to verify compliance.

**11.64.120 City of Berkeley: purchases prohibited**

The City of Berkeley shall not purchase any Disposable Foodware that does not comply with the Disposable Foodware Standards in Section 11.64.070, nor shall any City-sponsored event utilize non-compliant Disposable Foodware.

**11.64.130 Liability and Enforcement**

- A. Anyone violating or failing to comply with any requirement of this chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a

requirement of this chapter until one year after the effective date of such requirement.

- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 11.64.090.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

**11.64.140 Severability**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, 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 proscribed 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 City Council hereby declares that it would have passed this title, 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.

**11.64.150 Chapter supersedes existing laws and regulations**

The provisions of this chapter shall supersede any conflicting law or regulations.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



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ACTION CALENDAR

December 11, 2018

To: Honorable Mayor and Members of the City Council  
From: Councilmember Sophie Hahn and Mayor Jesse Arreguín  
Subject: Single Use Disposable Foodware and Litter Reduction Ordinance

RECOMMENDATION

1. Adopt a first reading of the Single Use Foodware and Litter Reduction Ordinance.
2. Refer to the City Manager to:
  - a. Establish a mini-grant program administered and funded either directly by the City or by community partners to help Prepared Food Vendors with one-time costs associated with conversion to Reusable Foodware for eating on the premises (“eating-in”), ~~to be launched by January 1, 2020 (six months before the date Reusable Foodware requirements become effective).~~
  - b. Establish a program administered and funded either directly by the City or by community partners to provide technical assistance to Prepared Food Vendors implementing Reusable Foodware requirements for eating on the premises, the Single Use Foodware Ordinance, on a free or sliding-scale fee basis, to be launched by July 1, 2019.
  - c. Create a Reusable Takeout Foodware program for launch three years after the effective date of the Single Use Disposable Foodware and Litter Reduction Ordinance July 1, 2021, in collaboration with community partners such as the Ecology Center, Rethink Disposables and StopWaste.
  - d. Prior to launch of the Reusable Takeout Foodware program, Draft for approval amendments to the Single Use Disposable Foodware and Litter Reduction Ordinance to implement the Reusable Takeout Foodware program as an alternative to Compostable Takeout Foodware, and impose a charge, similar to or the same as the Disposable Cup charge, on other Disposable Foodware containers.
  - e. Create a program to expand and support composting, to ensure Single Use Disposable Foodware is actually composted.

e.f. Prior to January 1, 2022 report to the City Council on progress towards full implementation of and compliance with the Single Use Disposable Foodware and Litter Reduction Ordinance and these referrals

3. Refer to the City Manager to determine funding and staffing needs and sources of funds to implement ~~for~~ each program/phase. Consider and suggest implementation alternatives to achieve similar results at lower cost to the City, if any. and submit recommended alternatives to the Zero Waste Commission and City Council for consideration, and funding allocations or requests to the budget process. ~~funding allocations or requests to the budget process.~~

### FINANCIAL IMPLICATIONS

Reducing use and disposal of products that make up the majority of Berkeley's street and storm-drain litter has the potential to significantly lower City expenses including costs related to collection of debris from over 400 city trash receptacles, from clearing of clogged stormwater intakes city-wide, and from daily street sweeping and litter management. Even for "recyclable" items that are properly placed in a recycling bin, these items are costly to sort and process and have limited markets resulting in additional costs to the City. Many of these items result in contamination to the composting program which increase the cost of composting.

Staff time will be required to launch programs related to the Single Use Foodware and Litter Reduction Ordinance. Some programs and services may be provided by community partners at relatively low cost. Once launched, staff time for administration and enforcement of the Ordinance will be limited.

Costs, sources of funding and community partnerships to be determined by the City Manager.

### BACKGROUND

Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, "clamshells" and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions. The use of disposable foodware has grown exponentially over the past few decades. Because the environmental costs of these products is largely hidden to the business operator and consumer, little attention is paid to the quantity of packaging consumed and quickly thrown away. Reducing the use of SUDs in the City of Berkeley is a key strategy to achieve the City's Zero Waste and Climate Action goals, and to address the many environmental impacts and costs associated with the use and disposal of single-use foodware and packaging. SUDs often become litter therefore minimizing their use will

assist the City with achieving stormwater program requirements and could reduce costs for maintenance of full trash capture devices that the City has installed in stormdrains.

### ***Environmental Impacts of Single-Use Disposables***

The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources. It is a major component of litter on streets and in waterways, and of the plastic polluting our air, food, drinking water and oceans.

- Food and beverage SUDs make up approximately 25% of all waste produced in California.<sup>1</sup>
- Bay Area litter studies have found that food and beverage packaging comprises the majority of street litter.<sup>2</sup>
- Without dramatic systems change, by 2050, there will be more plastic in the ocean than fish.<sup>3</sup>
- Based on Berkeley's population of approximately 120,000 people, it is estimated that almost 40 million single use cups are used in the City of Berkeley every year.

Most SUDs are used for just a few minutes before becoming waste, while most are made to last for hundreds and even thousands of years, and have broad, long-lasting negative impacts. Plastics in waterways and oceans break down into smaller pieces (but do not biodegrade) and are present in most of the world's oceans, at all levels (surface, water column, and bottom).<sup>4</sup>

Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater<sup>5</sup>, which can transfer to fish, other seafood, and salt that is eventually sold for human consumption.<sup>6</sup> Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health effects including kidney and testicular cancer, thyroid disruption, delayed puberty and obesity.<sup>7</sup>

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<sup>1</sup> <https://www.wastedive.com/news/are-the-packaging-wars-coming-to-california/508491/>

<sup>2</sup> See Clean Water Action's "Taking out the Trash" Bay Area Litter study (2011) [http://www.cleanwateraction.org/files/publications/ca/Curr\\_CA\\_12%2012%2011final.pdf](http://www.cleanwateraction.org/files/publications/ca/Curr_CA_12%2012%2011final.pdf) ; California Coastal Cleanup Results 1989-2014 showing Food and Beverage packaging items are 7 out of the top 10 items collected and account for 34% of the total trash - <https://www.coastal.ca.gov/publiced/ccd/history.html#top10> ; BanList 2.0 shows food and beverage packaging items are 74% of top 20 littered items among 6 different beach cleanup datasets- <https://upstreampolicy.org/ban-list-20>

<sup>3</sup> Ellen MacArthur Foundation (2016)

<sup>4</sup> D. Barnes et al, 2009, *Accumulation and fragmentation of plastic debris in global environments*, Phil. Trans. R. Soc. B., 364-1985-98.

<sup>5</sup> Rochman, C.M., et al., 2013, Long-Term Field Measurement of Sorption of Organic Contaminants to Five Types of Plastic Pellets: Implications for Plastic Marine Debris. *Environmental Science and Technology*. 47, 1646-1654.

<sup>6</sup> Rochman C Met al, 2015a Anthropogenic debris in seafood: plastic debris and fibers from textiles in fish and bivalves sold for human consumption *Sci. Rep.* 5 14340.

<sup>7</sup> In 2015, the FDA barred from use three such fluorinated chemicals from food contact materials due to safety risks associated with cancer, toxicity, and other health effects; other fluorinated chemicals have similar chemical structures and pose similar risk.



### ***Strategies to Regulate SUDs***

Alameda County implemented its reusable bag ordinance in January 2013, and has seen dramatic results. Countywide, bag purchases by affected retail stores have declined by 85 percent. The number of shoppers bringing a reusable bag to affected stores, or not using a bag at all, has more than doubled during this time<sup>8</sup>. Globally, a number of strategies have been implemented to reduce the use of SUDs. Charges for single-use plastic bags have proven to decrease plastic bag consumption. When Ireland instituted a “Plas-Tax” in 2002, equivalent to about 20 cents per bag, plastic bag use declined by 90% and litter from plastic bags declined by 40%<sup>9</sup>. Similar charges have been implemented in Taiwan, Washington D.C., and the United Kingdom, resulting in decreases in plastic bag use of up to 80%. A 2016 plastic bag ban in California reduced the number of plastic bags found on beaches by half.<sup>10</sup> Studies have also shown that customers in areas with taxes on single use bags were more likely to use reusable bags.<sup>11</sup>

There is growing support for reducing the use of other single use disposables. Ireland is considering banning single use coffee cups, with 50% of the population surveyed in support.<sup>12</sup> The European Union announced in 2018 that it is implementing a policy for all plastic packaging to be recyclable or reusable by 2030.<sup>13</sup> Taiwan will be imposing charges for straws, plastic shopping bags, disposable utensils, and beverage cups by 2025, and will impose a complete ban on single-use plastic items, including straws, cups, and shopping bags, by 2030.<sup>14</sup>

### ***Reducing SUDs in the City of Berkeley***

The City of Berkeley has a long history of leadership in sustainability and environmental protections including the adoption of an ambitious Climate Action Plan in 2009, with a goal of achieving Zero Waste by 2020; the nation’s first curbside recycling program and styrofoam foodware ban; and one of the first commercial organics collection programs. The city reached a height of 78% waste diversion by AB 939 standards, and there has

<sup>8</sup> “Successful Results from Bag Ordinance”, 2014, Alameda County Waste Management authority, <http://reusablebagsac.org/news/successful-results-bag-ordinance>

<sup>9</sup> Mauro Anastasio and James Nix, Plastic Bag Levy in Ireland, Institute European Environmental Policy, 2016. <https://ieep.eu/uploads/articles/attachments/7f91cb97-8cb7-49c39cf0d34062a9192e/IE%20Plastic%20Bag%20Levy%20conference%20draft.pdf?v=63673818840>

<sup>10</sup> <http://www.latimes.com/opinion/editorials/la-ed-plastic-bag-ban-anniversary-20171118-story.html>

<sup>11</sup> T. A. Homonoff, *Can Small Incentives Have Large Effects? The Impact of Taxes versus Bonuses on Disposable Bag Use* National Tax Association Proceedings, Princeton University- <http://ntanet.org/wp-content/uploads/proceedings/2012/008-homonoff-can-small-incentives-2012-nta-proceedings.pdf>

<sup>12</sup> <http://www.thejournal.ie/coffee-cups-poll-3642333-Oct2017/>

<sup>13</sup> European Commission, EU Plastics Strategy-[http://ec.europa.eu/environment/waste/plastic\\_waste.htm](http://ec.europa.eu/environment/waste/plastic_waste.htm)

<sup>14</sup> “Taiwan to ban disposable plastic items by 2030,” February 22, 2108- <https://phys.org/news/2018-02-taiwan-disposable-plastic-items.html>

been a 50% reduction in solid waste disposal between 2000 to 2013<sup>15</sup>. Despite these achievements, Berkeley has not addressed the significant increase in takeout food packaging littering city streets, filling storm drains, requiring management in the waste stream, polluting our waterways, Bay and ocean, and threatening both human and animal health.

In addition, SUDs are particularly costly and challenging to divert from landfill. Non-recyclable food and beverage packaging is costly to remove from the waste stream and reduces the quality and value of recyclables, while non-compostable food packaging (some of which is advertised as “biodegradable” or “made from plants” which misleads consumers to believe it is compostable) contaminates compost, adding costs and reducing the quality of compost<sup>16</sup>. With China’s recent rejection of mixed recycled plastic imports, the value of recyclable plastics has dropped sharply and the final destination for these plastic SUDs is uncertain. This adds significant costs to the City’s collection, sorting, and processing of compostables and recyclables. To reach its Zero Waste goals, the City must reduce use of single-use food and beverage packaging.

Thanks to the leadership of Berkeley’s Ecology Center, working closely with UpStream, Clean Water Action, the Clean Water Fund, Story of Stuff, Surfrider Foundation, GAIA (Global Alliance for Incinerator Alternatives), the Green Science Policy Institute, Excellent Packaging, and numerous active residents and volunteers, the City Council unanimously referred a proposed Single Use Disposable Foodware and Litter Reduction ordinance to the Zero Waste Commission on April 24, 2018.

The Zero Waste Commission was tasked with review of the proposed ordinance and the conduct of community meetings to gather feedback on the proposed ordinance, and make recommendations. Since that time, the Zero Waste Commission Foodware Subcommittee conducted 4 community meetings between June and September of 2018, and collected comments from over 60 restaurateurs, environmental advocates, members of the disability community, and other community members. Meetings were held on different days and times of the day, at locations throughout Berkeley, and were noticed to the restaurant and food service community with the help of the City’s Economic Development staff. The Commission analyzed comments received in writing and through public testimony, and on September 24, 2018 unanimously referred their findings to the City Council (Attachment 2).

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<sup>15</sup> Berkeley Climate Action Plan: Tracking our Progress Waste Reduction & Recycling – Total Landfilled, [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/PDF%20total%20landfilled%20final.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/PDF%20total%20landfilled%20final.pdf)

<sup>16</sup> Clean Water Action, *What’s in the Package?* 2016 <https://www.cleanwateraction.org/features/what%E2%80%99s-package>

In addition, Councilmember Hahn met on-site with the owners of three restaurants that expressed concerns about implementation of the proposed ordinance, reviewing their current practices and challenges. All three have already implemented important measures to reduce the use of harmful Single Use Disposables, and shared important insights.

### ***Ordinance Elements***

The attached ordinance (Attachment 1) incorporates many of the Zero Waste Commission's recommendations and makes a number of changes to accommodate concerns and questions that were discussed as part of the Commission's public process. Changes include:

- Phasing-in elements of the ordinance, to allow Prepared Food Vendors time to adjust practices.
- Opportunities for limited exemptions, based on demonstrated hardship or extraordinary circumstances.
- Establishment of mini-grant and technical assistance programs, to help Prepared Food Vendors transition to Reusable and Compostable Foodware.
- Elimination of charges for all Single Use Disposable Foodware, except for cups, pending establishment of a Reusable Takeout Foodware program.
- Addition of standards for Prepared Food Vendors to reject customer-supplied cups that appear inappropriate or unsanitary.
- Addition of a recommendation that Prepared Food Vendors customarily offering straws keep a supply of compostable bioplastic straws for use by individuals specifically requesting "plastic" straws.
- Enforcement with notice and opportunities to cure, either by adopting practices or obtaining a waiver, if warranted, prior to imposition of fines or other penalties.

### ***City Manager Referral Components***

To complement the roll out of the Single Use Disposable Foodware and Litter Reduction Ordinance, the Zero Waste Commission recommends a number of City-sponsored programs to support implementation of the Ordinance's requirements, including:

- A mini-grant program to help cover one-time costs associated with the transition to Reusable Foodware for on-site dining;
- Technical assistance to support implementation of ordinance requirements.

Both programs must be operative by June 2019, six months before the key elements of the ordinance take effect.

It is incumbent upon the City to further expand composting resources – potentially including compost receptacles - for residents and customers. Many restaurants do provide composting receptacles in-store currently, but many residential countertop kitchen pails are too small to accommodate a significant increase in compostable foodware which is expected with widespread adoption of the Single Use Foodware and Litter Reduction Ordinance. The expansion of composting collection efforts also supports the goals and requirements of AB1826 and SB1383 to divert organics from the landfill. .

#### ENVIRONMENTAL SUSTAINABILITY

The production, consumption and disposal of single use food and beverage packaging is a major contributor to litter in our streets, plastic in landfills, pollution in waterways and oceans, GHG emissions, and harm to wildlife. This environmental ordinance represent a huge step forward in reducing the use of disposable foodware in Berkeley, fulfilling Berkeley's Zero Waste and Climate Action Goals, reducing greenhouse gas emissions 80% by 2050, and meeting State trash load level mandates.

#### CONTACT PERSON

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

Mayor Jesse Arreguín, (510) 981-7100

#### Attachments

1. Single Use Foodware and Litter Reduction Ordinance, amended to incorporate Zero Waste Commission recommendations
2. Zero Waste Commission recommendations to City Council, September 24, 2018
3. Referral to the Zero Waste Commission: Berkeley Single Use Foodware and Litter Reduction Ordinance, April 24, 2018

ORDINANCE NO. -N.S.

ADDING CHAPTER 11.64 TO THE BERKELEY MUNICIPAL CODE TO ADOPT A  
SINGLE USE FOODWARE AND LITTER REDUCTION ORDINANCE

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

Section 1. That a new Chapter 11.64 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 11.64

SINGLE USE FOODWARE AND LITTER REDUCTION ~~ORDINANCE~~

Sections:

- 11.64.010 Findings and Purposes
- 11.64.020 Definitions
- 11.64.030 Accessory disposable foodware items
- 11.64.040 Reusable customer cups
- 11.64.050 Compostable disposable foodware
- 11.64.060 Reusable foodware for dining on the premises
- 11.64.070 Disposable foodware standards
- 11.64.080 Separate disposable foodware waste receptacles
- 11.64.090 Waivers
- 11.64.100 Regulations applicable to all prepared food vendors
- 11.64.110 Duties responsibilities and authority of the City of Berkeley
- 11.64.120 City of Berkeley: purchases prohibited
- 11.64.130 Liability and enforcement
- 11.64.140 Severability
- 11.64.150 Ordinance Chapter supersedes existing laws and regulations

**11.64.010 Findings and Purposes.**

The eCouncil of the City of Berkeley finds and declares as follows:

- A. Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, “clamshells” and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions.

- B. The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources, ~~and~~ plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world's oceans.
- C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health conditions.
- D. Food and beverage SUDs make up approximately 25% of all waste produced in California. ~~In the Bay Area, food and beverage packaging comprises the majority of street litter, and is a significant contributor to the total amount of waste entering the City's waste stream.~~
- E. It is in the interest of the health, safety and welfare of all who live, work and do business in the City, that the amount of litter on public streets, parks and in other public places be reduced.
- F. The City of Berkeley must eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. ~~Reduction of single-use food and beverage packaging furthers this goal.~~
- G. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan, ~~as amended, in 2017,~~ and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

**11.64.020 Definitions.**

- A. "Prepared Food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing and which require no further preparation to be consumed. Prepared Food does not include raw uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed, ~~or raw uncooked meat products.~~
- B. "Takeout Food" means Prepared Food which is purchased to be consumed off a Prepared Food Vendor's premises. Takeout Food includes Prepared Food carried out by the customer or delivered by a Prepared Food Vendor or by a Takeout Food Delivery Service.

- C. "Prepared Food Vendor" means any establishment located within the City of Berkeley, including a Bakery, Cafeteria, Drive In, Food Products Store, Food Service Establishment (Carry Out, Quick Service, Full Service), Drugstore or Theater, as defined in BMC 23F.04, Mobile Food Facility, Temporary Food Facility (CA Health and Safety Code Sections 113831 and 113930 and as amended), bar and other similar establishment, selling Prepared Food to be consumed on and/or off its premises.
- D. "Disposable Foodware" means all containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids, sleeves, condiment containers, spill plugs, paper or foil wrappers, liners and any other items used to hold, serve, eat, or drink Prepared Food, which are designed for single use and in which Prepared Food is placed or packaged on a Prepared Food Vendor's premises.
- E. "Disposable Cup" is a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks, and alcoholic beverages ~~and other drinks~~.
- F. "Accessory Disposable Foodware Item" means any Disposable Foodware item such as straws, stirrers, napkins and utensils; condiment cups and packets; cup sleeves, tops, lids, and spill plugs; and other similar accessory or accompanying Disposable Foodware items used as part of food or beverage service or packaging.
- G. "Reusable Foodware" means all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.
- H. "Takeout Food Delivery Service" is a third party delivery service which picks up Takeout Food from a Prepared Food Vendor and delivers it to the customer for consumption off the premises.

**11.64.030 Accessory Disposable Foodware Items**

- A. Accessory Disposable Foodware items shall be provided only upon request by the customer or at self-serve stations, except that Disposable Cups for delivery by a Prepared Food Vendor or a Takeout Food Delivery Service may include tops, spill plugs and sleeves without request.

- B. Prepared Food Vendors and Takeout Food Delivery Services must provide options for customers to affirmatively request Accessory Disposable Foodware Items separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person.
- C. Prepared Food Vendors that customarily offer straws are encouraged to maintain a small supply of plastic-type straws which meet the Disposable Foodware Standards set forth in [sectionSection](#) 11.64.070, which may be provided to customers upon specific request for a “plastic” straw.
- D. Prepared Food Vendors offering condiments are encouraged to use dispensers rather than pre-packaged disposable condiment packets.

#### **11.64.040 Reusable Customer Cups**

- A. Except as provided in Chapter 11. Temporary Food Facilities of the California Health and Safety Code, Section 114353, Ccustomers may provide their own Reusable Foodware cups for beverage service in accordance with California State Health Code 114075(e) and as amended. Prepared Food Vendors may refuse, at their sole discretion, any customer-provided Reusable Foodware cup that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage, or that appears to be excessively soiled or unsanitary, and instead require use of a Reusable Foodware cup for a beverage consumed on the premises, or a Disposable Cup for a beverage to be consumed off the premises, with any charge required pursuant to [sectionSection](#) 11.64.050.D.

#### **11.64.050 Compostable Disposable Foodware**

Effective January 1, 2020:

- A. Takeout Food shall only be served in Disposable Foodware that conforms to the Disposable Foodware Standards [at-in sectionSection](#) 11.64.070.
- B. Accessory Disposable Foodware Items shall conform with the Disposable Foodware Standards [at-in](#) 11.64.070.
- C. Takeout Food Delivery Services shall only deliver Takeout Food from a Prepared Food Vendor that is served in Disposable Foodware and with Accessory Disposable Foodware Items, if any, that conform to the Disposable Foodware Standards [at-in](#) 11.64.070.
- D. Prepared Food Vendors shall charge customers twenty five cents (\$0.25) for every Disposable Cup provided.



- a.1. \_\_\_\_\_ Income from the Disposable Cup charge shall be retained by the Prepared Food Vendor and used for the purposes set forth in Section 11.64.100.C for use in its discretion.
  - b.2. \_\_\_\_\_ All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and as amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the Disposable Cup charge.
  - c.3. \_\_\_\_\_ Charges for Disposable Cups shall be identified separately on menus, ordering platforms and menu boards and on any receipt provided to the customer. Customers placing orders by telephone shall be informed verbally of Disposable Cup charges.
- E. Notwithstanding the requirements at sectionSections 11.64.050, subsections (A)-(C), a Prepared Food Vendor may request a waiver or waivers pursuant to sectionSection 11.64.090 for specific Disposable Foodware items. To obtain a waiver for a Disposable Foodware item, the Prepared Food Vendor must demonstrate that:
- a.1. \_\_\_\_\_ No Disposable Foodware item exists with substantially similar size, performance and/or utility that conforms with the Disposable Foodware Standards at in sSection 11.64.070 or, if such an item exists, that costs of using such item would cause undue financial hardship, and;
  - b.2. \_\_\_\_\_ The non-conforming Disposable Foodware item to be used in lieu of a conforming item is recyclable in the City of Berkeley recyclable collection program.
  - c.3. \_\_\_\_\_ The Prepared Food Vendor must provide documentation of efforts to obtain a substantially similar compliant item at a non-prohibitive price.
  - d.4. \_\_\_\_\_ Records of attempts to obtain a compliant item shall include:
    - i.a. \_\_\_\_\_ Emails, letters or other correspondence with two or more vendors that furnish Compostable Disposable Foodware, seeking the compliant item.
    - ii.b. \_\_\_\_\_ Responses from such Compostable Disposable Foodware vendors including, where applicable, specifications and pricing for such item.

~~iii-c.~~ \_\_\_\_\_ Specifications and pricing for the recyclable non-conforming item sought to be used, demonstrating its substantial superiority and/or affordability, and

~~iv-d.~~ \_\_\_\_\_ Any other records which demonstrate a good faith effort to comply with Disposable Foodware Standards for such item.

~~e-5.~~ \_\_\_\_\_ Reasonable added cost for a conforming item as compared to a substantially similar recyclable non-conforming item shall not by itself constitute adequate grounds to support a waiver for such item.

#### **11.64.060 Reusable Foodware for Dining on the Premises (i.e. “Eating-in”)**

Effective July 1, 2020:

- A. Prepared Food served for consumption on the premises of a Prepared Food Vendor shall only be served using Reusable Foodware, except that disposable paper food wrappers, foil wrappers, paper napkins, straws and paper tray- and plate-liners shall be allowed for dining on the premises, so long as they meet the Disposable Foodware Standards in ~~section~~Section 11.64.070.
- B. Notwithstanding the requirements at ~~section~~Section 11.64.060\_(A), Prepared Food Vendors that do not have on-site or off-site dishwashing capacity or are unable to contract for services to wash, rinse and sanitize Reusable Foodware in compliance with the California Health Code may request a waiver or partial waiver pursuant to Section 11.64.090. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints and/or undue financial hardship.
- C. All Disposable Foodware used on the premises by Prepared Food Vendors that are operating under full or partial waivers obtained pursuant to 11.64.090 shall conform to the Disposable Foodware Standards in Section 11.64.070.

~~D. Zoning permits and Business Licenses for Prepared Food Vendors applied for, renewed and/or deemed complete on or after January 1, 2019 shall only be granted to Prepared Food Vendors that demonstrate compliance with section 11.64.060\_(A). Installation and/or maintenance of appropriate dishwashing capacity in conformance with section 11.64.060\_(A) shall be included as a specific condition of approval for such permits and licenses.~~

#### **11.64.070 Disposable Foodware Standards**

- A. Disposable Foodware must be accepted by City of Berkeley municipal compost collection programs and be free of all intentionally added fluorinated chemicals, as certified by the Biodegradable Product Institute or other independent third party certifying organization or agency recognized by the City, except that non-compostable foil wrappers that are accepted in the City of Berkeley recyclable collection program may be used for burritos, wraps, and other items that require foil to contain and form the food item.
- B. The City shall maintain on its website a list of suppliers that offer Disposable Foodware that complies with these Disposable Foodware Standards.
- C. Changes, if any, to Disposable Foodware Standards shall become effective on January 1 of each-the next calendar year, and the City of Berkeley shall provide notice of any such changes to Prepared Food Vendors at least 90 days prior.

**11.64.080 Separate Disposable Foodware Waste Receptacles**

All Prepared Food Vendors, except Full Service Restaurants as defined in Chapter 23F.04 of the Berkeley Municipal Code, must provide at least one set of three easily accessed receptacles s each for discarded items to be composted, -or recycled, and, if needed, to be landfilled or otherwise wasted.

- A. To the extent possible given space constraints, all three receptacles should be placed together in the same location.
- B. The City shall identify materials accepted for each collection program on the City's website, and signage must be posted on and/or above each receptacle, indicating the materials to be deposited into such receptacle. Receptacles and signage shall be color-coded as follows:
  - a-1.        Blue for recyclables
  - b-2.        Green for compostables
  - c-3.        Black or gray for items to be landfilled or otherwise wasted
- C. Prepared Food Vendors that share premises may share receptacles.

**11.64.090 Waivers**

- A. The City Manager shall prescribe and adopt rules, regulations and forms for Prepared Food Vendors to obtain full or partial waivers from any requirement of this ordinance that is explicitly subject to waiver.

- B. Waivers shall be granted by the City Manager or his or her agents, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.
- C. The City Manager or his or her agents shall act on a waiver application no later than 180 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.
- D. Waivers may be granted for a specified period of up to two (2) years. During the waiver period, the Prepared Food Vendor shall make diligent efforts to become compliant.
- E. Under extraordinary circumstances, should a Prepared Food Vendor demonstrate that, at the close of a granted waiver period, and with diligent efforts to become compliant, compliance remains infeasible, additional waivers of up to two (2) years each may be granted. It shall be the Prepared Food Vendor's responsibility to apply for any subsequent waivers in a timely manner.

**11.64.100 Regulations applicable to all Prepared Food Vendors**

- A. Each Prepared Food Vendor shall maintain written records evidencing compliance with this Chapter.
- B. All records required by this Chapter shall be made available for inspection by the City Manager or his or her designated representative. It shall be unlawful for anyone having custody of such records to fail or refuse to produce such records upon request by the City Manager or his or her designated representative.
- C. All charges collected by the Prepared Food Vendor pursuant to ~~section~~[Section](#) 11.64.050 of this Chapter and retained by the Prepared Food Vendor may be used only for the following purposes:
  - ~~a.1.~~ [a.1.](#) Costs associated with complying with the requirements of this Chapter.
  - ~~b.2.~~ [b.2.](#) Actual costs of labor, equipment and materials for washing Reusable Foodware and providing customers with Reusable Foodware; costs of providing customers with compliant compostable Disposable Foodware; costs for reducing litter; and other costs associated with reducing the use of Disposable Foodware and litter.
  - ~~c.3.~~ [c.3.](#) Costs associated with a store's educational materials or educational campaign for reducing and/or encouraging the reduction of Disposable Foodware and litter.
  - ~~d. Costs associated with supplying customers with Reusable Foodware for Takeout Food that can be returned to the business for washing or as part of a City-wide system of Reusable Foodware for Takeout Food.~~

**11.64.110 Duties responsibilities and authority of the City of BerkeleyCity Manager's Powers**

The City Manager shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter and is hereby authorized to take any and all actions reasonable and necessary to enforce this chapter including, but not limited to, inspecting any Prepared Food Vendor's premises to verify compliance.

~~A. In June of 2021 the City shall report to the City Council on progress towards full implementation of and compliance with this ordinance.~~

**11.64.120 City of Berkeley: purchases prohibited**

The City of Berkeley shall not purchase any Disposable Foodware that does not comply with the Disposable Foodware Standards at-in Section 11.64.070, nor shall any City-sponsored event utilize non-compliant Disposable Foodware.

**11.64.130 Liability and Enforcement**

- A. Anyone violating or failing to comply with any requirement of this chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a requirement of this chapter until one year after the effective date of such requirement.
- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 11.64.090.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

**11.64.140 Severability**

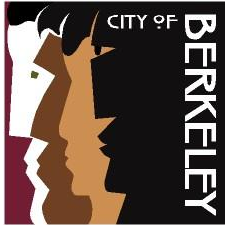
If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed 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 City Council hereby declares that it would have passed this title, 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.~~If any part or provision of this chapter or the~~

~~application thereof to any person or circumstance is held invalid, the remainder of the chapter, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this chapter are severable.~~

**11.64.150 Ordinance Chapter supersedes existing laws and regulations**

The provisions of this chapter shall supersede any conflicting law or regulations.  
~~restricting the use of polystyrene foam.~~

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Sophie Hahn  
Councilmember District 5

## **REVISED AGENDA MATERIAL for Supplemental Packet 1**

**Meeting Date:** December 11, 2018

**Item Number:** 27

**Item Description:** Single Use Disposable Foodware and Litter Reduction Ordinance

**Submitted by:** Councilmember Sophie Hahn

Formatting and continuity changes based on input from the City Attorney and City Clerk

ORDINANCE NO. -N.S.

ADDING CHAPTER 11.64 TO THE BERKELEY MUNICIPAL CODE TO ADOPT A  
SINGLE USE FOODWARE AND LITTER REDUCTION ORDINANCE

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

Section 1. That a new Chapter 11.64 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 11.64

SINGLE USE FOODWARE AND LITTER REDUCTION

Sections:

- 11.64.010 Purposes
- 11.64.020 Definitions
- 11.64.030 Accessory disposable foodware items
- 11.64.040 Reusable customer cups
- 11.64.050 Compostable disposable foodware
- 11.64.060 Reusable foodware for dining on the premises
- 11.64.070 Disposable foodware standards
- 11.64.080 Separate disposable foodware waste receptacles
- 11.64.090 Waivers
- 11.64.100 Regulations applicable to all prepared food vendors
- 11.64.110 Duties responsibilities and authority of the City of Berkeley
- 11.64.120 City of Berkeley: purchases prohibited
- 11.64.130 Liability and enforcement
- 11.64.140 Severability
- 11.64.150 Chapter supersedes existing laws and regulations

**11.64.010 Purposes.**

The council finds and declares as follows:

- A. Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, “clamshells” and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions.



- B. The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources, and plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world's oceans.
- C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health conditions.
- D. Food and beverage SUDs make up approximately 25% of all waste produced in California. In the Bay Area, food and beverage packaging comprises the majority of street litter, and is a significant contributor to the total amount of waste entering the City's waste stream.
- E. It is in the interest of the health, safety and welfare of all who live, work and do business in the City, that the amount of litter on public streets, parks and in other public places be reduced.
- F. The City of Berkeley must eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. Reduction of single-use food and beverage packaging furthers this goal.
- G. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan as amended in 2017, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

**11.64.020 Definitions.**

- A. "Prepared Food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing and which require no further preparation to be consumed. Prepared Food does not include raw uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed or raw uncooked meat products.
- B. "Takeout Food" means Prepared Food which is purchased to be consumed off a Prepared Food Vendor's premises. Takeout Food includes Prepared Food carried out by the customer or delivered by a Prepared Food Vendor or by a Takeout Food Delivery Service.

- C. "Prepared Food Vendor" means any establishment located within the City of Berkeley, including a Bakery, Cafeteria, Drive In, Food Products Store, Food Service Establishment (Carry Out, Quick Service, Full Service), Drugstore or Theater, as defined in BMC 23F.04, Mobile Food Facility, Temporary Food Facility (CA Health and Safety Code Sections 113831 and 113930 and as amended), bar and other similar establishment, selling Prepared Food to be consumed on and/or off its premises.
- D. "Disposable Foodware" means all containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids, sleeves, condiment containers, spill plugs, paper or foil wrappers, liners and any other items used to hold, serve, eat, or drink Prepared Food, which are designed for single use and in which Prepared Food is placed or packaged on a Prepared Food Vendor's premises.
- E. "Disposable Cup" is a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks, alcoholic beverages and other drinks.
- F. "Accessory Disposable Foodware Item" means any Disposable Foodware item such as straws, stirrers, napkins and utensils; condiment cups and packets; cup sleeves, tops, lids, and spill plugs; and other similar accessory or accompanying Disposable Foodware items used as part of food or beverage service or packaging.
- G. "Reusable Foodware" means all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.
- H. "Takeout Food Delivery Service" is a third party delivery service which picks up Takeout Food from a Prepared Food Vendor and delivers it to the customer for consumption off the premises.

**11.64.030 Accessory Disposable Foodware Items**

- A. Accessory Disposable Foodware items shall be provided only upon request by the customer or at self-serve stations, except that Disposable Cups for delivery by a Prepared Food Vendor or a Takeout Food Delivery Service may include tops, spill plugs and sleeves without request.

- B. Prepared Food Vendors and Takeout Food Delivery Services must provide options for customers to affirmatively request Accessory Disposable Foodware Items separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person.
- C. Prepared Food Vendors that customarily offer straws are encouraged to maintain a small supply of plastic-type straws which meet the Disposable Foodware Standards set forth in Section 11.64.070, which may be provided to customers upon specific request for a “plastic” straw.
- D. Prepared Food Vendors offering condiments are encouraged to use dispensers rather than pre-packaged disposable condiment packets.

**11.64.040 Reusable Customer Cups**

- A. Customers may provide their own Reusable Foodware cups for beverage service in accordance with California State Health Code 114075(e) and as amended. Prepared Food Vendors may refuse, at their sole discretion, any customer-provided Reusable Foodware cup that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage, or that appears to be excessively soiled or unsanitary, and instead require use of a Reusable Foodware cup for a beverage consumed on the premises, or a Disposable Cup for a beverage to be consumed off the premises, with any charge required pursuant to Section 11.64.050.D.

**11.64.050 Compostable Disposable Foodware**

Effective January 1, 2020:

- A. Takeout Food shall only be served in Disposable Foodware that conforms to the Disposable Foodware Standards in Section 11.64.070.
- B. Accessory Disposable Foodware Items shall conform with the Disposable Foodware Standards in 11.64.070.
- C. Takeout Food Delivery Services shall only deliver Takeout Food from a Prepared Food Vendor that is served in Disposable Foodware and with Accessory Disposable Foodware Items, if any, that conform to the Disposable Foodware Standards in 11.64.070.
- D. Prepared Food Vendors shall charge customers twenty five cents (\$0.25) for every Disposable Cup provided.
  - 1. Income from the Disposable Cup charge shall be retained by the Prepared Food Vendor for use in its discretion.

