



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

MONDAY, JANUARY 27, 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 13, 2020**
2. **Review and Approve Draft Agendas:**
 - a. 2/11/20 – 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. Updating Berkeley Telecom Ordinances and BMC codes (Item contains revised material)

From: Councilmember Davila

Referred: November 25, 2019

Due: May 24, 2020

Recommendation: Adopt a resolution directing the City Manager 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

Unscheduled Items

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

9. 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

10. 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, February 10, 2020

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**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 23, 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 13, 2020**

**2:30 P.M.**

2180 Milvia Street, 6<sup>th</sup> Floor, Berkeley, CA – Redwood Room

Committee Members:

Mayor Jesse Arreguin, Councilmembers Kate Harrison and Susan Wengraf

**Roll Call:** 2:32 p.m. All present.

**Public Comment** – 1 speaker

## Review of Agendas

### 1. Approval of Minutes: January 6, 2020

**Action:** M/S/C (Harrison/Wengraf) to approve the minutes of 1/6/20.

**Vote:** All Ayes.

### 2. Review and Approve Draft Agendas:

a. 1/28/20 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Wengraf/Harrison) to approve the agenda of the 1/28/20 meeting with the revisions noted below.

**Vote:** All Ayes.

- *Ceremonial Items: Young Musicians Choral Orchestra; John McNamara*
- *Item 8 Dorothy Day House (Davila) – revised item submitted*
- *Item 9 Bus Lane (Robinson) – Mayor Arreguin added as a co-sponsor*
- *Item 10 Bus Rapid Transit (Robinson) – referred to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee*
- *Item 14 Source of Income (Homeless Commission) – Rescheduled to April 14 to allow time for a City Manager companion report*
- *Item 19 Regional Leadership Goals (Arreguin) – removed from the agenda*

#### Policy Committee Track Items

- *Item 15 Council Appointments (Arreguin) – scheduled for 1/28/20 Consent Calendar*
- *Item 16 New Border Vision (Arreguin) – Councilmembers Harrison, Hahn, and Robinson added as co-sponsors; scheduled for 1/28/20 Consent Calendar*
- *Item 17 RV Parking (Kesarwani) – Mayor Arreguin and Councilmember Harrison added as co-sponsors; scheduled for the 1/28/20 Action Calendar*

#### Order of Items on Action Calendar

*Item 11 Cannabis Ordinance*

*Item 12 Surveillance Technology Report*

*Item 13 goBerkeley*

*Item 17 RV Parking*

3. **Selection of Item for the Berkeley Considers Online Engagement Portal**
  - Selected Item 17 regarding RV Parking
4. **Adjournments In Memory – None**

## Scheduling

5. **Council Worksessions Schedule**
  - Undergrounding Task Force presentation removed and rescheduled to a special meeting on March 24, 2020.
6. **Council Referrals to Agenda Committee for Scheduling – no action**
7. **Land Use Calendar – no action**

## 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  
**Action:** 3 speakers. M/S/C (Arreguin/Harrison) to approve the item with a Qualified Positive Recommendation, revised to recommend that the Rules of Procedure be amended to state that the use of digital communication such as e-mail and texting is discouraged by members of the Council during regular and

special meetings. In addition, the Rules will be amended to prohibit the use of any digital devices during closed session meetings except for the use of City-issued digital devices for the sole purpose of reviewing notes and agendas.

**Vote:** All Ayes.

**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:** 1 speaker. Revised item submitted. The item will remain in committee and be scheduled for the Council agenda when the Telecommunications Ordinance changes from the City Manager are scheduled for the Council agenda.

**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:** Moved to Unscheduled Calendar for the January 27, 2020 agenda. Presentation scheduled before Council on 2/25/20.

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

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 3:15 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on January 13, 2020

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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, February 11, 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. Approving a Partial Assignment and Third Amendment to the Disposition and Development Agreement, Ground Leases, and Certain Related Documents for 2012 Berkeley Way**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,684-N.S. approving a Partial Assignment and Third Amendment to the Disposition and Development Agreement for 2012 Berkeley Way, the three ground leases outlined in the Disposition and Development Agreement, and two Reciprocal Easement, Maintenance and Joint Use Agreements required for project operations.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400
- 2. Appointment of Director of Health, Housing, and Community Services Department**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution confirming the appointment of Lisa Warhuus as the Director of the Health, Housing and Community Services Department (HHCS) to be effective March 9, 2020 at an annual salary of \$188,000  
**Financial Implications:** Various Funds - \$188,000  
Contact: Dee Williams-Ridley, City Manager, (510) 981-7000

## Consent Calendar

**3. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on February 11, 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:** Various Funds - 12,528,300

Contact: Henry Oyekanmi, Finance, (510) 981-7300

**4. Contract No. 9649 Amendment: Sloan Sakai LLP for Continued Chief Labor Negotiator Services**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9649 increasing the contract amount by \$235,000 with Sloan Sakai LLP for Chief Labor Negotiator services, for a revised total contract amount not to exceed \$450,000.

**Financial Implications:** General Fund - \$235,000

Contact: LaTanya Bellow, Human Resources, (510) 981-6800

**5. Funding Application: State of California Department of Housing and Community Development for CalHome Funds**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager, or her designee, to submit an application to the State of California Department of Housing and Community Development (HCD) for a minimum of \$1,000,000 and up to \$5,000,000 in funding under the CalHome Owner-Occupied Rehabilitation Program, and if awarded, execute the Standard Agreement, and any subsequent amendments or modifications thereto.

**Financial Implications:** See report

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

## Consent Calendar

**6. Jointly Apply for Infill Infrastructure Grant Funding for Projects Seeking City Funding through the 2019 Housing Trust Fund Request for Proposals**  
**From: City Manager**

**Recommendation:** Adopt two resolutions that enable affordable housing development projects that applied for City funding through the 2019 Housing Trust Fund Request for Proposals to access State of California Infill Infrastructure Grant (IIG) funds by:

1. Authorizing the City Manager to prepare and submit a joint application with each of the following developers proposing to use IIG funds: a. Satellite Affordable Housing Associates (for Blake Apartments at 2527 San Pablo); b. Resources for Community Development (for Maudelle Miller Shirek Community at 2001 Ashby); 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 applications, entering into the State's Standard Agreement and other documents.

**Financial Implications:** See report

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

**7. Contract No. 19F-4404: Community Services Block Grant Discretionary Funding for June 1, 2019 – May 31, 2020**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to modify the scope and deliverables for Community Services Block Grant (CSBG) Contract Number 19F-4404 and execute any resultant agreements and amendments to provide services to low-income people for the period June 1, 2019 – May 31, 2020. Instead of providing short-term rental assistance, CSBG funds will be used for a mobile shower program operated by Project We Hope's Dignity on Wheels.

**Financial Implications:** See report

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

## Council Consent Items

**8. Support of HR 5038 – Farm Workforce Modernization Act of 2019**

**From: Mayor Arreguin**

**Recommendation:** Adopt a Resolution supporting House Resolution (HR) 5038 – the Farm Workforce Modernization Act of 2019. Send a copy of the Resolution to Representatives Zoe Lofgren and Barbara Lee, Senators Dianne Feinstein and Kamala Harris, and President Donald Trump.

**Financial Implications:** None

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



## Council Consent Items

9. **Support of HR 5609 - Homelessness Emergency Declaration Act**  
**From: Mayor Arreguin and Councilmember Hahn**  
**Recommendation:** Adopt a Resolution supporting House Resolution (HR) 5609, the Homelessness Emergency Declaration Act. Send a copy of the Resolution to Representatives Josh Harder and Barbara Lee, Senators Dianne Feinstein and Kamala Harris, and President Trump.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
10. **Referral: Electric Moped Ride-Share Franchise Agreement** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee)*  
**From: Councilmember Robinson**  
**Recommendation:** Refer to the City Manager to rename the existing One-Way Car Share Program as the One-Way Vehicle Share Program and to amend the Program to include administrative requirements and parking permit fees for motorized bicycles that are affixed with license plates and require a driver's license for individuals to operate them (mopeds), in coordination with the City of Oakland.  
**Financial Implications:** See report  
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 – Old Business

### 11. Recommendations Related to Code Enforcement and Receivership Actions

*(Continued from January 21, 2020)*

**From: Health, Life Enrichment, Equity, and Community Committee**

**Recommendation:** On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee took action to send an item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;
- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

**Financial Implications:** See report

Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150, Rashi Kesarwani, Councilmember, District 1, (510) 981-7110, Cheryl Davila, Councilmember, District 2, (510) 981-7120

## Action Calendar – New Business

### 12. Discussion and Direction Regarding Potential Ballot Measures for the November 3, 2020 General Municipal Election

**From: City Manager**

**Recommendation:** Discuss possible ballot measures for November 2020, and provide direction to the City Manager about which issues to include in a community survey.

**Financial Implications:** See report

Contact: Dave White, City Manager's Office, (510) 981-7000

## Action Calendar – New Business

### 13. Electric Bike Share Program Franchise Amendment

**From:** City Manager

**Recommendation:** Adopt a Resolution declaring the Council's intention to set a public hearing for March 10, 2020, at 6:00 p.m., to consider whether to grant a Franchise Agreement Amendment to Bay Area Motivate, LLC, a subsidiary of Lyft Incorporated, to provide shared electric bicycles to the Berkeley public.

**Financial Implications:** See report

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

## Council Action Items

### 14. Discourage the Use of Cell Phones, Email, Texting, Instant Messaging, and Social Media by City Councilmembers during Official City Meetings *(Reviewed by the Agenda & Rules Committee)*

**From:** Councilmember Davila

**Recommendation:** Adopt a Resolution Discouraging 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 limited as much as possible during City Council meetings. The use of digital technologies outside of the City-provided equipment, upon which Agenda Items and notes can be stored, is distracting, and disrespectful to the democratic process.

The use of cellphones and telecommunications should explicitly be prohibited during City Council Closed Sessions meetings, as they are confidential. All council meetings require the full and utmost attention of attendees.

The City Manager is recommended to submit an item to the Council to amend the Council Rules of Procedure and Order to include a moratorium on the use of cell phones by Councilmembers on the dais during council meetings.

**Financial Implications:** See report

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

## Action Calendar – Policy Committee Track Items

### 15. Amending B.M.C. Chapter 13.78 to Prohibit Additional Fees for Roommate Replacements and Lease Renewals and Terminations

**From:** Mayor Arreguin

**Recommendation:** Adopt first reading of an Ordinance to amend Berkeley Municipal Code (B.M.C.) Chapter 13.78 (Tenant Screening Fees Ordinance) to prohibit property owners from assessing additional fees on roommate replacements, lease renewals and terminations.

**Financial Implications:** None

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

## Action Calendar – Policy Committee Track Items

16. **Installation of William Byron Rumford Plaque**  
**From: Councilmembers Davila and Bartlett**  
**Recommendation:** Adopt a Resolution authorizing the installation of a plaque to honor William Byron Rumford in the public right of way.  
**Financial Implications:** \$2,000  
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
17. **2-Lane Option on Adeline St. between MLK Way and Ward St.**  
**From: Councilmember Bartlett**  
**Recommendation:** Refer to the City Manager to analyze the potential for a major redesign of the section of Adeline St. between MLK Way and Ward St., to improve the public space to increase safety for pedestrians, cyclists, and people living with disabilities, while also meeting the needs of public transit and emergency vehicles. The analysis should prioritize a 2-lane option that reduces the width of the street and creates many benefits for our community. Refer \$250,000 to the budget process to fund this important project.  
**Financial Implications:** See report  
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130
18. **Referral to the Budget Process: Eliminate the Permit Service Center Fund and Direct Revenues to the General Fund**  
**From: Councilmember Harrison**  
**Recommendation:** Referral to the Fiscal Year 2021-2022 Budget Process to direct all revenues associated with the Permit Service Center to the General Fund, amount included in a line item. All City Departments currently funded through the PSC Fund should have their funding from the General Fund increased appropriately.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

## Information Reports

19. **Commission on Disability FY 2019-20 Annual Workplan**  
**From: Commission on Disability**  
Contact: Dominika Bednarska, Commission Secretary, (510) 981-6300

## 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](mailto:clerk@cityofberkeley.info)

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

**COMMUNICATION ACCESS INFORMATION:**

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Office of the Mayor

CONSENT CALENDAR

February 11, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Support of HR 5038 – Farm Workforce Modernization Act of 2019

RECOMMENDATION

Adopt a Resolution supporting House Resolution (HR) 5038 – the Farm Workforce Modernization Act of 2019. Send a copy of the Resolution to Representatives Zoe Lofgren and Barbara Lee, Senators Dianne Feinstein and Kamala Harris, and President Donald Trump.

BACKGROUND

There are 2.4 million farmworkers in the United States, a majority of whom are undocumented. California is a significant source of the country's food resources, producing \$43 billion in agricultural goods annually including a third of all vegetables and two thirds of fruits and nuts. In California, approximately 75% of farmworkers are undocumented. These farmworkers play a crucial role in the state and country's economy, yet many of them live in fear, concerned that their livelihood will be uprooted through deportations.

House Resolution (HR) 5038, known as the Farm Workforce Modernization Act of 2019, is a bipartisan bill introduced by U.S. Representative Zoe Lofgren. The bill creates a path to legal immigration status for undocumented farmworkers, and ultimately citizenship. Specifically, it would allow workers to apply for Certified Agricultural Worker (CAW) status if they have worked in agriculture for at least 180 days over the past two years prior to the introduction of the bill. Farmworkers with a CAW status would be authorized to work in any industry, but they must continue to work in agriculture at least 100 days per year to qualify for renewal (the status lasts for 5.5 years and can be renewed indefinitely). CAW status also grants holders the ability to travel in and out of the United States. Spouse and children of a CAW worker are also given the same protections.

Once a person receives CAW status, they can apply for Legal Permanent Resident Status, more commonly known as a Green Card. In order to achieve Legal Permanent Resident Status, a person will need to work in agriculture for at least 100 days annually for:

- 4 years for those who have worked in the industry for more than 10 years
- 8 years if they have worked in the industry for less than ten years prior to the introduction of the bill.

The bill also addresses affordable housing for farmworkers. This would earmark increased federal funding for farmworker housing in rural communities and ensure that new housing is suitable for families.

The bill, introduced in November 2019, cleared the House after a bipartisan vote of 260-165. It is currently in the Senate Committee on the Judiciary.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1: Resolution

2: Text of HR 5038

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

IN SUPPORT OF HR 5038 –FARM WORKFORCE MODERNIZATION ACT OF 2019

WHEREAS, there are an estimated 2.4 million farmworkers in the United States, a majority of whom are undocumented, including approximately 75% in California; and

WHEREAS, California is home to a significant proportion of America's agricultural industry, growing a third of all vegetables and two thirds of fruit and nuts in the country, and contributing \$43 billion in goods annually; and

WHEREAS, farmworkers are an important part of our state and nation's economy, yet many live in fear, concerned that their livelihood will be uprooted through deportations;; and

WHEREAS, House Resolution (HR) 5038, known as Farm Workforce Modernization Act of 2019, introduced by U.S. Representative Zoe Lofgren creates a path to immigration status for undocumented farmworkers and ultimately citizenship; and

WHEREAS, the bill creates the Certified Agricultural Worker (CAW) status which allows people who have worked in agriculture for at least 180 days within two years prior to the introduction of the bill and their families to travel in and out of the United States and apply for Legal Permanent Residency Status, commonly known as a Green Card; and

WHEREAS, applicants must continue to work in agriculture for at least 100 days a year, and renew their status as a CAW every 5.5 years, which can be renewed indefinitely; and

WHEREAS, to be granted a Green Card, applicants will need to work in agriculture for at least 100 days annually for 4 years, for those who have worked in the industry for more than 10 years before the introduction of the bill, and 8 years for those who have worked in the industry for less than ten years prior to the introduction of the bill; and

WHEREAS, the bill also has provisions for the creation of affordable housing for rural farmworker families; and

WHEREAS, HR 5038 is in alignment with Berkeley values as a Sanctuary City, in that it provides undocumented residents a pathway to citizenship without fear of deportation; and

WHEREAS, the bi-partisan bill, which was introduced in November 2019, has passed the House with a 260-165 vote, and as of January 21, 2020 was referred to the Senate Committee on the Judiciary.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports House Resolution (HR) 5038, the Farm Workforce Modernization Act of 2019.

BE IT FURTHER RESOLVED that copies of this Resolution be sent to Representatives Zoe Lofgren and Barbara Lee, Senators Dianne Feinstein and Kamala Harris, and President Donald Trump.

116TH CONGRESS
1ST SESSION

H. R. 5038

IN THE SENATE OF THE UNITED STATES

DECEMBER 12, 2019

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To amend the Immigration and Nationality Act to provide for terms and conditions for nonimmigrant workers performing agricultural labor or services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Farm Workforce Modernization Act of 2019”.

4 (b) **TABLE OF CONTENTS.**—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—SECURING THE DOMESTIC AGRICULTURAL WORKFORCE

Subtitle A—Temporary Status for Certified Agricultural Workers

- Sec. 101. Certified agricultural worker status.
- Sec. 102. Terms and conditions of certified status.
- Sec. 103. Extensions of certified status.
- Sec. 104. Determination of continuous presence.
- Sec. 105. Employer obligations.
- Sec. 106. Administrative and judicial review.

Subtitle B—Optional Earned Residence for Long-term Workers

- Sec. 111. Optional adjustment of status for long-term agricultural workers.
- Sec. 112. Payment of taxes.
- Sec. 113. Adjudication and decision; review.

Subtitle C—General Provisions

- Sec. 121. Definitions.
- Sec. 122. Rulemaking; Fees.
- Sec. 123. Background checks.
- Sec. 124. Protection for children.
- Sec. 125. Limitation on removal.
- Sec. 126. Documentation of agricultural work history.
- Sec. 127. Employer protections.
- Sec. 128. Correction of social security records.
- Sec. 129. Disclosures and privacy.
- Sec. 130. Penalties for false statements in applications.
- Sec. 131. Dissemination of information.
- Sec. 132. Exemption from numerical limitations.
- Sec. 133. Reports to Congress.
- Sec. 134. Grant program to assist eligible applicants.
- Sec. 135. Authorization of appropriations.

**TITLE II—ENSURING AN AGRICULTURAL WORKFORCE FOR THE
FUTURE**

Subtitle A—Reforming the H-2A Temporary Worker Program

- Sec. 201. Comprehensive and streamlined electronic H-2A platform.
- Sec. 202. H-2A program requirements.
- Sec. 203. Agency roles and responsibilities.
- Sec. 204. Worker protection and compliance.
- Sec. 205. Report on wage protections.

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- Sec. 206. Portable H–2A visa pilot program.
- Sec. 207. Improving access to permanent residence.

Subtitle B—Preservation and Construction of Farmworker Housing

- Sec. 220. Short title.
- Sec. 221. Permanent establishment of housing preservation and revitalization program.
- Sec. 222. Eligibility for rural housing vouchers.
- Sec. 223. Amount of voucher assistance.
- Sec. 224. Rental assistance contract authority.
- Sec. 225. Funding for multifamily technical improvements.
- Sec. 226. Plan for preserving affordability of rental projects.
- Sec. 227. Covered housing programs.
- Sec. 228. New farmworker housing.
- Sec. 229. Loan and grant limitations.
- Sec. 230. Operating assistance subsidies.
- Sec. 231. Eligibility of certified workers.

Subtitle C—Foreign Labor Recruiter Accountability

- Sec. 251. Registration of foreign labor recruiters.
- Sec. 252. Enforcement.
- Sec. 253. Appropriations.
- Sec. 254. Definitions.

TITLE III—ELECTRONIC VERIFICATION OF EMPLOYMENT
ELIGIBILITY

- Sec. 301. Electronic employment eligibility verification system.
- Sec. 302. Mandatory electronic verification for the agricultural industry.
- Sec. 303. Coordination with E–Verify Program.
- Sec. 304. Fraud and misuse of documents.
- Sec. 305. Technical and conforming amendments.
- Sec. 306. Protection of Social Security Administration programs.
- Sec. 307. Report on the implementation of the electronic employment verification system.
- Sec. 308. Modernizing and streamlining the employment eligibility verification process.
- Sec. 309. Rulemaking and Paperwork Reduction Act.

1 **TITLE I—SECURING THE DOMES-**
2 **TIC AGRICULTURAL WORK-**
3 **FORCE**

4 **Subtitle A—Temporary Status for**
5 **Certified Agricultural Workers**

6 **SEC. 101. CERTIFIED AGRICULTURAL WORKER STATUS.**

7 (a) REQUIREMENTS FOR CERTIFIED AGRICULTURAL
8 WORKER STATUS.—

9 (1) PRINCIPAL ALIENS.—The Secretary may
10 grant certified agricultural worker status to an alien
11 who submits a completed application, including the
12 required processing fees, before the end of the period
13 set forth in subsection (c) and who—

14 (A) performed agricultural labor or serv-
15 ices in the United States for at least 1,035
16 hours (or 180 work days) during the 2-year pe-
17 riod preceding the date of the introduction of
18 this Act;

19 (B) on the date of the introduction of this
20 Act—

21 (i) is inadmissible or deportable from
22 the United States; or

23 (ii) is under a grant of deferred en-
24 forced departure or has temporary pro-

1 tected status under section 244 of the Im-
2 migration and Nationality Act;

3 (C) subject to section 104, has been con-
4 tinuously present in the United States since the
5 date of the introduction of this Act and until
6 the date on which the alien is granted certified
7 agricultural worker status; and

8 (D) is not otherwise ineligible for certified
9 agricultural worker status as provided in sub-
10 section (b).

11 (2) DEPENDENT SPOUSE AND CHILDREN.—The
12 Secretary may grant certified agricultural dependent
13 status to the spouse or child of an alien granted cer-
14 tified agricultural worker status under paragraph
15 (1) if the spouse or child is not ineligible for cer-
16 tified agricultural dependent status as provided in
17 subsection (b).

18 (b) GROUNDS FOR INELIGIBILITY.—

19 (1) GROUNDS OF INADMISSIBILITY.—Except as
20 provided in paragraph (3), an alien is ineligible for
21 certified agricultural worker or certified agricultural
22 dependent status if the Secretary determines that
23 the alien is inadmissible under section 212(a) of the
24 Immigration and Nationality Act (8 U.S.C.

1 1182(a)), except that in determining inadmis-
2 sibility—

3 (A) paragraphs (4), (5), (7), and (9)(B) of
4 such section shall not apply;

5 (B) subparagraphs (A), (C), (D), (F), and
6 (G) of such section 212(a)(6) and paragraphs
7 (9)(C) and (10)(B) of such section 212(a) shall
8 not apply unless based on the act of unlawfully
9 entering the United States after the date of in-
10 troduction of this Act; and

11 (C) paragraphs (6)(B) and (9)(A) of such
12 section 212(a) shall not apply unless the rel-
13 evant conduct began on or after the date of fil-
14 ing of the application for certified agricultural
15 worker status.

16 (2) **ADDITIONAL CRIMINAL BARS.**—Except as
17 provided in paragraph (3), an alien is ineligible for
18 certified agricultural worker or certified agricultural
19 dependent status if the Secretary determines that,
20 excluding any offense under State law for which an
21 essential element is the alien’s immigration status
22 and any minor traffic offense, the alien has been
23 convicted of—

24 (A) any felony offense;

1 (B) an aggravated felony (as defined in
2 section 101(a)(43) of the Immigration and Na-
3 tionality Act (8 U.S.C. 1101(a)(43)) at the
4 time of the conviction);

5 (C) two misdemeanor offenses involving
6 moral turpitude, as described in section
7 212(a)(2)(A)(i)(I) of the Immigration and Na-
8 tionality Act (8 U.S.C. 1182(a)(2)(A)(i)(I)),
9 unless an offense is waived by the Secretary
10 under paragraph (3)(B); or

11 (D) three or more misdemeanor offenses
12 not occurring on the same date, and not arising
13 out of the same act, omission, or scheme of
14 misconduct.

15 (3) WAIVERS FOR CERTAIN GROUNDS OF INAD-
16 MISSIBILITY.—For humanitarian purposes, family
17 unity, or if otherwise in the public interest, the Sec-
18 retary may waive the grounds of inadmissibility
19 under—

20 (A) paragraph (1), (6)(E), or (10)(D) of
21 section 212(a) of the Immigration and Nation-
22 ality Act (8 U.S.C. 1182(a)); or

23 (B) subparagraphs (A) and (D) of section
24 212(a)(2) of the Immigration and Nationality
25 Act (8 U.S.C. 1182(a)(2)), unless inadmis-

1 sibility is based on a conviction that would oth-
2 erwise render the alien ineligible under subpara-
3 graph (A), (B), or (D) of paragraph (2).

4 (c) APPLICATION.—

5 (1) APPLICATION PERIOD.—Except as provided
6 in paragraph (2), the Secretary shall accept initial
7 applications for certified agricultural worker status
8 during the 18-month period beginning on the date
9 on which the interim final rule is published in the
10 Federal Register pursuant to section 122(a).

11 (2) EXTENSION.—If the Secretary determines,
12 during the initial period described in paragraph (1),
13 that additional time is required to process initial ap-
14 plications for certified agricultural worker status or
15 for other good cause, the Secretary may extend the
16 period for accepting applications for up to an addi-
17 tional 12 months.

18 (3) SUBMISSION OF APPLICATIONS.—

19 (A) IN GENERAL.—An alien may file an
20 application with the Secretary under this sec-
21 tion with the assistance of an attorney or a
22 nonprofit religious, charitable, social service, or
23 similar organization recognized by the Board of
24 Immigration Appeals under section 292.2 of
25 title 8, Code of Federal Regulations. The Sec-

1 retary shall also create a procedure for accept-
2 ing applications filed by qualified designated en-
3 tities with the consent of the applicant.

4 (B) FARM SERVICE AGENCY OFFICES.—
5 The Secretary, in consultation with the Sec-
6 retary of Agriculture, shall establish a process
7 for the filing of applications under this section
8 at Farm Service Agency offices throughout the
9 United States.

10 (4) EVIDENCE OF APPLICATION FILING.—As
11 soon as practicable after receiving an application for
12 certified agricultural worker status, the Secretary
13 shall provide the applicant with a document acknowl-
14 edging the receipt of such application. Such docu-
15 ment shall serve as interim proof of the alien's au-
16 thorization to accept employment in the United
17 States and shall be accepted by an employer as evi-
18 dence of employment authorization under section
19 274A(b)(1)(C) of the Immigration and Nationality
20 Act (8 U.S.C. 1324a(b)(1)(C)), if the employer is
21 employing the holder of such document to perform
22 agricultural labor or services, pending a final admin-
23 istrative decision on the application.

24 (5) EFFECT OF PENDING APPLICATION.—Dur-
25 ing the period beginning on the date on which an

1 alien applies for certified agricultural worker status
2 under this subtitle, and ending on the date on which
3 the Secretary makes a final administrative decision
4 regarding such application, the alien and any de-
5 pendents included in the application—

6 (A) may apply for advance parole, which
7 shall be granted upon demonstrating a legiti-
8 mate need to travel outside the United States
9 for a temporary purpose;

10 (B) may not be detained by the Secretary
11 or removed from the United States unless the
12 Secretary makes a prima facie determination
13 that such alien is, or has become, ineligible for
14 certified agricultural worker status;

15 (C) may not be considered unlawfully
16 present under section 212(a)(9)(B) of the Im-
17 migration and Nationality Act (8 U.S.C.
18 1182(a)(9)(B)); and

19 (D) may not be considered an unauthor-
20 ized alien (as defined in section 274A(h)(3) of
21 the Immigration and Nationality Act (8 U.S.C.
22 1324a(h)(3))).

23 (6) WITHDRAWAL OF APPLICATION.—The Sec-
24 retary shall, upon receipt of a request from the ap-
25 plicant to withdraw an application for certified agri-

1 cultural worker status under this subtitle, cease
2 processing of the application, and close the case.
3 Withdrawal of the application shall not prejudice
4 any future application filed by the applicant for any
5 immigration benefit under this Act or under the Im-
6 migration and Nationality Act (8 U.S.C. 1101 et
7 seq.).

8 (d) ADJUDICATION AND DECISION.—

9 (1) IN GENERAL.—Subject to section 123, the
10 Secretary shall render a decision on an application
11 for certified agricultural worker status not later than
12 180 days after the date the application is filed.

13 (2) NOTICE.—Prior to denying an application
14 for certified agricultural worker status, the Sec-
15 retary shall provide the alien with—

16 (A) written notice that describes the basis
17 for ineligibility or the deficiencies in the evi-
18 dence submitted; and

19 (B) at least 90 days to contest ineligibility
20 or submit additional evidence.

21 (3) AMENDED APPLICATION.—An alien whose
22 application for certified agricultural worker status is
23 denied under this section may submit an amended
24 application for such status to the Secretary if the
25 amended application is submitted within the applica-

1 tion period described in subsection (c) and contains
2 all the required information and fees that were miss-
3 ing from the initial application.

4 (e) **ALTERNATIVE H-2A STATUS.**—An alien who has
5 not met the required period of agricultural labor or serv-
6 ices under subsection (a)(1)(A), but is otherwise eligible
7 for certified agricultural worker status under such sub-
8 section, shall be eligible for classification as a non-
9 immigrant described in section 101(a)(15)(H)(ii)(a) of the
10 Immigration and Nationality Act (8 U.S.C.
11 1101(a)(15)(H)(ii)(a)) upon approval of a petition sub-
12 mitted by a sponsoring employer, if the alien has per-
13 formed at least 575 hours (or 100 work days) of agricul-
14 tural labor or services during the 3-year period preceding
15 the date of the introduction of this Act. The Secretary
16 shall create a procedure to provide for such classification
17 without requiring the alien to depart the United States
18 and obtain a visa abroad.

