



**BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE
SPECIAL MEETING**

**MONDAY, JANUARY 13, 2020
2:30 P.M.**

2180 Milvia Street, 6th Floor, Berkeley, CA – Redwood Room

Committee Members:

Mayor Jesse Arreguin, Councilmembers Kate Harrison and Susan Wengraf

AGENDA

Roll Call

Public Comment

Review of Agendas

1. **Approval of Minutes: January 6, 2020**
2. **Review and Approve Draft Agendas:**
 - a. 1/28/20 – 6:00 p.m. Regular City Council Meeting
3. **Selection of Item for the Berkeley Considers Online Engagement Portal**
4. **Adjournments In Memory**

Scheduling

5. **Council Worksessions Schedule**
6. **Council Referrals to Agenda Committee for Scheduling**
7. **Land Use Calendar**

Referred Items for Review

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

8. Prohibiting the Use of Cell Phones, Email, Texting, Instant Messaging, and Social Media by City Councilmembers during Official City Meetings

From: Councilmember Davila

Referred: November 25, 2019

Due: May 24, 2020

Recommendation:

Adopt a Resolution Prohibiting the Use of Cell Phones, Email, Texting, Instant Messaging, and

Social Media by City Councilmembers during Official City Meetings. The Brown Act prohibits a majority of members of a legislative body from communicating outside of a public meeting on a matter on the agenda for their consideration. In order to ensure the full attention of the Council to the public and each other, the use of cell phones with access to email, text-messaging, instant messaging, and social media should be prohibited during all City Council meetings. The use of digital technologies outside of the provided City tablets, upon which Agenda Items and notes can be stored, is distracting, disrespectful, and jeopardizing to democratic process.

The Council Rules of Procedure and Order should be amended to include a moratorium on the use of cell phones by Councilmembers on the dais during open and closed session council meetings.

Financial Implications: None

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

9. Updating Berkeley Telecom Ordinances and BMC codes

From: Councilmember Davila

Referred: November 25, 2019

Due: May 24, 2020

Recommendation: Direct the City Manager to adopt a resolution to include the attached sample language and contained hyperlinked references to update the City's Telecom Ordinances and BMC codes.

Financial Implications: None

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

Referred Items for Review

10. Referral: Compulsory Composting and Edible Food Recovery

From: Councilmembers Robinson and Hahn

Referred: November 25, 2019

Due: May 24, 2020

Recommendation: Refer to the Zero Waste Commission to develop a plan, in consultation with the public and key stakeholders, to achieve timely compliance with Senate Bill 1383 (Lara, 2016) including: 1. An ordinance making composting compulsory for all businesses and residences in the City of Berkeley. The Commission should also consider the inclusion of compulsory recycling. 2. An edible food recovery program for all Tier 1 and 2 commercial edible food generators.

Financial Implications: See report

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

11. Discussion of Potential Revisions to the City Council Rules of Procedure and Order

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment – Next Meeting Monday, January 27, 2020

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.

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. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.



COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

* * *

I hereby certify that the agenda for this special meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 9, 2020.

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

Mark Numainville, City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA.

BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE SPECIAL MEETING MINUTES

MONDAY, JANUARY 6, 2020

2:30 P.M.

2180 Milvia Street, 6th Floor, Berkeley, CA – Redwood Room

TELECONFERENCE LOCATION - 701 West Baristo Road, Palm Springs, CA

TELECONFERENCE LOCATION – 2043 Lincoln Street, Berkeley, CA

Committee Members:

Mayor Jesse Arreguin, Councilmembers Kate Harrison and Susan Wengraf

Roll Call: 2:30 p.m. All present.

Public Comment – 4 speakers

Review of Agendas

1. Approval of Minutes: November 25, 2019

Action: M/S/C (Wengraf/Harrison) to approve the Minutes of 11/25/19.

Vote: All Ayes.

2. Review and Approve Draft Agendas:

a. 1/21/20 – 6:00 p.m. Regular City Council Meeting

Action: M/S/C (Wengraf/Arreguin) to approve the agenda of the 1/21/20 meeting with the revisions noted below.

Vote: All Ayes.

- *Item Added: No War with Iran (Robinson) – Councilmember Davila added as a co-sponsor*
- *Item 30 YMCA (Arreguin) – Councilmember Bartlett added as a co-sponsor*
- *Item 31 BYA (Davila) – Councilmember Bartlett added as a co-sponsor*
- *Item 32 Referral to City Manager (Davila) – Councilmember Bartlett added as a co-sponsor*
- *Item 33 Zero Waste (Hahn) – Councilmember Bartlett added as a co-sponsor*
- *Item 34 Census Town Hall (Wengraf) – Councilmember Bartlett added as a co-sponsor*
- *Item 38 BERA Amendments (FCPC) – scheduled to 2/4/20 special meeting*
- *Item 39 BERA Amendments (FCPC) – scheduled to 2/4/20 special meeting*
- *Item 43 Cannabis (Homeless Commission) – scheduled to 2/4/20 special meeting*
- *Item 44 Council Rules (OGC) – scheduled to 2/4/20 special meeting*
- *Item 45 Council Rules (OGC) – scheduled to 2/4/20 special meeting*
- *Item 49 Receivership (HLEEC) – moved to Consent Calendar*

Policy Committee Track Items

- *Item 50 Measure P (Arreguin) – Moved to 1/21/20 Action Calendar*
- *Item 51 Budget Referral (Harrison) – Moved to 1/21/20 Consent Calendar*
- *Item 52 Small Business (Hahn) – Moved to 1/21/20 Consent Calendar*
- *Item 53 Roe v. Wade (Wengraf) – Councilmembers Hahn and Davila added as co-sponsors; Moved to 1/21/20 Consent Calendar*

Order of Items on Action Calendar

Item 36 RPP

Item 37 ADU Urgency Ordinance

Item 42a/b Paving Plan

Item 48 Outdoor Shelter

Item 50 Measure P

Item 41 Vehicle Purchase

Item 47 Kitchen Hood Exhaust

Item 40 Rules of Procedure

Item 46a/b Sugar-Sweetened Beverages

3. Selection of Item for the Berkeley Considers Online Engagement Portal

- Selected Draft Item 48 Outdoor Shelter

4. Adjournments In Memory – None

Scheduling

5. Council Worksessions Schedule

Action: Moved Vision 2050 to unscheduled list; added goBerkeley to 1/14/20

6. Council Referrals to Agenda Committee for Scheduling – No action

7. Land Use Calendar

Action: 1581 LeRoy scheduled for February 25, 2020

Referred Items for Review

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

8. Prohibiting the Use of Cell Phones, Email, Texting, Instant Messaging, and Social Media by City Councilmembers during Official City Meetings

From: Councilmember Davila

Referred: November 25, 2019

Due: May 24, 2020

Recommendation:

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Social Media by City Councilmembers during Official City Meetings. The Brown Act prohibits a majority of members of a legislative body from communicating outside of a public meeting on a matter on the agenda for their consideration.

In order to ensure the full attention of the Council to the public and each other, the use of cell phones with access to email, text-messaging, instant messaging, and social media should be prohibited during all City Council meetings. The use of digital technologies outside of the provided City tablets, upon which Agenda Items and notes can be stored, is distracting, disrespectful, and jeopardizing to democratic process.

The Council Rules of Procedure and Order should be amended to include a moratorium on the use of cell phones by Councilmembers on the dais during open and closed session council meetings.

Financial Implications: None

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

Action: 5 speakers. Discussion held. Item continued to January 13, 2020.

9. Updating Berkeley Telecom Ordinances and BMC codes

From: Councilmember Davila

Referred: November 25, 2019

Due: May 24, 2020

Recommendation: Direct the City Manager to adopt a resolution to include the attached sample language and contained hyperlinked references to update the City's Telecom Ordinances and BMC codes.

Financial Implications: None

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

Action: Item continued to January 13, 2020.

Referred Items for Review

10. Referral: Compulsory Composting and Edible Food Recovery

From: Councilmembers Robinson and Hahn

Referred: November 25, 2019

Due: May 24, 2020

Recommendation: Refer to the Zero Waste Commission to develop a plan, in consultation with the public and key stakeholders, to achieve timely compliance with Senate Bill 1383 (Lara, 2016) including: 1. An ordinance making composting compulsory for all businesses and residences in the City of Berkeley. The Commission should also consider the inclusion of compulsory recycling. 2. An edible food recovery program for all Tier 1 and 2 commercial edible food generators.

Financial Implications: See report

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

Action: Item continued to January 13, 2020. Presentation scheduled for February 25, 2020.

11. Discussion of Potential Revisions to the City Council Rules of Procedure and Order

Action: No action taken.

Items for Future Agendas

- **Discussion of items to be added to future agendas - None**

Adjournment

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

Vote: All Ayes.

Adjourned at 3:45 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on January 6, 2020.

Mark Numainville, City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA.

DRAFT AGENDA



BERKELEY CITY COUNCIL MEETING

Tuesday, January 28, 2020
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, (510) 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. Contract: Lake Research Partners for 2020 Community Survey**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to approve a contract and any amendments with Lake Research Partners to develop and perform one (1) or two (2) surveys of registered voters, provide the associated analysis and reports, and any required polling services. The contract would be for a one year period, starting January 29, 2020 through January 31, 2021 for a total not to exceed amount of \$75,000.
Financial Implications: General Fund - \$75,000
Contact: Matthai Chakko, City Manager's Office, (510) 981-7000
- 2. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on January 28, 2020**
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: T1-Green Infrastructure Fund- \$462,000
Contact: Henry Oyekanmi, Finance, (510) 981-7300

Consent Calendar

- 3. Participation Agreement with Pension Stabilization Trust for an IRS Section 115 Trust Fund**
From: City Manager
Recommendation: Adopt a Resolution repealing and replacing Resolution No. 68,853-N.S. and authorizing the City Manager, as City's Plan Administrator, to enter into a Participation Agreement with Pension Stabilization Trust (PST), an IRS Section 115 Trust Fund; and authorizing the City's Plan Administrator to execute the legal and administrative documents on behalf of the City and to take whatever additional actions are necessary to enter into a Participation Agreement with PST.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 4. Contract No. 3200086 Amendment: Albany Community Access to Resources and Services (Albany CARES)**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to amend Contract No. 3200086 with the Albany Community Access to Resources and Services (Albany CARES) in an amount not to exceed \$50,000 for a total not to exceed contract amount of \$100,000, through June 30, 2020.
Financial Implications: Mental Health Services Act - \$50,000
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400
- 5. Jointly Apply for Infill Infrastructure Grant Funding for 1601 Oxford**
From: City Manager
Recommendation: Adopt two Resolutions that enable Satellite Affordable Housing Associates to access State of California Infill Infrastructure Grant (IIG) funds for its 1601 Oxford project by:
1. Authorizing the City Manager to prepare and submit a joint application for IIG funds; and
2. Authorizing the City Manager to take actions needed for the City's participation in the IIG program by adopting state-required terms about submitting an application, entering into the State's Standard Agreement and other documents.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

Consent Calendar

6. **Disposition of City-Owned, Former Redevelopment Agency Property at 1631 Fifth Street** *(Reviewed by the Land Use, Housing & Economic Development Committee)*
From: City Manager
Recommendation: Adopt a resolution authorizing the sale of the City-owned, former Redevelopment Agency property at 1631 Fifth Street at market rate and authorizing the City Manager to contract with a real estate broker to manage the sale.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

7. **Agreement with the East Bay Municipal Utility District for Pavement Rehabilitation of Portions of Ellsworth Street and Stuart Street**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a cost sharing Agreement with the East Bay Municipal Utility District for the pavement rehabilitation on Ellsworth Street and Stuart Street during construction of the East Bay Municipal Utility District's Wildcat Pipeline Improvement Project in an amount not to exceed \$855,264 which includes a 20% contingency.
Financial Implications: Street Capital Improvement - \$855,264
Contact: Phillip Harrington, Public Works, (510) 981-6300

Council Consent Items

8. **Dorothy Day House First Annual Fundraiser: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**
From: Councilmember Davila
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$150 from Councilmember Cheryl Davila, to Dorothy Day House for their First Annual Fundraiser on February, 7, 2020 with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute.
Financial Implications: Councilmember's Discretionary Funds - \$150
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

Council Consent Items

9. Letter in Support of a Dedicated Bus Lane on the Bay Bridge

From: Councilmember Robinson

Recommendation: Send a letter to the California Department of Transportation (Caltrans), the Metropolitan Transportation Commission (MTC), Assemblymember Buffy Wicks, Assemblymember Rob Bonta, Assemblymember Jim Frazier, State Senator Nancy Skinner, and Senator Jim Beall in support of the reinstatement of a dedicated bus lane on the San Francisco-Oakland Bay Bridge.

Financial Implications: See report

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

10. Letter in Support of Reviving Berkeley Bus Rapid Transit

From: Councilmember Robinson

Recommendation: Send a letter to AC Transit, the Alameda County Transportation Commission, Assemblymember Buffy Wicks, and State Senator Nancy Skinner in support of expanding Bus Rapid Transit into Berkeley on Telegraph Avenue at the first possible opportunity

Financial Implications: None

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

Action Calendar

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

The Presiding Officer will request that persons wishing to speak 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 – Public Hearings

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

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

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

Action Calendar – Public Hearings

11. Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, provide direction regarding proposed ordinance language alternatives and take the following action: Adopt the first reading of five ordinances to amend the Berkeley Municipal Code (BMC) Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F which would:

- A. Allow new business types (Delivery-Only Retailers, Consumption Lounges);
- B. Allow Retailers to continue to operate as Microbusinesses;
- C. Clarify cannabis business operational standards and development standards, such as quotas and buffers, for Storefront Retailers;
- D. Allow more opportunities for Commercial Cultivation by expanding location options; and
- E. Protect the health of the general public and youth with additional advertising, signage and sales regulations.

Financial Implications: See report

Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

Action Calendar – Old Business

12. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras *(Continued from December 3, 2019. Item contains supplemental material.)*

From: City Manager

Recommendation: Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.

Financial Implications: None

Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000

13. goBerkeley Residential Shared Parking Pilot Project Update *(Continued from December 3, 2019.)*

From: City Manager

Recommendation: Receive a presentation providing an update on the Residential Shared Parking Pilot project, and offer any comments to staff on the implementation of the project.

Financial Implications: None

Contact: Phillip Harrington, Public Works, (510) 981-6300

Action Calendar – New Business

14. Amending Source of Income Discrimination Ordinance to Establish Administrative Enforcement Procedure

From: Homeless Commission

Recommendation: The Homeless Commission recommends that BMC 13.31 be amended to provide for an administrative procedure to enforce the anti-discrimination property rental ordinance as to source of income. Such procedure should involve establishing a complaints procedure under an existing City of Berkeley department such as the Department of Planning or Rent Stabilization Board, where a complaint could be filed by a prospective tenant, or tenant, alleging that they have been discriminated against by a landlord, property owner or authorized agent or employee when seeking rental housing or in any other context currently covered under BMC 13.31.

The Homeless Commission further recommends that any person seeking housing, with a voucher or any subsidy to pay their rent, be considered for the rental in the order which their rental application is received and be entitled to the rental as the first applicant of right. Insufficient credit or poor credit shall not be a fact considered for rental as to the totality of the rent to be paid if the rent is to be otherwise paid through the voucher or subsidy source.

Financial Implications: See report

Contact: Brittany Carnegie, Commission Secretary, (510) 981-5400

Action Calendar – Policy Committee Track Items

15. 2020 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 Liaisons to City Boards and Commissions for a one-year term ending January 31, 2021 or until new appointments are made.

Financial Implications: None

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

16. Support the “New Border Vision” to expand public safety, protect human rights, and welcome people to our city

From: Mayor Arreguin

Recommendation: Adopt a resolution supporting the “New Border Vision”, a 21st century border policy that begins with the belief that migrants are part of the human family and should be treated with dignity and respect. Send a copy of the Resolution to U.S. Senators Dianne Feinstein and Kamala Harris, Congresswoman Barbara Lee and President Donald Trump.

Financial Implications: None

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

Action Calendar – Policy Committee Track Items

17. Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours

From: Councilmember Kesarwani

Recommendation: Adopt a resolution to allow recipients of a three-month “Grace Period” permit for safe RV parking to park overnight during non-business hours in designated City-owned parking lots pursuant to California Vehicle Code Section 21107.8(a)(1).

The resolution authorizes the City Manager to determine appropriate City-owned parking lots, with consideration for safe ingress and egress, accessibility of restroom facilities, and other health and safety considerations.

Financial Implications: See report

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

Information Reports

18. Public Health Division’s Recommendations on Cannabis

From: City Manager

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

19. Report on Regional Leadership and Goals for 2020

From: Mayor Arreguin

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

Public Comment – Items Not Listed on the Agenda

Adjournment

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

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

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

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

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

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

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

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

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

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

COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

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

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



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

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Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
January 28, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Dorothy Day House First Annual Fundraiser: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

#### RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$150 from Councilmember Cheryl Davila, to Dorothy Day House for their First Annual Fundraiser on February, 7, 2020 with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute.

#### BACKGROUND

Dorothy Day House (DDH) is a community based 501(c)3 organization non-profit organization that for over 30 years has provided meals, shelter, and employment for low income residents and people who experience homelessness in Berkeley. DDH is open every night in the basement of the Veterans Memorial Building at 1931 Center Street from 6:00 PM to 7:30 AM. Additionally, DDH offers a community breakfast and lunch that is open to the public.

Dorothy Day House will hold their First Annual Fundraiser on Thursday, February, 7, 2020 at 6 PM at SPATS, 1974 Shattuck Ave. The event features a short tour of the facility at 5 PM at 1931 Center St. Then the fundraiser will kick off at 6pm at SPATS, featuring distinguished list of bartenders, keynote speakers, art and talent from the community.

#### FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact. \$250 is available from Councilmember Cheryl Davila's Council Office Budget discretionary account (011-11-102-000-0000-000-411).

#### ENVIRONMENTAL SUSTAINABILITY

Protecting low income residents and people who experience homelessness is itself an act of environmental sustainability.

#### CONTACT PERSON

Cheryl Davila,  
Councilmember District 2  
510.981.7120  
[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

#### ATTACHMENT:

1. Resolution
2. Email regarding Dorothy Day House Fundraiser on Thursday, February, 7, 2020

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEYS AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Councilmember Cheryl Davila has surplus funds in her office expenditure account (budget code 011-11-102-000-0000-000-411); and

WHEREAS, Dorothy Day House (DDH), a California non-profit tax-exempt corporation, is seeking donations for their First Annual Fundraiser on Thursday, February, 7, 2020 at 6 PM at SPATS 1974 Shattuck Ave, Downtown Berkeley; and

WHEREAS, Dorothy Day House (DDH) is a community based 501(c)3 organization non-profit organization that for over 30 years has provided meals, shelter, and employment for low income residents and people who experience homelessness in Berkeley; and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to \$250 per Councilmember, including \$150 from Councilmember Cheryl Davila, shall be granted to Dorothy Day House for their First Annual Fundraiser on Thursday, February, 7, 2020.

**From:** Robbi Montoya <[r.montoya@dorothydayhouse.org](mailto:r.montoya@dorothydayhouse.org)>

**Sent:** Monday, January 06, 2020 7:02 AM

**Subject:** SAVE THE DATE/DOROTHY DAY FUNDRAISER

Hello!

I am thrilled to announce that the Berkeley Community Resource Center/Dorothy Day House will be hosting their 1st annual fundraiser on FEB 7th at SPATS.

We will be providing a short tour of the facility at 5pm @ 1931 Center St. The event will kick off at 6pm at SPATS. We are honored to have a distinguished list of "celebrity" bartenders and keynote speakers.

We will have art and talent from the community as well as many ways you can show your support.

--

Thank You,

Robbi Montoya, Program Manager  
Berkeley Community Resource Center  
~ a program of Dorothy Day House

Office: 510 333.7521

Cell: 510 253.5792

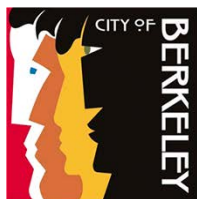
[r.montoya@dorothydayhouse.org](mailto:r.montoya@dorothydayhouse.org)

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

<https://dorothydayhouseberkeley.org/>

***"small steps lead to large strides"***





CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 January 28, 2020

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Rigel Robinson  
 Subject: Letter in Support of a Dedicated Bus Lane on the Bay Bridge

RECOMMENDATION

Send a letter to the California Department of Transportation (Caltrans), the Metropolitan Transportation Commission (MTC), Assemblymember Buffy Wicks, Assemblymember Rob Bonta, Assemblymember Jim Frazier, State Senator Nancy Skinner, and Senator Jim Beall in support of the reinstatement of a dedicated bus lane on the San Francisco-Oakland Bay Bridge.

BACKGROUND

On January 15, 1961, the State of California established a temporary dedicated bus lane on the Bay Bridge to alleviate rush hour congestion. The bus-only lane enabled buses to remain on schedule and reduced bus travel time across the bridge from 25 minutes to 13 minutes, twice as fast as automobiles during rush hour. Implementation had an immediate effect on AC Transit ridership — Transbay ticket sales increased 12.8 percent in just a year, from \$134,699 in January 1961 to \$153,912 in January 1962.

On January 31, 1963, the San Francisco Division of Bay Toll Crossing under the California Department of Public Works, now renamed the Division of Bay Toll Crossing, announced that it would be removing the bus express lane after only a year of operation. As reported by the San Francisco Chronicle, the chief engineer overseeing the bridge reconstruction project said that “the bus lane [would] be needed for general auto traffic because the upper deck of the bridge [was] going to be repaved.” The lane was converted into a combined bus and carpool lane.

The reconstruction project, which paved the upper deck one lane at a time and opened the bus lane to car traffic, ensured that “motorists would suffer no inconvenience.” However, bus commuters would see their commute times doubled to 25 minutes again. This decision was made despite the fact that during peak hours at that time, half of all East Bay commutes were by bus. An eastbound bus left San Francisco every 14 seconds, and 238 coaches crossed the bridge between 4 and 6 PM.

The Bay Bridge is currently owned and maintained by the California Department of Transportation, or Caltrans. The reconstructed Bay Bridge has a short bus-only lane that allows buses to bypass the FasTrak toll booths. However, on the majority of the bridge, buses share the road with general automobile traffic.

As Bay Area residents are priced out of San Francisco and move to the East Bay and other more affordable regions, Transbay automobile traffic has increased proportionally.

According to the Metropolitan Transportation Commission, weekday congestion-related delays on Bay Area freeways have broken a new record, surging by 80 percent since 2010. Former MTC Chair Jake Mackenzie states that “eight of the top 10 most crowded commutes [in the Bay Area] are routes to or from the Bay Bridge or Silicon Valley.”

At the same time, the rising demand for Transbay bus service is evident. AC Transit Transbay ridership has “undergone substantial ridership growth,” necessitating the staff decision to add additional trips into the schedule and take steps to manage overcrowding. Transbay routes experienced a 20 percent increase from 11,000 daily riders in 2013 to 13,500 in 2015. In 2018, Transbay ridership increased by another 1.8 percent, making up 10 percent of total weekday ridership.

In order to accommodate growing Transbay ridership, improve the efficiency and appeal of Transbay public transit, and reduce automobile congestion, Caltrans should explore reimplementing a dedicated bus lane on the Bay Bridge.

A bus-only lane implemented in a dense, congested area to speed up transit without major capital improvements is also known as a tactical transit lane (TTL). Ideal conditions for a TTL are commuter corridors where transit speeds and headway reliability are of concern, and allowing transit to bypass car traffic yields the greatest benefits. According to a 2019 study by the UCLA Institute of Transportation, TTLs increase bus ridership by “speeding up travel times, improving [the] passenger experience and enhancing overall perceptions of riding the bus.” The Bay Bridge, designated by the MTC as the most congested freeway corridor in the Bay Area at peak commute times, is an excellent candidate for a tactical transit lane.

Cities across the country are beginning to understand the importance of dedicated bus lanes for transit reliability. Permanent bus-only lanes have been implemented in San Francisco, Los Angeles, Santa Monica, Chicago, Baltimore, and right here in Berkeley. Additional pilot programs are underway in cities such as Boston, Cincinnati, Pittsburgh, and Cambridge.

The San Francisco Municipal Transportation Agency (SFMTA) conducted a before-and-after study of the dedicated bus lane on Market Street, and “found that three bus lanes painted onto downtown streets in 2014 improved transit delays (despite increases in car traffic), boosted transit reliability by 25 percent, and cut collisions by 16 percent.”

During peak hours, Market Street accommodates more than 200 buses per hour. Several dedicated bus lanes have been implemented on streets that serve far fewer buses — 4th Street, one of San Francisco’s major transit corridors, services only 40 buses per hour at peak times. There is a great need for a dedicated bus lane in such a congested, public transit-rich corridor.

In order to encourage Transbay commuters to choose public transit over cars, Caltrans must provide the infrastructure needed to make buses the more efficient and reliable



option. Ultimately, a dedicated bus lane on the Bay Bridge would take pollutant-emitting and traffic-congesting cars off the road while improving the public transit experience.

Staff should send the attached letter of support to Caltrans, the MTC, Assemblymember Buffy Wicks, Assemblymember Rob Bonta, Assemblymember Jim Frazier, State Senator Nancy Skinner, and Senator Jim Beall.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

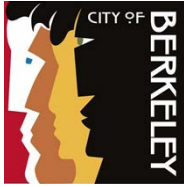
Improved Transbay public transportation will incentivize commuters to take public transit instead of driving, therefore reducing vehicle miles traveled.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Attachments:

- 1: Letter
- 2: San Francisco Chronicle: Fast Bus Lane on Bay Bridge Ups Ticket Sales (February 8, 1962)
- 3: San Francisco Chronicle: Bridge Buses to Lose Special Lane (January 31, 1963)



To: California Department of Transportation

Date: January 28, 2020

Re: In Support of a Dedicated Bus Lane on the Bay Bridge

Dear California Department of Transportation:

The City of Berkeley is committed to reducing our negative environmental impact through innovative transportation solutions. One of our most valuable partners in our effort to reduce vehicle miles traveled, encourage residents to use sustainable modes of transit, and promote transportation equity and accessibility has been AC Transit. However, the reliability, efficiency, and quality of bus service for Bay Area residents and commuters depends on intentional and well-planned infrastructure. Therefore, the City of Berkeley is writing in support of reinstating a dedicated bus lane on the San Francisco-Oakland Bay Bridge.

In 1961, the State of California established a temporary dedicated bus lane on the Bay Bridge to alleviate rush hour congestion. The bus-only lane increased AC Transit Transbay ridership by 12.8 percent, enabled buses to remain on schedule, and reduced bus travel time across the bridge from 25 minutes to 13 minutes. However, after just one year of operation, it was removed in 1963 to make room for general automobile traffic.

Cities across the country, including Berkeley, are beginning to understand the importance of dedicated bus lanes for transit reliability. San Francisco's bus-only lanes improved transit delays, boosted reliability by 25 percent, and cut collisions by 16 percent. Dedicated bus lanes are especially beneficial in dense, congested commuter corridors such as the Bay Bridge.

As Bay Area residents are priced out of San Francisco and move to the East Bay and other more affordable regions, Transbay automobile traffic has increased proportionally. According to the Metropolitan Transportation Commission, weekday congestion-related delays on Bay Area freeways have broken a new record, surging by 80 percent since 2010. The Bay Bridge is the most congested freeway corridor in the Bay Area, and eight of the top 10 most crowded Bay Area commutes are routes to or from the Bay Bridge and Silicon Valley.

At the same time, the rising demand for Transbay bus service, which now makes up 10 percent of AC Transit weekday ridership, is evident. In order to accommodate growing Transbay ridership, improve the efficiency and appeal of Transbay public transit, and reduce automobile congestion, Caltrans should explore reimplementing a dedicated bus lane on the Bay Bridge. If California is committed to meeting its statewide climate goals by incentivizing commuters to choose public transit over cars, Caltrans must provide the infrastructure needed to make buses the more efficient and reliable option.

Sincerely,

The Berkeley City Council

Several suggestions have

## Fast **Bus Lane** On Bay Bridge Ups Ticket Sales

Ticket sales to transbay bus commuters jumped 12.8 per cent in January over the same month a year ago, the Alameda-Contra Costa Transit District announced yesterday.

This was the first indication of the effectiveness of the new exclusive **bus lane** on the Bay Bridge, district officials said.

The **bus lane** was established on January 15 by the State to take some of the pressure off rush hour congestion. Buses can make the bridge crossing in about 12 or 13 minutes, or about twice as fast as autos in rush hour traffic.

As a result, district officials said, to commute book sales for last month totaled \$153,912, an increase of \$19,213 over January, 1961.

Source: <https://twitter.com/chrisarvinsf/status/1182490535778340865>

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Commuter Slowdown

# Bridge Buses to Lose Special Lane

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 , who has four s by a previous s now married to Kathy Grant, 28. three small chil-  
 Our Correspondent

Buses will lose their exclusive right to a single express lane on the lower deck of the Bay Bridge tomorrow, it was learned last night.

Directors of the San Francisco Division of Bay Toll Crossing rescinded the bus express lane yesterday. It has been in operation for a year.

Norman C. Raab, chief engineer on the bridge reconstruction project, said the bus lane will be needed for general auto traffic because the upper deck of the bridge is going to be repaved.

Raab said the bus lane was only a temporary measure, anyway.

Alameda-Contra Costa Transit system directors, obviously dismayed at the loss of the lane, notified commuters that the bridge crossing will take a little longer now.

Raab said the repaving project is scheduled for April. He said engineering studies will have to be made before the project begins, and he did not know how

long the repaving project would take.

"The upper deck of the bridge hasn't been paved since it was built 25 years ago," Raab said, "and it needs it."

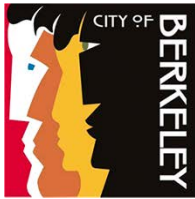
He said motorists would suffer no inconvenience. The upper deck will be paved one lane at a time and its use by motorists will be replaced by the lower deck lane formerly reserved for buses.

Alameda-Contra Costa transit directors, however, expected bus commuters would be sorely inconvenienced. Travel time across the bridge for buses was reduced from 25 minutes to 13 minutes by the express lane.

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Source: <https://twitter.com/chrisarvinsf/status/1182490535778340865>



CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 January 28, 2020

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Rigel Robinson  
 Subject: Letter in Support of Reviving Berkeley Bus Rapid Transit

RECOMMENDATION

Send a letter to AC Transit, the Alameda County Transportation Commission, Assemblymember Buffy Wicks, and State Senator Nancy Skinner in support of expanding Bus Rapid Transit into Berkeley on Telegraph Avenue at the first possible opportunity.