2. All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and as amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the Disposable Cup charge.
  3. Charges for Disposable Cups shall be identified separately on menus, ordering platforms and menu boards and on any receipt provided to the customer. Customers placing orders by telephone shall be informed verbally of Disposable Cup charges.
- E. Notwithstanding the requirements at Section 11.64.050, subsections A-C, a Prepared Food Vendor may request a waiver or waivers pursuant to Section 11.64.090 for specific Disposable Foodware items. To obtain a waiver for a Disposable Foodware item, the Prepared Food Vendor must demonstrate that:
1. No Disposable Foodware item exists with substantially similar size, performance and/or utility that conforms with the Disposable Foodware Standards in Section 11.64.070 or, if such an item exists, that costs of using such item would cause undue financial hardship, and;
  2. The non-conforming Disposable Foodware item to be used in lieu of a conforming item is recyclable in the City of Berkeley recyclable collection program.
  3. The Prepared Food Vendor must provide documentation of efforts to obtain a substantially similar compliant item at a non-prohibitive price.
  4. Records of attempts to obtain a compliant item shall include:
    - a. Emails, letters or other correspondence with two or more vendors that furnish Compostable Disposable Foodware, seeking the compliant item.
    - b. Responses from such Compostable Disposable Foodware vendors including, where applicable, specifications and pricing for such item.
    - c. Specifications and pricing for the recyclable non-conforming item sought to be used, demonstrating its substantial superiority and/or affordability, and
    - d. Any other records which demonstrate a good faith effort to comply with Disposable Foodware Standards for such item.

5. Reasonable added cost for a conforming item as compared to a substantially similar recyclable non-conforming item shall not by itself constitute adequate grounds to support a waiver for such item.

**11.64.060 Reusable Foodware for Dining on the Premises** Effective July 1, 2020:

- A. Prepared Food served for consumption on the premises of a Prepared Food Vendor shall only be served using Reusable Foodware, except that disposable paper food wrappers, foil wrappers, paper napkins, straws and paper tray- and plate-liners shall be allowed for dining on the premises, so long as they meet the Disposable Foodware Standards in Section 11.64.070.
- B. Notwithstanding the requirements at Section 11.64.060.A, Prepared Food Vendors that do not have on-site or off-site dishwashing capacity or are unable to contract for services to wash, rinse and sanitize Reusable Foodware in compliance with the California Health Code may request a waiver or partial waiver pursuant to Section 11.64.090. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints and/or undue financial hardship.
- C. All Disposable Foodware used on the premises by Prepared Food Vendors that are operating under full or partial waivers obtained pursuant to 11.64.090 shall conform to the Disposable Foodware Standards in Section 11.64.070.
- D. Zoning permits and Business Licenses for Prepared Food Vendors applied for, renewed and/or deemed complete on or after the effective date of this ordinance shall only be granted to Prepared Food Vendors that demonstrate compliance with section 11.64.060.A. Installation and/or maintenance of appropriate dishwashing capacity in conformance with section 11.64.060.A shall be included as a specific condition of approval for such permits and licenses.

**11.64.070 Disposable Foodware Standards**

- A. Disposable Foodware must be accepted by City of Berkeley municipal compost collection programs and be free of all intentionally added fluorinated chemicals, as certified by the Biodegradable Product Institute or other independent third party certifying organization or agency recognized by the City, except that non-compostable foil wrappers that are accepted in the City of Berkeley recyclable collection program may be used for burritos, wraps, and other items that require foil to contain and form the food item.

- B. The City shall maintain on its website a list of suppliers that offer Disposable Foodware that complies with these Disposable Foodware Standards.
- C. Changes, if any, to Disposable Foodware Standards shall become effective on January 1 of each calendar year, and the City of Berkeley shall provide notice of any such changes to Prepared Food Vendors at least 90 days prior.

**11.64.080 Separate Disposable Foodware Waste Receptacles**

All Prepared Food Vendors, except Full Service Restaurants as defined in Chapter 23F.04 of the Berkeley Municipal Code, must provide at least one easily accessed receptacle each for discarded items to be composted or recycled, and, if needed, to be landfilled or otherwise wasted.

- A. To the extent possible given space constraints, all three receptacles should be placed together in the same location.
- B. The City shall identify materials accepted for each collection program on the City's website, and signage must be posted on and/or above each receptacle, indicating the materials to be deposited into such receptacle. Receptacles and signage shall be color-coded as follows:
  - 1. Blue for recyclables
  - 2. Green for compostables
  - 3. Black or gray for items to be landfilled or otherwise wasted
- C. Prepared Food Vendors that share premises may share receptacles.

**11.64.090 Waivers**

- A. The City Manager shall prescribe and adopt rules, regulations and forms for Prepared Food Vendors to obtain full or partial waivers from any requirement of this ordinance that is explicitly subject to waiver.
- B. Waivers shall be granted by the City Manager or his or her agents, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.
- C. The City Manager or his or her agents shall act on a waiver application no later than 180 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.
- D. Waivers may be granted for a specified period of up to two (2) years. During the waiver period, the Prepared Food Vendor shall make diligent efforts to become compliant.

- E. Under extraordinary circumstances, should a Prepared Food Vendor demonstrate that, at the close of a granted waiver period, and with diligent efforts to become compliant, compliance remains infeasible, additional waivers of up to two (2) years each may be granted. It shall be the Prepared Food Vendor's responsibility to apply for any subsequent waivers in a timely manner.

**11.64.100 Regulations applicable to all Prepared Food Vendors**

- A. Each Prepared Food Vendor shall maintain written records evidencing compliance with this Chapter.
- B. All records required by this Chapter shall be made available for inspection by the City Manager or his or her designated representative. It shall be unlawful for anyone having custody of such records to fail or refuse to produce such records upon request by the City Manager or his or her designated representative.
- C. All charges collected by the Prepared Food Vendor pursuant to Section 11.64.050 of this Chapter and retained by the Prepared Food Vendor may be used only for the following purposes:
  - 1. Costs associated with complying with the requirements of this Chapter.
  - 2. Actual costs of labor, equipment and materials for washing Reusable Foodware and providing customers with Reusable Foodware; costs of providing customers with compliant compostable Disposable Foodware; costs for reducing litter; and other costs associated with reducing the use of Disposable Foodware and litter.
  - 3. Costs associated with a store's educational materials or educational campaign for reducing and/or encouraging the reduction of Disposable Foodware and litter.
  - 4. Costs associated with supplying customers with Reusable Foodware for Takeout Food that can be returned to the business for washing or as part of a City-wide system of Reusable Foodware for Takeout Food.

**11.64.110 Duties responsibilities and authority of the City of Berkeley**The City Manager shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter and is hereby authorized to take any and all actions reasonable and necessary to enforce this chapter including, but not limited to, inspecting any Prepared Food Vendor's premises to verify compliance.

- A. In June of 2021 the City shall report to the City Council on progress towards full implementation of and compliance with this ordinance.

**11.64.120 City of Berkeley: purchases prohibited**

The City of Berkeley shall not purchase any Disposable Foodware that does not comply with the Disposable Foodware Standards in Section 11.64.070, nor shall any City-

sponsored event utilize non-compliant Disposable Foodware.

**11.64.130 Liability and Enforcement**

- A. Anyone violating or failing to comply with any requirement of this chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a requirement of this chapter until one year after the effective date of such requirement.
- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 11.64.090.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

**11.64.140 Severability**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, 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 proscribed 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 City Council hereby declares that it would have passed this title, 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.

**11.64.150 Chapter supersedes existing laws and regulations**

The provisions of this chapter shall supersede any conflicting law or regulations..

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



ORDINANCE NO. -N.S.

ADDING CHAPTER 11.64 TO THE BERKELEY MUNICIPAL CODE TO ADOPT A  
SINGLE USE FOODWARE AND LITTER REDUCTION ORDINANCE

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

Section 1. That a new Chapter 11.64 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 11.64

SINGLE USE FOODWARE AND LITTER REDUCTION ~~ORDINANCE~~

Sections:

- 11.64.010 Purposes
- 11.64.020 Definitions
- 11.64.030 Accessory disposable foodware items
- 11.64.040 Reusable customer cups
- 11.64.050 Compostable disposable foodware
- 11.64.060 Reusable foodware for dining on the premises
- 11.64.070 Disposable foodware standards
- 11.64.080 Separate disposable foodware waste receptacles
- 11.64.090 Waivers
- 11.64.100 Regulations applicable to all prepared food vendors
- 11.64.110 Duties responsibilities and authority of the City of Berkeley
- 11.64.120 City of Berkeley: purchases prohibited
- 11.64.130 Liability and enforcement
- 11.64.140 Severability
- 11.64.150 ~~Ordinance-Chapter~~ supersedes existing laws and regulations

**11.64.010 Purposes.**

The council finds and declares as follows:

- A. Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, “clamshells” and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions.

- B. The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources, and plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world's oceans.
- C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health conditions.
- D. Food and beverage SUDs make up approximately 25% of all waste produced in California. In the Bay Area, food and beverage packaging comprises the majority of street litter, and is a significant contributor to the total amount of waste entering the City's waste stream.
- E. It is in the interest of the health, safety and welfare of all who live, work and do business in the City, that the amount of litter on public streets, parks and in other public places be reduced.
- F. The City of Berkeley must eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. Reduction of single-use food and beverage packaging furthers this goal.
- G. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan as amended in 2017, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

**11.64.020 Definitions.**

- A. "Prepared Food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing and which require no further preparation to be consumed. Prepared Food does not include raw uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed or raw uncooked meat products.
- B. "Takeout Food" means Prepared Food which is purchased to be consumed off a Prepared Food Vendor's premises. Takeout Food includes Prepared Food carried out by the customer or delivered by a Prepared Food Vendor or by a Takeout Food Delivery Service.

- C. "Prepared Food Vendor" means any establishment located within the City of Berkeley, including a Bakery, Cafeteria, Drive In, Food Products Store, Food Service Establishment (Carry Out, Quick Service, Full Service), Drugstore or Theater, as defined in BMC 23F.04, Mobile Food Facility, Temporary Food Facility (CA Health and Safety Code Sections 113831 and 113930 [and as amended](#)), bar and other similar establishment, selling Prepared Food to be consumed on and/or off its premises.
- D. "Disposable Foodware" means all containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids, sleeves, condiment containers, spill plugs, paper or foil wrappers, liners and any other items used to hold, serve, eat, or drink Prepared Food, which are designed for single use and in which Prepared Food is placed or packaged on a Prepared Food Vendor's premises.
- E. "Disposable Cup" is a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks, alcoholic beverages and other drinks.
- F. "Accessory Disposable Foodware Item" means any Disposable Foodware item such as straws, stirrers, napkins and utensils; condiment cups and packets; cup sleeves, tops, lids, and spill plugs; and other similar accessory or accompanying Disposable Foodware items used as part of food or beverage service or packaging.
- G. "Reusable Foodware" means all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.
- H. "Takeout Food Delivery Service" is a third party delivery service which picks up Takeout Food from a Prepared Food Vendor and delivers it to the customer for consumption off the premises.

**11.64.030 Accessory Disposable Foodware Items**

- A. Accessory Disposable Foodware items shall be provided only upon request by the customer or at self-serve stations, except that Disposable Cups for delivery by a Prepared Food Vendor or a Takeout Food Delivery Service may include tops, spill plugs and sleeves without request.

- B. Prepared Food Vendors and Takeout Food Delivery Services must provide options for customers to affirmatively request Accessory Disposable Foodware Items separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person.
- C. Prepared Food Vendors that customarily offer straws are encouraged to maintain a small supply of plastic-type straws which meet the Disposable Foodware Standards set forth in ~~section~~Section 11.64.070, which may be provided to customers upon specific request for a “plastic” straw.
- D. Prepared Food Vendors offering condiments are encouraged to use dispensers rather than pre-packaged disposable condiment packets.

**11.64.040 Reusable Customer Cups**

- A. Customers may provide their own Reusable Foodware cups for beverage service in accordance with California State Health Code 114075(e) ~~and~~ as amended. Prepared Food Vendors may refuse, at their sole discretion, any customer-provided Reusable Foodware cup that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage, or that appears to be excessively soiled or unsanitary, and instead require use of a Reusable Foodware cup for a beverage consumed on the premises, or a Disposable Cup for a beverage to be consumed off the premises, with any charge required pursuant to ~~section~~Section 11.64.050.D.

**11.64.050 Compostable Disposable Foodware**

Effective January 1, 2020:

- A. Takeout Food shall only be served in Disposable Foodware that conforms to the Disposable Foodware Standards ~~at in~~ Section 11.64.070.
- B. Accessory Disposable Foodware Items shall conform with the Disposable Foodware Standards ~~at in~~ Section 11.64.070.
- C. Takeout Food Delivery Services shall only deliver Takeout Food from a Prepared Food Vendor that is served in Disposable Foodware and with Accessory Disposable Foodware Items, if any, that conform to the Disposable Foodware Standards ~~at in~~ Section 11.64.070.
- D. Prepared Food Vendors shall charge customers twenty five cents (\$0.25) for every Disposable Cup provided.
  - ~~a.1.~~ a.1. Income from the Disposable Cup charge shall be retained by the Prepared Food Vendor for use in its discretion.

- ~~b.2.~~ 2. All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and as amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the Disposable Cup charge.
- ~~e.3.~~ 3. Charges for Disposable Cups shall be identified separately on menus, ordering platforms and menu boards and on any receipt provided to the customer. Customers placing orders by telephone shall be informed verbally of Disposable Cup charges.
- E. Notwithstanding the requirements at ~~section~~Sections 11.64.050, subsections ~~(A)-(C)~~, a Prepared Food Vendor may request a waiver or waivers pursuant to ~~section~~Section 11.64.090 for specific Disposable Foodware items. To obtain a waiver for a Disposable Foodware item, the Prepared Food Vendor must demonstrate that:
- ~~a.1.~~ 1. No Disposable Foodware item exists with substantially similar size, performance and/or utility that conforms with the Disposable Foodware Standards ~~at in s~~Section 11.64.070 or, if such an item exists, that costs of using such item would cause undue financial hardship, and;
- ~~b.2.~~ 2. The non-conforming Disposable Foodware item to be used in lieu of a conforming item is recyclable in the City of Berkeley recyclable collection program.
- ~~e.3.~~ 3. The Prepared Food Vendor must provide documentation of efforts to obtain a substantially similar compliant item at a non-prohibitive price.
- ~~d.4.~~ 4. Records of attempts to obtain a compliant item shall include:
- ~~i.a.~~ a. Emails, letters or other correspondence with two or more vendors that furnish Compostable Disposable Foodware, seeking the compliant item.
- ~~ii.b.~~ b. Responses from such Compostable Disposable Foodware vendors including, where applicable, specifications and pricing for such item.
- ~~iii.c.~~ c. Specifications and pricing for the recyclable non-conforming item sought to be used, demonstrating its substantial superiority and/or affordability, and

~~iv.d.~~ Any other records which demonstrate a good faith effort to comply with Disposable Foodware Standards for such item.

~~e.5.~~ Reasonable added cost for a conforming item as compared to a substantially similar recyclable non-conforming item shall not by itself constitute adequate grounds to support a waiver for such item.

**11.64.060 Reusable Foodware for Dining on the Premises (i.e. “Eating-in”)**

Effective July 1, 2020:

- A. Prepared Food served for consumption on the premises of a Prepared Food Vendor shall only be served using Reusable Foodware, except that disposable paper food wrappers, foil wrappers, paper napkins, straws and paper tray- and plate-liners shall be allowed for dining on the premises, so long as they meet the Disposable Foodware Standards in ~~section~~Section 11.64.070.
- B. Notwithstanding the requirements at ~~section~~Section 11.64.060 ~~(A)~~, Prepared Food Vendors that do not have on-site or off-site dishwashing capacity or are unable to contract for services to wash, rinse and sanitize Reusable Foodware in compliance with the California Health Code may request a waiver or partial waiver pursuant to Section 11.64.090. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints and/or undue financial hardship.
- C. All Disposable Foodware used on the premises by Prepared Food Vendors that are operating under full or partial waivers obtained pursuant to 11.64.090 shall conform to the Disposable Foodware Standards in Section 11.64.070.
- D. Zoning permits and Business Licenses for Prepared Food Vendors applied for, renewed and/or deemed complete on or after the effective date of this ordinance ~~January 1, 2019~~ shall only be granted to Prepared Food Vendors that demonstrate compliance with section 11.64.060 ~~(A)~~. Installation and/or maintenance of appropriate dishwashing capacity in conformance with section 11.64.060 ~~(A)~~ shall be included as a specific condition of approval for such permits and licenses.

**11.64.070 Disposable Foodware Standards**

- A. Disposable Foodware must be accepted by City of Berkeley municipal compost collection programs and be free of all intentionally added fluorinated chemicals, as certified by the Biodegradable Product Institute or other independent third party certifying organization or agency recognized by the City, except that non-

compostable foil wrappers that are accepted in the City of Berkeley recyclable collection program may be used for burritos, wraps, and other items that require foil to contain and form the food item.

- B. The City shall maintain on its website a list of suppliers that offer Disposable Foodware that complies with these Disposable Foodware Standards.
- C. Changes, if any, to Disposable Foodware Standards shall become effective on January 1 of each calendar year, and the City of Berkeley shall provide notice of any such changes to Prepared Food Vendors at least 90 days prior.

**11.64.080 Separate Disposable Foodware Waste Receptacles**

All Prepared Food Vendors, except Full Service Restaurants as defined in Chapter 23F.04 of the Berkeley Municipal Code, must provide at least one easily accessed receptacle each for discarded items to be composted or recycled, and, if needed, to be landfilled or otherwise wasted.

- A. To the extent possible given space constraints, all three receptacles should be placed together in the same location.
- B. The City shall identify materials accepted for each collection program on the City's website, and signage must be posted on and/or above each receptacle, indicating the materials to be deposited into such receptacle. Receptacles and signage shall be color-coded as follows:
  - ~~a~~.1. \_\_\_\_\_ Blue for recyclables
  - ~~b~~.2. \_\_\_\_\_ Green for compostables
  - ~~c~~.3. \_\_\_\_\_ Black or gray for items to be landfilled or otherwise wasted
- C. Prepared Food Vendors that share premises may share receptacles.

**11.64.090 Waivers**

- A. The City Manager shall prescribe and adopt rules, regulations and forms for Prepared Food Vendors to obtain full or partial waivers from any requirement of this ordinance that is explicitly subject to waiver.
- B. Waivers shall be granted by the City Manager or his or her agents, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.
- C. The City Manager or his or her agents shall act on a waiver application no later than 180 days after receipt of such application, including mailing written

notification of the City Manager's decision to the address supplied by the applicant.

- D. Waivers may be granted for a specified period of up to two (2) years. During the waiver period, the Prepared Food Vendor shall make diligent efforts to become compliant.
- E. Under extraordinary circumstances, should a Prepared Food Vendor demonstrate that, at the close of a granted waiver period, and with diligent efforts to become compliant, compliance remains infeasible, additional waivers of up to two (2) years each may be granted. It shall be the Prepared Food Vendor's responsibility to apply for any subsequent waivers in a timely manner.

**11.64.100 Regulations applicable to all Prepared Food Vendors**

- A. Each Prepared Food Vendor shall maintain written records evidencing compliance with this Chapter.
- B. All records required by this Chapter shall be made available for inspection by the City Manager or his or her designated representative. It shall be unlawful for anyone having custody of such records to fail or refuse to produce such records upon request by the City Manager or his or her designated representative.
- C. All charges collected by the Prepared Food Vendor pursuant to ~~section~~Section 11.64.050 of this Chapter and retained by the Prepared Food Vendor may be used only for the following purposes:
  - ~~a.~~a.1.        Costs associated with complying with the requirements of this Chapter.
  - ~~b.~~b.2.        Actual costs of labor, equipment and materials for washing Reusable Foodware and providing customers with Reusable Foodware; costs of providing customers with compliant compostable Disposable Foodware; costs for reducing litter; and other costs associated with reducing the use of Disposable Foodware and litter.
  - ~~c.~~c.3.        Costs associated with a store's educational materials or educational campaign for reducing and/or encouraging the reduction of Disposable Foodware and litter.
  - ~~d.~~d.4.        Costs associated with supplying customers with Reusable Foodware for Takeout Food that can be returned to the business for washing or as part of a City-wide system of Reusable Foodware for Takeout Food.

**11.64.110 Duties responsibilities and authority of the City of BerkeleyCity Manager's Powers**

The City Manager shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter and is hereby authorized to take any



and all actions reasonable and necessary to enforce this chapter including, but not limited to, inspecting any Prepared Food Vendor's premises to verify compliance.

- A. In June of 2021 the City shall report to the City Council on progress towards full implementation of and compliance with this ordinance.

#### **11.64.120 City of Berkeley: purchases prohibited**

The City of Berkeley shall not purchase any Disposable Foodware that does not comply with the Disposable Foodware Standards ~~at in~~ Section 11.64.070, nor shall any City-sponsored event utilize non-compliant Disposable Foodware.

#### **11.64.130 Liability and Enforcement**

- A. Anyone violating or failing to comply with any requirement of this chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a requirement of this chapter until one year after the effective date of such requirement.
- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 11.64.090.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

#### **11.64.140 Severability**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, 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 proscribed 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 City Council hereby declares that it would have passed this title, 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. If any part or provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this chapter are severable.

**11.64.150 Ordinance Chapter supersedes existing laws and regulations**

The provisions of this chapter shall supersede any conflicting law or regulation~~s~~  
~~restricting the use of polystyrene foam.~~

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Berkeley City Council, District 5  
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Berkeley, CA 94704  
(510) 981-7150  
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ACTION CALENDAR

January 22, 2019

*(Continued from December 11, 2018)*

To: Honorable Mayor and Members of the City Council  
From: Councilmember Sophie Hahn and Mayor Jesse Arreguin  
Subject: Single Use Disposable Foodware and Litter Reduction Ordinance

RECOMMENDATION

1. Adopt a first reading of the Single Use Foodware and Litter Reduction Ordinance.
2. Refer to the City Manager to:
  - a. Establish a mini-grant program administered and funded either directly by the City or by community partners to help Prepared Food Vendors with one-time costs associated with conversion to Reusable Foodware for eating on the premises (“eating-in”), to be launched by January 1, 2020 (six months before the date Reusable Foodware requirements become effective).
  - b. Establish a program administered and funded either directly by the City or by community partners to provide technical assistance to Prepared Food Vendors implementing the Single Use Foodware Ordinance, on a free or sliding-scale fee basis, to be launched by July 1, 2019.
  - c. Create a Reusable Takeout Foodware program for launch July 1, 2021, in collaboration with community partners such as the Ecology Center, Rethink Disposables and StopWaste
  - d. Draft for approval amendments to the Single Use Foodware and Litter Reduction Ordinance to implement the Reusable Takeout Foodware program as an alternative to Compostable Takeout Foodware, and impose a charge, similar to or the same as the Disposable Cup charge, on other Disposable Foodware containers.
  - e. Create a program to expand and support composting, to ensure Single Use Disposable Foodware is actually composted.
3. Refer to the City Manager to determine funding and staffing needs and sources of funds for each program/phase, and submit funding allocations or requests to the budget process.

## FINANCIAL IMPLICATIONS

Reducing use and disposal of products that make up the majority of Berkeley's street and storm-drain litter has the potential to significantly lower City expenses including costs related to collection of debris from over 400 city trash receptacles, from clearing of clogged stormwater intakes city-wide, and from daily street sweeping and litter management. Even for "recyclable" items that are properly placed in a recycling bin, these items are costly to sort and process and have limited markets resulting in additional costs to the City. Many of these items result in contamination to the composting program which increase the cost of composting.

Staff time will be required to launch programs related to the Single Use Foodware and Litter Reduction Ordinance. Some programs and services may be provided by community partners at relatively low cost. Once launched, staff time for administration and enforcement of the Ordinance will be limited.

Costs, sources of funding and community partnerships to be determined by the City Manager.

## BACKGROUND

Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, "clamshells" and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions. The use of disposable foodware has grown exponentially over the past few decades. Because the environmental costs of these products is largely hidden to the business operator and consumer, little attention is paid to the quantity of packaging consumed and quickly thrown away. Reducing the use of SUDs in the City of Berkeley is a key strategy to achieve the City's Zero Waste and Climate Action goals, and to address the many environmental impacts and costs associated with the use and disposal of single-use foodware and packaging. SUDs often become litter therefore minimizing their use will assist the City with achieving stormwater program requirements and could reduce costs for maintenance of full trash capture devices that the City has installed in stormdrains.

### ***Environmental Impacts of Single-Use Disposables***

The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources. It is a major component of litter on streets and in waterways, and of the plastic polluting our air, food, drinking water and oceans.

- Food and beverage SUDs make up approximately 25% of all waste produced in California.<sup>1</sup>
- Bay Area litter studies have found that food and beverage packaging comprises the majority of street litter.<sup>2</sup>
- Without dramatic systems change, by 2050, there will be more plastic in the ocean than fish.<sup>3</sup>
- Based on Berkeley's population of approximately 120,000 people, it is estimated that almost 40 million single use cups are used in the City of Berkeley every year.

Most SUDs are used for just a few minutes before becoming waste, while most are made to last for hundreds and even thousands of years, and have broad, long-lasting negative impacts. Plastics in waterways and oceans break down into smaller pieces (but do not biodegrade) and are present in most of the world's oceans, at all levels (surface, water column, and bottom).<sup>4</sup>

Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater<sup>5</sup>, which can transfer to fish, other seafood, and salt that is eventually sold for human consumption.<sup>6</sup> Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health effects including kidney and testicular cancer, thyroid disruption, delayed puberty and obesity.<sup>7</sup>

### **Strategies to Regulate SUDs**

Alameda County implemented its reusable bag ordinance in January 2013, and has seen dramatic results. Countywide, bag purchases by affected retail stores have declined by 85 percent. The number of shoppers bringing a reusable bag to affected stores, or not using a bag at all, has more than doubled during this time<sup>8</sup>. Globally, a number of strategies have been implemented to reduce the use of SUDs. Charges for

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<sup>1</sup> <https://www.wastedive.com/news/are-the-packaging-wars-coming-to-california/508491/>

<sup>2</sup> See Clean Water Action's "Taking out the Trash" Bay Area Litter study (2011) [http://www.cleanwateraction.org/files/publications/ca/Curr\\_CA\\_12%2012%2011final.pdf](http://www.cleanwateraction.org/files/publications/ca/Curr_CA_12%2012%2011final.pdf) ; California Coastal Cleanup Results 1989-2014 showing Food and Beverage packaging items are 7 out of the top 10 items collected and account for 34% of the total trash - <https://www.coastal.ca.gov/publiced/ccd/history.html#top10> ; BanList 2.0 shows food and beverage packaging items are 74% of top 20 littered items among 6 different beach cleanup datasets- <https://upstreampolicy.org/ban-list-20>

<sup>3</sup> Ellen MacArthur Foundation (2016)

<sup>4</sup> D. Barnes et al, 2009, *Accumulation and fragmentation of plastic debris in global environments*, Phil. Trans. R. Soc. B., 364-1985-98.

<sup>5</sup> Rochman, C.M., et al., 2013, Long-Term Field Measurement of Sorption of Organic Contaminants to Five Types of Plastic Pellets: Implications for Plastic Marine Debris. *Environmental Science and Technology*. 47, 1646–1654.

<sup>6</sup> Rochman C Met al, 2015a Anthropogenic debris in seafood: plastic debris and fibers from textiles in fish and bivalves sold for human consumption *Sci. Rep.* 5 14340.

<sup>7</sup> In 2015, the FDA barred from use three such fluorinated chemicals from food contact materials due to safety risks associated with cancer, toxicity, and other health effects; other fluorinated chemicals have similar chemical structures and pose similar risk.

<sup>8</sup> "Successful Results from Bag Ordinance", 2014, Alameda County Waste Management authority, <http://reusablebagsac.org/news/successful-results-bag-ordinance>

single-use plastic bags have proven to decrease plastic bag consumption. When Ireland instituted a “Plas-Tax” in 2002, equivalent to about 20 cents per bag, plastic bag use declined by 90% and litter from plastic bags declined by 40%<sup>9</sup>. Similar charges have been implemented in Taiwan, Washington D.C., and the United Kingdom, resulting in decreases in plastic bag use of up to 80%. A 2016 plastic bag ban in California reduced the number of plastic bags found on beaches by half.<sup>10</sup> Studies have also shown that customers in areas with taxes on single use bags were more likely to use reusable bags.<sup>11</sup>

There is growing support for reducing the use of other single use disposables. Ireland is considering banning single use coffee cups, with 50% of the population surveyed in support.<sup>12</sup> The European Union announced in 2018 that it is implementing a policy for all plastic packaging to be recyclable or reusable by 2030.<sup>13</sup> Taiwan will be imposing charges for straws, plastic shopping bags, disposable utensils, and beverage cups by 2025, and will impose a complete ban on single-use plastic items, including straws, cups, and shopping bags, by 2030.<sup>14</sup>

### ***Reducing SUDs in the City of Berkeley***

The City of Berkeley has a long history of leadership in sustainability and environmental protections including the adoption of an ambitious Climate Action Plan in 2009, with a goal of achieving Zero Waste by 2020; the nation’s first curbside recycling program and styrofoam foodware ban; and one of the first commercial organics collection programs. The city reached a height of 78% waste diversion by AB 939 standards, and there has been a 50% reduction in solid waste disposal between 2000 to 2013<sup>15</sup>. Despite these achievements, Berkeley has not addressed the significant increase in takeout food packaging littering city streets, filling storm drains, requiring management in the waste stream, polluting our waterways, Bay and ocean, and threatening both human and animal health.

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<sup>9</sup> Mauro Anastasio and James Nix, Plastic Bag Levy in Ireland, Institute European Environmental Policy, 2016. <https://ieep.eu/uploads/articles/attachments/7f91cb97-8cb7-49c39cf0d34062a9192e/IE%20Plastic%20Bag%20Levy%20conference%20draft.pdf?v=63673818840>

<sup>10</sup> <http://www.latimes.com/opinion/editorials/la-ed-plastic-bag-ban-anniversary-20171118-story.html>

<sup>11</sup> T. A. Homonoff, *Can Small Incentives Have Large Effects? The Impact of Taxes versus Bonuses on Disposable Bag Use* National Tax Association Proceedings, Princeton University- <http://ntanet.org/wp-content/uploads/proceedings/2012/008-homonoff-can-small-incentives-2012-nta-proceedings.pdf>

<sup>12</sup> <http://www.thejournal.ie/coffee-cups-poll-3642333-Oct2017/>

<sup>13</sup> European Commission, EU Plastics Strategy-[http://ec.europa.eu/environment/waste/plastic\\_waste.htm](http://ec.europa.eu/environment/waste/plastic_waste.htm)

<sup>14</sup> “Taiwan to ban disposable plastic items by 2030,” February 22, 2108- <https://phys.org/news/2018-02-taiwan-disposable-plastic-items.html>

<sup>15</sup> Berkeley Climate Action Plan: Tracking our Progress Waste Reduction & Recycling – Total Landfilled, [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/PDF%20total%20landfilled%20final.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/PDF%20total%20landfilled%20final.pdf)

In addition, SUDs are particularly costly and challenging to divert from landfill. Non-recyclable food and beverage packaging is costly to remove from the waste stream and reduces the quality and value of recyclables, while non-compostable food packaging (some of which is advertised as “biodegradable” or “made from plants” which misleads consumers to believe it is compostable) contaminates compost, adding costs and reducing the quality of compost<sup>16</sup>. With China’s recent rejection of mixed recycled plastic imports, the value of recyclable plastics has dropped sharply and the final destination for these plastic SUDs is uncertain. This adds significant costs to the City’s collection, sorting, and processing of compostables and recyclables. To reach its Zero Waste goals, the City must reduce use of single-use food and beverage packaging.

Thanks to the leadership of Berkeley’s Ecology Center, working closely with UpStream, Clean Water Action, the Clean Water Fund, Story of Stuff, Surfrider Foundation, GAIA (Global Alliance for Incinerator Alternatives), the Green Science Policy Institute, Excellent Packaging, and numerous active residents and volunteers, the City Council unanimously referred a proposed Single Use Disposable Foodware and Litter Reduction ordinance to the Zero Waste Commission on April 24, 2018.

The Zero Waste Commission was tasked with review of the proposed ordinance and the conduct of community meetings to gather feedback on the proposed ordinance, and make recommendations. Since that time, the Zero Waste Commission Foodware Subcommittee conducted 4 community meetings between June and September of 2018, and collected comments from over 60 restaurateurs, environmental advocates, members of the disability community, and other community members. Meetings were held on different days and times of the day, at locations throughout Berkeley, and were noticed to the restaurant and food service community with the help of the City’s Economic Development staff. The Commission analyzed comments received in writing and through public testimony, and on September 24, 2018 unanimously referred their findings to the City Council (Attachment 2).

In addition, Councilmember Hahn met on-site with the owners of three restaurants that expressed concerns about implementation of the proposed ordinance, reviewing their current practices and challenges. All three have already implemented important measures to reduce the use of harmful Single Use Disposables, and shared important insights.

### ***Ordinance Elements***

The attached ordinance (Attachment 1) incorporates many of the Zero Waste Commission’s recommendations and makes a number of changes to accommodate

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<sup>16</sup> Clean Water Action, *What’s in the Package?* 2016 <https://www.cleanwateraction.org/features/what%E2%80%99s-package>

concerns and questions that were discussed as part of the Commission's public process. Changes include:

- Phasing-in elements of the ordinance, to allow Prepared Food Vendors time to adjust practices.
- Opportunities for limited exemptions, based on demonstrated hardship or extraordinary circumstances.
- Establishment of mini-grant and technical assistance programs, to help Prepared Food Vendors transition to Reusable and Compostable Foodware.
- Elimination of charges for all Single Use Disposable Foodware, except for cups, pending establishment of a Reusable Takeout Foodware program.
- Addition of standards for Prepared Food Vendors to reject customer-supplied cups that appear inappropriate or unsanitary.
- Addition of a recommendation that Prepared Food Vendors customarily offering straws keep a supply of compostable bioplastic straws for use by individuals specifically requesting "plastic" straws.
- Enforcement with notice and opportunities to cure, either by adopting practices or obtaining a waiver, if warranted, prior to imposition of fines or other penalties.

#### ***City Manager Referral Components***

To complement the roll out of the Single Use Disposable Foodware and Litter Reduction Ordinance, the Zero Waste Commission recommends a number of City-sponsored programs to support implementation of the Ordinance's requirements, including:

- A mini-grant program to help cover one-time costs associated with the transition to Reusable Foodware for on-site dining;
- Technical assistance to support implementation of ordinance requirements.

Both programs must be operative by June 2019, six months before the key elements of the ordinance take effect.

It is incumbent upon the City to further expand composting resources – potentially including compost receptacles - for residents and customers. Many restaurants do provide composting receptacles in-store currently, but many residential countertop kitchen pails are too small to accommodate a significant increase in compostable foodware which is expected with widespread adoption of the Single Use Foodware and Litter Reduction Ordinance. The expansion of composting collection efforts also supports the goals and requirements of AB1826 and SB1383 to divert organics from the landfill. .



ENVIRONMENTAL SUSTAINABILITY

The production, consumption and disposal of single use food and beverage packaging is a major contributor to litter in our streets, plastic in landfills, pollution in waterways and oceans, GHG emissions, and harm to wildlife. This environmental ordinance represent a huge step forward in reducing the use of disposable foodware in Berkeley, fulfilling Berkeley's Zero Waste and Climate Action Goals, reducing greenhouse gas emissions 80% by 2050, and meeting State trash load level mandates.

CONTACT PERSON

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

Mayor Jesse Arreguín, (510) 981-7100

Attachments

1. Single Use Foodware and Litter Reduction Ordinance, amended to incorporate Zero Waste Commission recommendations
2. Zero Waste Commission recommendations to City Council, September 24, 2018
3. Referral to the Zero Waste Commission: Berkeley Single Use Foodware and Litter Reduction Ordinance, April 24, 2018

ORDINANCE NO. -N.S.