19 **SEC. 102. TERMS AND CONDITIONS OF CERTIFIED STATUS.**

20 (a) **IN GENERAL.**—

21 (1) **APPROVAL.**—Upon approval of an applica-
22 tion for certified agricultural worker status, or an
23 extension of such status pursuant to section 103, the
24 Secretary shall issue—

1 (A) documentary evidence of such status to
2 the applicant; and

3 (B) documentary evidence of certified agri-
4 cultural dependent status to any qualified de-
5 pendent included on such application.

6 (2) DOCUMENTARY EVIDENCE.—In addition to
7 any other features and information as the Secretary
8 may prescribe, the documentary evidence described
9 in paragraph (1)—

10 (A) shall be machine-readable and tamper-
11 resistant;

12 (B) shall contain a digitized photograph;

13 (C) shall serve as a valid travel and entry
14 document for purposes of applying for admis-
15 sion to the United States; and

16 (D) shall be accepted during the period of
17 its validity by an employer as evidence of em-
18 ployment authorization and identity under sec-
19 tion 274A(b)(1)(B) of the Immigration and Na-
20 tionality Act (8 U.S.C. 1324a(b)(1)(B)).

21 (3) VALIDITY PERIOD.—Certified agricultural
22 worker and certified agricultural dependent status
23 shall be valid for 5 1/2 years beginning on the date
24 of approval.

1 (4) TRAVEL AUTHORIZATION.—An alien with
2 certified agricultural worker or certified agricultural
3 dependent status may—

4 (A) travel within and outside of the United
5 States, including commuting to the United
6 States from a residence in a foreign country;
7 and

8 (B) be admitted to the United States upon
9 return from travel abroad without first obtain-
10 ing a visa if the alien is in possession of—

11 (i) valid, unexpired documentary evi-
12 dence of certified agricultural worker or
13 certified agricultural worker dependent sta-
14 tus as described in subsection (a); or

15 (ii) a travel document that has been
16 approved by the Secretary and was issued
17 to the alien after the alien’s original docu-
18 mentary evidence was lost, stolen, or de-
19 stroyed.

20 (b) ABILITY TO CHANGE STATUS.—

21 (1) CHANGE TO CERTIFIED AGRICULTURAL
22 WORKER STATUS.—Notwithstanding section 101(a),
23 an alien with valid certified agricultural dependent
24 status may apply to change to certified agricultural
25 worker status, at any time, if the alien—

15

1 (A) submits a completed application, in-
2 cluding the required processing fees; and

3 (B) is not ineligible for certified agricul-
4 tural worker status under section 101(b).

5 (2) CLARIFICATION.—Nothing in this title pro-
6 hibits an alien granted certified agricultural worker
7 or certified agricultural dependent status from
8 changing status to any other nonimmigrant classi-
9 fication for which the alien may be eligible.

10 (c) PROHIBITION ON PUBLIC BENEFITS, TAX BENE-
11 FITS, AND HEALTH CARE SUBSIDIES.—Aliens granted
12 certified agricultural worker or certified agricultural de-
13 pendent status shall be considered lawfully present in the
14 United States for all purposes for the duration of their
15 status, except that such aliens—

16 (1) shall be ineligible for Federal means-tested
17 public benefits to the same extent as other individ-
18 uals who are not qualified aliens under section 431
19 of the Personal Responsibility and Work Oppor-
20 tunity Reconciliation Act of 1996 (8 U.S.C. 1641);

21 (2) are not entitled to the premium assistance
22 tax credit authorized under section 36B of the Inter-
23 nal Revenue Code of 1986 (26 U.S.C. 36B), and
24 shall be subject to the rules applicable to individuals

1 who are not lawfully present set forth in subsection
2 (e) of such section;

3 (3) shall be subject to the rules applicable to in-
4 dividuals who are not lawfully present set forth in
5 section 1402(e) of the Patient Protection and Af-
6 fordable Care Act (42 U.S.C. 18071(e)); and

7 (4) shall be subject to the rules applicable to in-
8 dividuals not lawfully present set forth in section
9 5000A(d)(3) of the Internal Revenue Code of 1986
10 (26 U.S.C. 5000A(d)(3)).

11 (d) REVOCATION OF STATUS.—

12 (1) IN GENERAL.—The Secretary may revoke
13 certified agricultural worker or certified agricultural
14 dependent status if, after providing notice to the
15 alien and the opportunity to provide evidence to con-
16 test the proposed revocation, the Secretary deter-
17 mines that the alien no longer meets the eligibility
18 requirements for such status under section 101(b).

19 (2) INVALIDATION OF DOCUMENTATION.—Upon
20 the Secretary's final determination to revoke an
21 alien's certified agricultural worker or certified agri-
22 cultural dependent status, any documentation issued
23 by the Secretary to such alien under subsection (a)
24 shall automatically be rendered invalid for any pur-
25 pose except for departure from the United States.

1 **SEC. 103. EXTENSIONS OF CERTIFIED STATUS.**

2 (a) REQUIREMENTS FOR EXTENSIONS OF STATUS.—

3 (1) PRINCIPAL ALIENS.—The Secretary may
4 extend certified agricultural worker status for addi-
5 tional periods of 5 1/2 years to an alien who submits
6 a completed application, including the required proc-
7 essing fees, within the 120-day period beginning 60
8 days before the expiration of the fifth year of the
9 immediately preceding grant of certified agricultural
10 worker status, if the alien—

11 (A) except as provided in section 126(e),
12 has performed agricultural labor or services in
13 the United States for at least 575 hours (or
14 100 work days) for each of the prior 5 years in
15 which the alien held certified agricultural work-
16 er status; and

17 (B) has not become ineligible for certified
18 agricultural worker status under section 101(b).

19 (2) DEPENDENT SPOUSE AND CHILDREN.—The
20 Secretary may grant or extend certified agricultural
21 dependent status to the spouse or child of an alien
22 granted an extension of certified agricultural worker
23 status under paragraph (1) if the spouse or child is
24 not ineligible for certified agricultural dependent sta-
25 tus under section 101(b).

1 (3) WAIVER FOR LATE FILINGS.—The Sec-
2 retary may waive an alien’s failure to timely file be-
3 fore the expiration of the 120-day period described
4 in paragraph (1) if the alien demonstrates that the
5 delay was due to extraordinary circumstances be-
6 yond the alien’s control or for other good cause.

7 (b) STATUS FOR WORKERS WITH PENDING APPLICA-
8 TIONS.—

9 (1) IN GENERAL.—Certified agricultural worker
10 status of an alien who timely files an application to
11 extend such status under subsection (a) (and the
12 status of the alien’s dependents) shall be automati-
13 cally extended through the date on which the Sec-
14 retary makes a final administrative decision regard-
15 ing such application.

16 (2) DOCUMENTATION OF EMPLOYMENT AU-
17 THORIZATION.—As soon as practicable after receipt
18 of an application to extend certified agricultural
19 worker status under subsection (a), the Secretary
20 shall issue a document to the alien acknowledging
21 the receipt of such application. An employer of the
22 worker may not refuse to accept such document as
23 evidence of employment authorization under section
24 274A(b)(1)(C) of the Immigration and Nationality

1 Act (8 U.S.C. 1324a(b)(1)(C)), pending a final ad-
2 ministrative decision on the application.

3 (c) NOTICE.—Prior to denying an application to ex-
4 tend certified agricultural worker status, the Secretary
5 shall provide the alien with—

6 (1) written notice that describes the basis for
7 ineligibility or the deficiencies of the evidence sub-
8 mitted; and

9 (2) at least 90 days to contest ineligibility or
10 submit additional evidence.

11 **SEC. 104. DETERMINATION OF CONTINUOUS PRESENCE.**

12 (a) EFFECT OF NOTICE TO APPEAR.—The contin-
13 uous presence in the United States of an applicant for cer-
14 tified agricultural worker status under section 101 shall
15 not terminate when the alien is served a notice to appear
16 under section 239(a) of the Immigration and Nationality
17 Act (8 U.S.C. 1229(a)).

18 (b) TREATMENT OF CERTAIN BREAKS IN PRES-
19 ENCE.—

20 (1) IN GENERAL.—Except as provided in para-
21 graphs (2) and (3), an alien shall be considered to
22 have failed to maintain continuous presence in the
23 United States under this subtitle if the alien de-
24 parted the United States for any period exceeding

1 90 days, or for any periods, in the aggregate, ex-
2 ceeding 180 days.

3 (2) EXTENSIONS FOR EXTENUATING CIR-
4 CUMSTANCES.—The Secretary may extend the time
5 periods described in paragraph (1) for an alien who
6 demonstrates that the failure to timely return to the
7 United States was due to extenuating circumstances
8 beyond the alien’s control, including the serious ill-
9 ness of the alien, or death or serious illness of a
10 spouse, parent, son or daughter, grandparent, or sib-
11 ling of the alien.

12 (3) TRAVEL AUTHORIZED BY THE SEC-
13 RETARY.—Any period of travel outside of the United
14 States by an alien that was authorized by the Sec-
15 retary shall not be counted toward any period of de-
16 parture from the United States under paragraph
17 (1).

18 **SEC. 105. EMPLOYER OBLIGATIONS.**

19 (a) RECORD OF EMPLOYMENT.—An employer of an
20 alien in certified agricultural worker status shall provide
21 such alien with a written record of employment each year
22 during which the alien provides agricultural labor or serv-
23 ices to such employer as a certified agricultural worker.

24 (b) CIVIL PENALTIES.—

1 (1) IN GENERAL.—If the Secretary determines,
2 after notice and an opportunity for a hearing, that
3 an employer of an alien with certified agricultural
4 worker status has knowingly failed to provide the
5 record of employment required under subsection (a),
6 or has provided a false statement of material fact in
7 such a record, the employer shall be subject to a civil
8 penalty in an amount not to exceed \$500 per viola-
9 tion.

10 (2) LIMITATION.—The penalty under paragraph
11 (1) for failure to provide employment records shall
12 not apply unless the alien has provided the employer
13 with evidence of employment authorization described
14 in section 102 or 103.

15 (3) DEPOSIT OF CIVIL PENALTIES.—Civil pen-
16 alties collected under this paragraph shall be depos-
17 ited into the Immigration Examinations Fee Ac-
18 count under section 286(m) of the Immigration and
19 Nationality Act (8 U.S.C. 1356(m)).

20 **SEC. 106. ADMINISTRATIVE AND JUDICIAL REVIEW.**

21 (a) ADMINISTRATIVE REVIEW.—The Secretary shall
22 establish a process by which an applicant may seek admin-
23 istrative review of a denial of an application for certified
24 agricultural worker status under this subtitle, an applica-
25 tion to extend such status, or a revocation of such status.

1 (b) **ADMISSIBILITY IN IMMIGRATION COURT.**—Each
 2 record of an alien’s application for certified agricultural
 3 worker status under this subtitle, application to extend
 4 such status, revocation of such status, and each record
 5 created pursuant to the administrative review process
 6 under subsection (a) is admissible in immigration court,
 7 and shall be included in the administrative record.

8 (c) **JUDICIAL REVIEW.**—Notwithstanding any other
 9 provision of law, judicial review of the Secretary’s decision
 10 to deny an application for certified agricultural worker
 11 status, an application to extend such status, or the deci-
 12 sion to revoke such status, shall be limited to the review
 13 of an order of removal under section 242 of the Immigra-
 14 tion and Nationality Act (8 U.S.C. 1252).

15 **Subtitle B—Optional Earned**
 16 **Residence for Long-term Workers**

17 **SEC. 111. OPTIONAL ADJUSTMENT OF STATUS FOR LONG-**
 18 **TERM AGRICULTURAL WORKERS.**

19 (a) **REQUIREMENTS FOR ADJUSTMENT OF STA-**
 20 **TUS.**—

21 (1) **PRINCIPAL ALIENS.**—The Secretary may
 22 adjust the status of an alien from that of a certified
 23 agricultural worker to that of a lawful permanent
 24 resident if the alien submits a completed application,

1 including the required processing and penalty fees,
2 and the Secretary determines that—

3 (A) except as provided in section 126(e),
4 the alien performed agricultural labor or serv-
5 ices for not less than 575 hours (or 100 work
6 days) each year—

7 (i) for at least 10 years prior to the
8 date of the enactment of this Act and for
9 at least 4 years in certified agricultural
10 worker status; or

11 (ii) for fewer than 10 years prior to
12 the date of the enactment of this Act and
13 for at least 8 years in certified agricultural
14 worker status; and

15 (B) the alien has not become ineligible for
16 certified agricultural worker status under sec-
17 tion 101(b).

18 (2) DEPENDENT ALIENS.—

19 (A) IN GENERAL.—The spouse and each
20 child of an alien described in paragraph (1)
21 whose status has been adjusted to that of a
22 lawful permanent resident may be granted law-
23 ful permanent residence under this subtitle if—

24 (i) the qualifying relationship to the
25 principal alien existed on the date on which

1 such alien was granted adjustment of sta-
2 tus under this subtitle; and

3 (ii) the spouse or child is not ineligible
4 for certified agricultural worker dependent
5 status under section 101(b).

6 (B) PROTECTIONS FOR SPOUSES AND
7 CHILDREN.—The Secretary of Homeland Secu-
8 rity shall establish procedures to allow the
9 spouse or child of a certified agricultural work-
10 er to self-petition for lawful permanent resi-
11 dence under this subtitle in cases involving—

12 (i) the death of the certified agricul-
13 tural worker, so long as the spouse or child
14 submits a petition not later than 2 years
15 after the date of the worker’s death; or

16 (ii) the spouse or a child being bat-
17 tered or subjected to extreme cruelty by
18 the certified agricultural worker.

19 (3) DOCUMENTATION OF WORK HISTORY.—An
20 applicant for adjustment of status under this section
21 shall not be required to resubmit evidence of work
22 history that has been previously submitted to the
23 Secretary in connection with an approved extension
24 of certified agricultural worker status.

1 (b) PENALTY FEE.—In addition to any processing
2 fee that the Secretary may assess in accordance with sec-
3 tion 122(b), a principal alien seeking adjustment of status
4 under this subtitle shall pay a \$1,000 penalty fee, which
5 shall be deposited into the Immigration Examinations Fee
6 Account pursuant to section 286(m) of the Immigration
7 and Nationality Act (8 U.S.C.1356(m)).

8 (c) EFFECT OF PENDING APPLICATION.—During the
9 period beginning on the date on which an alien applies
10 for adjustment of status under this subtitle, and ending
11 on the date on which the Secretary makes a final adminis-
12 trative decision regarding such application, the alien and
13 any dependents included on the application—

14 (1) may apply for advance parole, which shall
15 be granted upon demonstrating a legitimate need to
16 travel outside the United States for a temporary
17 purpose;

18 (2) may not be detained by the Secretary or re-
19 moved from the United States unless the Secretary
20 makes a prima facie determination that such alien
21 is, or has become, ineligible for adjustment of status
22 under subsection (a);

23 (3) may not be considered unlawfully present
24 under section 212(a)(9)(B) of the Immigration and
25 Nationality Act (8 U.S.C. 1182(a)(9)(B)); and

1 (4) may not be considered an unauthorized
2 alien (as defined in section 274A(h)(3) of the Immi-
3 gration and Nationality Act (8 U.S.C.
4 1324a(h)(3))).

5 (d) EVIDENCE OF APPLICATION FILING.—As soon as
6 practicable after receiving an application for adjustment
7 of status under this subtitle, the Secretary shall provide
8 the applicant with a document acknowledging the receipt
9 of such application. Such document shall serve as interim
10 proof of the alien’s authorization to accept employment
11 in the United States and shall be accepted by an employer
12 as evidence of employment authorization under section
13 274A(b)(1)(C) of the Immigration and Nationality Act (8
14 U.S.C. 1324a(b)(1)(C)), pending a final administrative
15 decision on the application.

16 (e) WITHDRAWAL OF APPLICATION.—The Secretary
17 shall, upon receipt of a request to withdraw an application
18 for adjustment of status under this subtitle, cease proc-
19 essing of the application, and close the case. Withdrawal
20 of the application shall not prejudice any future applica-
21 tion filed by the applicant for any immigration benefit
22 under this Act or under the Immigration and Nationality
23 Act (8 U.S.C. 1101 et seq.).

1 **SEC. 112. PAYMENT OF TAXES.**

2 (a) IN GENERAL.—An alien may not be granted ad-
3 justment of status under this subtitle unless the applicant
4 has satisfied any applicable Federal tax liability.

5 (b) COMPLIANCE.—An alien may demonstrate com-
6 pliance with subsection (a) by submitting such documenta-
7 tion as the Secretary, in consultation with the Secretary
8 of the Treasury, may require by regulation.

9 **SEC. 113. ADJUDICATION AND DECISION; REVIEW.**

10 (a) IN GENERAL.—Subject to the requirements of
11 section 123, the Secretary shall render a decision on an
12 application for adjustment of status under this subtitle not
13 later than 180 days after the date on which the application
14 is filed.

15 (b) NOTICE.—Prior to denying an application for ad-
16 justment of status under this subtitle, the Secretary shall
17 provide the alien with—

18 (1) written notice that describes the basis for
19 ineligibility or the deficiencies of the evidence sub-
20 mitted; and

21 (2) at least 90 days to contest ineligibility or
22 submit additional evidence.

23 (c) ADMINISTRATIVE REVIEW.—The Secretary shall
24 establish a process by which an applicant may seek admin-
25 istrative review of a denial of an application for adjust-
26 ment of status under this subtitle.

1 (d) JUDICIAL REVIEW.—Notwithstanding any other
 2 provision of law, an alien may seek judicial review of a
 3 denial of an application for adjustment of status under
 4 this title in an appropriate United States district court.

5 **Subtitle C—General Provisions**

6 **SEC. 121. DEFINITIONS.**

7 In this title:

8 (1) IN GENERAL.—Except as otherwise pro-
 9 vided, any term used in this title that is used in the
 10 immigration laws shall have the meaning given such
 11 term in the immigration laws (as such term is de-
 12 fined in section 101 of the Immigration and Nation-
 13 ality Act (8 U.S.C. 1101)).

14 (2) AGRICULTURAL LABOR OR SERVICES.—The
 15 term “agricultural labor or services” means—

16 (A) agricultural labor or services as such
 17 term is used in section 101(a)(15)(H)(ii) of the
 18 Immigration and Nationality Act (8 U.S.C.
 19 1101(a)(15)(H)(ii)), without regard to whether
 20 the labor or services are of a seasonal or tem-
 21 porary nature; and

22 (B) agricultural employment as such term
 23 is defined in section 3 of the Migrant and Sea-
 24 sonal Agricultural Worker Protection Act (29
 25 U.S.C. 1802), without regard to whether the

1 specific service or activity is temporary or sea-
2 sonal.

3 (3) APPLICABLE FEDERAL TAX LIABILITY.—

4 The term “applicable Federal tax liability” means all
5 Federal income taxes assessed in accordance with
6 section 6203 of the Internal Revenue Code of 1986
7 beginning on the date on which the applicant was
8 authorized to work in the United States as a cer-
9 tified agricultural worker.

10 (4) APPROPRIATE UNITED STATES DISTRICT

11 COURT.—The term “appropriate United States dis-
12 trict court” means the United States District Court
13 for the District of Columbia or the United States
14 district court with jurisdiction over the alien’s prin-
15 cipal place of residence.

16 (5) CHILD.—The term “child” has the meaning

17 given such term in section 101(b)(1) of the Immi-
18 gration and Nationality Act (8 U.S.C. 1101(b)(1)).

19 (6) CONVICTED OR CONVICTION.—The term

20 “convicted” or “conviction” does not include a judg-
21 ment that has been expunged or set aside, that re-
22 sulted in a rehabilitative disposition, or the equiva-
23 lent.

24 (7) EMPLOYER.—The term “employer” means

25 any person or entity, including any labor contractor

1 or any agricultural association, that employs workers
2 in agricultural labor or services.

3 (8) QUALIFIED DESIGNATED ENTITY.—The
4 term “qualified designated entity” means—

5 (A) a qualified farm labor organization or
6 an association of employers designated by the
7 Secretary; or

8 (B) any other entity that the Secretary
9 designates as having substantial experience,
10 demonstrated competence, and a history of
11 long-term involvement in the preparation and
12 submission of application for adjustment of sta-
13 tus under title II of the Immigration and Na-
14 tionality Act (8 U.S.C. 1151 et seq.).

15 (9) SECRETARY.—The term “Secretary” means
16 the Secretary of Homeland Security.

17 (10) WORK DAY.—The term “work day” means
18 any day in which the individual is employed 5.75 or
19 more hours in agricultural labor or services.

20 **SEC. 122. RULEMAKING; FEES.**

21 (a) RULEMAKING.—Not later than 180 days after the
22 date of the enactment of this Act, the Secretary shall pub-
23 lish in the Federal Register, an interim final rule imple-
24 menting this title. Notwithstanding section 553 of title 5,
25 United States Code, the rule shall be effective, on an in-

1 terim basis, immediately upon publication, but may be
2 subject to change and revision after public notice and op-
3 portunity for comment. The Secretary shall finalize such
4 rule not later than 1 year after the date of the enactment
5 of this Act.

6 (b) FEES.—

7 (1) IN GENERAL.—The Secretary may require
8 an alien applying for any benefit under this title to
9 pay a reasonable fee that is commensurate with the
10 cost of processing the application.

11 (2) FEE WAIVER; INSTALLMENTS.—

12 (A) IN GENERAL.—The Secretary shall es-
13 tablish procedures to allow an alien to—

14 (i) request a waiver of any fee that
15 the Secretary may assess under this title if
16 the alien demonstrates to the satisfaction
17 of the Secretary that the alien is unable to
18 pay the prescribed fee; or

19 (ii) pay any fee or penalty that the
20 Secretary may assess under this title in in-
21 stallments.

22 (B) CLARIFICATION.—Nothing in this sec-
23 tion shall be read to prohibit an employer from
24 paying any fee or penalty that the Secretary

1 may assess under this title on behalf of an alien
2 and the alien's spouse or children.

3 **SEC. 123. BACKGROUND CHECKS.**

4 (a) SUBMISSION OF BIOMETRIC AND BIOGRAPHIC
5 DATA.—The Secretary may not grant or extend certified
6 agricultural worker or certified agricultural dependent sta-
7 tus under subtitle A, or grant adjustment of status to that
8 of a lawful permanent resident under subtitle B, unless
9 the alien submits biometric and biographic data, in accord-
10 ance with procedures established by the Secretary. The
11 Secretary shall provide an alternative procedure for aliens
12 who cannot provide all required biometric or biographic
13 data because of a physical impairment.

14 (b) BACKGROUND CHECKS.—The Secretary shall use
15 biometric, biographic, and other data that the Secretary
16 determines appropriate to conduct security and law en-
17 forcement background checks and to determine whether
18 there is any criminal, national security, or other factor
19 that would render the alien ineligible for status under this
20 title. An alien may not be granted any such status under
21 this title unless security and law enforcement background
22 checks are completed to the satisfaction of the Secretary.

23 **SEC. 124. PROTECTION FOR CHILDREN.**

24 (a) IN GENERAL.—Except as provided in subsection
25 (b), for purposes of eligibility for certified agricultural de-

1 pendent status or lawful permanent resident status under
2 this title, a determination of whether an alien is a child
3 shall be made using the age of the alien on the date on
4 which the initial application for certified agricultural
5 worker status is filed with the Secretary of Homeland Se-
6 curity.

7 (b) LIMITATION.—Subsection (a) shall apply for no
8 more than 10 years after the date on which the initial
9 application for certified agricultural worker status is filed
10 with the Secretary of Homeland Security.

11 **SEC. 125. LIMITATION ON REMOVAL.**

12 (a) IN GENERAL.—An alien who appears to be prima
13 facie eligible for status under this title shall be given a
14 reasonable opportunity to apply for such status. Such an
15 alien may not be placed in removal proceedings or removed
16 from the United States until a final administrative deci-
17 sion establishing ineligibility for such status is rendered.

18 (b) ALIENS IN REMOVAL PROCEEDINGS.—Notwith-
19 standing any other provision of the law, the Attorney Gen-
20 eral shall (upon motion by the Secretary with the consent
21 of the alien, or motion by the alien) terminate removal
22 proceedings, without prejudice, against an alien who ap-
23 pears to be prima facie eligible for status under this title,
24 and provide such alien a reasonable opportunity to apply
25 for such status.

1 (c) EFFECT OF FINAL ORDER.—An alien present in
2 the United States who has been ordered removed or has
3 been permitted to depart voluntarily from the United
4 States may, notwithstanding such order or permission to
5 depart, apply for status under this title. Such alien shall
6 not be required to file a separate motion to reopen, recon-
7 sider, or vacate the order of removal. If the Secretary ap-
8 proves the application, the Secretary shall notify the At-
9 torney General of such approval, and the Attorney General
10 shall cancel the order of removal. If the Secretary renders
11 a final administrative decision to deny the application, the
12 order of removal or permission to depart shall be effective
13 and enforceable to the same extent as if the application
14 had not been made, only after all available administrative
15 and judicial remedies have been exhausted.

16 (d) EFFECT OF DEPARTURE.—Section 101(g) of the
17 Immigration and Nationality Act (8 U.S.C. 1101(g)) shall
18 not apply to an alien who departs the United States—

19 (1) with advance permission to return to the
20 United States granted by the Secretary under this
21 title; or

22 (2) after having been granted certified agricul-
23 tural worker status or lawful permanent resident
24 status under this title.

1 **SEC. 126. DOCUMENTATION OF AGRICULTURAL WORK HIS-**
2 **TORY.**

3 (a) BURDEN OF PROOF.—An alien applying for cer-
4 tified agricultural worker status under subtitle A or ad-
5 justment of status under subtitle B has the burden of
6 proving by a preponderance of the evidence that the alien
7 has worked the requisite number of hours or days required
8 under section 101, 103, or 111, as applicable. The Sec-
9 retary shall establish special procedures to properly credit
10 work in cases in which an alien was employed under an
11 assumed name.

12 (b) EVIDENCE.—An alien may meet the burden of
13 proof under subsection (a) by producing sufficient evi-
14 dence to show the extent of such employment as a matter
15 of just and reasonable inference. Such evidence may in-
16 clude—

17 (1) an annual record of certified agricultural
18 worker employment as described in section 105(a),
19 or other employment records from employers;

20 (2) employment records maintained by collective
21 bargaining associations;

22 (3) tax records or other government records;

23 (4) sworn affidavits from individuals who have
24 direct knowledge of the alien's work history; or

25 (5) any other documentation designated by the
26 Secretary for such purpose.

1 (c) EXCEPTION FOR EXTRAORDINARY CIR-
2 CUMSTANCES.—

3 (1) IN GENERAL.—In determining whether an
4 alien has met the requirement under section
5 103(a)(1)(A) or 111(a)(1)(A), the Secretary may
6 credit the alien with not more than 575 hours (or
7 100 work days) of agricultural labor or services in
8 the United States if the alien was unable to perform
9 the required agricultural labor or services due to—

10 (A) pregnancy, illness, disease, disabling
11 injury, or physical limitation of the alien;

12 (B) injury, illness, disease, or other special
13 needs of the alien's child or spouse;

14 (C) severe weather conditions that pre-
15 vented the alien from engaging in agricultural
16 labor or services; or

17 (D) termination from agricultural employ-
18 ment, if the Secretary determines that—

19 (i) the termination was without just
20 cause; and

21 (ii) the alien was unable to find alter-
22 native agricultural employment after a rea-
23 sonable job search.

24 (2) EFFECT OF DETERMINATION.—A deter-
25 mination under paragraph (1)(D) shall not be con-

1 clusive, binding, or admissible in a separate or sub-
2 sequent judicial or administrative action or pro-
3 ceeding between the alien and a current or prior em-
4 ployer of the alien or any other party.

5 **SEC. 127. EMPLOYER PROTECTIONS.**

6 (a) CONTINUING EMPLOYMENT.—An employer that
7 continues to employ an alien knowing that the alien in-
8 tends to apply for certified agricultural worker status
9 under subtitle A shall not violate section 274A(a)(2) of
10 the Immigration and Nationality Act (8 U.S.C.
11 1324a(a)(2)) by continuing to employ the alien for the du-
12 ration of the application period under section 101(c), and
13 with respect to an alien who applies for certified agricul-
14 tural status, for the duration of the period during which
15 the alien’s application is pending final determination.

16 (b) USE OF EMPLOYMENT RECORDS.—Copies of em-
17 ployment records or other evidence of employment pro-
18 vided by an alien or by an alien’s employer in support of
19 an alien’s application for certified agricultural worker or
20 adjustment of status under this title may not be used in
21 a civil or criminal prosecution or investigation of that em-
22 ployer under section 274A of the Immigration and Nation-
23 ality Act (8 U.S.C. 1324a) or the Internal Revenue Code
24 of 1986 for the prior unlawful employment of that alien
25 regardless of the outcome of such application.

1 (c) **ADDITIONAL PROTECTIONS.**—Employers that
 2 provide unauthorized aliens with copies of employment
 3 records or other evidence of employment in support of an
 4 application for certified agricultural worker status or ad-
 5 justment of status under this title shall not be subject to
 6 civil and criminal liability pursuant to such section 274A
 7 for employing such unauthorized aliens. Records or other
 8 evidence of employment provided by employers in response
 9 to a request for such records for the purpose of estab-
 10 lishing eligibility for status under this title may not be
 11 used for any purpose other than establishing such eligi-
 12 bility.