BACKGROUND

Bus Rapid Transit, or BRT, is a growing tool in urban planning centers the concept of transit right-of-way. Dedicated bus lanes can increase bus speeds by 6 to 12 percent,<sup>1</sup> reducing delays by ensuring that buses do not have to slow or stop for other vehicles (which accounts for 57 percent of delays), or wait to merge back into traffic after making a stop (24 percent of delays).<sup>2</sup>

Traffic congestion disproportionately affects public transit operations because of the multiplier effect — late buses have to pick up more passengers at every stop, causing them to fall even more behind schedule. This effect also means that more buses need to be deployed to maintain scheduled frequencies, costing taxpayers money.<sup>3</sup>

BRT makes it possible for transit agencies to run reliable bus service independent of how many cars are on the road. However, it is also intended to benefit non-transit users. Buses and cars sharing lanes poses a danger to drivers, who are put at risk by buses that suddenly merge into traffic or slow to make a stop. Once dedicated bus lanes are implemented, emergency vehicles can use them to bypass private automobile traffic, improving response times. Furthermore, the traffic calming, sidewalk widening, and general public realm improvements that are encompassed in a comprehensive BRT project are community benefits that enhance the streetscape for pedestrians, bicyclists, and local businesses alike.<sup>4</sup>

The AC Transit East Bay Bus Rapid Transit project was originally proposed to be implemented as a three-city project, connecting the Cities of Berkeley, Oakland, and San Leandro. The proposal would have provided bus service connecting the Downtown Berkeley and Bay Fair BART stations that was 18 percent faster, more frequent, and more reliable than current service. By 2015, BRT was expected to attract 6,820 new

<sup>1</sup> BRT for Berkeley: A Proposal for Consideration, pg. 1-2

<sup>2</sup> BRT for Berkeley: A Proposal for Consideration, pg. 1-12

<sup>3</sup> BRT for Berkeley: A Proposal for Consideration, pg. 1-2

<sup>4</sup> BRT for Berkeley: A Proposal for Consideration, pg. 1-3

riders to transit per weekday over the no-build alternative, reducing vehicle miles traveled (VMT) by 6.2 million per year.<sup>5</sup>

As part of an AC Transit Major Investment Study (MIS) process, the Berkeley City Council adopted implementation of BRT as an official City policy in a 2001 unanimous vote. The policy, Resolution 61,170-N.S., states that Berkeley has a “Transit First Policy that supports the creation of exclusive transit lanes,” and specifically calls out supporting “bus rapid transit as the preferred transit mode” on Telegraph Avenue. This aligns with the findings of the MIS, which found BRT to be more cost-effective and beneficial than any less robust improvements. The study also found Telegraph Avenue to be a better route for BRT than College Avenue or Shattuck Avenue.<sup>6</sup>

However, in a 2010 reversal, the Council rejected Telegraph BRT by a 4-2-2 vote, citing stakeholder concerns about impacts on traffic, parking, and loading.<sup>7</sup> Instead, Council voted 8-0 for a “reduced impact” proposal without bus-only lanes, focusing on improving bus loading areas and signage and implementing priority signalization and a proof-of-payment system.<sup>8</sup> Because this proposal was not studied in AC Transit’s BRT Draft Environmental Impact Report, it could not be legally incorporated into the Bus Rapid Transit plan. As a result, BRT is currently only being implemented in the Cities of Oakland and San Leandro.

Since 2010, Berkeley’s political environment and the needs of its residents have changed. Public transit demand, population, and employment in the East Bay are all growing — by 2040 in AC Transit’s service area, population is projected to grow by 30 percent and employment by 40 percent. By 2025 along the Telegraph corridor, population is expected to grow by 16 percent and employment by 23 percent.<sup>9</sup> In the next three years, UC Berkeley’s student enrollment will reach 44,735, a 33.7 percent increase over original projections.<sup>10</sup>

Coupled with a burgeoning housing crisis that is pushing residents to live farther from their jobs, these numbers pose significant traffic and congestion challenges. Berkeley residents are commuting to Oakland and San Leandro, and vice versa. UC Berkeley students are living farther from campus or commuting from home. AC Transit’s Draft EIR found that the number of Berkeley intersections that are severely congested during rush hour will increase from one to five by 2025 without BRT.<sup>11</sup>

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<sup>5</sup> BRT for Berkeley: A Proposal for Consideration, pg. 1-19

<sup>6</sup> BRT for Berkeley: A Proposal for Consideration, pg. 1-13

<sup>7</sup> <https://www.eastbaytimes.com/2010/05/06/berkeley-opposes-bus-only-lanes-for-transit-project/>

<sup>8</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/2010/05May/2010-05-18\\_Item\\_02\\_Minutes\\_for\\_Approval.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/2010/05May/2010-05-18_Item_02_Minutes_for_Approval.pdf)

<sup>9</sup> <http://www.actransit.org/wp-content/uploads/Draft-Final-MCS-Report.pdf>

<sup>10</sup> <https://www.berkeleyside.com/2019/02/21/uc-berkeleys-student-enrollment-projected-to-reach-44735-in-next-3-years>

<sup>11</sup> BRT for Berkeley: A Proposal for Consideration, pg. 1-12

A dedicated bus lane on Telegraph connecting Berkeley and Oakland would build much-needed public transit infrastructure into a densifying neighborhood that increasingly relies on multimodal transportation. BRT was projected to attract a total of 39,200 additional riders by 2035.<sup>12</sup> A significant fraction of these riders would be replacing their car trips with efficient, reliable public transit — when San Pablo Avenue adopted rapid bus routes, 19 percent of their riders were former drivers.<sup>13</sup> Providing an attractive public transit alternative to driving is crucial for reducing vehicle miles traveled, encouraging people to get out of their cars, and ensuring that roads are less congested for Berkeley residents who absolutely need to drive.

In October, the Council unanimously passed a referral to move forward with the Telegraph Public Realm Plan shared streets proposal, which will reconfigure the first four blocks of Telegraph Avenue to prioritize pedestrians, bicyclists, and buses over automobile thru traffic.<sup>14</sup> Over the next few years, the City will be identifying and applying for regional funding sources, going through multiple stages of design and planning, and engaging in community outreach and public input. This presents a unique opportunity for Telegraph Avenue to be reintegrated into the Bus Rapid Transit plan.

Staff should send the attached letter of support to AC Transit, the Alameda County Transportation Commission, Assemblymember Buffy Wicks, and State Senator Nancy Skinner.

#### FINANCIAL IMPLICATIONS

None.

#### ENVIRONMENTAL SUSTAINABILITY

The City of Berkeley's Climate Action Plan supports BRT as a key strategy to reducing carbon emissions, stating that the City should "continue timely assessment and development of proposed East Bay Bus Rapid Transit (BRT) system." The Plan stresses the importance of BRT "given the expected significant increase in the Bay Area's population (and associated traffic congestion) in that same time period."<sup>15</sup> Implementation of Bus Rapid Transit will reduce vehicle miles traveled (VMT) by 6.2 million per year.

#### CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

#### Attachments:

1: Letter

<sup>12</sup> BRT for Berkeley: A Proposal for Consideration, fig. 1-7

<sup>13</sup> BRT for Berkeley: A Proposal for Consideration, pg. 1-20

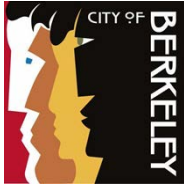
<sup>14</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/10\\_Oct/Documents/2019-10-29\\_Item\\_30\\_Referral\\_Telegraph\\_Shared\\_Streets\\_-\\_Rev.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/10_Oct/Documents/2019-10-29_Item_30_Referral_Telegraph_Shared_Streets_-_Rev.aspx)

<sup>15</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/Berkeley%20Climate%20Action%20Plan.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Berkeley%20Climate%20Action%20Plan.pdf)

2: BRT for Berkeley: A Proposal for Consideration

[https://www.cityofberkeley.info/uploadedFiles/Planning\\_\(new\\_site\\_map\\_walk-through\)/Level 3 - General/LPA REPORT FINAL 090809 FULL REPORT.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_(new_site_map_walk-through)/Level_3_-_General/LPA_REPORT_FINAL_090809_FULL_REPORT.pdf)





To: AC Transit Board of Directors & Alameda County Transportation Commission

Date: January 28, 2020

Re: In Support of reviving Berkeley Bus Rapid Transit

Dear AC Transit Board of Directors & Alameda County Transportation Commission:

AC Transit has long been a valuable partner for the City of Berkeley, helping us meet our climate goals through innovative, low-emission transportation solutions. The greater East Bay also benefits from AC Transit's various initiatives to improve ridership, efficiency, and reliability of service. One such project, the Bus Rapid Transit plan, is currently being implemented in the Cities of Oakland and San Leandro.

In 2010, the Berkeley City Council rejected the Bus Rapid Transit project by a 4-2-2 vote, citing stakeholder concerns about traffic, parking, and loading. However, as the Bay Area faces increasing challenges around climate and housing, the dire need for efficient, reliable public transportation has never been clearer. The current City Council understands these needs and believes that dedicated bus lanes are the best way to move our city towards a sustainable future. Therefore, the City of Berkeley is formally requesting that AC Transit consider expanding Bus Rapid Transit into Berkeley on Telegraph Avenue at the first possible opportunity.

Since Council rejected the Bus Rapid Transit proposal, Berkeley's political environment and the needs of its residents have changed. Demand for efficient public transportation is growing, and a burgeoning housing crisis is pushing residents to live farther from their jobs. Berkeley residents are commuting to Oakland and San Leandro, and vice versa. UC Berkeley students, the vast majority of whom do not use a car, are living farther from campus or commuting from home. A dedicated bus lane on Telegraph would build much-needed public transit infrastructure into a densifying neighborhood that increasingly relies on multimodal transportation, and more intimately connect Berkeley and Oakland.

The City of Berkeley has renewed efforts to move forward with the Telegraph shared streets proposal, which will reconfigure the first four blocks of Telegraph to prioritize pedestrians, bicyclists, and buses over automobile thru traffic. Over the next few years, the City will be identifying and applying for regional funding sources, going through multiple stages of design and planning, and engaging in community outreach and public input. We believe that the planned overhaul of the streetscape presents a unique opportunity for Berkeley to be reintegrated into Bus Rapid Transit plans.

The current Council recognizes the importance of providing efficient and reliable public transportation for our residents. As the housing crisis and the effects of climate change sweep across the Bay Area, Berkeley is ready to take bold action to invest in sustainable modes of transportation. And as our city and region grow, we believe our public transit infrastructure should grow with us.

Sincerely,

The Berkeley City Council





Berkeley Homeless Commission

ACTION CALENDAR

January 28, 2020

To: Honorable Mayor and Members of the City Council

From: Homeless Commission

Submitted by: Carole Marasovic, Chairperson, Homeless Commission

Subject: Amending Source of Income Discrimination Ordinance to Establish Administrative Enforcement Procedure

RECOMMENDATION

The Homeless Commission recommends that BMC 13.31 be amended to provide for an administrative procedure to enforce the anti-discrimination property rental ordinance as to source of income. Such procedure should involve establishing a complaints procedure under an existing City of Berkeley department such as the Department of Planning or Rent Stabilization Board, where a complaint could be filed by a prospective tenant, or tenant, alleging that they have been discriminated against by a landlord, property owner or authorized agent or employee when seeking rental housing or in any other context currently covered under BMC 13.31.

Stage 1 of enforcement in the complaints procedure shall involve the taking of the complaint which shall be investigated by the designated department expeditiously, within a reasonable period of time no longer than ten days. Upon completion of the investigation, a finding shall be made of substantial evidence of discrimination or no evidence of discrimination.

In the process of the investigation, the investigator shall concurrently, while identifying the facts, attempt to resolve the complaint by seeking to bring the parties to agreement that the complaining party be permitted to rent the premises in question or alternatively, if the premises has otherwise been rented prior to the investigation, be provided the first option for the next available vacancy at the premises.

Where the complaint has not otherwise been resolved through this procedure, and there is a finding of substantial evidence, the complaining party shall be offered the opportunity to have its complaint heard by an administrative hearing officer mirroring a procedure or similar to a procedure afforded by BMC 1.28. If the complainant files for such an administrative hearing, and the rental property remains available, the filing for an administrative hearing, shall constitute a stay of the property being otherwise rented to another applicant.

If at the administrative hearing, the administrative law judge, or hearing officer, finds in favor of the complainant, the administrative hearing officer can order that housing be provided to the complainant and/or direct a fine of no more than five thousand dollars (\$5,000) to be paid to the complainant with an additional penalty to the City of Berkeley for the costs of the administrative appeal.

This procedure will be a final administrative decision subject to litigation to be brought in a court of law by a complainant through any legal entity, private or public as the complainant can identify.

The Homeless Commission further recommends that any person seeking housing, with a voucher or any subsidy to pay their rent, be considered for the rental in the order which their rental application is received and be entitled to the rental as the first applicant of right. Insufficient credit or poor credit shall not be a fact considered for rental as to the totality of the rent to be paid if the rent is to be otherwise paid through the voucher or subsidy source.

#### SUMMARY

The current source of income anti-discrimination ordinance has not been enforced because the enforcement provisions are impractical. Amendments to the ordinance will provide for a means of enforcement, through administrative procedures, that will open up housing in Berkeley to persons with Section 8 vouchers, Shelter Plus certificates, VASH vouchers and other subsidies.

Establishing an investigative procedure, prior to an administrative hearing, encourages early resolution of the complaint avoiding additional expense to the landlord/property owner and provides for a timely rental for the complainant.

#### FISCAL IMPACTS OF RECOMMENDATION

The costs to implement such a program will be substantial and are best calculated by staff. However, implementing an administrative procedure is the only means of enforcing a law critical to protecting access to rental housing by persons with vouchers and other subsidies.

#### CURRENT SITUATION AND ITS EFFECTS

On July 25, 2017, Council unanimously passed an ordinance to prohibit discrimination in property rental based on source of income. Since that time, discrimination based on source of income remains pervasive throughout the Berkeley community. The current enforcement provisions in the ordinance are impractical.

The complaining party currently must seek legal redress in court, through a protracted process, when they are only seeking to rent an apartment in a timely manner. An administrative procedure, commencing with an investigation of their complaint, is far more likely to result in an expeditious resolution, concluding in rental.

Even if the complainant wanted to proceed through an untimely litigation route, they would be hard-pressed to identify an attorney to represent them. County counsel or the district attorney, as stated in the current ordinance, would not prioritize such cases. The reference to any other person or entity, in the current ordinance, could include the City Attorney but that undertaking would be excessively burdensome to the City of Berkeley City Attorney, already overstretched with competing demands. This ordinance has not substantially caught fire so as to interest the private bar in bringing these claims.

#### BACKGROUND

On November 13, 2019, the Homeless Commission voted to pass the recommendation as earlier stated in the recommendation section of this report and herein incorporated by reference.

**Action:** M/S/C Marasovic/Hill to submit the report on enforcement of source income discrimination to Council as written.

**Vote:** Ayes: Hill, Marasovic, Kealoha-Blake, Hirpara.

Noes: Mulligan, Behm-Steinberg, Hollyman. *Abstain:* None. *Absent:* None.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects.

#### RATIONALE FOR RECOMMENDATION

As source of income discrimination continues in Berkeley two years following the adoption of an ordinance prohibiting such, it is clear that the current ordinance is insufficient as to enforcement. An administrative procedure is best in terms of an expeditious resolution.

An increase in a fine, through the administrative procedure, is an incentive for property manager/landlord resolution. The order of an application received is critical because otherwise, denial is easily justified through a pool of applicants which favors those without vouchers or subsidies. Lack of credit or bad credit can be a basis for denial to a Section 8 voucher/subsidy holder. However, that credit is irrelevant when the voucher or subsidy holder's rent will be largely paid by the funding source.

#### ALTERNATIVE ACTIONS CONSIDERED

The Commission considered not taking action which would mean that the ordinance is meaningless without lack of enforcement.

#### CONTACT PERSON

Brittany Carnegie, Community Services Specialist II, HHCS, 510-981-5415





Office of the Mayor

CONSENT CALENDAR

January 28, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: 2020 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 Liaisons to City Boards and Commissions for a one-year term ending January 31, 2021 or until new appointments are made.

BACKGROUND

There are a number of City Council appointments to various Partnership Committees, Regional Bodies and Liaisons to City Boards and Commissions. Every two years after the General Municipal Election, the Mayor makes recommendations on new Council representatives.

On January 22, 2019, the City Council adopted Resolution No. 68,744-N.S. making appointments to Council Standing Policy Committees, Partnership Committees, Regional Bodies, and Liaisons to City Boards and Commissions until January 31, 2020. Given that these appointments will expire at the end of this month, the Council must make new appointments.

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 2020

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, the City Council adopted Resolution No. 68,744-N.S. appointing Council representatives to Council Policy Committees, Regional Bodies, Partnership Committees and Liaisons to City Boards and Commissions for terms ending January 31, 2020 or until new appointments are approved by the full Council; 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

WHEREAS, these Committee appointments will expire on January 31, 2020 and new appointments must be made; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley the City of Berkeley officially makes the following appointments for the period ending January 31, 2021 or until new appointments are approved:

**City Council Standing Policy Committees:**

Agenda & Rules Committee

Appoint Mayor Arreguín, Vice-Mayor Hahn and Councilmember Wengraf  
Appoint Councilmember Bartlett as Alternate

Budget & Finance Committee

Appoint Mayor Arreguin, Councilmember Davila and Councilmember Droste  
Appoint Councilmember Harrison as Alternate

Facilities, Infrastructure, Transportation, Environment & Sustainability Committee

Appoint Councilmember Davila, Councilmember Harrison and Councilmember Robinson  
Appoint Vice-Mayor Hahn as Alternate

Public Safety Committee

Appoint Councilmember Kesarwani, Councilmember Robinson and Councilmember Wengraf  
Appoint Councilmember Droste as Alternate

Land Use, Housing & Economic Development Committee

Appoint Councilmember Bartlett, Councilmember Droste and Councilmember Harrison



Appoint Mayor Arreguin as Alternate

Health, Life Enrichment, Equity & Community Committee

Appoint Councilmember Bartlett, Vice-Mayor Hahn, and Councilmember Kesarwani

Appoint Councilmember Robinson as Alternate

**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 Mayor Arreguin, Councilmember Davila and Councilmember Kesarwani

2x2 Committee of the City Council and the Board of Education

Appoint Mayor Arreguin and Vice-Mayor 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 Councilmember Wengraf

Appoint Vice-Mayor Hahn as Alternate

Delegate to Association of Bay Area Governments General Assembly

Appoint Councilmember Bartlett

Appoint Councilmember Droste as Alternate

Joint Powers Authority - East Bay Community Energy Authority

Appoint Mayor Arreguín

Appoint Councilmember Harrison as Alternate

Joint Powers Agreement - East Bay Regional Sports Fields

Appoint Councilmember Kesarwani

Appoint Councilmember Davila as Alternate

Joint Powers Authority - Lead Abatement

Appoint Councilmember 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 Vice-Mayor Hahn

Community Health Commission  
Appoint Councilmember Kesarwani

Mental Health Commission  
Appoint Councilmember Davila



Office of the Mayor

ACTION CALENDAR  
JANUARY 28, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguin

Subject: Support the “New Border Vision” to expand public safety, protect human rights, and welcome people to our city.

### RECOMMENDATION

Adopt a resolution supporting the “New Border Vision”, a 21st century border policy that begins with the belief that migrants are part of the human family and should be treated with dignity and respect. Send a copy of the Resolution to U.S. Senators Dianne Feinstein and Kamala Harris, Congresswoman Barbara Lee and President Donald Trump.

### FINANCIAL IMPLICATIONS

No financial implications to the City.

### BACKGROUND

The residents of Berkeley have a long history and deep commitment to welcoming immigrants, refugees, and those in exile. In 1971, the City Council declared Berkeley to be a “City of Refuge”, and reaffirmed their decision in 1986 relating to Central American refugees, in 2007 after U.S. Immigration and Customs Enforcement (ICE) enforcement action took place throughout the Bay Area, and again in 2016 after the election of Donald Trump.

In early 2017, the Mayor convened a Sanctuary City Task Force, bringing immigrant rights groups, legal providers, health care providers, BUSD, UC Berkeley, Berkeley City College and other stakeholders together to discuss ways to implement our City of Refuge policy, and provide resources to support our undocumented community. On June 25, 2017, the city adopted an amendment to the City of Refuge Policy stating that “no department, agency, commission, officer or employee of the City of Berkeley shall use any City funds or resources to assist in the enforcement of Federal immigration law or to gather or disseminate information status of individuals in the City of Berkeley unless such assistance is required by federal or state statute, regulation or court decision”. Consistent with our City of Refuge Policy, the City Council should take further action and work with the Southern Border Communities Coalition to bring light to the

greater authorization powers held by the federal border authorities and protect our civil liberties.

When we think of a "border city" we often think of those communities immediately along the US-International border. However, under federal law 8 C.F.R. 287.1, Berkeley is a border city as it falls within 100 miles of a land or sea border, and as such Berkeley is subject to the "warrantless powers" of Department of Homeland Security (DHS) employees who may assert the power under 8 U.S.C. 1357(a)(3) to interrogate our residents, set up checkpoints, and board and search our cars, trains, buses, planes, boats, without needing a warrant or the equivalent of probable cause as is normally required under the U.S. Constitution's Fourth Amendment and the California Constitution's Article 1 Section 13.

As a border city, federal authorities within the Department of Homeland Security ("HSI") Customs of Border Protection ("CBP"), Homeland Security Investigations ("HSI"), and Immigration Customs Enforcement ("ICE") - and local enforcement bureaus serving on a joint task force with any DHS agency - may act without warrant to: set up checkpoints, search vehicles, BART, AC Transit, enter onto private property and racially profile and interrogate anyone suspected of not being a citizen. Recent polls estimate that 1 in 4 Californians have been stopped at an internal checkpoint by border authorities<sup>1</sup>. Furthermore, DHS agencies have a long history of abusing their power to bring fear and death to their victims.

Border authorities engage in widespread corruption and abuse of power with little accountability. In the last year alone, at least 12 people have died in CBP custody<sup>2</sup>. Since 2010, over 90 people have been killed during CBP encounters, 21 in California<sup>3</sup>. At least 28 of those killed were U.S. citizens. In 2018, CBP officers were arrested at a rate 5 times the average for state and local police officers<sup>4</sup>. The DHS Office of Inspector General has found that CBP lacks adequate safeguards to address employee misconduct. However, they are continuously expanding and using large sums of the federal budget for their unsupervised inhumane misconduct.

The power of border authorities is only growing. With over 60,000 employees, CBP is the largest law enforcement agency in the U.S. and poised to become a national police

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<sup>1</sup> Tom K. Wong, US Immigr. Pol'y Ctr., Public Opinion About the Border, at the Border 19 (2019), <https://usipc.ucsd.edu/publications/usipc-border-poll-final.pdf>.

<sup>2</sup> Garrett M. Graff, *The Border Patrol Hits a Breaking Point*, POLITICO Magazine (July 15, 2019), <https://www.politico.com/magazine/story/2019/07/15/border-patrol-trump-administration-227357>

<sup>3</sup> *Deaths by Border Patrol*, Southern Border Communities Coalition, [https://www.southernborder.org/deaths\\_by\\_border\\_patrol](https://www.southernborder.org/deaths_by_border_patrol)

<sup>4</sup> Justin Rohrlich & Zoë Schlanger, *Border Officers Are Arrested 5 Times More Often than Other US Law Enforcement*, Quartz (July 16, 2019), <https://qz.com/1664253/cbp-officers-arrested-5-times-as-often-as-other-law-enforcement/>.

force with extra-constitutional powers<sup>5</sup>. Each year, the U.S. spends more on border and immigration enforcement than the combined budgets of the FBI; Bureau of Alcohol, Tobacco, Firearms and Explosives; Drug Enforcement Administration; Secret Service; and U.S. Marshals - plus the entire annual budget of the NYPD. Such a large and unjust federal agency must be checked for the protection of our civil liberties. Being that Berkeley established itself as a sanctuary city, it is part of its commitment to protect immigrants and refugees from these abusive federal agencies and speak up against federal law.

The New Border Vision resolution calls to end these abuses; it calls for compassionate border governance based on expanding public safety, protecting human rights, and creating a welcoming environment for residents and newcomers. This resolution aims to protect our human rights and stand up against unjust federal law by holding authorities accountable, keeping families together, providing humanitarian aid, rescue and recovery, protecting vulnerable individuals, and creating a welcoming environment for residents and newcomers. Given Berkeley's status as a border city under federal law, it is important to advocate for changes to federal law to provide greater oversight and limits to the power of federal border officials. Berkeley needs to take the first step to address this unjust federal power that jeopardizes the safety of our community and engage with other communities and cities to do the same.

#### ENVIRONMENTAL SUSTAINABILITY

No identified environmental effects.

#### CONTACT PERSON

Mayor Jesse Arreguin 510-981-7100

#### Attachments:

- 1: Resolution
- 2: New Border Vision Fact Sheet- Berkeley Law International Human Rights Law Clinic
- 3: New Border Vision May 2019 Report- Southern Border Communities Coalition
- 4: New Border Vision One-Pager
- 5: Map of United States Enforcement Zone

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<sup>5</sup> See Garrett M. Graff, *The Green Monster*, POLITICO Magazine (Nov./Dec. 2014), <https://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220>; *About CBP*, U.S. Customs & Border Protection, <https://www.cbp.gov/about>

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

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY  
CALLING FOR A "NEW BORDER VISION" TO EXPAND PUBLIC SAFETY, PROTECT HUMAN  
RIGHTS, AND WELCOME PEOPLE TO OUR CITY

WHEREAS, the Berkeley Council has found that peace is inseparable from justice, and the residents of Berkeley have welcomed to our city those who have been forced into exile and those who have come fleeing torture and death (BMC 3.68.010 E,L); and

WHEREAS, the Berkeley Council declared Berkeley to be a City of Refuge in 1971 (Resolution No 44,784 -N.S.), reaffirmed that decision in 1986 relating to Central American refugees (Resolution 52,526-N.S.), in 2007 after ICE raids took place in the Bay Area Communities (Resolution 52,526-N.S.), and again in 2016 due to increased hate crimes after the election of Donald Trump, and against xenophobic rhetoric used during the campaign (Resolution 67,763-N.S.); and

WHEREAS, in early 2017, a Sanctuary City Task Force was convened, which brought immigrant and civil rights groups, faith leaders, legal experts, school and university officials, and community activists together to discuss ways to strengthen our City of Refugee policy, as well as support our undocumented community members; and

WHEREAS, over the past two years, the Task Force and working groups developed resources and protocols to clarify the rights of undocumented individuals and city/community partners in the case of ICE enforcement activity; and

WHEREAS, the Berkeley School Board in December passed a sanctuary campus policy which clearly articulates restrictions on information sharing, providing access to school facilities, and collaboration with immigration officials; and

WHEREAS, the Director of the Berkeley Health, Housing and Community Services Department also provided guidance to department staff on ICE protocols; and

WHEREAS, on March 14, 2017, City Council adopted a resolution to Denouncing the Presidential Executive Order to Build a US-Mexico Border Wall and divest from all companies involved (No. 67,865); and

WHEREAS, on July 25, 2017, the City Council affirmed that no department, agency, commission, officer or employee of the City of Berkeley shall use any City funds or resources to assist in the enforcement of Federal immigration law or to gather or disseminate information on the status of individuals in the city of Berkeley unless required by law; and

WHEREAS, the City Council affirms no department, agency, commission, officer or employee shall deny access to any city service or benefits to residents on the basis of their immigration status; and

WHEREAS, On July 24, 2018, the City Council passed a resolution to Support California’s Sanctuary Immigration Policies and Lawsuits Against Trump’s Policies (No. 68,573), by calling on the City Council to support SB 54, AB 103, and AB 450; and

WHEREAS, on October 31, 2017, the City Council adopted a resolution Directing Berkeley to Divest from All Entities Involved in Targeting Immigrants (No. 68,208); and

WHEREAS, these laws serve to make all Californians, Immigrants, Citizens and undocumented alike feel secure and protected in speaking and seeking aid from California law enforcement and protect them from unannounced workplace immigration raids and work to ensure that those being detained on the grounds of their citizenship are treated fairly and not being help under poor conditions; and

WHEREAS, on February 13, 2018, the City Council passed a resolution Opposing the Threats of Imminent Enforcement Sweeps by ICE (No. 68,328) after it was widely reported that federal immigration officials planned a major enforcement sweep in the Bay Area and across other parts of Northern California; and

WHEREAS, the City is made up of a diverse population, and 19% of City residents were born outside of the United States<sup>6</sup> but now form part of the fabric of our communities and contribute to the cultural, social and economic vibrancy of the City; and

WHEREAS, the City is a border city as it falls within 100 miles of a land or sea border under 8 C.F.R. 287.1, and as such the residents of the City are subject to the “warrantless powers” of Department of Homeland Security (DHS) employees who assert the power under 8 U.S.C. 1357(a)(3) to interrogate our residents, set up checkpoints, and board and search our cars, trains, buses, planes, boats, and other conveyances without needing a warrant or the equivalent of probable cause as is normally required under the U.S. Constitution’s Fourth Amendment and the California Constitution’s Article 1 Section 13; and

WHEREAS, the City also falls within 25 miles of an external boundary of the United States and as such the residents of the City are subject to DHS employees entering onto their private property, but not their dwelling, to patrol the border under 8 U.S.C. 1357(a)(3), which also undermines the constitutional rights of City residents; and

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<sup>6</sup> <https://datausa.io/profile/geo/berkeley-ca/#demographics>

WHEREAS, City residents are subject to profiling by DHS employees because the U.S. Department of Justice's "Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity"<sup>7</sup> prohibits profiling except in the vicinity of border, which includes our City, and this runs counter to California law under the Racial and Identity Profiling Act and Penal Code Section 13519.4; and

WHEREAS, the Department of Homeland Security is made up of multiple agencies who enforce border security in various ways, at physical land borders, at sea and in the interior of the country described as the expansive border region, which includes the City, and agencies consist of U.S. Customs Border Protection (CBP) and its component agency, Border Patrol, but also U.S. Immigration Customs Enforcement (ICE), Homeland Security Investigations (HSI), the US Coast Guard and the Cybersecurity and Infrastructure Agency, among others; and

WHEREAS, the City depends on local, state, and federal laws to protect the natural and cultural heritage of California and address climate change through laws that protect our air quality, water quality, biological diversity, historical sites, sacred places, and other valuable resources, and all of these laws can be waived in their entirety by DHS without judicial review under Real ID Act Section 102 for the purpose of building border barriers, undermining our well-being and the principle of due process embedded in the U.S. Constitution's Fifth Amendment; and

WHEREAS, we are less safe, not more safe, when DHS employees operate with absolute power, and without transparency or accountability, asserting that they are not subject to our laws, which leads to a culture of impunity and high rates of abuse and corruption that endanger the country, with 42 CBP officers arrested for corruption since 2004 in California<sup>8</sup>; and

WHEREAS, the impunity of DHS employees operating in the border region has led to the assault of countless people and the killing of more than 90 people, including citizen and non-citizen women, children and men since 2010, of which 21 were killed in California and at its borders, and no DHS employee has ever been held accountable<sup>9</sup>; and

WHEREAS, border deterrence tactics such as walls and other barriers intentionally funnel people into dangerous and remote corridors that has led to the deaths of over 7,000 people since 1994, when Operation Gatekeeper began at the California border, with a current death toll of an estimated 400 men, women and children a year, which amounts to one person dying

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<sup>7</sup> Page 2, Footnote 2 of 2014 DOJ Guidance: <https://www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf>

<sup>8</sup> [http://www.pogoarchives.org/m/prisons/CBP-2017-033851-and-CBP-2018-035232-Redacted\\_20180423.pdf](http://www.pogoarchives.org/m/prisons/CBP-2017-033851-and-CBP-2018-035232-Redacted_20180423.pdf)