ADDING CHAPTER 11.64 TO THE BERKELEY MUNICIPAL CODE TO ADOPT A  
SINGLE USE FOODWARE AND LITTER REDUCTION ORDINANCE

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

Section 1. That a new Chapter 11.64 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 11.64

SINGLE USE FOODWARE AND LITTER REDUCTION ORDINANCE

Sections:

- 11.64.010 Purposes
- 11.64.020 Definitions
- 11.64.030 Accessory disposable foodware items
- 11.64.040 Reusable customer cups
- 11.64.050 Compostable disposable foodware
- 11.64.060 Reusable foodware for dining on the premises
- 11.64.070 Disposable foodware standards
- 11.64.080 Separate disposable foodware waste receptacles
- 11.64.090 Waivers
- 11.64.100 Regulations applicable to all food vendors
- 11.64.110 Duties responsibilities and authority of the City of Berkeley
- 11.64.120 City of Berkeley: purchases prohibited
- 11.64.130 Liability and enforcement
- 11.64.140 Severability
- 11.64.150 Ordinance supersedes existing laws and regulations

**11.64.010 Purposes.**

The council finds and declares as follows:

- A. Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, "clamshells" and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions.

- B. The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources, and plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world's oceans.
- C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health conditions.
- D. Food and beverage SUDs make up approximately 25% of all waste produced in California. In the Bay Area, food and beverage packaging comprises the majority of street litter, and is a significant contributor to the total amount of waste entering the City's waste stream.
- E. It is in the interest of the health, safety and welfare of all who live, work and do business in the City, that the amount of litter on public streets, parks and in other public places be reduced.
- F. The City of Berkeley must eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. Reduction of single-use food and beverage packaging furthers this goal.
- G. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan as amended in 2017, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

**11.64.020 Definitions.**

- A. "Prepared Food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing and which require no further preparation to be consumed. Prepared Food does not include raw uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed or raw uncooked meat products.
- B. "Takeout Food" means Prepared Food which is purchased to be consumed off a Prepared Food Vendor's premises. Takeout Food includes Prepared Food carried out by the customer or delivered by a Prepared Food Vendor or by a Takeout Food Delivery Service.

- C. "Prepared Food Vendor" means any establishment located within the City of Berkeley, including a Bakery, Cafeteria, Drive In, Food Products Store, Food Service Establishment (Carry Out, Quick Service, Full Service), Drugstore or Theater, as defined in BMC 23F.04, Mobile Food Facility, Temporary Food Facility (CA Health and Safety Code Sections 113831 and 113930), bar and other similar establishment, selling Prepared Food to be consumed on and/or off its premises.
- D. "Disposable Foodware" means all containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids, sleeves, condiment containers, spill plugs, paper or foil wrappers, liners and any other items used to hold, serve, eat, or drink Prepared Food, which are designed for single use and in which Prepared Food is placed or packaged on a Prepared Food Vendor's premises.
- E. "Disposable Cup" is a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks, alcoholic beverages and other drinks.
- F. "Accessory Disposable Foodware Item" means any Disposable Foodware item such as straws, stirrers, napkins and utensils; condiment cups and packets; cup sleeves, tops, lids, and spill plugs; and other similar accessory or accompanying Disposable Foodware items used as part of food or beverage service or packaging.
- G. "Reusable Foodware" means all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.
- H. "Takeout Food Delivery Service" is a third party delivery service which picks up Takeout Food from a Prepared Food Vendor and delivers it to the customer for consumption off the premises.

**11.64.030 Accessory Disposable Foodware Items**

- A. Accessory Disposable Foodware items shall be provided only upon request by the customer or at self-serve stations, except that Disposable Cups for delivery by a Prepared Food Vendor or a Takeout Food Delivery Service may include tops, spill plugs and sleeves without request.

- B. Prepared Food Vendors and Takeout Food Delivery Services must provide options for customers to affirmatively request Accessory Disposable Foodware Items separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person.
- C. Prepared Food Vendors that customarily offer straws are encouraged to maintain a small supply of plastic-type straws which meet the Disposable Foodware Standards set forth in section 11.64.070, which may be provided to customers upon specific request for a “plastic” straw.
- D. Prepared Food Vendors offering condiments are encouraged to use dispensers rather than pre-packaged disposable condiment packets.

**11.64.040 Reusable Customer Cups**

- A. Customers may provide their own Reusable Foodware cups for beverage service in accordance with California State Health Code 114075(e). Prepared Food Vendors may refuse, at their sole discretion, any customer-provided Reusable Foodware cup that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage, or that appears to be excessively soiled or unsanitary, and instead require use of a Reusable Foodware cup for a beverage consumed on the premises, or a Disposable Cup for a beverage to be consumed off the premises, with any charge required pursuant to section 11.64.050.D.

**11.64.050 Compostable Disposable Foodware**

Effective January 1, 2020:

- A. Takeout Food shall only be served in Disposable Foodware that conforms to the Disposable Foodware Standards at section 11.64.070.
- B. Accessory Disposable Foodware Items shall conform with the Disposable Foodware Standards at 11.64.070.
- C. Takeout Food Delivery Services shall only deliver Takeout Food from a Prepared Food Vendor that is served in Disposable Foodware and with Accessory Disposable Foodware Items, if any, that conform to the Disposable Foodware Standards at 11.64.070.
- D. Prepared Food Vendors shall charge customers twenty five cents (\$0.25) for every Disposable Cup provided.
  - a. Income from the Disposable Cup charge shall be retained by the Prepared Food Vendor.

- b. All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the Disposable Cup charge.
  - c. Charges for Disposable Cups shall be identified separately on menus, ordering platforms and menu boards and on any receipt provided to the customer. Customers placing orders by telephone shall be informed verbally of Disposable Cup charges.
- E. Notwithstanding the requirements at sections 11.64.050(A)-(C), a Prepared Food Vendor may request a waiver or waivers pursuant to section 11.64.090 for specific Disposable Foodware items. To obtain a waiver for a Disposable Foodware item, the Prepared Food Vendor must demonstrate that:
- a. No Disposable Foodware item exists with substantially similar size, performance and/or utility that conforms with the Disposable Foodware Standards at section 11.64.070 or, if such an item exists, that costs of using such item would cause undue financial hardship, and;
  - b. The non-conforming Disposable Foodware item to be used in lieu of a conforming item is recyclable in the City of Berkeley recyclable collection program.
  - c. The Prepared Food Vendor must provide documentation of efforts to obtain a substantially similar compliant item at a non-prohibitive price.
  - d. Records of attempts to obtain a compliant item shall include:
    - i. Emails, letters or other correspondence with two or more vendors that furnish Compostable Disposable Foodware, seeking the compliant item.
    - ii. Responses from such Compostable Disposable Foodware vendors including, where applicable, specifications and pricing for such item.
    - iii. Specifications and pricing for the recyclable non-conforming item sought to be used, demonstrating its substantial superiority and/or affordability, and
    - iv. Any other records which demonstrate a good faith effort to comply with Disposable Foodware Standards for such item.

- e. Reasonable added cost for a conforming item as compared to a substantially similar recyclable non-conforming item shall not by itself constitute adequate grounds to support a waiver for such item.

**11.64.060 Reusable Foodware for Dining on the Premises (i.e. “Eating-in”)**

Effective July 1, 2020:

- A. Prepared Food served for consumption on the premises of a Prepared Food Vendor shall only be served using Reusable Foodware, except that disposable paper food wrappers, foil wrappers, paper napkins, straws and paper tray- and plate-liners shall be allowed for dining on the premises, so long as they meet the Disposable Foodware Standards in section 11.64.070.
- B. Notwithstanding the requirements at section 11.64.060(A), Prepared Food Vendors that do not have on-site or off-site dishwashing capacity or are unable to contract for services to wash, rinse and sanitize Reusable Foodware in compliance with the California Health Code may request a waiver or partial waiver pursuant to 11.64.090. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints and/or undue financial hardship.
- C. All Disposable Foodware used on the premises by Prepared Food Vendors that are operating under full or partial waivers obtained pursuant to 11.64.090 shall conform to the Disposable Foodware Standards in 11.64.070.
- D. Zoning permits and Business Licenses for Prepared Food Vendors applied for, renewed and/or deemed complete on or after January 1, 2019 shall only be granted to Prepared Food Vendors that demonstrate compliance with section 11.64.060(A). Installation and/or maintenance of appropriate dishwashing capacity in conformance with section 11.64.060(A) shall be included as a specific condition of approval for such permits and licenses.

**11.64.070 Disposable Foodware Standards**

- A. Disposable Foodware must be accepted by City of Berkeley municipal compost collection programs and be free of all intentionally added fluorinated chemicals, as certified by the Biodegradable Product Institute or other independent third party certifying organization or agency recognized by the City, except that non-compostable foil wrappers that are accepted in the City of Berkeley recyclable collection program may be used for burritos, wraps, and other items that require foil to contain and form the food item.

- B. The City shall maintain on its website a list of suppliers that offer Disposable Foodware that complies with these Disposable Foodware Standards.
- C. Changes, if any, to Disposable Foodware Standards shall become effective on January 1 of each calendar year, and the City of Berkeley shall provide notice of any such changes to Prepared Food Vendors at least 90 days prior.

**11.64.080 Separate Disposable Foodware Waste Receptacles**

All Prepared Food Vendors, except Full Service Restaurants as defined in Chapter 23F.04 of the Berkeley Municipal Code, must provide at least one easily accessed receptacle each for discarded items to be composted or recycled, and, if needed, to be landfilled or otherwise wasted.

- A. To the extent possible given space constraints, all three receptacles should be placed together in the same location.
- B. The City shall identify materials accepted for each collection program on the City's website, and signage must be posted on and/or above each receptacle, indicating the materials to be deposited into such receptacle. Receptacles and signage shall be color-coded as follows:
  - a. Blue for recyclables
  - b. Green for compostables
  - c. Black or gray for items to be landfilled or otherwise wasted
- C. Prepared Food Vendors that share premises may share receptacles.

**11.64.090 Waivers**

- A. The City Manager shall prescribe and adopt rules, regulations and forms for Prepared Food Vendors to obtain full or partial waivers from any requirement of this ordinance that is explicitly subject to waiver.
- B. Waivers shall be granted by the City Manager or his or her agents, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.
- C. The City Manager or his or her agents shall act on a waiver application no later than 180 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.
- D. Waivers may be granted for a specified period of up to two (2) years. During the waiver period, the Prepared Food Vendor shall make diligent efforts to become compliant.



- E. Under extraordinary circumstances, should a Prepared Food Vendor demonstrate that, at the close of a granted waiver period, and with diligent efforts to become compliant, compliance remains infeasible, additional waivers of up to two (2) years each may be granted. It shall be the Prepared Food Vendor's responsibility to apply for any subsequent waivers in a timely manner.

**11.64.100 Regulations applicable to all Prepared Food Vendors**

- A. Each Prepared Food Vendor shall maintain written records evidencing compliance with this Chapter.
- B. All records required by this Chapter shall be made available for inspection by the City Manager or his or her designated representative. It shall be unlawful for anyone having custody of such records to fail or refuse to produce such records upon request by the City Manager or his or her designated representative.
- C. All charges collected by the Prepared Food Vendor pursuant to section 11.64.050 of this Chapter and retained by the Prepared Food Vendor may be used only for the following purposes:
  - a. Costs associated with complying with the requirements of this Chapter.
  - b. Actual costs of labor, equipment and materials for washing Reusable Foodware and providing customers with Reusable Foodware; costs of providing customers with compliant compostable Disposable Foodware; costs for reducing litter; and other costs associated with reducing the use of Disposable Foodware and litter.
  - c. Costs associated with a store's educational materials or educational campaign for reducing and/or encouraging the reduction of Disposable Foodware and litter.
  - d. Costs associated with supplying customers with Reusable Foodware for Takeout Food that can be returned to the business for washing or as part of a City-wide system of Reusable Foodware for Takeout Food.

**11.64.110 City Manager's Powers**

- A. The City Manager shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter and is hereby authorized to take any and all actions reasonable and necessary to enforce this chapter including, but not limited to, inspecting any Prepared Food Vendor's premises to verify compliance.
- B. In June of 2021 the City shall report to the City Council on progress towards full implementation of and compliance with this ordinance.

**11.64.120 City of Berkeley: purchases prohibited**

The City of Berkeley shall not purchase any Disposable Foodware that does not comply with the Disposable Foodware Standards at Section 11.64.070, nor shall any City-sponsored event utilize non-compliant Disposable Foodware.

**11.64.130 Enforcement**

- A. Anyone violating or failing to comply with any requirement of this chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a requirement of this chapter until one year after the effective date of such requirement.
- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to 11.64.090.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

**11.64.140 Severability**

If any part or provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this chapter are severable.

**11.64.150 Ordinance supersedes existing laws and regulations**

The provisions of this chapter shall supersede any conflicting law or regulation restricting the use of polystyrene foam.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

## Zero Waste Commission Recommendations for the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance

*Note that comments may not be verbatim, and that “recyclable” materials refer ONLY to those accepted in the City’s Curbside Recycling Collection Program.*

### **TOPIC: Requiring Durable/Reusable Foodware for DINING-IN**

Comments received:

- Space concerns for installing washing machines/water usage/reusable ware
- Durable foodware poses a safety threat to employees if used as projectiles (comment from Top Dog)
- Labor costs to train and require employees to wash durable food ware

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Provide free technical assistance to help food establishments plan operations and equipment changes
- Provide small grants or loans to help defray the up-front costs of purchasing reusable foodware and re-configuring kitchens
- Allow private off-site washing/cleaning services to provide service in lieu of on-site cleaning.
- Exempt certain establishments from the 100% reusable requirement on a case-by-case basis, if they can prove it was impossible to implement all requirements due to unique considerations, so long as a good faith effort is made to do the most possible to achieve goals of ordinance.
- Compostable items used in any case where use of reusables are determined non-implementable by City.
- City-wide funded education program for businesses to transition to requirements of ordinance.
- Provide fact-sheet/FAQ for businesses

### **TOPIC: Collection and Documentation of SUD Charge-Added complexity/logistics**

Comments Received:

- Multiple business owners expressed concern about how to implement the SUD charge.
- Need clarification on how to enter line item(s) for SUD charges? (Ex: Does a customer who orders a soup, salad, and sandwich need three SUD line items, each item to be documented?)
- Limited/low quality of labor and high cost of business makes this a real issue
- Many people do not request a receipt - is this non-compliant with ordinance requiring public notification of charge?

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Clarify requirements for reporting line-item charges on receipts (virtual or hardcopy)
- Provide fact-sheet/FAQ for businesses

**TOPIC: Ordinance targets prepared/served food produced in-house for take-out, while exempting other waste generating food-serving establishments (ex: pre-packaged take-out food from grocery stores, coffee chains, movie theaters).**

Comments:

- Food that is trucked in (examples: Trader Joe's salads, to-go prepared food at grocery stores, coffee chains) can be packed in any container with no fee, thus targeting small, local businesses.
- Similarly, will a fountain drink in a SUD is subject to a charge, but not a can of soda.
- Movie theaters do not have kitchens, cannot be expected to convert to reusables, request exemption from SUD charges.

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Phased approach to charge for take-out food ware, to ensure equity across businesses in Berkeley
- Examine ways to require compostable containers for prepared foods from other establishments besides those that produce food on-site for take-out (ex: grocery stores, coffee store chains)
- Include movie theaters for conversion to compostables if reusables are not possible.

**TOPIC: Availability of alternative compostable containers to contain all foods for take-out.**

Comments:

- No compostable containers exist that can hold items at 180F degrees
- No acceptable alternatives to plastic are currently available for all types of food condiments

Suggestion:

- Exempt items with no reasonable alternatives until acceptable/compliant items are available in the market Alternatives should be compostable or recyclable.
- City should work with recognized industry organizations for accepted standards of "best" items that comply with compostability and health concerns (ex: BPI) in order to develop approved list of compliant items

**TOPIC: Ordinance does not ensure compostable/recyclable SUD items will end up in proper source-separated stream.**

Comments:

- If SUDs are required to be compostable or recyclable, it is still likely these items will end up in landfill, based on consumer behavior and availability of recycle/compost collection containers. Suggest a focus on downstream user, as it is a known issue that waste streams are often poorly sorted.
- Overseas markets are no longer accepting our plastics, and they are harming the environment with litter and chemicals/degradation

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Funded City-wide program to educate consumers on proper sorting of waste and ordinance (FAQ)
- Improve collection through increased service and quantity of city bins in high-traffic food take-out establishments
- All items should be required to be compostable (no recyclable plastics), due to changing overseas markets
- Require customer-facing in-store compost bins for collection

**TOPIC: Charges for take-out containers when consumers have no alternative to BYO (affects consumer)**

Comments:

- Many restaurants are prohibited from in-house dining, and thus can only offer take out options.
- Results in customer complaints for being charged for take-out containers with no alternatives available.
- As customers have no choice, charge will not lead to a positive behavior change (*this issue is in contrast to the bag fee, where customers always have the choice to bring their own bags*).
- Take-out is an essential life factor for many customers.
- Punishing people for using such is regressive.
- Many businesses will not allow BYO take-out container to fill for sanitary concerns or health violations.
- With minimum wage increase, this ordinance would add just another increase in prices and be hard for consumers to swallow.
- Reusable cups brought in by customers have been relatively acceptable and exhibits positive behavior change
- Affects low-income stakeholders that may have no access to washing their BYO containers
- Incentives for discount for BYO instead of charges

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Create a guidance document and feasibility study on “Bring Your Own...”
- Develop a pilot program for standardized reusable to-go container system.
- Implement phased-approach to charge: phase one for hot beverage containers/lids, phase two later for food containers after analyzing results of phase one implementation and pilot program
- Assess impacts of any charge on low-income, transient stakeholders
- Consider incentives for BYO as part of overall ordinance strategy
- Clarify in the ordinance language that there is no requirement for businesses to charge additional fees for disposables; the SUD fee must simply be itemized. (i.e. if a business currently charges \$10 for a meal, they can still charge \$10, but they need to itemize on the receipt the \$9.75 for meal + \$.0.25 for the disposable container.)

**TOPIC: BYO containers need to be acceptable to businesses for portion sizing and cleanliness/compliance with health codes. (affects Businesses)**

Comments:

- Many restaurants are prohibited from in-house dining, and thus can only offer take out options.
- Results in customer complaints for being charged for take-out containers with no alternatives available.
- As customers have no choice, charge will not lead to a positive behavior change
- Will potentially drive customers to neighboring cities lacking such an ordinance (*in contrast to bag fee, where BYOB is available*).
- Cleanliness of BYO brought in by customers is an issue
- Consider incentives for BYO as part of overall ordinance strategy

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Work with local health code departments for clarity on acceptable containers
- Work with businesses to support conditions of BYO containers provided by customers (beverage containers)
- Establish City-wide reusable container program (funding likely necessary)
- Consider pilot-program for reusable container program
- Implement phased-approach to charge: phase one for hot beverage containers/lids, phase two later for food containers after analyzing results of phase one implementation and pilot program

**TOPIC: Acceptable straws that meet ordinance requirements yet effectively serve disabled stakeholders.**

Comments:

- Disabled community has been left out of conversation
- Disabled stakeholders need straws that will not degrade or pose a choking hazard
- Other stakeholders that are not disabled may need straws (children, older people)

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Assess and study best alternatives available that are deemed acceptable for the disabled community.
- Bio-Plastic certified compostable straws could be exempted for said special uses/stakeholders, with recommendation that businesses have them available and provided upon request.
- For general use, specify compostable paper straws only, on request or self-service
- Possible: City purchase of reusable silicone straws to be distributed by City through disabled groups, commission, and other sanctioned methods (City of Alameda).

**Topic: Coordinate with existing laws/ordinances and seek support from the Alameda County Waste Management Authority (StopWaste).**

Comments:

- Replace “Disposable Food Packaging” with “Disposable Foodware” (StopWaste)
- Waivers: What would a partial waiver include? What happens after 3 years? What constitutes “make every effort to become compliant”? What type of activities/efforts would the city consider? What types of thresholds would be considered allowable under “space constraints?” (StopWaste)
- Clarify language of ordinance, including waivers, time frame, space constraints, free of added Fluorinated Chemicals
- If “to go” meal is served in a compliant reusable bag, an additional minimum \$0.10 will need to be charged to comply with Ordinance 2016-2, which could increase total “Takeout Meal” charges to be greater than \$0.25. There is no charge for carryout food given to customers in compliant paper bags. (StopWaste)

Based on the input received, the ZWC suggests Council consider the following possible adjustments to the proposed ordinance:

- Coordinate with ACWMA (StopWaste) to ensure language is consistent with existing ordinances
- Examine best practices of local communities in County and cities bordering City.
- Review Bag Ban ordinance for compliance and consideration of charge amount.

**The Commission recommends taking note of the following issues that should to be addressed:**

- Recyclability of most “plastic” foodware
- Difficulty to tell the difference between compostable bio-plastic utensils and plastic utensils
- Importance of City-approved list for acceptable materials for take-out containers
- Which food waste-generating establishments are exempted (ex. theaters)
- No plastic ware should be accepted, in spite of language in current City Curbside Recycling Collection Program accepted materials, due to market instability and environmental concerns.
- Amount of proposed charge (\$0.20 v. \$0.25) to balance customer behavior change with businesses concerns of loss of sales due to minimum wage hike and proposed charge.





Berkeley City Council  
2180 Milvia Street, 5th Floor  
Berkeley, CA 94704

ACTION CALENDAR

April 24, 2018

To: Honorable Mayor and Members of the City Council

From: Councilmember Sophie Hahn and Mayor Jesse Arreguin, and  
Councilmembers Linda Maio and Susan Wengraf

Subject: Referral to the Zero Waste Commission:  
Berkeley Single Use Foodware and Litter Reduction Ordinance

RECOMMENDATION

1. Refer the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance to the Zero Waste Commission to invite input from key stakeholders, including restaurants and other food retailers and zero waste, plastics, oceans and other environmental experts, and hold public meetings to obtain input on the proposed Ordinance.
2. Refer to the Zero Waste Commission to report back to the City Council results of the Commission's community outreach and analysis, and provide recommendations for improvements to the proposed Berkeley Single Use Foodware and Litter Reduction Ordinance.

FINANCIAL IMPLICATIONS

The only added cost of the referral, beyond normal staff time to support the Zero Waste Commission's review of the proposed ordinance, is potential staffing of one or more community meetings to obtain stakeholder and other public input.

Reducing use and disposal of products that make up the majority of Berkeley's street and storm-drain litter has the potential to significantly lower City expenses including costs related to collection of debris from over 400 city trash receptacles, from clearing of clogged stormwater intakes city-wide, and from daily street sweeping and litter management.

BACKGROUND

Single use disposable foodware and packaging (SUDs) - including plastic bottles, caps, lids, straws, cups, and containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions. The use of disposable foodware has grown exponentially over the past few decades. The practice of providing food and beverage packaging free of charge fails to incorporate the environmental and social costs of these products into the price of food and beverage service. As a result, customers and food business operators pay little attention to the quantity of single use packaging products consumed and quickly thrown away. Reducing the use of SUDs in the City of Berkeley is a key strategy to achieve the City's Zero Waste and Climate Action goals, and to address the many

environmental impacts and costs associated with the use and disposal of single-use foodware and packaging.

### ***Environmental Impacts of Single-Use Disposables***

The production, consumption, and disposal of SUDs contributes significantly to the depletion of natural resources. It is a major component of litter on streets and in waterways, and of the plastic polluting our air, food, drinking water and oceans.

- Food and beverage SUDs make up approximately 25% of all waste produced in California<sup>1</sup>
- Bay Area litter studies have found that food and beverage packaging comprises the majority of street litter, half of which comes from fast food and take-out food establishments<sup>2</sup>
- Eighty percent of marine plastic pollution originates from trash in urban runoff<sup>3</sup>
- In the year 2000, half of all plastic packaging in the UK was comprised of SUDs<sup>4</sup>
- Nearly 700 species of marine wildlife are impacted by ingestion and entanglement of plastics, causing starvation, disease, and death<sup>5</sup>
- Without dramatic systems change, by 2050, there will be more plastic in the ocean than fish<sup>6</sup>
- Based on Berkeley's population of approximately 120,000 people, it is estimated that almost 40 million single use cups are used in the City of Berkeley every year
- Paper cups alone generate 2.2 billion pounds of waste per year nationwide, consuming over 11 million trees, resulting in 4 billion pounds of carbon dioxide emissions, and requiring the consumption of 35 billion gallons of water to manufacture<sup>7</sup>

Most SUDs are used for just a few minutes before becoming waste, while the plastics many are made of last for hundreds and even thousands of years, and have broad, long-lasting negative impacts. Plastics in waterways and oceans break down into smaller pieces (but do not biodegrade) and are present in most of the world's oceans, at all levels (surface, water column, and bottom).<sup>8</sup> Among other hazards, plastic debris attracts and concentrates ambient pollutants

<sup>1</sup> <https://www.wastedive.com/news/are-the-packaging-wars-coming-to-california/508491/>

<sup>2</sup> See Clean Water Action's "Taking out the Trash" Bay Area Litter study (2011) [http://www.cleanwateraction.org/files/publications/ca/Curr\\_CA\\_12%2012%2011final.pdf](http://www.cleanwateraction.org/files/publications/ca/Curr_CA_12%2012%2011final.pdf) ; California Coastal Cleanup Results 1989-2014 showing Food and Beverage packaging items are 7 out of the top 10 items collected and account for 34% of the total trash - <https://www.coastal.ca.gov/publiced/ccd/history.html#top10> ; BanList 2.0 shows food and beverage packaging items are 74% of top 20 littered items among 6 different beach cleanup datasets- <https://upstreampolicy.org/ban-list-20>

<sup>3</sup> 80% from land based sources: U.S. Department of Commerce, NOAA, Office of Public and Constituent Affairs, (1999) "Turning to the Sea: America's Ocean Future," p.5. Re: most of land-based ocean litter comes from trash in urban runoff: *Trash TMDLs for the Los Angeles River Watershed*, (September 19, 2001):17.

<sup>4</sup> Hopewell, et Al. Royal Society Biological [Sciences Philos Trans R Soc Lond B Biol Sci](#). 2009 Jul 27; 364(1526): 2115–2126.

<sup>5</sup> Gall & Thompson, The Impact of Marine Debris on Marine Life, *Marine Poll Bull*, 2015 Mar 15:93(1-2);170-179

<sup>6</sup> Ellen MacArthur Foundation (2016)

<sup>7</sup> Clean Water Action Disposable vs. Reusable Cups Fact Sheet

<sup>8</sup> D. Barnes et al, 2009, *Accumulation and fragmentation of plastic debris in global environments*, Phil. Trans. R. Soc. B., 364-1985-98.

in seawater and freshwater<sup>9</sup>, which can transfer to fish, other seafood, and salt that is eventually sold for human consumption.<sup>10</sup> Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health effects including kidney and testicular cancer, thyroid disruption, delayed puberty and obesity.<sup>11</sup>

### ***Berkeley as a Zero Waste Leader***

The City of Berkeley has a long history of leadership in sustainability and environmental protections including the adoption of an ambitious Climate Action Plan in 2009, with a goal of achieving Zero Waste by 2020; the nation's first curbside recycling program and styrofoam foodware ban; and one of the first commercial organics collection programs. 75% of the City's discarded material is diverted from landfill, and there has been a 50% reduction in solid waste disposal between 2000 to 2013<sup>12</sup>. Despite these achievements, Berkeley has not addressed the significant increase in takeout food packaging littering city streets, filling storm drains, requiring management in the waste stream, polluting our waterways, Bay and ocean, and threatening both human and animal health.

In addition, SUDs are particularly costly and challenging to divert from landfill. Non-recyclable food and beverage packaging is costly to remove from the waste stream and reduces the quality and value of recyclables, while non-compostable food packaging (some of which is advertised as "compostable") contaminates compost, adding costs and reducing the quality of compost<sup>13</sup>. With China's recent rejection of mixed recycled plastic imports, the value of recyclable plastics has dropped sharply and the final destination for these plastic SUDs is uncertain. This adds significant costs to the City's collection, sorting, and processing of compostables and recyclables. To reach its Zero Waste goals, the City must reduce use of unnecessary single-use food and beverage packaging.

### ***Strategies to Regulate SUDs***

Alameda County implemented its reusable bag ordinance in January 2013, and has seen dramatic results. Countywide, bag purchases by affected retail stores have declined by 85 percent. The number of shoppers bringing a reusable bag to affected stores, or not using a bag at all, has more than doubled during this time<sup>14</sup>. Globally, a number of strategies have been implemented to reduce the use of SUDs. Charges for single-use plastic bags have proven to decrease plastic bag consumption. When Ireland instituted a "Plas-Tax" in 2002 equivalent to

<sup>9</sup> Rochman, C.M., et al., 2013, Long-Term Field Measurement of Sorption of Organic Contaminants to Five Types of Plastic Pellets: Implications for Plastic Marine Debris. *Environmental Science and Technology*. 47, 1646–1654.

<sup>10</sup> Rochman C Met al, 2015a Anthropogenic debris in seafood: plastic debris and fibers from textiles in fish and bivalves sold for human consumption *Sci. Rep.* 5 14340.

<sup>11</sup> In 2015, the FDA barred from use three such fluorinated chemicals from food contact materials due to safety risks associated with cancer, toxicity, and other health effects; other fluorinated chemicals have similar chemical structures and pose similar risk.

<sup>12</sup> Berkeley Climate Action Plan: Tracking our Progress Waste Reduction & Recycling – Total Landfilled, [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/PDF%20total%20landfilled%20final.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/PDF%20total%20landfilled%20final.pdf)

<sup>13</sup> Clean Water Action, *What's in the Package?* 2016 <https://www.cleanwateraction.org/features/what%E2%80%99s-package>

<sup>14</sup> "Successful Results from Bag Ordinance", 2014, Alameda County Waste Management authority, <http://reusablebagsac.org/news/successful-results-bag-ordinance>

about 20 cents per bag, plastic bag use declined by 90% and litter from plastic bags declined by 40%<sup>15</sup>. Similar charges have been implemented in Taiwan, Washington D.C., and the United Kingdom, resulting in decreases in plastic bag use of up to 80%. A 2016 plastic bag ban in California reduced the number of plastic bags found on beaches by half.<sup>16</sup> Studies have also shown that customers in areas with taxes on single use bags were more likely to use reusable bags.<sup>17</sup>

There appears to be growing support for reducing the use of other single use disposables. Ireland is considering banning single use coffee cups, with 50% of the population surveyed in support.<sup>18</sup> The European Union announced in 2018 that it is implementing a policy for all plastic packaging to be recyclable or reusable by 2030.<sup>19</sup> Taiwan will be imposing charges for straws, plastic shopping bags, disposable utensils, and beverage cups by 2025, and will impose a complete ban on single-use plastic items, including straws, cups, and shopping bags, by 2030.<sup>20</sup>

### ***Economic Advantages for Businesses***

Businesses in the Bay Area spend between \$0.25 and \$0.85 per meal on disposable foodware.<sup>21</sup> Reducing the use of SUDs can provide significant cost savings, even considering the costs associated with making the transition to reusables. The *Rethink Disposable* program of the Clean Water Fund, in partnership with STOP WASTE in Alameda County, has conducted a number of case studies showcasing businesses that have voluntarily minimized SUDs and incorporated reusables<sup>22</sup>. These businesses saw annual net cost savings (after accounting for costs of reusables, dishwashing, etc.) from \$1,000 - \$22,000 per year.<sup>23</sup>

In addition, recent surveys completed by the City of Berkeley's Office of Economic Development found that neighborhood cleanliness, including trash collection, was a major concern of business owners interviewed. Business Improvement Districts (BIDs) and the Clean Cities Program work to keep Berkeley's business districts clean, but at great expense. The Telegraph Business Improvement District (TBID), for example, reported collecting over 22 tons of street litter in one year.

### ***Reducing SUDs in the City of Berkeley***

<sup>15</sup> Mauro Anastasio and James Nix, Plastic Bag Levy in Ireland, Institute European Environmental Policy, 2016. <https://ieep.eu/uploads/articles/attachments/7f91cb97-8cb7-49c39cf0d34062a9192e/IE%20Plastic%20Bag%20Levy%20conference%20draft.pdf?v=63673818840>

<sup>16</sup> <http://www.latimes.com/opinion/editorials/la-ed-plastic-bag-ban-anniversary-20171118-story.html>

<sup>17</sup> T. A. Homonoff, *Can Small Incentives Have Large Effects? The Impact of Taxes versus Bonuses on Disposable Bag Use* National Tax Association Proceedings, Princeton University- <http://ntanet.org/wp-content/uploads/proceedings/2012/008-homonoff-can-small-incentives-2012-nta-proceedings.pdf>

<sup>18</sup> <http://www.thejournal.ie/coffee-cups-poll-3642333-Oct2017/>

<sup>19</sup> European Commission, EU Plastics Strategy-[http://ec.europa.eu/environment/waste/plastic\\_waste.htm](http://ec.europa.eu/environment/waste/plastic_waste.htm)

<sup>20</sup> "Taiwan to ban disposable plastic items by 2030," February 22, 2108- <https://phys.org/news/2018-02-taiwan-disposable-plastic-items.html>

<sup>21</sup> Id.

<sup>22</sup> <https://cleanwater.org/publications/participating-business-testimonials>

<sup>23</sup> Data provided by Clean Water Action's *ReThink Disposable* program, March 2018. See attached fact sheet.

Through the leadership of Berkeley's Ecology Center, working closely with UpStream, Clean Water Action, the Clean Water Fund, Story of Stuff, Surfrider Foundation, GAIA (Global Alliance for Incinerator Alternatives), the Green Science Policy Institute, Excellent Packaging, and numerous active residents and volunteers, a proposed Berkeley Single Use Foodware and Litter Reduction Ordinance has been drafted. This visionary Ordinance combines proven strategies for reducing SUDs including promotion of reusable foodware, fees when SUDs are used, and creation of a list of approved, truly compostable or recyclable SUDs for use City-wide.

The Ecology Center and Clean Water Action also undertook an extensive research and public outreach process, including surveys of local food businesses, discussions with business owners and environmental experts, and assessment of a charge-based cup reduction pilot project completed by Telegraph Green and Cafe Strada<sup>24</sup>. This level of research, outreach and field testing represents study and consultation of an intensity and duration rarely undertaken in conjunction with new proposals in Berkeley, and has resulted in a proposed ordinance incorporating extensive expert, community and real-world data.

The survey, conducted in 2017-2018 by Clean Water Action, the Ecology Center, and other partners, covers 59 Berkeley food businesses (about 10% of affected food businesses) of various sizes and service styles, and includes respondents from all of the City's commercial districts. Of these businesses, 58% would support a customer charge for cups, and 67% would support a charge for disposable food containers.

These and other findings inform the proposed ordinance, which was written to be both aspirational and achievable. More complex proposals and bans were rejected in favor of a simplified set of recommendations that offer cost savings for restaurants and small businesses, a stream of revenue for the City to implement and enforce the ordinance, and a major step forward in reducing pollution and litter, and in meeting the City's Zero Waste and Climate Action Goals.

### ***Proposed Ordinance Elements***

The purpose of the proposed Ordinance is to reduce litter and waste associated with single use food and beverage packaging in the City of Berkeley. The proposal requires that food consumed on-site be served in reusable, durable dishes, cups, and utensils. Foil, wrappers, and tray liners are still allowed, and provision is made for waivers under specific circumstances.

The ordinance also provides that food businesses charge customers for take-out cups, clamshells and other take-out foodware, similar to the charge for paper bags associated with California's plastic bag ban (SB 270). Charges for disposables will encourage customers to bring their own reusable cups and containers. \$0.25 will be charged for disposable cups, and \$0.25 for food containers. Food establishments will keep the proceeds from these charges, and the City will collect an "at cost" fee for administration of the program. As with charges for bags, customers using SNAP & WIC will be excluded from paying these fees. The ordinance also

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<sup>24</sup> <https://serc.berkeley.edu/paying-the-price-of-disposable-cups-at-caffe-strada/>

provides that single use straws, utensils, and stirrers (which will have to be compostable) be provided only “by request”.