13 (d) **LIMITATION ON PROTECTION.**—The protections
 14 for employers under this section shall not apply if the em-
 15 ployer provides employment records to the alien that are
 16 determined to be fraudulent.

17 **SEC. 128. CORRECTION OF SOCIAL SECURITY RECORDS;**
 18 **CONFORMING AMENDMENTS.**

19 (a) **IN GENERAL.**—Section 208(e)(1) of the Social
 20 Security Act (42 U.S.C. 408(e)(1)) is amended—

21 (1) in subparagraph (B)(ii), by striking “or” at
 22 the end;

23 (2) in subparagraph (C), by inserting “or” at
 24 the end;

1 (3) by inserting after subparagraph (C) the fol-
2 lowing:

3 “(D) who is granted certified agricultural work-
4 er status, certified agricultural dependent status, or
5 lawful permanent resident status under title I of the
6 Farm Work Modernization Act of 2019,”; and

7 (4) in the undesignated matter following sub-
8 paragraph (D), as added by paragraph (3), by strik-
9 ing “1990.” and inserting “1990, or in the case of
10 an alien described in subparagraph (D), if such con-
11 duct is alleged to have occurred before the date on
12 which the alien was granted status under title I of
13 the Farm Work Modernization Act of 2019.”.

14 (b) EFFECTIVE DATE.—The amendments made by
15 subsection (a) shall take effect on the first day of the sev-
16 enth month that begins after the date of the enactment
17 of this Act.

18 (c) CONFORMING AMENDMENTS.—

19 (1) SOCIAL SECURITY ACT.—Section 210(a)(1)
20 of the Social Security Act (42 U.S.C. 410(a)(1)) is
21 amended by inserting before the semicolon the fol-
22 lowing: “(other than aliens granted certified agricul-
23 tural worker status or certified agricultural depend-
24 ent status under title I of the Farm Work Mod-
25 ernization Act of 2019”.

1 (2) INTERNAL REVENUE CODE OF 1986.—Sec-
2 tion 3121(b)(1) of the Internal Revenue Code of
3 1986 is amended by inserting before the semicolon
4 the following: “(other than aliens granted certified
5 agricultural worker status or certified agricultural
6 dependent status under title I of the Farm Work
7 Modernization Act of 2019”.

8 (3) EFFECTIVE DATE.—The amendments made
9 by this subsection shall apply with respect to service
10 performed after the date of the enactment of this
11 Act.

12 (d) AUTOMATED SYSTEM TO ASSIGN SOCIAL SECU-
13 RITY ACCOUNT NUMBERS.—Section 205(c)(2)(B) of the
14 Social Security Act (42 U.S.C. 405(c)(2)(B)) is amended
15 by adding at the end the following:

16 “(iv) The Commissioner of Social Se-
17 curity shall, to the extent practicable, co-
18 ordinate with the Secretary of the Depart-
19 ment of Homeland Security to implement
20 an automated system for the Commissioner
21 to assign social security account numbers
22 to aliens granted certified agricultural
23 worker status or certified agricultural de-
24 pendent status under title I of the Farm
25 Work Modernization Act of 2019. An alien

1 who is granted such status, and who was
2 not previously assigned a social security
3 account number, shall request assignment
4 of a social security account number and a
5 social security card from the Commissioner
6 through such system. The Secretary shall
7 collect and provide to the Commissioner
8 such information as the Commissioner
9 deems necessary for the Commissioner to
10 assign a social security account number,
11 which information may be used by the
12 Commissioner for any purpose for which
13 the Commissioner is otherwise authorized
14 under Federal law. The Commissioner may
15 maintain, use, and disclose such informa-
16 tion only as permitted by the Privacy Act
17 and other Federal law.”.

18 **SEC. 129. DISCLOSURES AND PRIVACY.**

19 (a) IN GENERAL.—The Secretary may not disclose
20 or use information provided in an application for certified
21 agricultural worker status or adjustment of status under
22 this title (including information provided during adminis-
23 trative or judicial review) for the purpose of immigration
24 enforcement.

1 (b) REFERRALS PROHIBITED.—The Secretary, based
2 solely on information provided in an application for cer-
3 tified agricultural worker status or adjustment of status
4 under this title (including information provided during ad-
5 ministrative or judicial review), may not refer an applicant
6 to U.S. Immigration and Customs Enforcement, U.S. Cus-
7 toms and Border Protection, or any designee of either
8 such entity.

9 (c) EXCEPTIONS.—Notwithstanding subsections (a)
10 and (b), information provided in an application for cer-
11 tified agricultural worker status or adjustment of status
12 under this title may be shared with Federal security and
13 law enforcement agencies—

14 (1) for assistance in the consideration of an ap-
15 plication under this title;

16 (2) to identify or prevent fraudulent claims or
17 schemes;

18 (3) for national security purposes; or

19 (4) for the investigation or prosecution of any
20 felony not related to immigration status.

21 (d) PENALTY.—Any person who knowingly uses, pub-
22 lishes, or permits information to be examined in violation
23 of this section shall be fined not more than \$10,000.

24 (e) PRIVACY.—The Secretary shall ensure that ap-
25 propriate administrative and physical safeguards are in

1 place to protect the security, confidentiality, and integrity
2 of personally identifiable information collected, main-
3 tained, and disseminated pursuant to this title.

4 **SEC. 130. PENALTIES FOR FALSE STATEMENTS IN APPLICA-**
5 **TIONS.**

6 (a) **CRIMINAL PENALTY.**—Any person who—

7 (1) files an application for certified agricultural
8 worker status or adjustment of status under this
9 title and knowingly falsifies, conceals, or covers up
10 a material fact or makes any false, fictitious, or
11 fraudulent statements or representations, or makes
12 or uses any false writing or document knowing the
13 same to contain any false, fictitious, or fraudulent
14 statement or entry; or

15 (2) creates or supplies a false writing or docu-
16 ment for use in making such an application,

17 shall be fined in accordance with title 18, United States
18 Code, imprisoned not more than 5 years, or both.

19 (b) **INADMISSIBILITY.**—An alien who is convicted
20 under subsection (a) shall be deemed inadmissible to the
21 United States under section 212(a)(6)(C)(i) of the Immi-
22 gration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)).

23 (c) **DEPOSIT.**—Fines collected under subsection (a)
24 shall be deposited into the Immigration Examinations Fee

1 Account pursuant to section 286(m) of the Immigration
2 and Nationality Act (8 U.S.C. 1356(m)).

3 **SEC. 131. DISSEMINATION OF INFORMATION.**

4 (a) IN GENERAL.—Beginning not later than the first
5 day of the application period described in section 101(c)—

6 (1) the Secretary of Homeland Security, in co-
7 operation with qualified designated entities, shall
8 broadly disseminate information described in sub-
9 section (b); and

10 (2) the Secretary of Agriculture, in consultation
11 with the Secretary of Homeland Security, shall dis-
12 seminate to agricultural employers a document con-
13 taining the information described in subsection (b)
14 for posting at employer worksites.

15 (b) INFORMATION DESCRIBED.—The information de-
16 scribed in this subsection shall include—

17 (1) the benefits that aliens may receive under
18 this title; and

19 (2) the requirements that an alien must meet to
20 receive such benefits.

21 **SEC. 132. EXEMPTION FROM NUMERICAL LIMITATIONS.**

22 The numerical limitations under title II of the Immi-
23 gration and Nationality Act (8 U.S.C. 1151 et seq.) shall
24 not apply to the adjustment of aliens to lawful permanent

1 resident status under this title, and such aliens shall not
2 be counted toward any such numerical limitation.

3 **SEC. 133. REPORTS TO CONGRESS.**

4 Not later than 180 days after the publication of the
5 final rule under section 122(a), and annually thereafter
6 for the following 10 years, the Secretary shall submit a
7 report to Congress that identifies, for the previous fiscal
8 year—

9 (1) the number of principal aliens who applied
10 for certified agricultural worker status under subtitle
11 A, and the number of dependent spouses and chil-
12 dren included in such applications;

13 (2) the number of principal aliens who were
14 granted certified agricultural worker status under
15 subtitle A, and the number of dependent spouses
16 and children who were granted certified agricultural
17 dependent status;

18 (3) the number of principal aliens who applied
19 for an extension of their certified agricultural worker
20 status under subtitle A, and the number of depend-
21 ent spouses and children included in such applica-
22 tions;

23 (4) the number of principal aliens who were
24 granted an extension of certified agricultural worker
25 status under subtitle A, and the number of depend-

1 ent spouses and children who were granted certified
 2 agricultural dependent status under such an exten-
 3 sion;

4 (5) the number of principal aliens who applied
 5 for adjustment of status under subtitle B, and the
 6 number of dependent spouses and children included
 7 in such applications;

8 (6) the number of principal aliens who were
 9 granted lawful permanent resident status under sub-
 10 title B, and the number of spouses and children who
 11 were granted such status as dependents;

12 (7) the number of principal aliens included in
 13 petitions described in section 101(e), and the num-
 14 ber of dependent spouses and children included in
 15 such applications; and

16 (8) the number of principal aliens who were
 17 granted H-2A status pursuant to petitions described
 18 in section 101(e), and the number of dependent
 19 spouses and children who were granted H-4 status.

20 **SEC. 134. GRANT PROGRAM TO ASSIST ELIGIBLE APPLI-**
 21 **CANTS.**

22 (a) ESTABLISHMENT.—The Secretary shall establish
 23 a program to award grants, on a competitive basis, to eli-
 24 gible nonprofit organizations to assist eligible applicants

1 under this title by providing them with the services de-
2 scribed in subsection (c).

3 (b) ELIGIBLE NONPROFIT ORGANIZATION.—For
4 purposes of this section, the term “eligible nonprofit orga-
5 nization” means an organization described in section
6 501(c)(3) of the Internal Revenue Code of 1986 (exclud-
7 ing a recipient of funds under title X of the Economic
8 Opportunity Act of 1964 (42 U.S.C. 2996 et seq.)) that
9 has demonstrated qualifications, experience, and expertise
10 in providing quality services to farm workers or aliens.

11 (c) USE OF FUNDS.—Grant funds awarded under
12 this section may be used for the design and implementa-
13 tion of programs that provide—

14 (1) information to the public regarding the eli-
15 gibility and benefits of certified agricultural worker
16 status authorized under this title; and

17 (2) assistance, within the scope of authorized
18 practice of immigration law, to individuals submit-
19 ting applications for certified agricultural worker
20 status or adjustment of status under this title, in-
21 cluding—

22 (A) screening prospective applicants to as-
23 sess their eligibility for such status;

1 (B) completing applications, including pro-
2 viding assistance in obtaining necessary docu-
3 ments and supporting evidence; and

4 (C) providing any other assistance that the
5 Secretary determines useful to assist aliens in
6 applying for certified agricultural worker status
7 or adjustment of status under this title.

8 (d) SOURCE OF FUNDS.—In addition to any funds
9 appropriated to carry out this section, the Secretary may
10 use up to \$10,000,000 from the Immigration Examina-
11 tions Fee Account under section 286(m) of the Immigra-
12 tion and Nationality Act (8 U.S.C. 1356(m)) to carry out
13 this section.

14 (e) ELIGIBILITY FOR SERVICES.—Section 504(a)(11)
15 of Public Law 104–134 (110 Stat. 1321–53 et seq.) shall
16 not be construed to prevent a recipient of funds under title
17 X of the Economic Opportunity Act of 1964 (42 U.S.C.
18 2996 et seq.) from providing legal assistance directly re-
19 lated to an application for status under this title or to
20 an alien granted such status.

21 **SEC. 135. AUTHORIZATION OF APPROPRIATIONS.**

22 There is authorized to be appropriated to the Sec-
23 retary, such sums as may be necessary to implement this
24 title, including any amounts needed for costs associated

1 with the initiation of such implementation, for each of fis-
2 cal years 2020 through 2022.

3 **TITLE II—ENSURING AN AGRICULTURAL WORKFORCE FOR**
4 **CULTURAL WORKFORCE FOR**
5 **THE FUTURE**

6 **Subtitle A—Reforming the H-2A**
7 **Temporary Worker Program**

8 **SEC. 201. COMPREHENSIVE AND STREAMLINED ELECTRONIC H-2A PLATFORM.**
9

10 (a) STREAMLINED H-2A PLATFORM.—

11 (1) IN GENERAL.—Not later than 12 months
12 after the date of the enactment of this Act, the Sec-
13 retary of Homeland Security, in consultation with
14 the Secretary of Labor, the Secretary of Agriculture,
15 the Secretary of State, and United States Digital
16 Service, shall ensure the establishment of an elec-
17 tronic platform through which a petition for an H-
18 2A worker may be filed. Such platform shall—

19 (A) serve as a single point of access for an
20 employer to input all information and sup-
21 porting documentation required for obtaining
22 labor certification from the Secretary of Labor
23 and the adjudication of the H-2A petition by
24 the Secretary of Homeland Security;

1 (B) serve as a single point of access for the
2 Secretary of Homeland Security, the Secretary
3 of Labor, and State workforce agencies to con-
4 currently perform their respective review and
5 adjudicatory responsibilities in the H-2A proc-
6 ess;

7 (C) facilitate communication between em-
8 ployers and agency adjudicators, including by
9 allowing employers to—

10 (i) receive and respond to notices of
11 deficiency and requests for information;

12 (ii) submit requests for inspections
13 and licensing;

14 (iii) receive notices of approval and
15 denial; and

16 (iv) request reconsideration or appeal
17 of agency decisions; and

18 (D) provide information to the Secretary of
19 State and U.S. Customs and Border Protection
20 necessary for the efficient and secure processing
21 of H-2A visas and applications for admission.

22 (2) OBJECTIVES.—In developing the platform
23 described in paragraph (1), the Secretary of Home-
24 land Security, in consultation with the Secretary of
25 Labor, the Secretary of Agriculture, the Secretary of

1 State, and United States Digital Service, shall
2 streamline and improve the H-2A process, including
3 by—

4 (A) eliminating the need for employers to
5 submit duplicate information and documenta-
6 tion to multiple agencies;

7 (B) eliminating redundant processes, where
8 a single matter in a petition is adjudicated by
9 more than one agency;

10 (C) reducing the occurrence of common pe-
11 tition errors, and otherwise improving and expe-
12 diting the processing of H-2A petitions; and

13 (D) ensuring compliance with H-2A pro-
14 gram requirements and the protection of the
15 wages and working conditions of workers.

16 (b) ONLINE JOB REGISTRY.—The Secretary of Labor
17 shall maintain a national, publicly-accessible online job
18 registry and database of all job orders submitted by H-
19 2A employers. The registry and database shall—

20 (1) be searchable using relevant criteria, includ-
21 ing the types of jobs needed to be filled, the date(s)
22 and location(s) of need, and the employer(s) named
23 in the job order;

1 (2) provide an interface for workers in English,
2 Spanish, and any other language that the Secretary
3 of Labor determines to be appropriate; and

4 (3) provide for public access of job orders ap-
5 proved under section 218(h)(2) of the Immigration
6 and Nationality Act.

7 **SEC. 202. H-2A PROGRAM REQUIREMENTS.**

8 Section 218 of the Immigration and Nationality Act
9 (8 U.S.C. 1188) is amended to read as follows:

10 **“SEC. 218. ADMISSION OF TEMPORARY H-2A WORKERS.**

11 “(a) LABOR CERTIFICATION CONDITIONS.—The Sec-
12 retary of Homeland Security may not approve a petition
13 to admit an H-2A worker unless the Secretary of Labor
14 has certified that—

15 “(1) there are not sufficient United States
16 workers who are able, willing and qualified, and who
17 will be available at the time and place needed, to
18 perform the agricultural labor or services described
19 in the petition; and

20 “(2) the employment of the H-2A worker in
21 such labor or services will not adversely affect the
22 wages and working conditions of workers in the
23 United States who are similarly employed.

24 “(b) H-2A PETITION REQUIREMENTS.—An em-
25 ployer filing a petition for an H-2A worker to perform

1 agricultural labor or services shall attest to and dem-
2 onstrate compliance, as and when appropriate, with all ap-
3 plicable requirements under this section, including the fol-
4 lowing:

5 “(1) NEED FOR LABOR OR SERVICES.—The em-
6 ployer has described the need for agricultural labor
7 or services in a job order that includes a description
8 of the nature and location of the work to be per-
9 formed, the anticipated period or periods (expected
10 start and end dates) for which the workers will be
11 needed, and the number of job opportunities in
12 which the employer seeks to employ the workers.

13 “(2) NONDISPLACEMENT OF UNITED STATES
14 WORKERS.—The employer has not and will not dis-
15 place United States workers employed by the em-
16 ployer during the period of employment of the H-
17 2A worker and during the 60-day period imme-
18 diately preceding such period of employment in the
19 job for which the employer seeks approval to employ
20 the H-2A worker.

21 “(3) STRIKE OR LOCKOUT.—Each place of em-
22 ployment described in the petition is not, at the time
23 of filing the petition and until the petition is ap-
24 proved, subject to a strike or lockout in the course
25 of a labor dispute.

1 “(4) RECRUITMENT OF UNITED STATES WORK-
2 ERS.—The employer shall engage in the recruitment
3 of United States workers as described in subsection
4 (c) and shall hire such workers who are able, willing
5 and qualified, and who will be available at the time
6 and place needed, to perform the agricultural labor
7 or services described in the petition. The employer
8 may reject a United States worker only for lawful,
9 job-related reasons.

10 “(5) WAGES, BENEFITS, AND WORKING CONDI-
11 TIONS.—The employer shall offer and provide, at a
12 minimum, the wages, benefits, and working condi-
13 tions required by this section to the H-2A worker
14 and all workers who are similarly employed. The em-
15 ployer—

16 “(A) shall offer such similarly employed
17 workers not less than the same benefits, wages,
18 and working conditions that the employer is of-
19 fering or will provide to the H-2A worker; and

20 “(B) may not impose on such similarly em-
21 ployed workers any restrictions or obligations
22 that will not be imposed on the H-2A worker.

23 “(6) WORKERS’ COMPENSATION.—If the job op-
24 portunity is not covered by or is exempt from the
25 State workers’ compensation law, the employer shall

1 provide, at no cost to the worker, insurance covering
2 injury and disease arising out of, and in the course
3 of, the worker's employment which will provide bene-
4 fits at least equal to those provided under the State
5 workers' compensation law.

6 “(7) COMPLIANCE WITH LABOR AND EMPLOY-
7 MENT LAWS.—The employer shall comply with all
8 applicable Federal, State and local employment-re-
9 lated laws and regulations.

10 “(8) COMPLIANCE WITH FOREIGN LABOR RE-
11 CRUITMENT LAWS.—The employer shall comply with
12 subtitle C of title II of the Farm Workforce Mod-
13 ernization Act of 2019.

14 “(c) RECRUITING REQUIREMENTS.—

15 “(1) IN GENERAL.—The employer may satisfy
16 the recruitment requirement described in subsection
17 (b)(4) by satisfying all of the following:

18 “(A) JOB ORDER.—As provided in sub-
19 section (h)(1), the employer shall complete a
20 job order for posting on the electronic job reg-
21 istry maintained by the Secretary of Labor and
22 for distribution by the appropriate State work-
23 force agency. Such posting shall remain on the
24 job registry as an active job order through the
25 period described in paragraph (2)(B).

1 “(B) FORMER WORKERS.—At least 45
2 days before each start date identified in the pe-
3 tition, the employer shall—

4 “(i) make reasonable efforts to con-
5 tact any United States worker the em-
6 ployer employed in the previous year in the
7 same occupation and area of intended em-
8 ployment for which an H-2A worker is
9 sought (excluding workers who were termi-
10 nated for cause or abandoned the work-
11 site); and

12 “(ii) post such job opportunity in a
13 conspicuous location or locations at the
14 place of employment.

15 “(C) POSITIVE RECRUITMENT.—During
16 the period of recruitment, the employer shall
17 complete any other positive recruitment steps
18 within a multi-State region of traditional or ex-
19 pected labor supply where the Secretary of
20 Labor finds that there are a significant number
21 of qualified United States workers who, if re-
22 cruited, would be willing to make themselves
23 available for work at the time and place needed.

24 “(2) PERIOD OF RECRUITMENT.—

1 “(A) IN GENERAL.—For purposes of this
2 subsection, the period of recruitment begins on
3 the date on which the job order is posted on the
4 online job registry and ends on the date that
5 H–2A workers depart for the employer’s place
6 of employment. For a petition involving more
7 than one start date under subsection (h)(1)(C),
8 the end of the period of recruitment shall be de-
9 termined by the date of departure of the H–2A
10 workers for the final start date identified in the
11 petition.

12 “(B) REQUIREMENT TO HIRE US WORK-
13 ERS.—

14 “(i) IN GENERAL.—Notwithstanding
15 the limitations of subparagraph (A), the
16 employer will provide employment to any
17 qualified United States worker who applies
18 to the employer for any job opportunity in-
19 cluded in the petition until the later of—

20 “(I) the date that is 30 days
21 after the date on which work begins;

22 or

23 “(II) the date on which—

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1 “(aa) 33 percent of the work
2 contract for the job opportunity
3 has elapsed; or

4 “(bb) if the employer is a
5 labor contractor, 50 percent of
6 the work contract for the job op-
7 portunity has elapsed.

8 “(ii) STAGGERED ENTRY.—For a peti-
9 tion involving more than one start date
10 under subsection (h)(1)(C), each start date
11 designated in the petition shall establish a
12 separate job opportunity. An employer may
13 not reject a United States worker because
14 the worker is unable or unwilling to fill
15 more than one job opportunity included in
16 the petition.

17 “(iii) EXCEPTION.—Notwithstanding
18 clause (i), the employer may offer a job op-
19 portunity to an H-2A worker instead of an
20 alien granted certified agricultural worker
21 status under title I of the Farm Workforce
22 Modernization Act of 2019 if the H-2A
23 worker was employed by the employer in
24 each of 3 years during the most recent 4-
25 year period.

1 “(3) RECRUITMENT REPORT.—

2 “(A) IN GENERAL.—The employer shall
3 maintain a recruitment report through the ap-
4 plicable period described in paragraph (2)(B)
5 and submit regular updates through the elec-
6 tronic platform on the results of recruitment.
7 The employer shall retain the recruitment re-
8 port, and all associated recruitment documenta-
9 tion, for a period of 3 years from the date of
10 certification.

11 “(B) BURDEN OF PROOF.—If the employer
12 asserts that any eligible individual who has ap-
13 plied or been referred is not able, willing or
14 qualified, the employer bears the burden of
15 proof to establish that the individual is not able,
16 willing or qualified because of a lawful, employ-
17 ment-related reason.

18 “(d) WAGE REQUIREMENTS.—

19 “(1) IN GENERAL.—Each employer under this
20 section will offer the worker, during the period of
21 authorized employment, wages that are at least the
22 greatest of—

23 “(A) the agreed-upon collective bargaining
24 wage;

1 “(B) the adverse effect wage rate (or any
2 successor wage established under paragraph
3 (7));

4 “(C) the prevailing wage (hourly wage or
5 piece rate); or

6 “(D) the Federal or State minimum wage.

7 “(2) ADVERSE EFFECT WAGE RATE DETER-
8 MINATIONS.—

9 “(A) IN GENERAL.—Except as provided
10 under subparagraph (B), the applicable adverse
11 effect wage rate for each State and occupational
12 classification for a calendar year shall be as fol-
13 lows:

14 “(i) The annual average hourly wage
15 for the occupational classification in the
16 State or region as reported by the Sec-
17 retary of Agriculture based on a wage sur-
18 vey conducted by such Secretary.

19 “(ii) If a wage described in clause (i)
20 is not reported, the national annual aver-
21 age hourly wage for the occupational clas-
22 sification as reported by the Secretary of
23 Agriculture based on a wage survey con-
24 ducted by such Secretary.

1 “(iii) If a wage described in clause (i)
2 or (ii) is not reported, the Statewide an-
3 nual average hourly wage for the standard
4 occupational classification as reported by
5 the Secretary of Labor based on a wage
6 survey conducted by such Secretary.

7 “(iv) If a wage described in clause (i),
8 (ii), or (iii) is not reported, the national av-
9 erage hourly wage for the occupational
10 classification as reported by the Secretary
11 of Labor based on a wage survey con-
12 ducted by such Secretary.

13 “(B) LIMITATIONS ON WAGE FLUCTUA-
14 TIONS.—

15 “(i) WAGE FREEZE FOR CALENDAR
16 YEAR 2020.—For calendar year 2020, the
17 adverse effect wage rate for each State and
18 occupational classification under this sub-
19 section shall be the adverse effect wage
20 rate that was in effect for H-2A workers
21 in the applicable State in calendar year
22 2019.

23 “(ii) CALENDAR YEARS 2021 THROUGH
24 2029.—For each of calendar years 2021
25 through 2029, the adverse effect wage rate

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1 for each State and occupational classifica-
2 tion under this subsection shall be the
3 wage calculated under subparagraph (A),
4 except that such wage may not—

5 “(I) be more than 1.5 percent
6 lower than the wage in effect for H-
7 2A workers in the applicable State
8 and occupational classification in the
9 immediately preceding calendar year;

10 “(II) except as provided in clause
11 (III), be more than 3.25 percent high-
12 er than the wage in effect for H-2A
13 workers in the applicable State and
14 occupational classification in the im-
15 mediately preceding calendar year;
16 and

17 “(III) if the application of clause
18 (II) results in a wage that is lower
19 than 110 percent of the applicable
20 Federal or State minimum wage, be
21 more than 4.25 percent higher than
22 the wage in effect for H-2A workers
23 in the applicable State and occupa-
24 tional classification in the immediately
25 preceding calendar year.

1 “(iii) CALENDAR YEARS AFTER
2 2029.—For any calendar year after 2029,
3 the applicable wage rate described in para-
4 graph (1)(B) shall be the wage rate estab-
5 lished pursuant to paragraph (7)(D). Until
6 such wage rate is effective, the adverse ef-
7 fect wage rate for each State and occupa-
8 tional classification under this subsection
9 shall be the wage calculated under sub-
10 paragraph (A), except that such wage may
11 not be more than 1.5 percent lower or 3.25
12 percent higher than the wage in effect for
13 H–2A workers in the applicable State and
14 occupational classification in the imme-
15 diately preceding calendar year.

16 “(3) MULTIPLE OCCUPATIONS.—If the primary
17 job duties for the job opportunity described in the
18 petition do not fall within a single occupational clas-
19 sification, the applicable wage rates under subpara-
20 graphs (B) and (C) of paragraph (1) for the job op-
21 portunity shall be based on the highest such wage
22 rates for all applicable occupational classifications.

23 “(4) PUBLICATION; WAGES IN EFFECT.—

24 “(A) PUBLICATION.—Prior to the start of
25 each calendar year, the Secretary of Labor shall

1 publish the applicable adverse effect wage rate
2 (or successor wage rate, if any), and prevailing
3 wage if available, for each State and occupa-
4 tional classification through notice in the Fed-
5 eral Register.

6 “(B) JOB ORDERS IN EFFECT.—Except as
7 provided in subparagraph (C), publication by
8 the Secretary of Labor of an updated adverse
9 effect wage rate or prevailing wage for a State
10 and occupational classification shall not affect
11 the wage rate guaranteed in any approved job
12 order for which recruitment efforts have com-
13 menced at the time of publication.

14 “(C) EXCEPTION FOR YEAR-ROUND
15 JOBS.—If the Secretary of Labor publishes an
16 updated adverse effect wage rate or prevailing
17 wage for a State and occupational classification
18 concerning a petition described in subsection
19 (i), and the updated wage is higher than the
20 wage rate guaranteed in the work contract, the
21 employer shall pay the updated wage not later
22 than 14 days after publication of the updated
23 wage in the Federal Register.

24 “(5) WORKERS PAID ON A PIECE RATE OR
25 OTHER INCENTIVE BASIS.—If an employer pays by

1 the piece rate or other incentive method and requires
2 one or more minimum productivity standards as a
3 condition of job retention, such standards shall be
4 specified in the job order and shall be no more than
5 those normally required (at the time of the first peti-
6 tion for H-2A workers) by other employers for the
7 activity in the area of intended employment, unless
8 the Secretary of Labor approves a higher minimum
9 standard resulting from material changes in produc-
10 tion methods.

11 “(6) GUARANTEE OF EMPLOYMENT.—

12 “(A) OFFER TO WORKER.—The employer
13 shall guarantee the worker employment for the
14 hourly equivalent of at least three-fourths of the
15 work days of the total period of employment,
16 beginning with the first work day after the ar-
17 rival of the worker at the place of employment
18 and ending on the date specified in the job
19 offer. For purposes of this subparagraph, the
20 hourly equivalent means the number of hours in
21 the work days as stated in the job offer and
22 shall exclude the worker’s Sabbath and Federal
23 holidays. If the employer affords the worker less
24 employment than that required under this para-
25 graph, the employer shall pay the worker the

1 amount which the worker would have earned
2 had the worker, in fact, worked for the guaran-
3 teed number of hours.

4 “(B) FAILURE TO WORK.—Any hours
5 which the worker fails to work, up to a max-
6 imum of the number of hours specified in the
7 job offer for a work day, when the worker has
8 been offered an opportunity to do so, and all
9 hours of work actually performed (including vol-
10 untary work in excess of the number of hours
11 specified in the job offer in a work day, on the
12 worker’s Sabbath, or on Federal holidays) may
13 be counted by the employer in calculating
14 whether the period of guaranteed employment
15 has been met.

16 “(C) ABANDONMENT OF EMPLOYMENT;
17 TERMINATION FOR CAUSE.—If the worker vol-
18 untarily abandons employment without good
19 cause before the end of the contract period, or
20 is terminated for cause, the worker is not enti-
21 tled to the guarantee of employment described
22 in subparagraph (A).