<sup>9</sup> [https://www.southernborder.org/deaths\\_by\\_border\\_patrol](https://www.southernborder.org/deaths_by_border_patrol)



every day for the last 25 years as a result of irresponsible policies that use risk to life as a deterrence<sup>10</sup>; and

WHEREAS, border policies criminalize rather than manage migration, leading to the inhumane treatment of families seeking life, liberty, and the pursuit of happiness, which are described as inalienable rights in the U.S. Declaration of Independence, and have led to the mass incarceration of more than 50,000 migrants, which include 24,177 in California as of 2017<sup>11</sup>; and

WHEREAS, nearly one million people arrive to the United States every day, around 196,000 people every day via California, and more than 99 percent of them come with prior authorization as citizens, residents, and visa holders, but often face long waits at California’s border because of poor border management despite the government’s allocation of over \$13 billion a year to U.S. Customs and Border Protection alone<sup>12</sup>; and

WHEREAS, the United States loses billions of dollars and thousands of jobs every year due to long wait times at our southern border that delay trade and travel, and the cost is felt across every state, all of which are dependent on trade with Mexico as our largest trading partner; and

WHEREAS, over 160 countries took an unprecedented action in December 2018 by signing a Global Compact on Migration that calls for the protection of human rights at borders, setting new global standards and best practices for border governance as detailed in the United Nations Office of the High Commissioner for Human Rights “Recommended Principles and Guidelines on Human Rights at International Borders”; and

WHEREAS, current U.S. border policies are out of sync with global best practices and undermine our well-being, and we need our country to change its approach to the border and become a model of good border governance to create humane and functional borders for the 21st century; and

WHEREAS, border communities in conjunction with human rights experts have drafted a “New Border Vision” that adopts global best practices and relates them to the U.S. borders to expand public safety, protect human rights, and welcome people with dignity at our borders; and

WHEREAS, the “New Border Vision” leads with our values beginning with the belief that migrants are part of the human family and should be treated with dignity and respect; that migration is the exercise of the inalienable right to life, liberty, and the pursuit of happiness and as such, migrants should be humanized rather than criminalized; that we should treat all people as we would want to be treated, and give everyone full and fair opportunity to be safe; and

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<sup>10</sup> [https://www.southernborder.org/deaths\\_by\\_border\\_patrol](https://www.southernborder.org/deaths_by_border_patrol)

<sup>11</sup> <https://www.bjs.gov/content/pub/pdf/p17.pdf>

<sup>12</sup> <https://explore.dot.gov/views/BorderCrossingData/Monthly?:isGuestRedirectFromVizportal=y&embed=y>

WHEREAS, expanding public safety in the “New Border Vision” means expanding public trust of DHS, but there can be no trust if there is no accountability and border agents treat residents as second-class citizens and migrants as criminals, the “New Border Vision” calls for the following:

- Decriminalize migration and focus border authorities and resources on true organized crime and terrorist threats, so that everyone, including border residents and migrants, feel safe in the presence of border authorities and do not have reason to fear mistreatment;
- Set a high standard for effective, professional and accountable law enforcement so that border authorities are trained, supervised, and recognized for adhering to best practices that build trust and keep us all safe, regardless of our status;
- Respect human rights without creating zones of exceptions or impunity, end mass detention, and provide people who suffer abuse by border authorities with meaningful access to justice to hold border authorities accountable; and

WHEREAS, protecting human rights in the “New Border Vision” means preserving the dignity of life, rather than intentionally endangering it or treating it as an acceptable collateral consequence of our policies, the “New Border Vision” calls for the following:

- Prioritize human rights at the border, allowing people to seek protection or safe return with the assistance of our government, rather than prosecution by the government; migrants seeking protection should not be turned back into harm’s way;
- Provide immediate aid, rescue, and recovery to people in distress at the border, and support rather than prosecute humanitarian aid workers who fill gaps left by the government to save lives;
- Protect children by keeping families together, locating them in the community rather than in detention, and giving child welfare specialists a primary role, not border law enforcement authorities; and

WHEREAS, welcoming people with dignity in the “New Border Vision” means creating an efficient, effective, and humane entry system to foster goodwill, but that is challenging at a militarized border, the “New Border Vision” calls for the following:

- Expand the channels for entry with adequate and accountable staff, more lanes at ports, more open hours, and more opportunities to approach so no one is left waiting for unreasonable amounts of time;

- Set the standard for border authorities to conduct welcoming, expeditious, non-threatening, professional interviews to identify people entering and screen for people who may need protection;
- Direct border authorities to refer migrants seeking protection to other agencies or community organizations that are not law enforcement and are better suited to provide trauma, medical, psychological, legal, language and other assistance in whole-of-government and whole-of-society approach to humanitarian response; and

WHEREAS, the “New Border Vision” is grounded in good governance principles that call for evidence-based and data-driven decision-making, consideration of affected communities including border residents, transparency and oversight, and full accountability without exceptions, waivers, or zones of immunity.

**NOW THEREFORE BE IT RESOLVED THAT THE CITY OF Berkeley:**

- 1. Recognizes that the City of Berkeley is a border city, which falls into the zone of border enforcement, as defined in 8 C.F.R. 287.1, and as such have a particular stake in the border policies that affect our residents as well as our country.**
- 2. Supports a “New Border Vision” that expands public safety, protects human rights, and welcomes people with dignity at the border. Our government should lead with our values, address our needs and adhere to good governance principles to create humane and well-functioning borders for the 21st century.**
- 3. Calls on Congress to eliminate “powers without warrant” in 8 U.S.C. 1357, which subjects City residents to potential unreasonable searches by federal authorities, undermining constitutional protections that the City is charged with protecting.**
- 4. Calls on Congress to end the border-region exception to the prohibitions on profiling, which subjects City residents to potential profiling by federal authorities, undermining California’s protection against profiling, which the City is charged with protecting; and calls on Congress to legislate universal prohibitions.**
- 5. Calls on Congress to eliminate the blanket waiver authority in Real ID Section 102, which gives federal authorities absolute and unreviewable authority to waive all local, state, and federal laws to build border barriers, undermining the well-being of City residents, the protection of their natural and cultural heritage in California, and their due process rights.**
- 6. Calls on Congress to end the criminalization of migrants for simply being migrants by eliminating 8 U.S.C. 1325, which leads to the criminal prosecution and incarceration of people asking for help; instead we should limit the adjudication of migrant cases to civil immigration proceedings to determine what remedies they**

**may be eligible for including asylum.**

BE IT FURTHER AND FINALLY RESOLVED that copies of this Resolution be sent to U.S. Senator Dianne Feinstein and Kamala Harris, Congresswoman Barbara Lee and President Donald Trump.

**Berkeley is a border city, which puts the civil liberties of its residents at risk of abuse by federal border authorities.**

Federal border authorities have extraordinary powers within 100 miles of the coast to stop, search, and interrogate residents. Within 25 miles of the coastal border, they can enter onto private property.

- As Berkeley is a coastal city, federal border authorities within the Department of Homeland Security (“DHS”)—Customs and Border Protection (“CBP”), Homeland Security Investigations (“HSI”), and Immigration Customs Enforcement (“ICE”)—and local enforcement bureaus serving on a joint task force with any DHS agency, may act without a warrant to:
  1. set up checkpoints;
  2. search vehicles, BART, AC Transit, etc.;
  3. enter onto private property; and
  4. racially profile and interrogate anyone suspected of not being a citizen.
- 1 in 4 Californians have been stopped at an internal checkpoint by border authorities.

**Border authorities engage in widespread corruption and abuse of power with little accountability.**

With over 60,000 employees, CBP is the largest law enforcement agency in the U.S. It is also dangerous.

- In the last year alone, at least 12 people have died in CBP custody. Since 2010, over 90 people have been killed during CBP encounters, 21 in California and at its borders. In 2018, CBP officers were arrested at a rate 5 times the average for state and local police officers.
- CBP has failed to effectively investigate misconduct cases. The DHS Office of Inspector General has found that CBP lacks adequate safeguards to address employee misconduct. A report by the Police Executive Research Forum concluded that CBP’s use-of-force policies were “*far outside the mainstream of U.S. law enforcement*” and that many CBP deadly-force cases “*did not appear to meet the test of objective reasonableness.*”

CBP’s actions have eroded the trust of the public.

- 4 in 10 Californians have little or no trust that CBP Border Patrol agents will protect the rights and civil liberties of border residents and migrants. An even higher number have little or no trust that Border Patrol agents will be held accountable for abuses of authority.

**The power of border authorities is only growing.**

CBP is poised to become a national police force with extraconstitutional powers. Its stated goal is “[t]o serve as the premier law enforcement agency.”

- In 2019, CBP was allocated \$17.1 billion—almost four times more than in 2003. In 2017, nearly \$300 million was allocated to hire an additional 7500 Border Patrol agents.
- Each year, the U.S. spends more on border and immigration enforcement than the combined budgets of the FBI; Bureau of Alcohol, Tobacco, Firearms and Explosives; Drug Enforcement Administration; Secret Service; and U.S. Marshals—plus the entire annual budget of the NYPD.

**The New Border Vision resolution calls to end these abuses; it calls for compassionate border governance based on:**

1. Expanding public safety: holding border authorities accountable;
2. Protecting human rights: keeping families together, providing humanitarian aid, rescue and recovery, and protecting vulnerable individuals; and
3. Creating a welcoming environment for residents and newcomers.

# A NEW BORDER VISION

*Creating 21st century border governance by expanding public safety, protecting human rights, and welcoming residents and newcomers.*

**MAY 2019**



# INTRODUCTION

## We need a New Border Vision.

A New Border Vision is a path forward. It is a guiding light and a chance to move with common purpose to unite us, rather than divide us. It is our opportunity to lead with our values, address our needs, and adhere to good governance to generate well-functioning and rights-respecting borders for the 21st century.

The United States was founded on the belief that all people have the inalienable human rights to life, liberty, and the pursuit of happiness – regardless of where they come from. As a nation formed by indigenous communities and immigrants, some of whom came involuntarily, we still strive to build a more perfect union that protects these rights for all people including new migrants and refugees.

Migration has helped define this country and the global community, making every country a place of origin, transit, and destination. But the widespread failure to protect migrants, exposing them to abuse, exploitation, and harm, recently led the world of nations in December 2018 to adopt the Global Compact on Migration to reduce the vulnerabilities to migrants everywhere by respecting, protecting, and fulfilling their human rights. Our national belief in human rights – inalienable rights – can similarly inspire us now.

Over the years, the United States helped give shape to a human rights movement that drew inspiration from our founding principles. But our current border policy turns away from this proud history. For years, this country has forgotten our commitment to human rights, choosing instead to criminalize migrants and engage in deadly and unaccountable border enforcement, undermining public safety. This administration has gone further, eroding the very human rights this country was founded upon.

Border communities and the people who live in, arrive to, or travel through them have suffered as a result. Our voices should be paramount in the national debate about the border. Instead, the border region – the place we call home – has repeatedly been used as a proving ground by politicians wanting to demonstrate their iron will while exploiting people's fears about immigrants. These politicians have only hurt our humanity. To this, we say 'No More.' We offer a new vision that decriminalizes migration and sets us on a new path to act with our values and fulfill our moral and legal obligations to uphold human rights.

A New Border Vision is a framework for positive and compassionate action. It is our chance to create responsive and responsible border governance for the 21<sup>st</sup> century. This New Border Vision focuses on three priorities for creating good border governance:

- 1. Expanding Public Safety**
- 2. Protecting Human Rights**
- 3. Welcoming Residents & Newcomers**

## VALUES FOR A NEW BORDER VISION

### ***Uphold the inalienable human rights of life, liberty, and the pursuit of happiness.***

In our Declaration of Independence, life, liberty, and the pursuit of happiness are described as inalienable rights. They are the most fundamental human rights and are endowed to migrants just as they are endowed to citizens. In fact, migration is the pursuit of these rights. The protection of these universal human rights must be given primacy in all border governance measures.

### ***Partner with border communities in decision-making about the border.***

Border communities in the United States are economically vibrant, naturally beautiful, and culturally diverse. They are places of encounter, opportunity and hope, and they are home to millions of border residents who are our nation's chief ambassadors and welcomers. Border residents are directly affected by border governance and must be taken into account in a central way. Border communities know the border region better than anyone else and must be consulted about their priorities.

### ***Recognize the dignity and humanity of people who are migrating.***

Migration is a human phenomenon as old as time and a part of nearly every family's story. It is a defining feature of our globalized world, making every country, including the United States, a country of origin, transit, and destination. If governed well, migration is a source of prosperity, innovation, and sustainable development. Thoughtful border governance helps to increase opportunities for safe, orderly, and regular migration and to minimize the need for dangerous and irregular migration. Migration should never be criminalized. Good border governance recognizes our common humanity and shared potential.

### ***Honor the principle of non-discrimination.***

The principle of non-discrimination is a cherished constitutional value found in the equal protection clause of the 14th amendment. Border governance measures must not exclude or mistreat people based on race, ethnicity, gender, national origin, religion, sexual orientation, gender identity or expression, disability or any other human trait. Our traits are what make us human and should not imperil us or be cause for exclusion or mistreatment.

### ***Strive for social cohesion and inclusion.***

As a country, we have long aspired to find unity in diversity, with the words *E Pluribus Unum* (out of many, one) emblazoned on the nation's seal. We are a democracy inspired by indigenous people, forged by diverse immigrants and freed people, and continuously rejuvenated by newcomers from around the world. Our policies and public statements must recognize that diversity is our strength and, with our words and our deeds, we must strive to foster social cohesion and avoid stigmatizing, xenophobic, racist, alarmist, or inaccurate language.





# EXPANDING PUBLIC SAFETY



Our communities are safe when everyone is supported to pursue their full potential in an environment of harmony, safety, equality, and justice. We are safe when everyone can access quality education, healthcare, homes, and jobs. We are safe when we are protected from flooding, fires, and other disasters. We are safe when we can call first responders for help without the threat of violence or deportation. In short, we are safe when everyone can thrive. The role of government is to invest in the things that keep us safe and help us thrive.

That is not currently happening in the border region. Instead of investing in revitalizing border communities, the current administration is doubling down on militarizing them. Instead of contributing to our safety, unaccountable border authorities engage in abuse and corruption while the administration continues to push for deadly walls that exacerbate flooding and

devastate our cultural and natural heritage. Public safety depends on public trust, but there can be no trust when the administration is unwilling to hold itself accountable and is fixated on policies that are harmful and out of touch with reality.

Despite the rhetoric, no known terrorist has entered via our southern border, and the best way to ensure no one ever does is to provide humane and orderly processes at our border, which we currently lack. According to the FBI, border cities are among the safest in the country, with the lowest rates of violent crime and property crime. On an annual basis, less than a fraction of one percent of people entering the country arrive without prior authorization, and an even smaller fraction demonstrate intent to commit crimes or do harm. In that context, the militarization of border communities does not make sense and does not expand our safety. On the contrary, it makes us far less safe. What does increase our safety is creating border policies that are responsive to our needs and responsible to the communities they are intended to serve.

Responsive border policies focus on actual needs in border communities that ensure families feel safe and thrive. Such policies also focus on genuine threats and recognize that migration, in and of itself, is not a threat. Nor is it a crime. Migration is the human experience of seeking life, liberty, and the pursuit of happiness. Facilitating the humane and orderly movement of people across the border increases public safety.

Responsible policies train border authorities in global best practices, including in limiting the use of force, and train them to prioritize saving people and to avoid tactics that endanger them. Such policies require border authorities to protect the human rights of everyone, everywhere in the United States, including in border communities that are often wrongly viewed as exempt from these protections.

Expanding the notion of public safety is in everyone's interest. Responsible border management means that families – residents and migrants alike – feel safe in their well being and do not have reason to fear border authorities. It means border authorities are trained, supervised, and recognized for adhering to best practices that build trust and help keep us all safe. It also means that people who suffer from the abuse by border authorities have meaningful access to justice, and border authorities are held accountable.

# GOALS FOR EXPANDING PUBLIC SAFETY

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## ***Engage in strategic planning to focus border authorities and resources***

- » Engage in evidence-based strategic planning to identify true threats and appropriate responses to organized crime and terrorism: this means focusing on these threats, not migration. Programs such as Zero Tolerance and Operation Streamline that criminalize migrants and separate families should end.
- » Focus border authorities at the border: this means deploying them at the borders, proportionate to true threats, and eliminating interior checkpoints, roving patrols, and collaboration with local police. These practices erode trust in law enforcement and restrict freedom inside the United States.
- » Focus resources on detection of true criminal and terrorist threats: this means investing in tools that work, such as ground sensors, vehicle scanners and technologies with privacy protections, not expensive, harmful, and ineffective walls.

## ***Employ best practices for effective and professional policing***

- » Adhere to best practices: this means implementing the highest policing standards from the Police Executive Research Forum (PERF) and the International Association of Chiefs of Police (IACP), to reward professionalism, prevent abuse and corruption, and create a culture of accountability.
- » Provide ongoing training, especially on the use of force: this means considering human life as paramount and training authorities on de-escalation and non-lethal responses, such as for rock throwers; limiting force to a proportionate response; using lethal force only when proportionate and absolutely necessary to prevent death or serious injury; and establishing clear consequences for abuse of power.
- » Prioritize and protect life, avoiding tactics that endanger life: this means border authorities embrace a role as preservers of life; assessing risks associated with a tactic; and ending tactics that potentially harm people, such as scatter tactics that disorient migrants, high-speed car chases, and “prevention through deterrence” strategies such as barriers that funnel people into dangerous corridors.

## ***Respect human rights***

- » Enforce the protection of human rights fully: this means law enforcement should investigate and prosecute persons that violate these rights, including border authorities. Establish firewalls to protect personal data and enable migrants to effectively seek help, report crime, and participate in judicial proceedings.
- » End unreasonable searches, seizures, and surveillance in the border region: this means requiring border authorities to have probable cause or a warrant to board and search vehicles and boats or enter private land, without exception; it also means limiting the use of drones, intercept equipment, facial recognition, and other surveillance in order to ensure protection of civil liberties.
- » End mass incarceration of migrants at the border: this means ending the current practice of detention; detention should only be used as a last resort after community-based alternatives and should be limited in scope and duration, be necessary and proportionate, and based on individual assessment. Children and families should never be detained. Ever.

# PROTECTING HUMAN RIGHTS



Every day, millions of people cross borders in pursuit of their inalienable rights. Our borders should be a model to the world on how to protect and uphold human rights. Instead, we have endangered people with policies that create lawlessness and impunity, undermining good border governance. Border regions are often treated as zones of exception for human rights. That should never be the case. Good border governance depends on the full defense of human rights.

Our border communities recognize and respect the reality of families with mixed immigration status. The people without status who live in our homes, worship in our churches, volunteer at our schools, and in so many other ways enrich our communities are not threats to our national security. To the contrary, they demonstrate how border communities practice *convivencia* (living together) in vibrant ways. Migration control and border enforcement tactics that target and victimize these families and our communities must be discarded. Migration is not a crime and the migrants living among us should not be treated as if it were.

The protection of human rights is of particular concern for the border residents who live inside the United States in the spaces between ports of entry. We often must pass through checkpoints as far away as 100 miles into the interior. In these zones, border authorities assert excessive power, beyond the power of other law enforcement agencies, which leads to harassment, abuse, racial profiling and intimidation of border residents and travelers. If human rights are to mean something, they must be fully protected in border communities, without exception.

Migrants in distress at our borders are also particularly vulnerable to human rights abuses. These include families who are seeking protection from danger they face in their home countries. We are obligated to respect the right to asylum and must offer other protections to keep people out of imminent danger.

Vulnerable migrants also include those who are blocked from safe migration channels. Unable to access the ports of entry because of turnbacks or lack of information, these migrants are forced to cross between the ports, often relying on smugglers. They pass through remote and treacherous areas leading hundreds of migrants to die in transit each year in our southern border region.

Good border governance requires the protection of human rights and respect of human dignity of every person. It also requires providing more avenues for safe migration, including expanding the pathways for legal immigration and expanding protections for people in danger. It also includes protecting children and other vulnerable individuals arriving at the border, prioritizing human rights in the processing of asylum seekers and others seeking protection, and preserving life through immediate aid and rescue.

# GOALS FOR PROTECTING HUMAN RIGHTS

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## ***Prioritize human rights in border governance***

- » Prioritize human rights in policy and practice to facilitate effective border governance: this means shifting away from an enforcement-at-any-cost perspective that threatens human rights, harms community well-being, creates zones of impunity, erodes trust, and is ultimately ineffective.
- » Protect individuals from return or expulsion to countries where they face the risk of persecution and torture: this means providing a safe and effective process for people to seek available protections. People should never be returned to countries where they will be exposed to human rights violations.
- » Ensure that the return of migrants with no legal right to stay is safe, dignified and follows due process: this means returning people only after an individual assessment and exhaustion of remedies; returning them with their families (who are not eligible for protections) and with identity documents and belongings; and ending returns at night, to dangerous places, or remote areas far from apprehension.

## ***Provide immediate aid, rescue, and recovery***

- » Provide immediate humanitarian aid to ensure human dignity: this means, border authorities should be trained and equipped to provide first aid, water, food, blankets, sanitary items, and rest to individuals who present themselves or are encountered. The government should provide support to organizations that provide aid to migrants in their communities and help family members reunite.
- » Prioritize rescue and recovery: this means increasing search and rescue capacity, locating rescue beacons with 911 cell-relay along remote routes, and making every effort to rescue, recover, identify, and repatriate remains through international multi-stakeholder collaborations that include the effective participation of and regular communication with families of the disappeared.
- » Recognize the ancient, moral, and sacred duty of individuals to help others in distress: this means ensuring that people who provide humanitarian aid, rescue, and recovery are not penalized for or obstructed from doing so, and their aid provisions are never destroyed. Instead they should be supported to fill gaps the government is unable to fill.

## ***Protect children and other vulnerable individuals***

- » Protect the best interests of children at all times regardless of their migration status or that of their parents: this means treating children as children first, maintaining family unity, locating children in the community, and having child welfare specialists play a primary role with children, not border authorities.
- » Increase sensitivities to vulnerable populations: this means border authorities (who are mostly male) should be regularly trained to communicate with people they encounter who are female, indigenous, ethnic minorities, religious minorities, LGBTQ, traumatized, or otherwise vulnerable.
- » Provide support and pursue justice for families impacted by border militarization: this means providing federal and state victim support services for families who have been harmed or killed; and fully investigating and prosecuting border authorities alleged to be responsible.

# WELCOMING RESIDENTS & NEWCOMERS



Our borders are places of encounter, opportunity, and hope, but our current policy has undermined their potential and growth. The nearly one million people who arrive in the United States daily include border residents, visitors, merchants, and migrants. They are strengthening connections with our global neighbors, building goodwill, and fueling our economy so that we can all thrive.

Over 99 percent of people arriving have prior authorization to enter the country. Less than one percent come without prior authorization and most of them seek protection in the form of asylum or other assistance. A smaller number arrive seeking a better life like generations of migrants before them. Our welcoming system must respond to all of them in an effective, humane, and efficient way.

Given the volume and variety of people arriving, responsible border governance requires that we have sufficient channels for people with prior authorization (visas, passports) to cross the border. It is also essential that we have adequate and accountable personnel to staff those crossings. The country loses billions of dollars and thousands of jobs every year due to the long wait times at our southern border crossings. The cost is felt across the nation, which depends on trade with Mexico, now our largest trading partner. Long lines at the border also impact local businesses, degrade air quality, and imperil the well being of elderly, pregnant and disabled individuals who cannot withstand long waits.

We must ensure clear processes and sufficient access for migrants without prior authorization to approach the ports of entry to seek asylum, protection, or other assistance. Migration should never be criminalized. To do so is to criminalize a fundamental human experience. In order for the United States to engage in managing migration in a manner consistent with our values, our policies must reflect our humanity.

The welcoming of migrants necessitates a whole-of-government and whole-of-society approach that begins before migrants arrive at the border. It begins with the cooperation and coordination of local, state, national and international governments and nongovernmental organizations on both sides of the border to respond to the human rights concerns and needs of migrants. The role of border authorities with regard to migrants is to identify newcomers in a professional manner, identify their reason for entry, and make appropriate and timely referrals. That's it. Referrals include child welfare specialists, asylum officers, trauma counselors, medical teams, humanitarian aid organizations, and other partnering community organizations to assist migrants.

To facilitate the welcoming of migrants, it's imperative that border authorities and others coordinating with them on both sides of the border provide migrants access to interpretation in a language they understand, access to information about their rights, freedoms, and available protections, and access to other relevant assistance including cultural liaisons and legal counsel to communicate effectively and exercise their human rights fully. All of this should be done in a cage-free environment that honors the dignity of migrants. This will facilitate expeditious processing in conformance with national and international obligations.

# GOALS FOR WELCOMING RESIDENTS & NEWCOMERS

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## ***Expand channels to welcome people at ports of entry***

- » Respect international obligations to asylum seekers and others seeking protection, ensuring entry systems provide migrants the opportunity to present themselves expeditiously: this means sufficient staffing and facilities to avoid turnbacks and eliminate prolonged waits outside the country.
- » Increase channels for entry of border residents, visitors, merchants, and migrants: this means adequate and accountable staff, more lanes at ports, more open hours, and more opportunity to approach and be processed so that no one is deterred and compelled to pursue irregular entry.
- » Provide accommodation for elderly, pregnant, disabled, and others in need to physically access channels safely: this means assisting with mobility, providing seating, providing access to shade and water, and providing expeditious processing when necessary.

## ***Expedite interviews to identify and refer arrivals***

- » Conduct interviews in an efficient, professional, confidential, non-threatening, non-coercive way: this means a clear standard for treating everyone with dignity and respect; it also means extending full due process for credible fear interviews that should only be conducted by asylum officers, not border agents.
- » Identify the reason for entry without engaging in discrimination: this means no profiling based on race, ethnicity, gender, national origin, religion, sexual orientation, gender identity and expression, disability or other identity traits. Human traits should never be cause for exclusion or mistreatment.
- » Make appropriate and timely referrals for people who are at particular risk: this means referrals to governmental or nongovernmental entities to address the needs of children, asylum seekers, victims of trafficking or violence, and those with medical concerns. People waiting should have adequate water, food, sanitation, and a comfortable temperature in a humane, cage-free environment.

## ***Provide access to interpretation, information and assistance***

- » Provide access to interpretation for arrivals who need help with communication: this means language or sign interpretation, or verbal explanation for those who are not literate.
- » Provide access to information about rights, freedoms, and available protections: this means proactively giving this information to arrivals subject to enforcement measures and possible return, and distributing widely in countries of origin.
- » Provide access to assistance in a whole-of-government approach: this means having sufficient trained personnel, other than border authorities, to provide medical and psychological assistance, trauma response, cultural liaison, child guardianship, legal assistance and other assistance in cooperation with nongovernmental service providers as needed.

## RULES FOR GOOD BORDER GOVERNANCE

### ***Drive decision-making with accurate and unbiased data.***

Good border governance is driven by data that grounds responsible decision-making in reality, not rhetoric. High-quality data enables research, guides coherent and evidence-based policymaking, informs public discourse, and allows for effective monitoring and evaluation of the implementation of policies.

### ***Partner with affected stakeholders.***

The impact of border policies on border residents, visitors, merchants, and migrants should be addressed in the development, implementation, and evaluation of border governance policies. Good border governance responds to the concerns of affected communities and incorporates the input of stakeholders, which include local governments, civil society organizations, and international actors. In a whole-of-government and whole-of-society approach to border governance, stakeholders are partners in responding to challenges and needs, and local border communities do not bear the cost or burden of responding alone.

### ***Be transparent to the public.***

Transparency is a cornerstone of good border governance and means that information about policies and their implementation must be freely available and accessible to those affected by them. The public must be informed about the data collected, reports produced, budgets allocated, money spent, policies proposed, decisions made, evaluations completed, evidence collected, and videos recorded, and the location of detainees. Responses to Freedom of Information Act (FOIA) requests should come within weeks, not years.

### ***Ensure meaningful oversight.***

Oversight is necessary to ensure compliance with goals, policies, and standards of professionalism. Good border governance must strengthen internal monitoring of the Department of Homeland Security (Office of Civil Rights and Civil Liberties, Office of Inspector General, Office of Professional Responsibility). It must also include external monitoring by independent auditors, civilian review bodies, and international observers.

### ***Hold authorities accountable.***

A cornerstone to public trust is accountability. Government officials must be accountable to those they govern and there can be no exceptions, no waivers from compliance with the law. Access to an accountable justice system is key for people pursuing remedies for harm resulting from border governance policies and practices, or from corruption or organized-crime ties. Meaningful justice includes a robust complaint system, independent investigation, fair adjudication, and effective remedy. An effective remedy is responsive, timely, and meaningful. It provides reparation to the victim, guards against repetition, and applies the appropriate sanctions commensurate with the offense including a criminal conviction and/or administrative discipline.



## CONCLUSION

A New Border Vision for responsible border management leads with our values, addresses our needs, and adheres to good governance to generate well-functioning borders for the 21st century.

This vision was developed by the Southern Border Communities Coalition (SBCC), a coalition of community organizations spanning the length of the southern border, in collaboration with the Northern Border Coalition (NBC) and in consultation with academics, human rights experts, and law enforcement leaders. This vision draws on national and global perspectives on border governance to create a path forward at a divisive and chaotic time in the United States.

A New Border Vision is intended to set a new tone for dialogue about the border, to offer a template for new policy development, and to encourage us to turn the page to move forward together with common purpose and shared humanity. Let this vision be a guide to fulfill our nation's moral and legal obligations.

*“The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are written, as with a sun beam in the whole volume of human nature, by the hand of the divinity itself; and can never be erased or obscured by mortal power.”*

Alexander Hamilton, 1775  
American Statesman, Founding Father, and Immigrant

### **SBCC would like to thank the following for contributing their perspective:**

#### **Global perspective:**

Global Justice Clinic, New York University Law School  
Inter American Commission for Human Rights, Office of the Rapporteur on the Rights of Migrants  
United Nations Former Vice Chair on the Committee on Migrant Workers  
United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions  
United Nations Special Rapporteur on Racism, Racial Discrimination, Xenophobia and Related Intolerance  
United Nations High Commissioner for Refugees  
Regional Office for the USA and the Caribbean  
United Nations Committee on Migrant Workers  
University of California Berkeley's International Human Rights Law Clinic

#### **National perspective:**

American Civil Liberties Union (ACLU)  
Church World Service  
National Network for Immigrant and Refugee Rights  
Washington Office on Latin America

#### **Southern border perspective:**

Alliance San Diego (CA)  
American Friends Service Committee - US-Mexico Border Program (CA)  
California Immigrant Policy Center (CA)  
San Diego Immigrant Rights Consortium (CA)  
SEIU United Service Workers West (CA)  
Colibrí Center (AZ)  
Frontera de Cristo (AZ)  
Good Shepherd United Church of Christ (AZ)  
ACLU New Mexico (NM)  
New Mexico Comunidades en Acción y de Fe (NM)  
ACLU Border Rights Center (TX)  
La Unión Del Pueblo Entero (TX)  
Rio Grande Valley Equal Voice Network (TX)  
South Texas Human Rights Center (TX)

#### **Northern border perspective:**

New York Immigration Coalition  
Northern Borders Coalition





*Produced by Alliance San Diego on behalf of the Southern Border Communities Coalition.*

*For more information about SBCC, visit [www.southernborder.org](http://www.southernborder.org).*



A New Border Vision is a framework for responsible border governance. It leads with our values, addresses our needs, and adheres to good governance principles to generate humane and well-functioning borders for the 21st century. It is driven by border communities who are calling for the following action in a New Border Vision:

### **EXPAND PUBLIC SAFETY.**

Public safety depends on public trust, but there can be no trust when the administration treats migrants as criminals and border residents as second-class citizens. We must decriminalize migration, hold border authorities accountable, and treat everyone with dignity and respect.