Finally, the policy will require that all disposable foodware be free of certain highly toxic chemicals known to migrate into food and beverages, and be recyclable or compostable in the City’s waste management programs.

The City will be responsible for creating and updating an accessible list of approved foodware so that food retailers can easily identify products that conform to requirements. This will protect public health and the environment from some of the most toxic and persistent chemicals used in food and beverage packaging, and ensure that “compostables” furnished in Berkeley are actually compostable within the City’s program. The City will be responsible for administration and enforcement.

#### ENVIRONMENTAL SUSTAINABILITY

The production, consumption and disposal of single use food and beverage packaging is a major contributor to litter in our streets, plastic in landfills, pollution in waterways and oceans, GHG emissions, and harm to wildlife. This environmental ordinance represent a huge step forward in reducing the use of disposable foodware in Berkeley, fulfilling Berkeley’s Zero Waste and Climate Action Goals, reducing greenhouse gas emissions 80% by 2050, and meeting State trash load level mandates.

#### CONTACT

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Mayor Jesse Arreguin | (510) 981-7100 | [mayor@cityofberkeley.info](mailto:mayor@cityofberkeley.info)

#### ATTACHMENTS

1. Draft Berkeley Single Use Foodware and Litter Reduction Ordinance
2. CaseStudy: Caravaggio Gelateria Italiana
3. Clean Water Action Disposable vs Reusable Cups Fact Sheet



- H. **“Reusable Foodware”** shall mean all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.
- I. **“Plastic”** means a synthetic material made from fossil fuel based polymers such as polyethylene, polystyrene, polypropylene, and polycarbonate that can be molded or blown into shape while soft and then set into a rigid or slightly elastic form.
- J. **“Fluorinated Chemicals”** means perfluoroalkyl and polyfluoroalkyl substances or fluorinated chemicals, which for the purposes of food packaging are a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

**Section 2. Reusable Foodware for Dining on the Premises (i.e. “Eating-in”)**

This section applies to Prepared Food served for consumption on the premises of a Prepared Food Vendor.

- A. As of [Effective Date], Prepared Food Vendors shall only sell or provide food and beverages for consumption on the premises using Reusable Foodware, except as provided in Section 2(C).
- B. Prepared Food Vendors offering Takeout Food shall ask customers whether they will consume their purchased food or beverage on the premises (i.e. “for here”) or off the premises (i.e. “to go”). If the purchased food or beverage is intended for consumption on the premises, the Prepared Food Vendor shall serve such food or beverage in Reusable Foodware.
- C. Prepared Food Vendors that do not have on-site or off-site dishwashing capacity to wash, rinse and sanitize Reusable Foodware in compliance with the California Health Code may request a full or partial waiver from the requirements of Section 2(A) if they can demonstrate inability to comply due to space constraints and financial hardship, such as investments and costs that take more than a year to be paid for through savings. Waivers may be granted for up to three years, during which time the Prepared Food Vendor shall make every effort to become complaint. If a waiver is granted, all Disposable Foodware used for eating on the premises must conform to the Disposable Food Packaging Standards in Section 3.
- D. As of [Date - 1 year after Effective Date?], new zoning permits and business licenses for Prepared Food Vendors shall only be granted to Prepared Food Vendors that have adequate onsite or offsite dishwashing capacity to comply with section 2(A).



- E. Disposable food wrappers, foil sheets, napkins and paper or foil basket and tray liners shall be allowed for dining on the premises so long as they meet the Disposable Food Packaging Standards in Section 3.

**Section 3. Disposable Foodware Standards**

This section provides standards for the types of Disposable Foodware that may be used for Takeout Food, or for Prepared Food eaten on the premises of a Prepared Food Vendor with a valid waiver, as provided for in Section 2(C).

- A. The City shall maintain a list of approved Disposable Foodware sources and types that shall be available at [physical location] and on the City's website. The City shall update annually the list of approved Disposable Foodware types and sources. No other Disposable Foodware may be used by any Prepared Food Vendor.
- B. Disposable Foodware approved by the City shall meet the following standards:
  - a. Beginning [Date], all Disposable Foodware used to serve or package Prepared Foods that are prepared in the City of Berkeley:
    - i. Must be accepted by City of Berkeley composting or recycling municipal collection programs, and
    - ii. If compostable, must be certified compostable by the Biodegradable Product Institute or another independent third party certifying organization or agency recognized by the City.
  - b. Beginning [Date - one year from Effective Date], compostable Disposable Foodware containing paper or other natural fiber material shall be free of all intentionally added Fluorinated Chemicals as certified by the Biodegradable Product Institute or other third party certifying organization or agency recognized by the City.
  - c. The City may adopt regulations that require Disposable Foodware to have minimum post-consumer recycled content, and any other Disposable Foodware specifications that support the goals of this Ordinance.

**Section 4. Disposable Foodware Charges**

Customers shall be charged for Disposable Foodware used for dining off the premises.

- A. Beginning [Effective Date] , Prepared Food Vendors selling Takeout Food shall charge a customer twenty five cents (\$0.25) for every Disposable Cup provided.
- B. Beginning [Effective Date], Prepared Food Vendors selling Takeout Food shall charge a customer twenty five cents (\$0.25) per Disposable Food Container and no more than twenty-five-cents (\$0.25) per Takeout Meal.
- C. Income from charges for Disposable Cups and Disposable Food Containers shall be retained by the Prepared Food Vendor.
- D. The charges set forth in A and B apply to all Takeout Food and Takeout Meals prepared and sold in the City of Berkeley and served in Disposable Food Containers and Disposable Cups, except for Prepared Food Vendors providing Disposable Food

Containers and Disposable Cups for carry-out of leftovers from Prepared Food eaten on the premises (i.e. “doggie bags”).

- E. All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code, or an electronic benefit transfer card issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the charges specified in this Section.
- F. Charges for Disposable Cups, Disposable Food Containers and Takeout Meals shall be identified separately on any receipt provided to the customer.
- G. Disposable straws, stirrers, cup spill plugs, napkins, condiment packets, utensils and other similar Disposable Foodware accompanying Disposable Cups, Disposable Food Containers and Takeout Meals shall be provided free of charge, and only upon request by the customer or at self-serve stations.

#### **Section 5. Signage Requirements for Takeout Food Vendors**

- A. The City shall provide text explaining Disposable Foodware Charges and specifications for signage that Takeout Food Vendors must post in plain view of customers at the point of sale.
- B. Takeout Food Vendors shall also include Disposable Foodware Charges on their printed and electronically available menus.
- C. Takeout Food Vendors shall inform customers of Disposable Foodware Charges for orders taken by telephone.
- D. Third-party delivery services shall include on their electronic platforms text pursuant to subsection A explaining Disposable Foodware Charges and include Disposable Foodware Charges on their menus and billing interfaces.

#### **Section 6. Duties, Responsibilities and Authority of the City of Berkeley**

- A. The City Manager is hereby charged with the enforcement of this Chapter, except as otherwise provided herein, and shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this Chapter.
- B. The Master Fee Schedule shall be amended to include a fee to cover City expenses of inspection and enforcement of this ordinance.
- C. It shall be the duty of the City Manager to collect and receive all fees imposed by this Section, and to keep an accurate record thereof.
- D. Within three years of the effective date of this Ordinance, the City shall evaluate and report to City Council on the effectiveness of this ordinance.



Community Environmental Advisory Commission

ACTION CALENDAR  
January 22, 2019

To: Honorable Mayor, Members of the City Council,  
From: Community Environmental Advisory Commission (CEAC)  
Submitted by: Michael Goldhaber, CEAC Chair  
Subject: Effective Enforcement of Safe Lead-Paint Practices

RECOMMENDATION

Direct the City Manager to prepare two ordinances as described below and return them for vote of the City Council within two months, so that when passed the city staff can effectively intervene when painters ignore safe practices they have agreed to uphold in removing lead paint from structures built before 1978:

- 1) an ordinance adding safe lead-paint practices (already mandated by the state and federal governments) to the City Code so that such practices can be regularly enforced as part of code enforcement; [this ordinance could follow the wording of an ordinance proposed in the City of Emeryville in 2017 ({see Attachment 1}]
- 2) an ordinance in accord with California law that allows the city to be reimbursed for costs (staff time) for enforcement efforts (thus making it cost-effective for the City staff to engage in enforcement) and to automatically add fines up to \$1,000 for each day of failing to comply with orders to cease unlawful practices. This ordinance could apply generally to all municipal code violations, in addition to lead paint cleanup, to fund and reimburse stronger enforcement efforts by the City. [See Attachment 2, for legal justification].

FISCAL IMPACTS OF RECOMMENDATION:

Because the recommended actions would allow streamlining enforcement measures when lead-paint safe practices are ignored, and because the City would have a way to be reimbursed for any staff time resulting in successful litigation, the total effect would probably be a net saving for the City, quite apart from the reduced costs needed for any

kind of mitigation of lead poisoning of residents or the environment. (In addition to reimbursement for FTE's, the City is apparently permitted to level fines of up to \$1,000.00 per day for ongoing violations.)

#### CURRENT SITUATION AND ITS EFFECTS:

The only current mention of lead paint in the Municipal Code is 13.78.060 [Tenant Protections] C.7: "No Landlord of any Rental Unit located in the City of Berkeley, shall [...] in bad faith fail to follow appropriate industry standards to or protocols designed to minimize exposure to [...] lead paint [...]" The language says nothing about owners, developers, remodelers, etc., who are not acting as landlords.

The City currently requires that all permits that contain plans for construction or remodeling are stamped with the statement:

#### *Lead Hazard Warning*

*Due to the possible presence of lead-based paint, lead-safe work practices are required by law for all repairs that disturb paint in pre-1979 buildings. Failure to do so could create lead hazards that violate California Health and Safety Code, Sections 17920.10 and 105256 with potential fines for violations up to \$5,000 (Section [d] amended) or imprisonment for not more than 6 months in the county jail or both. For more information, visit [www.aclppp.org](http://www.aclppp.org)*

We understand that recipients of permits must declare that that they have read (and will heed) this warning. But at present the City staff has no adequate way to respond to reported violations of the declaration. Recently, knowledgeable residents observed neighbor's violations of safe practices and repeatedly complained to City officials but were unable to obtain any redress until CEAC did its best to intervene on their behalf, and even after that intervention, enforcement was limited. The limited investigation we were able to conduct, through the good offices of our Secretary revealed the City officials felt their hands were tied because the City has no lead-paint code of its own. Also, previously, we heard repeatedly that the City staff was reluctant to enforce because staff time such as for court appearances and evidence preparation would not be sufficiently compensated by the fines allowed by State law. We have now learned that State Law permits the City to enact an ordinance allowing FTE recovery of such staff time, as indicated Appendix 2

At its October 11, 2018 meeting, the Commission approved the above recommendation and requests that the Planning Commission bring said action to City Council for adoption.

M/S/C (Ticconi, Lim) to prepare two ordinances that when passed the city staff can effectively intervene when painters ignore safe practices they have agreed to uphold in removing lead paint from structures built before 1978. Ayes: Simmons, Varnhagen, Ticconi, and Goldhaber, Lim. Noes: None. Absent: Kapla, Gould. Abstained: Hetzel

BACKGROUND:

In 1991, Berkeley voters enacted a parcel-fee to be paid to joint Powers Authority in the County, now known Healthy Homes. There had been considerable confusion about the powers of Healthy Homes. **We restate once again: Because what was enacted to pay for this organization is a fee and not a tax, by State Law, Healthy Homes may investigate and even remediate but may not enforce laws.** In a previous resolution and in previous appearances before the City Council, CEAC has emphasized the need for City enforcement of lead-paint safety. **Only the City of Berkeley is in a position to enforce against violations that occur within its boundaries, except when CAL-OSHA choose to enforce unsafe labor practices.** Unfortunately, until July, CEAC was unaware that the city needs to update its own codes in the way described above.

ENVIRONMENTAL SUSTAINABILITY:

As we have reported previously, lead from paint can be serious ground contaminant as well as very dangerous toxin for infants and young children—or, for that matter, young animals—whose brains are still developing. Lead-paint particles insufficiently contained that land on the ground can be washed into the Bay where marine life can be contaminated.

RATIONALE FOR RECOMMENDATION:

Repeated failure by City staff to crack down on violations of State Law and of agreements freely entered into by developers and contractors with the Planning Department indicate the need for new and clear steps to make sure enforcement occurs. This, we have now learned, is clearly within the scope of the City's powers. No alternative to passing new ordinances would clarify the abilities and powers of city staff to carry out necessary enforcement of vital laws.

ALTERNATIVE ACTIONS CONSIDERED:

No alternative to passing new ordinances would clarify the abilities and powers of city staff to carry out necessary enforcement of vital rules. However, additional steps, such as better citizen education, while no substitute for adequate enforcement, would help ensure that even more violations are reported and nipped in the bud.

CITY MANAGER

See companion report.

CONTACT PERSON

Michael Goldhaber, Chair, Community Environmental Advisory Commission  
Viviana Garcia, Commission Secretary, 981-7460

Attachments:

1. Proposed Emeryville ordinance as modified by CEAC
2. Excerpt of *California League of Cities Proceedings* from 2014

Attachment 1, PROPOSED EMERYVILLE ORDINANCE WITH OUR MODIFICATION:

“Lead-Safe Renovation, Repair and Painting Certification Required. No renovation of a building, facility or other structure shall be initiated within the city if such renovation is regulated under 40 CFR §745.82, unless the applicant for the renovation complies with all of the following:

(1) submits and complies with a sworn written statement, on a form prescribed by the Building Code Inspector, stating that:

a. individuals performing the renovation are properly trained in accordance with 40 CFR Part 745, Subpart E;

b. renovators and firms performing the renovation are certified in accordance with 40 CFR Part 745, Subpart E; and

c. the work practices in 40 CFR 745.85 will be followed during the renovation; and

(2) submits a copy of the certifications issued to renovators and firms performing renovations pursuant to 40 CFR Part 745, Subpart E.”

We recommend adding: “Violations are subject to fine” as authorized by California Government Code section 53069.4(a)(1).

Attachment 2, from a *California League of Cities Proceedings* from 2014:

“State law authorizes cities to recover much of the costs of enforcement as long as the city has adopted a proper ordinance. If done correctly, in many types of code enforcement cases, the city will have the right to recover all costs involved, from abatement costs to staff costs, attorney’s fees and incidental expenses. This can include those costs incurred in the administrative, civil, warrant and even appellate processes, among others.

“In addition, State law contains numerous provisions, some cited above, for recovery of enforcement costs when abatement action is taken pursuant to those statutes.(See, e.g., Gov. Code §§ 38772–38773.7)

“In addition, cities are authorized to enact ordinances for the recovery of attorney’s fees in “any action” to abate a nuisance, as well as abatement and administrative costs. Gov. Code § 38773.5.(See, e.g., Health & Safety. Code, § 17980.7(d)(1) [State Housing law provision providing for recovery of all costs, including investigation and enforcement costs]; Civ. Code § 3496 [providing for cost recovery in certain public nuisance cases].)——Excerpts from *California League of Cities Proceedings of May , 2014 Meeting on Protecting Neighborhood Livability....*]







Peace and Justice Commission

ACTION CALENDAR

January 22, 2019

To: Honorable Mayor and Members of the City Council

From: Peace and Justice Commission

Submitted by: George Lippman, Chairperson, Peace and Justice Commission

Subject: Resolution declaring City of Berkeley will not contract with or invest City funds in any entity involved in the production or upgrading of weapons

RECOMMENDATION

Adopt resolution submitted by the Peace and Justice Commission declaring City of Berkeley will not contract with or invest City funds in any entity involved in the production or upgrading of weapons.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

At its regular meeting September 17, 2018, the Peace and Justice Commission unanimously adopted the following recommendation: declaring that City of Berkeley will not invest City funds in any involved in the production or upgrading of weapons

M/S/C: Bohn/Kenin  
 Ayes: Maran, Watson, Lippman, Bohn, Kenin, Chen  
 Noes: None  
 Abstain: None  
 Absent: Pancoast

BACKGROUND

The City of Berkeley investment policy currently bans investment in weapons. This resolution is endorsed by over 50 organizations that favor divestment from weapons manufacturers. The organizations include CODEPINK, American Friends Service Committee, Peace Action USA, United for Peace and Justice, and the Women’s International League for Peace and Freedom.

Resolution declaring that the City of Berkeley will not contract with or invest City funds in any entity involved in the production or upgrading of weapons.

ACTION CALENDAR  
January 22, 2019

This campaign has been spurred by the Trump Administration's belligerent posture that has brought the country to the brink of war, as well as the passionate national campaign, especially among young people, against gun violence domestically.

ENVIRONMENTAL SUSTAINABILITY

Reversing militarism is one of the key levers of promoting sustainability. Point 2 of the Environmentalists Against War declaration in 2003 stated, "War destroys human settlements and native habitats. War destroys wildlife and contaminates the land, air and water. The damage can last for generations." <sup>1</sup>

RATIONALE FOR RECOMMENDATION

In passing this resolution the City of Berkeley joins with cities nationwide that oppose militarism and violence, and encourages other cities to follow Berkeley's lead.

Finance and Procurement staff are encouraged to review procurements and contracts as well as investments to ensure that the City does not do any kind of business with companies tied to the manufacture of weapons.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

See City Manager companion report.

CONTACT PERSON

|                                                        |              |
|--------------------------------------------------------|--------------|
| George Lippman, Chair, Peace and Justice Commission    | 510-517-8739 |
| Shallon Allen, Secretary, Peace and Justice Commission | 510-981-7071 |

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<sup>1</sup> <http://www.envirosagainstar.org/sayno/tenreasons.html>

Resolution declaring that the City of Berkeley will not contract with or invest City funds in any entity involved in the production or upgrading of weapons.

ACTION CALENDAR  
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Attachment:

Resolution declaring that the City of Berkeley will not contract with or invest City funds in any entity involved in the production or upgrading of weapons.

WHEREAS, since 2001, the United States has spent over \$5.6 trillion on wars resulting in over 1.17 million deaths and displacing more than 10.1 million people<sup>1</sup>; and

WHEREAS, the cost of U.S. domestic and foreign militarism, including veterans' affairs, homeland security, and law enforcement, and incarceration, topped \$818 billion in 2017,<sup>2</sup>; and accounted for 64% of federal discretionary spending in 2016, at a time when federal funds are desperately needed in order to build affordable housing, improve public transit, and develop sustainable energy sources;<sup>3</sup>and

WHEREAS, the United States remains the most militarized nation in the world, with a military budget greater than the next eight countries combined, an estimated 800 military bases and stations in over 70 countries around the world, and arms producers that dominated 57.9% of the share of major global arms sales in 2016<sup>4</sup>; and

WHEREAS, nearly 15,000 nuclear weapons, most of an order of magnitude more powerful than the U.S. atomic bombs that destroyed Hiroshima and Nagasaki, over 90% held by the United States and Russia, continue to pose an intolerable threat to humanity;<sup>5</sup> and detonation of even a small fraction of these weapons would disrupt the global climate and agricultural production so severely that the resulting famine could put the lives of more than two billion people at risk;<sup>6</sup> and

WHEREAS, the United States is poised to spend \$1.7 trillion dollars over the next three decades to maintain and modernize its nuclear bombs and warheads; the submarines, missiles and bombers to deliver them; and the infrastructure to sustain the nuclear enterprise indefinitely, which many experts believe actually increases the risk of nuclear proliferation, nuclear terrorism, and nuclear war by accident, miscalculation or intent, at a time when nuclear-armed countries are already on the brink of military confrontation;<sup>7</sup> and

WHEREAS, investing in companies producing the nuclear and conventional weapons at the roots of U.S. militarism implicitly supports this misdirection of our tax dollars; and

WHEREAS, many major arms producers depend on the federal government as their primary consumer and are thus dependent upon perpetual warfare, political instability, and the prioritization of militarism over diplomacy; and

WHEREAS, U.S. weapons manufacturers continue to supply repressive regimes around the world, and U.S.-produced weapons are being used in attacks that the international

Resolution declaring that the City of Berkeley will not contract with or invest City funds in any entity involved in the production or upgrading of weapons.

ACTION CALENDAR  
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community deems unlawful for their disproportionate and excessive harm to civilians;  
and

WHEREAS, billions of dollars' worth of military-grade equipment has been transferred to local police departments in our communities, resulting in the disproportionate targeting of communities of color and perpetuating a culture of violence, hostility, and fear;<sup>8</sup> and

WHEREAS, the rate of mass shootings in America is the highest anywhere in the developed world, as civilian gun manufacturers continue to reap enormous profits from unnecessary bloodshed in our streets and homes;<sup>9</sup> and

WHEREAS, the average American taxpayer works 27 days a year to pay Pentagon contractors and pays 23.4 cents of each of their federal income tax dollars toward military spending, at a time when 43 million Americans live in poverty or qualify as low-income;<sup>10</sup> and

WHEREAS, the U.S. Conference of Mayors unanimously "calls on the President and Congress to reverse federal spending priorities and to redirect funds currently allocated to nuclear weapons and unwarranted military spending to restore full funding for Community Development Block Grants and the Environmental Protection Agency, to create jobs by rebuilding our nation's crumbling infrastructure, and to ensure basic human services for all, including education, environmental protection, food assistance, housing and health care;<sup>11</sup> and

WHEREAS, the City's investment practices must accord with the City's commitment to equality, peace, and justice;

NOW, THEREFORE, BE IT RESOLVED, that the City Council formally declares its opposition to contracting with or investing City funds in any entities that are involved in the production or upgrading of weapons and weapons systems, whether conventional or nuclear, and including the manufacture of civilian arms, and decides that it shall be City policy to divest from such entities; and

BE IT FURTHER RESOLVED, that the City Council directs any and all persons acting on behalf of City investment activity to enforce the provisions of this Resolution; and

BE IT FURTHER RESOLVED, that this Resolution shall be binding City policy and shall be in full force and effect after adoption by the City Council.

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<sup>1</sup> "Costs of War, Brown University, Watson Institute of International and Public Affairs," <https://watson.brown.edu/costsofwar/>

<sup>2</sup> "US Military Budget: Components, Challenges, Growth," *The Balance*, <https://www.thebalance.com/u-s-military-budget-components-challenges-growth-3306320>

Resolution declaring that the City of Berkeley will not contract with or invest City funds in any entity involved in the production or upgrading of weapons.

ACTION CALENDAR  
January 22, 2019

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<sup>3</sup> “The Militarized Federal Budget,” National Priorities, <https://www.nationalpriorities.org/analysis/2017/militarized-budget-2017/>

<sup>4</sup> “Top 100 Arms-Producing and Military Service Companies, 2016,” Stockholm International Peace Research Institute, <https://www.sipri.org/publications/2017/sipri-fact-sheets/sipri-top-100-arms-producing-and-military-services-companies-2016>

<sup>5</sup> “Nuclear Weapons: Who Has What at a Glance,” Arms Control Association, <https://www.armscontrol.org/factsheets/Nuclearweaponswhohaswhat>

<sup>6</sup> “Nuclear Famine: Two Billion People at Risk?” International Physicians for the Prevention of Nuclear War, <https://www.psr.org/wp-content/uploads/2018/04/two-billion-at-risk.pdf>

<sup>7</sup> “U.S. Nuclear Modernization Program,” Arms Control Association, <https://www.armscontrol.org/factsheets/USNuclearModernization>

<sup>8</sup> “War Comes Home,” ACLU, <https://www.aclu.org/issues/criminal-law-reform/reforming-police-practices/war-comes-home>

<sup>9</sup> “How US Gun culture compares with the world in 5 charts,” CNN, <https://www.cnn.com/2017/10/03/americas/us-gun-statistics/index.html>

<sup>10</sup> “Tax Dollar Receipt,” National Priorities Project, <https://www.nationalpriorities.org/interactive-data/taxday/>

<sup>11</sup> “Calling on the Administration and Congress to Step Back From the Brink and Exercise Global Leadership in Preventing Nuclear War,” U.S. Conference of Mayors, June 11, 2018, <http://www.mayorsforpeace.org/english/ecbn/resolution/20180612.html>





Sugar-Sweetened Beverage  
Product Panel of Experts (SSBPPE)

ACTION CALENDAR

January 22, 2019

To: Honorable Mayor and Members of the City Council

From: Sugar-Sweetened Beverage Product Panel of Experts Commission

Submitted by: Poki Namkung, Chairperson, SSBPPE Commission

Subject: Allocation of \$4.75 Million Over Two Years, FY20 and FY21, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs).

RECOMMENDATIONS

1. Adopt a Resolution allocating \$4.75 million from the General Fund in FY20 (July 1, 2019 through June 30, 2020) and FY21 (July 1, 2020 through June 30, 2021) that shall be invested in a grant program administered and coordinated by the Berkeley Public Health Division consistent with the SSBPPE's goals to reduce the consumption of sugar sweetened beverages (SSB) in Berkeley and to address the effects of SSB consumption. The total of \$4.75 million will be distributed in two installments of \$2.375 million per year for FY20 and FY21. In each of these years, the funds will be distributed as follows:
  - a. Direct the City Manager to award up to 40% of the allocated funds to Berkeley Unified School District (BUSD) through a grant proposal to reduce the consumption of sugar-sweetened beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs. The BUSD funding process is separate from the RFP process for the general community-based organization funding process and shall be guided by the SSBPPE Commission's Criteria for BUSD Funding (Attachment 2).
  - b. Direct the City Manager to award at least 40% of the allocated funds through a RFP process managed by the Public Health Division for grants to community-based organizations consistent with the SSBPPE's goals to reduce the consumption of SSBs and to address the effects of SSB consumption. The community-based organization funding RFP process is separate from the BUSD funding process and shall be guided by the SSBPPE Commission's Criteria for Community Agency Grants (Attachment 3).
2. Direct the City Manager to utilize 20% of the allocated funds to support the Berkeley Public Health Division (BPHD) to coordinate and monitor the grant process, coordinate the overall program evaluation, and produce an annual report

that disseminates process and outcome data resulting from the SSBPPE funding program. A comprehensive and sustainable media campaign that coordinates with all regional soda tax efforts will be managed by the BPHD with 10% of this portion of the allocation.

#### FISCAL IMPACTS OF RECOMMENDATION

Measure D, passed in November of 2014, created two provisions, namely: a) a 1 cent per ounce tax on sugary drinks distributed in Berkeley and b) creation of a Panel of Experts Commission. The collection of this tax commenced in May of 2015 and is being deposited into the City's General Fund. The SSBPPE Commission's recommendation to Council for allocation of \$4.75 million for FY20 and FY21 is independent of the amount of tax collected from the distribution of SSB in Berkeley. This request will create a liability of \$4.75 million for the City's General Fund in FY20 and FY21.

#### CURRENT SITUATION AND ITS EFFECTS (Ordinance: SUGAR-SWEETENED, 2014)

Our nation, our state, and our community face a major public health crisis. Diabetes, obesity, and tooth decay have been on the rise for decades. Although no group has escaped these epidemics, children, as well as low income communities and communities of color have been and continue to be disproportionately affected. While there is no single cause for the rise in diabetes, obesity, and tooth decay, there is overwhelming evidence of the link between the consumption of sugary drinks and the incidence of diabetes, obesity, and tooth decay.

Sugary drinks such as soft drinks, energy drinks, sweetened teas, and sport drinks offer little or no nutritional value, but massive quantities of added sugar. A single 20-ounce bottle of soda, for instance, typically contains the equivalent of approximately 16 teaspoons of sugar. Before the 1950s, the standard soft-drink bottle was 6.5 ounces. In the 1950s, larger size containers were introduced, including the 12-ounce can, which became widely available in 1960. By the early 1990s, 20-ounce plastic bottles had become the norm. At the same time, hundreds of millions of dollars have been spent in an ongoing massive marketing campaign, which particularly targets children and people of color. In 2006 alone, nearly \$600 million was spent in advertising to children under 18. African American and Latino children are also aggressively targeted with advertisements to promote sugar-laden drinks.

The resulting impact on consumption should not be surprising. The average American now drinks nearly 50 gallons of sugary drinks a year. Childhood obesity has more than doubled in children and tripled in adolescents in the past 30 years; in 2010, more than one-third of children and adolescents were overweight or obese. The problem is especially acute with children in California. From 1989 to 2008, the percentage of children consuming sugary drinks increased from 79% to 91% and the percentage of total calories obtained from sugary drinks increased by 60% in children ages 6 to 11. This level of consumption has had tragic impacts on community health. Type 2 Diabetes –previously only seen among adults –is now increasing among children. If the current



obesity trends are not reversed, it is predicted that one in three children and nearly one-half of Latino and African American children born in the year 2000 will develop type 2 diabetes in their lifetimes.

Our community has not been immune to the challenge of unhealthy weight gain and obesity. According to the 2018 City of Berkeley Health Status Report, over a quarter of Berkeley's 5th and 7th grade students (all race/ethnicities) are overweight or obese. Berkeley has a lower proportion of 5th and 7th grade children who are overweight or obese (29.4%) compared to children in Alameda County (35.3%) but has a higher proportion compared to California (26.8%). However, a higher proportion of African-American children are overweight or obese in Berkeley compared to Alameda County or California.

Tooth decay, while not as life threatening as diabetes or obesity, still has a meaningful impact, especially on children. In fact, tooth decay is the most common childhood disease, experienced by over 70% of California's 3rd graders. Children who frequently or excessively consume beverages high in sugar are at increased risk for dental cavities. Dental problems are a major cause of missed school days and poor school performance as well as pain, infection, and tooth loss in California.

There are also economic costs. In 2006, for instance, overweight and obesity-related costs in California were estimated at almost \$21 billion.

#### BACKGROUND

In November of 2014, the Berkeley voters passed Measure D, which requires both the collection of a 1 cent per ounce tax on the distribution of sugary drinks in the City of Berkeley AND the convening of a Panel of Experts (the Sugar Sweetened Beverage Products Panel of Experts--SSBPPE) to recommend investments to both reduce the consumption of sugary drinks as well as to address the health consequences of the consumption of sugary drinks.

Fiscal revenue reports from the Department of Finance detail that the total Soda Tax revenues collected from May, 2015 through May, 2018 was \$5,096,596. Over the three fiscal years of collection, a conservative estimate of revenues collected for the month of June is \$150,000 per month. Adding the missing revenue from June, 2018 to the previous total for a full three years of fiscal data makes the total funds from Soda Tax revenues \$5,246,596. Approximately \$1,700,000 of this total has thus far, not been allocated for the purposes of reducing sugary drink consumption. Projecting into the future, a conservative estimate of Soda Tax revenues would be \$1,600,000 per year.

On May 17, 2018, the SSBPPE Commission moved to approve the SSBPPE Media Subcommittee's recommendation that 10% of the tax revenues of the distribution of sugar-sweetened beverages that go into the City of Berkeley General Fund be

recommended for allocation toward a sustained annual media campaign to promote water consumption and reduce sugary beverage consumption.

Per the SSBPPE's charge, the SSBPPE Commission, on July 19, 2018, approved the recommendation to the Berkeley City Council for allocation of \$4.75 million for the period FY20 and FY21, to be made available to invest in grants programs to reduce the consumption of sugary drinks as well as a sustainable annual media campaign to address the health consequences of the consumption of sugary drinks and moved to adopt their recommendation to Council as follows:

**The Commission approves that the Chair will write a Council Report requesting allocation for the Healthy Berkeley Funding Program for FY 2020 and FY2021 consisting of a base allocation of 1.5 million per year for two years for a total of 3 million dollars. The Commission requests an additional amount of collected soda tax revenues heretofore unallocated from 2015 through fiscal year 2018 of approximately 1.75 million dollars.**

**M/S/C:** Ishii/Browne

**Ayes:** Commissioners Browne, Crawford, Moore, Namkung, Rose, Ishii, and Scheider

**Noes:** None

**Abstain:** None

**Recused:** None

**Absent from vote:** Commissioner Kouromenos

**Excused:**

**Motion passed. 9:14 P.M.**

#### ENVIRONMENTAL SUSTAINABILITY

When sugary drink consumption decreases due to the direct investments in programs and activities, the SSBPPE expects that there will be a reduction to the City's waste stream.

#### RATIONALE FOR RECOMMENDATION

The SSBPPE Commission, noting the previous two-year's allocations of \$1.5 million for FY18 and FY19, believes that it is more effective for grant recipients to continue receiving grant funding in two-year cycles. This longer grant period resulted in more comprehensive strategies to: a) reduce access to SSB, b) improve access to water, c) limit marketing of SSB to children, and d) implement education and awareness campaigns with specific populations. The longer grant period will also indicate the City of Berkeley's commitment to reducing the consumption of SSB and improving the health of Berkeley residents, particularly those most impacted by obesity, diabetes, tooth

decay, and heart diseases. The Commission further estimates that the previous \$3 million investment over FY18 and FY19 helped increase the capacity of community-based organizations and schools. The longer grant funding will allow grantees to develop multi-level interventions that include education, policy, and institutional, systems and environmental changes with measureable outcome data and evaluation to show the rise in public awareness about the harmful impacts of SSB, reduce consumption of SSB over time, and decrease the health risks among residents of Berkeley.

To have the greatest impact, the SSBPPE Commission recommends that the following populations be prioritized:

- a) Children and their families with a particular emphasis on young children who are in the process of forming lifelong habits.
- b) Children and young adults living in households with limited resources.
- c) Groups exhibiting higher than average population levels of type 2 diabetes, obesity, and tooth decay rates.
- d) Groups that are disproportionately targeted by the beverage industry marketing.

#### ALTERNATIVE ACTIONS CONSIDERED

- a) The Commission deliberated on who should manage and implement the long-term sustained media campaign for which they recommend 10% of funds from the SSB revenues that flow into the General Fund be allocated. The Commission determined that the Public Health Division can be allocated an additional 10% to implement the media campaign since the Let's Drink Water! Campaign was successfully implemented by the Healthy Berkeley Program in 2017.

#### CITY MANAGER

See City Manager companion report.

#### CONTACT PERSON

Dechen Tsering, MPH, Commission Secretary, HHCS, (510) 981-5394

#### ATTACHMENTS

1. Resolution
2. SSBPPE Commission's Criteria for BUSD Funding
3. SSBPPE Commission's Criteria for Community Agencies Funding

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

ALLOCATION: \$4.75 MILLION TOTAL FOR SUGAR-SWEETENED BEVERAGE CONSUMPTION AND REDUCTION GRANT PROGRAM IN FY20 AND FY21

WHEREAS, the consumption of sugar-sweetened beverages (“SSB”) in Berkeley is impacting the health of the people in Berkeley; and

WHEREAS, in FY18 and FY19, the City Council awarded a total of \$3 million upon the recommendation of the SSBPPE Commission to demonstrate the City’s long-term commitment to decreasing the consumption of SSB and mitigate the harmful impacts of SSB on the population of Berkeley; and

WHEREAS, many studies demonstrate that high intake of SSB is associated with risk of Type 2 Diabetes, obesity, tooth decay, and coronary heart disease; and

WHEREAS, hundreds of millions of dollars have been spent in an ongoing massive marketing campaign, which particularly targets children and people of color; and

WHEREAS, an African American resident of Berkeley is 14 times more likely than a White resident to be hospitalized for diabetes; and

WHEREAS, 40% of 9<sup>th</sup> graders in Berkeley High School are either overweight or obese; and

WHEREAS, tooth decay is the most common childhood disease, experienced by over 70% of California’s 3<sup>rd</sup> graders; and

WHEREAS, in 2012, a U.S. national research team estimated levying a penny-per-ounce tax on sweetened beverages would prevent nearly 100,000 cases of heart disease, 8,000 strokes, and 26,000 deaths over the next decade and 240,000 cases of diabetes per year nationwide.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to allocate \$4.75 million from the General Fund to be disbursed in two (2) installments of \$2.375 million in FY20 and \$2.375 million in FY21 and invested as follows:

1. Allocate up to 40% of the allocated funds to Berkeley Unified School District (BUSD) through a grant proposal to reduce the consumption of sugar-sweetened beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs for the period, July 1, 2019 to June 30, 2021; and
2. Allocate at least 40% of the allocated funds through a RFP process managed by the Public Health Division for grants to community-based organizations consistent

- with the SSBPPE's goals to reduce the consumption of SSB and to address the effects of SSB consumption for the period, July 1, 2019 to June 30, 2021; and
3. Allocate 20% of the allocated funds to support the Berkeley Public Health Division (BPHD) to coordinate and monitor the grant process, coordinate the overall program evaluation, and produce an annual report that disseminates process and outcome data resulting from the SSBPPE funding program. A comprehensive and sustainable media campaign that coordinates with all regional soda tax efforts will be managed by BPHD with 10% of this portion of the allocation.