23 “(D) CONTRACT IMPOSSIBILITY.—If, be-
24 fore the expiration of the period of employment
25 specified in the job offer, the services of the

1 worker are no longer required for reasons be-
2 yond the control of the employer due to any
3 form of natural disaster before the guarantee in
4 subparagraph (A) is fulfilled, the employer may
5 terminate the worker’s employment. In the
6 event of such termination, the employer shall
7 fulfill the employment guarantee in subpara-
8 graph (A) for the work days that have elapsed
9 from the first work day after the arrival of the
10 worker to the termination of employment. The
11 employer shall make efforts to transfer a work-
12 er to other comparable employment acceptable
13 to the worker. If such transfer is not effected,
14 the employer shall provide the return transpor-
15 tation required in subsection (f)(2).

16 “(7) WAGE STANDARDS AFTER 2029.—

17 “(A) STUDY OF ADVERSE EFFECT WAGE
18 RATE.—Beginning in fiscal year 2026, the Sec-
19 retary of Agriculture and Secretary of Labor
20 shall jointly conduct a study that addresses—

21 “(i) whether the employment of H-2A
22 workers has depressed the wages of United
23 States farm workers;

24 “(ii) whether an adverse effect wage
25 rate is necessary to protect the wages of

1 United States farm workers in occupations
2 in which H-2A workers are employed;

3 “(iii) whether alternative wage stand-
4 ards would be sufficient to prevent wages
5 in occupations in which H-2A workers are
6 employed from falling below the wage level
7 that would have prevailed in the absence of
8 H-2A employment;

9 “(iv) whether any changes are war-
10 ranted in the current methodologies for
11 calculating the adverse effect wage rate
12 and the prevailing wage rate; and

13 “(v) recommendations for future wage
14 protection under this section.

15 “(B) FINAL REPORT.—Not later than Oc-
16 tober 1, 2027, the Secretary of Agriculture and
17 Secretary of Labor shall jointly prepare and
18 submit a report to the Congress setting forth
19 the findings of the study conducted under sub-
20 paragraph (A) and recommendations for future
21 wage protections under this section.

22 “(C) CONSULTATION.—In conducting the
23 study under subparagraph (A) and preparing
24 the report under subparagraph (B), the Sec-
25 retary of Agriculture and Secretary of Labor

1 shall consult with representatives of agricultural
2 employers and an equal number of representa-
3 tives of agricultural workers, at the national,
4 State and local level.

5 “(D) WAGE DETERMINATION AFTER
6 2029.—Upon publication of the report described
7 in subparagraph (B), the Secretary of Labor, in
8 consultation with and the approval of the Sec-
9 retary of Agriculture, shall make a rule to es-
10 tablish a process for annually determining the
11 wage rate for purposes of paragraph (1)(B) for
12 fiscal years after 2029. Such process shall be
13 designed to ensure that the employment of H-
14 2A workers does not undermine the wages and
15 working conditions of similarly employed United
16 States workers.

17 “(e) HOUSING REQUIREMENTS.—Employers shall
18 furnish housing in accordance with regulations established
19 by the Secretary of Labor. Such regulations shall be con-
20 sistent with the following:

21 “(1) IN GENERAL.—The employer shall be per-
22 mitted at the employer’s option to provide housing
23 meeting applicable Federal standards for temporary
24 labor camps or to secure housing which meets the
25 local standards for rental and/or public accommoda-

1 tions or other substantially similar class of habi-
2 tation: Provided, That in the absence of applicable
3 local standards, State standards for rental and/or
4 public accommodations or other substantially similar
5 class of habitation shall be met: Provided further,
6 That in the absence of applicable local or State
7 standards, Federal temporary labor camp standards
8 shall apply.

9 “(2) FAMILY HOUSING.—Except as otherwise
10 provided in subsection (i)(5), the employer shall pro-
11 vide family housing to workers with families who re-
12 quest it when it is the prevailing practice in the area
13 and occupation of intended employment to provide
14 family housing.

15 “(3) UNITED STATES WORKERS.—Notwith-
16 standing paragraphs (1) and (2), an employer is not
17 required to provide housing to United States work-
18 ers who are reasonably able to return to their resi-
19 dence within the same day.

20 “(4) TIMING OF INSPECTION.—

21 “(A) IN GENERAL.—The Secretary of
22 Labor or designee shall make a determination
23 as to whether the housing furnished by an em-
24 ployer for a worker meets the requirements im-
25 posed by this subsection prior to the date on

1 which the Secretary of Labor is required to
2 make a certification with respect to a petition
3 for the admission of such worker.

4 “(B) TIMELY INSPECTION.—The Secretary
5 of Labor shall provide a process for—

6 “(i) an employer to request inspection
7 of housing up to 60 days before the date
8 on which the employer will file a petition
9 under this section; and

10 “(ii) annual inspection of housing for
11 workers who are engaged in agricultural
12 employment that is not of a seasonal or
13 temporary nature.

14 “(f) TRANSPORTATION REQUIREMENTS.—

15 “(1) TRAVEL TO PLACE OF EMPLOYMENT.—A
16 worker who completes 50 percent of the period of
17 employment specified in the job order shall be reim-
18 bursed by the employer for the cost of the worker’s
19 transportation and subsistence from the place from
20 which the worker came to work for the employer (or
21 place of last employment, if the worker traveled
22 from such place) to the place of employment.

23 “(2) TRAVEL FROM PLACE OF EMPLOYMENT.—
24 For a worker who completes the period of employ-
25 ment specified in the job order or who is terminated

1 without cause, the employer shall provide or pay for
 2 the worker's transportation and subsistence from the
 3 place of employment to the place from which the
 4 worker, disregarding intervening employment, came
 5 to work for the employer, or to the place of next em-
 6 ployment, if the worker has contracted with a subse-
 7 quent employer who has not agreed to provide or
 8 pay for the worker's transportation and subsistence
 9 to such subsequent employer's place of employment.

10 “(3) LIMITATION.—

11 “(A) AMOUNT OF REIMBURSEMENT.—Ex-
 12 cept as provided in subparagraph (B), the
 13 amount of reimbursement provided under para-
 14 graph (1) or (2) to a worker need not exceed
 15 the lesser of—

16 “(i) the actual cost to the worker of
 17 the transportation and subsistence in-
 18 volved; or

19 “(ii) the most economical and reason-
 20 able common carrier transportation
 21 charges and subsistence costs for the dis-
 22 tance involved.

23 “(B) DISTANCE TRAVELED.—For travel to
 24 or from the worker's home country, if the travel
 25 distance between the worker's home and the rel-

1 evant consulate is 50 miles or less, reimburse-
2 ment for transportation and subsistence may be
3 based on transportation to or from the con-
4 sulate.

5 “(g) HEAT ILLNESS PREVENTION PLAN.—

6 “(1) IN GENERAL.—The employer shall main-
7 tain a reasonable plan that describes the employer’s
8 procedures for the prevention of heat illness, includ-
9 ing appropriate training, access to water and shade,
10 the provision of breaks, and the protocols for emer-
11 gency response. Such plan shall—

12 “(A) be in writing in English and, to the
13 extent necessary, any language common to a
14 significant portion of the workers if they are
15 not fluent in English; and

16 “(B) be posted at a conspicuous location at
17 the worksite and provided to employees prior to
18 the commencement of labor or services.

19 “(2) CLARIFICATION.—Nothing in this sub-
20 section is intended to limit any other Federal or
21 State authority to promulgate, enforce, or maintain
22 health and safety standards related to heat-related
23 illness.

24 “(h) H-2A PETITION PROCEDURES.—

1 “(1) SUBMISSION OF PETITION AND JOB
2 ORDER.—

3 “(A) IN GENERAL.—The employer shall
4 submit information required for the adjudica-
5 tion of the H-2A petition, including a job
6 order, through the electronic platform no more
7 than 75 calendar days and no fewer than 60
8 calendar days before the employer’s first date of
9 need specified in the petition.

10 “(B) FILING BY AGRICULTURAL ASSOCIA-
11 TIONS.—An association of agricultural pro-
12 ducers that use agricultural services may file an
13 H-2A petition under subparagraph (A). If an
14 association is a joint or sole employer of work-
15 ers who perform agricultural labor or services,
16 H-2A workers may be used for the approved
17 job opportunities of any of the association’s
18 producer members and such workers may be
19 transferred among its producer members to per-
20 form the agricultural labor or services for which
21 the petition was approved.

22 “(C) PETITIONS INVOLVING STAGGERED
23 ENTRY.—

24 “(i) IN GENERAL.—Except as pro-
25 vided in clause (ii), an employer may file

1 a petition involving employment in the
2 same occupational classification and same
3 area of intended employment with multiple
4 start dates if—

5 “(I) the petition involves tem-
6 porary or seasonal employment and no
7 more than 10 start dates;

8 “(II) the multiple start dates
9 share a common end date;

10 “(III) no more than 120 days
11 separate the first start date and the
12 final start date listed in the petition;
13 and

14 “(IV) the need for multiple start
15 dates arises from variations in labor
16 needs associated with the job oppor-
17 tunity identified in the petition.

18 “(ii) LABOR CONTRACTORS.—A labor
19 contractor may not file a petition described
20 in clause (i) unless the labor contractor—

21 “(I) is filing as a joint employer
22 with its contractees, or is operating in
23 a State in which joint employment
24 and liability between the labor con-

1 tractor and its contractees is other-
2 wise established; or

3 “(II) has posted and is maintain-
4 ing a premium surety bond as de-
5 scribed in subsection (1)(1).

6 “(2) LABOR CERTIFICATION.—

7 “(A) REVIEW OF JOB ORDER.—

8 “(i) IN GENERAL.—The Secretary of
9 Labor, in consultation with the relevant
10 State workforce agency, shall review the
11 job order for compliance with this section
12 and notify the employer through the elec-
13 tronic platform of any deficiencies not later
14 than 7 business days from the date the
15 employer submits the necessary informa-
16 tion required under paragraph (1)(A). The
17 employer shall be provided 5 business days
18 to respond to any such notice of deficiency.

19 “(ii) STANDARD.—The job order must
20 include all material terms and conditions
21 of employment, including the requirements
22 of this section, and must be otherwise con-
23 sistent with the minimum standards pro-
24 vided under Federal, State or local law. In
25 considering the question of whether a spe-

1 cific qualification is appropriate in a job
2 order, the Secretary of Labor shall apply
3 the normal and accepted qualification re-
4 quired by non-H-2A employers in the
5 same or comparable occupations and crops.

6 “(iii) EMERGENCY PROCEDURES.—

7 The Secretary of Labor shall establish
8 emergency procedures for the curing of de-
9 ficiencies that cannot be resolved during
10 the period described in clause (i).

11 “(B) APPROVAL OF JOB ORDER.—

12 “(i) IN GENERAL.—Upon approval of
13 the job order, the Secretary of Labor shall
14 immediately place for public examination a
15 copy of the job order on the online job reg-
16 istry, and the State workforce agency serv-
17 ing the area of intended employment shall
18 commence the recruitment of United
19 States workers.

20 “(ii) REFERRAL OF UNITED STATES
21 WORKERS.—The Secretary of Labor and
22 State workforce agency shall keep the job
23 order active until the end of the period de-
24 scribed in subsection (c)(2) and shall refer

1 to the employer each United States worker
2 who applies for the job opportunity.

3 “(C) REVIEW OF INFORMATION FOR DEFICIENCIES.—Within 7 business days of the ap-
4 proval of the job order, the Secretary of Labor
5 shall review the information necessary to make
6 a labor certification and notify the employer
7 through the electronic platform if such informa-
8 tion does not meet the standards for approval.
9 Such notification shall include a description of
10 any deficiency, and the employer shall be pro-
11 vided 5 business days to cure such deficiency.

12 “(D) CERTIFICATION AND AUTHORIZATION
13 OF WORKERS.—Not later than 30 days before
14 the date that labor or services are first required
15 to be performed, the Secretary of Labor shall
16 issue the requested labor certification if the
17 Secretary determines that the requirements set
18 forth in this section have been met.

19 “(E) EXPEDITED ADMINISTRATIVE AP-
20 PEALS OF CERTAIN DETERMINATIONS.—The
21 Secretary of Labor shall by regulation establish
22 a procedure for an employer to request the ex-
23 pedited review of a denial of a labor certifi-
24 cation under this section, or the revocation of
25

1 such a certification. Such procedure shall re-
2 quire the Secretary to expeditiously, but no
3 later than 72 hours after expedited review is re-
4 quested, issue a de novo determination on a
5 labor certification that was denied in whole or
6 in part because of the availability of able, will-
7 ing and qualified workers if the employer dem-
8 onstrates, consistent with subsection (e)(3)(B),
9 that such workers are not actually available at
10 the time or place such labor or services are re-
11 quired.

12 “(3) PETITION DECISION.—

13 “(A) IN GENERAL.—Not later than 7 busi-
14 ness days after the Secretary of Labor issues
15 the certification, the Secretary of Homeland Se-
16 curity shall issue a decision on the petition and
17 shall transmit a notice of action to the peti-
18 tioner via the electronic platform.

19 “(B) APPROVAL.—Upon approval of a pe-
20 tition under this section, the Secretary of
21 Homeland Security shall ensure that such ap-
22 proval is noted in the electronic platform and is
23 available to the Secretary of State and U.S.
24 Customs and Border Protection, as necessary,
25 to facilitate visa issuance and admission.

1 “(C) PARTIAL APPROVAL.—A petition for
2 multiple named beneficiaries may be partially
3 approved with respect to eligible beneficiaries
4 notwithstanding the ineligibility, or potential in-
5 eligibility, of one or more other beneficiaries.

6 “(D) POST-CERTIFICATION AMEND-
7 MENTS.—The Secretary of Labor shall provide
8 a process for amending a request for labor cer-
9 tification in conjunction with an H-2A petition,
10 subsequent to certification by the Secretary of
11 Labor, in cases in which the requested amend-
12 ment does not materially change the petition
13 (including the job order).

14 “(4) ROLES OF AGRICULTURAL ASSOCIA-
15 TIONS.—

16 “(A) MEMBER’S VIOLATION DOES NOT
17 NECESSARILY DISQUALIFY ASSOCIATION OR
18 OTHER MEMBERS.—If an individual producer
19 member of a joint employer association is deter-
20 mined to have committed an act that results in
21 the denial of a petition with respect to the
22 member, the denial shall apply only to that
23 member of the association unless the Secretary
24 of Labor determines that the association or

1 other member participated in, had knowledge
2 of, or reason to know of, the violation.

3 “(B) ASSOCIATION’S VIOLATION DOES NOT
4 NECESSARILY DISQUALIFY MEMBERS.—

5 “(i) If an association representing ag-
6 ricultural producers as a joint employer is
7 determined to have committed an act that
8 results in the denial of a petition with re-
9 spect to the association, the denial shall
10 apply only to the association and does not
11 apply to any individual producer member
12 of the association unless the Secretary of
13 Labor determines that the member partici-
14 pated in, had knowledge of, or reason to
15 know of, the violation.

16 “(ii) If an association of agricultural
17 producers certified as a sole employer is
18 determined to have committed an act that
19 results in the denial of a petition with re-
20 spect to the association, no individual pro-
21 ducer member of such association may be
22 the beneficiary of the services of H-2A
23 workers in the commodity and occupation
24 in which such aliens were employed by the
25 association which was denied during the

1 period such denial is in force, unless such
2 producer member employs such aliens in
3 the commodity and occupation in question
4 directly or through an association which is
5 a joint employer of such workers with the
6 producer member.

7 “(5) SPECIAL PROCEDURES.—The Secretary of
8 Labor, in consultation with the Secretary of Agri-
9 culture and Secretary of Homeland Security, may by
10 regulation establish alternate procedures that rea-
11 sonably modify program requirements under this
12 section, when the Secretary determines that such
13 modifications are required due to the unique nature
14 of the work involved.

15 “(6) CONSTRUCTION OCCUPATIONS.—An em-
16 ployer may not file a petition under this section on
17 behalf of a worker if the majority of the worker’s
18 duties will fall within a construction or extraction oc-
19 cupational classification.

20 “(i) NON-TEMPORARY OR -SEASONAL NEEDS.—

21 “(1) IN GENERAL.—Notwithstanding the re-
22 quirement in section 101(a)(15)(H)(ii)(a) that the
23 agricultural labor or services performed by an H-2A
24 worker be of a temporary or seasonal nature, the
25 Secretary of Homeland Security may, consistent

1 with the provisions of this subsection, approve a pe-
2 tition for an H-2A worker to perform agricultural
3 services or labor that is not of a temporary or sea-
4 sonal nature.

5 “(2) NUMERICAL LIMITATIONS.—

6 “(A) FIRST 3 FISCAL YEARS.—The total
7 number of aliens who may be issued visas or
8 otherwise provided H-2A nonimmigrant status
9 under paragraph (1) for the first fiscal year
10 during which the first visa is issued under such
11 paragraph and for each of the following two fis-
12 cal years may not exceed 20,000.

13 “(B) FISCAL YEARS 4 THROUGH 10.—

14 “(i) IN GENERAL.—The total number
15 of aliens who may be issued visas or other-
16 wise provided H-2A nonimmigrant status
17 under paragraph (1) for the first fiscal
18 year following the fiscal years referred to
19 in subparagraph (A) and for each of the
20 following 6 fiscal years may not exceed a
21 numerical limitation jointly imposed by the
22 Secretary of Agriculture and Secretary of
23 Labor in accordance with clause (ii).

24 “(ii) ANNUAL ADJUSTMENTS.—For
25 each fiscal year referred to in clause (i),

1 the Secretary of Agriculture and Secretary
2 of Labor, in consultation with the Sec-
3 retary of Homeland Security, shall estab-
4 lish a numerical limitation for purposes of
5 clause (i). Such numerical limitation may
6 not be lower 20,000 and may not vary by
7 more than 12.5 percent compared to the
8 numerical limitation applicable to the im-
9 mediately preceding fiscal year. In estab-
10 lishing such numerical limitation, the Sec-
11 retaries shall consider appropriate factors,
12 including—

13 “(I) a demonstrated shortage of
14 agricultural workers;

15 “(II) the level of unemployment
16 and underemployment of agricultural
17 workers during the preceding fiscal
18 year;

19 “(III) the number of H-2A work-
20 ers sought by employers during the
21 preceding fiscal year to engage in ag-
22 ricultural labor or services not of a
23 temporary or seasonal nature;

24 “(IV) the number of such H-2A
25 workers issued a visa in the most re-

85

1 cent fiscal year who remain in the
2 United States in compliance with the
3 terms of such visa;

4 “(V) the estimated number of
5 United States workers, including
6 workers who obtained certified agri-
7 cultural worker status under title I of
8 the Farm Workforce Modernization
9 Act of 2019, who worked during the
10 preceding fiscal year in agricultural
11 labor or services not of a temporary
12 or seasonal nature;

13 “(VI) the number of such United
14 States workers who accepted jobs of-
15 fered by employers using the online
16 job registry during the preceding fis-
17 cal year;

18 “(VII) any growth or contraction
19 of the United States agricultural in-
20 dustry that has increased or decreased
21 the demand for agricultural workers;
22 and

23 “(VIII) any changes in the real
24 wages paid to agricultural workers in
25 the United States as an indication of

1 a shortage or surplus of agricultural
2 labor.

3 “(C) SUBSEQUENT FISCAL YEARS.—For
4 each fiscal year following the fiscal years re-
5 ferred to in subparagraph (B), the Secretary of
6 Agriculture and Secretary of Labor shall jointly
7 determine, in consultation with the Secretary of
8 Homeland Security, and after considering ap-
9 propriate factors, including those factors listed
10 in subclauses (I) through (VIII) of subpara-
11 graph (B)(ii), whether to establish a numerical
12 limitation for that fiscal year. If a numerical
13 limitation is so established—

14 “(i) such numerical limitation may
15 not be lower than highest number of aliens
16 admitted under this subsection in any of
17 the three fiscal years immediately pre-
18 ceding the fiscal year for which the numer-
19 ical limitation is to be established; and

20 “(ii) the total number of aliens who
21 may be issued visas or otherwise provided
22 H-2A nonimmigrant status under para-
23 graph (1) for that fiscal year may not ex-
24 ceed such numerical limitation.

1 “(D) EMERGENCY PROCEDURES.—The
2 Secretary of Agriculture and Secretary of
3 Labor, in consultation with the Secretary of
4 Homeland Security, shall jointly establish by
5 regulation procedures for immediately adjusting
6 a numerical limitation imposed under subpara-
7 graph (B) or (C) to account for significant
8 labor shortages.

9 “(3) ALLOCATION OF VISAS.—

10 “(A) BI-ANNUAL ALLOCATION.—The an-
11 nual allocation of visas described in paragraph
12 (2) shall be evenly allocated between two halves
13 of the fiscal year unless the Secretary of Home-
14 land Security, in consultation with the Sec-
15 retary of Agriculture and Secretary of Labor,
16 determines that an alternative allocation would
17 better accommodate demand for visas. Any un-
18 used visas in the first half of the fiscal year
19 shall be added to the allocation for the subse-
20 quent half of the same fiscal year.

21 “(B) RESERVE FOR DAIRY LABOR OR
22 SERVICES.—

23 “(i) IN GENERAL.—Of the visa num-
24 bers made available in each half of the fis-
25 cal year pursuant to subparagraph (A), 50

1 percent of such visas shall be reserved for
2 employers filing petitions seeking H-2A
3 workers to engage in agricultural labor or
4 services in the dairy industry.

5 “(ii) EXCEPTION.—If, after 4 months
6 have elapsed in one half of the fiscal year,
7 the Secretary of Homeland Security deter-
8 mines that application of clause (i) will re-
9 sult in visas going unused during that half
10 of the fiscal year, clause (i) shall not apply
11 to visas under this paragraph during the
12 remainder of such calendar half.

13 “(C) LIMITED ALLOCATION FOR CERTAIN
14 SPECIAL PROCEDURES INDUSTRIES.—

15 “(i) IN GENERAL.—Notwithstanding
16 the numerical limitations under paragraph
17 (2), up to 500 aliens may be issued visas
18 or otherwise provided H-2A nonimmigrant
19 status under paragraph (1) in a fiscal year
20 for range sheep or goat herding.

21 “(ii) LIMITATION.—The total number
22 of aliens in the United States in valid H-
23 2A status under clause (i) at any one time
24 may not exceed 500.

1 “(iii) CLARIFICATION.—Any visas
2 issued under this subparagraph may not be
3 considered for purposes of the annual ad-
4 justments under subparagraphs (B) and
5 (C) of paragraph (2).

6 “(4) ANNUAL ROUND TRIP HOME.—

7 “(A) IN GENERAL.—In addition to the
8 other requirements of this section, an employer
9 shall provide H-2A workers employed under
10 this subsection, at no cost to such workers, with
11 annual round trip travel, including transpor-
12 tation and subsistence during travel, to their
13 homes in their communities of origin. The em-
14 ployer must provide such travel within 14
15 months of the initiation of the worker’s employ-
16 ment, and no more than 14 months can elapse
17 between each required period of travel.

18 “(B) LIMITATION.—The cost of travel
19 under subparagraph (A) need not exceed the
20 lesser of—

21 “(i) the actual cost to the worker of
22 the transportation and subsistence in-
23 volved; or

24 “(ii) the most economical and reason-
25 able common carrier transportation

1 charges and subsistence costs for the dis-
2 tance involved.

3 “(5) FAMILY HOUSING.—An employer seeking
4 to employ an H-2A worker pursuant to this sub-
5 section shall offer family housing to workers with
6 families if such workers are engaged in agricultural
7 employment that is not of a seasonal or temporary
8 nature. The worker may reject such an offer. The
9 employer may not charge the worker for the work-
10 er’s housing, except that if the worker accepts family
11 housing, a prorated rent based on the fair market
12 value for such housing may be charged for the work-
13 er’s family members.

14 “(6) WORKPLACE SAFETY PLAN FOR DAIRY EM-
15 PLOYEES.—

16 “(A) IN GENERAL.—If an employer is
17 seeking to employ a worker in agricultural labor
18 or services in the dairy industry pursuant to
19 this subsection, the employer must report inci-
20 dents consistent with the requirements under
21 section 1904.39 of title 29, Code of Federal
22 Regulations, and maintain an effective worksite
23 safety and compliance plan to prevent work-
24 place accidents and otherwise ensure safety.
25 Such plan shall—

1 “(i) be in writing in English and, to
2 the extent necessary, any language com-
3 mon to a significant portion of the workers
4 if they are not fluent in English; and

5 “(ii) be posted at a conspicuous loca-
6 tion at the worksite and provided to em-
7 ployees prior to the commencement of
8 labor or services.

9 “(B) CONTENTS OF PLAN.—The Secretary
10 of Labor, in consultation with the Secretary of
11 Agriculture, shall establish by regulation the
12 minimum requirements for the plan described
13 in subparagraph (A). Such plan shall include
14 measures to—

15 “(i) require workers (other than the
16 employer’s family members) whose posi-
17 tions require contact with animals to com-
18 plete animal care training, including ani-
19 mal handling and job-specific animal care;

20 “(ii) protect against sexual harass-
21 ment and violence, resolve complaints in-
22 volving harassment or violence, and protect
23 against retaliation against workers report-
24 ing harassment or violence; and

1 “(iii) contain other provisions nec-
2 essary for ensuring workplace safety, as
3 determined by the Secretary of Labor, in
4 consultation with the Secretary of Agri-
5 culture.

6 “(C) CLARIFICATION.—Nothing in this
7 paragraph is intended to apply to persons or
8 entities that are not seeking to employ workers
9 under this section. Nothing in this paragraph is
10 intended to limit any other Federal or State au-
11 thority to promulgate, enforce, or maintain
12 health and safety standards related to the dairy
13 industry.

14 “(j) ELIGIBILITY FOR H-2A STATUS AND ADMISSION
15 TO THE UNITED STATES.—

16 “(1) DISQUALIFICATION.—An alien shall be in-
17 eligible for admission to the United States as an H-
18 2A worker pursuant to a petition filed under this
19 section if the alien was admitted to the United
20 States as an H-2A worker within the past 5 years
21 of the date the petition was filed and—

22 “(A) violated a material provision of this
23 section, including the requirement to promptly
24 depart the United States when the alien’s au-
25 thorized period of admission has expired, unless

1 the alien has good cause for such failure to de-
2 part; or

3 “(B) otherwise violated a term or condition
4 of admission into the United States as an H-
5 2A worker.

6 “(2) VISA VALIDITY.—A visa issued to an H-
7 2A worker shall be valid for 3 years and shall allow
8 for multiple entries during the approved period of
9 admission.

10 “(3) PERIOD OF AUTHORIZED STAY; ADMIS-
11 SION.—

12 “(A) IN GENERAL.—An alien admissible as
13 an H-2A worker shall be authorized to stay in
14 the United States for the period of employment
15 specified in the petition approved by the Sec-
16 retary of Homeland Security under this section.
17 The maximum continuous period of authorized
18 stay for an H-2A worker is 36 months.

19 “(B) REQUIREMENT TO REMAIN OUTSIDE
20 THE UNITED STATES.—In the case of an H-2A
21 worker whose maximum continuous period of
22 authorized stay (including any extensions) has
23 expired, the alien may not again be eligible for
24 such stay until the alien remains outside the

1 United States for a cumulative period of at
2 least 45 days.

3 “(C) EXCEPTIONS.—The Secretary of
4 Homeland Security shall deduct absences from
5 the United States that take place during an H-
6 2A worker’s period of authorized stay from the
7 period that the alien is required to remain out-
8 side the United States under subparagraph (B),
9 if the alien or the alien’s employer requests
10 such a deduction, and provides clear and con-
11 vincing proof that the alien qualifies for such a
12 deduction. Such proof shall consist of evidence
13 including, but not limited to, arrival and depart-
14 ure records, copies of tax returns, and records
15 of employment abroad.

16 “(D) ADMISSION.—In addition to the max-
17 imum continuous period of authorized stay, an
18 H-2A worker’s authorized period of admission
19 shall include an additional period of 10 days
20 prior to the beginning of the period of employ-
21 ment for the purpose of traveling to the place
22 of employment and 45 days at the end of the
23 period of employment for the purpose of trav-
24 eling home or seeking an extension of status
25 based on a subsequent offer of employment if

1 the worker has not reached the maximum con-
2 tinuous period of authorized stay under sub-
3 paragraph (A) (subject to the exceptions in sub-
4 paragraph (C)).

5 “(4) CONTINUING H-2A WORKERS.—

6 “(A) SUCCESSIVE EMPLOYMENT.—An H-
7 2A worker is authorized to start new or concur-
8 rent employment upon the filing of a nonfrivo-
9 lous H-2A petition, or as of the requested start
10 date, whichever is later if—

11 “(i) the petition to start new or con-
12 current employment was filed prior to the
13 expiration of the H-2A worker’s period of
14 admission as defined in paragraph (3)(D);
15 and

16 “(ii) the H-2A worker has not been
17 employed without authorization in the
18 United States from the time of last admis-
19 sion to the United States in H-2A status
20 through the filing of the petition for new
21 employment.

22 “(B) PROTECTION DUE TO IMMIGRANT
23 VISA BACKLOGS.—Notwithstanding the limita-
24 tions on the period of authorized stay described
25 in paragraph (3), any H-2A worker who—

1 “(i) is the beneficiary of an approved
2 petition, filed under section 204(a)(1)(E)
3 or (F) for preference status under section
4 203(b)(3)(A)(iii); and

5 “(ii) is eligible to be granted such sta-
6 tus but for the annual limitations on visas
7 under section 203(b)(3)(A),
8 may apply for, and the Secretary of Homeland
9 Security may grant, an extension of such non-
10 immigrant status until the Secretary of Home-
11 land Security issues a final administrative deci-
12 sion on the alien’s application for adjustment of
13 status or the Secretary of State issues a final
14 decision on the alien’s application for an immi-
15 grant visa.