- ◆ Focus border authorities and resources on true threats at the border, not migration.
- ◆ Employ best practices for effective, professional and accountable policing.
- ◆ End unreasonable searches, seizures, surveillance and detention.

### **PROTECT HUMAN LIFE.**

Our borders should be a model to the world on how to protect and uphold human rights. Instead, we have threatened people with policies and tactics that endanger life. We must preserve life above all else and support humanitarian acts that proactively save people.

- ◆ Prioritize human rights, allowing people to seek protection or safe return.
- ◆ Provide immediate aid, rescue, and recovery to people in distress.
- ◆ Protect children and other vulnerable individuals, keeping families together.

### **WELCOME PEOPLE AT THE BORDER.**

Our welcoming system must respond to border residents, migrants, merchants and visitors in an effective, efficient, and humane way — one that takes a whole-of-government and whole-of-society approach. This means border authorities should play a limited role to identify and clear people, or they refer them as needed, including migrants and asylum seekers, to other governmental or nongovernmental entities for assistance and processing.

- ◆ Expand channels to welcome people at ports of entry, eliminating long wait lines.
- ◆ Expedite entry interviews to identify and clear people or refer them for help as needed.
- ◆ In a whole of government approach, provide access to interpretation, information, and assistance.



Learn more about a New Border Vision and the Southern Border Communities Coalition at [southernborder.org](https://southernborder.org). July 2019.



Una Nueva Visión Fronteriza es un marco de gobernanza fronteriza responsable que lidera con nuestros valores, aborda nuestras necesidades y se adhiere a los principios de la buena gobernanza para crear fronteras para el siglo XXI que funcionen bien. Es una visión impulsada por comunidades fronterizas que buscan lo siguiente a través de una Nueva Visión Fronteriza:

## AMPLIAR LA SEGURIDAD PÚBLICA.

La seguridad pública depende de la confianza pública, pero no puede existir la confianza cuando la administración trata a migrantes como criminales y a los residentes fronterizos como ciudadanos de segunda clase. Debemos despenalizar la migración, hacer que las autoridades fronterizas rindan cuentas y tratar a todas las personas con dignidad y respeto.

- ◆ Enfocar a las autoridades y a los recursos en las verdaderas amenazas en la frontera, no en la migración.
- ◆ Emplear las mejores prácticas para una vigilancia policial efectiva y profesional que rinda cuentas.
- ◆ Poner fin a las irrazonables búsquedas, confiscaciones, vigilancia y detención.

## PROTEGER LA VIDA HUMANA.

Nuestras fronteras deben ser un modelo para el mundo sobre cómo proteger y elevar los derechos humanos. En lugar de hacer eso, hemos amenazado a la población con políticas y tácticas que ponen en riesgo la vida. Debemos preservar la vida antes que nada, y apoyar los actos humanitarios proactivos que salvan a la gente.

- ◆ Priorizar los derechos humanos para que las personas pidan protección o sean retornadas de forma segura.
- ◆ Proveer asistencia, rescate o recuperación inmediata a personas que se encuentran en peligro.
- ◆ Proteger a niños y niñas y a otras personas vulnerables, así como mantener a las familias unidas.

## DAR LA BIENVENIDA A LAS PERSONAS EN LA FRONTERA.

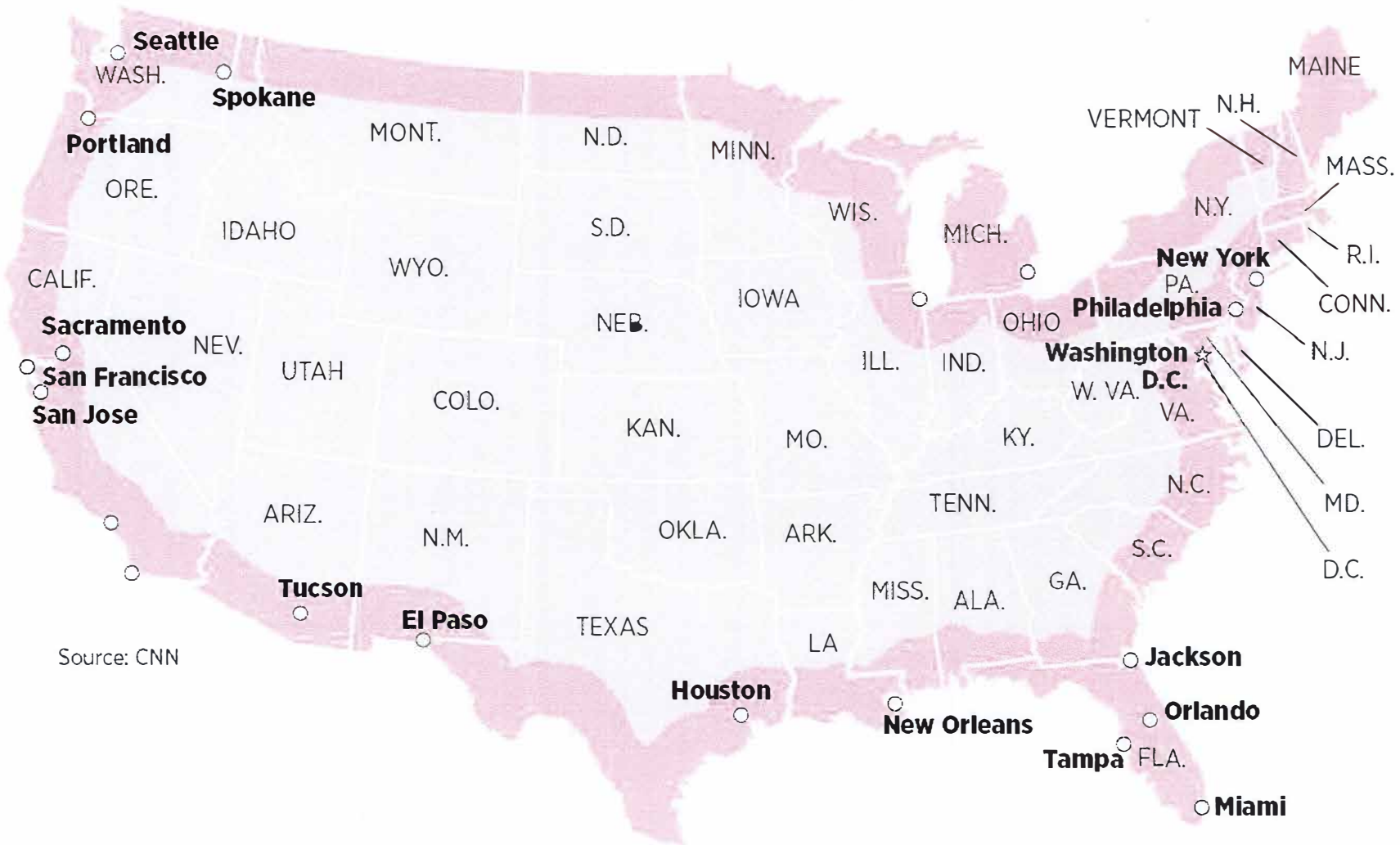
Nuestro sistema acogedor debe responder a residentes fronterizos, migrantes, comerciantes y visitantes de una forma efectiva, eficiente y humana que incluya un enfoque de todo el gobierno y de toda la sociedad. Las autoridades fronterizas deben limitarse a identificar y autorizar, y de ser necesario, referir a migrantes y solicitantes de asilo a entidades gubernamentales o NGOs para recibir asistencia o ser procesados.

- ◆ Expandir los canales para darle la bienvenida a la gente a los puertos de entrada y eliminar las filas largas
- ◆ Acelerar entrevistas de entrada para identificar y autorizar o referir para recibir asistencia.
- ◆ Proveer acceso a interpretación, información y asistencia como parte de un enfoque de todo el gobierno.



# United States border enforcement zone

Immigration checks by Border Patrol agents may be made without a warrant up to 100 miles from U.S. borders and coastlines. The area in orange is the enforcement zone including some of the the major cities within that zone.



Source: CNN

MOLLY QUINN/THE SPOKESMAN-REVIEW



Rashi Kesarwani  
Councilmember District 1

CONSENT CALENDAR  
January 28, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Rashi Kesarwani  
Subject: Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours

RECOMMENDATION

Adopt a resolution to allow recipients of a three-month “Grace Period” permit for safe RV parking to park overnight during non-business hours in designated City-owned parking lots pursuant to California Vehicle Code Section 21107.8(a)(1).

The resolution authorizes the City Manager to determine appropriate City-owned parking lots, with consideration for safe ingress and egress, accessibility of restroom facilities, and other health and safety considerations.

FINANCIAL IMPLICATIONS

Staff time to determine appropriate City-owned parking lots for safe RV parking, prepare parking lots for use, and to allocate an initial 25 permits for safe RV parking under the three-month Grace Period Permit Program.

CURRENT SITUATION AND ITS EFFECTS

The number of people residing in RVs on the public right-of-way for extended periods of time has grown, according to the 2019 Homelessness Point-in-Time Count for Alameda County. In Berkeley, there is a high concentration of RVs located west of San Pablo Avenue, particularly in the commercial Gilman District and adjacent residential neighborhoods. The existence of RVs on the public right-of-way for extended periods of time without sewer, water, and electrical connections presents health and safety concerns for RV dwellers and other members of the community.

The City has received a wide range of health and safety complaints related to the high concentration of RVs, including, for example, improper disposal of human waste into storm drains, blocked sight lines on streets, and reduced availability of employee parking within a reasonable proximity to businesses during early morning and late-night hours creating concerns about personal safety. Further, the high concentration of RVs in the Gilman District for extended periods of time has prevented our Public Works Department from doing street sweeping in the area.

City of Berkeley staff have spent considerable time and energy over the better part of 2019 investigating options for a 24-hour off-street safe RV parking site for specified priority populations. Staff investigated numerous public and private options and enlisted the services of a real property specialist with a goal of identifying a suitable parking lot. To date, no viable site has been identified within city limits for 24-hour use due to a variety of issues such as expense, limited size, or being legally infeasible. In light of these challenges as well as the need to ensure the health and safety of our community in a manner that is sensitive to priority populations, this resolution is put forward as a means of addressing the urgent need for a viable solution. The resolution—required pursuant to California Vehicle Code Section 21107.8(a)(1)—would authorize the City Manager to (1) determine appropriate City-owned parking lots for the three-month Grace Period Permit for safe RV parking, with consideration for safe ingress and egress, accessibility of restroom facilities, and other health and safety considerations and (2) to determine appropriate hours of availability during overnight non-business hours.

Allowing overnight parking in City-owned parking lots during overnight non-business hours aligns with our Strategic Plan Priority Project of advancing our goal to create housing support services for our most vulnerable community members. It also helps us maintain our infrastructure and facilities by helping to keep our streets and storm drains clean and clear of hazardous material.

#### BACKGROUND

Homelessness in the Bay Area continues to rise with an increase in Alameda County of 43% from 2017 to 2019. As a result of this increase in homelessness, there has been an increase in the number of RVs parking for extended periods of time within the City of Berkeley without access to sewer, water, and electrical connections, creating a health and safety risk. In December 2018, City staff had identified 193 RVs and oversized vehicles parked on the public right-of-way, with 100 oversized vehicles concentrated in West Berkeley. Additionally, City staff had been contacted more than 1,500 times in calendar year 2018 with requests by community members to address the health and safety impact of RVs in residential and commercial areas, according to the February 26, 2019 referral response staff report.

The City has sought to balance the preservation of health and safety for all with our obligation to do as much as we can to help our most vulnerable. On February 28, 2019, the City Council approved the first reading of Ordinance No. 7,643- N.S. amending Berkeley Municipal Code Chapter 14.40.120 to add oversized RVs and campers to the list of vehicles not allowed to park overnight on the public right-of-way between the hours of 2 a.m. to 5 a.m. for more than one hour. The Council's motion specified that the enforcement of the ordinance would be preceded by notice, outreach, providing flexible funding and service referrals.

On March 26, 2019, the City Council adopted a second reading of Ordinance No. 7,643- N.S. with additional recommendations and guidelines to ensure that enforcement would not commence until outreach is conducted and a permit system is developed. Council also allocated \$50,000 in state Homeless Emergency Aid Program dollars for flexible funding to

assist RV dwellers, and authorized targeted outreach to RV dwellers in order to identify needs and determine if they meet the criteria for priority populations eligible for the three-month "Grace Period" Permit Program (with the possibility of renewal). The Council specified priority populations to include families with children, people who work or study in Berkeley, and persons who had a Berkeley home address within the past 10 years as well as consideration of health status, disability and self-care needs, age and household size (including the presence of children).

Further, on December 3, 2019, the City Council allocated \$100,000 for the current fiscal year (FY19-20) and \$100,000 for the next fiscal year (FY20-21) for funding such services as portable bathrooms and trash pick-up related to a safe RV parking program. We note that safe parking for individuals sheltering in vehicles is a model being used in other communities, including Santa Barbara, Los Angeles, East Palo Alto, Oakland, and San Francisco.

#### ENVIRONMENTAL SUSTAINABILITY

Providing access to designated City-owned parking lots for overnight use during non-business hours helps to address improper disposal of human waste and debris as the parking areas will be chosen with consideration for restroom facilities and trash service.

#### CONTACT PERSON

Councilmember Rashi Kesarwani, Council District 1  
510-981-7110

#### Attachments:

1: Resolution

Exhibit A: Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours

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

Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours

WHEREAS, the Berkeley City Council adopted Ordinance No. 7,643- N.S. on March 26, 2019 amending Berkeley Municipal Code section 14.40.120 to add oversized RVs and campers to the list of vehicles not allowed to park overnight on the public right-of-way between the hours of two a.m. and five a.m. for a greater length of time than one hour; and

WHEREAS, the City Council also adopted “Implementation Guidelines for Managing RV Parking” on March 26, 2019 in order to ensure that enforcement of Ordinance No. 7,643-N.S. would not commence until outreach is conducted and a program is developed to enable specified priority populations to receive a three-month “Grace Period” Permit to park in a designated safe location with a possibility of renewal; and

WHEREAS, the population of individuals and families living in RVs and campers on the public right-of-way for extended periods of time is diverse, with some vehicles housing populations that the City Council has deemed priority populations including families with children, people who work or study in Berkeley, and persons who previously had a Berkeley home address within the last 10 years; and

WHEREAS, the proliferation of RV dwellers reflects the regional shortage of affordable homes and related homelessness crisis, with a need to prioritize supportive services based on consideration of health status, disability and self-care needs, age and household size (including the presence of children); and

WHEREAS, the City of Berkeley has contracted with a homeless services provider to conduct outreach to people living in RVs; and

WHEREAS, the City of Berkeley has conducted an exhaustive search for a 24-hour safe RV parking location within city limits, including discussions with numerous public and private entities, with no locations to date found to be viable due to a variety of issues such as expense, limited size, or being legally infeasible.

WHEREAS, the California Vehicle Code Section 21107.8(a)(1) establishes that a city may, by resolution, find and declare that there are off-street parking facilities that are available for a public vehicular parking use; and

WHEREAS, the City of Berkeley seeks to implement all laws and ordinances in a fair and humane manner.

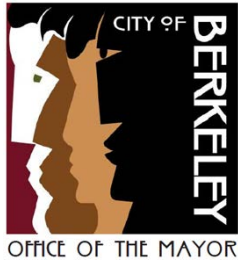
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that designated City-owned parking lots with appropriate ingress and egress shall be made



available overnight during non-business hours for individuals in receipt of a three-month Grace Period Permit for safe RV parking.

BE IT FURTHER RESOLVED that the City Manager is authorized to determine appropriate City-owned parking lots for the three-month Grace Period Permit for safe RV parking, with consideration for safe ingress and egress, accessibility of restroom facilities, and other health and safety considerations and to determine appropriate hours of availability during overnight non-business hours.





TO: Honorable Members of the City Council

FROM: Mayor Arreguín

SUBJECT: Report on Regional Leadership and Goals for 2020

SUMMARY

The purpose of this item is to update the City Council about Berkeley's participation and leadership on regional issues. This item will be submitted as a supplemental for the January 28 meeting.

CONTACT

Mayor Jesse Arreguín  
mayor@cityofberkeley.info | 510-981-7100



| Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i> |                                                                                                                                                                 |
|-------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Scheduled Dates                                                               |                                                                                                                                                                 |
| Jan. 14                                                                       | <ol style="list-style-type: none"> <li>1. Civic Center Visioning</li> <li>2. Update: goBerkeley (RPP)</li> </ol>                                                |
| Feb. 4                                                                        | <ol style="list-style-type: none"> <li>1. Discussion of Community Poll (Ballot Measures)</li> <li>2. Adeline Corridor Plan</li> </ol>                           |
| March 17                                                                      | <ol style="list-style-type: none"> <li>1. Undergrounding Task Force</li> <li>2. CIP Update (PRW and Public Works)</li> <li>3. Measure T1 Update</li> </ol>      |
| May 5                                                                         | <ol style="list-style-type: none"> <li>1. Budget Update</li> <li>2. Crime Report</li> </ol>                                                                     |
| June 23                                                                       | <ol style="list-style-type: none"> <li>1. Climate Action Plan/Resiliency Update</li> <li>2. Digital Strategic Plan/FUND\$ Replacement/Website Update</li> </ol> |
| July 21                                                                       | <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> </ol>                                                                                                |
| Sept. 29                                                                      | <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> </ol>                                                                                                |
| Oct. 20                                                                       | <ol style="list-style-type: none"> <li>1. Update: Berkeley’s 2020 Vision</li> <li>2. BMASP/Berkeley Pier-WETA Ferry</li> </ol>                                  |

| Unscheduled Workshops                                                                                       |
|-------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Cannabis Health Considerations</li> <li>2. Vision 2050</li> </ol> |

| Unscheduled Presentations (City Manager)                                 |
|--------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Systems Realignment</li> </ol> |

|    | <b>City Council Referrals to the Agenda Committee and Unfinished Business for Scheduling</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <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>) <b>March 18, 2019 Action:</b> <i>Item to be agendized at future Agenda and Rules Committee Meeting pending scheduling confirmation from City Manager.</i></p> <p><b>From: Councilmember Worthington</b></p> <p><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.</p> <p><b>Financial Implications:</b> Minimal</p> <p>Contact: Kriss Worthington, Councilmember, District 7, 981-7170</p> |
| 2. | <p><b>36. Referral Response: Issue a Request for Information to Explore Grant Writing Services from Specialized Municipal Grant-Writing Firms, and Report Back to Council</b> (<i>Referred from the October 15, 2019 agenda</i>)</p> <p><b>From: City Manager</b></p> <p>Contact: Henry Oyekanmi, Finance, 981-7300</p> <p><i>Note: Will be considered in FY 2021 Budget Process</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 3. | <p><b>28. Repealing and Reenacting BMC Chapter 13.104, Wage Theft Prevention</b> (<i>Referred from the November 12, 2019 agenda</i>)</p> <p><b>From: Mayor Arreguin and Councilmembers Harrison, Droste, and Hahn</b></p> <p><b>Recommendation:</b> Adopt second reading of Ordinance No. 7,668-N.S. repealing and reenacting BMC Chapter 13.104, Wage Theft Prevention to improve enforcement of the ordinance by requiring a signed acknowledgement of ordinance requirements and signed attestation at completion of the project.</p> <p>First Reading Vote: All Ayes.</p> <p><b>Financial Implications:</b> Staff time</p> <p>Contact: Jesse Arreguin, Mayor, (510) 981-7100</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>                                            |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
| <b>Public Hearings Scheduled</b>                                            |                      |                       |                                         |                   |
| 2422 Fifth St (construct mixed-use building)                                | ZAB                  |                       |                                         | 2/25/2020         |
| 1581 Le Roy Ave (convert vacant elementary school property)                 | ZAB                  |                       |                                         | 2/25/2020         |
| 1581 Le Roy Ave (convert vacant elementary school property)                 | LPC                  |                       |                                         | 2/25/2020         |
| 0 Euclid Ave - Berryman Reservoir (denial of 4G telecom facility)           | ZAB                  |                       |                                         | TBD               |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
| <b>Remanded to ZAB or LPC</b>                                               |                      |                       |                                         |                   |
| 1155-73 Hearst Ave (develop two parcels)                                    | ZAB                  |                       |                                         |                   |
| 90-Day Deadline: May 19, 2019                                               |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
| <b>Notes</b>                                                                |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |

1/7/2020







Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR

December 10, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Prohibiting the Use of Cell Phones, Email, Texting, Instant Messaging, and Social Media by City Councilmembers during Official City Meetings

RECOMMENDATION

Adopt a Resolution Prohibiting the Use of Cell Phones, Email, Texting, Instant Messaging, and Social Media by City Councilmembers during Official City Meetings. The Brown Act prohibits a majority of members of a legislative body from communicating outside of a public meeting on a matter on the agenda for their consideration.

In order to ensure the full attention of the Council to the public and each other, the use of cell phones with access to email, text-messaging, instant messaging, and social media should be prohibited during all City Council meetings. The use of digital technologies outside of the provided City tablets, upon which Agenda Items and notes can be stored, is distracting, disrespectful, and jeopardizing to democratic process.

The Council Rules of Procedure and Order should be amended to include a moratorium on the use of cell phones by Councilmembers on the dais during open and closed session council meetings.

FISCAL IMPACTS OF RECOMMENDATION

None.

ENVIRONMENTAL SUSTAINABILITY

None.

BACKGROUND

After serving three consecutive years on Berkeley City Council, it has become clear that the cell phones are being overused in City Council meetings, including in Closed Sessions. As elected officials and public servants, Berkeley City Councilmembers should be fully attentive in meetings, focused on the issues being raised by constituents and fellow Councilmembers. Especially when residents are giving public comment and only allowed to speak for 2 minutes, it is imperative that City Councilmembers utilize active listening strategies and show utmost respect to those we represent. Currently, members of the public have expressed feeling ignored or neglected by Berkeley City Council members who appear to be preoccupied with their technology and personal communication devices during Public Comment sessions.

In addition to being rude, texting during the meetings creates additional channels for lobbyists to influence Councilmembers votes and results in a lack of transparency. Additionally, if 3 or more Councilmembers of speaking to each other on text threads about a legislative topic this is in violation of the Brown Act. Thus, the use of cellular telephones on the dais communicates disregard for the general public, the deprioritization of our constituency's concerns, disengagement in ethical democracy, and ought to be banned.

CONTACT PERSON

Cheryl Davila  
Councilmember District 2  
510.981.7120  
[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

ATTACHMENT: 1: Resolution

REFERENCES:

1. <https://www.pe.com/2014/04/13/city-councils-officials8217-texting-during-meetings-sparks-debate/>

2. [http://local.anaheim.net/docs\\_agend/questys\\_pub/6575/6605/6606/6897/6913/Resolution6913.pdf](http://local.anaheim.net/docs_agend/questys_pub/6575/6605/6606/6897/6913/Resolution6913.pdf)

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

RESOLUTION OF THE COUNCIL OF THE CITY OF BERKELEY PROHIBITING THE USE OF CELL PHONES, EMAIL, TEXTING, INSTANT MESSAGING AND SOCIAL MEDIA BY ELECTED CITY COUNCILMEMBERS DURING OFFICIAL CITY MEETINGS

WHEREAS, the City of Berkeley Council Rules of Procedure and Orders *Section I.D.* page 4, specifies the Duties of Councilmembers and code of Decorum, stating “While the Council is in session, the City Council will practice civility and decorum in their discussions and debate. Councilmembers will value each other’s time and will preserve order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings of the Council... nor disturb any other member while that member is speaking...”; and

WHEREAS, the use of cellular telephones and digital communications including text-messaging, emailing, perusing social media, or non-pertinent websites is distracting, and a threat to decorum; and

WHEREAS, members of the public have expressed feeling ignored or neglected by Berkeley City Council members who appear to be preoccupied with their technology and personal communication devices during Public Comment sessions; and

WHEREAS, the use of cell phones during the council meeting opens additional channels to influence Councilmembers immediately during a vote, leading to a lack of transparency; and

WHEREAS the Brown Act, California Government Code section 6200 *et seq.*, prohibits a majority of members of a legislative body from communicating outside of a public meeting on a matter on the agenda for their consideration; and

WHEREAS a text message thread could include participation of many Berkeley City Councilmembers addressing topics of legislation, in violation of the Brown Act; and

WHEREAS, other City Councils in the State of California, including, Palm Springs, Santa Rosa<sup>1</sup>, and Anaheim<sup>2</sup>, have banned the use of text-messaging, instant messaging, and/or emailing during their Council meetings;

Now, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the use of cell phones during City Council meetings be prohibited for Berkeley City Councilmember; and

BE IT FURTHER RESOLVED that while communications regarding Council items should be strictly prohibited by cell phones, personal communications between family members and/or care-givers can be taken outside in the case of emergencies; and

BE IT RESOLVED in order to acknowledge differences in learning styles and our of support tactile learners, note-taking can continue to be facilitated both with a pen and paper and/or on the tablets provided by the City; and

THEREFORE BE IT FINALLY RESOLVED that the Council Rules of Procedure and Order be amended to include a moratorium on the use of cell phones by Councilmembers on the dais during open and closed session council meetings.





Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
December 10, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Updating Berkeley Telecom Ordinances and BMC codes

#### RECOMMENDATION

Direct the City Manager to adopt a resolution to include the attached sample language and contained hyperlinked references to update the City's Telecom Ordinances and BMC codes.

#### BACKGROUND

For several months now, the community has been concerned about the potential installation of 5G technology and small cells throughout the city. The technology has not been thoroughly tested concerning radiation.

Some City of Berkeley communities bear the brunt of health-related impacts caused by industrial and other activities. The California Environmental Protection Agency has identified various census tracts within the City as disadvantaged communities disproportionately burdened by and vulnerable to multiple sources of pollution.

It is important now more than ever, to update the City's Telecom Ordinances to protect the health and safety of our residents that cover the following areas:

**1. FCC CLAUSE:** Include a clause voiding relevant sections of the ordinance, or requiring modification, in the event of a regulatory change or overturning of the FCC Order. (see report by Next Century Cities) **Laws, permits, and re-certifications need to be CONDITIONAL**, so that they may be revoked or modified if out of compliance or if/when federal law is modified. (Fairfax, Sonoma City) Also include a **SEVERABILITY** clause.

#### **2. PERMITS**

2.a. **Conditional Use Permits:** Maintain that each wireless facility requires a Conditional Use Permit (Planning Dept, ZAB, or Public Works) followed by an encroachment permit

2.b. **Significant Gap in coverage:** Require that a significant gap in coverage be proven by applicant before approval of a wireless antenna and confirmed by an independent engineer.\* (Calabasas, Old Palos Verdes)

**Least Intrusive Methods:** Require the least intrusive methods to fill any gaps for small cells and other wireless facilities. A justification study which includes the rationale for selecting the proposed use; a detailed explanation of the coverage gap that the proposed use would serve; and how the proposed use is the least intrusive means for the applicant to provide service. Said study shall include all existing structures and/or alternative sites evaluated for potential installation of the proposed facility and why said alternatives are not a viable option. (Old Palos Verdes) An independent\* engineer shall confirm, or not.

2.c. **Radio-frequency Data Report:** Require a thorough radio-frequency (RF) data report as part of the permit submittal for consultants. For all applications, require both an RF Compliance Report signed by a registered, independent professional engineer, and a supporting RF Data Request Form. (Calabasas, Palos Verdes, Suisun City, Sonoma City) The independent\* engineer will be hired by the City of Berkeley and billed to the applicant.

2.d. **Mock-up, Construction Drawings, Site Survey, Photo Simulations:** Require full-size mock-up of proposed Small Cell Facilities (SCF) and other pertinent information in order to adequately consider potential impacts. (Larkspur, Calabasas, Palos Verdes. Also see Boulder, CO Report) Require **Balloon Tests**. (Town of Hempstead NY 2013)

2.e. **Public notification:** Telecom related Planning Commission, Public Works, and Zoning Adjustment Board hearings shall be publicized in the most widely read local newspapers and local online news sources\* and on the City website no less than 30 days prior to the hearing or meeting. No less than 30 days prior, a U.S. 1st class mail shall be sent to all addresses within 3,000 feet of the proposed facilities. The outside of the envelope shall be printed with "Urgent Notice of Public Hearing." Due to the "shot clock", City requires applicants to hold a publicly noticed meeting two weeks prior to submitting an application within the affected neighborhood. Applicants mail all affected residents and businesses date, time, and location of hearings at least two weeks prior. The applicant pays associated costs including mailings and meeting location rent.

**Community Meeting:** Applicant is required to [publicize in local newspapers and local online news sources\* and] hold a community meeting at least two weeks prior to the hearing on the use permit. (San Anselmo, Palos Verdes) Applicants shall mail all affected residents and businesses date, time, and location of hearings at least two weeks prior, 1st class etc. [as in 2.e].

2.f. **Notification:** Notify property owners, residents, tenants, business owners, and workers within 3000 feet of a proposed wireless installation within one week of application submittal and again within one week of permit approval. 1st class etc. [as in 2.e].

2.g. **Independent Expert\*** The City shall retain an independent, qualified consultant to review any application for a permit for a wireless telecommunications facility. The review is intended to be a review of technical aspects of the proposed wireless telecommunications facility and shall address any or all of the following: xxxx (Old Palos Verdes) Paid by applicant (San Anselmo)

2.h. **Trees:** No facility shall be permitted to be installed in the drip line of any tree in the right-of-way. (Old Palos Verdes, 15' in Los Altos) (See Berkeley's Heritage Tree ordinance.)

2.i. **Transfer of Permit:** The permittee shall not transfer the permit to any person prior to the completion of the construction of the facility covered by the permit, unless and until the transferee of the permit has submitted the security instrument required by section 12.18.080(B)(5). (Palos Verdes)

2.j. **General Liability Insurance:** To protect the City, the permittee shall obtain, pay for and maintain, in full force and effect until the facility approved by the permit is removed in its entirety from the public right-of-way, an insurance policy or policies of commercial general liability insurance, with minimum limits of two million dollars for each occurrence and four million dollars in the aggregate, that fully protects the City from claims and suits for bodily injury and property damage. The insurance must name the City and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers as additional named insureds, be issued by an insurer admitted in the State of California with a rating of at least a A:VII in the latest edition of A.M. Best's Insurance Guide, and include an endorsement providing that the policies cannot be canceled or reduced except with 30 days prior written notice to the city, except for cancellation due to nonpayment of premium.... (Old Palos Verdes, Fairfax, Newark. San Anselmo has an indemnification clause.)