A records signature copy of the said agreement and any amendments to be on file in the Office of the City Clerk.



Sugar-Sweetened Beverage  
Product Panel of Experts - (SSBPPE)

## The SSBPPE Commission's Criteria for Berkeley Unified School District (BUSD) Funding

The SSBPPE Commission adopts the following recommendations to City Council for a grant proposal process for BUSD. This recommendation is separate from the SSBPPE Community Grants Request for Proposal (RFP) process. Only BUSD is eligible for this funding. A district proposal must conform to the criteria below and must be adopted by the school board.

### Definition:

BUSD Schools are defined as any BUSD school or program from early childhood education through high school including out-of-school care programs and family engagement.

### The SSBPPE Commission recommends:

1. Up to 40% of the total allocation of the City Council's funding to reduce the consumption of Sugar-Sweetened Beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs. The SSBPPE will consider and recommend full or partial funding depending on the proposed outcomes. The SSBPPE recommends two year grants for FY20 and FY21.

#### a. Priority Areas and Activities:

- i. Reducing access to SSBs,
- ii. Improving access to water,
- iii. Implementing education and awareness programs to reduce SSB consumption at BUSD.
- iv. Developing multi-level interventions to reduce SSB consumption that include a combination of institutional policy, systems, and environmental change as well as nutrition education and awareness.

#### b. Priority Populations:

- i. Children and their families; pre-school through high school;
- ii. Children and young adults living in households with limited resources;
- iii. Groups exhibiting higher than average population levels of type 2 diabetes, obesity, and tooth decay; and
- iv. Groups that are disproportionately targeted by the beverage industry marketing.

*A Vibrant and Healthy Berkeley for All*

**c. The highest priority outcomes that should be tracked and measured for beneficiaries of funded programs include:**

- i. Increases in knowledge and awareness of the health risks (oral health, diabetes, and obesity) of consuming sugary drinks. Changes in attitudes reflecting a preference for water or other non-sugary drinks among BUSD students and staff.
- ii. Decreased consumption of sugary drinks among BUSD students and staff.
- iii. Increased family engagement to raise awareness about the health impacts of sugary drink consumption. Changes in family attitudes reflecting a preference for water.

**2. The Grant Process:** City staff will provide opportunities for technical assistance during the grant application process.

**a. Proposal Requirements:**

- i. Proposals must reflect approval from the BUSD School Board.
- ii. BUSD will not sell or serve sugar-sweetened beverages (as defined by the SSB tax) at any BUSD schools or campuses.
- iii. Awarded funding will not supplant BUSD FY20 and FY21 General Fund allocations.
- iv. Funded projects will publicly reflect support from City of Berkeley Program.
- v. Funded projects and programs will include methods for evaluating their process and outcomes based on SMART Objectives.
- vi. The proposal timelines and budgets are feasible.

**b. Criteria for proposal:** The following criteria will be considered, although not exclusively, in determining which proposals are funded:

- i. Proposal aims to decrease consumption of sugary drinks and/or address the health effects of the consumption of sugary drinks. (15%)
- ii. Proposal includes policy, system, or environment (PSE) strategies. (30%)
- iii. Proposal reaches people and communities in the priority populations. (15%)
- iv. Proposal includes partnerships and collaboration. (10%)
- v. Proposal has elements that will last beyond the grant period. (10%)
- vi. Proposal budget matches the work plan and is feasible. (10%)
- vii. Describe related experience. (10%)



## SSBPPE Commission's Criteria for Community Agency Grants

Sugar-Sweetened Beverage  
Product Panel of Experts - (SSBPPE)

**Recommended actions to reduce Sugar-Sweetened Beverage (SSB) consumption and decrease health disparities.**

- 1. Minimum of 40% of the total allocation by the City Council's funding to reduce the consumption of sugar sweetened beverages (SSB's) be invested in grants for community-based programs for FY20 and FY21. A two year commitment will help to stabilize program design and implementation and will result in better outcomes to reduce SSB consumption.**
  - a. The types of interventions that should be prioritized for support include actions to:**
    - i. Reduce access to SSBs;
    - ii. Improve access to water;
    - iii. Limit marketing of SSBs to children;
    - iv. Implement education and awareness campaigns with specific populations, including measurable outcome data; and
    - v. Developing multi-level interventions to reduce SSB consumption that include a combination of institutional policy, systems, and environmental change as well as nutrition education and awareness.
  - b. Priority populations:**
    - I. Children and their families - with an emphasis on young children who are in the process of forming lifelong habits;
    - II. Children and young adults living in households with limited resources;
    - III. Groups exhibiting higher than average population levels of type 2 diabetes, obesity, and tooth decay rates;
    - IV. Groups that are disproportionately targeted by the beverage industry marketing.
  - c. The highest priority outcomes that should be tracked and measured for beneficiaries of funded programs include:**
    - i. Increases in knowledge of the health risks of consuming sugary drinks; changes in attitudes reflecting a preference for water or other non-sugary drinks; and
    - ii. Decreased consumption of sugary drinks.
  - d. Organizations that are prioritized to apply for funding include:**
    - i. Berkeley-based organizations and service providers serving the population of Berkeley.



- ii. Non-profit (501(c)(3) or groups with a fiscal agent.
- iii. Berkeley Unified School District (BUSD) programs will only be able to access BUSD specified funding.

**2. The Grant Process:**

- i. Every effort should be made to simplify the SSB grant process.
- ii. City staff should make available opportunities for technical assistance for first time applicants.

**a. Requirement for receiving a grant:**

- i. Funded organizations must have in place or agree to adopt prior to being funded an organizational policy prohibiting serving SSBs at organization-sponsored events or meetings.
- ii. Awarded funding will not supplant any existing funding.
- iii. Funded projects will publicly reflect support from City of Berkeley Program.
- iv. The project includes methods for evaluating both its process and outcomes based on SMART Objectives.

**b. Criteria for ranking proposals:** The following criteria will be considered, although not exclusively, in determining which proposals are funded:

- I. Proposal aims to decrease consumption of sugary drinks and/or address the health effects of the consumption of sugary drinks. (15%)
- II. Proposal includes policy, system, or environment (PSE) strategies. (30%)
- III. Proposal reaches people and communities in the priority populations. (15%)
- IV. Proposal includes partnerships and collaboration. (10%)
- V. Proposal has elements that will last beyond the grant period. (10%)
- VI. Proposal budget matches the work plan and is feasible. (10%)
- VII. Describe related experience. (10%)





Office of the Mayor

CONSENT CALENDAR  
January 22, 2019

To: Members of the City Council  
From: Mayor Jesse Arreguín  
Subject: 2019 City Council Committee and Regional Body Appointments

RECOMMENDATION

Adopt a Resolution approving the appointment of Council representatives to City Council Standing Policy Committees, Partnership Committees, Regional Bodies, and Council Liaisons for a one-year term from January 2019 to January 2020.

BACKGROUND

There are a number of Council appointments to various Partnership Committees, Regional Bodies and Liaisons to City Boards and Commissions. The Mayor respectfully submits his recommendations for appointments to various regional committees and commissions.

On December 11, 2018, the City Council established a system of Standing Policy Committees. The Governing Policies and Procedures for Standing Policy Committees require appointment of committee members by the full Council no later than January 31st each year. The recommendations for those Standing Policy Committees are also included in the proposed resolution.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Not Applicable.

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

1: Resolution

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

APPROVING APPOINTMENTS TO STANDING CITY COUNCIL POLICY COMMITTEES, PARTNERSHIP COMMITTEES, LIASIONS TO BOARDS AND COMMISSIONS AND REGIONAL BODIES FOR 2019

WHEREAS, the City Council has numerous appointments to various Partnership Committees, Regional Bodies and Liaisons to City Boards and Commissions, and must make new appointments every two years following the General Municipal Election; and

WHEREAS, six new Standing Policy Committees were established by the City Council on December 11, 2018; and

WHEREAS, pursuant to Resolution No. 68,726-N.S. and the Governing Policies and Procedures for Standing Policy Committees, appointments to Council Standing Policy Committees must be made by January 31st each year; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley officially makes the following appointments for the period ending January 31, 2020 or until new appointments are approved:

**City Council Standing Policy Committees:**

Agenda & Rules Committee

Appoint Mayor Arreguín, Vice-Mayor Wengraf and Councilmember Harrison

Budget & Finance Committee

Appoint Councilmember Davila, Councilmember Droste and Councilmember Kesarwani

Facilities, Infrastructure, Transportation, Environment & Sustainability Committee

Councilmember Davila, Councilmember Harrison and Councilmember Robinson

Public Safety Committee

Appoint Councilmember Bartlett, Councilmember Robinson and Vice-Mayor Wengraf

Land Use, Housing & Economic Development Committee

Appoint Councilmember Droste, Councilmember Hahn and Mayor Arreguín

Health, Life Enrichment, Equity & Community Committee

Appoint Councilmember Bartlett, Councilmember Hahn, and Councilmember Kesarwani

**Partnership Committees:**

4x4 Joint Task Force Committee on Housing: Rent Board/City Council

Appoint Mayor Arreguín, Councilmember Davila, Councilmember Harrison and Councilmember Robinson

3x3 Committee of the Berkeley City Council and the Berkeley Housing Authority  
Appoint Councilmember Davila, Councilmember Harrison and Councilmember Kesarwani

2x2 Committee of the City Council and the Board of Education  
Appoint Mayor Arreguín and Councilmember Hahn  
Appoint Councilmember Droste as Alternate

**Regional Committees:**

Alameda County Transportation Commission  
Appoint Mayor Arreguín  
Appoint Councilmember Droste as Alternate

Alameda County Waste Management Authority  
Appoint Vice-Mayor Wengraf  
Appoint Councilmember Hahn as Alternate

Association of Bay Area Governments  
Appoint Councilmember Bartlett  
Appoint Councilmember Kesarwani as Alternate

Joint Powers Authority - East Bay Community Energy Authority  
Appoint Mayor Arreguín  
Appoint Councilmember Harrison as Alternate

Joint Powers Authority - East Bay Sports Field Recreation  
Appoint Mayor Arreguín  
Appoint Councilmember Davila as Alternate

Joint Powers Authority - Lead Abatement  
Appoint Vice-Mayor Wengraf  
Appoint Councilmember Droste as Alternate

League of California Cities - East Bay Division  
Appoint Councilmember Harrison  
Appoint Councilmember Robinson as Alternate

Oakland Airport Noise Forum  
Appoint Councilmember Davila

**Council Liaisons to City Boards and Commissions:**

Board of Library Trustees  
Appoint Councilmember Hahn

Community Health Commission  
Appoint Councilmember Kesarwani

Mental Health Commission  
Appoint Councilmember Davila



Office of the Mayor

ACTION CALENDAR

January 22, 2019

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín and Councilmembers Kesarwani and Wengraf

Subject: RFP for Development of West Berkeley Service Center Site

RECOMMENDATION

Direct the City Manager to issue an RFP for the development of the West Berkeley Service Center site into a senior housing and services project consistent with Age Friendly Berkeley recommendations.

BACKGROUND

The population of Berkeley residents 65 years and older has steadily increased in recent years. In 2017, older adults were estimated to make up 13.5% of our community – an increase of approximately 2% from the 2010 Census (11.7%) and approximately 3% from the 2000 Census (10.2%). Recent projections from multiple sources, including the Alameda County Plan for Older Adults, show that by 2030 one in five residents (20.5%) in Berkeley will be over 65, nearly doubling the current population. Advances in medicine and the spike of ‘baby boomers’ born after World War II have resulted in a late-twentieth century demographic phenomenon, popularly referred to as the ‘silver tsunami’, that cities across the country are similarly anticipating.

Based on surveys completed by AARP (2012) and the Age Friendly Berkeley Initiative (2018) we know that older adults increasingly prefer to age in their communities, which tells us we need a continuum of housing options for this growing population, in tandem with services. We also know that housing affordability and availability, along with transit access, are major areas of concern, especially for low-income respondents. In 2014, 23% of Berkeley residents 60 years and older were living under 200% of the Federal Poverty Level, according to the American Community Survey. As of July 2018, there were 738 dedicated affordable units for seniors, with a waitlist of 6-8 years. Amidst the current affordability crisis, low- and fixed-income seniors are struggling just to stay housed, let alone receive the care they require.

In an effort to respond to current and future needs, the Berkeley Age Friendly Continuum was formed out of conversations between residents and those providing and working in aging services across the city. The goal of this work is to strengthen Berkeley as a place to age, and ensure implementation of an integrated, person-centered, replicable, continuum of supports and services for older adults and those with disabilities as they navigate transitions of aging. This effort is now supported by the City of Berkeley, Kaiser, Sutter and AARP, and is heavily informed by the Age Friendly

Cities and Communities effort led by the World Health Organization. Their three-year Action Plan will soon be released, focusing on how we can move forward aging standards, and ensure ours is a livable community where all generations thrive.

While the initial work of the Age Friendly Continuum has been focused on conducting a comprehensive needs assessment, setting priorities, articulating an organizational structure, and developing a 3-year plan, their longer term goal has always included piloting a senior housing and services facility that could be a model for the future of aging in place in Berkeley. One of the recommendations from their soon to be released Age Friendly Berkeley Action Plan under Housing and Economic Security, is to “develop a continuum of affordable, accessible housing options for older adults to age in their community regardless of their health or financial status”.

In April 2016, the City Council passed a referral to identify City owned properties that have the potential to be used for affordable housing sites. An information report with the referral response was presented in February 2017, with the West Berkeley Service Center (WBSC) identified as a potential site for future development. In May 2017, Council then passed a budget referral for a feasibility study for the construction of affordable senior housing, specifically mentioning the WBSC along with the North and South Berkeley Senior Centers. Located at 1900 6<sup>th</sup> Street, the WBSC is an approximately 31,000 square foot parcel situated in a Mixed Used Residential (MUR) zone. Public transit accessibility is plentiful, with several high-frequency AC Transit routes and Amtrak located within half a mile. In addition, the 4<sup>th</sup> Street shopping corridor, and community health care facilities are nearby. The site is currently home to several tenants that provide a variety of services, including the City of Berkeley Aging Services, the Black Infant Health Program, Public Health Nurses and the Meals on Wheels program.

Initial plans were to keep the WBSC under the scope of the Measure T1 process. Measure T1, passed by Berkeley voters in 2016, is a \$100 million bond for rebuilding and renovating the City’s aging infrastructure, including City owned facilities. Yet what this site needs is beyond an infrastructure upgrade, and its history as a hub for senior services presents an opportunity. West Berkeley has an extremely limited number of affordable housing units for seniors, despite being in a location that is easily accessible to various medical and aging services. And thanks to the passage of Measure O, a \$135 million dollar housing bond, combined with other funding opportunities, it could now be possible to fund the development of a senior housing and services facility modeled after the work of Age Friendly Berkeley, that becomes the gold standard for aging in place in our community, and the region.

Such a development would be consistent with the West Berkeley Plan, which calls for the residential development of MUR zones to facilitate the activation of such blocks while also maintaining a high level of services for the diverse population of West



Berkeley. Additionally, the Plan calls for the development of housing, which provides on-site supportive services, as an explicit goal.

A first step to this process would be to issue an RFP for a conceptual design for development of the WBSC, including the following criteria:

- Focuses on universally designed, affordable housing for older adults
- Incorporates the latest in technology and aging
- Functions both as services linked to housing and as a community hub of activity
- Reserves a portion of the units for assisted living and memory care
- Consistency with the recommendations of the Age Friendly Berkeley Initiative

Any proposed development could have access to various forms of funding, including but not limited to Measure O (which explicitly mentions senior housing), new markets and low-income tax credits, local/regional/state funding such as U1, A1, and Prop 63/MHSA, along with private foundations.

#### FINANCIAL IMPLICATIONS

Staff time.

#### ENVIRONMENTAL SUSTAINABILITY

Not applicable.

#### CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

#### Attachments:

1. Age Friendly Initiative, HHCS Presentation, City Council Worksession on July 17, 2018
2. Referral Response: Analysis of City-Owned Property for Potential Housing Development, February 14, 2017
3. Budget Referral: Feasibility Study For The Construction Of Affordable Senior Housing, May 16, 2017

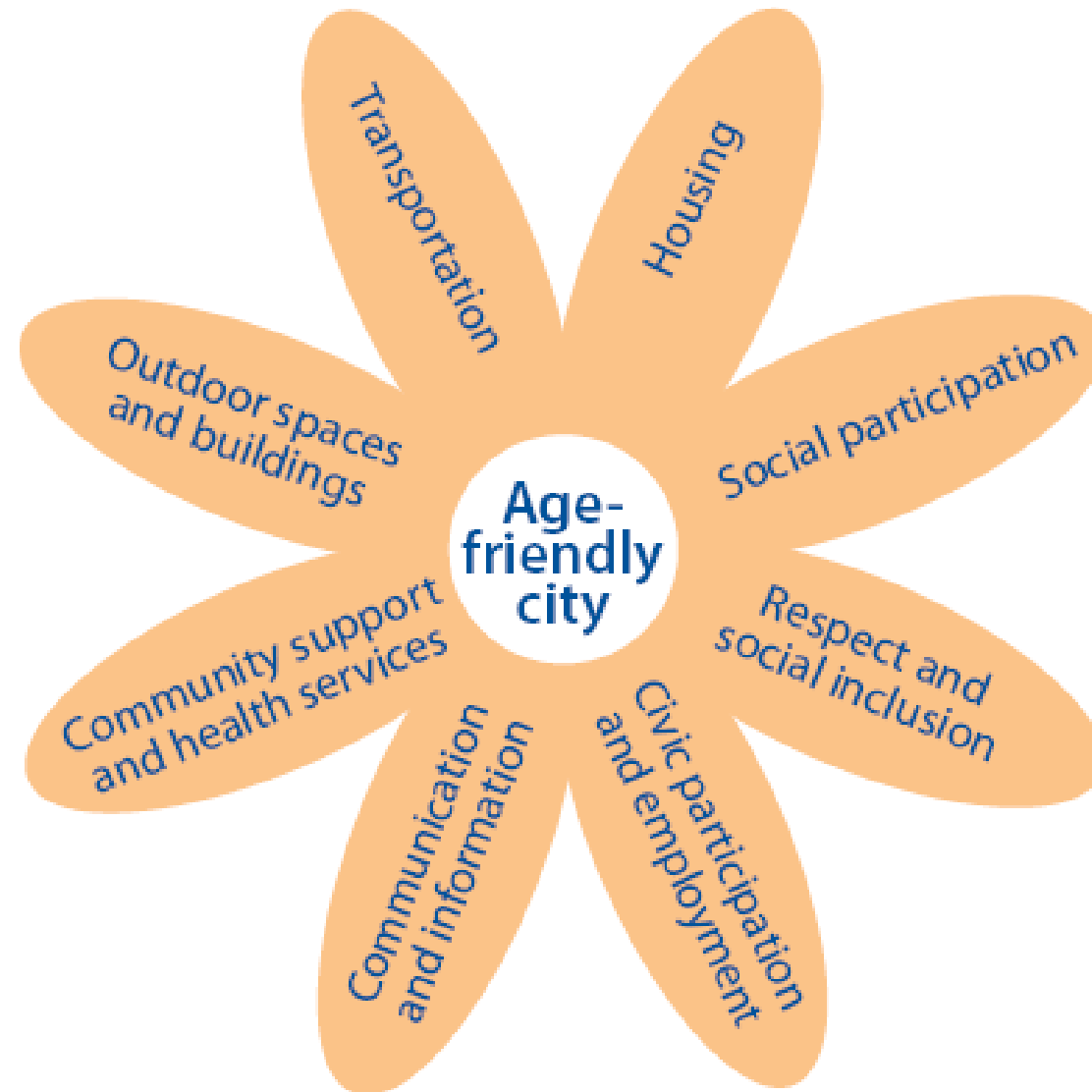
# Age Friendly Initiative

Presented by Tanya Bustamante

Department of Health, Housing & Community Services

July 17, 2018

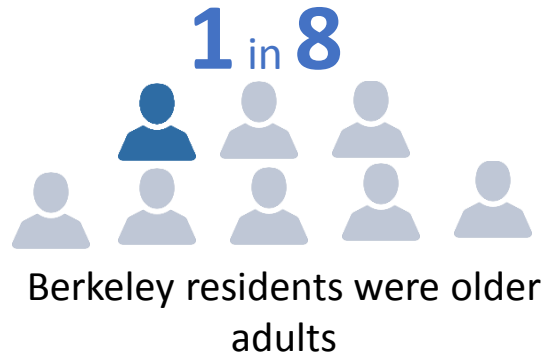
# Age Friendly City



# Age Friendly Berkeley Initiative

## SHIFTING DEMOGRAPHICS

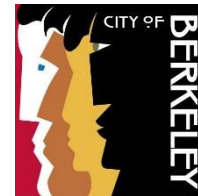
In 2010, approximately



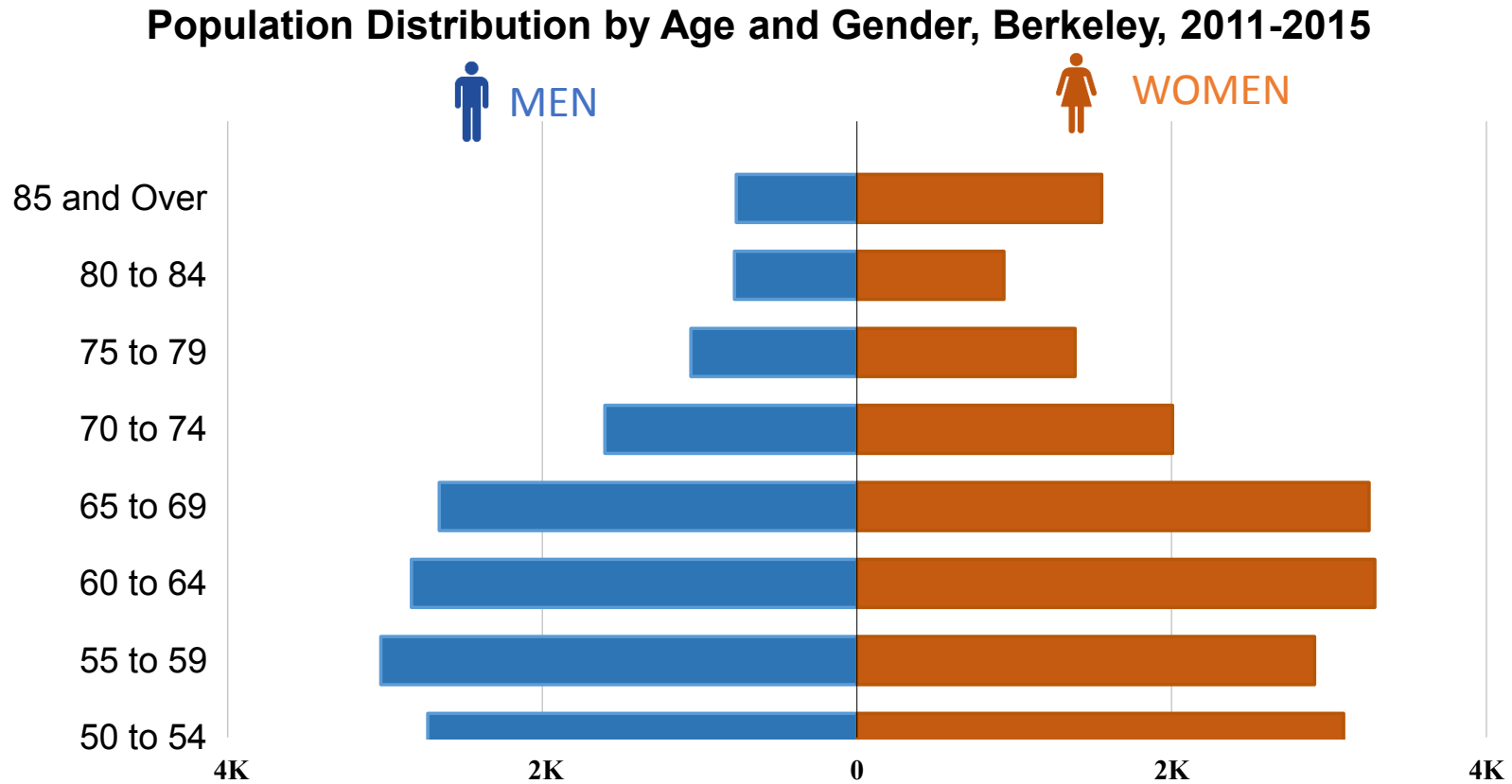
By 2030, more than



## PARTNERS



# Older Adults in Berkeley



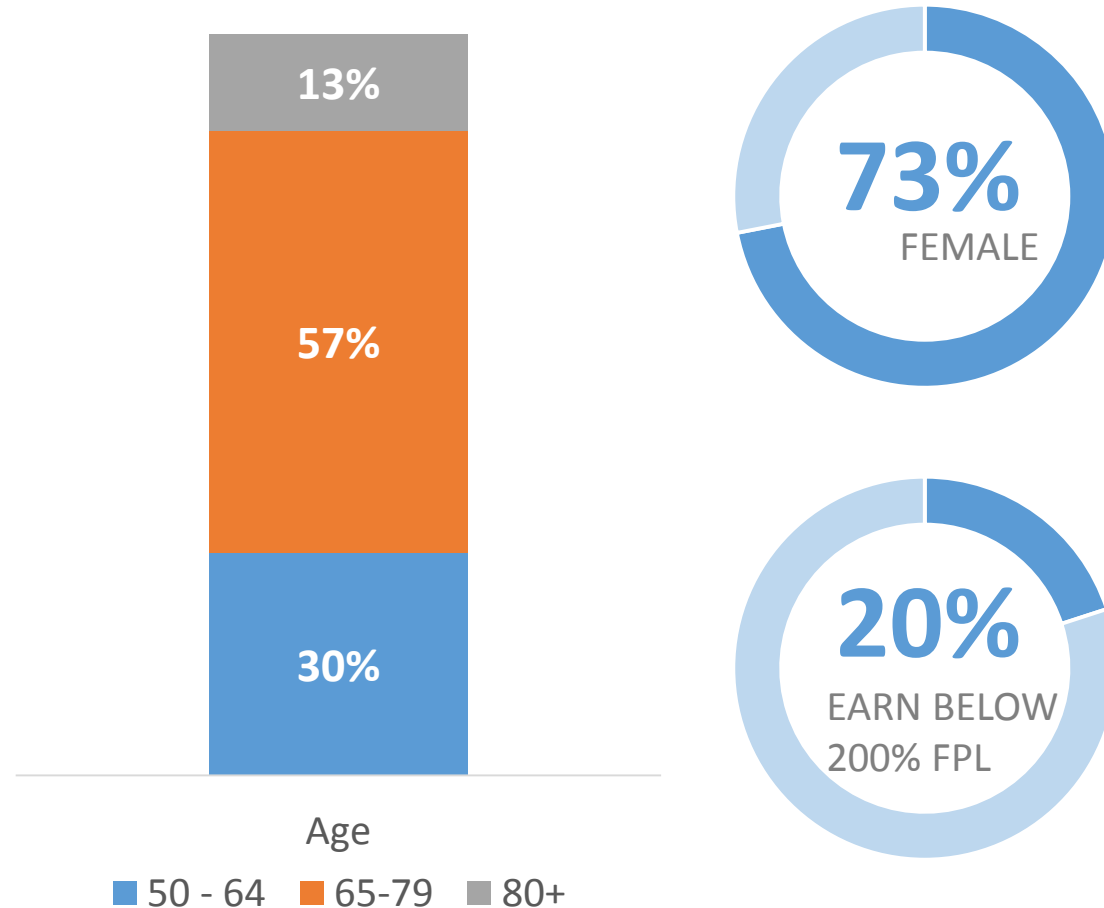
Source: City of Berkeley Public Health Division, Epidemiology & Vital Statistics; U.S. Census, ACS 2011-2015

# Informing the Berkeley Age Friendly Plan

## PROCESS

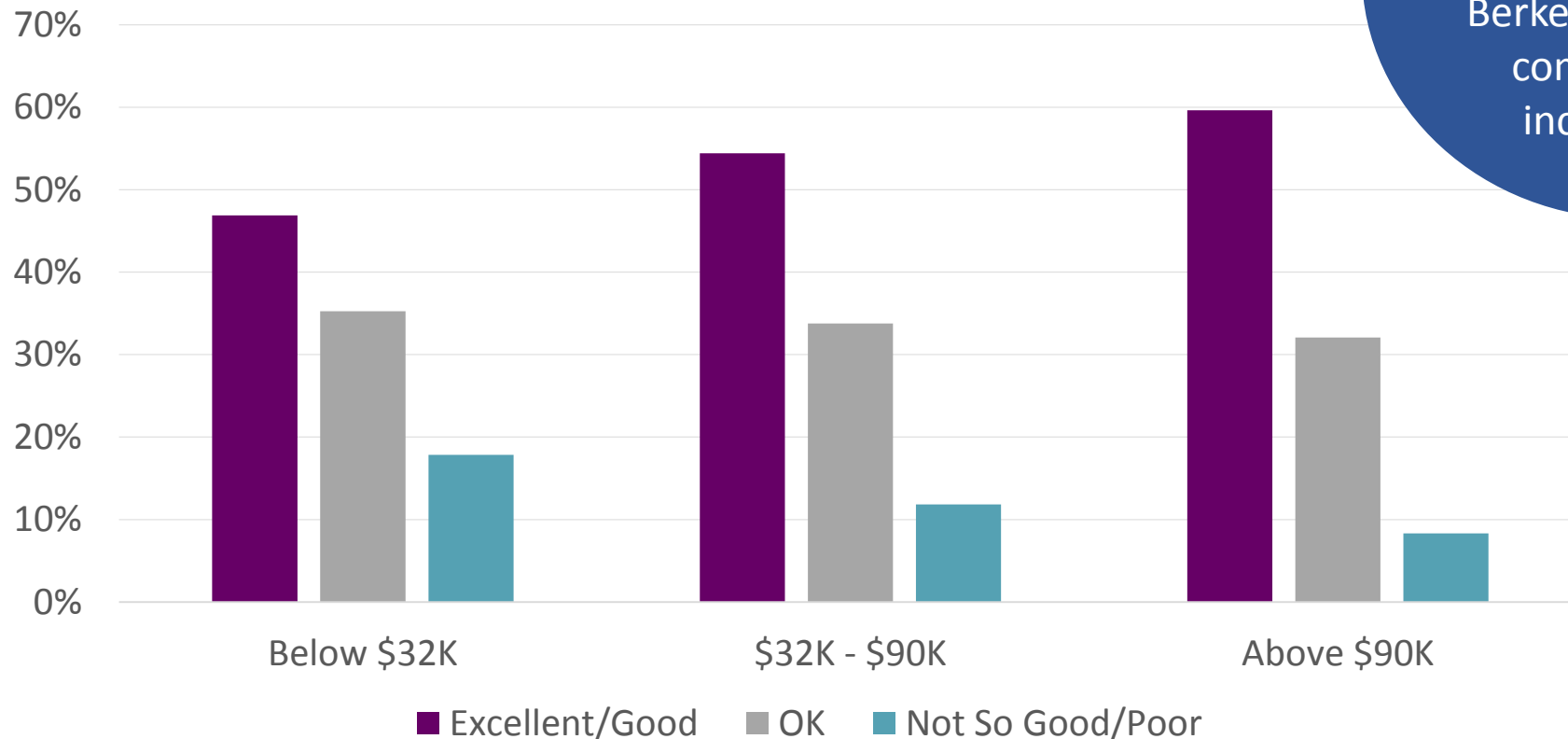
- Community Survey:
  - Over 1,400 respondents (Berkeley adults age 50+)
- Informational Interviews:
  - 18 City staff from 9 Departments

## PROFILE OF COMMUNITY RESPONDENTS



# Berkeley Rating Varies by Income

How Respondents Rate Berkeley as a Place to Age by Income Group



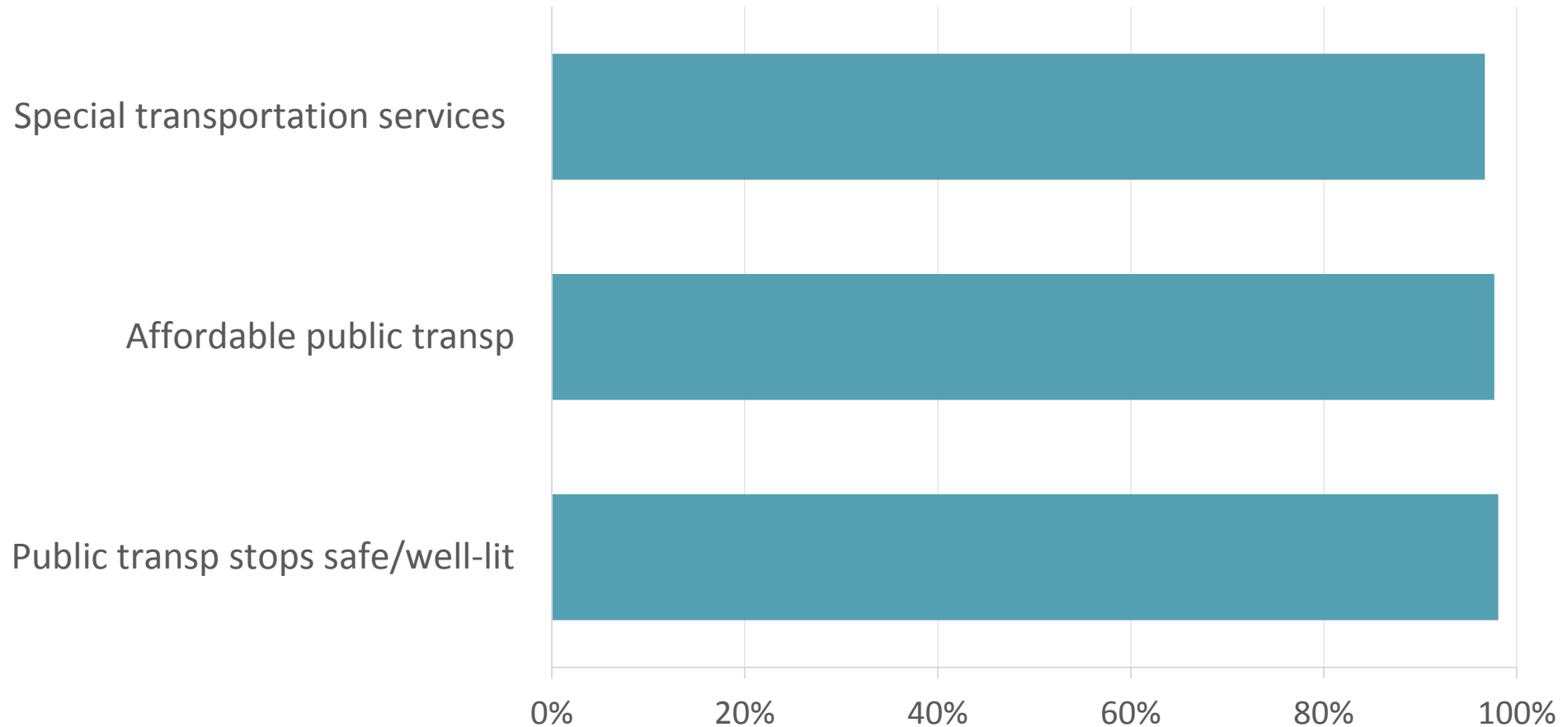
Those earning below \$32k were more than **twice** as likely to rate Berkeley poorly when compared to top income earners





# Transportation is a High Priority for Older Adults

Traffic Resources that are  
Very Important or Somewhat Important for Seniors



# City of Berkeley Projects that Support an Age Friendly City for All

## HOUSING

- Senior and disabled home loan programs
- Accessory Dwelling Unit (ADU) policies
- Housing safety program thru Planning Department

## OPEN SPACES

- Older adult programs thru Parks & Rec Department
- “Crime Prevention through Environmental Design”
- Older adults engaged thru Measure T1

## TRANSPORT.

- Master pedestrian plan in commercial areas
- City sidewalk assessment
- Mobility management and travel training for seniors

# Recommended Actions

## TRANSPORTATION



- Advance affordability, availability, and reliability of public transport
- Improve transportation infrastructure
- Extend educational programs on public transit options

## HOUSING



- Promote universal design & accessible neighborhoods
- Support policy efforts that preserve units rented below market rates
- Collaborate to develop continuum of housing options

## OUTDOOR SPACES



- Seek older adult input while developing the master pedestrian plan
- Improve park bathrooms and facilities
- Create safe routes to common destinations

# Aging Services Division at a Glance

**24.4**

FTE STAFF

**190**

VOLUNTEERS

**170**

VULNERABLE SENIORS  
RECEIVE CASE MANAGEMENT

**1,140**

SENIOR CENTER CLASSES  
DELIVERED

**120**

SHOPPING EXCURSIONS  
ORGANIZED

**50,000**

MEALS SERVED AT  
OUR SENIOR CENTERS

**13,400**

TAXI RIDES

**1,270**

VAN RIDES

**60,000**

MEALS DELIVERED TO  
HOMEBOUND SENIORS

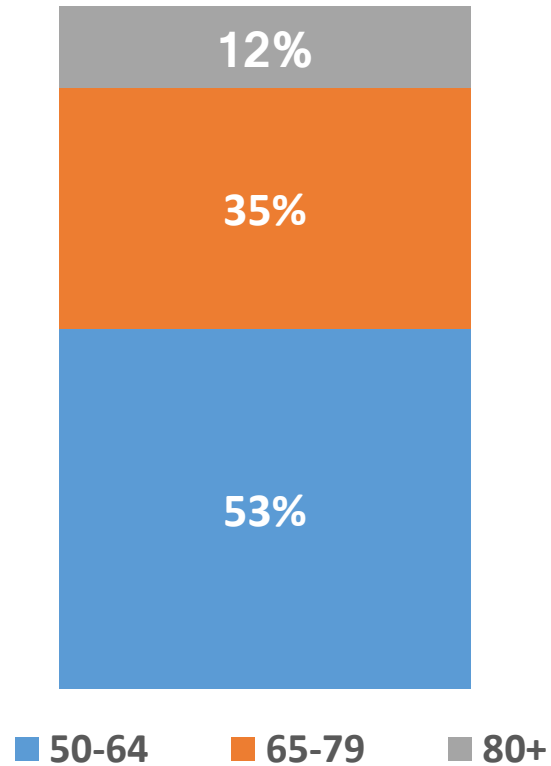
# Questions?