16 “(5) ABANDONMENT OF EMPLOYMENT.—

17 “(A) IN GENERAL.—Except as provided in
18 subparagraph (B), an H-2A worker who aban-
19 dons the employment which was the basis for
20 the worker’s authorized stay, without good
21 cause, shall be considered to have failed to
22 maintain H-2A status and shall depart the
23 United States or be subject to removal under
24 section 237(a)(1)(C)(i).

1 “(B) GRACE PERIOD TO SECURE NEW EM-
2 PLOYMENT.—An H-2A worker shall not be con-
3 sidered to have failed to maintain H-2A status
4 solely on the basis of a cessation of the employ-
5 ment on which the alien’s classification was
6 based for a period of 45 consecutive days, or
7 until the end of the authorized validity period,
8 whichever is shorter, once during each author-
9 ized validity period.

10 “(k) REQUIRED DISCLOSURES.—

11 “(1) DISCLOSURE OF WORK CONTRACT.—Not
12 later than the time the H-2A worker applies for a
13 visa, the employer shall provide the worker with a
14 copy of the work contract that includes the disclo-
15 sures and rights under this section (or in the ab-
16 sence of such a contract, a copy of the job order and
17 proof of the certification described in subparagraphs
18 (B) and (D) of subsection (h)(2)). An H-2A worker
19 moving from one H-2A employer to a subsequent
20 H-2A employer shall be provided with a copy of the
21 new employment contract no later than the time an
22 offer of employment is made by the subsequent em-
23 ployer.

24 “(2) HOURS AND EARNINGS STATEMENTS.—

25 The employer shall furnish to H-2A workers, on or

1 before each payday, in one or more written state-
2 ments—

3 “(A) the worker’s total earnings for the
4 pay period;

5 “(B) the worker’s hourly rate of pay, piece
6 rate of pay, or both;

7 “(C) the hours of employment offered to
8 the worker and the hours of employment actu-
9 ally worked;

10 “(D) if piece rates of pay are used, the
11 units produced daily;

12 “(E) an itemization of the deductions
13 made from the worker’s wages; and

14 “(F) any other information required by
15 Federal, State or local law.

16 “(3) NOTICE OF WORKER RIGHTS.—The em-
17 ployer must post and maintain in a conspicuous lo-
18 cation at the place of employment, a poster provided
19 by the Secretary of Labor in English, and, to the ex-
20 tent necessary, any language common to a signifi-
21 cant portion of the workers if they are not fluent in
22 English, which sets out the rights and protections
23 for workers employed pursuant to this section.

24 “(l) LABOR CONTRACTORS; FOREIGN LABOR RE-
25 CRUITERS; PROHIBITION ON FEES.—

1 “(1) LABOR CONTRACTORS.—

2 “(A) SURETY BOND.—An employer that is
3 a labor contractor who seeks to employ H–2A
4 workers shall maintain a surety bond in an
5 amount required under subparagraph (B). Such
6 bond shall be payable to the Secretary of Labor
7 or pursuant to the resolution of a civil or crimi-
8 nal proceeding, for the payment of wages and
9 benefits, including any assessment of interest,
10 owed to an H–2A worker or a similarly em-
11 ployed United States worker, or a United
12 States worker who has been rejected or dis-
13 placed in violation of this section.

14 “(B) AMOUNT OF BOND.—The Secretary
15 of Labor shall annually publish in the Federal
16 Register a schedule of required bond amounts
17 that are determined by such Secretary to be
18 sufficient for labor contractors to discharge fi-
19 nancial obligations under this section based on
20 the number of workers the labor contractor
21 seeks to employ and the wages such workers are
22 required to be paid.

23 “(C) PREMIUM BOND.—A labor contractor
24 seeking to file a petition involving more than
25 one start date under subsection (h)(1)(C) shall

1 maintain a surety bond that is at least 15 per-
2 cent higher than the applicable bond amount
3 determined by the Secretary under subpara-
4 graph (B).

5 “(D) USE OF FUNDS.—Any sums paid to
6 the Secretary under subparagraph (A) that are
7 not paid to a worker because of the inability to
8 do so within a period of 5 years following the
9 date of a violation giving rise to the obligation
10 to pay shall remain available to the Secretary
11 without further appropriation until expended to
12 support the enforcement of this section.

13 “(2) PROHIBITION AGAINST EMPLOYEES PAY-
14 ING FEES.—Neither the employer nor its agents
15 shall seek or receive payment of any kind from any
16 worker for any activity related to the H-2A process,
17 including payment of the employer’s attorneys’ fees,
18 application fees, or recruitment costs. An employer
19 and its agents may receive reimbursement for costs
20 that are the responsibility and primarily for the ben-
21 efit of the worker, such as government-required
22 passport fees.

23 “(3) THIRD PARTY CONTRACTS.—The contract
24 between an employer and any labor contractor or
25 any foreign labor recruiter (or any agent of such

1 labor contractor or foreign labor recruiter) whom the
2 employer engages shall include a term providing for
3 the termination of such contract for cause if the con-
4 tractor or recruiter, either directly or indirectly, in
5 the placement or recruitment of H-2A workers seeks
6 or receives payments or other compensation from
7 prospective employees. Upon learning that a labor
8 contractor or foreign labor recruiter has sought or
9 collected such payments, the employer shall so termi-
10 nate any contracts with such contractor or recruiter.

11 “(m) ENFORCEMENT AUTHORITY.—

12 “(1) IN GENERAL.—The Secretary of Labor is
13 authorized to take such actions against employers,
14 including imposing appropriate penalties and seeking
15 monetary and injunctive relief and specific perform-
16 ance of contractual obligations, as may be necessary
17 to ensure compliance with the requirements of this
18 section and with the applicable terms and conditions
19 of employment.

20 “(2) COMPLAINT PROCESS.—

21 “(A) PROCESS.—The Secretary of Labor
22 shall establish a process for the receipt, inves-
23 tigation, and disposition of complaints alleging
24 failure of an employer to comply with the re-

1 requirements under this section and with the ap-
2 plicable terms and conditions of employment.

3 “(B) FILING.—A complaint referred to in
4 subparagraph (A) may be filed not later than 2
5 years after the date of the conduct that is the
6 subject of the complaint.

7 “(C) COMPLAINT NOT EXCLUSIVE.—A
8 complaint filed under this paragraph is not an
9 exclusive remedy and the filing of such a com-
10 plaint does not waive any rights or remedies of
11 the aggrieved party under this law or other
12 laws.

13 “(D) DECISION AND REMEDIES.—If the
14 Secretary of Labor finds, after notice and op-
15 portunity for a hearing, that the employer failed
16 to comply with the requirements of this section
17 or the terms and conditions of employment, the
18 Secretary of Labor may require payment of un-
19 paid wages, unpaid benefits, fees assessed in
20 violation of this section, damages, and civil
21 money penalties. The Secretary is also author-
22 ized to impose other administrative remedies,
23 including disqualification of the employer from
24 utilizing the H-2A program for a period of up
25 to 5 years in the event of willful or multiple

1 material violations. The Secretary is authorized
2 to permanently disqualify an employer from uti-
3 lizing the H-2A program upon a subsequent
4 finding involving willful or multiple material
5 violations.

6 “(E) DISPOSITION OF PENALTIES.—Civil
7 penalties collected under this paragraph shall be
8 deposited into the H-2A Labor Certification
9 Fee Account established under section 203 of
10 the Farm Workforce Modernization Act of
11 2019.

12 “(3) STATUTORY CONSTRUCTION.—Nothing in
13 this subsection may be construed as limiting the au-
14 thority of the Secretary of Labor to conduct an in-
15 vestigation—

16 “(A) under any other law, including any
17 law affecting migrant and seasonal agricultural
18 workers; or

19 “(B) in the absence of a complaint.

20 “(4) RETALIATION PROHIBITED.—It is a viola-
21 tion of this subsection for any person to intimidate,
22 threaten, restrain, coerce, blacklist, discharge, or in
23 any other manner discriminate against, or to cause
24 any person to intimidate, threaten, restrain, coerce,
25 blacklist, or in any manner discriminate against, an

1 employee, including a former employee or an appli-
2 cant for employment, because the employee—

3 “(A) has disclosed information to the em-
4 ployer, or to any other person, that the em-
5 ployee reasonably believes evidences a violation
6 under this section, or any rule or regulation re-
7 lating to this section;

8 “(B) has filed a complaint concerning the
9 employer’s compliance with the requirements
10 under this section or any rule or regulation per-
11 taining to this section;

12 “(C) cooperates or seeks to cooperate in an
13 investigation or other proceeding concerning the
14 employer’s compliance with the requirements
15 under this section or any rule or regulation per-
16 taining to this section; or

17 “(D) has taken steps to exercise or assert
18 any right or protection under the provisions of
19 this section, or any rule or regulation pertaining
20 to this section, or any other relevant Federal,
21 State, or local law.

22 “(5) INTERAGENCY COMMUNICATION.—The
23 Secretary of Labor, in consultation with the Sec-
24 retary of Homeland Security, Secretary of State and
25 the Equal Employment Opportunity Commission,

1 shall establish mechanisms by which the agencies
2 and their components share information, including
3 by public electronic means, regarding complaints,
4 studies, investigations, findings and remedies regard-
5 ing compliance by employers with the requirements
6 of the H-2A program and other employment-related
7 laws and regulations.

8 “(n) DEFINITIONS.—In this section:

9 “(1) DISPLACE.—The term ‘displace’ means to
10 lay off a similarly employed United States worker,
11 other than for lawful job-related reasons, in the oc-
12 cupation and area of intended employment for the
13 job for which H-2A workers are sought.

14 “(2) H-2A WORKER.—The term ‘H-2A worker’
15 means a nonimmigrant described in section
16 101(a)(15)(H)(ii)(a).

17 “(3) JOB ORDER.—The term ‘job order’ means
18 the document containing the material terms and
19 conditions of employment, including obligations and
20 assurances required under this section or any other
21 law.

22 “(4) ONLINE JOB REGISTRY.—The term ‘online
23 job registry’ means the online job registry of the
24 Secretary of Labor required under section 201(b) of

1 the Farm Workforce Modernization Act of 2019 (or
2 similar successor registry).

3 “(5) SIMILARLY EMPLOYED.—The term ‘simi-
4 larly employed’, in the case of a worker, means a
5 worker in the same occupational classification as the
6 classification or classifications for which the H-2A
7 worker is sought.

8 “(6) UNITED STATES WORKER.—The term
9 ‘United States worker’ means any worker who is—

10 “(A) a citizen or national of the United
11 States;

12 “(B) an alien who is lawfully admitted for
13 permanent residence, is admitted as a refugee
14 under section 207, is granted asylum under sec-
15 tion 208, or is an immigrant otherwise author-
16 ized to be employed in the United States;

17 “(C) an alien granted certified agricultural
18 worker status under title I of the Farm Work-
19 force Modernization Act of 2019; or

20 “(D) an individual who is not an unauthor-
21 ized alien (as defined in section 274A(h)(3))
22 with respect to the employment in which the
23 worker is engaging.

24 “(o) FEES; AUTHORIZATION OF APPROPRIATIONS.—

25 “(1) FEES.—

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1 “(A) IN GENERAL.—The Secretary of
2 Homeland Security shall impose a fee to pro-
3 cess petitions under this section. Such fee shall
4 be set at a level that is sufficient to recover the
5 reasonable costs of processing the petition, in-
6 cluding the reasonable costs of providing labor
7 certification by the Secretary of Labor.

8 “(B) DISTRIBUTION.—Fees collected
9 under subparagraph (A) shall be deposited as
10 offsetting receipts into the immigration exami-
11 nations fee account in section 286(m), except
12 that the portion of fees assessed for the Sec-
13 retary of Labor shall be deposited into the H-
14 2A Labor Certification Fee Account established
15 pursuant to section 203(c) of the Farm Work-
16 force Modernization Act of 2019 .

17 “(2) APPROPRIATIONS.—There are authorized
18 to be appropriated for each fiscal year such sums as
19 necessary for the purposes of—

20 “(A) recruiting United States workers for
21 labor or services which might otherwise be per-
22 formed by H-2A workers, including by ensuring
23 that State workforce agencies are sufficiently
24 funded to fulfill their functions under this sec-
25 tion;

1 “(B) enabling the Secretary of Labor to
2 make determinations and certifications under
3 this section and under section 212(a)(5)(A)(i);

4 “(C) monitoring the terms and conditions
5 under which H-2A workers (and United States
6 workers employed by the same employers) are
7 employed in the United States; and

8 “(D) enabling the Secretary of Agriculture
9 to carry out the Secretary of Agriculture’s du-
10 ties and responsibilities under this section.”.

11 **SEC. 203. AGENCY ROLES AND RESPONSIBILITIES.**

12 (a) RESPONSIBILITIES OF THE SECRETARY OF
13 LABOR.—With respect to the administration of the H-2A
14 program, the Secretary of Labor shall be responsible for—

15 (1) consulting with State workforce agencies
16 to—

17 (A) review and process job orders;

18 (B) facilitate the recruitment and referral
19 of able, willing and qualified United States
20 workers who will be available at the time and
21 place needed;

22 (C) determine prevailing wages and prac-
23 tices; and

24 (D) conduct timely inspections to ensure
25 compliance with applicable Federal, State, or

1 local housing standards and Federal regulations
2 for H-2A housing;

3 (2) determining whether the employer has met
4 the conditions for approval of the H-2A petition de-
5 scribed in section 218 of the Immigration and Na-
6 tionality Act (8 U.S.C. 1188);

7 (3) determining, in consultation with the Sec-
8 retary of Agriculture, whether a job opportunity is
9 of a seasonal or temporary nature;

10 (4) determining whether the employer has com-
11 plied or will comply with the H-2A program require-
12 ments set forth in section 218 of the Immigration
13 and Nationality Act (8 U.S.C. 1188);

14 (5) processing and investigating complaints con-
15 sistent with section 218(m) of the Immigration and
16 Nationality Act (8 U.S.C. 1188(m));

17 (6) referring any matter as appropriate to the
18 Inspector General of the Department of Labor for
19 investigation;

20 (7) ensuring that guidance to State workforce
21 agencies to conduct wage surveys is regularly up-
22 dated; and

23 (8) issuing such rules and regulations as are
24 necessary to carry out the Secretary of Labor's re-

1 sponsibilities under section 218 of the Immigration
2 and Nationality Act (8 U.S.C. 1188).

3 (b) RESPONSIBILITIES OF THE SECRETARY OF
4 HOMELAND SECURITY.—With respect to the administra-
5 tion of the H–2A program, the Secretary of Homeland Se-
6 curity shall be responsible for—

7 (1) adjudicating petitions for the admission of
8 H–2A workers, which shall include an assessment as
9 to whether each beneficiary will be employed in ac-
10 cordance with the terms and conditions of the cer-
11 tification and whether any named beneficiaries qual-
12 ify for such employment;

13 (2) transmitting a copy of the final decision on
14 the petition to the employer, and in the case of ap-
15 proved petitions, ensuring that the petition approval
16 is reflected in the electronic platform to facilitate the
17 prompt issuance of a visa by the Department of
18 State (if required) and the admission of the H–2A
19 workers to the United States;

20 (3) establishing a reliable and secure method
21 through which H–2A workers can access information
22 about their H–2A visa status, including information
23 on pending, approved, or denied petitions to extend
24 such status;

1 (4) investigating and preventing fraud in the
2 program, including the utilization of H-2A workers
3 for other than allowable agricultural labor or serv-
4 ices; and

5 (5) issuing such rules and regulations as are
6 necessary to carry out the Secretary of Homeland
7 Security's responsibilities under section 218 of the
8 Immigration and Nationality Act (8 U.S.C. 1188).

9 (c) ESTABLISHMENT OF ACCOUNT AND USE OF
10 FUNDS.—

11 (1) ESTABLISHMENT OF ACCOUNT.—There is
12 established in the general fund of the Treasury a
13 separate account, which shall be known as the “H-
14 2A Labor Certification Fee Account”. Notwith-
15 standing any other provisions of law, there shall be
16 deposited as offsetting receipts into the account all
17 amounts—

18 (A) collected as a civil penalty under sec-
19 tion 218(m)(2)(E) of the Immigration and Na-
20 tionality Act; and

21 (B) collected as a fee under section
22 218(o)(1)(B) of the Immigration and Nation-
23 ality Act.

24 (2) USE OF FEES.—Amounts deposited into the
25 H-2A Labor Certification Fee Account shall be

1 available (except as otherwise provided in this para-
2 graph) without fiscal year limitation and without the
3 requirement for specification in appropriations Acts
4 to the Secretary of Labor for use, directly or
5 through grants, contracts, or other arrangements, in
6 such amounts as the Secretary of Labor determines
7 are necessary for the costs of Federal and State ad-
8 ministration in carrying out activities in connection
9 with labor certification under section 218 of the Im-
10 migration and Nationality Act. Such costs may in-
11 clude personnel salaries and benefits, equipment and
12 infrastructure for adjudication and customer service
13 processes, the operation and maintenance of an on-
14 line job registry, and program integrity activities.
15 The Secretary, in determining what amounts to
16 transfer to States for State administration in car-
17 rying out activities in connection with labor certifi-
18 cation under section 218 of the Immigration and
19 Nationality Act shall consider the number of H-2A
20 workers employed in that State and shall adjust the
21 amount transferred to that State accordingly. In ad-
22 dition, 10 percent of the amounts deposited into the
23 H-2A Labor Certification Fee Account shall be
24 available to the Office of Inspector General of the
25 Department of Labor to conduct audits and criminal

1 investigations relating to such foreign labor certifi-
2 cation programs.

3 (3) ADDITIONAL FUNDS.—Amounts available
4 under paragraph (1) shall be available in addition to
5 any other funds appropriated or made available to
6 the Department of Labor under other laws, includ-
7 ing section 218(o)(2) of the Immigration and Na-
8 tionality Act.

9 **SEC. 204. WORKER PROTECTION AND COMPLIANCE.**

10 (a) EQUALITY OF TREATMENT.—H-2A workers shall
11 not be denied any right or remedy under any Federal,
12 State, or local labor or employment law applicable to
13 United States workers engaged in agricultural employ-
14 ment.

15 (b) APPLICABILITY OF OTHER LAWS.—

16 (1) MIGRANT AND SEASONAL AGRICULTURAL
17 WORKER PROTECTION ACT.—H-2A workers shall be
18 considered migrant agricultural workers for purposes
19 of the Migrant and Seasonal Agricultural Worker
20 Protection Act (29 U.S.C. 1801 et seq.).

21 (2) WAIVER OF RIGHTS PROHIBITED.—Agree-
22 ments by H-2A workers to waive or modify any
23 rights or protections under this Act or section 218
24 of the Immigration and Nationality Act (8 U.S.C.
25 1188) shall be considered void or contrary to public

1 policy except as provided in a collective bargaining
2 agreement with a bona fide labor organization.

3 (3) MEDIATION.—

4 (A) FREE MEDIATION SERVICES.—The
5 Federal Mediation and Conciliation Service
6 shall be available to assist in resolving disputes
7 arising under this section between H-2A work-
8 ers and agricultural employers without charge
9 to the parties.

10 (B) COMPLAINT.—If an H-2A worker files
11 a civil lawsuit alleging one or more violations of
12 section 218 of the Immigration and Nationality
13 Act (8 U.S.C. 1188), the Fair Labor Standards
14 Act of 1938 (29 U.S.C. 201 et seq.), or the Mi-
15 grant and Seasonal Agricultural Worker Protec-
16 tion Act (29 U.S.C. 1801 et seq.), not later
17 than 60 days after the filing of proof of service
18 of the complaint, a party to the lawsuit may file
19 a request with the Federal Mediation and Con-
20 ciliation Service to assist the parties in reaching
21 a satisfactory resolution of all issues involving
22 all parties to the dispute.

23 (C) NOTICE.—Upon filing a request under
24 subparagraph (B) and giving of notice to the
25 parties, the parties shall attempt mediation

1 within the period specified in subparagraph
2 (D), except that nothing in this paragraph shall
3 limit the ability of a court to order preliminary
4 injunctive relief to protect health and safety or
5 to otherwise prevent irreparable harm.

6 (D) 90-DAY LIMIT.—The Federal Medi-
7 ation and Conciliation Service may conduct me-
8 diation or other nonbinding dispute resolution
9 activities for a period not to exceed 90 days be-
10 ginning on the date on which the Federal Medi-
11 ation and Conciliation Service receives a request
12 for assistance under subparagraph (B) unless
13 the parties agree to an extension of such period.

14 (E) AUTHORIZATION OF APPROPRIA-
15 TIONS.—

16 (i) IN GENERAL.—Subject to clause
17 (ii), there is authorized to be appropriated
18 to the Federal Mediation and Conciliation
19 Service, such sums as may be necessary for
20 each fiscal year to carry out this subpara-
21 graph.

22 (ii) MEDIATION.—Notwithstanding
23 any other provision of law, the Director of
24 the Federal Mediation and Conciliation
25 Service is authorized—

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1 (I) to conduct the mediation or
2 other dispute resolution activities from
3 any other account containing amounts
4 available to the Director; and

5 (II) to reimburse such account
6 with amounts appropriated pursuant
7 to clause (i).

8 (F) PRIVATE MEDIATION.—If all parties
9 agree, a private mediator may be employed as
10 an alternative to the Federal Mediation and
11 Conciliation Service.

12 (c) FARM LABOR CONTRACTOR REQUIREMENTS.—

13 (1) SURETY BONDS.—

14 (A) REQUIREMENT.—Section 101 of the
15 Migrant and Seasonal Agricultural Worker Pro-
16 tection Act (29 U.S.C. 1811), is amended by
17 adding at the end the following:

18 “(e) A farm labor contractor shall maintain a surety
19 bond in an amount determined by the Secretary to be suf-
20 ficient for ensuring the ability of the farm labor contractor
21 to discharge its financial obligations, including payment
22 of wages and benefits to employees. Such a bond shall be
23 available to satisfy any amounts ordered to be paid by the
24 Secretary or by court order for failure to comply with the
25 obligations of this Act. The Secretary of Labor shall annu-

1 ally publish in the Federal Register a schedule of required
 2 bond amounts that are determined by such Secretary to
 3 be sufficient for farm labor contractors to discharge finan-
 4 cial obligations based on the number of workers to be cov-
 5 ered.”.

6 (B) REGISTRATION DETERMINATIONS.—
 7 Section 103(a) of the Migrant and Seasonal Ag-
 8 ricultural Worker Protection Act (29 U.S.C.
 9 1813(a)), is amended—

10 (i) in paragraph (4), by striking “or”
 11 at the end;

12 (ii) in paragraph (5)(B), by striking
 13 “or” at the end;

14 (iii) in paragraph (6), by striking the
 15 period at the end and inserting “;” ; and

16 (iv) by adding at the end the fol-
 17 lowing:

18 “(7) has failed to maintain a surety bond in
 19 compliance with section 101(e); or

20 “(8) has been disqualified by the Secretary of
 21 Labor from importing nonimmigrants described in
 22 section 101(a)(15)(H)(ii) of the Immigration and
 23 Nationality Act.”.

24 (2) SUCCESSORS IN INTEREST.—

1 (A) DECLARATION.—Section 102 of the
2 Migrant and Seasonal Agricultural Worker Pro-
3 tection Act (29 U.S.C. 1812), is amended—

4 (i) in paragraph (4), by striking
5 “and” at the end;

6 (ii) in paragraph (5), by striking the
7 period at the end and inserting “; and”;
8 and

9 (iii) by adding at the end the fol-
10 lowing:

11 “(6) a declaration, subscribed and sworn to by
12 the applicant, stating whether the applicant has a
13 familial, contractual, or employment relationship
14 with, or shares vehicles, facilities, property, or em-
15 ployees with, a person who has been refused
16 issuance or renewal of a certificate, or has had a
17 certificate suspended or revoked, pursuant to section
18 103.”.

19 (B) REBUTTABLE PRESUMPTION.—Section
20 103 of the Migrant and Seasonal Agricultural
21 Worker Protection Act (29 U.S.C. 1813), as
22 amended by this Act, is further amended by in-
23 serting after subsection (a) the following new
24 subsection (and by redesignating the subse-
25 quent subsections accordingly):

1 “(b)(1) There shall be a rebuttable presumption that
2 an applicant for issuance or renewal of a certificate is not
3 the real party in interest in the application if the appli-
4 cant—

5 “(A) is the immediate family member of any
6 person who has been refused issuance or renewal of
7 a certificate, or has had a certificate suspended or
8 revoked; and

9 “(B) identifies a vehicle, facility, or real prop-
10 erty under paragraph (2) or (3) of section 102 that
11 has been previously listed by a person who has been
12 refused issuance or renewal of a certificate, or has
13 had a certificate suspended or revoked.

14 “(2) An applicant described in paragraph (1) bears
15 the burden of demonstrating to the Secretary’s satisfac-
16 tion that the applicant is the real party in interest in the
17 application.”.

18 **SEC. 205. REPORT ON WAGE PROTECTIONS.**

19 (a) Not later than 3 years after the date of the enact-
20 ment of this Act, and every 3 years thereafter, the Sec-
21 retary of Labor and Secretary of Agriculture shall prepare
22 and transmit to the Committees on the Judiciary of the
23 House of Representatives and Senate, a report that ad-
24 dresses—

1 (1) whether, and the manner in which, the em-
2 ployment of H-2A workers in the United States has
3 impacted the wages, working conditions, or job op-
4 portunities of United States farm workers;

5 (2) whether, and the manner in which, the ad-
6 verse effect wage rate increases or decreases wages
7 on United States farms, broken down by geographic
8 region and farm size;

9 (3) whether any potential impact of the adverse
10 effect wage rate varies based on the percentage of
11 workers in a geographic region that are H-2A work-
12 ers;

13 (4) the degree to which the adverse effect wage
14 rate is affected by the inclusion in wage surveys of
15 piece rate compensation, bonus payments, and other
16 pay incentives, and whether such forms of incentive
17 compensation should be surveyed and reported sepa-
18 rately from hourly base rates;

19 (5) whether, and the manner in which, other
20 factors may artificially affect the adverse effect wage
21 rate, including factors that may be specific to a re-
22 gion, State, or region within a State;

23 (6) whether, and the manner in which, the H-
24 2A program affects the ability of United States

1 farms to compete with agricultural commodities im-
2 ported from outside the United States;

3 (7) the number and percentage of farmworkers
4 in the United States whose incomes are below the
5 poverty line;

6 (8) whether alternative wage standards would
7 be sufficient to prevent wages in occupations in
8 which H-2A workers are employed from falling
9 below the wage level that would have prevailed in the
10 absence of the H-2A program;

11 (9) whether any changes are warranted in the
12 current methodologies for calculating the adverse ef-
13 fect wage rate and the prevailing wage; and

14 (10) recommendations for future wage protec-
15 tion under this section.

16 (b) In preparing the report described in subsection
17 (a), the Secretary of Labor and Secretary of Agriculture
18 shall engage with equal numbers of representatives of ag-
19 ricultural employers and agricultural workers, both locally
20 and nationally.

21 **SEC. 206. PORTABLE H-2A VISA PILOT PROGRAM.**

22 (a) ESTABLISHMENT OF PILOT PROGRAM.—

23 (1) IN GENERAL.—Not later than 18 months
24 after the date of the enactment of this Act, the Sec-
25 retary of Homeland Security, in consultation with

1 the Secretary of Labor and Secretary of Agriculture,
2 shall establish through regulation a 6-year pilot pro-
3 gram to facilitate the free movement and employ-
4 ment of temporary or seasonal H-2A workers to
5 perform agricultural labor or services for agricul-
6 tural employers registered with the Secretary of Ag-
7 riculture. Notwithstanding the requirements of sec-
8 tion 218 of the Immigration and Nationality Act,
9 such regulation shall establish the requirements for
10 the pilot program, consistent with subsection (b).
11 For purposes of this section, such a worker shall be
12 referred to as a portable H-2A worker, and status
13 as such a worker shall be referred to as portable H-
14 2A status.

15 (2) ONLINE PLATFORM.—The Secretary of
16 Homeland Security, in consultation with the Sec-
17 retary of Labor and the Secretary of Agriculture,
18 shall maintain an online electronic platform to con-
19 nect portable H-2A workers with registered agricul-
20 tural employers seeking workers to perform tem-
21 porary or seasonal agricultural labor or services.
22 Employers shall post on the platform available job
23 opportunities, including a description of the nature
24 and location of the work to be performed, the antici-
25 pated period or periods of need, and the terms and

1 conditions of employment. Such platform shall allow
2 portable H-2A workers to search for available job
3 opportunities using relevant criteria, including the
4 types of jobs needed to be filled and the dates and
5 locations of need.

6 (3) LIMITATION.—Notwithstanding the
7 issuance of the regulation described in paragraph
8 (1), the Secretary of State may not issue a portable
9 H-2A visa and the Secretary of Homeland Security
10 may not confer portable H-2A status on any alien
11 until the Secretary of Homeland Security, in con-
12 sultation with the Secretary of Labor and Secretary
13 of Agriculture, has determined that a sufficient
14 number of employers have been designated as reg-
15 istered agricultural employers under subsection
16 (b)(1) and that such employers have sufficient job
17 opportunities to employ a reasonable number of
18 portable H-2A workers to initiate the pilot program.