2.k. **Attorneys' Fees:** The Permittee is required to pay any/all costs of legal action. (Suisun City)

2.l. **Speculative Equipment:** Pre-approving wireless equipment or other alleged improvements that the applicant does not presently intend to install, but may wish to install at an undetermined future time, does not serve the public interest. The City shall not pre-approve telecom equipment or wireless facilities. (Fairfax, Old Palos Verdes, Sebastopol)

2.m. **Citizens may appeal** decisions made. (San Anselmo)

**3. ACCESS Americans with Disabilities Act (ADA):** All facilities shall be in compliance with the ADA. (New Palos Verdes, Fairfax, Sebastopol, Mill Valley, Sonoma City, Suisun City) Electromagnetic Sensitivity (EMS) is a disabling characteristic, recognized by the Federal Access Board since 2002. The main treatment for this condition is avoidance of exposure to wireless radiation. Under the 1990 Americans with Disabilities Act, people who suffer from exposure to Electromagnetic Fields (EMF) are part of a protected disabled class under Title 42 U.S. Code § 12101 et seq. (Heed Berkeley's pioneering disability rights laws and Berkeley's Precautionary Principle ordinance NO. 6,911-N.S "to promote the health, safety, and general welfare of the community.")

#### **4. SETBACKS:**

4.a. **Prohibited Zones** for Small Cells: Prohibits small cell telecommunication facilities in residential zones and multi-family zoning districts (Calabasas, Mill Valley, Los Altos, Sonoma City)

4.b. **Preferred or Disfavored Locations:** In addition to residential areas, designate areas where cell towers are disfavored and not permitted, i.e. near schools, residential areas, city buildings, sensitive habitats, on ridge lines, public parks, Historic Overlay Districts, in open spaces or where they are favored i.e. commercial zoning areas, industrial zoning areas. (Calabasas, Sebastopol, Boulder Report)

4.c. **Disfavored Location:** Small cell installations are not permitted in close proximity to residences, particularly near sleeping and living areas. Viable and defensible setbacks will vary based on zoning. (ART ordinance) 1500 foot minimum setback from residences that are not in residential districts!

4.d. **1500 Foot Setback from other small cell** installations: Locate small cell installations no less than 1500 feet away from the Permittee or any Lessee's nearest other small cell installation. (Calabasas, Petaluma, Fairfax, Mill Valley, Suisun City, Palos Verdes, Sebastopol San Ramon, Sonoma City,-Boulder Report)

4.e. **1500 Foot Minimum Setback** from any educational facility, child/elder/healthcare facility, or park. (ART Ordinance) The California Supreme Court ruled on April 4, 2019 that San Francisco may regulate based on "negative health consequences, or safety concerns that may come from telecommunication deployment." (Sebastopol forbids potential threat to public health, migratory birds, or endangered species, also in combination with other facilities. Refer to Berkeley's Precautionary Principle Ordinance)

4.f. **500 Foot Minimum Setback from any business/workplace** (Petaluma, Suisun City)

#### **5. LOCATION PREFERENCE:**

5.a. **Order of preference:** The order of preference for the location of small cell installations in the City, from most preferred to least preferred, is: (1) Industrial zone (2) Commercial zone (3) Mixed commercial and residential zone (4) Residential zone (ART Ordinance, New Palos Verdes) [Residential zone ban]

5.b. **Fall Zone:** The proposed small cell installation shall have an adequate fall zone to minimize the possibility of damage or injury resulting from pole collapse or failure, ice fall or debris fall, and to avoid or minimize all other impacts upon adjoining property

5.c. **Private Property:** If a facility (such as a street light pole, street signal pole, utility pole, utility cabinet, vault, or cable conduit) will be located on or in the property of someone other than the owner of the facility, the applicant shall provide a duly executed and notarized authorization from the property owner(s) authorizing the placement of the facility on or in the property owner's property. (Palos Verdes) [Many Berkeleyans do not want wireless antennas allowed on private property. If a permit is considered for private property, not just the property owners but all those who spend time or own/rent property within 1500 feet must be notified immediately of how they may weigh in, and be informed of the decision immediately with possibility of appeal if a permit is granted.]

5.d. **Endangerment, interference:** No person shall install, use or maintain any facility which in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

## 6. **TESTING:**

6.a. **Random Testing for RF Compliance:** The City shall employ a qualified, independent \* RF engineer to conduct an annual random and unannounced test of the Permittee's small cell **and other** wireless installations located within the City to certify their compliance with all Federal Communications Commission (FCC) RF emission limits. The reasonable cost of such tests shall be paid by the Permittee. (Fairfax, (ART, Old Berkeley. Suisun City requires annual inspections and testing.)

6.b. **RF/EMF Testing:** Berkeley's current law states that the City Manager "may" require independent testing of telecom equipment. Change "may" to "shall" and delete the word "Manager" so that, if s/he does not find time to hire an independent expert, other City staff or a Council Committee may do so. The law needs to require independent testing of all equipment, unannounced in advance, twice annually, with permittees required to reimburse the City for costs and to pay a deposit in advance. Dates, addresses, and results of testing shall be posted on the City website and published in local media. \*\* [Montgomery County Maryland studied RF radiation levels from small cells and found that FCC exposure levels were exceeded within 11 feet.]

6.c. **Violation of Compliance Notification:** In the event that such independent tests reveal that any small cell installation(s) owned or operated by Permittee or its Lessees, singularly or in the aggregate, is emitting RF radiation in excess of FCC exposure standards as they pertain to the general public, the City shall notify the Permittee and all residents living within 1500 feet of the installation(s) of the violation(s), and the Permittee shall have 48 hours to bring the installation(s) into compliance. Failure to bring the installation(s) into compliance shall result in the forfeiture of all or part of the Compliance Bond, and the City shall have the right to require the removal of such installation(s), as the City in its sole discretion may determine is in the public interest. (ART)

6.d. **Non-acceptance of Applications:** Where such annual recertification has not been properly or timely submitted, or equipment no longer in use has not been removed within the required 30-day period, no further applications for wireless installations will be accepted by the City until such time as the annual re-certification has been submitted and all fees and fines paid. (ART)

7. **RIGHT TO KNOW:** The City shall inform the affected public via website, local news publications \*\*, and US 1st class mail (with topic prominently announced in red on outside of envelope) of Master Licensing Agreement between the City and telecom, Design Standards for Small Cells or other wireless equipment, other telecom agreements, and notification within 2 business days of receiving permit applications, calendaring related hearings/meetings, and approving permits. Notice shall include location and date of expected installations, description of the appeals process, and dates of installations. A map featuring all telecom equipment shall be on the City website and available to residents who request it at 2180 Milvia St. Applicants/Permittees, who are profiting from using Berkeley's public right of way, will reimburse City for the reasonable cost of mailings, Town Halls, and staff to handle telecom applications, public notification, inspections, recertifications, etc.

## 8. **RECERTIFICATION:**

8.a. **Annual Recertification:** Each year, commencing on the first anniversary of the issuance of the permit, the Permittee shall submit to the City an affidavit which shall list all active small cell



wireless installations it owns within the City by location, certifying that (1) each active small cell installation is covered by liability insurance in the amount of \$2,000,000 per installation, naming the City as an additional insured; and (2) each active installation has been inspected for safety and found to be in sound working condition and in compliance with all federal safety regulations concerning RF exposure limits. (ART) Any installation that is out of compliance will be promptly removed; the permit for that installation will be terminated, with all associated expenses paid by the applicant.

8.b. **Recertification Fees:** Recertification fees will be calculated each year by the City. They will be based on the anticipated costs of City for meeting the compliance requirements put in place by this ordinance. The total costs will be divided by the number of permits and assigned to the permit-holders as part of the recertification process

8.c. **Noise Restrictions** (Sonoma City): Each wireless telecommunications facility shall be operated in such a manner so as not to cause any disruption to the community's peaceful enjoyment of the city.

- o Non-polluting backup generators shall only be operated during periods of power outages, and shall not be tested on weekends, holidays, or between the hours of 5:00 p.m. and 9:00 a.m.

- o At no time shall any facility be permitted to exceed 45 DBA and the noise levels specified in Municipal Code XXX. (Los Altos)

- 8.d. **Noise Complaints:** If a nearby property owner registers a noise complaint, the City shall forward the same to the permittee. Said complaint shall be reviewed and evaluated by the applicant. The permittee shall have 10 business days to file a written response regarding the complaint which shall include any applicable remedial measures. If the City determines the complaint is valid and the applicant has not taken steps to minimize the noise, the City may hire a consultant to study, examine and evaluate the noise complaint and the permittee shall pay the fee. The matter shall be reviewed by City staff. If sound proofing or other sound attenuation measures are required to bring the project into compliance with the Code, the City may impose conditions on the project to achieve said objective. (Old Palos Verdes, Calabasas)

9.a. **AESTHETICS and UNDERGROUNDING:** At every site where transmitting antennas are to be placed, all ancillary equipment shall be placed in an underground chamber beneath the street constructed by the Permittee. (Calabasas, Mill Valley, Petaluma) The chamber shall include battery power sufficient to provide a minimum of 72 hours of electricity to the ancillary equipment. \*\*\*

- Permittee is responsible for placing on the pole two signs with blinking lights, with design approved by City, each in the opposite direction, to inform people walking on the sidewalk, what is installed on the pole. Should a sign be damaged, Permittee shall replace it within 5 business days. (Town of Hempstead NY required a 4 foot warning sign on each pole.)

9.b. **Aesthetic Requirements:** According to the Baller Stokes & Lide law firm, some of the aesthetic considerations that local governments may consider include: \*\*\*\*

- o Size of antennas, equipment boxes, and cabling;
- o Painting of attachments to match mounting structures;
- o Consistency with the character of historic neighborhoods;
- o Aesthetic standards for residential neighborhoods, including “any minimum setback from dwellings, parks, or playgrounds and minimum setback from dwellings, parks, or playgrounds; maximum structure heights; or limitations on the use of small, decorative structures as mounting locations.” (Boulder Report)

“**Independent**” means: The RF engineering company has never provided services to a telecom corporation, and the company’s employee who tests exposure levels has also never provided services to a telecom corporation.

**Right to Know** - Publish on City website, in online local news: Berkeley Daily Planet, Berkeleyside, and local newspapers: Berkeley Voice, Berkeley Times (2019. Update as needed)

**\*\*\* Undergrounding** - A single shielded multi-wire cable from the underground chamber shall be used to transmit radiation to the antennae for the purpose of transmitting data. If the pole is of hollow metal, the cable shall be inside the pole; if the pole is solid wood, the cable can be attached to the pole. Installation shall include its own analogue electricity meter and Permittee shall pay the electrical utility a monthly charge for the amount of electricity used.

Except during construction, or essential maintenance, automobiles and trucks, of an allowed weight, shall be allowed to park at the site of the underground chamber. If maintenance is required within the underground chamber the Permittees shall place a notice on the parked car or truck, to be moved within 24 hours. If no vehicle is parked on top of the underground chamber the Permitted shall place a No Parking sign for up to 24 hours.

FISCAL IMPACTS OF RECOMMENDATION

None.

ENVIRONMENTAL SUSTAINABILITY

It is imperative to protect the most vulnerable and all our citizens from these hazards. .

CONTACT PERSON

Cheryl Davila,  
Councilmember, District 2  
510.981.7120  
[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

ATTACHMENTS:

1. Resolution

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY SUPPORTING AMENDMENTS TO THE CITY'S TELECOM ORDINANCES

WHEREAS, communities in the City of Berkeley are disadvantaged and disproportionately bear the brunt of health-related impacts caused by industrial and other activities. The California Environmental Protection Agency has identified various census tracts within the City of Richmond as disadvantaged communities disproportionately burdened by and vulnerable to multiple sources of pollution

Now, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley support amendments to the City Telecom Ordinances to protect the health and safety of our residents.

BE IT FURTHER RESOLVED, the City Council directed the City Attorney to prepare any draft ordinances using the attached sample language and hyperlink references to update the City's Telecom Ordinances:

**1. FCC CLAUSE:** Include a clause voiding relevant sections of the ordinance, or requiring modification, in the event of a regulatory change or overturning of the FCC Order. (see report by Next Century Cities) **Laws, permits, and re-certifications need to be CONDITIONAL**, so that they may be revoked or modified if out of compliance or if/when federal law is modified. (Fairfax, Sonoma City) Also include a **SEVERABILITY** clause.

## **2. PERMITS**

**2.a. Conditional Use Permits:** Maintain that each wireless facility requires a Conditional Use Permit (Planning Dept, ZAB, or Public Works) followed by an encroachment permit

**2.b. Significant Gap in coverage:** Require that a significant gap in coverage be proven by applicant before approval of a wireless antenna and confirmed by an independent engineer.\* (Calabasas, Old Palos Verdes)

**Least Intrusive Methods:** Require the least intrusive methods to fill any gaps for small cells and other wireless facilities. A justification study which includes the rationale for selecting the proposed use; a detailed explanation of the coverage gap that the proposed use would serve; and how the proposed use is the least intrusive means for the applicant to provide service. Said study shall include all existing structures and/or alternative sites evaluated for potential installation of the proposed facility and why said alternatives are not a viable option. (Old Palos Verdes) An independent\* engineer shall confirm, or not.

**2.c. Radio-frequency Data Report:** Require a thorough radio-frequency (RF) data report as part of the permit submittal for consultants. For all applications, require both an RF Compliance Report signed by a registered, independent professional engineer, and a supporting RF Data Request Form. (Calabasas, Palos Verdes, Suisun City, Sonoma City) The independent\* engineer will be hired by the City of Berkeley and billed to the applicant.

**2.d. Mock-up, Construction Drawings, Site Survey, Photo Simulations:** Require full-size mock-up of proposed Small Cell Facilities (SCF) and other pertinent information in order to adequately consider potential impacts. (Larkspur, Calabasas, Palos Verdes. Also see Boulder, CO Report) Require **Balloon Tests**. (Town of Hempstead NY 2013)

**2.e. Public notification:** Telecom related Planning Commission, Public Works, and Zoning Adjustment Board hearings shall be publicized in the most widely read local newspapers and local online news sources\* and on the City website no less than 30 days prior to the hearing or meeting. No less than 30 days prior, a U.S. 1st class mail shall be sent to all addresses within 3,000 feet of the proposed facilities. The outside of the envelope shall be printed with "Urgent Notice of Public Hearing." Due to the "shot clock", City requires applicants to hold a publicly noticed meeting two weeks prior to submitting an application within the affected neighborhood. Applicants mail all affected residents and businesses date, time, and location of hearings at least two weeks prior. The applicant pays associated costs including mailings and meeting location rent.

**Community Meeting:** Applicant is required to [publicize in local newspapers and local online news sources\* and] hold a community meeting at least two weeks prior to the hearing on the use permit. (San Anselmo, Palos Verdes) Applicants shall mail all affected residents and businesses date, time, and location of hearings at least two weeks prior, 1st class etc. [as in 2.e].

**2.f. Notification:** Notify property owners, residents, tenants, business owners, and workers within 3000 feet of a proposed wireless installation within one week of application submittal and again within one week of permit approval. 1st class etc. [as in 2.e].

**2.g. Independent Expert\*** The City shall retain an independent, qualified consultant to review any application for a permit for a wireless telecommunications facility. The review is intended to be a review of technical aspects of the proposed wireless telecommunications facility and shall address any or all of the following: xxxx (Old Palos Verdes) Paid by applicant (San Anselmo)

2.h. **Trees:** No facility shall be permitted to be installed in the drip line of any tree in the right-of-way. (Old Palos Verdes, 15' in Los Altos) (See Berkeley's Heritage Tree ordinance.)

2.i. **Transfer of Permit:** The permittee shall not transfer the permit to any person prior to the completion of the construction of the facility covered by the permit, unless and until the transferee of the permit has submitted the security instrument required by section 12.18.080(B)(5). (Palos Verdes)

2.j. **General Liability Insurance:** To protect the City, the permittee shall obtain, pay for and maintain, in full force and effect until the facility approved by the permit is removed in its entirety from the public right-of-way, an insurance policy or policies of commercial general liability insurance, with minimum limits of two million dollars for each occurrence and four million dollars in the aggregate, that fully protects the City from claims and suits for bodily injury and property damage. The insurance must name the City and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers as additional named insureds, be issued by an insurer admitted in the State of California with a rating of at least a A:VII in the latest edition of A.M. Best's Insurance Guide, and include an endorsement providing that the policies cannot be canceled or reduced except with 30 days prior written notice to the city, except for cancellation due to nonpayment of premium.... (Old Palos Verdes, Fairfax, Newark. San Anselmo has an indemnification clause.)

2.k. **Attorneys' Fees:** The Permittee is required to pay any/all costs of legal action. (Suisun City)

2.l. **Speculative Equipment:** Pre-approving wireless equipment or other alleged improvements that the applicant does not presently intend to install, but may wish to install at an undetermined future time, does not serve the public interest. The City shall not pre-approve telecom equipment or wireless facilities. (Fairfax, Old Palos Verdes, Sebastopol)

2.m. **Citizens may appeal** decisions made. (San Anselmo)

**3. ACCESS Americans with Disabilities Act (ADA):** All facilities shall be in compliance with the ADA. (New Palos Verdes, Fairfax, Sebastopol, Mill Valley, Sonoma City, Suisun City) Electromagnetic Sensitivity (EMS) is a disabling characteristic, recognized by the Federal Access Board since 2002. The main treatment for this condition is avoidance of exposure to wireless radiation. Under the 1990 Americans with Disabilities Act, people who suffer from exposure to Electromagnetic Fields (EMF) are part of a protected disabled class under Title 42 U.S. Code § 12101 et seq. (Heed Berkeley's pioneering disability rights laws and Berkeley's Precautionary Principle ordinance NO. 6,911-N.S "to promote the health, safety, and general welfare of the community.")

#### **4. SETBACKS:**

4.a. **Prohibited Zones** for Small Cells: Prohibits small cell telecommunication facilities in residential zones and multi-family zoning districts (Calabasas, Mill Valley, Los Altos, Sonoma City, Elk Grove Ca)

4.b. **Preferred or Disfavored Locations:** In addition to residential areas, designate areas where cell towers are disfavored and not permitted, i.e. near schools, residential areas, city buildings, sensitive habitats, on ridge lines, public parks, Historic Overlay Districts, in open spaces or where they are favored i.e. commercial zoning areas, industrial zoning areas. (Calabasas, Sebastopol, Boulder Report)

4.c. **Disfavored Location:** Small cell installations are not permitted in close proximity to residences, particularly near sleeping and living areas. Viable and defensible setbacks will vary based on zoning. (ART ordinance) 1500 foot minimum setback from residences that are not in residential districts!

4.d. **1500 Foot Setback from other small cell** installations: Locate small cell installations no less than 1500 feet away from the Permittee or any Lessee's nearest other small cell installation. (Calabasas, Petaluma, Fairfax, Mill Valley, Suisun City, Palos Verdes, Sebastopol San Ramon, Sonoma City, -Boulder Report)

4.e. **1500 Foot Minimum Setback** from any educational facility, child/elder/healthcare facility, or park. (ART Ordinance) The California Supreme Court ruled on April 4, 2019 that San

Francisco may regulate based on "negative health consequences, or safety concerns that may come from telecommunication deployment." (Sebastopol forbids potential threat to public health, migratory birds, or endangered species, also in combination with other facilities. Refer to Berkeley's Precautionary Principle Ordinance)

4.f. **500 Foot Minimum Setback from any business/workplace** (Petaluma, Suisun City)

## **5. LOCATION PREFERENCE:**

5.a. **Order of preference:** The order of preference for the location of small cell installations in the City, from most preferred to least preferred, is: (1) Industrial zone (2) Commercial zone (3) Mixed commercial and residential zone (4) Residential zone (ART Ordinance, New Palos Verdes) [Residential zone ban]

5.b. **Fall Zone:** The proposed small cell installation shall have an adequate fall zone to minimize the possibility of damage or injury resulting from pole collapse or failure, ice fall or debris fall, and to avoid or minimize all other impacts upon adjoining property

5.c. **Private Property:** If a facility (such as a street light pole, street signal pole, utility pole, utility cabinet, vault, or cable conduit) will be located on or in the property of someone other than the owner of the facility, the applicant shall provide a duly executed and notarized authorization from the property owner(s) authorizing the placement of the facility on or in the property owner's property. (Palos Verdes) [Many Berkeleyans do not want wireless antennas allowed on private property. If a permit is considered for private property, not just the property owners but all those who spend time or own/rent property within 1500 feet must be notified immediately of how they may weigh in, and be informed of the decision immediately with possibility of appeal if a permit is granted.]

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- o Painting of attachments to match mounting structures;
- o Consistency with the character of historic neighborhoods;
- o Aesthetic standards for residential neighborhoods, including “any minimum setback from dwellings, parks, or playgrounds and minimum setback from dwellings, parks, or playgrounds; maximum structure heights; or limitations on the use of small, decorative structures as mounting locations.” (Boulder Report)

“**Independent**” means: The RF engineering company has never provided services to a telecom corporation, and the company’s employee who tests exposure levels has also never provided services to a telecom corporation.

**Right to Know** - Publish on City website, in online local news: Berkeley Daily Planet, Berkeleyside, and local newspapers: Berkeley Voice, Berkeley Times (2019. Update as needed)

\*\*\* **Undergrounding** - A single shielded multi-wire cable from the underground chamber shall be used to transmit radiation to the antennae for the purpose of transmitting data. If the pole is of hollow metal, the cable shall be inside the pole; if the pole is solid wood, the cable can be attached to the pole. Installation shall include its own analogue electricity meter and Permittee shall pay the electrical utility a monthly charge for the amount of electricity used.

Except during construction, or essential maintenance, automobiles and trucks, of an allowed weight, shall be allowed to park at the site of the underground chamber. If maintenance is required within the underground chamber the Permittees shall place a notice on the parked car or truck, to be moved within 24 hours. If no vehicle is parked on top of the underground chamber the Permitted shall place a No Parking sign for up to 24 hours.

\*\*\*\* WiRED deleted four of the points that were either not approved or not understood.

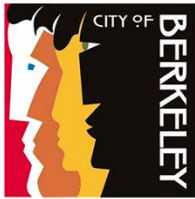
Various cities' wireless facilities ordinances are hyperlinked in the Key Points.

Scroll down ~20 pages to find them: <https://mdsafetech.org/cell-tower-and-city-ordinances/>

N.B. **More cities than those listed have adopted these points.**







CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 December 10, 2019

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Rigel Robinson and Sophie Hahn  
 Subject: Referral: Compulsory Composting and Edible Food Recovery

### RECOMMENDATION

Refer to the Zero Waste Commission to develop a plan, in consultation with the public and key stakeholders, to achieve timely compliance with Senate Bill 1383 (Lara, 2016) including:

1. An ordinance making composting compulsory for all businesses and residences in the City of Berkeley. The Commission should also consider the inclusion of compulsory recycling.
2. An edible food recovery program for all Tier 1 and 2 commercial edible food generators.

### CURRENT SITUATION

Recycling and composting in Berkeley is currently governed by the 2012 Alameda County mandatory recycling ordinance, of which the City of Berkeley is a covered jurisdiction. Under the ordinance, all businesses must have recycling service and businesses that generate 20 or more gallons of organics must have composting service. All multi-family properties (5+ units) are required to provide composting and recycling service. Businesses and property owners are also required to inform their tenants, employees, and contractors of proper composting and recycling technique at least once a year, and provide tenants with additional reminders during move-in and move-out.<sup>1</sup>

The ordinance is enforced through surprise routine inspections. If a business or multi-family property is issued two official violation notices, they may receive an administrative citation. While citations and fines are issued for non-compliance, multi-family property owners and managers are not liable for tenants who improperly sort their waste.<sup>2</sup>

### BACKGROUND

In 2009, San Francisco successfully implemented compulsory composting for all businesses and residences, allowing them to achieve an 80 percent landfill diversion rate in 2012 that remains the highest in the country.<sup>3</sup> This successful policy laid the

<sup>1</sup> <http://www.recyclingrulesac.org/ordinance-overview/>

<sup>2</sup> <http://www.recyclingrulesac.org/my-recycling-rules/>

<sup>3</sup> <https://www.epa.gov/transforming-waste-tool/zero-waste-case-study-san-francisco>

groundwork for the State of California and other cities across the nation to follow suit and introduce legislation to increase composting rates.

California Senate Bill 1383 was introduced by Senator Ricardo Lara and signed into law by Governor Jerry Brown in 2016. The legislation establishes a target of a 50 percent reduction in statewide organic waste disposal by 2020 and a 75 percent reduction by 2025, in addition to a 20 percent increase in edible food recovery by 2025.<sup>4</sup> SB 1383 imposes two main requirements onto local jurisdictions: the provision of organic waste collection services to all residents and businesses, and the development of an edible food recovery program for all Tier 1 and 2 commercial edible food generators.<sup>5</sup>

As defined in SB 1383, Tier 1 commercial edible food generators are 1) supermarkets, 2) grocery stores with a total facility size equal to or greater than 7,500 square feet, 3) food service distributors, and 4) wholesale food markets. Tier 2 commercial edible food generators are 1) restaurants with 250 or more seats or a total facility size equal to or greater than 5,000 square feet, 2) hotels with an onsite food facility and 200 or more rooms, 3) health facilities with an onsite food facility and 100 or more beds, 4) large venues, 5) large events, 6) state agencies with a cafeteria with 250 or more seats or total cafeteria size equal to or greater than 5,000 square feet, and 7) local education agency facilities with an onsite food facility.<sup>6</sup>

California's climate change initiatives are primarily governed by AB 32 (2006), Executive Order B-30-15 (2015), and Executive Order S-3-05 (2005), which establish targets for reducing greenhouse gas emissions. The state's current goals are to reduce emissions to 1990 levels by 2020, 40 percent below 1990 levels by 2030, and 80 percent below 1990 levels by 2050.<sup>7</sup>

Improving landfill diversion rates is an important part of the solution. Organic waste that is improperly disposed of produces methane, a greenhouse gas which has 28 to 36 times the Global Warming Potential (GWP) of carbon dioxide over a 100-year period.<sup>8</sup> By diverting organic waste from the landfill, SB 1383 will reduce at least 4 million metric tons of statewide greenhouse gas emissions annually by 2030.

CalRecycle conducted an informal rulemaking process for SB 1383 from February 2017 to December 2018, and is expected to conclude the year-long formal rulemaking process by the end of 2019.<sup>9</sup> The City of Berkeley's Zero Waste Department submitted two rounds of formal comments on the draft regulations in July and October 2019.

Pursuant to the new regulations, local jurisdictions must have their composting and edible food recovery programs in place by January 1, 2022, when CalRecycle is authorized to begin enforcement actions. The enforcement mechanism is similar to the

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<sup>4</sup> [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB1383](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1383)

<sup>5</sup> <https://www.calrecycle.ca.gov/organics/slcp/education>

<sup>6</sup> [http://ncrarecycles.org/wp-content/uploads/2018/10/SB1383\\_Final-May-Draft-Edible-Regs-Only.pdf](http://ncrarecycles.org/wp-content/uploads/2018/10/SB1383_Final-May-Draft-Edible-Regs-Only.pdf)

<sup>7</sup> <https://ww3.arb.ca.gov/cc/cc.htm>

<sup>8</sup> <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials>

<sup>9</sup> <https://www.calrecycle.ca.gov/laws/rulemaking/slcp>

enforcement of other solid waste and recycling regulations, in which cities and counties can be issued a violation and be subject to enforcement for failure to comply with any individual aspect of the regulation. CalRecycle has discretion to determine the level of penalty necessary to remedy a violation.

In order to achieve compliance with state law by 2022, it is imperative that the City of Berkeley begin planning as soon as possible. According to CalRecycle's SB 1383 guide for local governments, City Councils and Boards of Supervisors across California must "adopt an ordinance or similarly enforceable mechanism that is consistent with these regulatory requirements prior to 2022...planning in 2019 will be critical to meet the deadline."

Implementing the compulsory composting component of SB 1383 will require the City to adopt an ordinance that builds on the existing Alameda County ordinance, adding composting requirements for residences with 1-4 units and businesses that generate fewer than 20 gallons of organic waste. The edible food recovery program component necessitates work to ensure that our existing food recovery organizations have enough capacity to meet statewide goals, including the consideration of providing additional funding for this purpose.

With the opening of a new warehouse in September 2019, Berkeley Food Network is working to establish a food sourcing and distribution hub which will include a food recovery program that reduces the amount of edible food sent to landfill. As BFN is already a valuable partner to the City and is in the process of forming partnerships with food recovery organizations, the Commission should explore ways the City can partner with them to meet SB 1383 requirements and further support them in their work.<sup>10</sup>

#### FINANCIAL IMPLICATIONS

Staff time and an undetermined amount of funding, contingent on the Commission's recommendations, to bring the City into compliance with state law.

#### ENVIRONMENTAL SUSTAINABILITY

This proposal aligns with the City of Berkeley's Climate Action Plan, which calls for a reduction in greenhouse gas emissions by 80 percent below 2000 levels by 2050. As a means to achieve this goal, Chapter 5 of the Plan recommends measures to "enhance recycling, composting, and source reduction services for residential and non-residential buildings."<sup>11</sup>

#### CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

<sup>10</sup> <https://berkeleyfoodnetwork.org/about/our-work/>

<sup>11</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/BCAP%20Exec%20Summary4.9.09.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/BCAP%20Exec%20Summary4.9.09.pdf)

Attachments:

1: CalRecycle Education and Outreach Resources: An Overview of SB 1383's Organic Waste Reduction Requirements

2: San Francisco Mandatory Recycling and Composting Ordinance

[https://sfenvironment.org/sites/default/files/policy/sfe\\_zw\\_sf\\_mandatory\\_recycling\\_composting\\_ord\\_100-09.pdf](https://sfenvironment.org/sites/default/files/policy/sfe_zw_sf_mandatory_recycling_composting_ord_100-09.pdf)

3: Recycling Rules Alameda County

<http://www.recyclingrulesac.org/enforcement-overview/>

# SB 1383

## Reducing Short-Lived Climate Pollutants in California

### An Overview of SB 1383's Organic Waste Reduction Requirements



*Note to presenter: This slide presentation was developed for local jurisdiction staff by CalRecycle staff to educate city council members city board members, city and county staff, decision-makers, and other impacted colleagues. The slides include suggested talking points. We have also provided a handful of slides with artwork, images, and icons that you can use to build new content if needed. Please view this presentation in slideshow mode before presenting to familiarize yourself with the animations. If you have any questions, you can contact Christina Files in the CalRecycle Office of Public Affairs: [christina.files@calrecycle.ca.gov](mailto:christina.files@calrecycle.ca.gov).*

### Presentation Introduction

- SB 1383 (Lara, Chapter 395, Statutes of 2016) is the most significant waste reduction mandate to be adopted in California in the last 30 years.
- SB 1383 requires the state to reduce organic waste [food waste, green waste, paper products, etc.] disposal by 75% by 2025. In other words, the state must reduce organic waste disposal by more than 20 million tons annually by 2025.
- The law also requires the state to increase edible food recovery by 20 percent by 2025.
- This has significant policy and legal implications for the state and local governments.
  1. SB 1383 establishes a statewide target and not a jurisdiction organic waste recycling target.
  2. Given that it is a statewide target and there are not jurisdiction targets, the regulation requires a more prescriptive approach (this is different than AB 939).
    - A. CalRecycle must adopt regulations that impose requirements necessary to achieve the statewide targets.
    - B. This makes the regulation more similar to other environmental quality regulations where regulated entities, i.e., jurisdictions, are required to implement specific actions, rather than achieve unique targets.