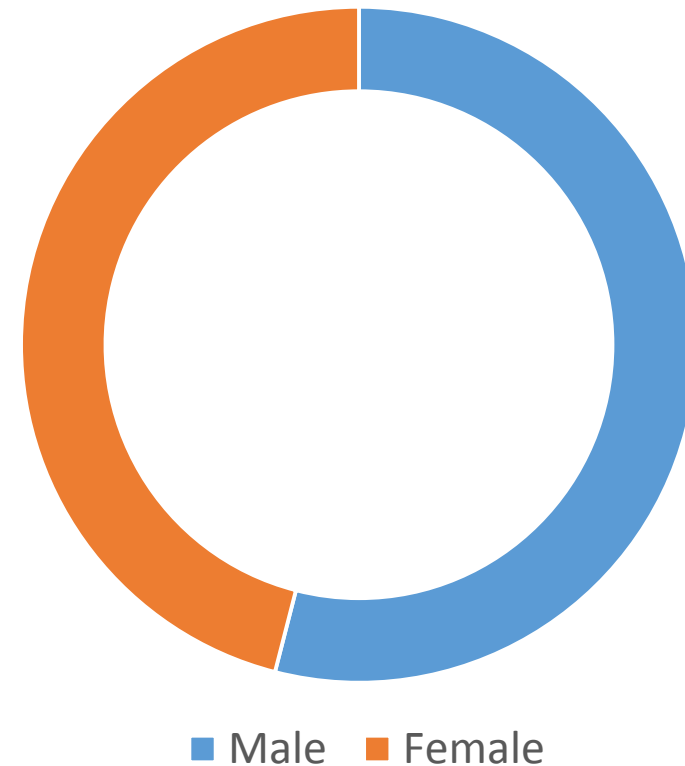
# Additional Slides

# Older Adults in Berkeley

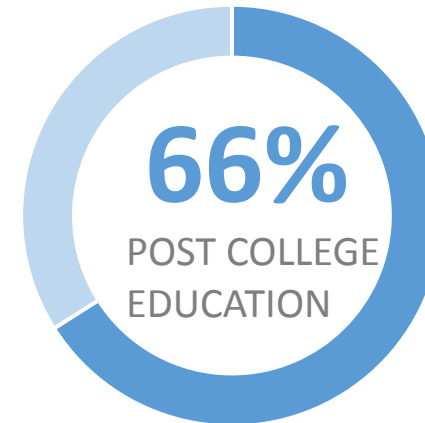
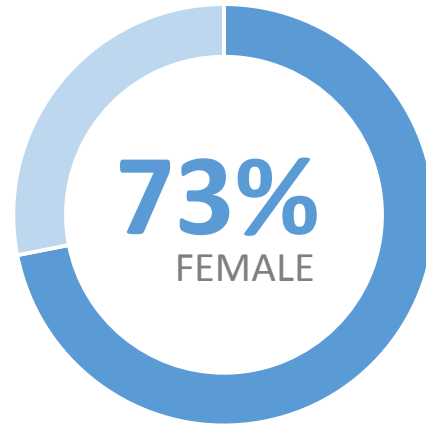
Age Distribution for Adults 50+



Gender Distribution for Adults 50+



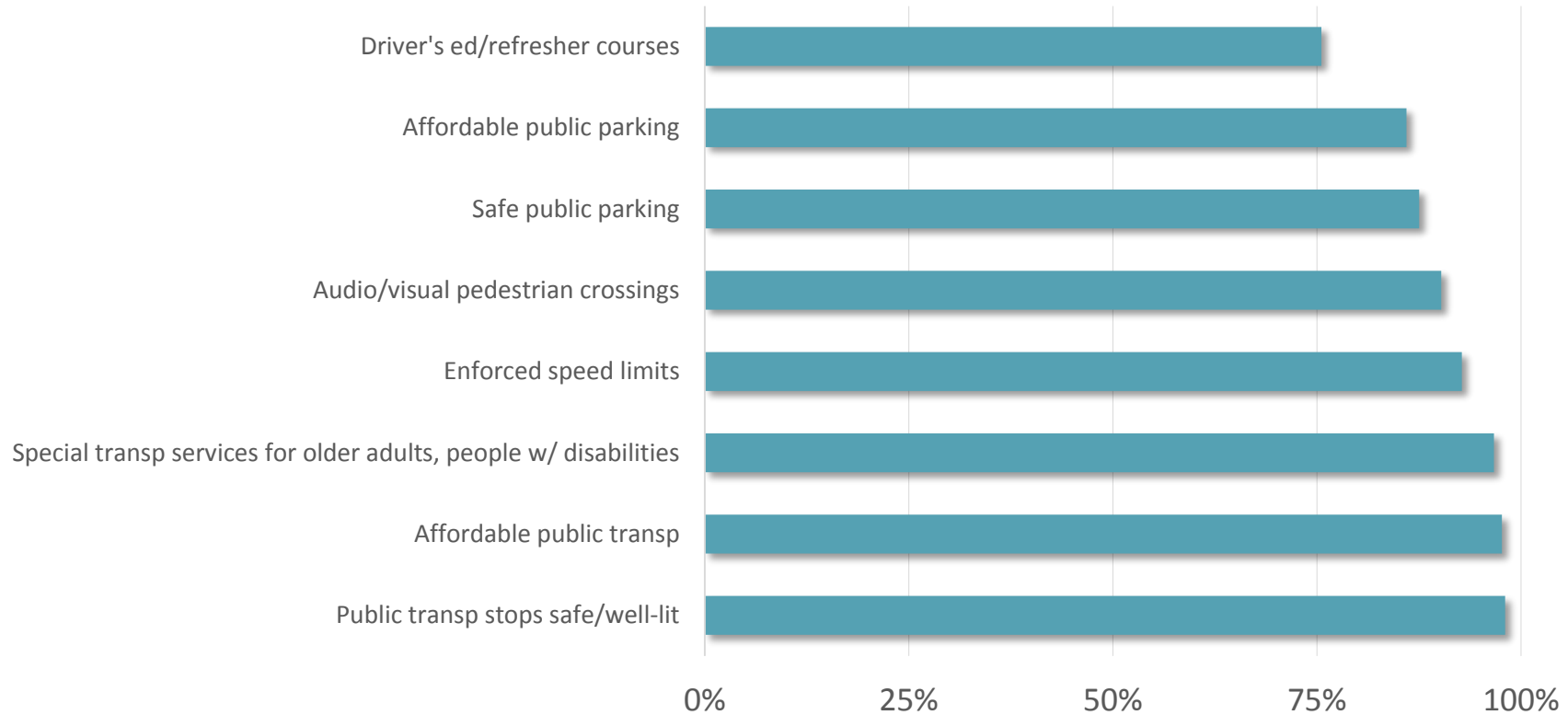
# Community Survey Respondent Profile



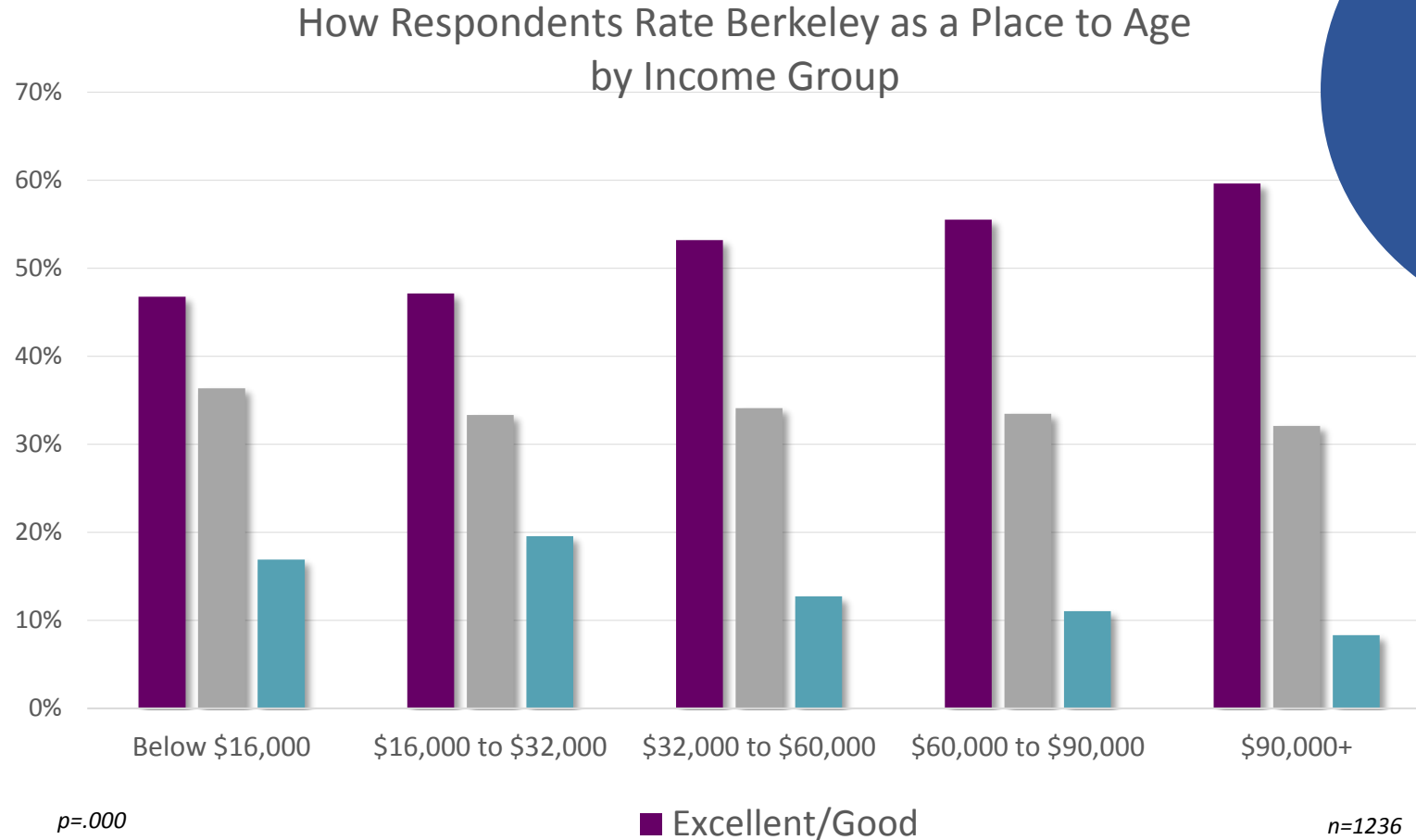


# Transportation is a High Priority for Older Adults

Traffic Resources that are  
Very Important or Somewhat Important for Seniors

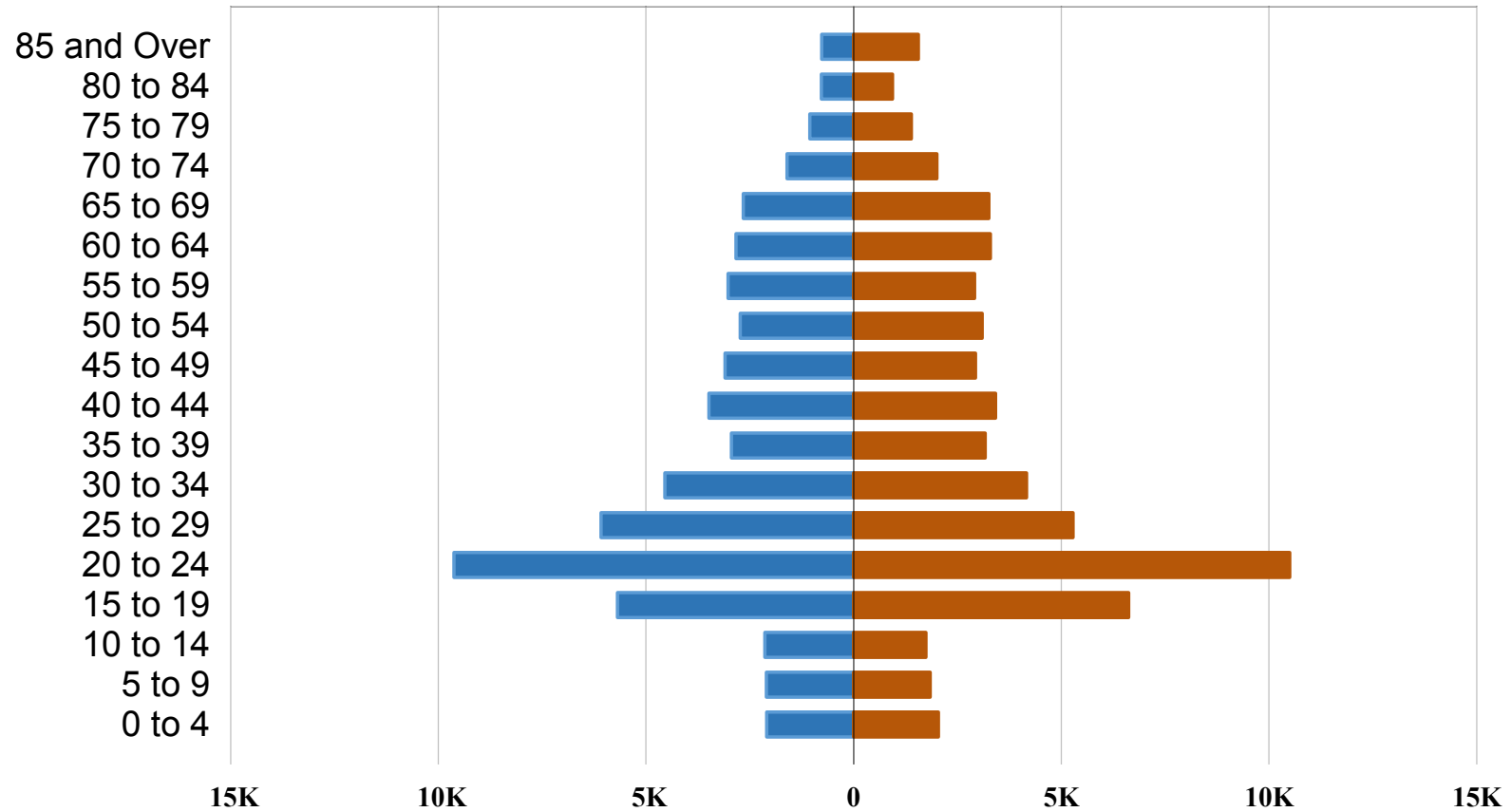


# Berkeley Rating Varies by Income



Those earning below \$32k were more than **twice** as likely to rate Berkeley poorly when compared to top income earners

# Berkeley Population by Age and Gender



Source: City of Berkeley Public Health Division, Epidemiology & Vital Statistics; U.S. Census, ACS 2011-2015

# Older Adults in Berkeley

- Age distribution
  - 55-59 5.4%
  - 60-64 5.2%
  - 65-74 8.2%
  - 75-84 3.7%
  - 85+ 1.8%
- Gender (65 and over)
  - Male 41.8%
  - Female 58.2%

# Aging Services Division

- **Staffing & Volunteers**

- 24 FTE staff
- 175-200 volunteers throughout the year

- **2 Senior Centers**

- Daily classes, enrichment activities, shuttle transportation
  - 97 classes per month
  - 10-12 field and shopping trips per month
- 200 lunchtime meals served each day (over 50,000 meals per year)
- Paratransit services:
  - FY17: over 13,400 taxi rides & over 1,270 van rides

- **Social Services Unit**

- Caseload of approximately 120

- **Meals on Wheels**

- Approximately 60,000 meals delivered per year

# City of Berkeley Projects that Support an Age Friendly City for All

## HOUSING

- Senior and disabled home loan programs
- Accessory Dwelling Unit (ADU) policies
- Housing safety program thru Planning Department

## OPEN SPACES

- Older adult programs thru Parks & Rec Department
- “Crime Prevention through Environmental Design”
- Older adults engaged thru Measure T1

## TRANS.

- Master pedestrian plan in commercial areas
- City sidewalk assessment
- Mobility management and travel training for seniors




Office of the City Manager

INFORMATION CALENDAR

February 14, 2017

To: Honorable Mayor and Members of the City Council

From:  Dee Williams-Ridley, City Manager

Submitted by: Paul Buddenhagen, Director, Health, Housing and Community Services

Subject: Referral Response: Analysis of City-Owned Property for Potential for Housing Development

SUMMARY

On April 5, 2016 City Council requested an inventory of City-owned properties in order to evaluate their potential for affordable housing development. In the past, the City has sold (for example, for Oxford Plaza and Harper Crossing) and leased (in the case of William Byron Rumford Senior Plaza) City-owned property to support affordable housing.

The City owns 119 properties scattered throughout Berkeley. (In many cases, these properties are made up of multiple legal parcels.) Staff reviewed the inventory and assessed each site's development potential, based on criteria prioritizing sites that are mostly likely to accommodate a multifamily rental project and most competitive for affordable housing funding. HHCS staff reviewed the sites' zoning designation, square footage, current use, and whether or not properties were protected as parks or open space under Measure L, the Berkeley Public Parks and Open Space Preservation Ordinance. Six properties were identified citywide that met the basic criteria. One is the Berkeley Way parking lot, currently the subject of an agreement with BRIDGE Housing related to its development as affordable housing. The other five all had other significant challenges to development. All would require more review before taking any further action.

Staff did not review properties for the potential to sell. Oakland's housing plan, Oakland at Home, recommended selling City-owned properties not suitable for affordable housing development and placing 30% of the proceeds in a housing trust fund.

CURRENT SITUATION AND ITS EFFECTS

This report responds to a referral that originally appeared on the April 5, 2016 Council agenda and was sponsored by Councilmember Wengraf.

For this project, HHCS staff started with a detailed list of City-owned parcels that had been compiled by the Public Works Department from multiple sources, and updated it with information from the Berkeley Municipal Code as well as internal records. The

complete list is attached (see Attachment 3). It is the most comprehensive list that has been compiled to date.

#### Initial Assessment: Selected Properties

HHCS staff identified six properties that met basic criteria for housing development suitability and grouped them in three categories, based on the criteria briefly described above, and described in depth in the Background section of this report. The following describes the six properties which best met the criteria identified. None of these sites were identified as housing opportunity sites in the Housing Element, primarily because of existing City uses and zoning constraints. The City already has an agreement with BRIDGE Housing for the development of Berkeley Way, and the other five have significant challenges to development. These sites are also listed in Attachment 1.

*Group 1.* Two properties met all basic criteria. They are: 1) located within zones allowing multifamily development; 2) larger than 15,000 square feet; 3) not protected under Measure L; and 4) have no existing structures.

- **Berkeley Way Parking Lot (2012 Berkeley Way):**  
The City and BRIDGE Housing have a Disposition and Development Agreement for a project on this site that will incorporate affordable housing, permanent supportive housing, transitional housing, homeless services, and replacement public parking. On September 27, 2016, City Council awarded \$835,897 in Housing Trust Funds to support additional predevelopment activities, including architectural work, environmental studies, and planning fees.
- **Elmwood Parking Lot (2642 Russell Street)**  
Five City-owned parcels could be merged to create a 27,000 square foot lot. The parcels currently form a narrow parking lot situated between a row of shops facing College Avenue, and a residential neighborhood composed primarily of 1-2 story single family homes and small multifamily buildings. This parking lot supports the Elmwood commercial area. At a minimum, this site would need to be rezoned to support multifamily housing development at a large enough scale to make affordable housing feasible.

While the square footage of the parcel initially seemed promising, several of the adjacent residential buildings are situated on the lot lines, and the businesses use the City's property for trash pickup and delivery access. Setbacks would likely be required on one if not both sides. In addition, the lot's irregular shape and proximity to existing commercial and residential uses would constrain its footprint and height to the point at which an affordable development may be infeasible, particularly with replacement parking for the commercial district. Combined, these limitations are likely to make affordable housing development infeasible at this time.



*Group 2.* Two additional properties are 1) located within zones allowing multifamily development; 2) larger than 15,000 square feet; and 3) not protected under Measure L; but they have active City uses. A third property, Center Street Garage, also met these criteria but was not considered because it is currently under construction.

- **West Berkeley Service Center (1900 Sixth Street).** The West Berkeley Service Center is located on a parcel that is 31,000 square feet, in an area that is a mix of commercial, industrial, and residential. Some of the parking spots are currently being used for City vehicles. The neighboring buildings are 1-2 stories tall, but 4-5 story buildings are located one block away along University Avenue. Though the existing zoning (MUR - Mixed Use Residential) permits multifamily development, changing the zoning could help maximize the site's development potential. Demolishing and replacing the service center, currently used for senior social services, the Black Infant Health Program, Public Health Nurses and the Meals on Wheels program, would add significantly to the cost of housing development at the site.
- **Telegraph-Channing Garage and Shops (2425 Channing Way)**  
This six-story parking garage also includes retail spaces on the ground floor. Built in the late 1960s, the garage provides parking for the stores and restaurants along Telegraph Avenue near the UC Berkeley campus. Conceivably, the site could be redeveloped to include replacement commercial spaces and parking with housing over it.

However, since the structure is a key resource for local businesses, the costs of temporary commercial relocation during construction, and the costs of replacing parking and commercial spaces would make development very costly and could be infeasible in combination with affordable housing. In order to also add new residential units, the replacement structure would likely need to be several stories taller than the current structure, which is already among the tallest buildings in the neighborhood. These issues present significant challenges to using the site for affordable housing in the foreseeable future.

*Group 3.* These properties are both larger than 15,000 square feet and vacant, but would require zoning changes before multifamily housing could be constructed and have constraints from Measure L. The North Bowling Green is protected from development under Measure L, and would require a vote of the people to change its designation and make it legal to develop. The Santa Fe Right of Way requires further analysis to determine Measure L's applicability. Unlike other parcels protected under Measure L, both of these properties are fenced off from the public and not in active use.

- **North Bowling Green (1324 Allston Way)**  
Within the Corp Yard, along Allston Way, the North Bowling Green is a vacant lot of approximately 21,000 square feet that is not actively used by the City. The site

was used as a lawn bowling green starting in 1929, but has not been maintained as such since 2008. This site, along with the South Bowling Green and clubhouse, is leased to the Berkeley Lawn Bowling Club, though Parks is negotiating a new lease that will not include the North Bowling Green. The site contains elevated levels of pesticides and metals, and the contaminated soil would need to be excavated or encapsulated prior to active use or development, which does not rule out affordable housing development but would add to the cost. The entire Corp Yard site is within an R-2 zone, so the North Bowling Green would need to be split from the Corp Yard parcel and rezoned to allow for multifamily housing. The 150-unit Strawberry Creek Lodge (affordable senior housing) is located within a block of the vacant site, though the immediately adjacent residential units are single-family homes.

- **Santa Fe Right of Way**

The City owns six vacant, non-contiguous parcels that were part of the right of way for the former Santa Fe Railroad. The lots cut through the middle of blocks at a diagonal, and are separated by several streets: Ward, Derby, Carleton, Parker and Blake. Collectively, the parcels comprise approximately 75,000 square feet of undeveloped land. The parcels are zoned R-1 and R-2, which do not permit multifamily construction. The neighborhood is primarily single family homes with a few 2-story multifamily buildings. Although it could be possible to combine these sites into a single scattered site project, it would be difficult to achieve the density required to make a scattered site project large enough to be competitive for tax credit and other affordable housing funding.

## BACKGROUND

The initial data collection resulted in a list of 229 individual parcels, which was reduced to 119 after staff analysis. Several Berkeley Housing Authority and BUSD properties associated with Berkeley 75, former public housing, were removed from consideration, and adjacent parcels were combined into single entries to better assess their development potential. Staff then researched each property for specific data, including zoning and property square footage.

From the list of 119 parcels, some City-owned properties were excluded from further analysis because they were not available or clearly not suitable for development as housing. Sites not considered for future housing development included City offices at Center and Milvia, street segments, sidewalks, fire and police facilities, and sites leased to existing affordable housing projects.

The City owns approximately one acre of air rights to develop over the western parking lot at Ashby BART, which is zoned C-SA. The site was not included in this report because it is being analyzed as part of the Adeline Corridor planning process. The City does not own air rights at North Berkeley BART.

### Methodology and Criteria

The remaining 92 properties were then ranked based on a set of criteria established to identify the sites with the greatest development potential (and fewest development barriers). The following criteria were used:

#### *Zoning*

Given the City of Berkeley's general plan and municipal code, multi-family housing can only be built within certain zones<sup>1</sup>. Properties outside these zones were ranked lower since they would require zoning changes in order to be suitable for higher density development.

#### *Size of parcel/ability to support 50+ units of housing*

Staff prioritized sites that can accommodate 50+ units of housing for affordable housing development. In this analysis, we looked at sites of 15,000 square feet as having the greatest potential, and gave consideration to sites over 10,000 square feet. Sites smaller than this are unsuitable for affordable multifamily housing development because:

- Even with greatly reduced or donated land, affordable housing development requires public funding. There are limited funding sources for affordable housing, and most multifamily housing developers pursue Low Income Housing Tax Credits as a significant source. Tax credit funding is highly competitive, and non-tax credit projects can be difficult to finance. California intends to start incentivizing larger developments by awarding higher points to projects with 50 or more units. Staff estimated that sites under 15,000 square feet would not allow for the density required to meet the 50-unit minimum for a competitive project. Sites between 10,000 and 15,000 were included but ranked lower, as they could be combined for a scattered site project.
- The long length of time required for obtaining financing for Harper Crossing (41 units) and Grayson Street Apartments (23 units) are probably at least partially related to their small size. Smaller projects are generally less competitive for housing funds because of their higher per unit costs and, in the case of the Affordable Housing and Sustainable Communities program, due to their smaller impact on reducing greenhouse gas emissions.
- Similarly, Oakland's housing plan recommended using sites that can accommodate 50+ units for affordable housing, and selling the others for revenue to support housing.
- One local affordable housing developer, when asked about minimum size, said "we've found that in higher-density areas (like Berkeley) sites should be at least 15,000 sq ft. We will look at smaller sites if there are special circumstances but as a rule of thumb it is hard to create a feasible multifamily rental project on a site

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<sup>1</sup> Zones that allow multifamily housing are R-3, R-4, R-5, C-1, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-W, C-DMU, and MU-R

under that size.” Another emphasized the need to look at the development capacity, citing a project on 13,000 square foot plot with 62 one-bedrooms, feasible only because it has 6 stories (typically not possible in Berkeley).

#### *Parks and open spaces, restricted by Measure L*

In 1986, Berkeley residents passed Measure L, the Berkeley Public Parks and Open Space Preservation Ordinance, ensuring that all existing City open space would be preserved (not developed). Measure L requires a vote of the people to use or to develop a public open space or park for any purpose other than public parks or open space, unless a State of Emergency has been declared. In this context, the Homeless Shelter Crisis declared by City Council in 2016 does not qualify as a State of Emergency, and would not supersede Measure L. Staff consulted with Parks to confirm that 23 properties larger than 10,000 square feet are restricted under Measure L. Staff did not ask Parks to review the following properties in hillside zones due to topographical constraints on development: Grotto Rock Park, Indian Rock Park, Remillard Park, Cragmont Park, and Great Stone Face Park.

#### *Current Use*

Berkeley is largely built out, and most City-owned properties have buildings and active uses. Staff prioritized properties that do not have any structures, followed by properties that are active City facilities, and finally properties leased to non-City entities. Staff did not review the 21 leases noted in the property inventory, and did not assess the development potential of the sites once the leases expire, as that was beyond the scope of the current analysis.

#### Properties Less Suitable for Development

The remaining 113 properties were considered less suitable for development because they did not meet enough of the priority criteria. More than half of the remaining properties were eliminated because they fell below the threshold of 10,000 square feet (49 properties) or because they are actively used open space or parks and are protected under Measure L (22 properties, excluding the Santa Fe ROW). Other properties were eliminated because of their current use, including a number of City facilities on lots larger than 15,000 square feet. Attachment 2 includes a list of every City-owned property over 15,000 square feet in area.

#### ENVIRONMENTAL SUSTAINABILITY

Any site would require environmental analysis to assess its suitability for development, and identify contaminants or issues needing remediation.

#### POSSIBLE FUTURE ACTION

Staff will continue to work with BRIDGE Housing and the Berkeley Food and Housing Project on the redevelopment of the Berkeley Way Parking Lot. Staff plan to report back to City Council with a recommendation on the disposition of two former

Redevelopment Agency properties the City owns on 5<sup>th</sup> Street. Staff welcome any additional information that could further update the property information shown in Attachment 3.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Fiscal impacts of future action will depend on the course of action identified. Developing new affordable housing on City-owned land will require additional City funding contributions.