19 (b) PILOT PROGRAM ELEMENTS.—The pilot program
20 in subsection (a) shall contain the following elements:

21 (1) REGISTERED AGRICULTURAL EMPLOY-
22 ERS.—

23 (A) DESIGNATION.—Agricultural employ-
24 ers shall be provided the ability to seek designa-
25 tion as registered agricultural employers. Rea-

1 sonable fees may be assessed commensurate
2 with the cost of processing applications for des-
3 ignation. A designation shall be valid for a pe-
4 riod of up to 3 years unless revoked for failure
5 to comply with program requirements. Reg-
6 istered employers that comply with program re-
7 quirements may apply to renew such designa-
8 tion for additional periods of up to 3 years for
9 the duration of the pilot program.

10 (B) LIMITATIONS.—Registered agricultural
11 employers may employ aliens with portable H-
12 2A status without filing a petition. Such em-
13 ployers shall pay such aliens at least the wage
14 required under section 218(d) of the Immigra-
15 tion and Nationality Act (8 U.S.C. 1188(d)).

16 (C) WORKERS' COMPENSATION.—If a job
17 opportunity is not covered by or is exempt from
18 the State workers' compensation law, a reg-
19 istered agricultural employer shall provide, at
20 no cost to the worker, insurance covering injury
21 and disease arising out of, and in the course of,
22 the worker's employment, which will provide
23 benefits at least equal to those provided under
24 the State workers' compensation law.

25 (2) DESIGNATED WORKERS.—

1 (A) IN GENERAL.—Individuals who have
2 been previously admitted to the United States
3 in H–2A status, and maintained such status
4 during the period of admission, shall be pro-
5 vided the opportunity to apply for portable H–
6 2A status. Portable H–2A workers shall be sub-
7 ject to the provisions on visa validity and peri-
8 ods of authorized stay and admission for H–2A
9 workers described in paragraphs (2) and (3) of
10 section 218(j) of the Immigration and Nation-
11 ality Act (8 U.S.C. 1188(j)(2) and (3)).

12 (B) LIMITATIONS ON AVAILABILITY OF
13 PORTABLE H–2A STATUS.—

14 (i) INITIAL OFFER OF EMPLOYMENT
15 REQUIRED.—No alien may be granted
16 portable H–2A status without an initial
17 valid offer of employment to perform tem-
18 porary or agricultural labor or services
19 from a registered agricultural employer.

20 (ii) NUMERICAL LIMITATIONS.—The
21 total number of aliens who may hold valid
22 portable H–2A status at any one time may
23 not exceed 10,000. Notwithstanding such
24 limitation, the Secretary of Homeland Se-
25 curity may further limit the number of

1 aliens with valid portable H-2A status if
2 the Secretary determines that there are an
3 insufficient number of registered agricul-
4 tural employers or job opportunities to
5 support the employment of all such port-
6 able H-2A workers.

7 (C) SCOPE OF EMPLOYMENT.—During the
8 period of admission, a portable H-2A worker
9 may perform temporary or seasonal agricultural
10 labor or services for any employer in the United
11 States that is designated as a registered agri-
12 cultural employer pursuant to paragraph (1).
13 An employment arrangement under this section
14 may be terminated by either the portable H-2A
15 worker or the registered agricultural employer
16 at any time.

17 (D) TRANSFER TO NEW EMPLOYMENT.—
18 At the cessation of employment with a reg-
19 istered agricultural employer, a portable H-2A
20 worker shall have 60 days to secure new em-
21 ployment with a registered agricultural em-
22 ployer.

23 (E) MAINTENANCE OF STATUS.—A port-
24 able H-2A worker who does not secure new em-
25 ployment with a registered agricultural em-

1 ployer within 60 days shall be considered to
2 have failed to maintain such status and shall
3 depart the United States or be subject to re-
4 moval under section 237(a)(1)(C)(i) of the Im-
5 migration and Nationality Act (8 U.S.C.
6 1188(a)(1)(C)(i)).

7 (3) ENFORCEMENT.—The Secretary of Labor
8 shall be responsible for conducting investigations
9 and random audits of employers to ensure compli-
10 ance with the employment-related requirements of
11 this section, consistent with section 218(m) of the
12 Immigration and Nationality Act (8 U.S.C.
13 1188(m)). The Secretary of Labor shall have the au-
14 thority to collect reasonable civil penalties for viola-
15 tions, which shall be utilized by the Secretary for the
16 administration and enforcement of the provisions of
17 this section.

18 (4) ELIGIBILITY FOR SERVICES.—Section 305
19 of Public Law 99–603 (100 Stat. 3434) is amended
20 by striking “other employment rights as provided in
21 the worker’s specific contract under which the non-
22 immigrant was admitted” and inserting “employ-
23 ment-related rights”.

24 (c) REPORT.—Not later than 6 months before the
25 end of the third fiscal year of the pilot program, the Sec-

1 retary of Homeland Security, in consultation with the Sec-
2 retary of Labor and the Secretary of Agriculture, shall
3 prepare and submit to the Committees on the Judiciary
4 of the House of Representatives and the Senate, a report
5 that provides—

6 (1) the number of employers designated as reg-
7 istered agricultural employers, broken down by geo-
8 graphic region, farm size, and the number of job op-
9 portunities offered by such employers;

10 (2) the number of employers whose designation
11 as a registered agricultural employer was revoked;

12 (3) the number of individuals granted portable
13 H-2A status in each fiscal year, along with the
14 number of such individuals who maintained portable
15 H-2A status during all or a portion of the 3-year
16 period of the pilot program;

17 (4) an assessment of the impact of the pilot
18 program on the wages and working conditions of
19 United States farm workers;

20 (5) the results of a survey of individuals grant-
21 ed portable H-2A status, detailing their experiences
22 with and feedback on the pilot program;

23 (6) the results of a survey of registered agricul-
24 tural employers, detailing their experiences with and
25 feedback on the pilot program;

1 (7) an assessment as to whether the program
2 should be continued and if so, any recommendations
3 for improving the program; and

4 (8) findings and recommendations regarding ef-
5 fective recruitment mechanisms, including use of
6 new technology to match workers with employers
7 and ensure compliance with applicable labor and em-
8 ployment laws and regulations.

9 **SEC. 207. IMPROVING ACCESS TO PERMANENT RESIDENCE.**

10 (a) **WORLDWIDE LEVEL.**—Section 201(d)(1)(A) of
11 the Immigration and Nationality Act (8 U.S.C.
12 1151(d)(1)(A)) is amended by striking “140,000” and in-
13 sserting “180,000”.

14 (b) **VISAS FOR FARMWORKERS.**—Section 203(b) of
15 the Immigration and Nationality Act (8 U.S.C. 1153(b))
16 is amended—

17 (1) in paragraph (1) by striking “28.6 percent
18 of such worldwide level” and inserting “40,040”;

19 (2) in paragraph (2)(A) by striking “28.6 per-
20 cent of such worldwide level” and inserting
21 “40,040”;

22 (3) in paragraph (3)—

23 (A) in subparagraph (A)—

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1 (i) in the matter before clause (i), by
2 striking “28.6 percent of such worldwide
3 level” and inserting “80,040”; and

4 (ii) by amending clause (iii) to read as
5 follows:

6 “(iii) OTHER WORKERS.—Other quali-
7 fied immigrants who, at the time of peti-
8 tioning for classification under this para-
9 graph—

10 “(I) are capable of performing
11 unskilled labor, not of a temporary or
12 seasonal nature, for which qualified
13 workers are not available in the
14 United States; or

15 “(II) can demonstrate employ-
16 ment in the United States as an H-
17 2A nonimmigrant worker for at least
18 100 days in each of at least 10
19 years.”;

20 (B) by amending subparagraph (B) to read
21 as follows:

22 “(B) VISAS ALLOCATED FOR OTHER
23 WORKERS.—

24 “(i) IN GENERAL.—Except as pro-
25 vided in clauses (ii) and (iii), 50,000 of the

1 visas made available under this paragraph
2 shall be reserved for qualified immigrants
3 described in subparagraph (A)(iii).

4 “(ii) PREFERENCE FOR AGRICUL-
5 TURAL WORKERS.—Subject to clause (iii),
6 not less than four-fifths of the visas de-
7 scribed in clause (i) shall be reserved for—

8 “(I) qualified immigrants de-
9 scribed in subparagraph (A)(iii)(I)
10 who will be performing agricultural
11 labor or services in the United States;
12 and

13 “(II) qualified immigrants de-
14 scribed in subparagraph (A)(iii)(II).

15 “(iii) EXCEPTION.—If because of the
16 application of clause (ii), the total number
17 of visas available under this paragraph for
18 a calendar quarter exceeds the number of
19 qualified immigrants who otherwise may be
20 issued such a visa, clause (ii) shall not
21 apply to visas under this paragraph during
22 the remainder of such calendar quarter.

23 “(iv) NO PER COUNTRY LIMITS.—
24 Visas described under clause (ii) shall be

1 issued without regard to the numerical lim-
2 itation under section 202(a)(2).”; and

3 (C) by amending subparagraph (C) by
4 striking “An immigrant visa” and inserting
5 “Except for qualified immigrants petitioning for
6 classification under subparagraph (A)(iii)(II),
7 an immigrant visa”;

8 (4) in paragraph (4), by striking “7.1 percent
9 of such worldwide level” and inserting “9,940”; and

10 (5) in paragraph (5)(A), in the matter before
11 clause (i), by striking “7.1 percent of such world-
12 wide level” and inserting “9,940”.

13 (c) PETITIONING PROCEDURE.—Section
14 204(a)(1)(E) of the Immigration and Nationality Act (8
15 U.S.C. 1154(a)(1)(E)) is amended by inserting “or
16 203(b)(3)(A)(iii)(II)” after “203(b)(1)(A)”.

17 (d) DUAL INTENT.—Section 214(b) of the Immigra-
18 tion and Nationality Act (8 U.S.C. 1184(b)) is amended
19 by striking “section 101(a)(15)(H)(i) except subclause
20 (b1) of such section” and inserting “clause (i), except sub-
21 clause (b1), or (ii)(a) of section 101(a)(15)(H)”.

1 **Subtitle B—Preservation and Con-**
2 **struction of Farmworker Hous-**
3 **ing**

4 **SEC. 220. SHORT TITLE.**

5 This subtitle may be cited as the “Strategy and In-
6 vestment in Rural Housing Preservation Act of 2019”.

7 **SEC. 221. PERMANENT ESTABLISHMENT OF HOUSING PRES-**
8 **ERVATION AND REVITALIZATION PROGRAM.**

9 Title V of the Housing Act of 1949 (42 U.S.C. 1471
10 et seq.) is amended by adding at the end the following
11 new section:

12 **“SEC. 545. HOUSING PRESERVATION AND REVITALIZATION**
13 **PROGRAM.**

14 “(a) ESTABLISHMENT.—The Secretary shall carry
15 out a program under this section for the preservation and
16 revitalization of multifamily rental housing projects fi-
17 nanced under section 515 or both sections 514 and 516.

18 “(b) NOTICE OF MATURING LOANS.—

19 “(1) TO OWNERS.—On an annual basis, the
20 Secretary shall provide written notice to each owner
21 of a property financed under section 515 or both
22 sections 514 and 516 that will mature within the 4-
23 year period beginning upon the provision of such no-
24 tice, setting forth the options and financial incen-
25 tives that are available to facilitate the extension of

1 the loan term or the option to decouple a rental as-
2 sistance contract pursuant to subsection (f).

3 “(2) TO TENANTS.—

4 “(A) IN GENERAL.—For each property fi-
5 nanced under section 515 or both sections 514
6 and 516, not later than the date that is 2 years
7 before the date that such loan will mature, the
8 Secretary shall provide written notice to each
9 household residing in such property that in-
10 forms them of the date of the loan maturity,
11 the possible actions that may happen with re-
12 spect to the property upon such maturity, and
13 how to protect their right to reside in Federally
14 assisted housing after such maturity.

15 “(B) LANGUAGE.—Notice under this para-
16 graph shall be provided in plain English and
17 shall be translated to other languages in the
18 case of any property located in an area in which
19 a significant number of residents speak such
20 other languages.

21 “(c) LOAN RESTRUCTURING.—Under the program
22 under this section, the Secretary may restructure such ex-
23 isting housing loans, as the Secretary considers appro-
24 priate, for the purpose of ensuring that such projects have
25 sufficient resources to preserve the projects to provide safe

1 and affordable housing for low-income residents and farm
2 laborers, by—

3 “(1) reducing or eliminating interest;

4 “(2) deferring loan payments;

5 “(3) subordinating, reducing, or reamortizing
6 loan debt; and

7 “(4) providing other financial assistance, in-
8 cluding advances, payments, and incentives (includ-
9 ing the ability of owners to obtain reasonable re-
10 turns on investment) required by the Secretary.

11 “(d) RENEWAL OF RENTAL ASSISTANCE.—When the
12 Secretary offers to restructure a loan pursuant to sub-
13 section (c), the Secretary shall offer to renew the rental
14 assistance contract under section 521(a)(2) for a 20-year
15 term that is subject to annual appropriations, provided
16 that the owner agrees to bring the property up to such
17 standards that will ensure its maintenance as decent, safe,
18 and sanitary housing for the full term of the rental assist-
19 ance contract.

20 “(e) RESTRICTIVE USE AGREEMENTS.—

21 “(1) REQUIREMENT.—As part of the preserva-
22 tion and revitalization agreement for a project, the
23 Secretary shall obtain a restrictive use agreement
24 that obligates the owner to operate the project in ac-
25 cordance with this title.

1 “(2) TERM.—

2 “(A) NO EXTENSION OF RENTAL ASSIST-
3 ANCE CONTRACT.—Except when the Secretary
4 enters into a 20-year extension of the rental as-
5 sistance contract for the project, the term of
6 the restrictive use agreement for the project
7 shall be consistent with the term of the restruc-
8 tured loan for the project.

9 “(B) EXTENSION OF RENTAL ASSISTANCE
10 CONTRACT.—If the Secretary enters into a 20-
11 year extension of the rental assistance contract
12 for a project, the term of the restrictive use
13 agreement for the project shall be for 20 years.

14 “(C) TERMINATION.—The Secretary may
15 terminate the 20-year use restrictive use agree-
16 ment for a project prior to the end of its term
17 if the 20-year rental assistance contract for the
18 project with the owner is terminated at any
19 time for reasons outside the owner’s control.

20 “(f) DECOUPLING OF RENTAL ASSISTANCE.—

21 “(1) RENEWAL OF RENTAL ASSISTANCE CON-
22 TRACT.—If the Secretary determines that a matur-
23 ing loan for a project cannot reasonably be restruc-
24 tured in accordance with subsection (c) and the
25 project was operating with rental assistance under

1 section 521, the Secretary may renew the rental as-
2 sistance contract, notwithstanding any provision of
3 section 521, for a term, subject to annual appropria-
4 tions, of at least 10 years but not more than 20
5 years.

6 “(2) RENTS.—Any agreement to extend the
7 term of the rental assistance contract under section
8 521 for a project shall obligate the owner to con-
9 tinue to maintain the project as decent, safe and
10 sanitary housing and to operate the development in
11 accordance with this title, except that rents shall be
12 based on the lesser of—

13 “(A) the budget-based needs of the project;

14 or

15 “(B) the operating cost adjustment factor
16 as a payment standard as provided under sec-
17 tion 524 of the Multifamily Assisted Housing
18 Reform and Affordability Act of 1997 (42
19 U.S.C. 1437 note).

20 “(g) MULTIFAMILY HOUSING TRANSFER TECHNICAL
21 ASSISTANCE.—Under the program under this section, the
22 Secretary may provide grants to qualified non-profit orga-
23 nizations and public housing agencies to provide technical
24 assistance, including financial and legal services, to bor-
25 rowers under loans under this title for multifamily housing

1 to facilitate the acquisition of such multifamily housing
2 properties in areas where the Secretary determines there
3 is a risk of loss of affordable housing.

4 “(h) TRANSFER OF RENTAL ASSISTANCE.—After the
5 loan or loans for a rental project originally financed under
6 section 515 or both sections 514 and 516 have matured
7 or have been prepaid and the owner has chosen not to
8 restructure the loan pursuant to subsection (c), a tenant
9 residing in such project shall have 18 months prior to loan
10 maturation or prepayment to transfer the rental assist-
11 ance assigned to the tenant’s unit to another rental project
12 originally financed under section 515 or both sections 514
13 and 516, and the owner of the initial project may rent
14 the tenant’s previous unit to a new tenant without income
15 restrictions.

16 “(i) ADMINISTRATIVE EXPENSES.—Of any amounts
17 made available for the program under this section for any
18 fiscal year, the Secretary may use not more than
19 \$1,000,000 for administrative expenses for carrying out
20 such program.

21 “(j) AUTHORIZATION OF APPROPRIATIONS.—There
22 is authorized to be appropriated for the program under
23 this section \$200,000,000 for each of fiscal years 2020
24 through 2024.”.

1 **SEC. 222. ELIGIBILITY FOR RURAL HOUSING VOUCHERS.**

2 Section 542 of the Housing Act of 1949 (42 U.S.C.
3 1490r) is amended by adding at the end the following new
4 subsection:

5 “(c) **ELIGIBILITY OF HOUSEHOLDS IN SECTIONS**
6 **514, 515, AND 516 PROJECTS.**—The Secretary may pro-
7 vide rural housing vouchers under this section for any low-
8 income household (including those not receiving rental as-
9 sistance) residing, for a term longer than the remaining
10 term of their lease in effect just prior to prepayment, in
11 a property financed with a loan made or insured under
12 section 514 or 515 (42 U.S.C. 1484, 1485) which has
13 been prepaid without restrictions imposed by the Secretary
14 pursuant to section 502(c)(5)(G)(ii)(I) (42 U.S.C.
15 1472(c)(5)(G)(ii)(I)), has been foreclosed, or has matured
16 after September 30, 2005, or residing in a property as-
17 sisted under section 514 or 516 that is owned by a non-
18 profit organization or public agency.”.

19 **SEC. 223. AMOUNT OF VOUCHER ASSISTANCE.**

20 Notwithstanding any other provision of law, in the
21 case of any rural housing voucher provided pursuant to
22 section 542 of the Housing Act of 1949 (42 U.S.C.
23 1490r), the amount of the monthly assistance payment for
24 the household on whose behalf such assistance is provided
25 shall be determined as provided in subsection (a) of such
26 section 542.

1 **SEC. 224. RENTAL ASSISTANCE CONTRACT AUTHORITY.**

2 Subsection (d) of section 521 of the Housing Act of
3 1949 (42 U.S.C. 1490a(d)) is amended—

4 (1) in paragraph (1), by inserting after sub-
5 paragraph (A) the following new subparagraph (and
6 by redesignating the subsequent subparagraphs ac-
7 cordingly):

8 “(B) upon request of an owner of a project fi-
9 nanced under section 514 or 515, the Secretary is
10 authorized to enter into renewal of such agreements
11 for a period of 20 years or the term of the loan,
12 whichever is shorter, subject to amounts made avail-
13 able in appropriations Acts;” and

14 (2) by adding at the end the following new
15 paragraph:

16 “(3) In the case of any rental assistance contract au-
17 thority that becomes available because of the termination
18 of assistance on behalf of an assisted family—

19 “(A) at the option of the owner of the rental
20 project, the Secretary shall provide the owner a pe-
21 riod of 6 months before such assistance is made
22 available pursuant to subparagraph (B) during
23 which the owner may use such assistance authority
24 to provide assistance of behalf of an eligible unas-
25 sisted family that—

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1 “(i) is residing in the same rental project
2 that the assisted family resided in prior to such
3 termination; or

4 “(ii) newly occupies a dwelling unit in such
5 rental project during such period; and

6 “(B) except for assistance used as provided in
7 subparagraph (A), the Secretary shall use such re-
8 maining authority to provide such assistance on be-
9 half of eligible families residing in other rental
10 projects originally financed under section 515 or
11 both sections 514 and 516 of this Act.”.

12 **SEC. 225. FUNDING FOR MULTIFAMILY TECHNICAL IM-**
13 **PROVEMENTS.**

14 There is authorized to be appropriated to the Sec-
15 retary of Agriculture \$50,000,000 for fiscal year 2020 for
16 improving the technology of the Department of Agri-
17 culture used to process loans for multifamily housing and
18 otherwise managing such housing. Such improvements
19 shall be made within the 5-year period beginning upon the
20 appropriation of such amounts and such amount shall re-
21 main available until the expiration of such 5-year period.

22 **SEC. 226. PLAN FOR PRESERVING AFFORDABILITY OF**
23 **RENTAL PROJECTS.**

24 (a) PLAN.—The Secretary of Agriculture (in this sec-
25 tion referred to as the “Secretary”) shall submit a written

1 plan to the Congress, not later than the expiration of the
2 6-month period beginning on the date of the enactment
3 of this Act, for preserving the affordability for low-income
4 families of rental projects for which loans were made
5 under section 515 or made to nonprofit or public agencies
6 under section 514 and avoiding the displacement of tenant
7 households, which shall—

8 (1) set forth specific performance goals and
9 measures;

10 (2) set forth the specific actions and mecha-
11 nisms by which such goals will be achieved;

12 (3) set forth specific measurements by which
13 progress towards achievement of each goal can be
14 measured;

15 (4) provide for detailed reporting on outcomes;
16 and

17 (5) include any legislative recommendations to
18 assist in achievement of the goals under the plan.

19 (b) ADVISORY COMMITTEE.—

20 (1) ESTABLISHMENT; PURPOSE.—The Sec-
21 retary shall establish an advisory committee whose
22 purpose shall be to assist the Secretary in preserving
23 section 515 properties and section 514 properties
24 owned by nonprofit or public agencies through the
25 multifamily housing preservation and revitalization

1 program under section 545 and in implementing the
2 plan required under subsection (a).

3 (2) MEMBER.—The advisory committee shall
4 consist of 16 members, appointed by the Secretary,
5 as follows:

6 (A) A State Director of Rural Develop-
7 ment for the Department of Agriculture.

8 (B) The Administrator for Rural Housing
9 Service of the Department of Agriculture.

10 (C) Two representatives of for-profit devel-
11 opers or owners of multifamily rural rental
12 housing.

13 (D) Two representatives of non-profit de-
14 velopers or owners of multifamily rural rental
15 housing.

16 (E) Two representatives of State housing
17 finance agencies.

18 (F) Two representatives of tenants of mul-
19 tifamily rural rental housing.

20 (G) One representative of a community de-
21 velopment financial institution that is involved
22 in preserving the affordability of housing as-
23 sisted under sections 514, 515, and 516 of the
24 Housing Act of 1949.

1 (H) One representative of a nonprofit or-
2 ganization that operates nationally and has ac-
3 tively participated in the preservation of hous-
4 ing assisted by the Rural Housing Service by
5 conducting research regarding, and providing fi-
6 nancing and technical assistance for, preserving
7 the affordability of such housing.

8 (I) One representative of low-income hous-
9 ing tax credit investors.

10 (J) One representative of regulated finan-
11 cial institutions that finance affordable multi-
12 family rural rental housing developments.

13 (K) Two representatives from non-profit
14 organizations representing farmworkers, includ-
15 ing one organization representing farmworker
16 women.

17 (3) MEETINGS.—The advisory committee shall
18 meet not less often than once each calendar quarter.

19 (4) FUNCTIONS.—In providing assistance to the
20 Secretary to carry out its purpose, the advisory com-
21 mittee shall carry out the following functions:

22 (A) Assisting the Rural Housing Service of
23 the Department of Agriculture to improve esti-
24 mates of the size, scope, and condition of rental
25 housing portfolio of the Service, including the

1 time frames for maturity of mortgages and
2 costs for preserving the portfolio as affordable
3 housing.

4 (B) Reviewing current policies and proce-
5 dures of the Rural Housing Service regarding
6 preservation of affordable rental housing fi-
7 nanced under sections 514, 515, 516, and 538
8 of the Housing Act of 1949, the Multifamily
9 Preservation and Revitalization Demonstration
10 program (MPR), and the rental assistance pro-
11 gram and making recommendations regarding
12 improvements and modifications to such policies
13 and procedures.

14 (C) Providing ongoing review of Rural
15 Housing Service program results.

16 (D) Providing reports to the Congress and
17 the public on meetings, recommendations, and
18 other findings of the advisory committee.

19 (5) TRAVEL COSTS.—Any amounts made avail-
20 able for administrative costs of the Department of
21 Agriculture may be used for costs of travel by mem-
22 bers of the advisory committee to meetings of the
23 committee.

1 **SEC. 227. COVERED HOUSING PROGRAMS.**

2 Paragraph (3) of section 41411(a) of the Violence
3 Against Women Act of 1994 (34 U.S.C. 12491(a)(3)) is
4 amended—

5 (1) in subparagraph (I), by striking “and” at
6 the end;

7 (2) by redesignating subparagraph (J) as sub-
8 paragraph (K); and

9 (3) by inserting after subparagraph (I) the fol-
10 lowing new subparagraph:

11 “(J) rural development housing voucher
12 assistance provided by the Secretary of Agri-
13 culture pursuant to section 542 of the Housing
14 Act of 1949 (42 U.S.C. 1490r), without regard
15 to subsection (b) of such section, and applicable
16 appropriation Acts; and”.

17 **SEC. 228. NEW FARMWORKER HOUSING.**

18 Section 513 of the Housing Act of 1949 (42 U.S.C.
19 1483) is amended by adding at the end the following new
20 subsection:

21 “(f) FUNDING FOR FARMWORKER HOUSING.—

22 “(1) SECTION 514 FARMWORKER HOUSING
23 LOANS.—

24 “(A) INSURANCE AUTHORITY.—The Sec-
25 retary of Agriculture may, to the extent ap-
26 proved in appropriation Acts, insure loans

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1 under section 514 (42 U.S.C. 1484) during
2 each of fiscal years 2020 through 2029 in an
3 aggregate amount not to exceed \$200,000,000.

4 “(B) AUTHORIZATION OF APPROPRIATIONS
5 FOR COSTS.—There is authorized to be appro-
6 priated \$75,000,000 for each of fiscal years
7 2020 through 2029 for costs (as such term is
8 defined in section 502 of the Congressional
9 Budget Act of 1974 (2 U.S.C. 661a)) of loans
10 insured pursuant the authority under subpara-
11 graph (A).

12 “(2) SECTION 516 GRANTS FOR FARMWORKER
13 HOUSING.—There is authorized to be appropriated
14 \$30,000,000 for each of fiscal years 2020 through
15 2029 for financial assistance under section 516 (42
16 U.S.C. 1486).

17 “(3) SECTION 521 HOUSING ASSISTANCE.—
18 There is authorized to be appropriated
19 \$2,700,000,000 for each of fiscal years 2020
20 through 2029 for rental assistance agreements en-
21 tered into or renewed pursuant to section 521(a)(2)
22 (42 U.S.C. 1490a(a)(2)) or agreements entered into
23 in lieu of debt forgiveness or payments for eligible
24 households as authorized by section 502(c)(5)(D).”.

1 **SEC. 229. LOAN AND GRANT LIMITATIONS.**

2 Section 514 of the Housing Act of 1949 (42 U.S.C.
3 1484) is amended by adding at the end the following:

4 “(j) PER PROJECT LIMITATIONS ON ASSISTANCE.—
5 If the Secretary, in making available assistance in any
6 area under this section or section 516 (42 U.S.C. 1486),
7 establishes a limitation on the amount of assistance avail-
8 able per project, the limitation on a grant or loan award
9 per project shall not be less than \$5 million.”.

10 **SEC. 230. OPERATING ASSISTANCE SUBSIDIES.**

11 Subsection (a)(5) of section 521 of the Housing Act
12 of 1949 (42 U.S.C. 1490a(a)(5)) is amended—

13 (1) in subparagraph (A) by inserting “or do-
14 mestic farm labor legally admitted to the United
15 States and authorized to work in agriculture” after
16 “migrant farmworkers”;

17 (2) in subparagraph (B)—

18 (A) by striking “AMOUNT.—In any fiscal
19 year” and inserting “AMOUNT.—

20 “(i) HOUSING FOR MIGRANT FARM-
21 WORKERS.—In any fiscal year”;

22 (B) by inserting “providing housing for mi-
23 grant farmworkers” after “any project”; and

24 (C) by inserting at the end the following:

25 “(ii) HOUSING FOR OTHER FARM
26 LABOR.—In any fiscal year, the assistance

1 provided under this paragraph for any
2 project providing housing for domestic
3 farm labor legally admitted to the United
4 States and authorized to work in agri-
5 culture shall not exceed an amount equal
6 to 50 percent of the operating costs for the
7 project for the year, as determined by the
8 Secretary. The owner of such project shall
9 not qualify for operating assistance unless
10 the Secretary certifies that the project was
11 unoccupied or underutilized before making
12 units available to such farm labor, and
13 that a grant under this section will not dis-
14 place any farm worker who is a United
15 States worker.”; and

16 (3) in subparagraph (D), by adding at the end
17 the following:

18 “(iii) The term ‘domestic farm labor’ has
19 the same meaning given such term in section
20 514(f)(3) (42 U.S.C. 1484(f)(3)), except that
21 subparagraph (A) of such section shall not
22 apply for purposes this section.”.

1 **SEC. 231. ELIGIBILITY OF CERTIFIED WORKERS.**

2 Subsection (a) of section 214 of the Housing and
3 Community Development Act of 1980 (42 U.S.C. 1436a)
4 is amended—

5 (1) in paragraph (6), by striking “or” at the
6 end;

7 (2) by redesignating paragraph (7) as para-
8 graph (8); and

9 (3) by inserting after paragraph (6) the fol-
10 lowing:

11 “(7) an alien granted certified agricultural
12 worker or certified agricultural dependent status
13 under title I of the Farm Workforce Modernization
14 Act of 2019, but solely for financial assistance made
15 available pursuant to section 521 or 542 of the
16 Housing Act of 1949 (42 U.S.C. 1490a, 1490r);
17 or”.