- a. For example AB 32 established GHG reduction targets for the state, and the implementing Cap-and-Trade regulations require businesses to take specific actions.
  - i. The individual businesses are not required to achieve a specific target.
  - ii. They are required to take actions prescribed by the date.

### Overview of Presentation

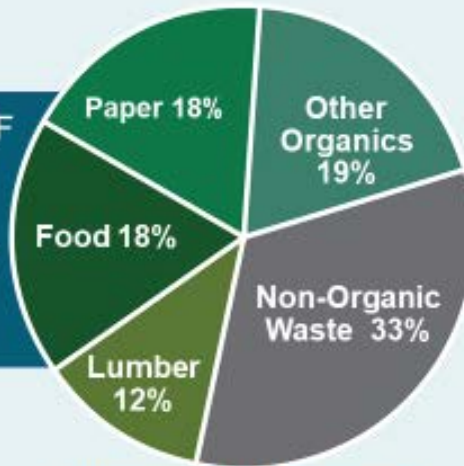
- Background and Context of SB 1383: Why California passed this law
- SB 1383 Requirements: A big picture look at the law's requirements and objectives
- Jurisdiction Responsibilities: What SB 1383 requires of local governments
  - Provide organic waste collection to all residents and businesses
  - Establish an edible food recovery program that recovers edible food from the waste stream
  - Conduct outreach and education to all affected parties, including generators, haulers, facilities, edible food recovery organizations, and city/county departments
  - Capacity Planning: Evaluating your jurisdiction's readiness to implement SB 1383
  - Procure recycled organic waste products like compost, mulch, and renewable natural gas (RNG)
  - Inspect and enforce compliance with SB 1383
  - Maintain accurate and timely records of SB 1383 compliance
- CalRecycle Oversight Responsibilities
- SB 1383 Key Implementation Dates
- SB 1383 Key Jurisdiction Dates

### Additional Resources

- CalRecycle's Short-Lived Climate Pollutants (SLCP): Organic Waste Methane Emissions Reductions webpage has more information: <https://www.calrecycle.ca.gov/Climate/SLCP/>
- CalRecycle's SB 1383 Rulemaking webpage as more information about the status of 1383 regulations: <https://www.calrecycle.ca.gov/laws/rulemaking/slcp>

## Organic Waste Is the Largest Waste Stream in California

CALIFORNIA DISPOSED OF APPROXIMATELY **27 MILLION TONS** OF ORGANIC WASTE IN 2017



California's Waste Stream

IN CALIFORNIA, MILLIONS ARE  
**FOOD INSECURE**

1 IN 8 CALIFORNIANS  
1 IN 5 CHILDREN



CALIFORNIA THROWS AWAY  
**MORE THAN 6 MILLION TONS**  
OF FOOD WASTE EVERY YEAR!

CalRecycle 

- When we are talking about organic waste for the purposes of SB 1383 we are talking about green waste, wood waste, food waste, but also fibers, such as paper and cardboard.
- Organic waste comprises two-thirds of our waste stream.
- Food waste alone is the largest waste stream in California.
  - According to CalRecycle's last waste characterization study in 2014, food waste comprised 18 percent of what we disposed.
- SB 1383 also requires California to recover 20 percent of currently disposed edible food.
  - We currently don't know how much of the food waste stream is edible.
  - CalRecycle is conducting a new waste characterization study in 2018/19 that is taking a closer look at our food waste stream.
  - The results of this study will help determine how much edible food waste is landfilled on average throughout the state.
- Here's what we do know:
  - 1 in 5 children go hungry every night in California – redirecting perfectly edible food that is currently being disposed to feed those in need can help alleviate this.
  - For every 2 ½ tons of food rescued, that's the equivalent of taking 1 car off the road for a year. (<https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>)

# CLIMATE CHANGE NEGATIVELY IMPACTS CALIFORNIA

Landfilled Organic Waste Emits

## Methane Gas— A Super Pollutant

More Powerful than CO<sub>2</sub>

Methane Gas Contributes to  
Climate Change in California



CALIFORNIA  
is already experiencing  
the impacts of  
CLIMATE CHANGE

IN 2015 THE DROUGHT COST THE  
AGRICULTURE INDUSTRY IN THE  
CENTRAL VALLEY AN ESTIMATED  
\$2.7 BILLION & 20,000 JOBS

CalRecycle 

- Landfilling organic waste leads to the anaerobic breakdown of that material, which creates methane.
- Landfills are responsible for 21% of the state's methane emissions. **Landfills are the third largest producer of methane.**
- Methane is 72 times more potent than Carbon Dioxide (CO<sub>2</sub>) over a 20-year horizon.
- Climate change may seem like a distant problem, but there are other more localized environmental impacts associated with landfill disposal of organic waste that **have immediate negative impacts on our community now.**
  - Landfilling organic waste is a significant source of local air quality pollutants (NOX and PM<sub>2.5</sub>).
  - These pollutants have an immediate negative impact on the air our community and it can cause respiratory issues and hospitalizations.
  - Diverting organic waste to recycling can significantly reduce these local air quality emissions and the associated negative impacts.

We are starting to see the effects of climate change in cities and counties throughout California.


- Longer droughts and warmer temperatures are drying our forest and contributing to the ever increasing number of wildfires in CA (which also impact air quality).
- Cyclical droughts
- Bigger storms
- Coastal erosion due to rising sea levels
- We should not underestimate the cost of these climate change impacts.
  - The state and communities are spending billions fighting wildfires, removing debris and rebuilding homes.
  - That means we are paying for the effects of climate change today.



- The financial and public health impacts are here and **we need to take action to mitigate climate change now**
- That is why the state enacted SB 1383, which is designed to reduce the global warming gasses like methane, which are the most potent and are “short-lived”
- Reducing this gas now, through actions like organic waste recycling will significantly reduce emissions, and will reduce the impacts of climate change in our life time.

## SB 1383 Requirements

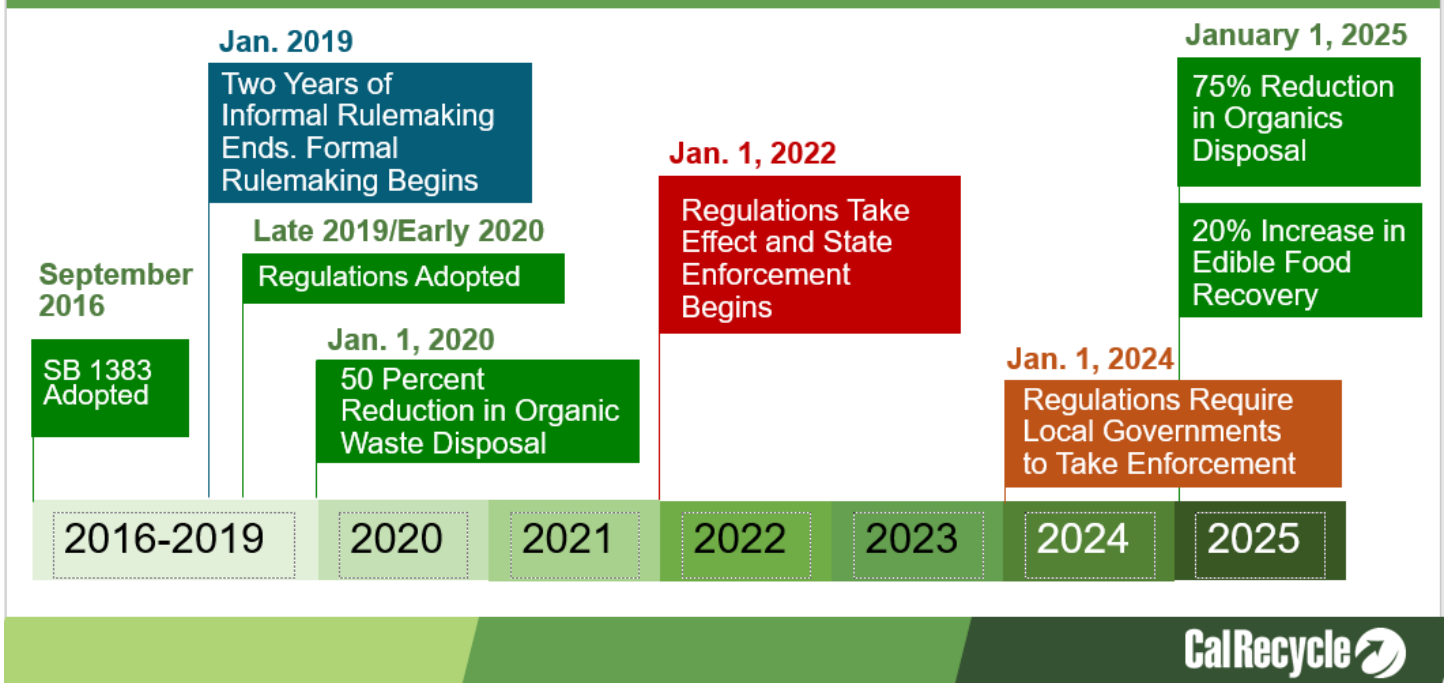
|      |                                                                                                        |
|------|--------------------------------------------------------------------------------------------------------|
| 2020 | 50 PERCENT REDUCTION IN LANDFILLED ORGANIC WASTE<br>(11.5 Million Tons Allowed Organic Waste Disposal) |
| 2022 | REGULATIONS TAKE EFFECT                                                                                |
| 2025 | 75 PERCENT REDUCTION IN LANDFILLED ORGANIC WASTE<br>(5.7 Million Tons Allowed Organic Waste Disposal)  |
| 2025 | 20 PERCENT INCREASE IN RECOVERY OF CURRENTLY DISPOSED EDIBLE FOOD                                      |



### Overview of SB 1383:

- SB 1383 establishes aggressive organic waste reduction targets.
- SB 1383 also builds upon Mandatory Commercial Organics Recycling law. Our jurisdiction has been implementing this law since 2016.
- SB 1383 requires Californians to reduce organic waste disposal by 50% by 2020 and 75% by 2025.
  - These targets use the 2014 Waste Characterization Study measurements when 23 million tons of organic waste were disposed.
  - These disposal reductions will reduce at least 4 million metric tons of greenhouse gas emissions annually by 2030.
- Additionally as a part of the disposal reduction targets the Legislature directed CalRecycle to increase edible food recovery by 20 percent by 2025.
  - The food recovery goal is unique.

# SB 1383 Key Implementation Dates



Highlighted here on the slide are the key dates for SB 1383 implementation and milestones.

1. This law, the targets, and the requirements for CalRecycle to adopt regulations were adopted in September 2016
2. CalRecycle conducted two years of informal hearings with local governments and stakeholders to develop regulatory concepts.

## Formal Rulemaking

1. CalRecycle started the formal regulation rulemaking January 18, 2019, this is expected to conclude by the end of 2019.

## Regulations Take Effect

1. The regulations will become enforceable in 2022.
  - a. **Jurisdictions must have their programs in place on January 1, 2022.**

## Jurisdictions Must Initiate Enforcement

1. **In 2024 Jurisdictions will be required to take enforcement against noncompliant entities.**
2. Finally, in 2025 the state must achieve the 75 percent reduction and 20 food recovery targets.
3. To meet the deadline of January 1, 2022, **CalRecycle expects that jurisdictions will be planning and making programmatic and budgetary decisions regarding the requirements in advance of the deadline.**
4. CalRecycle can begin enforcement actions on jurisdictions and other entities starting on Jan. 1, 2022.
5. **The enforcement process on jurisdictions is different than under AB 939:**
  - a. Like many solid waste and recycling regulations, a regulated entity (such as a city or county) can be issued a violation and be subject to enforcement for failure to comply with any individual aspect of the regulation. This is different from the unique AB 939 enforcement structure where a jurisdiction's overall efforts to achieve specific target are reviewed in arrears

- b. Like most regulatory enforcement programs, the enforcing agency (CalRecycle) will have discretion to determine the level of penalty necessary to remedy any given violation. E.g. A reporting violation may be considered less severe than a failure to provide collection services to all generators.
  - c. CalRecycle will consider certain mitigating factors which are specifically enumerated in the regulation. This is not the same as good faith effort but includes similar considerations. The specific nuances regarding requirements for state and local enforcement will be discussed in the later slides.
- **These timelines mean that we need to start planning now.**

## SB 1383 Key Jurisdiction Dates

2022



Provide Organics Collection Service to All Residents and Businesses



Establish Edible Food Recovery Program



Conduct Education and Outreach



Procurement



Capacity Planning

2024



Starting January 1, 2024 Jurisdictions must take action against non-compliant entities

1. To meet the deadline of January 1, 2022, **CalRecycle expects that jurisdictions will be planning and making programmatic and budgetary decisions regarding the requirements in advance of the deadline.**
  - a. CalRecycle can begin enforcement actions on jurisdictions and other entities starting on Jan. 1, 2022.
2. This slide outlines the major programmatic activities for jurisdictions and the following slides will cover more details.
3. In 2024 Jurisdictions will be required to take enforcement against noncompliant entities.
  - a. There are additional details in the draft regulations regarding the enforcement requirements
4. CalRecycle has some funding through competitive grant programs, as well as a loan program, for establishing the infrastructure for recycling organic waste and recovering edible food. However, for the programmatic activities, such as enforcement, inspections, education, collection we will need to plan for budgetary changes to address these.

- a. In early 2020 CalRecycle will have a number of tools that we can begin utilizing, such as a model enforcement ordinance, franchise agreement models, and education materials. Using the 2018 and 2020 Statewide Waste Characterization Studies, jurisdictions will have data needed to conduct some of the capacity planning requirements.
- b. Although the regulations are not finalized the major components are not expected to change.
- c. We need to **start planning now** to have the programmatic and budgetary changes in place by January 1, 2022.

## JURISDICTION RESPONSIBILITIES

**Provide Organics  
Collection Services to All  
Residents and Businesses**



**Conduct Education  
and Outreach to  
Community**



**Secure Access to  
Recycling and Edible  
Food Recovery Capacity**



**Establish Edible  
Food Recovery  
Program**



**Procure Recyclable  
and Recovered  
Organic Products**



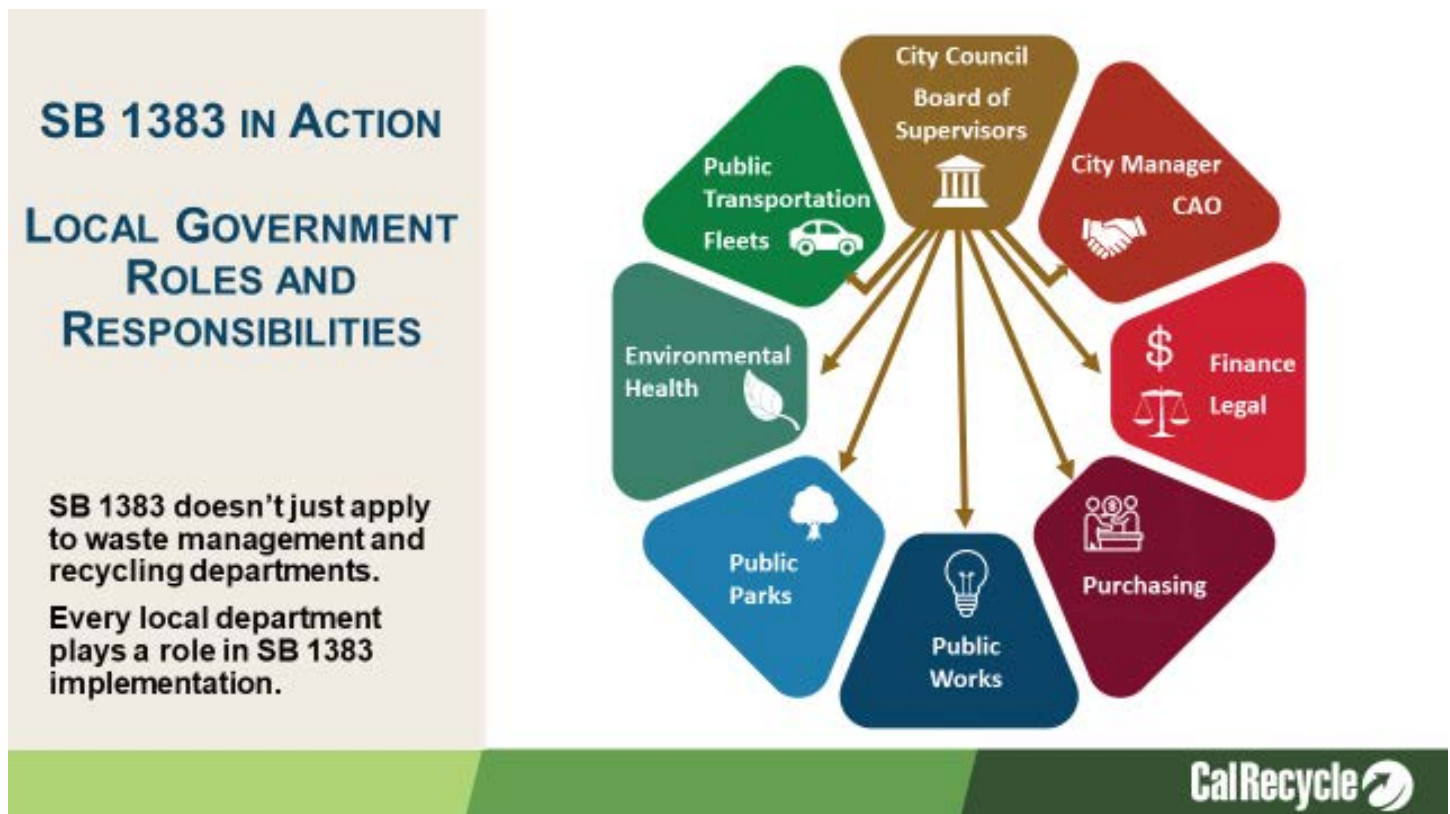
**Monitor Compliance  
and Conduct  
Enforcement**

**CalRecycle**

Jurisdictions will be required to adequately resource these programs:

1. **Provide organic waste collection services to all residents and businesses.**
  - A. This means for all organic waste, including green waste, wood waste, food waste, manure, fibers, etc.
  - B. Containers have prescribed colors (any shade of grey or black for trash, green for organic waste and blue containers for traditional recyclables)
  - C. There are container labeling and contamination monitoring requirements
  - D. We need to assess our current collection programs and determine what may need to be, expanded, or changed
2. **Establish edible food recovery program for all Tier 1 and 2 commercial edible food generators**
  - A. This means ensuring that there are edible food recovery organizations that have enough capacity
  - B. This may entail providing funding to ensure there is adequate capacity and collection services
3. **Conduct education and outreach to all generators**

- A. This will require education to be provided to all generators, and when applicable education may need to be provided in Spanish and other languages.
4. **Our jurisdiction will be required to procure certain levels of compost, renewable gas used for transportation fuels, electricity, heating applications, or pipeline injection, or electricity from biomass conversion produced from organic waste.**
5. **Plan and secure access for recycling and edible food recovery capacity.**
6. **We will be required to monitor compliance and conduct enforcement**
  - A. **Monitoring and education must begin in 2022**
  - B. **Enforcement actions must start Jan 1, 2024**
7. **We will need to adopt an ordinance, or similarly enforceable mechanism that is consistent with these regulatory requirements prior to 2022.**
8. **Planning in 2019 will be critical to meet the deadline.**



1. Jurisdictions should start planning now to get ready for SB 1383 implementation.
2. This **law extends beyond directing waste management and recycling operations and staff.**
  - a. **Each department will need to understand how SB 1383 impacts their work.**
  - b. **Recordkeeping and reporting requirements extend to all of these departments,** and jurisdiction leaders will play a vital role in ensuring compliance with SB 1383.
- **City Councils and Boards of Supervisors** will need to pass local enforcement ordinances to require all residents and businesses to subscribe to these services.
- **City Managers and Chief Administrative Officers** will be involved in capacity planning, directing procurement of recycled organic products like compost and renewable natural gas, and establishing edible food recovery programs.

- **Finance and Legal staff** will be involved in local enforcement ordinances, new collection fees, and ensuring programs are adequately resourced.
- **Purchasing staff** will be central to procuring recycled organic products, including paper.
  - Procure does not necessarily mean purchase, but this department is likely aware of current compost, mulch, RNG, and paper product purchases for the jurisdiction.
- **Public Works staff** are involved with hauler agreements, local waste management processing facilities, and organic waste recycling facilities (like compost and anaerobic digestion facilities). They may also be involved in civil engineering activities where compost may be utilized (as in erosion control along city streets and embankments).
- **Public Parks staff** may be involved with assessing the need for local compost application to parks and city landscaped areas.
- **Environmental Health staff** may be tasked with enforcement duties, including inspecting commercial food generators for compliance with edible food recovery requirements.
- **Public Transportation and Fleet departments** could be involved in procuring renewable natural gas for city and county owned vehicles.

## SB 1383 IN ACTION

### JURISDICTION REQUIREMENTS






**Provide organics collection service to all residents and businesses**

## Organic Waste Collection Services



### Three-Container “source separated” Collection Service

- Organics prohibited from black container
- All organic waste segregated for collection and recycling



### Two-Container Collection Service

- One container for collection of segregated organic waste
- One container for collection of mixed waste (subject to 75% organic content recovery standard)





### One-Container Collection Service

- One container for collection of mixed waste (subject to 75% organic content recovery standard)

- Minimum contamination monitoring and reduction requirements
- Collection waivers authorized for certain documented circumstances



*(Note to presenter: You might customize this slide to reflect the collection system for residential and commercial recycling programs. Remember this law/regulation is about all organic waste so that means the fibers, foodwaste, greenwaste, manure, etc.)*

- The most basic element of the regulation is that jurisdictions are **required to provide an organic waste collection service to each of their residents and businesses.**
- The regulations also **require all residents and businesses to use an organic waste recycling service that meets the regulatory requirements.**
- Jurisdictions must have enforceable requirements on its haulers that collect organic waste in the jurisdiction, and also for commercial and residential generators and self-haulers.

- There is a lot of detail regarding the types of allowable collection programs (several pages of regulatory text dedicated just to this). These are the high level requirements.
  - **Each resident and business**, must subscribe to an organic waste collection service that either “source-separates” the waste (e.g. separate bins), or transports all unsegregated waste to a facility that recovers 75 percent of the organic content collected from the system.
  - The regulations allow for a menu of collection options.
    - A one-can system – you’ll be responsible for ensuring that all contents are transported to a facility that recovers 75% of organic content
    - A two-can system – at least one of the containers (whichever includes organic waste and garbage) must be transported to a facility that recovers 75% of organic content
    - A three-can system – organic waste is required to be source separated (paper in blue, food and yard in green). No recovery rate
    - The three-can option also allows additional separation at the hauler/generators discretion... For example some jurisdictions provided separate containers for yard (green) and food (brown) waste so they can be managed separately
- The same rules will apply to entities not subject to local control, and CalRecycle will oversee State Agencies, UCs, CSUs, Community Colleges, K-12 schools and other entities not subject to local oversight.



*(Note to presenter: You may want to customize the speaking points depending on how much your community is already doing to implement edible food recovery programs)*

SB 1383 requires that we strengthen our existing infrastructure for edible food recovery and food distribution.

**Jurisdictions** – are responsible to implement Edible Food Recovery Programs in their communities. Even in communities where existing infrastructure already exists, there are new recordkeeping and inspection tasks that will need to be implemented.

- **Assess Capacity of Existing Food Recovery**
- **Establish Food Recovery Program (And Expand Existing Infrastructure if necessary)**
- **Inspect Commercial Generators for Compliance**
- **Education and Outreach**

Jurisdictions should get a **head start on 1383 implementation by assessing the infrastructure that currently exists within your community.** Jurisdictions need to assess the following:

- How many commercial generators do you have? How much edible food could they donate?
- How many food recovery organizations exist, and what is their capacity to receive this available food?
- What gaps do we have in our current infrastructure and what do we need to do to close them?
- How can we fund the expansion of edible food recovery organizations? (Grants, partnerships, sponsorships, etc.)
- What partnerships currently exist and what new partnerships need to be established?
  - CalRecycle will be developing some tools to assist jurisdictions with this assessment.

**SB 1383 IN ACTION**

**EDUCATION REQUIREMENTS**

**JURISDICTION REQUIREMENTS**

Annually educate all organic waste generators, commercial edible food generators, and self-haulers about relevant requirements

Jurisdictions must provide print or electronic communication.

Jurisdictions May Supplement with Direct Communication.

Appropriate educational material must be provided to linguistically isolated households

Conduct Education and Outreach to Community

CalRecycle

Jurisdictions must conduct education and outreach to:

1. **All businesses and residents** regarding collection service requirements, contamination standards, self-haul requirements, and overall compliance with 1383
2. **Commercial edible food generators** regarding edible food donation requirements, and available edible food recovery organizations

Educational material must be linguistically accessible to our non-English speaking residents.



## SB 1383 IN ACTION

### PROCUREMENT REQUIREMENTS



**Procure Recycled and Recovered Organic Products**

## JURISDICTION REQUIREMENTS

### COMPOST, RNG & ELECTRICITY

- Minimum Procurement

### PAPER PROCUREMENT REQUIREMENTS

- Recycled Content
- Recyclability





- Each jurisdiction will have a minimum procurement target that is linked to its population. CalRecycle will notify jurisdictions of their target Prior to January 1, 2022
  - The jurisdiction can decide what mix of compost, mulch, biomass derived electricity, or renewable gas they want to use to meet their target.
  - CalRecycle will provide a calculator with the conversion factors for compost/renewable gas/electricity from biomass conversion made from organic waste for a jurisdiction to use to calculate progress towards meeting their target.
- **Procurement doesn't necessarily mean purchase.**
  - A jurisdiction that produces its own compost, mulch, renewable gas, or electricity from biomass conversion can use that toward the procurement target. Same goes for the jurisdiction's direct service providers (for example, its haulers).
    - A jurisdiction can use compost or mulch for erosion control, soil amendment, soil cover, parks/open spaces, giveaways.
    - A jurisdiction can use renewable gas to fuel their fleets, or a jurisdiction's waste hauler could use renewable gas to fuel their trucks. Renewable gas can be used for transportation fuels, electricity, or heating applications.
- SB 1383 also **requires that jurisdictions procure recycled-content paper when it is available at the same price or less than virgin material.**
- Finally procured paper products must meet FTC recyclability guidelines (essentially products we purchase must be recyclable).

# Construction & Landscaping Requirements



Recycling organic waste commingled with C&D debris, to meet CalGreen 65% requirement for C&D recycling in both residential and non-residential projects

Model Water Efficient Landscape Ordinance (MWELo) requirements for compost and mulch application.



CalRecycle 

*(Note to presenter: If your Jurisdiction already enforces CalGreen and MWELo, then you would address that this would not be a new requirement, or this slide could be eliminated.)*

**Jurisdictions will have to adopt an ordinance or other enforceable requirement that requires compliance with CalGreen and Water Efficient Landscape Ordinance requirements (California Code of Regulations Title 24, Part 11):**

- Providing readily accessible areas for recycling containers in commercial and multi-family units
- Recycling organic waste commingled with C&D debris, to meet CalGreen 65% requirement for C&D recycling in both residential and non-residential projects
- Require new construction and landscaping projects to meet Water Efficient Landscape requirements for compost and mulch application.

## ORGANIC WASTE RECYCLING INFRASTRUCTURE



SB 1383 Requires 50-100  
New or Expanded  
Organic Waste Recycling Facilities



*(Note to presenter: You might customize this slide if you have already secured adequate capacity for your organic recyclables.)*

In California today we have about 180 compost facilities with 34 of them accepting food waste.

- We have 14 AD facilities accepting solid waste.
- There is also a significant number of Waste Water Treatment Plants that could be leveraged to use for co-digestion of food waste.
- It will take a significant number of new facilities to recycle an additional 20-25 million tons of organic waste annually. CalRecycle estimates we will need 50-100 new or expanded facilities (depending on the size of each new facility this number could fluctuate).

## SB 1383 IN ACTION

### CAPACITY PLANNING



Evaluating Current  
Infrastructure and Planning  
New Compost and AD Facilities  
and Edible Food Recovery



CalRecycle 

#### Key Points:

1. **Each jurisdiction must plan for adequate capacity for recycling organic waste and for edible food recovery**
  - A. For edible food recovery capacity each jurisdiction must plan to recover 20 percent of the edible food for human consumption, must identify Tier 1 and 2 commercial edible food generators, and funding for edible food recovery infrastructure
2. Each county will lead this effort by coordinating with the cities in the county to estimate existing, new and/or expanded capacity.
3. Counties and cities must demonstrate that they have access to recycling capacity through existing contracts, franchise agreements, or other documented arrangements.
4. There are requirements for each jurisdiction to consult with specified entities to determine organic waste recycling capacity, such as the Local Enforcement Agency, Local Task Force, owners/operators of facilities, community composting operations, and from citizens, such as disadvantaged communities, i.e., to discuss the benefits and impacts associated with expansions/new facilities.
5. For edible food recovery the county and city must contact edible food recovery organizations that serve the jurisdiction to determine how much existing, new and/or planned capacity if available.
6. If capacity cannot be guaranteed, then each jurisdiction within the county that lacks capacity must submit an implementation schedule to CalRecycle that includes specified timelines and milestones, including funding for the necessary recycling or edible food recovery facilities.
7. The County must collect data from the cities on a specified schedule and report to CalRecycle. Cities are required to provide the required data to the County within 120 days.