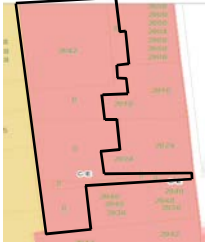




CONTACT PERSON

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

Attachments:

- 1: Selected Property List
2. City Properties Larger Than 15,000 SF
3. Inventory of City Properties
4. Original Referral Report from April 5, 2016

Selected Property List

| Priority Group | Name (Address)                                                         | Zoning          | Lot SF | Current Use       | Image                                                                                 | Bldg SF |
|----------------|------------------------------------------------------------------------|-----------------|--------|-------------------|---------------------------------------------------------------------------------------|---------|
| 1              | Berkeley Way Parking Lot<br>(2012 Berkeley Way)                        | C-DMU<br>Buffer | 40,945 | Parking<br>Lot    |    |         |
| 1              | Elmwood Parking Lot<br>(2642 Russell, 5 parcels)                       | C-E             | 27,374 | Parking<br>Lot    |    |         |
| 2              | Telegraph-Channing Garage and Shops<br>(2425 Channing Way)             | C-T             | 32,685 | Parking<br>Garage |   | 189,867 |
| 2              | West Berkeley Service Center<br>(1900 Sixth St)                        | MUR             | 31,020 | City<br>Facility  |  |         |
| 3              | North Bowling Green<br>(portion of City Corp Yard, 1324 Allston)       | R-2             | 21,000 | City<br>Facility  |  | 46,604  |
| 3              | Santa Fe Right of Way<br>(Ward, Derby, Carleton, and Blake, 6 parcels) | R-1/R-2         | 75,086 | ROW               |   |         |

**Attachment 2:  
All City-Owned Properties Larger Than 15,000 SF**

**City Facilities**

- Berkeley Fire Station Number 5 (2680 Shattuck Ave)
- Berkeley Fire Station Number 6 (999 Cedar St)
- Berkeley Fire Warehouse (1011 Folger Ave)
- Berkeley Police Department / Old City Hall (2100 / 2134 MLK Jr. Way)
- Berkeley Public Library – Central Branch (2090 Kittredge St)
- Berkeley Public Library-North Branch (1170 The Alameda)
- Berkeley Transfer Station (1201 Second St)
- City Corp Yard (1326 Allston Way)
- City Office Building (1947 Center St.)
- Civic Center Building (2180 Milvia St)
- Fire Department Station No.2 (2029 Berkeley Way)
- Firehouse Number 7 (3000 Shasta Ave)
- North Berkeley Senior Center (1901 Hearst Ave)
- North Bowling Green (part of City Corp Yard, 1324 Allston)
- South Berkeley Senior Center (2939 Ellis St)
- West Berkeley Service Center (1900 Sixth St)

**Existing Affordable Housing**

- Oceanview Garden Apartments (1816 Sixth St)
- University Avenue Cooperative Homes Apartments (Addison at Sacramento)
- William Byron Rumford Senior Plaza (3012 Sacramento St)

**Leased Properties**

- Berkeley Black Repertory Group Theater (3201 Adeline St)
- Berkeley Recycling Center (669 Gilman St)
- Nia House Learning Center (2234 Ninth St)
- Veterans Memorial Building (1931 Center St)
- Women's Daytime Drop-In Center (2218 Acton St)

**Parking Lots/Garages**

- Berkeley Way Parking Lot (2012 Berkeley Way)
- Center Street Garage (2025 Center St)
- Elmwood Parking Lot (2642 Russell)
- Oxford Plaza Parking Garage (2165 Kittredge)
- Telegraph-Channing Garage and Shops (2425 Channing Way)

### **Parks and Open Space**

- Aquatic Park\* (80 Bolivar Dr)
- Berkeley Way Mini Park (1294 Berkeley Way)
- Cedar Rose Park\* (1300 Rose St)
- Codornices Park and Berkeley Rose Garden (1201 Euclid Ave)
- Community Garden (1308 Bancroft Way)
- Cragmont Rock Park (960 Regal Rd)
- Dorothy Bolte Park (540 Spruce St)
- George Florence Park (2121 Tenth St)
- Glendale- La Loma Park (1310 La Loma Ave)
- Great Stoneface park (1930 Thousand Oaks Blvd)
- Greg Brown Park (1907 Harmon St)
- Grotto Rock Park (879 Santa Barbara Rd)
- Grove Park (1730 Oregon St)
- Harrison Park (1100 Fourth St)
- Hillside Open Space on Euclid Ave
- Indian Rock Park (950 Indian Rock Ave)
- James Kenney Park\* (1720 Eighth St)
- John Hinkel Park (41 Somerset Pl)
- Live Oak Park\* (1301 Shattuck Ave)
- Marina\*/Cesar Chavez Park (11 Spinnaker Way)
- MLK Jr. Civic Center Park (2151 Martin Luther King Jr Way)
- Ohlone Park (1701 Hearst Ave)
- Remillard Park (80 Poppy Ln)
- San Pablo Park (2800 Park St)
- Strawberry Creek Park (1260 Allston Way)
- Terrace View Park (1421 Queens Rd)
- Virginia-McGee Totland (1644 Virginia St)
- Willard Park (2730 Hillegass Ave)









*\*A portion of the property is leased to a local organization.*

### **Other**









- Santa Fe Right of Way (approx. 1400 Carleton)
- Sidewalk and Road (Ashby between Harper and MLK Jr. Way)
- Roundabout (Parkside Dr)
- Sojourner Truth Court (former Santa Fe ROW)
- West St (between Lincoln and Delaware)











Inventory of City Properties

| Name (Address)                                            | Zoning        | Lot SF | Current Use   | Notes                                                | Image                                                                               | APN                            | Bldg SF | Leased? | Tenant | End Lease Term |
|-----------------------------------------------------------|---------------|--------|---------------|------------------------------------------------------|-------------------------------------------------------------------------------------|--------------------------------|---------|---------|--------|----------------|
| 1631 5th Street                                           | MUR           | 5,525  | Other         | Former RDA property. Vacant lot.                     |   | 057 211701100                  |         |         |        |                |
| 1654 5th Street                                           | MULI/<br>MUR  | 5,300  | Other         | Former RDA property. Vacant, single-family home.     |    | 057 211602300                  |         |         |        |                |
| 1817-1819 Fourth Street                                   | C-W           | 12,500 | Other         | 2 parcels. Former RDA properties. Leased for retail. |   | 057 209901400<br>057 209901500 | 10,070  |         |        |                |
| 63rd Street Mini Park<br>(1615 63rd St)                   | R-2A          | 8,100  | Park          |                                                      |   | 052 152201100                  |         |         |        |                |
| Abandoned Rail ROW<br>(1018 Ashby Ave)                    | MULI          | 11,450 | ROW           | 2 parcels.                                           |  | 053 163300300<br>053 163300400 |         |         |        |                |
| Abandoned Rail ROW<br>(between Heinz and Ashby, at Ninth) | MULI/ C-<br>W | 11,855 | ROW           | Potential extension of Emeryville Greenway?          |  | 053 165200300                  |         |         |        |                |
| Abandoned Rail ROW<br>(near 920 Flogr)                    | MULI          | 743    | ROW           | At Berkeley-Emeryville City Line along Greenway.     |  | 052 151201002                  |         |         |        |                |
| Ann Chandler Public Health Center<br>(830 University Ave) | C-W           | 14,700 | City Facility |                                                      |  | 056 196600100                  |         |         |        |                |









Inventory of City Properties

| Name (Address)                               | Zoning                                                                   | Lot SF  | Current Use | Notes                                                  | Image                                                                                | APN                                                                                                                                                                                     | Bldg SF | Leased?        | Tenant                                                            | End Lease Term |
|----------------------------------------------|--------------------------------------------------------------------------|---------|-------------|--------------------------------------------------------|--------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|----------------|-------------------------------------------------------------------|----------------|
| Aquatic Park<br>(80 Bolivar Dr)              | Along MM/<br>MULI/C-<br>DMU<br>Buffer/R-<br>2A/No<br>zoning<br>available | 739,878 | Park        | 12 parcels                                             |    | 060 251300101<br>054 177100100<br>060 250700101<br>060 250700102<br>054 175200100<br>054 175200201<br>054 177200100<br>054 177100200<br>060 252700101<br>056 194900601<br>056 194800300 |         | Yes, a portion | Bay Area Outreach<br>Recreation Program;<br>Waterside<br>Workshop | 7/31/2021      |
| BART ROW<br>(Adeline at Alcatraz)            | Zoning<br>not<br>found, in<br>between<br>C-SA/ R-<br>2A                  | 5,553   | ROW         |                                                        |     | 052 153200600                                                                                                                                                                           |         |                |                                                                   |                |
| BART ROW<br>(Gilman to Neilson)              | C-N/ R-<br>1A/ R-2                                                       | 7,350   | Other       |                                                        |    | 060 239107502                                                                                                                                                                           |         |                |                                                                   |                |
| Bateman Mall<br>(3027 Colby St)              | R-2A/ R-3                                                                | 9,501   | Park        |                                                        |   | 052 157405906                                                                                                                                                                           |         |                |                                                                   |                |
| Becky Temko Tot Park<br>(2424 Roosevelt Ave) | R-2                                                                      | 6,760   | Park        |                                                        |  | 055 190701100                                                                                                                                                                           |         |                |                                                                   |                |
| Berkeley 75<br>(1521 Alcatraz Ave, A,B,C,D)  | R-3                                                                      | 7,150   | Leased      | scattered site<br>affordable<br>housing<br>development |   | 052 152000800                                                                                                                                                                           |         | Yes            | Berkeley 75 Housing<br>Partners LP - c/o<br>Related California    | 2/1/2084       |
| Berkeley 75<br>(1605 Stuart St C)            | R-2                                                                      | 6,750   | Leased      | scattered site<br>affordable<br>housing<br>development |   | 054 173001400                                                                                                                                                                           |         | Yes            | Berkeley 75 Housing<br>Partners LP                                | 5/12/2083      |
| Berkeley 75<br>(1812 A,B,C Fairview St)      | R-2A                                                                     | 6,500   | Leased      | scattered site<br>affordable<br>housing<br>development |  | 052 153001800                                                                                                                                                                           |         | Yes            | Berkeley 75 Housing<br>Partners LP                                | 5/12/2083      |





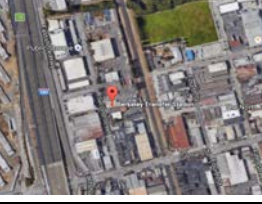

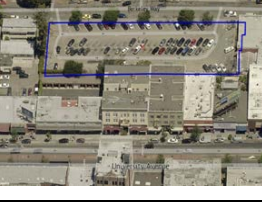

Attachment 3:  
Inventory of City Properties

| Name (Address)                                              | Zoning          | Lot SF | Current Use      | Notes                                                  | Image                                                                                | APN                                             | Bldg SF | Leased? | Tenant                             | End Lease Term |
|-------------------------------------------------------------|-----------------|--------|------------------|--------------------------------------------------------|--------------------------------------------------------------------------------------|-------------------------------------------------|---------|---------|------------------------------------|----------------|
| Berkeley 75<br>(2231, 2231A, 2231B, 2235 Eighth St)         | R-1A            | 6,500  | Leased           | scattered site<br>affordable<br>housing<br>development |    | 056 197001507                                   |         | Yes     | Berkeley 75 Housing<br>Partners LP | 5/12/2083      |
| Berkeley 75<br>(3016 Harper St A, B)                        | R-2A            | 4,893  | Leased           | scattered site<br>affordable<br>housing<br>development |    | 053 160200600                                   |         | Yes     | Berkeley 75 Housing<br>Partners LP | 5/12/2083      |
| Berkeley Adult Day Health Center<br>(1890 Alcatraz Ave)     | C-SA            | 9,404  | Other            |                                                        |    | 052 152702401                                   | 4,425   |         |                                    |                |
| Berkeley Black Repertory Group Theater<br>(3209 Adeline St) | C-SA            | 17,097 | Leased           | 3 parcels                                              |   | 052 152902100<br>052 152902200<br>052 152902300 | 8,000   | Yes     | Black Repertory<br>Group           | 5/30/2023      |
| Berkeley Fire Station Number 1<br>(2442 Eighth St)          | R-1A            | 10,260 | City<br>Facility |                                                        |  | 056 193901902                                   | 5,260   |         |                                    |                |
| Berkeley Fire Station Number 2<br>(2029 Berkeley Way)       | C-DMU<br>Buffer | 23,977 | City<br>Facility |                                                        |  | 057 205100901                                   | 13,685  |         |                                    |                |
| Berkeley Fire Station Number 3<br>(2710 Russell St)         | R-2             | 9,359  | City<br>Facility |                                                        |  | 052 156702601                                   | 5,100   |         |                                    |                |
| Berkeley Fire Station Number 4<br>(1900 Marin Ave)          | R-1H/ R-<br>1A  | 12,623 | City<br>Facility |                                                        |  | 061 257302600                                   | 5,442   |         |                                    |                |









Attachment 3:  
Inventory of City Properties

| Name (Address)                                                          | Zoning                 | Lot SF  | Current Use   | Notes                                                                                          | Image                                                                                | APN                             | Bldg SF | Leased? | Tenant                                                                                                                   | End Lease Term |
|-------------------------------------------------------------------------|------------------------|---------|---------------|------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|---------------------------------|---------|---------|--------------------------------------------------------------------------------------------------------------------------|----------------|
| Berkeley Fire Station Number 5<br>(2680 Shattuck Ave)                   | C-SA                   | 17,300  | City Facility |                                                                                                |    | 055 181900301                   | 9,302   |         |                                                                                                                          |                |
| Berkeley Fire Station Number 6<br>(999 Cedar St)                        | R-1A                   | 26,000  | City Facility |                                                                                                |    | 059 231201200                   | 8,346   |         |                                                                                                                          |                |
| Berkeley Fire Station Number 7<br>(3000 Shasta Ave)                     | R-1H                   | 129,277 | City Facility | from BMC. RealQuest Pro and City site indicate that EBMUD is owner of larger parcel, not City. |    | 063 316001305<br>063 316003700  |         |         |                                                                                                                          |                |
| Berkeley Fire Warehouse<br>(1011 Folger Ave)                            | MULI                   | 24,425  | City Facility |                                                                                                |   | 053 163403000                   | 8,021   |         |                                                                                                                          |                |
| Berkeley Police Department / Old City Hall<br>(2100 / 2134 MLK Jr. Way) | R-2                    | 144,480 | City Facility |                                                                                                |  | 057 201701601                   | 122,783 | Yes     | Building Opportunities for Self Sufficiency (BOSS) - McKinley House; County of Alameda; Berkeley Unified School District | 6/30/2013      |
| Berkeley Public Library - Central Branch<br>(2090 Kittredge St)         | C-DMU Corridor         | 25,141  | City Facility |                                                                                                |  | 057 202801701                   | 75,000  |         |                                                                                                                          |                |
| Berkeley Public Library - Claremont Branch<br>(2940 Benvenue Ave)       | R-2A                   | 11,652  | City Facility | 2 parcels                                                                                      |  | 052 157301600,<br>052 157301700 | 7,434   |         |                                                                                                                          |                |
| Berkeley Public Library<br>(2031 Bancroft Way)                          | C-DMV Buffer/ Corridor | 14,133  | City Facility |                                                                                                |  | 057 202800500                   | 30,000  |         |                                                                                                                          |                |


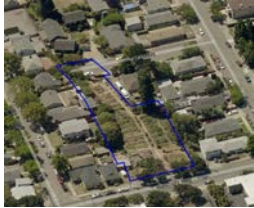






Attachment 3:  
Inventory of City Properties

| Name (Address)                                               | Zoning       | Lot SF  | Current Use   | Notes      | Image                                                                               | APN                                                                               | Bldg SF | Leased? | Tenant                                                              | End Lease Term |
|--------------------------------------------------------------|--------------|---------|---------------|------------|-------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|---------|---------|---------------------------------------------------------------------|----------------|
| Berkeley Public Library-North Branch<br>(1170 The Alameda)   | R-1          | 17,668  | City Facility |            |    | 061 260503500                                                                     | 10,591  |         |                                                                     |                |
| Berkeley Public Library-South Branch<br>(1901 Russell St)    | R-2A         | 13,444  | City Facility |            |    | 053 167901601                                                                     | 5,250   |         |                                                                     |                |
| Berkeley Public Library-West Branch<br>(1125 University Ave) | C-1          | 12,000  | City Facility |            |    | 057 208501100                                                                     | 9,400   |         |                                                                     |                |
| Berkeley Recycling Center<br>(669 Gilman St)                 | M            | 48,150  | Leased        |            |   | 060 236200110                                                                     | 22,595  | Yes     | Community Conservation Center Inc                                   | 8/31/1991      |
| Berkeley Transfer Station<br>(1201 Second St)                | M            | 276,531 | City Facility | 5 parcels  |  | 060 238200102<br>060 238200303<br>060 236200109<br>060 236200111<br>060 236200108 | 51,615  |         |                                                                     |                |
| Berkeley Way Mini Park<br>(1294 Berkeley Way)                | R-2A/ C-1    | 18,733  | Park          | BMC        |  | 057 208102300                                                                     | 960     |         |                                                                     |                |
| Berkeley Way Parking Lot<br>(2012 Berkeley Way)              | C-DMU Buffer | 40,945  | Parking Lot   |            |  | 057 205302201                                                                     |         |         |                                                                     |                |
| BOSS: Harrison House/ Sankofa house<br>(711 / 701 Harrison)  | MULI         | 6,486   | Leased        | HCS Leased |  | 060 238300102                                                                     |         | Yes     | Building Opportunities for Self Sufficiency (BOSS) - Harrison House | 10/31/2013     |


Inventory of City Properties

| Name (Address)                                                | Zoning       | Lot SF  | Current Use    | Notes     | Image                                                                                | APN                                                                                                                                                   | Bldg SF | Leased?        | Tenant                                                             | End Lease Term |
|---------------------------------------------------------------|--------------|---------|----------------|-----------|--------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|---------|----------------|--------------------------------------------------------------------|----------------|
| Cedar Rose Park<br>(1300 Rose St)                             | R-2          | 175,727 | Park           | 9 parcels |    | 060 241605800<br>060 241607700<br>059 228601900<br>059 228600203<br>059 229302001<br>060 242309600<br>059 228600103<br>058 213801500<br>059 228600104 |         | Yes, a portion | Ala Costa Center                                                   | No End Date    |
| Center Street Garage<br>(2025 Center St)                      | C-DMU Core   | 34,267  | Parking Garage |           |    | 057 202302003                                                                                                                                         | 175,500 |                |                                                                    |                |
| City Corp Yard<br>(1326 Allston Way)                          | R-2          | 250,072 | City Facility  |           |    | 056 199301501                                                                                                                                         | 46,604  | Yes            | Berkeley Lawn Bowling                                              | 12/31/2014     |
| City of Berkeley Animal Shelter<br>(1 Bolivar Dr)             | C-W          | 8,874   | Leased         |           |   | 060 252100201                                                                                                                                         |         | Yes            | New Cingular Wireless                                              | No End Date    |
| City Office Building<br>(1947 Center St)                      | C-DMU Buffer | 18,750  | City Facility  |           |  | 057 202200600                                                                                                                                         | 116,142 | Yes            | International Computer Science Institute; Rising Sun Energy Center | 4/30/2013      |
| Civic Center Building<br>(2180 Milvia St)                     | C-DMU Buffer | 38,808  | City Facility  |           |  | 057 202100100                                                                                                                                         | 77,145  |                |                                                                    |                |
| Codornices Park and Berkeley Rose Garden<br>(1201 Euclid Ave) | R-1H         | 470,240 | Park           | 4 parcels |  | 060 246800101<br>060 246800102<br>060 246800103<br>060 246500900                                                                                      |         |                |                                                                    |                |
| Colby St.<br>(between Ashby and Webster)                      | Next to R-3  | 13,603  | Other          | BMC       |  | 052 157308706                                                                                                                                         |         |                |                                                                    |                |

Inventory of City Properties






| Name (Address)                                | Zoning        | Lot SF  | Current Use | Notes           | Image                                                                                | APN                                                                                                     | Bldg SF | Leased? | Tenant                       | End Lease Term |
|-----------------------------------------------|---------------|---------|-------------|-----------------|--------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|---------|---------|------------------------------|----------------|
| Community Basketball Court                    | R-1           | 11,886  | Open Space  |                 |    | 058 213903108                                                                                           |         |         |                              |                |
| Community Garden (1308 Bancroft Way)          | R-2           | 38,526  | Open Space  | former rail ROW |     | 056 192203402                                                                                           |         |         |                              |                |
| Contra Costa Rock Park (869 Contra Costa Ave) | R-1H          | 7,456   | Park        |                 |    | 061 257605600                                                                                           |         |         |                              |                |
| Cragmont Rock Park (960 Regal Rd)             | R-1H          | 136,458 | Park        | 2 parcels       |   | 063 297500900<br>063 297501000                                                                          |         |         |                              |                |
| Dorothy Bolte Park (540 Spruce St)            | R-1H          | 50,516  | Park        |                 |  | 062 293902001<br>062 293902301                                                                          |         |         |                              |                |
| Elmwood Parking Lot (2642 Russell St)         | C-E           | 27,374  | Parking Lot | 6 parcels       |   | 052 156800300,<br>052 156800501,<br>052 156800601,<br>052 156800700,<br>052 156800801,<br>052 156800401 |         |         |                              |                |
| Epehsian's Children's Center (1907 Harmon St) | R-2A          | 3,000   | Leased      |                 |  | 052 152901100                                                                                           |         | Yes     | Epehsian's Children's Center | No End Date    |
| Fountain Walk (at Hopkins and El Dorado)      | C-N (H)/ R-1H | 9,678   | Other       |                 |  | 061 257100200                                                                                           |         |         |                              |                |

Attachment 3:  
Inventory of City Properties









| Name (Address)                                     | Zoning   | Lot SF  | Current Use | Notes     | Image                                                                                | APN                                                                               | Bldg SF | Leased? | Tenant | End Lease Term |
|----------------------------------------------------|----------|---------|-------------|-----------|--------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|---------|---------|--------|----------------|
| Frederick Mini Park<br>(780 Arlington Ave)         | R-1H     | 9,925   | Park        |           |    | 062 292002300                                                                     |         |         |        |                |
| George Florence Park (2121 Tenth St)               | R-1A     | 21,600  | Park        |           |    | 056 197701900                                                                     |         |         |        |                |
| Glendale- La Loma Park<br>(1310 La Loma Ave)       | R-1H     | 129,092 | Park        | 5 parcels |    | 060 246904300<br>060 246905500<br>060 246904200<br>060 246906101<br>064 423201100 |         |         |        |                |
| Great Stone Face park<br>(1930 Thousand Oaks Blvd) | R-1H     | 30,471  | Park        |           |   | 062 292000100                                                                     |         |         |        |                |
| Greg Brown Park<br>(1907 Harmon St)                | R-2A     | 20,046  | Park        | 2 parcels |  | 052 152902601<br>052 152901002                                                    |         |         |        |                |
| Grizzly Peak Park<br>(50 Whitaker Ave)             | R-1H     | 10,692  | Park        | BMC       |  | 063 298304900                                                                     |         |         |        |                |
| Grotto Rock Park<br>(879 Santa Barbara Rd)         | R-1H     | 16,867  | Park        |           |  | 061 258204500                                                                     |         |         |        |                |
| Grove Park<br>(1730 Oregon St)                     | R-2/R-2A | 121,794 | Park        | 3 parcels |  | 053 167600101<br>053 167800101<br>053 167800102                                   |         |         |        |                |











Inventory of City Properties

| Name (Address)                                             | Zoning      | Lot SF  | Current Use | Notes                                               | Image                                                                                | APN                                                              | Bldg SF | Leased?        | Tenant            | End Lease Term |
|------------------------------------------------------------|-------------|---------|-------------|-----------------------------------------------------|--------------------------------------------------------------------------------------|------------------------------------------------------------------|---------|----------------|-------------------|----------------|
| Harper Crossing<br>(3132 MLK Jr. Way)                      | R-2A/ C-SA  | 14,585  | Other       | Satellite Affordable Housing Associates development |    | 052 155101302                                                    |         |                |                   |                |
| Harrison Park<br>(1100 Fourth St)                          | MULI        | 280,341 | Park        | 4 parcels                                           |    | 060 238300102<br>060 238300200<br>060 238300300<br>060 238300400 | 9,644   |                |                   |                |
| Haskell-Mabel Mini Park<br>(1255 Haskell St)               | R-2A        | 2,658   | Park        |                                                     |    | 053 162600601                                                    |         |                |                   |                |
| Hillside Open Space on Euclid Ave<br>(near 660 Euclid Ave) | R-1H        | 21,041  | Open Space  | steep slope. Near 660 Euclid.                       |   | 063 295601701                                                    |         |                |                   |                |
| Indian Rock Park<br>(950 Indian Rock Ave)                  | R-1H        | 39,714  | Park        | 2 parcels                                           |  | 061 257802100<br>061 258401600                                   |         |                |                   |                |
| James Kenney Park<br>(1720 Eighth St)                      | R-1A        | 159,948 | Leased      |                                                     |  | 058 212200100                                                    |         | Yes, a portion | BAHIA             | 5/15/2012      |
| John Hinkel Park<br>(41 Somerset Ave)                      | R-1H        | 180,127 | Park        | 3 parcels                                           |  | 061 257900200<br>061 257900100<br>061 259803300                  |         |                |                   |                |
| Live Oak Park<br>(1301 Shattuck Ave)                       | R-2H/ R-2AH | 224,036 | Leased      |                                                     |  | 060 245503805<br>060 246601500                                   |         | Yes            | Theater First INC | 1/31/2023      |






Inventory of City Properties

| Name (Address)                                                   | Zoning              | Lot SF      | Current Use   | Notes | Image                                                                                | APN                                                              | Bldg SF | Leased?        | Tenant                                                                                                                                                                           | End Lease Term |
|------------------------------------------------------------------|---------------------|-------------|---------------|-------|--------------------------------------------------------------------------------------|------------------------------------------------------------------|---------|----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| Lower Codornices Path<br>(at Sixth St)                           | MULI                | 2,900       | Park          |       |    | 060 238501000                                                    |         |                |                                                                                                                                                                                  |                |
| Marina/Cesar Chavez Park<br>(11 Spinnaker Way)                   | No Zoning available | 191,060,069 | Leased        |       |    | 060 254500100<br>060 254000201<br>060 252800701<br>060 253400103 | 2,529   | Yes, a portion | Berkeley yacht Club; Berkeley marine Center; Berkeley Company, Highline Kites; Cal Sailing Club; Cal adventures; Skates Restaurant; Hs Lordships; Bait Shop-oung Kim; Doubletree | 12/31/2058     |
| Mental Health Adult Clinic<br>(2640 MLK Jr Way)                  | R-2A                | 12,314      | City Facility |       |    | 054 181100300                                                    | 11,194  |                |                                                                                                                                                                                  |                |
| MLK Jr. Civic Center Park<br>(2151 Martin Luther King Jr Way)    | R-3/ C-DMU Buffer   | 121,548     | Park          |       |   | 057 202100200                                                    | -       |                |                                                                                                                                                                                  |                |
| Mortar Rock Park<br>(901 Indian Rock Ave)                        | X? Next to R-1H     | 5,174       | Park          |       |  | 061 258305100                                                    |         |                |                                                                                                                                                                                  |                |
| Nia House Learning Center<br>(2234 Ninth St)                     | R-1A                | 19,855      | Leased        |       |  | 056 197000801                                                    | 7,760   | Yes            | Nia House Learning Center                                                                                                                                                        | 8/1/2053       |
| North Berkeley Senior Center<br>(1901 Hearst Ave)                | R-2A                | 32,803      | City Facility |       |  | 057 205701202                                                    |         |                |                                                                                                                                                                                  |                |
| North Bowling Green<br>(portion of City Corp Yard, 1324 Allston) | R-2                 | 21,000      | City Facility |       |  | 056 199301501                                                    | 46,604  |                |                                                                                                                                                                                  |                |





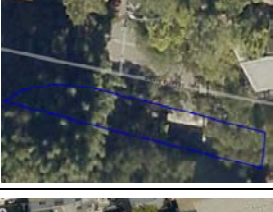



Inventory of City Properties

| Name (Address)                                                | Zoning                     | Lot SF  | Current Use | Notes                                                                       | Image                                                                                | APN                                                                                                                                                                    | Bldg SF | Leased? | Tenant | End Lease Term |
|---------------------------------------------------------------|----------------------------|---------|-------------|-----------------------------------------------------------------------------|--------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|---------|--------|----------------|
| Oak Park<br>(35 Domingo Ave)                                  | R-1H                       | 9,894   | Park        |                                                                             |    | 064 424200100                                                                                                                                                          |         |         |        |                |
| Oak Ridge Steps<br>(between El Camino Real and Oak Ridge)     | R-1H                       | 1,408   | ROW         |                                                                             |    | 064 424301400                                                                                                                                                          |         |         |        |                |
| Oceanview Garden Apartments<br>(1816 Sixth St)                | MUR                        | 115,476 | Other       | Oceanview Garden Apartments. Former RDA property. 2 non-contiguous parcels. |    | 057 209801202<br>058 211801007                                                                                                                                         |         |         |        |                |
| Ohlone Park<br>(1701 Hearst Ave)                              | R-2/ R-2A                  | 300,981 | Park        | 10 Parcels                                                                  |   | 057 206702801<br>057 206600601<br>057 206503100<br>057 206400702<br>057 205601501<br>057 206700700<br>058 215002001<br>060 241403102<br>060 241707602<br>060 241101802 |         |         |        |                |
| Open Space<br>(1100 Kains Ave)                                | R-2,<br>adjacent<br>to C-W | 5,200   | Other       | Only the open space is in Berkeley. Buildings are in Albany.                |  | 060 241000200                                                                                                                                                          |         |         |        |                |
| Open Space<br>(Santa Fe Ave at Albany border)                 | R-2                        | 1,925   | Open Space  | adjacent to BART ROW                                                        |  | 060 240906902                                                                                                                                                          |         |         |        |                |
| Open Space on California<br>(entrance to 1600 Addison condos) | R-2                        | 3,322   | Park        |                                                                             |  | 056 200500300                                                                                                                                                          |         |         |        |                |
| Open Space<br>(Hillcrest Rd)                                  | R-1H                       | 4,427   | Other       |                                                                             |  | 064 424701600                                                                                                                                                          |         |         |        |                |




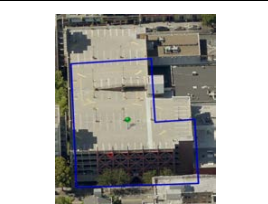




Inventory of City Properties

| Name (Address)                                  | Zoning     | Lot SF | Current Use    | Notes                                                                                        | Image                                                                                | APN                                             | Bldg SF | Leased? | Tenant                         | End Lease Term |
|-------------------------------------------------|------------|--------|----------------|----------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|-------------------------------------------------|---------|---------|--------------------------------|----------------|
| Open Space<br>(Sutter St at Eunice St)          | R-1H       | 7,579  | Open Space     |                                                                                              |    | 061 256600600                                   |         |         |                                |                |
| Open Space<br>(Tamalpais Rd)                    | R-1H       | 1,760  | Open Space     |                                                                                              |    | 060 247303800                                   |         |         |                                |                |
| Open Space<br>(Twain Ave near Sterling Ave)     | R-1H       | 3,271  | Open Space     |                                                                                              |    | 063 298400805                                   |         |         |                                |                |
| Oxford Plaza Parking Garage<br>(2165 Kittredge) | C-DMU Core | 46,633 | Parking Garage | 2 parcels. City owns a portion of the site - parking garage. Parcel listed as 0 square feet. |   | 057 211800100<br>057 211900100                  | 46,302  |         |                                |                |
| Parking Lot<br>(Adeline and Alcatraz)           | C-SA       | 5,831  | Leased         |                                                                                              |  | 052 152801504                                   | -       | Yes     | Children's First Medical Group | No End Date    |
| Presentation Park<br>(2199 California st)       | R-2        | 2,493  | Park           |                                                                                              |  | 056 200500200                                   |         |         |                                |                |
| Prince Street Mini Park<br>(1631 Prince St)     | R-2A       | 6,750  | Park           |                                                                                              |  | 053 160601000                                   |         |         |                                |                |
| Remillard Park<br>(80 Poppy Ln)                 | R-1H       | 83,734 | Park           | 3 parcels                                                                                    |  | 063 297601201<br>063 297601100<br>063 297601203 |         |         |                                |                |





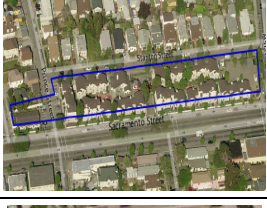


Inventory of City Properties

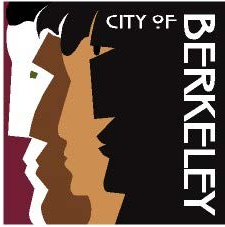
| Name (Address)                                           | Zoning         | Lot SF  | Current Use | Notes                    | Image                                                                                | APN                                                                                               | Bldg SF | Leased? | Tenant | End Lease Term |
|----------------------------------------------------------|----------------|---------|-------------|--------------------------|--------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|---------|---------|--------|----------------|
| Roundabout (Parkside Drive)                              | R-1H           | 16,767  | Open Space  |                          |    | 064 424404200                                                                                     |         |         |        |                |
| San Pablo Park (2800 Park st)                            | R-1            | 518,647 | Park        |                          |    | 053 166500100                                                                                     |         |         |        |                |
| Santa Fe Right of Way (approx. 1400 Carleton)            | R-1/R-2        | 75,086  | ROW         | 6 parcels                |    | 054 179302700<br>054 178303500<br>054 17830360<br>054 179402800<br>054 173502000<br>054 179002800 |         |         |        |                |
| Sidewalk and Road (Ashby between Harper and MLK Jr. Way) | R-2A/ C-SA     | 16,500  | Other       |                          |   | 053 160100402                                                                                     |         |         |        |                |
| Sidewalk (Le Conte Ave at La Loma Ave)                   | R-2AH          | 2,957   | Other       |                          |  | 058 220400100                                                                                     |         |         |        |                |
| Small Parcel (Ashby Ave, between Harper and Ellis)       | R-2A           | 222     | Other       |                          |  | 053 160200401                                                                                     |         |         |        |                |
| small plaza (Henry and Hearst)                           | R-2A           | 1,620   | Other       |                          |  | 057 205101602                                                                                     |         |         |        |                |
| Sojourner Truth Court (former Santa Fe ROW)              | R-3/ R-1/ C-SA | 36,110  | ROW         | includes some open space |  | 054 173702000                                                                                     |         |         |        |                |

Attachment 3:  
Inventory of City Properties

| Name (Address)                                                            | Zoning       | Lot SF  | Current Use    | Notes                                                          | Image                                                                                | APN                                                                                                                                  | Bldg SF | Leased? | Tenant                                                                                                                                                                                                                 | End Lease Term |
|---------------------------------------------------------------------------|--------------|---------|----------------|----------------------------------------------------------------|--------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|---------|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| South Berkeley Senior Center<br>(2939 Ellis St)                           | R-2A         | 21,690  | City Facility  | 3 parcels                                                      |    | 053 160302100<br>053 160302200<br>053 160302300                                                                                      |         |         |                                                                                                                                                                                                                        |                |
| Spiral gardens<br>(2850 Sacramento St)                                    | R-1/ C-SA    | 12,423  | Leased         |                                                                |    | 053 166903000                                                                                                                        |         | Yes     | Spiral Gardens Community Garden                                                                                                                                                                                        | 6/30/2008      |
| Strawberry Creek Park<br>(1260 Allston Way)                               | R-2/ R-2A    | 147,999 | Park           | 3 parcels                                                      |    | 056 199000700<br>056 199100200<br>056 199000403                                                                                      |         |         |                                                                                                                                                                                                                        |                |
| Telegraph-Channing Garage and Shops<br>(2425 Channing Way)                | C-T          | 32,685  | Parking Garage |                                                                |   | 055 187900601                                                                                                                        | 189,867 |         |                                                                                                                                                                                                                        |                |
| Terrace View Park<br>(1421 Queens Rd)                                     | R-1H         | 39,724  | Park           |                                                                |  | 060 248504601                                                                                                                        |         |         |                                                                                                                                                                                                                        |                |
| Tevlin Street<br>(north of Gilman)                                        | R-1A         | 7,438   | Other          |                                                                |  | 060 241701900                                                                                                                        |         |         |                                                                                                                                                                                                                        |                |
| University Avenue Cooperative Homes Apartments<br>(Addison at Sacramento) | R-4          | 50,842  | Leased         | Resources for Community Development affordable housing project |  | 056 199600401<br>056 199602401<br>056 199601000<br>056 199600600<br>056 199600900<br>056 199600200<br>056 199602800<br>056 199600300 |         | Yes     | UACH, LP                                                                                                                                                                                                               | 11/15/2080     |
| Veterans Memorial Building<br>(1931 Center St)                            | C-DMU Buffer | 24,819  | Leased         |                                                                |  | 057 202202000                                                                                                                        | 33,254  | Yes     | Building Opportunities for Self-Sufficiency (BOSS); Dorothy Day House; Option Recovery Services; Berkeley Food and Housing Project; Berkeley place; American Legion Post 7; Disabled American Vets, The Ecology Center | Mo to mo       |

Inventory of City Properties

| Name (Address)                                         | Zoning              | Lot SF  | Current Use   | Notes                                                          | Image                                                                                | APN                                             | Bldg SF | Leased? | Tenant                                                                                                       | End Lease Term |
|--------------------------------------------------------|---------------------|---------|---------------|----------------------------------------------------------------|--------------------------------------------------------------------------------------|-------------------------------------------------|---------|---------|--------------------------------------------------------------------------------------------------------------|----------------|
| Virginia-McGee Totland<br>(1644 Virginia St)           | R-2                 | 16,248  | Park          |                                                                |    | 058 215700100                                   |         |         |                                                                                                              |                |
| West Berkeley Service Center<br>(1900 Sixth St)        | MUR                 | 31,020  | City Facility |                                                                |    | 057 209700201                                   |         |         |                                                                                                              |                |
| West St.<br>(between Lincoln and Delaware)             | In between R-2/ R-1 | 33,048  | Other         | BMC.<br>3 parcels                                              |    | 058 213602400<br>058 213701800<br>058 213501900 |         |         |                                                                                                              |                |
| Willard Park<br>(2730 Hilleglass Ave)                  | R-2                 | 111,000 | Park          |                                                                |   | 054 171102700                                   |         |         |                                                                                                              |                |
| William B Rumford Senior Plaza<br>(3012 Sacramento St) | C-SA                | 76,666  | Leased        | Resources for Community Development affordable housing project |  | 053 161401800                                   | 47,424  |         | South Berkeley Cmty Housing Dev Corp - William Byron Rumford Sr. Plaza (Resources for Community Development) | 8/26/2070      |
| Women's Day Time Drop-in Center<br>(2213 Byron St)     | R-2                 | 4,800   | Leased        |                                                                |  | 056 198403000                                   | 3,173   | Yes     | Women's Day Time Drop-in Center                                                                              | 12/24/2023     |
| Women's Daytime Drop-In Center<br>(2218 Acton St)      | R-2                 | 21,085  | Leased        | Adjacent to City Corp Yard                                     |  | 056 199300600                                   | 594     | Yes     | Women's Daytime Drop In Center                                                                               | 2/18/2018      |



Susan Wengraf  
Councilmember District 6

## CONSENT CALENDAR

April 5, 2016

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Susan Wengraf  
 Subject: Analyzing All City-Owned Properties for Potential for Housing Development

### RECOMMENDATION

Request that the City Manager explore the opportunity for the City of Berkeley to build housing on city-owned property: conduct an inventory of city owned properties and return to City Council as soon as possible with an evaluation and analysis of those properties that are appropriate for the development of affordable housing.

### BACKGROUND

Across the state of California, urban centers are experiencing a crisis in housing availability at all levels of affordability. The crisis is very severe in the Bay Area. Lack of funds and subsidies from the state and federal government has exacerbated the obstacles to developing housing at all levels of affordability. In addition, the scarcity and the high cost of land in the Bay Area and in Berkeley, specifically, is an enormous barrier to producing affordable housing. Berkeley needs to optimize its limited resources now and look to partner with housing developers to build housing on city-owned land.