18 **Subtitle C—Foreign Labor**
19 **Recruiter Accountability**

20 **SEC. 251. REGISTRATION OF FOREIGN LABOR RECRUITERS.**

21 (a) IN GENERAL.—Not later than 1 year after the
22 date of the enactment of this Act, the Secretary of Labor,
23 in consultation with the Secretary of State and the Sec-
24 retary of Homeland Security, shall establish procedures
25 for the electronic registration of foreign labor recruiters
26 engaged in the recruitment of nonimmigrant workers de-

1 scribed in section 101(a)(15)(H)(ii)(a) of the Immigration
2 and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) to
3 perform agricultural labor or services in the United States.

4 (b) PROCEDURAL REQUIREMENTS.—The procedures
5 described in subsection (a) shall—

6 (1) require the applicant to submit a sworn dec-
7 laration—

8 (A) stating the applicant's permanent
9 place of residence or principal place of business,
10 as applicable;

11 (B) describing the foreign labor recruiting
12 activities in which the applicant is engaged; and

13 (C) including such other relevant informa-
14 tion as the Secretary of Labor and the Sec-
15 retary of State may require;

16 (2) include an expeditious means to update and
17 renew registrations;

18 (3) include a process, which shall include the
19 placement of personnel at each United States diplo-
20 matic mission in accordance with subsection (g)(2),
21 to receive information from the public regarding for-
22 eign labor recruiters who have allegedly engaged in
23 a foreign labor recruiting activity that is prohibited
24 under this subtitle;

1 (4) include procedures for the receipt and proc-
2 essing of complaints against foreign labor recruiters
3 and for remedies, including the revocation of a reg-
4 istration or the assessment of fines upon a deter-
5 mination by the Secretary of Labor that the foreign
6 labor recruiter has violated the requirements of this
7 subtitle;

8 (5) require the applicant to post a bond in an
9 amount sufficient to ensure the ability of the appli-
10 cant to discharge its responsibilities and ensure pro-
11 tection of workers, including payment of wages; and

12 (6) allow the Secretary of Labor and the Sec-
13 retary of State to consult with other appropriate
14 Federal agencies to determine whether any reason
15 exists to deny registration to a foreign labor re-
16 cruiter or revoke such registration.

17 (c) ATTESTATIONS.—Foreign labor recruiters reg-
18 istering under this subtitle shall attest and agree to abide
19 by the following requirements:

20 (1) PROHIBITED FEES.—The foreign labor re-
21 cruiter, including any agent or employee of such for-
22 eign labor recruiter, shall not assess any recruitment
23 fees on a worker for any foreign labor recruiting ac-
24 tivity.

1 (2) PROHIBITION ON FALSE AND MISLEADING
2 INFORMATION.—The foreign labor recruiter shall not
3 knowingly provide materially false or misleading in-
4 formation to any worker concerning any matter re-
5 quired to be disclosed under this subtitle.

6 (3) REQUIRED DISCLOSURES.—The foreign
7 labor recruiter shall ascertain and disclose to the
8 worker in writing in English and in the primary lan-
9 guage of the worker at the time of the worker’s re-
10 cruitment, the following information:

11 (A) The identity and address of the em-
12 ployer and the identity and address of the per-
13 son conducting the recruiting on behalf of the
14 employer, including each subcontractor or agent
15 involved in such recruiting.

16 (B) A copy of the approved job order or
17 work contract under section 218 of the Immi-
18 gration and Nationality Act, including all assur-
19 ances and terms and conditions of employment.

20 (C) A statement, in a form specified by the
21 Secretary—

22 (i) describing the general terms and
23 conditions associated with obtaining an H-
24 2A visa and maintaining H-2A status;

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1 (ii) affirming the prohibition on the
2 assessment of fees described in paragraph
3 (1), and explaining that such fees, if paid
4 by the employer, may not be passed on to
5 the worker;

6 (iii) describing the protections af-
7 farded the worker under this subtitle, in-
8 cluding procedures for reporting violations
9 to the Secretary of State, filing a com-
10 plaint with the Secretary of Labor, or fil-
11 ing a civil action; and

12 (iv) describing the protections af-
13 farded the worker by section 202 of the
14 William Wilberforce Trafficking Victims
15 Protection Reauthorization Act of 2008 (8
16 U.S.C. 1375b), including the telephone
17 number for the national human trafficking
18 resource center hotline number.

19 (4) BOND.—The foreign labor recruiter shall
20 agree to maintain a bond sufficient to ensure the
21 ability of the foreign labor recruiter to discharge its
22 responsibilities and ensure protection of workers,
23 and to forfeit such bond in an amount determined
24 by the Secretary under subsections (b)(1)(C)(ii) or

1 (c)(2)(C) of section 252 for failure to comply with
2 the provisions of this subtitle.

3 (5) COOPERATION IN INVESTIGATION.—The
4 foreign labor recruiter shall agree to cooperate in
5 any investigation under section 252 of this subtitle
6 by the Secretary or other appropriate authorities.

7 (6) NO RETALIATION.—The foreign labor re-
8 cruiter shall agree to refrain from intimidating,
9 threatening, restraining, coercing, discharging,
10 blacklisting or in any other manner discriminating
11 or retaliating against any worker or their family
12 members (including a former worker or an applicant
13 for employment) because such worker disclosed in-
14 formation to any person based on a reason to believe
15 that the foreign labor recruiter, or any agent or sub-
16 contractee of such foreign labor recruiter, is engag-
17 ing or has engaged in a foreign labor recruiting ac-
18 tivity that does not comply with this subtitle.

19 (7) EMPLOYEES, AGENTS, AND
20 SUBCONTRACTEES.—The foreign labor recruiter
21 shall consent to be liable for the conduct of any
22 agents or subcontractees of any level in relation to
23 the foreign labor recruiting activity of the agent or
24 subcontractee to the same extent as if the foreign
25 labor recruiter had engaged in such conduct.

1 (8) ENFORCEMENT.—If the foreign labor re-
2 cruiter is conducting foreign labor recruiting activity
3 wholly outside the United States, such foreign labor
4 recruiter shall establish a registered agent in the
5 United States who is authorized to accept service of
6 process on behalf of the foreign labor recruiter for
7 the purpose of any administrative proceeding under
8 this title or any Federal court civil action, if such
9 service is made in accordance with the appropriate
10 Federal rules for service of process.

11 (d) TERM OF REGISTRATION.—Unless suspended or
12 revoked, a registration under this section shall be valid
13 for 2 years.

14 (e) APPLICATION FEE.—The Secretary shall require
15 a foreign labor recruiter that submits an application for
16 registration under this section to pay a reasonable fee, suf-
17 ficient to cover the full costs of carrying out the registra-
18 tion activities under this subtitle.

19 (f) NOTIFICATION.—

20 (1) EMPLOYER NOTIFICATION.—

21 (A) IN GENERAL.—Not less frequently
22 than once every year, an employer of H-2A
23 workers shall provide the Secretary with the
24 names and addresses of all foreign labor re-
25 cruiters engaged to perform foreign labor re-

1 recruiting activity on behalf of the employer,
2 whether the foreign labor recruiter is to receive
3 any economic compensation for such services,
4 and, if so, the identity of the person or entity
5 who is paying for the services.

6 (B) AGREEMENT TO COOPERATE.—In ad-
7 dition to the requirements of subparagraph (A),
8 the employer shall—

9 (i) provide to the Secretary the iden-
10 tity of any foreign labor recruiter whom
11 the employer has reason to believe is en-
12 gaging in foreign labor recruiting activities
13 that do not comply with this subtitle; and

14 (ii) promptly respond to any request
15 by the Secretary for information regarding
16 the identity of a foreign labor recruiter
17 with whom the employer has a contract or
18 other agreement.

19 (2) FOREIGN LABOR RECRUITER NOTIFICA-
20 TION.—A registered foreign labor recruiter shall no-
21 tify the Secretary, not less frequently than once
22 every year, of the identity of any subcontractee,
23 agent, or foreign labor recruiter employee involved in
24 any foreign labor recruiting activity for, or on behalf
25 of, the foreign labor recruiter.

1 (g) ADDITIONAL RESPONSIBILITIES OF THE SEC-
2 RETARY OF STATE.—

3 (1) LISTS.—The Secretary of State, in con-
4 sultation with the Secretary of Labor shall maintain
5 and make publicly available in written form and on
6 the websites of United States embassies in the offi-
7 cial language of that country, and on websites main-
8 tained by the Secretary of Labor, regularly updated
9 lists—

10 (A) of foreign labor recruiters who hold
11 valid registrations under this section, includ-
12 ing—

13 (i) the name and address of the for-
14 eign labor recruiter;

15 (ii) the countries in which such re-
16 cruiters conduct recruitment;

17 (iii) the employers for whom recruit-
18 ing is conducted;

19 (iv) the occupations that are the sub-
20 ject of recruitment;

21 (v) the States where recruited workers
22 are employed; and

23 (vi) the name and address of the reg-
24 istered agent in the United States who is

1 authorized to accept service of process on
2 behalf of the foreign labor recruiter; and

3 (B) of foreign labor recruiters whose reg-
4 istration the Secretary has revoked.

5 (2) PERSONNEL.—The Secretary of State shall
6 ensure that each United States diplomatic mission is
7 staffed with a person who shall be responsible for re-
8 ceiving information from members of the public re-
9 garding potential violations of the requirements ap-
10 plicable to registered foreign labor recruiters and en-
11 suring that such information is conveyed to the Sec-
12 retary of Labor for evaluation and initiation of an
13 enforcement action, if appropriate.

14 (3) VISA APPLICATION PROCEDURES.—The Sec-
15 retary shall ensure that consular officers issuing
16 visas to nonimmigrants under section
17 101(a)(1)(H)(ii)(a) of the Immigration and Nation-
18 ality Act (8 U.S.C. 11001(a)(1)(H)(ii)(a))—

19 (A) provide to and review with the appli-
20 cant, in the applicant's language (or a language
21 the applicant understands), a copy of the infor-
22 mation and resources pamphlet required by sec-
23 tion 202 of the William Wilberforce Trafficking
24 Victims Protection Reauthorization Act of 2008
25 (8 U.S.C. 1375b);

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1 (B) ensure that the applicant has a copy of
2 the approved job offer or work contract;

3 (C) note in the visa application file wheth-
4 er the foreign labor recruiter has a valid reg-
5 istration under this section; and

6 (D) if the foreign labor recruiter holds a
7 valid registration, review and include in the visa
8 application file, the foreign labor recruiter's dis-
9 closures required by subsection (c)(3).

10 (4) DATA.—The Secretary of State shall make
11 publicly available online, on an annual basis, data
12 disclosing the gender, country of origin (and State,
13 county, or province, if available), age, wage, level of
14 training, and occupational classification,
15 disaggregated by State, of nonimmigrant workers
16 described in section 101(a)(15)(H)(ii)(a) of the Im-
17 migration and Nationality Act.

18 **SEC. 252. ENFORCEMENT.**

19 (a) DENIAL OR REVOCATION OF REGISTRATION.—

20 (1) GROUNDS FOR DENIAL OR REVOCATION.—

21 The Secretary shall deny an application for registra-
22 tion, or revoke a registration, if the Secretary deter-
23 mines that the foreign labor recruiter, or any agent
24 or subcontractee of such foreign labor recruiter—

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1 (A) knowingly made a material misrepre-
2 sentation in the registration application;

3 (B) materially failed to comply with one or
4 more of the attestations provided under section
5 251(c); or

6 (C) is not the real party in interest.

7 (2) NOTICE.—Prior to denying an application
8 for registration or revoking a registration under this
9 subsection, the Secretary shall provide written notice
10 of the intent to deny or revoke the registration to
11 the foreign labor recruiter. Such notice shall—

12 (A) articulate with specificity all grounds
13 for denial or revocation; and

14 (B) provide the foreign labor recruiter with
15 not less than 60 days to respond.

16 (3) RE-REGISTRATION.—A foreign labor re-
17 cruiter whose registration was revoked under sub-
18 section (a) may re-register if the foreign labor re-
19 cruiter demonstrates to the Secretary's satisfaction
20 that the foreign labor recruiter has not violated this
21 subtitle in the 5 years preceding the date an applica-
22 tion for registration is filed and has taken sufficient
23 steps to prevent future violations of this subtitle.

24 (b) ADMINISTRATIVE ENFORCEMENT.—

25 (1) COMPLAINT PROCESS.—

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1 (A) FILING.—A complaint may be filed
2 with the Secretary of Labor, in accordance with
3 the procedures established under section
4 251(b)(4) not later than 2 years after the ear-
5 lier of—

6 (i) the date of the last action which
7 constituted the conduct that is the subject
8 of the complaint took place; or

9 (ii) the date on which the aggrieved
10 party had actual knowledge of such con-
11 duct.

12 (B) DECISION AND PENALTIES.—If the
13 Secretary of Labor finds, after notice and an
14 opportunity for a hearing, that a foreign labor
15 recruiter failed to comply with any of the re-
16 quirements of this subtitle, the Secretary of
17 Labor may—

18 (i) levy a fine against the foreign
19 labor recruiter in an amount not more
20 than—

21 (I) \$10,000 per violation; and

22 (II) \$25,000 per violation, upon
23 the third violation;

24 (ii) order the forfeiture (or partial for-
25 feiture) of the bond and release of as much

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1 of the bond as the Secretary determines is
2 necessary for the worker to recover prohib-
3 ited recruitment fees;

4 (iii) refuse to issue or renew a reg-
5 istration, or revoke a registration; or

6 (iv) disqualify the foreign labor re-
7 cruiter from registration for a period of up
8 to 5 years, or in the case of a subsequent
9 finding involving willful or multiple mate-
10 rial violations, permanently disqualify the
11 foreign labor recruiter from registration.

12 (2) **AUTHORITY TO ENSURE COMPLIANCE.**—The
13 Secretary of Labor is authorized to take other such
14 actions, including issuing subpoenas and seeking ap-
15 propriate injunctive relief, as may be necessary to
16 assure compliance with the terms and conditions of
17 this subtitle.

18 (3) **STATUTORY CONSTRUCTION.**—Nothing in
19 this subsection may be construed as limiting the au-
20 thority of the Secretary of Labor to conduct an in-
21 vestigation—

22 (A) under any other law, including any law
23 affecting migrant and seasonal agricultural
24 workers; or

25 (B) in the absence of a complaint.

1 (c) CIVIL ACTION.—

2 (1) IN GENERAL.—The Secretary of Labor or
3 any person aggrieved by a violation of this subtitle
4 may bring a civil action against any foreign labor re-
5 cruiter, or any employer that does not meet the re-
6 quirements under subsection (d)(1), in any court of
7 competent jurisdiction—

8 (A) to seek remedial action, including in-
9 junctive relief; and

10 (B) for damages in accordance with the
11 provisions of this subsection.

12 (2) AWARD FOR CIVIL ACTION FILED BY AN IN-
13 DIVIDUAL.—

14 (A) IN GENERAL.—If the court finds in a
15 civil action filed by an individual under this sec-
16 tion that the defendant has violated any provi-
17 sion of this subtitle, the court may award—

18 (i) damages, up to and including an
19 amount equal to the amount of actual
20 damages, and statutory damages of up to
21 \$1,000 per plaintiff per violation, or other
22 equitable relief, except that with respect to
23 statutory damages—

24 (I) multiple infractions of a sin-
25 gle provision of this subtitle (or of a

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1 regulation under this subtitle) shall
2 constitute only one violation for pur-
3 poses of this subsection to determine
4 the amount of statutory damages due
5 a plaintiff; and

6 (II) if such complaint is certified
7 as a class action the court may
8 award—

9 (aa) damages up to an
10 amount equal to the amount of
11 actual damages; and

12 (bb) statutory damages of
13 not more than the lesser of up to
14 \$1,000 per class member per vio-
15 lation, or up to \$500,000; and
16 other equitable relief;

17 (ii) reasonable attorneys' fees and
18 costs; and

19 (iii) such other and further relief as
20 necessary to effectuate the purposes of this
21 subtitle.

22 (B) CRITERIA.—In determining the
23 amount of statutory damages to be awarded
24 under subparagraph (A), the court is author-
25 ized to consider whether an attempt was made

1 to resolve the issues in dispute before the resort
2 to litigation.

3 (C) BOND.—To satisfy the damages, fees,
4 and costs found owing under this paragraph,
5 the Secretary shall release as much of the bond
6 held pursuant to section 251(c)(4) as necessary.

7 (3) SUMS RECOVERED IN ACTIONS BY THE SEC-
8 RETARY OF LABOR.—

9 (A) ESTABLISHMENT OF ACCOUNT.—

10 There is established in the general fund of the
11 Treasury a separate account, which shall be
12 known as the “H-2A Foreign Labor Recruiter
13 Compensation Account”. Notwithstanding any
14 other provisions of law, there shall be deposited
15 as offsetting receipts into the account, all sums
16 recovered in an action by the Secretary of
17 Labor under this subsection.

18 (B) USE OF FUNDS.—Amounts deposited
19 into the H-2A Foreign Labor Recruiter Com-
20 pensation Account and shall be paid directly to
21 each worker affected. Any such sums not paid
22 to a worker because of inability to do so within
23 a period of 5 years following the date such
24 funds are deposited into the account shall re-
25 main available to the Secretary until expended.

1 The Secretary may transfer all or a portion of
2 such remaining sums to appropriate agencies to
3 support the enforcement of the laws prohibiting
4 the trafficking and exploitation of persons or
5 programs that aid trafficking victims.

6 (d) EMPLOYER SAFE HARBOR.—

7 (1) IN GENERAL.—An employer that hires
8 workers referred by a foreign labor recruiter with a
9 valid registration at the time of hiring shall not be
10 held jointly liable for a violation committed solely by
11 a foreign labor recruiter under this subtitle—

12 (A) in any administrative action initiated
13 by the Secretary concerning such violation; or

14 (B) in any Federal or State civil court ac-
15 tion filed against the foreign labor recruiter by
16 or on behalf of such workers or other aggrieved
17 party under this subtitle.

18 (2) CLARIFICATION.—Nothing in this subtitle
19 shall be construed to prohibit an aggrieved party or
20 parties from bringing a civil action for violations of
21 this subtitle or any other Federal or State law
22 against any employer who hired workers referred by
23 a foreign labor recruiter—

24 (A) without a valid registration at the time
25 of hire; or

1 (B) with a valid registration if the em-
2 ployer knew or learned of the violation and
3 failed to report such violation to the Secretary.

4 (e) PAROLE TO PURSUE RELIEF.—If other immigra-
5 tion relief is not available, the Secretary of Homeland Se-
6 curity may grant parole to permit an individual to remain
7 legally in the United States for time sufficient to fully and
8 effectively participate in all legal proceedings related to
9 any action taken pursuant to subsection (b) or (c).

10 (f) WAIVER OF RIGHTS.—Agreements by employees
11 purporting to waive or to modify their rights under this
12 subtitle shall be void as contrary to public policy.

13 (g) LIABILITY FOR AGENTS.—Foreign labor recruit-
14 ers shall be subject to the provisions of this section for
15 violations committed by the foreign labor recruiter's
16 agents or subcontractees of any level in relation to their
17 foreign labor recruiting activity to the same extent as if
18 the foreign labor recruiter had committed the violation.

19 **SEC. 253. APPROPRIATIONS.**

20 There is authorized to be appropriated such sums as
21 may be necessary for the Secretary of Labor and Secretary
22 of State to carry out the provisions of this subtitle.

23 **SEC. 254. DEFINITIONS.**

24 For purposes of this subtitle:

1 (1) FOREIGN LABOR RECRUITER.—The term
2 “foreign labor recruiter” means any person who per-
3 forms foreign labor recruiting activity in exchange
4 for money or other valuable consideration paid or
5 promised to be paid, to recruit individuals to work
6 as nonimmigrant workers described in section
7 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
8 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), including
9 any person who performs foreign labor recruiting ac-
10 tivity wholly outside of the United States. Such term
11 does not include any entity of the United States
12 Government or an employer, or employee of an em-
13 ployer, who engages in foreign labor recruiting activ-
14 ity solely to find employees for that employer’s own
15 use, and without the participation of any other for-
16 eign labor recruiter.

17 (2) FOREIGN LABOR RECRUITING ACTIVITY.—
18 The term “foreign labor recruiting activity” means
19 recruiting, soliciting, or related activities with re-
20 spect to an individual who resides outside of the
21 United States in furtherance of employment in the
22 United States, including when such activity occurs
23 wholly outside of the United States.

24 (3) RECRUITMENT FEES.—The term “recruit-
25 ment fees” has the meaning given to such term

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1 under section 22.1702 of title 22 of the Code of
 2 Federal Regulations, as in effect on the date of en-
 3 actment of this Act.

4 (4) PERSON.—The term “person” means any
 5 natural person or any corporation, company, firm,
 6 partnership, joint stock company or association or
 7 other organization or entity (whether organized
 8 under law or not), including municipal corporations.

9 **TITLE III—ELECTRONIC**
 10 **VERIFICATION OF EMPLOY-**
 11 **MENT ELIGIBILITY**

12 **SEC. 301. ELECTRONIC EMPLOYMENT ELIGIBILITY**
 13 **VERIFICATION SYSTEM.**

14 (a) IN GENERAL.—Chapter 8 of title II of the Immi-
 15 gration and Nationality Act (8 U.S.C. 1321 et seq.) is
 16 amended by inserting after section 274D the following:

17 **“SEC. 274E. REQUIREMENTS FOR THE ELECTRONIC**
 18 **VERIFICATION OF EMPLOYMENT ELIGI-**
 19 **BILITY.**

20 **“(a) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-**
 21 **TEM.—**

22 **“(1) IN GENERAL.—**The Secretary of Homeland
 23 Security (referred to in this section as the ‘Sec-
 24 retary’) shall establish and administer an electronic
 25 verification system (referred to in this section as the

1 ‘System’), patterned on the E–Verify Program de-
2 scribed in section 403(a) of the Illegal Immigration
3 Reform and Immigrant Responsibility Act of 1996
4 (8 U.S.C. 1324a note) (as in effect on the day be-
5 fore the effective date described in section 303(a)(4)
6 of the Farm Workforce Modernization Act of 2019),
7 and using the employment eligibility confirmation
8 system established under section 404 of such Act (8
9 U.S.C. 1324a note) (as so in effect) as a foundation,
10 through which the Secretary shall—

11 “(A) respond to inquiries made by persons
12 or entities seeking to verify the identity and em-
13 ployment authorization of individuals that such
14 persons or entities seek to hire, or to recruit or
15 refer for a fee, for employment in the United
16 States; and

17 “(B) maintain records of the inquiries that
18 were made, and of verifications provided (or not
19 provided) to such persons or entities as evidence
20 of compliance with the requirements of this sec-
21 tion.

22 “(2) INITIAL RESPONSE DEADLINE.—The Sys-
23 tem shall provide confirmation or a tentative non-
24 confirmation of an individual’s identity and employ-

1 ment authorization as soon as practicable, but not
2 later than 3 calendar days after the initial inquiry.

3 “(3) GENERAL DESIGN AND OPERATION OF
4 SYSTEM.—The Secretary shall design and operate
5 the System—

6 “(A) using responsive web design and
7 other technologies to maximize its ease of use
8 and accessibility for users on a variety of elec-
9 tronic devices and screen sizes, and in remote
10 locations;

11 “(B) to maximize the accuracy of re-
12 sponses to inquiries submitted by persons or en-
13 tities;

14 “(C) to maximize the reliability of the Sys-
15 tem and to register each instance when the Sys-
16 tem is unable to receive inquiries;

17 “(D) to protect the privacy and security of
18 the personally identifiable information main-
19 tained by or submitted to the System;

20 “(E) to provide direct notification of an in-
21 quiry to an individual with respect to whom the
22 inquiry is made, including the results of such
23 inquiry, and information related to the process
24 for challenging the results, in cases in which the
25 individual has established a user account as de-

1 scribed in paragraph (4)(B) or an electronic
2 mail address for the individual is submitted by
3 the person or entity at the time the inquiry is
4 made; and

5 “(F) to maintain appropriate administra-
6 tive, technical, and physical safeguards to pre-
7 vent misuse of the System and unfair immigra-
8 tion-related employment practices.

9 “(4) MEASURES TO PREVENT IDENTITY THEFT
10 AND OTHER FORMS OF FRAUD.—To prevent identity
11 theft and other forms of fraud, the Secretary shall
12 design and operate the System with the following at-
13 tributes:

14 “(A) PHOTO MATCHING TOOL.—The Sys-
15 tem shall display the digital photograph of the
16 individual, if any, that corresponds to the docu-
17 ment presented by an individual to establish
18 identity and employment authorization so that
19 the person or entity that makes an inquiry can
20 compare the photograph displayed by the Sys-
21 tem to the photograph on the document pre-
22 sented by the individual.

23 “(B) INDIVIDUAL MONITORING AND SUS-
24 PENSION OF IDENTIFYING INFORMATION.—The
25 System shall enable individuals to establish user

1 accounts, after authentication of an individual's
2 identity, that would allow an individual to—

3 “(i) confirm the individual's own em-
4 ployment authorization;

5 “(ii) receive electronic notification
6 when the individual's social security ac-
7 count number or other personally identi-
8 fying information has been submitted to
9 the System;

10 “(iii) monitor the use history of the
11 individual's personally identifying informa-
12 tion in the System, including the identities
13 of all persons or entities that have sub-
14 mitted such identifying information to the
15 System, the date of each query run, and
16 the System response for each query run;

17 “(iv) suspend or limit the use of the
18 individual's social security account number
19 or other personally identifying information
20 for purposes of the System; and

21 “(v) provide notice to the Department
22 of Homeland Security of any suspected
23 identity fraud or other improper use of
24 personally identifying information.

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1 “(C) BLOCKING MISUSED SOCIAL SECUR-
2 RITY ACCOUNT NUMBERS.—

3 “(i) IN GENERAL.—The Secretary, in
4 consultation with the Commissioner of So-
5 cial Security (referred to in this section as
6 the ‘Commissioner’), shall develop, after
7 publication in the Federal Register and an
8 opportunity for public comment, a process
9 in which social security account numbers
10 that have been identified to be subject to
11 unusual multiple use in the System or that
12 are otherwise suspected or determined to
13 have been compromised by identity fraud
14 or other misuse, shall be blocked from use
15 in the System unless the individual using
16 such number is able to establish, through
17 secure and fair procedures, that the indi-
18 vidual is the legitimate holder of the num-
19 ber.

20 “(ii) NOTICE.—If the Secretary blocks
21 or suspends a social security account num-
22 ber under this subparagraph, the Secretary
23 shall provide notice to the persons or enti-
24 ties that have made inquiries to the Sys-
25 tem using such account number that the

1 identity and employment authorization of
2 the individual who provided such account
3 number must be re-verified.

4 “(D) ADDITIONAL IDENTITY AUTHENTICA-
5 TION TOOL.—The Secretary shall develop, after
6 publication in the Federal Register and an op-
7 portunity for public comment, additional secu-
8 rity measures to adequately verify the identity
9 of an individual whose identity may not be
10 verified using the photo tool described in sub-
11 paragraph (A). Such additional security meas-
12 ures—

13 “(i) shall be kept up-to-date with
14 technological advances; and

15 “(ii) shall be designed to provide a
16 high level of certainty with respect to iden-
17 tity authentication.

18 “(E) CHILD-LOCK PILOT PROGRAM.—The
19 Secretary, in consultation with the Commis-
20 sioner, shall establish a reliable, secure program
21 through which parents or legal guardians may
22 suspend or limit the use of the social security
23 account number or other personally identifying
24 information of a minor under their care for
25 purposes of the System. The Secretary may im-

1 plement the program on a limited pilot basis be-
2 fore making it fully available to all individuals.

3 “(5) RESPONSIBILITIES OF THE COMMISSIONER
4 OF SOCIAL SECURITY.—The Commissioner, in con-
5 sultation with the Secretary, shall establish a reli-
6 able, secure method, which, within the time periods
7 specified in paragraph (2) and subsection
8 (b)(4)(D)(i)(II), compares the name and social secu-
9 rity account number provided in an inquiry against
10 such information maintained by the Commissioner in
11 order to validate (or not validate) the information
12 provided by the person or entity with respect to an
13 individual whose identity and employment authoriza-
14 tion the person or entity seeks to confirm, the cor-
15 respondence of the name and number, and whether
16 the individual has presented a social security ac-
17 count number that is not valid for employment. The
18 Commissioner shall not disclose or release social se-
19 curity information (other than such confirmation or
20 nonconfirmation) under the System except as pro-
21 vided under this section.

22 “(6) RESPONSIBILITIES OF THE SECRETARY OF
23 HOMELAND SECURITY.—

24 “(A) IN GENERAL.—The Secretary of
25 Homeland Security shall establish a reliable, se-

1 cure method, which, within the time periods
2 specified in paragraph (2) and subsection
3 (b)(4)(D)(i)(II), compares the name and identi-
4 fication or other authorization number (or any
5 other information determined relevant by the
6 Secretary) which are provided in an inquiry
7 against such information maintained or
8 accessed by the Secretary in order to validate
9 (or not validate) the information provided, the
10 correspondence of the name and number, and
11 whether the individual is authorized to be em-
12 ployed in the United States.

13 “(B) TRAINING.—The Secretary shall pro-
14 vide and regularly update training materials on
15 the use of the System for persons and entities
16 making inquiries.