- A. **Start year for planning and reporting is 2022 – that report must cover 2022-2025.**
- B. Subsequent reports will be due every 5 years, and will plan for a 10-year horizon



- **By January 1, 2022**, Jurisdictions are required to have:
  - An enforcement mechanism or ordinance in place, yet they are not required to enforce until 2024.
- **Between Jan 2022 and Dec 2023**, jurisdictions need to:
  - Identify businesses in violation and provide educational material to those generators
    - **The focus during the first 2 years is on educating generators.**
    - **The goal is to make sure every generator has an opportunity to comply before mandatory jurisdiction enforcement comes into effect in 2024.**
    - **The regulations allow 2 years for education and compliance.**
- **After January 2024**, jurisdictions shall take progressive enforcement against organic waste generators that are not in compliance.
  - The progressive approach allows for notification to the generator and provides ample time for the generator to comply before penalties are required to be issued by the jurisdiction.
  - CalRecycle sets a maximum timeframe that a jurisdiction has to issue a Notice of Violation and issue penalties to a generator.
  - The jurisdiction has the flexibility to develop its own enforcement process within these parameters.
    - When a Jurisdiction determines a violation occurred the jurisdiction is required to, at a minimum:

- Issue a Notice of Violation within 60 days of determining a violation.
- If the generator still has not complied within 150 days from the issuance of the Notice of Violation, then the jurisdiction is responsible to issue penalties
  - The 150 days, between the Notice and Violation and the penalty phase, allows the jurisdiction to use other methods to achieve compliance prior to being required to issue penalties. Therefore, only the most recalcitrant violators will need to be fined.
  - The regulations allow a generator to be out of compliance for a total 210 days, before penalties must be issued.
- The regulations set a minimum penalty amount of at least \$50 for the first offense within one year and can go up to \$500 a day for multiple offenses occurring within one year.
- **An early robust education program will minimize the amount of future enforcement action needed**

**JURISDICTION ENFORCEMENT REQUIREMENTS**

**Must Have Enforcement and Inspection Program that Includes:**

- **Annual Compliance Review**
  - Commercial Businesses that Generate  $\geq 2$  Cubic Yards/week
  - Verify Businesses are:
    - Subscribed to Service or Self-hauling
- **2 or 3 Container Collection Service: Route Reviews of Commercial/Residential Areas to Verify Service and Inspect for Contamination**
- **Single Unsegregated Collection Service: Verify Businesses are subscribed to a service that is Transporting Contents to a High Diversion Organic Waste Processing Facility**

Requirements Harmonize with AB 1826 and Don't Establish a Minimum Quantity of Physical Inspections

CalRecycle

*(Note to Presenter: If needed, customize the next couple of slides to fit the type of collection service that your City has/will have for residential and commercial. You may have residential on 3-container, multifamily on single or 2-container and businesses having all three depending on the business.)*

- If a Jurisdiction is using a 3- or 2-bin organic waste collection service they are required to do:
  - **Annual compliance review of commercial businesses just as we should be doing now with AB 1826 Mandatory Commercial Recycling**
    - Commercial businesses that generate 2 CY or more per week of solid waste (trash, recycling, organics),

- Note: commercial businesses include multi-family dwellings of five units or more
- This can be a desk audit to review reports from our haulers to verify that service is provided or that they are complying through self-hauling or backhauling
- **2- or 3-Collection Service:**
  - **Route reviews:** We are supposed to conduct route reviews of commercial businesses and residential areas. The route reviews check for:
    - Verifying subscription (validating the desk review)
      - This entails seeing that the business has the appropriate external containers.
      - If a business does not use the hauler's service, then verifying the business is self-hauling would be necessary. As noted earlier this is same type of action that AB 1826 already requires
      - Note: This random inspection of routes does not require going inside a business to verify that the business has appropriate containers/labels inside of the business.
  - **Monitoring for contamination on**
    - Randomly selected containers, and ensuring all collection routes are reviewed annually and that contamination is being monitored in the collection containers and education is provided if there is an issue
- OR
- A jurisdiction has the option of conducting waste composition studies every six months to identify if there are prohibited container contaminants. If there is more than 25 percent prohibited container contaminants, then additional education must be provided
- The Route Reviews can be done by our hauler(s)
- **Single Unsegregated Collection Service:** Same as the 2- or 3-bin service except:
  - We will need to verify with our hauler(s) that the contents are transported to a high diversion organic waste processing facility and that the facility is meeting the requirements of the organic content recovery rate
    - Note: The department will be identifying in the future what facilities are high diversion organic waste processing facilities as the facilities will be reporting to CalRecycle.
  - There are no route reviews required

## JURISDICTION ENFORCEMENT REQUIREMENTS ON COMMERCIAL FOOD GENERATORS



## Must Have Enforcement and Inspection Program that Includes:

- Inspections to verify:
  - Edible food Recovery arrangements
- Tier 1 Commercial Edible Food Generators by 2022
- Tier 2 Commercial Edible Food Generators by 2024

Commercial Edible Food Generator Inspections Can Be Combined with Existing Mandatory Inspections



*(Note to Presenter: If your jurisdiction is already implementing an edible food recovery program and conducting inspections, such as through the Health Department you will want to revise the talking points.)*

### Edible Food Recovery Program

- These types of inspections will be new for our jurisdiction.
- We will need to plan resources to conduct these inspections.
  - We might consider partnering with Health Inspectors that are already visiting food generators.
- Inspections on Tier One edible food generators in 2022 and Tier Two in 2024
  - Verify they have arrangements with a food recovery organization
  - Verify that the food generators are not intentionally spoiling food that can be recovered



**SB 1383 IN ACTION**  
**JURISDICTION REQUIREMENTS**



**Maintain Records and Report to CalRecycle**

**Recordkeeping Requirements:**

|                                                                                                                   |                                                                                                                         |                                                                                                                  |                                                                                                                          |                                                                                                                              |
|-------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| <br>Organic Collection Services  | <br>Hauler Program                     | <br>Contamination Minimization | <br>Waivers                           | <br>Education & Outreach                  |
| <br>Edible Food Recovery Program | <br>Recycled Organic Waste Procurement | <br>Recycled Paper Procurement | <br>Commercial Edible Food Generators | <br>Jurisdiction Inspection & Enforcement |



- Our jurisdiction will have to maintain all information in an Implementation Record.
  - Many sections require a minimum level of recordkeeping such as “ordinances, contracts, and franchise agreements”.
  - This graphic is a snapshot of items to be kept in the Implementation Record.
  - CalRecycle staff may review the implementation record as part of an audit of our program.
- The Implementation Record needs to be stored in one central location
  - It can be kept as a physical or electronic record
  - It needs to be accessible to CalRecycle staff within ten business days
  - It needs to be retained for five years

The infographic is divided into three main sections. The left section, 'STATE ENFORCEMENT', features a blue circle with a white icon of a classical building and the CalRecycle logo below it. The right section, 'CALRECYCLE OVERSIGHT (BEGINS IN 2022)', is divided into three vertical columns, each with a blue circular icon: a clipboard for 'Authorize Waivers', a person with a clipboard for 'Oversee and Monitor for Compliance', and a document for 'If Violations'.

**STATE ENFORCEMENT**

**CALRECYCLE OVERSIGHT (BEGINS IN 2022)**

**Authorize Waivers**

- Low Population
- Rural Areas

**Emergency Circumstances**

**Oversee and Monitor**

- State Agencies and Facilities
- Local Education Agencies

**Oversee and Monitor for Compliance**

**Jurisdiction Review**

- Conduct joint inspections with jurisdictions
- Review Implementation Record

**If Violations**

- Issue Notices of Violation
- May Authorize Corrective Action Plan
- Allows up to 24 months to address barriers outside of a jurisdiction's control

CalRecycle

Enforcement – CalRecycle will authorize low population and rural area waivers. In the case of entities such as public universities, which may be exempt from local solid waste oversight, CalRecycle will be directly responsible for ensuring compliance. This will be monitored through CalRecycle's existing state agency monitoring process.

**CalRecycle will be evaluating a Jurisdiction's Compliance.**

For example:

- Verifying that all organic waste generators have service
- Jurisdictions are providing education
- Issuing Notices of Violation within the correct timeline

**SB 1383 is a Statewide target and not a jurisdiction organic waste diversion target.** Unlike with AB 939 where there was a specified target for each jurisdiction, SB 1383 prohibits a jurisdiction target. Due to this structure:

- The regulations require a more prescriptive approach, and establishes state minimum standards.
- Jurisdictions will have to demonstrate compliance with each of the prescriptive standards **rather than the determination of a Good Faith Effort**, which uses a suite of indicators to determine if a jurisdiction is actively trying to implement programs and achieve targets

**Under the SB 1383 regulations** if CalRecycle determines a jurisdiction is violating one or more of the requirements,

- A jurisdiction will be noticed and will have 90 days to correct.
- Most violations should be able to be corrected in this timeframe. For cases where the jurisdiction may need a little additional time, the timeframe can be expanded to 180 days

- **For violations that are due to barriers outside the jurisdictions control and which may take more time to correct, the** regulations allow for the jurisdiction to be placed on a Corrective Action Plan (CAP), allowing up to 24 months to comply. In these cases, it must be apparent that the jurisdiction has taken substantial effort to comply but cannot due to extenuating circumstances (such as a lack of capacity, disaster).
- An initial corrective action plan issued due to inadequate capacity of organic waste recovery facilities may be extended for a period of up to 12 months if the jurisdiction meets the requirements and timelines of its CAP and has demonstrated substantial effort to CalRecycle.

The Corrective Action Plan [or CAP] is modeled off of the Notice and Order Process that is used for noncompliance at solid waste facilities, where a number of steps or milestones must be taken by the solid waste facility operator prior to being able to fully comply.

Regarding eligibility for a CAP failure of a governing body to adopt and ordinance, or adequately fund/resource a program IS NOT *considered substantial effort or an Extenuating Circumstance* and will not allow a violation to be subject to a Corrective Action Plan.



**CalRecycle**  
**STAY ENGAGED**

 <https://www2.calrecycle.ca.gov/Listservs/Subscribe/152>

 <https://www.calrecycle.ca.gov/organics/slcp>

 **Presenter's Contact Info**

**CalRecycle** 

*(Note to presenter: If you have been participating in the regulatory workshops you might customize this slide. If you haven't been participating you might consider using this slide to discuss next steps with your elected officials and executive management.)*

**Jurisdictions are encouraged to participate in the 1383 regulatory process.**



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This version incorporates changes and amendments approved by the Agenda & Rules Committee on September 16, 2019 for approval by the City Council.

# The Berkeley City Council Rules of Procedure and Order

Adopted by Resolution No. ##,###–N.S.  
Effective October 29, 2019

## Table of Contents

|             |                                                                                       |           |
|-------------|---------------------------------------------------------------------------------------|-----------|
| <b>I.</b>   | <b>DUTIES .....</b>                                                                   | <b>4</b>  |
| A.          | Duties of Mayor .....                                                                 | 4         |
| B.          | Duties of Councilmembers .....                                                        | 4         |
| C.          | Motions to be Stated by Chair .....                                                   | 4         |
| D.          | Decorum by Councilmembers .....                                                       | 4         |
| E.          | Voting Disqualification .....                                                         | 4         |
| F.          | Requests for Technical Assistance and/or Reports .....                                | 5         |
| <b>II.</b>  | <b>MEETINGS.....</b>                                                                  | <b>6</b>  |
| A.          | Call to Order - Presiding Officer.....                                                | 6         |
| B.          | Roll Call .....                                                                       | 6         |
| C.          | Quorum Call .....                                                                     | 6         |
| D.          | Council Meeting Conduct of Business .....                                             | 6         |
| E.          | Adjournment .....                                                                     | 7         |
| G.          | City Council Schedule and Recess Periods .....                                        | 7         |
| H.          | Pledge of Allegiance to the Flag .....                                                | 8         |
| I.          | Ad Hoc Subcommittees .....                                                            | 8         |
| <b>III.</b> | <b>AGENDA.....</b>                                                                    | <b>9</b>  |
| A.          | Declaration of Policy .....                                                           | 9         |
| B.          | Definitions.....                                                                      | 9         |
| C.          | Procedure for Bringing Matters Before City Council .....                              | 11        |
| D.          | Packet Preparation and Posting .....                                                  | 14        |
| E.          | Agenda Sequence and Order of Business .....                                           | 16        |
| F.          | Closed Session Documents.....                                                         | 16        |
| G.          | Regulations Governing City Council Policy Committees .....                            | 17        |
| <b>IV.</b>  | <b>CONDUCT OF MEETING .....</b>                                                       | <b>22</b> |
| A.          | Comments from the Public .....                                                        | 22        |
| B.          | Consent Calendar.....                                                                 | 24        |
| C.          | Information Reports Called Up for Discussion .....                                    | 25        |
| D.          | Communications.....                                                                   | 25        |
| E.          | Public Hearings for Land Use, Zoning, Landmarks, and Public Nuisance<br>Matters ..... | 25        |
| F.          | Work Sessions.....                                                                    | 26        |
| H.          | Protocol .....                                                                        | 27        |
| <b>V.</b>   | <b>PROCEDURAL MATTERS .....</b>                                                       | <b>28</b> |
| A.          | Persons Authorized to Sit at Tables .....                                             | 28        |
| B.          | Decorum.....                                                                          | 28        |
| C.          | Enforcement of Decorum.....                                                           | 28        |
| D.          | Precedence of Motions .....                                                           | 28        |
| E.          | Roberts Rules of Order.....                                                           | 29        |
| F.          | Rules of Debate .....                                                                 | 29        |
| G.          | Debate Limited .....                                                                  | 30        |
| H.          | Motion to Lay on Table .....                                                          | 30        |
| I.          | Division of Question.....                                                             | 30        |
| J.          | Addressing the Council.....                                                           | 30        |
| K.          | Addressing the Council After Motion Made .....                                        | 31        |

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|            |                                                                           |           |
|------------|---------------------------------------------------------------------------|-----------|
| <b>VI.</b> | <b>FACILITIES .....</b>                                                   | <b>32</b> |
| A.         | Council Chamber Capacity .....                                            | 32        |
| B.         | Alternate Facilities for Council Meetings .....                           | 32        |
| C.         | Signs, Objects, and Symbolic Materials.....                               | 32        |
| D.         | Fire Safety .....                                                         | 32        |
| E.         | Overcrowding .....                                                        | 32        |
|            | <b>APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES .....</b> | <b>33</b> |
|            | <b>APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA</b>   |           |
|            | <b>ITEMS .....</b>                                                        | <b>36</b> |

## I. DUTIES

### A. Duties of Mayor

The Mayor shall preside at the meetings of the Council and shall preserve strict order and decorum at all regular and special meetings of the Council. The Mayor shall state every question coming before the Council, announce the decision of the Council on all subjects, and decide all questions of order, subject, however, to an appeal to the Council, in which event a majority vote of the Council shall govern and conclusively determine such question of order. In the Mayor's absence, the Vice President of the Council (hereafter referred to as the Vice-Mayor) shall preside.

### B. Duties of Councilmembers

Promptly at the hour set by law on the date of each regular meeting, the members of the Council shall take their regular stations in the Council Chambers and the business of the Council shall be taken up for consideration and disposition.

### C. Motions to be Stated by Chair

When a motion is made, it may be stated by the Chair or the City Clerk before debate.

### D. Decorum by Councilmembers

While the Council is in session, the City Council will practice civility and decorum in their discussions and debate. Councilmembers will value each other's time and will preserve order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings of the Council, use personal, impertinent or slanderous remarks, nor disturb any other member while that member is speaking or refuse to obey the orders of the presiding officer or the Council, except as otherwise provided herein.

All Councilmembers have the opportunity to speak and agree to disagree but no Councilmember shall speak twice on any given subject unless all other Councilmembers have been given the opportunity to speak. The Presiding Officer may set limits on the speaking time allotted to Councilmembers during Council discussion.

The presiding officer has the affirmative duty to maintain order. The City Council will honor the role of the presiding officer in maintaining order. If a Councilmember believes the presiding officer is not maintaining order, the Councilmember may move that the Vice-Mayor, or another Councilmember if the Vice-Mayor is acting as the presiding officer at the time, enforce the rules of decorum and otherwise maintain order. If that motion receives a second and is approved by a majority of the Council, the Vice-Mayor, or other designated Councilmember, shall enforce the rules of decorum and maintain order.

### E. Voting Disqualification

No member of the Council who is disqualified shall vote upon the matter on which the member is disqualified. Any member shall openly state or have the presiding officer announce the fact and nature of such disqualification in open meeting, and shall not be subject to further inquiry. Where no clearly disqualifying conflict of interest appears, the matter of disqualification may, at the request of the member affected, be



decided by the other members of the Council, by motion, and such decision shall determine such member's right and obligation to vote. A member who is disqualified by conflict of interest in any matter shall not remain in the Chamber during the debate and vote on such matter, but shall request and be given the presiding officer's permission to recuse themselves. Any member having a "remote interest" in any matter as provided in Government Code shall divulge the same before voting.

**F. Requests for Technical Assistance and/or Reports**

A majority vote of the Council shall be required to direct staff to provide technical assistance, develop a report, initiate staff research, or respond to requests for information or service generated by an individual council member.

## II. MEETINGS

### A. Call to Order - Presiding Officer

The Mayor, or in the Mayor's absence, the Vice Mayor, shall take the chair precisely at the hour appointed by the meeting and shall immediately call the Council to order. Upon the arrival of the Mayor, the Vice Mayor shall immediately relinquish the chair. In the absence of the two officers specified in this section, the Councilmember present with the longest period of Council service shall preside.

### B. Roll Call

Before the Council shall proceed with the business of the Council, the City Clerk shall call the roll of the members and the names of those present shall be entered in the minutes. The later arrival of any absentee shall also be entered in the minutes.

### C. Quorum Call

During the course of the meeting, should the Chair note a Council quorum is lacking, the Chair shall call this fact to the attention of the City Clerk. The City Clerk shall issue a quorum call. If a quorum has not been restored within two minutes of a quorum call, the meeting shall be deemed automatically adjourned.

### D. Council Meeting Conduct of Business

The agenda for the regular business meetings shall include the following: Ceremonial Items (including comments from the City Auditor if requested); Comments from the City Manager; Comments from the Public; Consent Calendar; Action Calendar (Appeals, Public Hearings, Continued Business, Old Business, New Business); Information Reports; and Communication from the Public. Presentations and workshops may be included as part of the Action Calendar. The Chair will determine the order in which the item(s) will be heard with the consent of Council.

Upon request by the Mayor or any Councilmember, any item may be moved from the Consent Calendar or Information Calendar to the Action Calendar. Unless there is an objection by the Mayor or any Councilmember, the Council may also move an item from the Action Calendar to the Consent Calendar.

A public hearing that is not expected to be lengthy may be placed on the agenda for a regular business meeting. When a public hearing is expected to be contentious and lengthy and/or the Council's regular meeting schedule is heavily booked, the Agenda & Rules Committee, in conjunction with the staff, will schedule a special meeting exclusively for the public hearing. No other matters shall be placed on the agenda for the special meeting. All public comment will be considered as part of the public hearing and no separate time will be set aside for public comment not related to the public hearing at this meeting.

Except at meetings at which the budget is to be adopted, no public hearing may commence later than 10:00 p.m. unless there is a legal necessity to hold the hearing or make a decision at that meeting or the City Council determines by a two-thirds vote that there is a fiscal necessity to hold the hearing.

**E. Adjournment**

1. No Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items; and any motion to extend the meeting beyond 11:00 p.m. shall include a list of specific agenda items to be covered and shall specify in which order these items shall be handled.
2. Any items not completed at a regularly scheduled Council meeting may be continued to an Adjourned Regular Meeting by a two-thirds majority vote of the Council.

**F. Unfinished Business**

Any items not completed by formal action of the Council, and any items not postponed to a date certain, shall be considered Unfinished Business. All Unfinished Business shall be referred to the Agenda & Rules Committee for scheduling for a Council meeting that occurs within 60 days from the date the item last appeared on a Council agenda. The 60 day period is tolled during a Council recess.

**G. City Council Schedule and Recess Periods**

Pursuant to the Open Government Ordinance, the City Council shall hold a minimum of twenty-four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.

Regular meetings of the City Council shall be held generally two to three Tuesdays of each month; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.

Regular City Council meetings shall begin no later than 6:00 p.m.

A recess period is defined as a period of time longer than 21 days without a regular meeting of the Council.

When a recess period occurs, the City Manager is authorized to take such ministerial actions for matters of operational urgency as would normally be taken by the City Council during the period of recess except for those duties specifically reserved to the Council by the Charter, and including such emergency actions as are necessary for the immediate preservation of the public peace, health or safety; the authority to extend throughout the period of time established by the City Council for the period of recess.

The City Manager shall have the aforementioned authority beginning the day after the Agenda & Rules Committee meeting for the last regular meeting before a Council recess and this authority shall extend up to the date of the Agenda & Rules Committee meeting for the first regular meeting after the Council recess.

The City Manager shall make a full and complete report to the City Council at its first regularly scheduled meeting following the period of recess of actions taken by the City Manager pursuant to this section, at which time the City Council may make such findings as may be required and confirm said actions of the City Manager.

**H. Pledge of Allegiance to the Flag**

At the first meeting of each year following the August recess and at any subsequent meeting if specifically requested before the meeting by any member of the Council in order to commemorate an occasion of national significance, the first item on the Ceremonial Calendar will be the Pledge of Allegiance.

**I. Ad Hoc Subcommittees**

From time to time the Council or the Mayor may appoint several of its members but fewer than the existing quorum of the present body to serve as an ad hoc subcommittee. Only Councilmembers may be members of the ad hoc subcommittee; however, the subcommittee shall seek input and advice from residents, related commissions, and other groups. Ad Hoc Subcommittees must be reviewed annually by the Council to determine if the subcommittee is to continue.

Upon creation of an ad hoc subcommittee, the Council shall allow it to operate with the following parameters:

1. A specific charge or outline of responsibilities shall be established by the Council.
2. A target date must be established for a report back to the Council.
3. Maximum life of the subcommittee shall be one year, with annual review and possible extension by the Council.

Subcommittees shall conduct their meetings in locations that are open to the public and meet accessibility requirements under the Americans with Disabilities Act. Meetings may be held at privately owned facilities provided that the location is open to all that wish to attend and that there is no requirement for purchase to attend. Agendas for subcommittee meetings must be posted in the same manner as the agendas for regular Council meetings except that subcommittee agendas may be posted with 24-hour notice. The public will be permitted to comment on agenda items but public comments may be limited to one minute if deemed necessary by the Committee Chair. Agendas and minutes of the meetings must be maintained and made available upon request.

Ad hoc subcommittees will be staffed by City Council legislative staff. As part of the ad hoc subcommittee process, City staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item(s) under consideration. Staff analysis at ad hoc subcommittees is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

Subcommittees must be comprised of at least two members. If only two members are appointed, then both must be present in order for the subcommittee meeting to be held. In other words, the quorum for a two-member subcommittee is always two.

Ad hoc subcommittees may convene a closed session meeting pursuant to the conditions and regulations imposed by the Brown Act.

### III. AGENDA

#### A. Declaration of Policy

No ordinance, resolution, or item of business shall be introduced, discussed or acted upon before the Council at its meeting without prior thereto its having been published on the agenda of the meeting and posted in accordance with Section III.D.2. Exceptions to this rule are limited to circumstances listed in Section III.D.4.b and items continued from a previous meeting and published on a revised agenda.

#### B. Definitions

For purposes of this section, the terms listed herein shall be defined as follows:

1. "Agenda Item" means an item placed on the agenda (on either the Consent Calendar or as a Report For Action) for a vote of the Council by the Mayor or any Councilmember, the City Manager, the Auditor, or any board/commission/committee created by the City Council, or any Report For Information which may be acted upon if the Mayor or a Councilmember so requests. For purposes of this section, appeals shall be considered action items. All information from the City Manager concerning any item to be acted upon by the Council shall be submitted as a report on the agenda and not as an off-agenda memorandum and shall be available for public review, except to the extent such report is privileged and thus confidential such as an attorney client communication concerning a litigation matter. Council agenda items are limited to a maximum of three Co-Sponsors (in addition to the Primary Author). Co-Sponsors to Council reports may only be added in the following manner:
  - In the original item as submitted by the Primary Author
  - In a revised item submitted by the Primary Author at the Agenda & Rules Committee
  - By verbal request of the Primary Author at the Agenda & Rules Committee
  - In a revised item submitted by the Primary Author in Supplemental Reports and Communications Packet #1 or #2
  - By verbal or written request of the Mayor or any Councilmember at the Policy Committee meeting or meeting of the full council at which the item is considered

Agenda items shall contain all relevant documentation, including the information listed below.

- a) A descriptive title that adequately informs the public of the subject matter and general nature of the item or report;
- 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 report author that describes the action to be taken on the item, if applicable;

- 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.
  - k) Additional information and analysis as required. It is recommended that reports include the recommended points of analysis in the Council Report Guidelines in Appendix B.
2. "Primary Author" means the Mayor or Councilmember that initiated, authored, and submitted a council agenda item.
  3. "Co-Sponsor" means the Mayor or other Councilmembers designated by the Primary Author to be co-sponsor of the council agenda item.
  4. "Agenda" means the compilation of the descriptive titles of agenda items submitted to the City Clerk, arranged in the sequence established in Section III.E hereof.
  5. "Packet" means the agenda plus all its corresponding duplicated agenda items.
  6. "Emergency Matter" arises when prompt action is necessary due to the disruption or threatened disruption of public facilities and a majority of the Council determines that:
    - a) A work stoppage or other activity which severely impairs public health, safety, or both;
    - b) A crippling disaster, which severely impairs public health, safety or both. Notice of the Council's proposed consideration of any such emergency matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.
  7. "Continued Business" Items carried over from a prior agenda of a meeting occurring less than 11 days earlier.
  8. "Old Business" Items carried over from a prior agenda of a meeting occurring more than 11 days earlier.

## C. Procedure for Bringing Matters Before City Council

### 1. Persons Who Can Place Matters on the Agenda.

Matters may be placed on the agenda by the Mayor or any Councilmember, the City Manager, the Auditor, or any board/commission/committee created by the City Council. All items, other than board and commission items shall be subject to review by the Agenda & Rules Committee, which shall be a standing committee of the City Council.

The Agenda & Rules Committee shall meet 15 days prior to each City Council meeting and shall approve the agenda of that City Council meeting. Pursuant to BMC Section 1.04.080, if the 15<sup>th</sup> day prior to the Council meeting falls on a holiday, the Committee will meet the next business day. The Agenda & Rules Committee packet, including a draft agenda and Councilmember, Auditor, and Commission reports shall be distributed by 5:00 p.m. 4 days before the Agenda & Rules Committee meeting.

The Agenda & Rules Committee shall have the powers set forth below.

- a) **Items Authored by the Mayor, a Councilmember, or the Auditor.** As to items authored by the Mayor, a Councilmember, or the Auditor, the Agenda & Rules Committee shall review the item and may recommend that the matter be referred to a commission, to the City Manager, a Policy Committee, or back to the author for adherence to required form or for additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

The author of a “referred” item must inform the City Clerk within 24 hours of the adjournment of the Agenda & Rules Committee meeting whether they prefer to: 1) hold the item for a future meeting pending modifications as suggested by the Committee; 2) have the item appear on the Council agenda under consideration as originally submitted; 3) pull the item completely; or 4) re-submit the item with revisions as requested by the Agenda & Rules Committee within 24 hours of the adjournment of the Agenda & Rules Committee meeting for the Council agenda under consideration. Option 2 is not available for items eligible to be referred to a Policy Committee.

In the event that the City Clerk does not receive guidance from the author of the referred item within 24 hours of the Agenda & Rules Committee’s adjournment, the recommendation of the Agenda & Rules Committee will take effect.

Items held for a future meeting to allow for modifications will be placed on the next available Council meeting agenda at the time that the revised version is submitted to the City Clerk.

- b) **Items Authored by the City Manager.** The Agenda & Rules Committee shall review agenda descriptions of items authored by the City Manager. The Committee can recommend that the matter be referred to a commission or back to the City Manager for adherence to required form, additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

If the City Manager determines that the matter should proceed notwithstanding the Agenda & Rules Committee's action, it will be placed on the agenda as directed by the Manager. All City Manager items placed on the Council agenda against the recommendation of the Agenda & Rules Committee will automatically be placed on the Action Calendar.

- c) **Items Authored by Boards and Commissions.** Council items submitted by boards and commissions are subject to City Manager review and must follow procedures and timelines for submittal of reports as described in the Commissioners' Manual. The content of commission items is not subject to review by the Agenda & Rules Committee.

- i) For a commission item that does not require a companion report from the City Manager, the Agenda & Rules Committee may act on an agendaized commission report in the following manner:

1. Move a commission report from the Consent Calendar to the Action Calendar or from the Action Calendar to the Consent Calendar.
2. Re-schedule the commission report to appear on one of the next three regular Council meeting agendas that occur after the regular meeting under consideration. Commission reports submitted in response to a Council referral shall receive higher priority for scheduling.
3. Allow the item to proceed as submitted.

- ii) For any commission report that requires a companion report, the Agenda & Rules Committee may schedule the item on a Council agenda. The Committee must schedule the the commission item for a meeting occurring not sooner than 60 days and not later than 120 days from the date of the meeting under consideration by the Agenda & Rules Committee. A commission report submitted with a complete companion report may be scheduled pursuant to subparagraph c.i. above.

- d) The Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in Chapter III, Section E.



2. **Scheduling Public Hearings Mandated by State, Federal, or Local Statute.**  
The City Clerk may schedule a public hearing at an available time and date in those cases where State, Federal or local statute mandates the City Council hold a public hearing.
3. **Submission of Agenda Items.**
- a) **City Manager Items.** Except for Continued Business and Old Business, as a condition to placing an item on the agenda, agenda items from departments, including agenda items from commissions, shall be furnished to the City Clerk at a time established by the City Manager.
  - b) **Council and Auditor Items.** The deadline for reports submitted by the Auditor, Mayor and City Council is 5:00 p.m. on Monday, 22 days before each Council meeting.
  - c) **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 Councilmember is received by the City Clerk after established deadlines and is not included on the Agenda & Rules Committee's published agenda.  
  
The author of the report shall bring any reports submitted as Time Critical to the meeting of the Agenda & Rules Committee. Time Critical items must be accompanied by complete reports and statements of financial implications. If the Agenda & Rules Committee finds the matter to meet the definition of Time Critical, the Agenda & Rules Committee may place the matter on the Agenda on either the Consent or Action Calendar.
  - d) The City Clerk may not accept any agenda item after the adjournment of the Agenda & Rules Committee meeting, except for items carried over by the City Council from a prior City Council meeting occurring less than 11 days earlier, which may include supplemental or revised reports, and reports concerning actions taken by boards and commissions that are required by law or ordinance to be presented to the Council within a deadline that does not permit compliance with the agenda timelines in BMC Chapter 2.06 or these rules.
4. **Submission of Supplemental and Revised Agenda Material.**  
Berkeley Municipal Code Section 2.06.070 allows for the submission of supplemental and revised agenda material. Supplemental and revised material cannot be substantially new or only tangentially related to an agenda item. Supplemental material must be specifically related to the item in the Agenda Packet. Revised material should be presented as revised versions of the report or item printed in the Agenda Packet. Supplemental and revised material may be submitted for consideration as follows:
- a) Supplemental and revised agenda material shall be submitted to the City Clerk no later than 5:00 p.m. seven calendar days prior to the City Council

meeting at which it is to be considered. Supplemental and revised items that are received by the deadline shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. five calendar days prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Councilmember evaluation.

- b) Supplemental and revised agenda material submitted to the City Clerk after 5:00 p.m. seven days before the meeting and no later than 12:00 p.m. one day prior to the City Council meeting at which it is to be considered shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. one day prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Council evaluation.
- c) After 12:00 p.m. one calendar day prior to the meeting, supplemental or revised reports may be submitted for consideration by delivering a minimum of 42 copies of the supplemental/revised material to the City Clerk for distribution at the meeting. Each copy must be accompanied by a completed supplemental/revised material cover page, using the form provided by the City Clerk. Revised reports must reflect a comparison with the original item using track changes formatting. The material may be considered only if the City Council, by a two-thirds roll call vote, makes a factual determination that the good of the City clearly outweighs the lack of time for citizen review or City Councilmember evaluation of the material. Supplemental and revised material must be distributed and a factual determination made prior to the commencement of public comment on the agenda item in order for the material to be considered.