The City of Berkeley has a unique opportunity. The two senior centers, "North", on MLK and Hearst, and "South" on Ellis and Ashby and the Service Center on 6<sup>th</sup> Street are all in need of significant renovation. Now is the time to evaluate these properties to determine if it is feasible to create a mixed-use, housing/community center on these sites prior to spending millions of dollars on the current structures.

All City owned properties should be explored and evaluated for their potential as sites for housing development.

In addition, the Berkeley Unified School District owns property that has the potential to be developed as housing. The City of Berkeley should work closely with the BUSD to encourage them to move forward with their own analysis of potential housing sites that are currently under- utilized.



This severe housing crisis calls for all publicly owned land to be evaluated and considered.

FINANCIAL IMPLICATIONS: Staff time

CONTACT: Councilmember Susan Wengraf Council District 6 510-981-7160





Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
May 16, 2017

To: Honorable Mayor and Member of the City Council  
From: Councilmembers Susan Wengraf, Kate Harrison, Linda Maio and Ben Bartlett  
Subject: Budget Referral: Feasibility Study for the Construction of Affordable Senior Housing

RECOMMENDATION:

Refer to the budget referral process a feasibility study that evaluates the financial requirements and analyzes the site/context yield of the construction of affordable housing for seniors on the sites of North Berkeley Senior Center, West Berkeley Service Center and South Berkeley Senior Center.

FINANCIAL IMPLICATIONS:

\$100,000

BACKGROUND:

The demographic for people over 65 is increasing in Berkeley. By 2030, the population of residents over 65 will be more than 26,000. The number one concern expressed by seniors is their ability to be able to stay housed in Berkeley, as they get older.

Berkeley has an opportunity to provide affordable senior housing by building over the senior or service centers. Since the city owns the land, a public/private partnership for the construction and management is an excellent possibility.

As the city moves forward with planning the expenditures from Measure T1, we should be sure that resources used on improving our current facilities do not pre-empt the possibility of future development at these three sites.

ENVIRONMENTAL SUSTAINABILITY

No adverse effect on the environment.

CONTACT PERSON

Councilmember Susan Wengraf Council District 6 510-981-7160





Susan Wengraf, Vice Mayor

CONSENT CALENDAR  
January 22, 2019

To: Honorable Mayor and Members of the City Council  
 From: Vice Mayor Wengraf  
 Subject: Resolution Reaffirming the City of Berkeley's Commitment to Roe v. Wade

RECOMMENDATION

Adopt a Resolution reaffirming the City of Berkeley's commitment to Roe v. Wade, and honor the 46<sup>th</sup> anniversary of its passage with a proclamation.

BACKGROUND

Forty-six years ago, on January 22, 1973, the U.S. Supreme Court announced its decision in Roe v. Wade, a challenge to a Texas statute that made it a crime to perform an abortion unless a woman's life was at stake. The case had been filed by "Jane Roe," an unmarried woman who wanted to safely and legally end her pregnancy. Siding with Roe, the Supreme Court struck down the Texas law recognizing, for the first time, that the constitutional right to privacy "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy" (Roe v. Wade, 1973).

Roe has come to be known as the case that legalized abortion nationwide. At the time the decision was handed down, nearly all states outlawed abortion. Roe rendered these laws unconstitutional, making abortion services safer and more accessible to women throughout the country.

Given the current heightened threat to reproductive choice in America, it is critically important to reaffirm Berkeley's commitment to a woman's right to reproductive health choices. Policies enacted at the Federal level could potentially affect access to services even in California.

January 22, 2019 will be the 46<sup>th</sup> anniversary of the decision that effectively legalized abortion in the United States. The City has traditionally marked the anniversary with a proclamation recognizing the anniversary. The City continually passes resolutions denouncing the fraudulent media campaigns against Planned Parenthood and has expressed continued support for access to all reproductive healthcare services and all reproductive healthcare providers. The City also adopted a resolution against proposed funding cuts to the Title X Family Planning program, the only federal program dedicated solely to providing low income women and men with comprehensive family planning and related preventive health services.

The state of California has a history of supporting a woman's personal decisions regarding her reproductive health, including abortion. In 2012, California led the nation in being the only state to pass legislation expanding access to reproductive health care with AB 2348 expanding access to birth control. In 2013 the Legislature passed AB 154 and AB 980, improving abortion access.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY

Access to birth control, abortion and reproductive health services is critical to the attainment of our environmental goals.

CONTACT PERSON

Susan Wengraf, Council District 6, 510-981-7160

Attachments:

- 1: Resolution
- 2: Proclamation

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

REAFFIRMING THE CITY OF BERKELEY'S COMMITMENT TO ROE V. WADE

WHEREAS, January 22, 2019 marks the 46<sup>th</sup> anniversary of the historic Supreme Court decision, Roe v. Wade, which legalized abortion and recognized women's freedom of reproductive choice as essential to the lives, rights, health and equality of women; and

WHEREAS, Prior to 1973, the year when Roe v. Wade was enacted, women faced significant obstacles to safe reproductive health services, resulting in widespread loss of life and serious illness; and

WHEREAS, Individual states are passing laws banning rights to abortion: Mississippi and Kentucky banned abortion after 15 weeks and 11 weeks of gestation, respectively. Iowa banned abortions after a fetal heartbeat is detected, which it typically six weeks, before most women even know they are pregnant. These laws demonstrate a pattern of attempts to reverse Roe v Wade.

WHEREAS, The right to safe, legal and accessible abortion continues to be undermined by various federal initiatives, threatening the health and safety of women's lives, including the most marginalized women: low-income women, women of color, refugee and immigrant women.

WHEREAS, Throughout the Bay Area, hundreds of health care workers have devoted their careers to ensuring that the women of the Bay Area have access to safe and legal reproductive health services, while often putting their own safety at great risk due to harassment and violent opposition; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF BERKELEY that we RECOGNIZE AND CELEBRATE THE 46<sup>th</sup> ANNIVERSARY OF ROE V. WADE and praise the perilous and self-sacrificing work of the healthcare providers who face threats and violence for providing safe and legal health services to women throughout the Bay Area.

NOW FURTHER BE IT RESOLVED that the City of Berkeley re-affirms its commitment to: the human rights afforded to all women under Roe v. Wade, regardless of socioeconomic, ethnic, racial, cultural or religious background, age or sexual orientation and to opposing any laws or regulations that pose a threat to abortion, reproductive, sexual freedom and self-determination.

PROCLAMATION

REAFFIRMING THE CITY OF BERKELEY'S COMMITMENT TO ROE V. WADE

WHEREAS, January 22, 2019 marks the 46<sup>th</sup> anniversary of the historic Supreme Court decision, Roe v. Wade, which legalized abortion and recognized women's freedom of reproductive choice as essential to the lives, rights, health and equality of women; and

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Mayor Jesse Arreguin

Vice Mayor Susan Wengraf

Councilmember Lori Droste

Councilmember Sophie Hahn

Councilmember Cheryl Davila

Councilmember Kate Harrison

Councilmember Ben Bartlett

Councilmember Rashi Kersarwani

Councilmember Rigel Robinson





Community Environmental Advisory Commission

INFORMATION CALENDAR

January 22, 2019

To: Honorable Mayor and Members of the City Council  
 From: Community Environmental Advisory Commission (CEAC)  
 Submitted by: Michael Goldhaber, Chairperson, CEAC  
 Subject: Referral Response: Removing Plastic Microfibers from the Water Supply

INTRODUCTION

On April 24, 2018, the City Council adopted a referral sponsored by Councilmember Harrison which asked CEAC to assess the City of Berkeley's capacity to participate in an educational outreach program to inform City residents of the harmful nature of plastic microfibers, and to refer any findings to the East Bay Municipal Utilities District (EBMUD). A copy of that referral is included as Attachment 1 to this report.

At its November 8, 2018 meeting, the Commission approved the referral response for removing plastic microfibers from the water supply. M/S/C (Gould, Kapla). Ayes: Simmons, Varnhagen, Ticconi, Kapla, Goldhaber, Gould. Noes: None. Absent: Hetzel, Lim. Abstained: None

BACKGROUND

Human-made microplastics are now ubiquitous and persistent in aquatic environments, and are derived from several sources, including the washing of clothes. Every level of the food web is exposed to microplastics, from primary producers to higher trophic-level organisms. Not much can be done to remove microplastics from clothes wash water; the efficiency of the few control methods on offer has not been well documented.

Microplastics are defined as plastic pieces or fragments less than 5 millimeters in diameter. Microplastics have been accumulating in the marine environment for several decades, and likely to increase in abundance given the current dependence of a growing human population on the use of persistent plastics. Microplastics, in origin, can be primary products, that is purposefully manufactured, or secondary products, derived from the fragmentation of plastic items. They are a persistent pollutant, already present in all marine habitats. It has been estimated that 10% of globally produced plastics in 1997 ended up as plastic oceanic waste. If these estimates are correct and these trends continue, an estimated 38 million tons of debris would have entered the marine environment in 2015 alone.

Sources of aquatic microplastic pollution include: (1) microbeads used in personal care products such as facial scrubs and toothpastes, and pellets (called nurdles) used as precursors for industrial products; (2) microfibers derived from washing clothes made with synthetic materials; and (3) fragments of larger plastic items. In general, the most abundant marine microplastics detected are polyethylene from plastic bags and storage containers, polypropylene from bottle caps and ropes, polystyrene from utensils and cups, and polyamide (nylon) from ropes, fishing nets and textiles. Based on a study of the Los Angeles watershed, 90% of plastic debris by count, and 13% by weight are microplastic of less than 5 millimeters.

As part of the Regional Monitoring Program, San Francisco Estuary Institute scientists characterized Bay surface waters and effluent from waste water treatment plants for microplastic contaminants such as Styrofoam, microbeads used in personal care products, fragments from the degradation of larger plastics such as bottles, nurdles as precursors to plastic manufacturing, and fibers from clothes and fabrics. The eight Waste Water Treatment Plants, including EBMUP, studied discharged an average of 6,900,000 particles of microplastic per day with fibers being the dominant microplastic. Treatment plants with higher solids removal efficiency did not remove more plastics than the less efficient treatment plants. Fragments, including microbeads were the second most abundant microplastic in treatment plant effluent. In the Bay, fragments were the most abundant microplastic measured with fibers being the second most abundant type of microplastic.

One estimate is that in 2050 there will be more plastic than fish in the sea.

## ENVIRONMENTAL SUSTAINABILITY

Knowledge about the effects of microplastics is limited, but there are concerns that these particles could have adverse physical and toxicological effects on marine species. The consequences of ingestion of microplastics by marine organisms are not fully understood. However, laboratory studies have found that microplastics can harm small aquatic organisms that eat them, by interfering with feeding, digestion and reproduction, for example. There is also evidence that particles can be retained for several weeks after ingestion by marine organisms. However, more studies about such physical effects are needed,

There is also some concern that the ingestion of microplastics can cause physical effects, such as internal abrasion and blockage, and may also provide a pathway for the uptake of harmful chemicals by marine organisms. Species that show a high incidence of debris ingestion may therefore be susceptible to population-level effects, which could have negative consequences for endangered species with small populations that are exposed to multiple stressors.

Uptake of microplastics has recently been reported in commercially reared shellfish grown in open systems, indicating that microplastics are being ingested by humans via seafood. Plastic fibers are now showing up in fish and shellfish sold in California for human consumption. The potential health risks to humans of ingesting microplastics from the marine environment are not fully understood.

### POSSIBLE FUTURE ACTION

The current water and wastewater technologies do not remove plastics from the environment. As such, removal of plastics from the environment is not currently feasible via treatment, leaving source removal as the only alternative to lower plastics debris in the aquatic environment.

The following is derived from a publication of the Plastic Pollution Coalition. Every time you wash synthetic fabrics made of acrylic, nylon, and polyesters, including fleece, trousers, blouses, socks, and yoga pants, millions of microfibers are released into the water. Microfibers are not filtered out by waste treatment plants, so they end up in our waterways and oceans, where they impact marine organisms and the environment. One approach under study to reducing the release of microfibers into the environment involves altering textiles to make them less likely to shed fibers into the environment during everyday use or into water when they are washed. Another approach now available each of us is to:

- Wash synthetic clothes less frequently and for a shorter duration;
- Fill up your washing machine fully, reducing friction between clothes;
- Use liquid laundry soap;
- Use a colder wash setting;
- Dry spinning clothes at low revs;
- When you clean out your dryer, place lint in the trash;
- Purchase a washing machine lint filter or a wash bag, such GUPPYFRIEND from Patagonia or Rozalia Cora Ball (note that their microplastic removal effectiveness has not been verified in any published, peer-reviewed study);
- Speak up and tell clothing designers to choose natural fabrics that aren't prone to shedding;
- Tell your friends and family about microfiber pollution;
- Avoid purchasing cheaply-made, "fast fashion" clothes; and
- Buy clothes made from natural fibers such as cotton, linen, and wool. (However, at least cotton production has its own problems unless organic, namely high use of pesticides and fertilizers that also impact waters around the world.)

The water and wastewater agencies, including EBMUD, are aware of the issue, and participating in studies about plastics in waters. Therefore, outreach to these agencies

may not be necessary. So basically, public outreach and education is the most likely approach to reducing plastics in waters.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

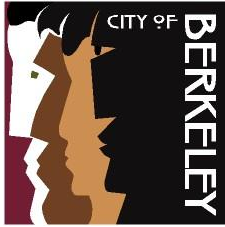
Fiscal impacts are limited to the costs of a public education campaign for which the costs could be minimized if the City were to pursue such a program in conjunction with other local municipal agencies or NGOs.

CONTACT PERSON

Viviana Garcia, Commission Secretary, Planning, (510) 981-7467

Attachments:

1: Council referral from April 24, 2018



[First Last name]  
Councilmember District [District No.]

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

**Meeting Date:** April 24, 2018

**Item Number:** 26

**Item Description:** Removing Plastic Microfibers From The Water Supply: A Referral to the Community Environmental Advisory Commission

**Submitted by:** Councilmember Harrison

Edited to reflect the intention of sending any relevant findings to EBMUD.

To: Honorable Mayor and Members of the City Council

From: Councilmember Kate Harrison

Subject: Removing Plastic Microfibers From The Water Supply: A Referral to the Community Environmental Advisory Commission

### RECOMMENDATION

Refer to the Community Environmental Advisory Commission to assess the City's capacity to participate in an outreach program informing residents of the harmful nature of microfibers. [Ask CEAC to refer any of their findings to the East Bay Municipal Utility District and request a report on the organization's water sourcing methods in drought years.](#)

### FINANCIAL IMPLICATIONS

Not applicable, due to its status as a Commission referral.

### BACKGROUND

The harmful nature of microfibers--tiny plastic bits often emerging from synthetic material--is the subject of a fledgling research movement. In recent years, concerned scientists have noted the prevalence of microfibers in a tap water supply and attempted to determine the impact of their presence. In the US, this issue is particularly urgent; according to a study conducted by Orb Media, 94% of their tap water samples contained plastic fibers. That rate ranked as the highest in the world.

Experts believe the toxic materials present in the microfibers could be of potential harm to human beings.

"We have enough data from looking at wildlife, and the impacts that it's having on wildlife, to be concerned," Dr. Sherri Mason, a microplastics expert at the State University of New York in Fredonia, told [The Guardian](#). "If it's impacting [wildlife], then how do we think that it's not going to somehow impact us?"

There are certain preventative measures individuals can take to limit their microfiber emissions. [Machine washing](#) Washing synthetic clothing [in a machine](#) allows these fibers to escape from our washing machines and filter out into [sewage treatment plants like the ones maintained by EBMUD](#) ~~our water streams~~. One study indicates each wash of a synthetic jacket produces up to 2 grams of microfibers. By making a concerted effort to avoid washing one's own synthetic clothing as much as possible, individual steps can be taken to lessen the quantity of microfibers in a local context. [Other potential preventative measures include purchasing industry standard washing bags that filter out microfibers and investing in a top load washing machine.](#)

[Generally, Berkeley residents can be confident in their water quality. In non-drought years, the Sierras serve as the City's primary water source. Because the Sierras lie a distance from any wastewater sources, this water bears no risks of microfiber contamination. However, EBMUD's water sourcing methods in drought years remains](#)



unclear. There is a possibility that microfibers find their way into EBMUD's sewage treatment plants in these conditions, but it will require a dialogue with EBMUD to confirm one way or another.

~~Other potential preventative measures include purchasing industry standard washing bags that filter out microfibers and investing in a top load washing machine.~~

~~Unfortunately, the toothpaste is out of the tube, so to speak. With our water stream already treatment facilities irrevocably potentially contaminated, the City ought to look into measures to curb their impact.~~

~~From the perspective of this Councilmember, an informational campaign is the City's best mechanism for addressing this issue.~~

This item proposes the Community Environmental Advisory Commission compile a list of the most harmful microfiber-related behaviors, consider the most effective methods of distributing this information, and estimate any potential financial cost to the City. Once compiled, the item recommends the Commission send their findings to EBMUD and then request a report on the organization's water collection tactics during drought seasons.

#### ENVIRONMENTAL SUSTAINABILITY

This item intends to improve the City's environmental practices.

#### CONTACT PERSON

Kate Harrison, District 4 Councilmember, 510-981-7140





Office of the City Auditor  
Jenny Wong, City Auditor

INFORMATION CALENDAR  
January 22, 2019

To: Honorable Mayor and Members of the City Council  
From: Jenny Wong, City Auditor  
Subject: City Auditor's Office 2018 Peer Review Results

INTRODUCTION

The Association of Local Government Auditors (ALGA) has once again issued an opinion that the City Auditor's Office's internal quality control system was suitably designed and operating effectively to provide reasonable assurance of compliance with *Government Auditing Standards* for the period of November 1, 2015 to October 31, 2018.

CURRENT SITUATION AND ITS EFFECTS

Auditors from the City of Toronto and the Los Angeles Unified School District completed an External Quality Control Review (peer review) of our internal quality control system. They followed the *ALGA Peer Review Guide* standards and guidelines in examining our system, including our efforts for ongoing monitoring and improvement.

The peer reviewers examined six projects representing 40% of our audits and 58% of our auditing hours over the peer-review period. They reviewed a selection of our non-audit service assessments in which we evaluated the impact of those services on our audits and identified safeguards for maintaining independence. It is in the opinion of the peer review team, that our internal quality control system was suitably designed and operating effectively to provide reasonable assurance of compliance with *Government Auditing Standards* for the period of November 1, 2015 to October 31, 2018.

*City Leadership's Delayed Response to Audit Recommendations*

While reviewing our office's efforts, the peer reviewers noticed an issue impacting the City: The length of time that some of our audit recommendations remain unaddressed by those responsible for taking action. Implementation of our audit recommendations rests with City management under the direction of City Council, and the peer reviewers commented that Berkeley leadership has not taken action on recommendations going back as far as 2009.

We share those concerns. We regularly communicate with City leadership the need to address our audit recommendations. We also issue quarterly reports on the number of open audit recommendations, releasing our last [report](#) on November 27, 2018.<sup>i</sup> We are currently working on methods to extend our public reporting and further encourage City leaders to prioritize taking action on our audit recommendations.

*City Auditor's Office Areas of Excellence*

The peer review team recognized our commitment to a high-standard of audit quality by identifying areas in which we excel:

- Having detailed audit policies and procedures that provide clear direction and practical, how-to approaches for applying *Government Auditing Standards*.
- Developing workpaper templates that assist audit staff in preparing audit documentation that demonstrates adherence to *Government Auditing Standards*.
- Providing strong supervisory oversight and ongoing monitoring of audit quality.
- Providing staff with continuous on-the-job feedback and regular performance evaluations that clearly emphasize the importance of adhering to *Government Auditing Standards*.

The efforts of many led to the peer reviewer's positive opinion and our ability to demonstrate a commitment to audit excellence. We would like to thank the following for their current and past contributions:

- Ann-Marie Hogan, Former City Auditor whose unwavering belief in the value of *Government Auditing Standards* provided continuous support of a well-designed and effective internal quality control system.
- Harriet Richardson, Former Audit Manager whose exceptional knowledge and skills designed the strong foundation supporting our existing quality control system.
- Claudette Biemeret, Audit Manager; Tracy Yarlott-Davis, Auditor II; Farkhad Askarov, Auditor II; Erin Mullin, Auditor I; Caitlin Palmer, Auditor I; Frank Marietti, Former Senior Auditor; Matt Grady, Former Senior Auditor; Lincoln Bogard, Former Auditor II; Myrna Ortiz, Former Auditor I; and Shalyn Pugh-Davis, Former Auditor I who remained committed to upholding our internal system of quality control.

BACKGROUND

The Berkeley City Charter requires our audits to be performed in accordance with government auditing standards and those standards require that we undergo a peer review every three years. The City Auditor's Office has consistently passed peer reviews since its first review in 1997.

Government Auditing Standards help ensure that government auditors maintain competence, integrity, objectivity, and independence in planning, conducting, and reporting their work. Auditors enhance their credibility by following standards so their work leads to improved government management, decision making, and oversight.

ENVIRONMENTAL SUSTAINABILITY

The peer review team maintained workpapers in electronic format, which greatly reduced the use of paper and ink. There are no other identifiable environmental effects or opportunities associated with the subject of this report.

POSSIBLE FUTURE ACTION

Due to the influence that nonaudit services have on our ability to remain independent and the increasing restrictions of *Government Auditing Standards* regarding independence requirements, we may propose reasonable and suitable courses of action to permanently eliminate or significantly reduce our City Charter mandated nonaudit activities.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None known at this time.

CONTACT PERSON

Jenny Wong, City Auditor (510) 981-6750

Attachments:

1: 2018 External Quality Control Review of the Berkeley City Auditor's Office with City Auditor Response and Certificate of Compliance

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<sup>i</sup> City Auditor's Snapshot: Quarterly Summary Report on Audit Recommendations 1<sup>st</sup> Quarter Fiscal Year 2018: <http://bit.ly/2UQQmS8>



# External Quality Control Review

of the  
**Berkeley City Auditor's Office**

Conducted in accordance with guidelines of the  
**Association of Local Government Auditors**  
for the period November 1, 2015 to October 31, 2018



## Association of Local Government Auditors

December 13, 2018

Ms. Jenny Wong  
Berkeley City Auditor  
2180 Milvia Street, 3rd Floor  
Berkeley, CA 94704

Dear Ms. Wong,

We have completed a peer review of the Berkeley City Auditor's Office for the period from November 1, 2015 to October 31, 2018. In conducting our review, we followed the standards and guidelines contained in the *Peer Review Guide* published by the Association of Local Government Auditors (ALGA).

We reviewed the internal quality control system of your audit organization and conducted tests in order to determine whether your internal quality control system operated to provide reasonable assurance of compliance with *Government Auditing Standards* issued by the Comptroller General of the United States. Our procedures included:

- Reviewing the audit organization's written policies and procedures.
- Reviewing internal monitoring procedures.
- Reviewing a sample of audit engagements and working papers.
- Reviewing documents related to independence, training, and development of auditing staff.
- Interviewing auditing staff, management, and members of the Audit Committee to assess their understanding of, and compliance with, relevant quality control policies and procedures.

Due to variances in individual performance and judgment, compliance does not imply adherence to standards in every case, but does imply adherence in most situations.

Based on the results of our review, it is our opinion that the Berkeley City Auditor's Office internal quality control system was suitably designed and operating effectively to provide reasonable assurance of compliance with *Government Auditing Standards* for audits and attestation engagements during the period from November 1, 2015 to October 31, 2018.

Ina Chan  
Auditor General's Office  
City of Toronto

Kien Hong, CPA  
Office of the Inspector General  
Los Angeles Unified School District



Office of the City Auditor  
Jenny Wong, City Auditor

December 13, 2018

Ina Chan, Assistant Auditor General, City of Toronto  
Kien Hong, Senior Auditor, Los Angeles Unified School District  
Lori Brooks Jaquess, City Auditor, City of Arlington

Dear ALGA Peer Review Team:

Thank you for conducting an external review of the City of Berkeley City Auditor's Office system of quality control. We are pleased that the Association of Local Government Auditors has once again issued an opinion that our office's internal quality control system was suitably designed and operating effectively to provide reasonable assurance of compliance with *Government Auditing Standards* for the period of November 1, 2015 to October 31, 2018.

We are committed to excellence and exemplifying transparency and accountability in government. We appreciate your recognition of our efforts by identifying these areas in which we excel:

- Having detailed audit policies and procedures that provide clear direction and practical, how-to approaches to applying *Government Auditing Standards*.
- Developing workpaper templates that assist staff in preparing audit documentation that demonstrates adherence to *Government Auditing Standards*.
- Providing strong supervisory oversight and ongoing monitoring of audit quality.
- Providing staff with continuous on-the-job feedback and formal performance evaluations that clearly emphasize the importance of adhering to *Government Auditing Standards*.

We would like to express our sincere appreciation to the peer review team and the Association of Local Government Auditors for their work and commitment to ensuring that government auditors adhere to *Government Auditing Standards*.

Respectfully,

Jenny Wong, City Auditor  
City Auditor





The Association of Local Government Auditors

Awards this

# *Certificate of Compliance*

to

***Berkeley City Auditor's Office***

Recognizing that the organization's internal quality control system was suitably designed and operating effectively to provide reasonable assurance of compliance with *Government Auditing Standards* for audit and attestation engagements during the period November 1, 2015, through October 31, 2018.

*Paul Geib*

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Paul Geib  
ALGA Peer Review Committee Chair

*Kristine Adams-Wannberg*

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Kristine Adams-Wannberg  
ALGA President



| Upcoming Workshops – <i>start time is 6:00 p.m. unless otherwise noted</i> |                                                                                                                                                                           |
|----------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Scheduled Dates                                                            |                                                                                                                                                                           |
| Jan 15                                                                     | <ol style="list-style-type: none"> <li>1. Berkeley Ballot Measure Follow-up</li> <li>2. North Berkeley BART Zoning and Future Development</li> </ol>                      |
| Feb 5                                                                      | <ol style="list-style-type: none"> <li>1. UC Berkeley Student Housing Plan (tentative)</li> <li>2. OED Update</li> <li>3. Wildfire Risk Reduction and Planning</li> </ol> |
| March 19                                                                   | <ol style="list-style-type: none"> <li>1. FY 2020 – FY 2021 Budget Update</li> <li>2. Crime Report</li> </ol>                                                             |
| May 7                                                                      | <ol style="list-style-type: none"> <li>1. Proposed FY 2020 – FY 2021 Budget</li> <li>2. Zero Waste Rate Review</li> <li>3. Bond Disclosure Training</li> </ol>            |
| June 18                                                                    | <ol style="list-style-type: none"> <li>1. Transfer Station Feasibility Study</li> <li>2. Staff Presentation - TBD</li> </ol>                                              |

| Unscheduled Workshops                                                               |
|-------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Cannabis Health Considerations</li> </ol> |

| Unscheduled Presentations (City Manager)                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Digital Strategic Plan/erma/Website Update</li> <li>2. Measure T1 Project Prioritization (Action Calendar)</li> <li>3. Arts and Culture Plan</li> <li>4. Parks, Recreation, and Waterfront CIP Update (Budget Presentation)</li> <li>5. Public Works CIP Update (Budget Presentation)</li> <li>6. Pedestrian Master Plan Update (January 22, 2019 – proposed)</li> <li>7. AC Mosquito Abatement District (presentation by the District, March 12 - tentative)</li> </ol> |

|    | <b>City Council Referrals to the Agenda Committee and Unfinished Business</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <p><b>28. Strengthening Provisions of Significant Community Benefits in the Downtown</b> (<i>referred from the March 13, 2018 agenda</i>)<br/> <b>From: Councilmember Harrison and Mayor Arreguin</b><br/> <b>Recommendation:</b> Adopt a Resolution establishing a more specific process and more precise standards for evaluating “Significant Community Benefit” packages for buildings exceeding 75 feet in the Downtown area, and rescinding Resolution No. 67,172-N.S.<br/> <b>Financial Implications:</b> See report<br/> Contact: Kate Harrison, Councilmember, District 4, 981-7140</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 2. | <p><b>61a. Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley</b> (<i>Referred from the July 24, 2018 agenda</i>)<br/> <b>From: Housing Advisory Commission</b><br/> <b>Recommendation:</b> That the City Council not use U1 funds to backfill the Workers’ Compensation Fund for the acquisition of the properties located at 1001, 1007, and 1011 University Avenue, and 1925 Ninth Street, City of Berkeley.<br/> <b>Financial Implications:</b> See report<br/> Contact: Amy Davidson, Commission Secretary, 981-5400</p> <p><b>61b. Companion Report: Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley</b> (<i>Referred from the July 24, 2018 agenda</i>)<br/> <b>From: City Manager</b><br/> <b>Recommendation:</b> Accept staff’s recommendation to use \$4,730,815 of Measure U1 revenue over a 5 year period (\$946,163 annually) to repay the Workers’ Compensation Fund for the acquisition of the properties located at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley.<br/> <b>Financial Implications:</b> See report<br/> Contact: Dee Williams-Ridley, City Manager, 981-7000</p> |
| 3. | <p><b>68. Revisions to Ordinance No. 7,521--N.S. in the Berkeley Municipal Code to increase compliance with the city’s short-term rental ordinance</b> (<i>Referred from the July 24, 2018 agenda. Agenda Committee to revisit in April 2019.</i>)<br/> <b>From: Councilmember Worthington</b><br/> <b>Recommendation:</b> Refer the City Manager to look into adopting revisions to Ordinance No. 7,521--N.S by modeling after the Home-Sharing Ordinance of the City of Santa Monica and the Residential Unit Conversion Ordinance of the City of San Francisco in order to increase compliance with city regulations on short-term rentals of unlicensed properties.<br/> <b>Financial Implications:</b> Minimal<br/> Contact: Kriss Worthington, Councilmember, District 7, 981-7170</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 4. | <p><b>4. Disposition of City-Owned, Former Redevelopment Agency Properties at 1631 Fifth Street and 1654 Fifth Street</b> (<i>Referred from the September 25, 2018 agenda</i>)<br/> <b>From: City Manager</b><br/> <b>Recommendation:</b><br/> 1. Adopt first reading of an Ordinance authorizing the sale of two City-owned, former Redevelopment Agency properties at 1631 Fifth Street and 1654 Fifth Street at market rate and deposit the proceeds in the City’s Housing Trust Fund (HTF).<br/> 2. Direct the City Manager to issue a Request for Proposals to select a real estate broker to manage the sale.<br/> <b>Financial Implications:</b> See report<br/> Contact: Kelly Wallace, Housing and Community Services, 981-5400</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5. | <p><b>19. Adopt the Sanctuary Contracting Ordinance proposed by the Peace and Justice Commission</b><br/> <i>(Referred from the November 13, 2018 agenda)</i><br/> <b>From: Councilmembers Worthington, Davila, Harrison, and Bartlett</b><br/> <b>Recommendation:</b> That the City Council adopt the attached Sanctuary Contracting Ordinance proposed by the Peace and Justice Commission. This ordinance prohibits the award of city contracts to vendors acting as ICE data brokers, or those providing extreme vetting services.<br/> <b>Financial Implications:</b> Minimal<br/> Contact: Kriss Worthington, Councilmember, District 7, 981-7170</p> |
| 6. | <p><b>14. Presentation: Pedestrian Master Plan Update</b> <i>(Referred from the December 4, 2018 agenda)</i><br/> <b>From: City Manager</b><br/> <b>Contact:</b> Phillip Harrington, Public Works, 981-6300</p>                                                                                                                                                                                                                                                                                                                                                                                                                                             |

| CITY CLERK DEPARTMENT                                                       |                      |                       |                                         |                   |
|-----------------------------------------------------------------------------|----------------------|-----------------------|-----------------------------------------|-------------------|
| WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS<br>BEFORE THE CITY COUNCIL |                      |                       |                                         |                   |
| Address                                                                     | Board/<br>Commission | Appeal Period<br>Ends | Determination<br>on Appeal<br>Submitted | Public<br>Hearing |
| <b>NOD – Notices of Decision</b>                                            |                      |                       |                                         |                   |
| 1526 Sixth St (Backroads, Inc.)                                             | ZAB                  | 1/4/2019              |                                         |                   |
| 2555 Fulton St (convert community care facility to dwelling)                | ZAB                  | 1/4/2019              |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
| <b>Public Hearings Scheduled</b>                                            |                      |                       |                                         |                   |
| 1155-73 Hearst Ave (develop two parcels)                                    | ZAB                  |                       |                                         | 1/29/2019         |
| 2190 Shattuck Ave (Shattuck Terrace Green Apartments)                       | ZAB                  |                       |                                         | 1/31/2019         |
| 2701 Shattuck Ave (construct 5-story mixed-use building)                    | ZAB                  |                       |                                         | 3/12/2019         |
| 1722 Walnut St (permit a ninth dwelling unit)                               | ZAB                  |                       |                                         | 3/26/2019         |
|                                                                             |                      |                       |                                         |                   |
| <b>Remanded to ZAB or LPC</b>                                               |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
| <b>Notes</b>                                                                |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |

Last Updated: 1/3/2019

## DRAFT

### Guidelines for Developing & Writing Agenda Items

These proposed Guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the Agenda Committee to request that the author of an item provide “additional analysis” if the item as submitted evidences a “significant lack of background or supporting information” or “significant grammatical or readability issues.”

These guidelines would provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they would prompt authors to consider presenting items with as much relevant information and analysis as possible.

Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:

2. Agenda items shall contain all relevant documentation, including the following as Applicable:
  - a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
  - b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
  - c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
  - d. Fiscal impacts of the recommendation;
  - e. A description of the current situation and its effects;
  - f. Background information as needed;
  - g. Rationale for recommendation;
  - h. Alternative actions considered;
  - i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
  - j. Person or persons to contact for further information, with telephone number. If the author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.

Proposed Guidelines for “complete” City Council Items:

1. Title
2. Consent/Action/Information Calendar
3. Recommendation
4. Summary Statement/“Current situation and its effects”
5. Background
6. Review of Existing Plans, Policies and Laws
7. Actions/Alternatives Considered
8. Consultation Plan and Results
9. Rationale for Recommendation
10. Implementation, Administration and Enforcement
11. Staffing and Fiscal Impacts
12. Outcomes and Evaluation
13. Contact Information
14. Attachments/Supporting Materials

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1. **Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

2. **Consent/Action/Information Calendar**

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

3. **Recommendation**

Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

Common action options include:

- Adopt first reading of ordinance
- Adopt a resolution
- Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
- Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
- Referral to a Commission or to a Standing or Ad Hoc Council Committee
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

4. **Summary Statement/ “Current situation and its effects”**

A short resume of the circumstances that give rise to the need for the recommended action(s).



- Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
- Example (fictional):  
*Winter rains are lasting longer than expected. Berkeley's winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley's winter shelters open until the end of April, and refers to the Budget Process \$40,000 to cover costs of an additional two months of shelter operations.*

## 5. **Background**

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

## 6. **Review of Existing Plans, Programs, Policies and Laws**

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals
- [other?]

Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan
- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Etc.

Review of the City's Strategic Plan

Review of similar legislation previously introduced/passed by Council  
Review of County, State and Federal laws/policies/programs/plans, if applicable

## 7. Actions/Alternatives Considered

- What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
- What solutions/measures are recommended by **advocates, experts, organizations**?
- What is the range of actions considered, and what are some of their major pros and cons?
- Why were other solutions not as feasible/advisable?

## 8. Consultation/Outreach Overview and Results

- Review/list external and internal stakeholders that were consulted
  - **External:** constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
  - **Internal:** staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, Clerk, etc.
- What reports, articles, books, websites and other materials were consulted?
- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?

## 9. Rationale for Recommendation

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented, but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

## 10. Implementation, Administration and Enforcement

Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation?

## 11. Fiscal Impacts

Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs.

## 12. Outcomes and Evaluation

State the specific outcomes expected, if any (i.e., "*it is expected that 100 homeless people will be referred to housing every year*") and what reporting/evaluation is recommended.

**13. Contact Information**

**14. Attachments/Supporting Materials**

DRAFT