#### **5. Scheduling a Presentation.**

Presentations from staff are either submitted as an Agenda Item or are requested by the City Manager. Presentations from outside agencies and the public are coordinated with the Mayor's Office. The Agenda & Rules Committee may adjust the schedule of presentations as needed to best manage the Council Agenda.

### **D. Packet Preparation and Posting**

#### **1. Preparation of the Packet.**

Not later than the thirteenth day prior to said meeting, the City Clerk shall prepare the packet, which shall include the agenda plus all its corresponding duplicated agenda items. No item shall be considered if not included in the packet, except as provided for in Section III.C.4 and Section III.D.4.

**2. Distribution and Posting of Agenda.**

- a) The City Clerk shall post each agenda of the City Council regular meeting no later than 11 days prior to the meeting and shall post each agenda of a special meeting at least 24 hours in advance of the meeting in the official bulletin board. The City Clerk shall maintain an affidavit indicating the location, date and time of posting each agenda.
- b) The City Clerk shall also post agendas and annotated agendas of all City Council meetings and notices of public hearings on the City's website.
- c) No later than 11 days prior to a regular meeting, copies of the agenda shall be mailed by the City Clerk to any resident of the City of Berkeley who so requests in writing. Copies shall also be available free of charge in the City Clerk Department.

**3. Distribution of the Agenda Packet.**

The Agenda Packet shall consist of the Agenda and all supporting documents for agenda items. No later than 11 days prior to a regular meeting, the City Clerk shall:

- a) distribute the Agenda Packet to each member of the City Council;
- b) post the Agenda Packet to the City's website;
- c) place copies of the Agenda Packet in viewing binders in the office of the City Clerk and in the main branch of the Berkeley Public Library; and
- d) make the Agenda Packet available to members of the press.

**4. Failure to Meet Deadlines.**

- a) The City Clerk shall not accept any agenda item or revised agenda item after the deadlines established.
- b) Matters not included on the published agenda may be discussed and acted upon as otherwise authorized by State law or providing the Council finds one of the following conditions is met:
  - A majority of the Council determines that the subject meets the criteria of "Emergency" as defined in Section III.B.5.
  - Two thirds of the Council determines that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the posting of the agenda as required by law.
- c) Matters listed on the printed agenda but for which supporting materials are not received by the City Council on the eleventh day prior to said meeting as part of the agenda packet, shall not be discussed or acted upon.

**E. Agenda Sequence and Order of Business**

The Council agenda for a regular business meeting is to be arranged in the following order:

1. Preliminary Matters: (Ceremonial, Comments from the City Manager, Comments from the City Auditor, Non-Agenda Public Comment)
2. Consent Calendar
3. Action Calendar
  - a) Appeals
  - b) Public Hearings
  - c) Continued Business
  - d) Old Business
  - e) New Business
4. Information Reports
5. Non-Agenda Public Comment
6. Adjournment
7. Communications

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

The Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in this section.

**F. Closed Session Documents**

This section establishes a policy for the distribution of, and access to, confidential closed session documents by the Mayor and Members of the City Council.

1. Confidential closed session materials shall be kept in binders numbered from one to nine and assigned to the Mayor (#9) and each Councilmember (#1 to #8 by district). The binders will contain confidential closed session materials related to Labor Negotiations, Litigation, and Real Estate matters.
2. The binders will be maintained by City staff and retained in the Office of the City Attorney in a secure manner. City staff will bring the binders to each closed session for their use by the Mayor and Councilmembers. At other times, the binders will be available to the Mayor and Councilmembers during regular business hours for review in the City Attorney's Office. The binders may not be removed from the City Attorney's Office or the location of any closed session meeting by the Mayor or Councilmembers. City staff will collect the binders at the end of each closed session meeting and return them to the City Attorney's Office.

3. Removal of confidential materials from a binder is prohibited.
4. Duplication of the contents of a binder by any means is prohibited.
5. Confidential materials shall be retained in the binders for at least two years.
6. This policy does not prohibit the distribution of materials by staff to the Mayor and Councilmembers in advance of a closed session or otherwise as needed, but such materials shall also be included in the binders unless it is impracticable to do so.

## **G. Regulations Governing City Council Policy Committees**

### **1. Legislative Item Process**

All agenda items begin with submission to the Agenda & Rules Committee.

#### Full Council Track

Items under this category are exempt from Agenda & Rules Committee discretion to refer them to a Policy Committee. Items in this category may be submitted for the agenda of any scheduled regular meeting pursuant to established deadlines (same as existing deadlines). Types of Full Council Track items are listed below.

- a. Items submitted by the City Manager and City Auditor
- b. Items submitted by Boards and Commissions
- c. Resolutions on Legislation and Electoral Issues relating to Outside Agencies/Jurisdictions
- d. Position Letters and/or Resolutions of Support/Opposition
- e. Donations from the Mayor and Councilmember District Office Budgets
- f. Referrals to the Budget Process
- g. Proclamations
- h. Sponsorship of Events
- i. Information Reports
- j. Presentations from Outside Agencies and Organizations
- k. Ceremonial Items
- l. Committee and Regional Body Appointments

The Agenda & Rules Committee has discretion to determine if an item submitted by the Mayor or a Councilmember falls under a Full Council Track exception or if it will be processed as a Policy Committee Track item. If an item submitted by the Mayor or a Councilmember has 1) a significant lack of background or supporting information, or 2) significant grammatical or readability issues the Agenda & Rules committee may refer the item to a Policy Committee.

### Policy Committee Track

Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts will go first to the Agenda & Rules Committee on a draft City Council agenda.

The Agenda & Rules Committee must refer an item to a Policy Committee at the first meeting that the item appears before the Agenda & Rules Committee. The Agenda & Rules Committee may only assign the item to a single Policy Committee.

For a Policy Committee Track item, the Agenda & Rules Committee, at its discretion, may either route item directly to 1) the agenda currently under consideration, 2) one of the next three full Council Agendas (based on completeness of the item, lack of potential controversy, minimal impacts, etc.), or 3) to a Policy Committee.

### Time Critical Track

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 Mayor or Councilmember is received by the City Clerk after established deadlines and is not included on the Agenda & Rules Committee's published agenda.

The Agenda & Rules Committee retains final discretion to determine the time critical nature of an item.

- a) Time Critical items submitted on the Full Council Track deadlines, that would otherwise be assigned to the Policy Committee Track, may bypass Policy Committee review if determined to be time critical. If such an item is deemed not to be time critical, it may be referred to a Policy Committee.
- b) Time Critical items on the Full Council Track or Policy Committee Track that are submitted at a meeting of the Agenda & Rules Committee may go directly on a council agenda if determined to be time critical.

## **2. Council Referrals to Committees**

The full Council may refer any agenda item to a Policy Committee by majority vote.

## **3. Participation Rules for Policy Committees Pursuant to the Brown Act**

- a. The quorum of a three-member Policy Committee is always two members. A majority vote of the committee (two 'yes' votes) is required to pass a motion.
- b. Two Policy Committee members may not discuss any item that has been referred to the Policy Committee outside of an open and noticed meeting.
- c. Notwithstanding paragraph (b) above, two members of a Policy Committee may co-author an item provided that one of the authors will not serve as a committee member for consideration of the item, and shall not participate in the committee's discussion of, or action on the item. For purposes of the item, the appointed

- alternate will serve as a committee member in place of the non-participating co-author.
- d. All three members of a Policy Committee may not be co-authors of an item that will be heard by the committee.
  - e. Only one co-author who is not a member of the Policy Committee may attend the committee meeting to participate in discussion of the item.
  - f. If two or more non-committee members are present for any item or meeting, then all non-committee members may act only as observers and may not participate in discussion. If an author is present to participate in the discussion of their item, no other Councilmembers, nor the Mayor, may attend as observers.
  - g. An item may be considered by only one Policy Committee before it goes to the full Council.

#### **4. Functions of the Committees**

Committees shall have the following qualities/components:

- a. All committees are Brown Act bodies with noticed public meetings and public comment. Regular meeting agendas will be posted at least 72 hours in advance of the meeting.
- b. Minutes shall be available online.
- c. Committees shall adopt regular meeting schedules, generally meeting once or twice per month; special meetings may be called when necessary, in accordance with the Brown Act.
- d. Generally, meetings will be held at 2180 Milvia Street in publicly accessible meeting rooms that can accommodate the committee members, public attendees, and staff.
- e. Members are recommended by the Mayor and approved by the full Council no later than January 31 of each year. Members continue to serve until successors are appointed and approved.
- f. Chairs are elected by the Committee at the first regular meeting of the Committee after the annual approval of Committee members by the City Council. In the absence of the Chair, the committee member with the longest tenure on the Council will preside.
- g. The Chair, or a quorum of the Committee may call a meeting or cancel a meeting of the Policy Committee.
- h. Committees will review items for completeness in accordance with Section III.B.2 of the City Council Rules of Procedure and Order and alignment with Strategic Plan goals.
- i. Reports leaving a Policy Committee must adequately include budget implications, administrative feasibility, basic legal concerns, and staff resource demands in order to allow for informed consideration by the full Council.
- j. Per Brown Act regulations, any such materials must be direct revisions or supplements to the item that was published in the agenda packet.

Items referred to a Policy Committee from the Agenda & Rules Committee or from the City Council must be agendized for a committee meeting within 60 days of the referral date.

Within 120 days of the referral date, the committee must vote to either (1) accept the author's request that the item remain in committee until a date certain (more than one extension may be requested by the author); or (2) send the item to the Agenda & Rules Committee to be placed on a Council Agenda with a Committee recommendation consisting of one of the four options listed below.

1. Positive Recommendation (recommending Council pass the item as proposed),
2. Qualified Positive Recommendation (recommending Council pass the item with some changes),
3. Qualified Negative Recommendation (recommending Council reject the item unless certain changes are made) or
4. Negative Recommendation (recommending the item not be approved).

The Policy Committee's recommendation will be included in a separate section of the report template for that purpose.

A Policy Committee may not refer an item under its consideration to a city board or commission.

The original Council author of an item referred to a Policy Committee is responsible for revisions and resubmission of the item back to the full Council. Items originating from the City Manager are revised and submitted by the appropriate city staff. Items from Commissions are revised and resubmitted by the members of the Policy Committee. Items and Recommendations originating from the Policy Committee are submitted to the agenda process by the members of the committee.

If a Policy Committee does not take final action by the 120-day deadline, the item is returned to the Agenda & Rules Committee and appears on the next available Council agenda. The Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the next Council agenda. Items appearing on a City Council agenda due to lack of action by a Policy Committee may not be referred to a Policy Committee and must remain on the full Council agenda for consideration.

Non-legislative or discussion items may be added to the Policy Committee agenda by members of the Committee with the concurrence of a quorum of the Committee. These items are not subject to the 120-day deadline for action.

Once the item is voted out of a Policy Committee, the final item will be resubmitted to the agenda process by the author, and it will return to the Agenda & Rules Committee on the



next available agenda. The Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the following Council agenda. Only items that receive a Positive Recommendation can be placed on the Consent Calendar.

The lead author may request expedited committee review for items referred to a committee. Criteria for expedited review is generally to meet a deadline for action (e.g. grant deadline, specific event date, etc.). If the committee agrees to the request, the deadline for final committee action is 45 days from the date the committee approves expedited review.

### **5. Number and Make-up of Committees**

Six committees are authorized, each comprised of three Councilmembers with a fourth Councilmember appointed as an alternate. Each Councilmember and the Mayor will serve on two committees. The Mayor shall be a member of the Agenda and Rules Committee. The committees are as follows:

1. Agenda and Rules Committee
2. Budget and Finance Committee
3. Facilities, Infrastructure, Transportation, Environment, and Sustainability
4. Health, Life Enrichment, Equity, and Community
5. Land Use, Housing, and Economic Development
6. Public Safety

The Agenda & Rules Committee shall establish the Policy Committee topic groupings, and may adjust said groupings periodically thereafter in order to evenly distribute expected workloads of various committees.

All standing Policy Committees of the City Council are considered “legislative bodies” under the Brown Act and must conduct all business in accordance with the Brown Act.

### **6. Role of City Staff at Committee Meetings**

Committees will be staffed by appropriate City Departments and personnel. As part of the committee process, staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item. Staff analysis at the Policy Committee level is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

## IV. CONDUCT OF MEETING

### A. Comments from the Public

Public comment will be taken in the following order:

- An initial ten-minute period of public comment on non-agenda items, after the commencement of the meeting and immediately after Ceremonial Matters and City Manager Comments.
- Public comment on the Consent and Information Calendars.
- Public comment on action items, appeals and/or public hearings as they are taken up under procedures set forth in the sections governing each below.
- Public comment on non-agenda items from any speakers who did not speak during the first round of non-agenda public comment at the beginning of the meeting.

Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. A speaker wishing to yield their time shall identify themselves, shall be recognized by the chair, and announce publicly their intention to yield their time. Disabled persons shall have priority seating in the front row of the public seating area.

A member of the public may only speak once at public comment on any single item, unless called upon by the Mayor or a Councilmember to answer a specific inquiry.

#### 1. Public Comment on Consent Calendar and Information Items.

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.”

The Council will then take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. A speaker may only speak once during the period for public comment on Consent Calendar and Information items. 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, the Mayor or 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.

**2. Public Comment on Action Items.**

After the initial ten minutes of public comment on non-agenda items and public comment and action on consent items, the public may comment on each remaining item listed on the agenda for action as the item is taken up.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, each speaker 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.

This procedure also applies to public hearings except those types of public hearings specifically provided for in this section.

**3. Appeals Appearing on Action Calendar.**

With the exception of appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission, appeals from decisions of City commissions appear on the "Action" section of the Council Agenda. Council determines whether to affirm the action of the commission, set a public hearing, or remand the matter to the commission. Appeals of proposed special assessment liens shall also appear on the "Action" section of the Council Agenda. Appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission are automatically set for public hearing and appear on the "Public Hearings" section of the Council Agenda.

Time shall be provided for public comment for persons representing both sides of the action/appeal and each side will be allocated seven minutes to present their comments on the appeal. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have seven minutes to comment and the applicant shall have seven minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have seven minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have seven minutes to comment and the persons supporting the action of the board or commission on appeal shall have seven minutes to comment. In the case of an appeal of proposed special assessment lien, the appellant shall have seven minutes to comment.

After the conclusion of the seven-minute comment periods, members of the public may comment on the appeal. Comments from members of the public regarding appeals shall be limited to one minute per speaker. Any person that addressed the Council during one of the seven-minute periods may not speak again during the public comment period on the appeal. Speakers may yield their time to one other speaker, however, no speaker shall have more than two minutes. Each side shall be informed of this public comment procedure at the time the Clerk notifies the parties of the date the appeal will appear on the Council agenda.

**4. Public Comment on Non Agenda Matters.**

Immediately following Ceremonial Matters and the City Manager Comments and prior to the Consent Calendar, 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.

Persons submitting speaker cards are not required to list their actual name, however they must list some identifying information or alternate name in order to be called to speak.

For the second round of public comment on non-agenda matters, the Presiding Officer retains the authority to limit the number of speakers by subject. The Presiding Officer will generally request that persons wishing to speak, line up at the podium to be recognized to determine the number of persons interested in speaking at that time. Each speaker will be entitled to speak for two minutes each unless the Presiding Officer determines that one-minute is appropriate given the number of speakers.

Pursuant to this document, no Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items. If any agenda item remains unfinished at 11:00 p.m. or the expiration of any extension after 11:00 p.m., it will be referred to the Agenda & Rules Committee for scheduling pursuant to Chapter II, Section F. In that event, the meeting shall be automatically extended for up to fifteen (15) minutes for public comment on non-agenda items.

**5. Ralph M. Brown Act Pertaining to Public Comments.**

The "Brown Act" prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the agenda. However, the Council may refer a matter to the City Manager.

**B. Consent Calendar**

There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, Councilmembers, boards, commissions, City Auditor and City Manager deem to be of such nature that no debate or inquiry will be necessary at the Council meetings. Ordinances for second reading may be included in the Consent Calendar.

It is the policy of the Council that the Mayor or Councilmembers wishing to ask questions concerning Consent Calendar items should ask questions of the contact person identified prior to the Council meeting so that the need for discussion of consent calendar items can be minimized.

Consent Calendar items may be moved to the Action Calendar by the Council. Action items may be reordered at the discretion of the Chair with the consent of Council.

**C. Information Reports Called Up for Discussion**

Reports for Information designated for discussion at the request of the Mayor or any Councilmember shall be added to the appropriate section of the Action Calendar and may be acted upon at that meeting or carried over as pending business until discussed or withdrawn. The agenda will indicate that at the request of Mayor or any Councilmember a Report for Information may be acted upon by the Council.

**D. Communications**

Letters from the public will not appear on the Council agenda as individual matters for discussion but will be distributed as part of the Council agenda packet with a cover sheet identifying the author and subject matter and will be listed under "Communications." All such communications must have been received by the City Clerk no later than 5:00 p.m. fifteen days prior to the meeting in order to be included on the agenda.

In instances where an individual forwards more than three pages of email messages not related to actionable items on the Council agenda to the Council to be reproduced in the "Communications" section of the Council packet, the City Clerk will not reproduce the entire email(s) but instead refer the public to the City's website or a hard copy of the email(s) on file in the City Clerk Department.

All communications shall be simply deemed received without any formal action by the Council. The Mayor or a Councilmember may refer a communication to the City Manager for action, if appropriate, or prepare a consent or action item for placement on a future agenda.

Communications related to an item on the agenda that are received after 5:00 p.m. fifteen days before the meeting are published as provided for in Chapter III.C.4.

**E. Public Hearings for Land Use, Zoning, Landmarks, and Public Nuisance Matters**

The City Council, in setting the time and place for a public hearing, may limit the amount of time to be devoted to public presentations. Staff shall introduce the public hearing item and present their comments.

Following any staff presentation, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Such reports shall include a brief statement describing the name, date, place, and content of the contact. Written reports shall be available for public review

in the office of the City Clerk prior to the meeting and placed in a file available for public viewing at the meeting.

This is followed by five-minute presentations each by the appellant and applicant. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have five minutes to comment and the applicant shall have five minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have five minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have five minutes to comment and the persons supporting the action of the board or commission on appeal shall have five minutes to comment. In the case of a public nuisance determination, the representative(s) of the subject property shall have five minutes to present.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, each speaker 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. Any person that addressed the Council during one of the five-minute periods may not speak again during the public comment period on the appeal. 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.

#### **F. Work Sessions**

The City Council may schedule a matter for general Council discussion and direction to staff. Official/formal action on a work session item will be scheduled on a subsequent agenda under the Action portion of the Council agenda.

In general, public comment at Council work sessions will be heard after the staff presentation, for a limited amount of time to be determined by the Presiding Officer.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking, each speaker 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.

After Council discussion, if time permits, the Presiding Officer may allow additional public comment. During this time, each speaker will receive one minute. Persons who spoke during the prior public comment time may be permitted to speak again.

**H. Protocol**

People addressing the Council may first give their name in an audible tone of voice for the record. All remarks shall be addressed to the Council as a body and not to any member thereof. No one other than the Council and the person having the floor shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer. No question shall be asked of a Councilmember except through the Presiding Officer.

## V. PROCEDURAL MATTERS

### A. Persons Authorized to Sit at Tables

No person, except City officials, their representatives and representatives of boards and commissions shall be permitted to sit at the tables in the front of the Council Chambers without the express consent of the Council.

### B. Decorum

No person shall disrupt the orderly conduct of the Council meeting. Prohibited disruptive behavior includes but is not limited to shouting, making disruptive noises, such as boos or hisses, creating or participating in a physical disturbance, speaking out of turn or in violation of applicable rules, preventing or attempting to prevent others who have the floor from speaking, preventing others from observing the meeting, entering into or remaining in an area of the meeting room that is not open to the public, or approaching the Council Dais without consent. Any written communications addressed to the Council shall be delivered to the City Clerk for distribution to the Council.

### C. Enforcement of Decorum

When the public demonstrates a lack of order and decorum, the presiding officer shall call for order and inform the person(s) that the conduct is violating the Rules of Order and Procedure and provide a warning to the person(s) to cease the disruptive behavior. Should the person(s) fail to cease and desist the disruptive conduct, the presiding officer may call a five (5) minute recess to allow the disruptions to cease.

If the meeting cannot be continued due to continued disruptive conduct, the presiding officer may have any law enforcement officer on duty remove or place any person who violates the order and decorum of the meeting under arrest and cause that person to be prosecuted under the provisions of applicable law.

### D. Precedence of Motions

When a question is before the Council, no motion shall be entertained except:

1. To adjourn,
2. To fix the hour of adjournment,
3. To lay on the table,
4. For the previous question,
5. To postpone to a certain day,
6. To refer,
7. To amend,
8. To substitute, and
9. To postpone indefinitely.



These motions shall have precedence in order indicated. Any such motion, except a motion to amend or substitute, shall be put to a vote without debate.

**E. Roberts Rules of Order**

Roberts Rules of Order have been adopted by the City Council and apply in all cases except the precedence of motions in Section V.D shall supersede.

**F. Rules of Debate**

**1. Presiding Officer May Debate.**

The presiding officer may debate from the chair; subject only to such limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges as a member of the Council by reason of that person acting as the presiding officer.

**2. Getting the Floor - Improper References to be avoided.**

Members desiring to speak shall address the Chair, and upon recognition by the presiding officer, shall confine themselves to the question under debate.

**3. Interruptions.**

A member, once recognized, shall not be interrupted when speaking unless it is to call a member to order, or as herein otherwise provided. If a member, while speaking, were called to order, that member shall cease speaking until the question of order is determined, and, if in order, the member shall be permitted to proceed.

**4. Privilege of Closing Debate.**

The Mayor or Councilmember moving the adoption of an ordinance or resolution shall have the privilege of closing the debate. When a motion to call a question is passed, the Mayor or Councilmember moving adoption of an ordinance, resolution or other action shall have three minutes to conclude the debate.

**5. Motion to Reconsider.**

A motion to reconsider any action taken by the Council may be made only during the same session such action is taken. It may be made either immediately during the same session, or at a recessed or adjourned session thereof. Such motion must be made by a member on the prevailing side, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable. Nothing herein shall be construed to prevent any member of the Council from making or remaking the same or other motion at a subsequent meeting of the Council.

**6. Repeal or Amendment of Action Requiring a Vote of Two-Thirds of Council, or Greater.**

Any ordinance or resolution which is passed and which, as part of its terms, requires a vote of two-thirds of the Council or more in order to pass a motion pursuant to such an ordinance or resolution, shall require the vote of the same percent of the Council to repeal or amend the ordinance or resolution.

**G. Debate Limited**

1. Consideration of each matter coming before the Council shall be limited to 20 minutes from the time the matter is first taken up, at the end of which period consideration of such matter shall terminate and the matter shall be dropped to the foot of the agenda, immediately ahead of Information Reports; provided that either of the following two not debatable motions shall be in order:
  - a) A motion to extend consideration which, if passed, shall commence a new twenty-minute period for consideration; or
  - b) If there are one or more motions on the floor, the previous question, which, if passed, shall require an immediate vote on pending motions.
2. The time limit set forth in subparagraph 1 hereof shall not be applicable to any public hearing, public discussion, Council discussion or other especially set matter for which a period of time has been specified (in which case such specially set time shall be the limit for consideration) or which by applicable law (e.g. hearings of appeals, etc.), the matter must proceed to its conclusion.
3. In the interest of expediting the business of the City, failure by the Chair or any Councilmember to call attention to the expiration of the time allowed for consideration of a matter, by point of order or otherwise, shall constitute unanimous consent to the continuation of consideration of the matter beyond the allowed time; provided, however, that the Chair or any Councilmember may at any time thereafter call attention to the expiration of the time allowed, in which case the Council shall proceed to the next item of business, unless one of the motions referred to in Section D hereof is made and is passed.

**H. Motion to Lay on Table**

A motion to lay on the table shall preclude all amendments or debate of the subject under consideration. If the motion shall prevail, the consideration of the subject may be resumed only upon a motion of a member voting with the majority and with consent of two-thirds of the members present.

**I. Division of Question**

If the question contains two or more propositions, which can be divided, the presiding officer may, and upon request of a member shall, divide the same.

**J. Addressing the Council**

Under the following headings of business, unless the presiding officer rules otherwise, any interested person shall have the right to address the Council in accordance with the following conditions and upon obtaining recognition by the presiding officer:

**1. Written Communications.**

Interested parties or their authorized representatives may address the Council in the form of written communications in regard to matters of concern to them by submitting their written communications at the meeting, or prior to the meeting pursuant to the deadlines in Chapter III.C.4.

**2. Public Hearings.**

Interested persons or their authorized representatives may address the Council by reading protests, petitions, or communications relating to matters then under consideration.

**3. Public Comment.**

Interested persons may address the Council on any issue concerning City business during the period assigned to Public Comment.

**K. Addressing the Council After Motion Made**

When a motion is pending before the Council, no person other than the Mayor or a Councilmember shall address the Council without first securing the permission of the presiding officer or Council to do so.

## VI.FACILITIES

### A. Council Chamber Capacity

Attendance at council meetings shall be limited to the posted seating capacity of the meeting location. Entrance to the meeting location will be appropriately regulated by the City Manager on occasions when capacity is likely to be exceeded. While the Council is in session, members of the public shall not remain standing in the meeting room except to address the Council, and sitting on the floor shall not be permitted.

### B. Alternate Facilities for Council Meetings

The City Council shall approve in advance a proposal that a Council meeting be held at a facility other than the School District Board Room.

If the City Manager has reason to anticipate that the attendance for a meeting will be substantially greater than the capacity of the Board Room and insufficient time exists to secure the approval of the City Council to hold the meeting at an alternate facility, the City Manager shall make arrangements for the use of a suitable alternate facility to which such meeting may be recessed and moved, if the City Council authorizes the action.

If a suitable alternate facility is not available, the City Council may reschedule the matter to a date when a suitable alternate facility will be available.

Alternate facilities are to be selected from those facilities previously approved by the City Council as suitable for meetings away from the Board Room.

### C. Signs, Objects, and Symbolic Materials

Objects and symbolic materials such as signs which do not have sticks or poles attached or otherwise create any fire or safety hazards will be allowed within the meeting location during Council meetings.

### D. Fire Safety

Exits shall not be obstructed in any manner. Obstructions, including storage, shall not be placed in aisles or other exit ways. Hand carried items must be stored so that such items do not inhibit passage in aisles or other exit ways. Attendees are strictly prohibited from sitting in aisles and/or exit ways. Exit ways shall not be used in any way that will present a hazardous condition.

### E. Overcrowding

Admittance of persons beyond the approved capacity of a place of assembly is prohibited. When the meeting location has reached the posted maximum capacity, additional attendees shall be directed to the designated overflow area.

## APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

### Purpose

To establish a uniform policy regarding the naming and renaming of existing and future parks, streets, pathways and other public facilities.

### Objective

- A. To ensure that naming public facilities (such as parks, streets, recreation facilities, pathways, open spaces, public building, bridges or other structures) will enhance the values and heritage of the City of Berkeley and will be compatible with community interest.

### Section 1 – Lead Commission

The City Council designates the following commissions as the ‘Lead Commissions’ in overseeing, evaluating, and ultimately advising the Council in any naming or renaming of a public facility. The lead commission shall receive and coordinate comment and input from other Commissions and the public as appropriate.

#### Board of Library Trustees

Parks and Recreation Commission –Parks, recreation centers, camps, plazas and public open spaces

Public Works Commission –Public buildings (other than recreation centers), streets and bridges or other structures in the public thoroughfare.

Waterfront Commission –Public facilities within the area of the City known as the Waterfront, as described in BMC 3.36.060.B.

### Section 2 – General Policy

- A. Newly acquired or developed public facilities shall be named immediately after acquisition or development to ensure appropriate public identity.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. Public facilities that are renamed must follow the same criteria for naming new facilities. In addition, the historical significance and geographical reference of the established name should be considered when weighing and evaluating any name change.
- D. The City encourages the recognition of individuals for their service to the community in ways that include the naming of activities such as athletic events, cultural presentations, or annual festivals, which do not involve the naming or renaming of public facilities.
- E. Unless restricted by covenant, facilities named after an individual should not necessarily be considered a perpetual name.

### Section 3 – Criteria for Naming of Public Facilities

When considering the naming of a new public facility or an unnamed portion or feature within an already named public facility (such as a room within the facility or a feature within an established park), or, the renaming of an existing public facility the following criteria shall be applied:

- A. Public Facilities are generally easier to identify by reference to adjacent street names, distinct geographic or environmental features, or primary use activity. Therefore, the preferred practice is to give City-owned property a name of historical or geographical significance and to retain these names.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. The naming of a public facility or any parts thereof in recognition of an individual posthumously may only be considered if the individual had a positive effect on the community and has been deceased for more than 1 year.
- D. When a public facility provides a specific programmatic activity, it is preferred that the activity (e.g. skateboard park, baseball diamond) be included in the name of the park or facility.
- E. When public parks are located adjacent to elementary schools, a name that is the same as the adjacent school shall be considered.
- F. When considering the renaming of an existing public facility, in addition to applying criteria A-E above, proper weight should be given to the fact that: a name lends a site or property authenticity and heritage; existing names are presumed to have historic significance; and historic names give a community a sense of place and identity, continuing through time, and increases the sense of neighborhood and belonging.

#### Section 4 –Naming Standards Involving a Major Contribution

When a person, group or organization requests the naming or renaming of a public facility, all of the following conditions shall be met:

- A. An honoree will have made a major contribution towards the acquisition and/or development costs of a public facility or a major contribution to the City.
- B. The honoree has a record of outstanding service to their community
- C. Conditions of any donation that specifies that name of a public facility, as part of an agreement or deed, must be approved by the City Council, after review by and upon recommendation of the City Manager.

#### Section 5 –Procedures for Naming or Renaming of Public Facilities

- A. Any person or organization may make a written application to the City Manager requesting that a public facility or portion thereof, be named or renamed.
  - 1. Recommendations may also come directly of the City Boards or Commissions, the City Council, or City Staff.
- B. The City Manager shall refer the application to the appropriate lead commission as defined in Section 1 of the City's policy on naming of public facilities, for that commission's review, facilitation, and recommendation of disposition.
  - 1. The application shall contain the name or names of the persons or organization making the application and the reason for the requested naming or renaming.
- C. The lead commission shall review and consider the application, using the policies and criteria articulated to the City Policy on Naming and Renaming to make a recommendation to Council.
  - 1. All recommendations or suggestion will be given the same consideration without regard to the source of the nomination
- D. The lead commission shall hold a public hearing and notify the general public of any discussions regarding naming or renaming of a public facility.

1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.
- E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

## APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These 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 & Rules 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 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 are intended to 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.



## Guidelines for 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, Programs, Policies and Laws
  7. Actions/Alternatives Considered
  8. Consultation/Outreach Overview and Results
  9. Rationale for Recommendation
  10. Implementation, Administration and Enforcement
  11. Environmental Sustainability
  12. Fiscal Impacts
  13. Outcomes and Evaluation
  14. Contact Information
  15. Attachments/Supporting Materials
- 

**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

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
- Other relevant precedents and plans

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. Environmental Sustainability**

Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

**12. 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.

**13. 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 or evaluation is recommended.

**14. Contact Information**

**15. Attachments/Supporting Materials**