17 “(C) AUDIT.—The Secretary shall provide
18 for periodic auditing of the System to detect
19 and prevent misuse, discrimination, fraud, and
20 identity theft, to protect privacy and assess
21 System accuracy, and to preserve the integrity
22 and security of the information in the System.

23 “(D) NOTICE OF SYSTEM CHANGES.—The
24 Secretary shall provide appropriate notification
25 to persons and entities registered in the System

1 of any change made by the Secretary or the
2 Commissioner related to permitted and prohib-
3 ited documents, and use of the System.

4 “(7) RESPONSIBILITIES OF THE SECRETARY OF
5 STATE.—As part of the System, the Secretary of
6 State shall provide to the Secretary of Homeland Se-
7 curity access to passport and visa information as
8 needed to confirm that a passport or passport card
9 presented under subsection (b)(3)(A)(i) confirms the
10 employment authorization and identity of the indi-
11 vidual presenting such document, and that a pass-
12 port, passport card, or visa photograph matches the
13 Secretary of State’s records, and shall provide such
14 assistance as the Secretary of Homeland Security
15 may request in order to resolve tentative noncon-
16 firmations or final nonconfirmations relating to such
17 information.

18 “(8) UPDATING INFORMATION.—The Commis-
19 sioner, the Secretary of Homeland Security, and the
20 Secretary of State shall update records in their cus-
21 tody in a manner that promotes maximum accuracy
22 of the System and shall provide a process for the
23 prompt correction of erroneous information, includ-
24 ing instances in which it is brought to their atten-

1 tion through the tentative nonconfirmation review
2 process under subsection (b)(4)(D).

3 “(9) MANDATORY AND VOLUNTARY SYSTEM
4 USES.—

5 “(A) MANDATORY USERS.—Except as oth-
6 erwise provided under Federal or State law,
7 such as sections 302 and 303 of the Farm
8 Workforce Modernization Act of 2019, nothing
9 in this section shall be construed as requiring
10 the use of the System by any person or entity
11 hiring, recruiting, or referring for a fee, an in-
12 dividual for employment in the United States.

13 “(B) VOLUNTARY USERS.—Beginning
14 after the date that is 30 days after the date on
15 which final rules are published under section
16 309(a) of the Farm Workforce Modernization
17 Act of 2019, a person or entity may use the
18 System on a voluntary basis to seek verification
19 of the identity and employment authorization of
20 individuals the person or entity is hiring, re-
21 cruiting, or referring for a fee for employment
22 in the United States

23 “(C) PROCESS FOR NON-USERS.—The em-
24 ployment verification process for any person or
25 entity hiring, recruiting, or referring for a fee,

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1 an individual for employment in the United
2 States shall be governed by section 274A(b) un-
3 less the person or entity—

4 “(i) is required by Federal or State
5 law to use the System; or

6 “(ii) has opted to use the System vol-
7 untarily in accordance with subparagraph
8 (B).

9 “(10) NO FEE FOR USE.—The Secretary may
10 not charge a fee to an individual, person, or entity
11 related to the use of the System.

12 “(b) NEW HIRES, RECRUITMENT, AND REFERRAL.—
13 Notwithstanding section 274A(b), the requirements re-
14 ferred to in paragraphs (1)(B) and (3) of section 274A(a)
15 are, in the case of a person or entity that uses the System
16 for the hiring, recruiting, or referring for a fee, an indi-
17 vidual for employment in the United States, the following:

18 “(1) INDIVIDUAL ATTESTATION OF EMPLOY-
19 MENT AUTHORIZATION.—During the period begin-
20 ning on the date on which an offer of employment
21 is accepted and ending on the date of hire, the indi-
22 vidual shall attest, under penalty of perjury on a
23 form designated by the Secretary, that the individual
24 is authorized to be employed in the United States by
25 providing on such form—

1 “(A) the individual’s name and date of
2 birth;

3 “(B) the individual’s social security ac-
4 count number (unless the individual has applied
5 for and not yet been issued such a number);

6 “(C) whether the individual is—

7 “(i) a citizen or national of the United
8 States;

9 “(ii) an alien lawfully admitted for
10 permanent residence; or

11 “(iii) an alien who is otherwise au-
12 thorized by the Secretary to be hired, re-
13 cruited, or referred for employment in the
14 United States; and

15 “(D) if the individual does not attest to
16 United States citizenship or nationality, such
17 identification or other authorization number es-
18 tablished by the Department of Homeland Se-
19 curity for the alien as the Secretary may speci-
20 fy.

21 “(2) EMPLOYER ATTESTATION AFTER EXAM-
22 INATION OF DOCUMENTS.—Not later than 3 busi-
23 ness days after the date of hire, the person or entity
24 shall attest, under penalty of perjury on the form
25 designated by the Secretary for purposes of para-

1 graph (1), that it has verified that the individual is
2 not an unauthorized alien by—

3 “(A) obtaining from the individual the in-
4 formation described in paragraph (1) and re-
5 cording such information on the form;

6 “(B) examining—

7 “(i) a document described in para-
8 graph (3)(A); or

9 “(ii) a document described in para-
10 graph (3)(B) and a document described in
11 paragraph (3)(C); and

12 “(C) attesting that the information re-
13 corded on the form is consistent with the docu-
14 ments examined.

15 “(3) ACCEPTABLE DOCUMENTS.—

16 “(A) DOCUMENTS ESTABLISHING EMPLOY-
17 MENT AUTHORIZATION AND IDENTITY.—A doc-
18 ument described in this subparagraph is an in-
19 dividual’s—

20 “(i) United States passport or pass-
21 port card;

22 “(ii) permanent resident card that
23 contains a photograph;

24 “(iii) foreign passport containing tem-
25 porary evidence of lawful permanent resi-

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1 dence in the form of an official I-551 (or
2 successor) stamp from the Department of
3 Homeland Security or a printed notation
4 on a machine-readable immigrant visa;

5 “(iv) unexpired employment author-
6 ization card that contains a photograph;

7 “(v) in the case of a nonimmigrant
8 alien authorized to engage in employment
9 for a specific employer incident to status,
10 a foreign passport with Form I-94, Form
11 I-94A, or other documentation as des-
12 ignated by the Secretary specifying the
13 alien’s nonimmigrant status as long as
14 such status has not yet expired and the
15 proposed employment is not in conflict
16 with any restrictions or limitations identi-
17 fied in the documentation;

18 “(vi) passport from the Federated
19 States of Micronesia or the Republic of the
20 Marshall Islands with Form I-94, Form I-
21 94A, or other documentation as designated
22 by the Secretary, indicating nonimmigrant
23 admission under the Compact of Free As-
24 sociation Between the United States and

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1 the Federated States of Micronesia or the
2 Republic of the Marshall Islands; or

3 “(vii) other document designated by
4 the Secretary, by notice published in the
5 Federal Register, if the document—

6 “(I) contains a photograph of the
7 individual, biometric identification
8 data, and other personal identifying
9 information relating to the individual;

10 “(II) is evidence of authorization
11 for employment in the United States;
12 and

13 “(III) contains security features
14 to make it resistant to tampering,
15 counterfeiting, and fraudulent use.

16 “(B) DOCUMENTS ESTABLISHING EMPLOY-
17 MENT AUTHORIZATION.—A document described
18 in this subparagraph is—

19 “(i) an individual’s social security ac-
20 count number card (other than such a card
21 which specifies on the face that the
22 issuance of the card does not authorize em-
23 ployment in the United States); or

24 “(ii) a document establishing employ-
25 ment authorization that the Secretary de-

1 termines, by notice published in the Fed-
2 eral Register, to be acceptable for purposes
3 of this subparagraph, provided that such
4 documentation contains security features
5 to make it resistant to tampering, counter-
6 feiting, and fraudulent use.

7 “(C) DOCUMENTS ESTABLISHING IDEN-
8 TITY.—A document described in this subpara-
9 graph is—

10 “(i) an individual’s driver’s license or
11 identification card if it was issued by a
12 State or one of the outlying possessions of
13 the United States and contains a photo-
14 graph and personal identifying information
15 relating to the individual;

16 “(ii) an individual’s unexpired United
17 States military identification card;

18 “(iii) an individual’s unexpired Native
19 American tribal identification document
20 issued by a tribal entity recognized by the
21 Bureau of Indian Affairs;

22 “(iv) in the case of an individual
23 under 18 years of age, a parent or legal
24 guardian’s attestation under penalty of law

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1 as to the identity and age of the individual;
2 or

3 “(v) a document establishing identity
4 that the Secretary determines, by notice
5 published in the Federal Register, to be ac-
6 ceptable for purposes of this subparagraph,
7 if such documentation contains a photo-
8 graph of the individual, biometric identi-
9 fication data, and other personal identi-
10 fying information relating to the indi-
11 vidual, and security features to make it re-
12 sistant to tampering, counterfeiting, and
13 fraudulent use.

14 “(D) AUTHORITY TO PROHIBIT USE OF
15 CERTAIN DOCUMENTS.—If the Secretary finds
16 that any document or class of documents de-
17 scribed in subparagraph (A), (B), or (C) does
18 not reliably establish identity or employment
19 authorization or is being used fraudulently to
20 an unacceptable degree, the Secretary may, by
21 notice published in the Federal Register, pro-
22 hibit or place conditions on the use of such doc-
23 ument or class of documents for purposes of
24 this section.

1 “(4) USE OF THE SYSTEM TO SCREEN IDEN-
2 TITY AND EMPLOYMENT AUTHORIZATION.—

3 “(A) IN GENERAL.—In the case of a per-
4 son or entity that uses the System for the hir-
5 ing, recruiting, or referring for a fee an indi-
6 vidual for employment in the United States,
7 during the period described in subparagraph
8 (B), the person or entity shall submit an in-
9 quiry through the System described in sub-
10 section (a) to seek verification of the identity
11 and employment authorization of the individual.

12 “(B) VERIFICATION PERIOD.—

13 “(i) IN GENERAL.—Except as pro-
14 vided in clause (ii), and subject to sub-
15 section (d), the verification period shall
16 begin on the date of hire and end on the
17 date that is 3 business days after the date
18 of hire, or such other reasonable period as
19 the Secretary may prescribe.

20 “(ii) SPECIAL RULE.—In the case of
21 an alien who is authorized to be employed
22 in the United States and who provides evi-
23 dence from the Social Security Administra-
24 tion that the alien has applied for a social
25 security account number, the verification

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1 period shall end 3 business days after the
2 alien receives the social security account
3 number.

4 “(C) CONFIRMATION.—If a person or enti-
5 ty receives confirmation of an individual’s iden-
6 tity and employment authorization, the person
7 or entity shall record such confirmation on the
8 form designated by the Secretary for purposes
9 of paragraph (1).

10 “(D) TENTATIVE NONCONFIRMATION.—

11 “(i) IN GENERAL.—In cases of ten-
12 tative nonconfirmation, the Secretary shall
13 provide, in consultation with the Commis-
14 sioner, a process for—

15 “(I) an individual to contest the
16 tentative nonconfirmation not later
17 than 10 business days after the date
18 of the receipt of the notice described
19 in clause (ii); and

20 “(II) the Secretary to issue a
21 confirmation or final nonconfirmation
22 of an individual’s identity and employ-
23 ment authorization not later than 30
24 calendar days after the Secretary re-

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1 ceives notice from the individual con-
2 testing a tentative nonconfirmation.

3 “(ii) NOTICE.—If a person or entity
4 receives a tentative nonconfirmation of an
5 individual’s identity or employment author-
6 ization, the person or entity shall, not later
7 than 3 business days after receipt, notify
8 such individual in writing in a language
9 understood by the individual and on a form
10 designated by the Secretary, that shall in-
11 clude a description of the individual’s right
12 to contest the tentative nonconfirmation.
13 The person or entity shall attest, under
14 penalty of perjury, that the person or enti-
15 ty provided (or attempted to provide) such
16 notice to the individual, and the individual
17 shall acknowledge receipt of such notice in
18 a manner specified by the Secretary.

19 “(iii) NO CONTEST.—

20 “(I) IN GENERAL.—A tentative
21 nonconfirmation shall become final if,
22 upon receiving the notice described in
23 clause (ii), the individual—

24 “(aa) refuses to acknowledge
25 receipt of such notice;

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1 “(bb) acknowledges in writ-
2 ing, in a manner specified by the
3 Secretary, that the individual will
4 not contest the tentative noncon-
5 firmation; or

6 “(cc) fails to contest the
7 tentative nonconfirmation within
8 the 10-business-day period begin-
9 ning on the date the individual
10 received such notice.

11 “(II) RECORD OF NO CON-
12 TEST.—The person or entity shall in-
13 dicate in the System that the indi-
14 vidual did not contest the tentative
15 nonconfirmation and shall specify the
16 reason the tentative nonconfirmation
17 became final under subclause (I).

18 “(III) EFFECT OF FAILURE TO
19 CONTEST.—An individual’s failure to
20 contest a tentative nonconfirmation
21 shall not be considered an admission
22 of any fact with respect to any viola-
23 tion of this Act or any other provision
24 of law.

25 “(iv) CONTEST.—

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1 “(I) IN GENERAL.—An individual
2 may contest a tentative nonconfirma-
3 tion by using the tentative noncon-
4 firmation review process under clause
5 (i), not later than 10 business days
6 after receiving the notice described in
7 clause (ii). Except as provided in
8 clause (iii), the nonconfirmation shall
9 remain tentative until a confirmation
10 or final nonconfirmation is provided
11 by the System.

12 “(II) PROHIBITION ON TERMI-
13 NATION.—In no case shall a person or
14 entity terminate employment or take
15 any adverse employment action
16 against an individual for failure to ob-
17 tain confirmation of the individual’s
18 identity and employment authoriza-
19 tion until the person or entity receives
20 a notice of final nonconfirmation from
21 the System. Nothing in this subclause
22 shall prohibit an employer from termi-
23 nating the employment of the indi-
24 vidual for any other lawful reason.

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1 “(III) CONFIRMATION OR FINAL
2 NONCONFIRMATION.—The Secretary,
3 in consultation with the Commis-
4 sioner, shall issue notice of a con-
5 firmation or final nonconfirmation of
6 the individual’s identity and employ-
7 ment authorization not later than 30
8 calendar days after the date the Sec-
9 retary receives notice from the indi-
10 vidual contesting the tentative non-
11 confirmation.

12 “(E) FINAL NONCONFIRMATION.—

13 “(i) NOTICE.—If a person or entity
14 receives a final nonconfirmation of an indi-
15 vidual’s identity or employment authoriza-
16 tion, the person or entity shall, not later
17 than 3 business days after receipt, notify
18 such individual of the final nonconfirma-
19 tion in writing, on a form designated by
20 the Secretary, which shall include informa-
21 tion regarding the individual’s right to ap-
22 peal the final nonconfirmation as provided
23 under subparagraph (F). The person or
24 entity shall attest, under penalty of per-
25 jury, that the person or entity provided (or

1 attempted to provide) the notice to the in-
2 dividual, and the individual shall acknowl-
3 edge receipt of such notice in a manner
4 designated by the Secretary.

5 “(ii) TERMINATION OR NOTIFICATION
6 OF CONTINUED EMPLOYMENT.—If a per-
7 son or entity receives a final nonconfirma-
8 tion regarding an individual, the person or
9 entity may terminate employment of the
10 individual. If the person or entity does not
11 terminate such employment pending appeal
12 of the final nonconfirmation, the person or
13 entity shall notify the Secretary of such
14 fact through the System. Failure to notify
15 the Secretary in accordance with this
16 clause shall be deemed a violation of sec-
17 tion 274A(a)(1)(A).

18 “(iii) PRESUMPTION OF VIOLATION
19 FOR CONTINUED EMPLOYMENT.—If a per-
20 son or entity continues to employ an indi-
21 vidual after receipt of a final nonconfirma-
22 tion, there shall be a rebuttable presump-
23 tion that the person or entity has violated
24 paragraphs (1)(A) and (a)(2) of section
25 274A(a).

1 “(F) APPEAL OF FINAL NONCONFIRMA-
2 TION.—

3 “(i) ADMINISTRATIVE APPEAL.—The
4 Secretary, in consultation with the Com-
5 missioner, shall develop a process by which
6 an individual may seek administrative re-
7 view of a final nonconfirmation. Such proc-
8 ess shall—

9 “(I) permit the individual to sub-
10 mit additional evidence establishing
11 identity or employment authorization;

12 “(II) ensure prompt resolution of
13 an appeal (but in no event shall there
14 be a failure to respond to an appeal
15 within 30 days); and

16 “(III) permit the Secretary to
17 impose a civil money penalty (not to
18 exceed \$500) on an individual upon
19 finding that an appeal was frivolous
20 or filed for purposes of delay.

21 “(ii) COMPENSATION FOR LOST
22 WAGES RESULTING FROM GOVERNMENT
23 ERROR OR OMISSION.—

24 “(I) IN GENERAL.—If, upon con-
25 sideration of an appeal of a final non-

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1 confirmation, the Secretary deter-
2 mines that the final nonconfirmation
3 was issued in error, the Secretary
4 shall further determine whether the
5 final nonconfirmation was the result
6 of government error or omission. If
7 the Secretary determines that the
8 final nonconfirmation was solely the
9 result of government error or omission
10 and the individual was terminated
11 from employment, the Secretary shall
12 compensate the individual for lost
13 wages.

14 “(II) CALCULATION OF LOST
15 WAGES.—Lost wages shall be cal-
16 culated based on the wage rate and
17 work schedule that were in effect
18 prior to the individual’s termination.
19 The individual shall be compensated
20 for lost wages beginning on the first
21 scheduled work day after employment
22 was terminated and ending 90 days
23 after completion of the administrative
24 review process described in this sub-
25 paragraph or the day the individual is

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1 reinstated or obtains other employ-
2 ment, whichever occurs first.

3 “(III) LIMITATION ON COM-
4 PENSATION.—No compensation for
5 lost wages shall be awarded for any
6 period during which the individual
7 was not authorized for employment in
8 the United States.

9 “(IV) SOURCE OF FUNDS.—
10 There is established in the general
11 fund of the Treasury, a separate ac-
12 count which shall be known as the
13 ‘Electronic Verification Compensation
14 Account’. Fees collected under sub-
15 sections (f) and (g) shall be deposited
16 in the Electronic Verification Com-
17 pensation Account and shall remain
18 available for purposes of providing
19 compensation for lost wages under
20 this subclause.

21 “(iii) JUDICIAL REVIEW.—Not later
22 than 30 days after the dismissal of an ap-
23 peal under this subparagraph, an indi-
24 vidual may seek judicial review of such dis-
25 missal in the United States District Court

1 in the jurisdiction in which the employer
2 resides or conducts business.

3 “(5) RETENTION OF VERIFICATION RECORDS.—

4 “(A) IN GENERAL.—After completing the
5 form designated by the Secretary in accordance
6 with paragraphs (1) and (2), the person or enti-
7 ty shall retain the form in paper, microfiche,
8 microfilm, electronic, or other format deemed
9 acceptable by the Secretary, and make it avail-
10 able for inspection by officers of the Depart-
11 ment of Homeland Security, the Department of
12 Justice, or the Department of Labor during the
13 period beginning on the date the verification is
14 completed and ending on the later of—

15 “(i) the date that is 3 years after the
16 date of hire; or

17 “(ii) the date that is 1 year after the
18 date on which the individual’s employment
19 is terminated.

20 “(B) COPYING OF DOCUMENTATION PER-
21 MITTED.—Notwithstanding any other provision
22 of law, a person or entity may copy a document
23 presented by an individual pursuant to this sec-
24 tion and may retain the copy, but only for the

1 purpose of complying with the requirements of
2 this section.

3 “(c) REVERIFICATION OF PREVIOUSLY HIRED INDI-
4 VIDUALS.—

5 “(1) MANDATORY REVERIFICATION.—In the
6 case of a person or entity that uses the System for
7 the hiring, recruiting, or referring for a fee an indi-
8 vidual for employment in the United States, the per-
9 son or entity shall submit an inquiry using the Sys-
10 tem to verify the identity and employment authoriza-
11 tion of—

12 “(A) an individual with a limited period of
13 employment authorization, within 3 business
14 days before the date on which such employment
15 authorization expires; and

16 “(B) an individual, not later than 10 days
17 after receiving a notification from the Secretary
18 requiring the verification of such individual pur-
19 suant to subsection (a)(4)(C).

20 “(2) REVERIFICATION PROCEDURES.—The
21 verification procedures under subsection (b) shall
22 apply to reverifications under this subsection, except
23 that employers shall—

24 “(A) use a form designated by the Sec-
25 retary for purposes of this paragraph; and

1 “(B) retain the form in paper, microfiche,
2 microfilm, electronic, or other format deemed
3 acceptable by the Secretary, and make it avail-
4 able for inspection by officers of the Depart-
5 ment of Homeland Security, the Department of
6 Justice, or the Department of Labor during the
7 period beginning on the date the reverification
8 commences and ending on the later of—

9 “(i) the date that is 3 years after the
10 date of reverification; or

11 “(ii) the date that is 1 year after the
12 date on which the individual’s employment
13 is terminated.

14 “(3) LIMITATION ON REVERIFICATION.—Except
15 as provided in paragraph (1), a person or entity may
16 not otherwise reverify the identity and employment
17 authorization of a current employee, including an
18 employee continuing in employment.

19 “(d) GOOD FAITH COMPLIANCE.—

20 “(1) IN GENERAL.—Except as otherwise pro-
21 vided in this subsection, a person or entity that uses
22 the System is considered to have complied with the
23 requirements of this section notwithstanding a tech-
24 nical failure of the System, or other technical or pro-
25 cedural failure to meet such requirement if there

1 was a good faith attempt to comply with the require-
2 ment.

3 “(2) EXCEPTION FOR FAILURE TO CORRECT
4 AFTER NOTICE.—Paragraph (1) shall not apply if—

5 “(A) the failure is not de minimis;

6 “(B) the Secretary has provided notice to
7 the person or entity of the failure, including an
8 explanation as to why it is not de minimis;

9 “(C) the person or entity has been pro-
10 vided a period of not less than 30 days (begin-
11 ning after the date of the notice) to correct the
12 failure; and

13 “(D) the person or entity has not corrected
14 the failure voluntarily within such period.

15 “(3) EXCEPTION FOR PATTERN OR PRACTICE
16 VIOLATORS.—Paragraph (1) shall not apply to a
17 person or entity that has engaged or is engaging in
18 a pattern or practice of violations of paragraph
19 (1)(A) or (2) of section 274A(a).

20 “(4) DEFENSE.—In the case of a person or en-
21 tity that uses the System for the hiring, recruiting,
22 or referring for a fee an individual for employment
23 in the United States, the person or entity shall not
24 be liable to a job applicant, an employee, the Federal
25 Government, or a State or local government, under

1 Federal, State, or local criminal or civil law, for any
2 employment-related action taken with respect to an
3 employee in good-faith reliance on information pro-
4 vided by the System. Such person or entity shall be
5 deemed to have established compliance with its obli-
6 gations under this section, absent a showing by the
7 Secretary, by clear and convincing evidence, that the
8 employer had knowledge that an employee is an un-
9 authorized alien.

10 “(e) LIMITATIONS.—

11 “(1) NO NATIONAL IDENTIFICATION CARD.—
12 Nothing in this section shall be construed to author-
13 ize, directly or indirectly, the issuance or use of na-
14 tional identification cards or the establishment of a
15 national identification card.

16 “(2) USE OF RECORDS.—Notwithstanding any
17 other provision of law, nothing in this section shall
18 be construed to permit or allow any department, bu-
19 reau, or other agency of the United States Govern-
20 ment to utilize any information, database, or other
21 records assembled under this section for any purpose
22 other than the verification of identity and employ-
23 ment authorization of an individual or to ensure the
24 secure, appropriate, and non-discriminatory use of
25 the System.

1 “(f) PENALTIES.—

2 “(1) IN GENERAL.—Except as provided in this
3 subsection, the provisions of subsections (e) through
4 (g) of section 274A shall apply with respect to com-
5 pliance with the provisions of this section and pen-
6 alties for non-compliance for persons or entities that
7 use the System.

8 “(2) CEASE AND DESIST ORDER WITH CIVIL
9 MONEY PENALTIES FOR HIRING, RECRUITING, AND
10 REFERRAL VIOLATIONS.—Notwithstanding the civil
11 money penalties set forth in section 274A(e)(4), with
12 respect to a violation of paragraph (1)(A) or (2) of
13 section 274A(a) by a person or entity that has hired,
14 recruited, or referred for a fee, an individual for em-
15 ployment in the United States, a cease and desist
16 order—

17 “(A) shall require the person or entity to
18 pay a civil penalty in an amount, subject to
19 subsection (d), of—

20 “(i) not less than \$2,500 and not
21 more than \$5,000 for each unauthorized
22 alien with respect to whom a violation of
23 either such subsection occurred;

24 “(ii) not less than \$5,000 and not
25 more than \$10,000 for each such alien in

1 the case of a person or entity previously
2 subject to one order under this paragraph;
3 or

4 “(iii) not less than \$10,000 and not
5 more than \$25,000 for each such alien in
6 the case of a person or entity previously
7 subject to more than one order under this
8 paragraph; and

9 “(B) may require the person or entity to
10 take such other remedial action as appropriate.

11 “(3) ORDER FOR CIVIL MONEY PENALTY FOR
12 VIOLATIONS.—With respect to a violation of section
13 274A(a)(1)(B), the order under this paragraph shall
14 require the person or entity to pay a civil penalty in
15 an amount, subject to paragraphs (4), (5), and (6),
16 of not less than \$1,000 and not more than \$25,000
17 for each individual with respect to whom such viola-
18 tion occurred. Failure by a person or entity to utilize
19 the System as required by law or providing informa-
20 tion to the System that the person or entity knows
21 or reasonably believes to be false, shall be treated as
22 a violation of section 274A(a)(1)(A).

23 “(4) EXEMPTION FROM PENALTY FOR GOOD
24 FAITH VIOLATION.—

1 “(A) IN GENERAL.—A person or entity
2 that uses the System is presumed to have acted
3 with knowledge for purposes of paragraphs
4 (1)(A) and (2) of section 274A(a) if the person
5 or entity fails to make an inquiry to verify the
6 identity and employment authorization of the
7 individual through the System.

8 “(B) GOOD FAITH EXEMPTION.—In the
9 case of imposition of a civil penalty under para-
10 graph (2)(A) with respect to a violation of para-
11 graph (1)(A) or (2) of section 274A(a) for hir-
12 ing or continuation of employment or recruit-
13 ment or referral by a person or entity, and in
14 the case of imposition of a civil penalty under
15 paragraph (3) for a violation of section
16 274A(a)(1)(B) for hiring or recruitment or re-
17 ferral by a person or entity, the penalty other-
18 wise imposed may be waived or reduced if the
19 person or entity establishes that the person or
20 entity acted in good faith.

21 “(5) MITIGATION ELEMENTS.—For purposes of
22 paragraphs (2)(A) and (3), when assessing the level
23 of civil money penalties, in addition to the good faith
24 of the person or entity being charged, due consider-
25 ation shall be given to the size of the business, the

1 seriousness of the violation, whether or not the indi-
2 vidual was an unauthorized alien, and the history of
3 previous violations.

4 “(6) CRIMINAL PENALTY.—Notwithstanding
5 section 274A(f)(1) and the provisions of any other
6 Federal law relating to fine levels, any person or en-
7 tity that is required to comply with the provisions of
8 this section and that engages in a pattern or prac-
9 tice of violations of paragraph (1) or (2) of section
10 274A(a), shall be fined not more than \$5,000 for
11 each unauthorized alien with respect to whom such
12 a violation occurs, imprisoned for not more than 18
13 months, or both.

14 “(7) ELECTRONIC VERIFICATION COMPENSA-
15 TION ACCOUNT.—Civil money penalties collected
16 under this subsection shall be deposited in the Elec-
17 tronic Verification Compensation Account for the
18 purpose of compensating individuals for lost wages
19 as a result of a final nonconfirmation issued by the
20 System that was based on government error or omis-
21 sion, as set forth in subsection (b)(4)(F)(ii)(IV).

22 “(8) DEBARMENT.—

23 “(A) IN GENERAL.—If a person or entity
24 is determined by the Secretary to be a repeat
25 violator of paragraph (1)(A) or (2) of section

1 274A(a) or is convicted of a crime under sec-
2 tion 274A, such person or entity may be consid-
3 ered for debarment from the receipt of Federal
4 contracts, grants, or cooperative agreements in
5 accordance with the debarment standards and
6 pursuant to the debarment procedures set forth
7 in the Federal Acquisition Regulation.

8 “(B) NO CONTRACT, GRANT, AGREE-
9 MENT.—If the Secretary or the Attorney Gen-
10 eral wishes to have a person or entity consid-
11 ered for debarment in accordance with this
12 paragraph, and such a person or entity does not
13 hold a Federal contract, grant or cooperative
14 agreement, the Secretary or Attorney General
15 shall refer the matter to the Administrator of
16 General Services to determine whether to list
17 the person or entity on the List of Parties Ex-
18 cluded from Federal Procurement, and if so, for
19 what duration and under what scope.

20 “(C) CONTRACT, GRANT, AGREEMENT.—If
21 the Secretary or the Attorney General wishes to
22 have a person or entity considered for debar-
23 ment in accordance with this paragraph, and
24 such person or entity holds a Federal contract,
25 grant, or cooperative agreement, the Secretary

1 or Attorney General shall advise all agencies or
2 departments holding a contract, grant, or coop-
3 erative agreement with the person or entity of
4 the Government's interest in having the person
5 or entity considered for debarment, and after
6 soliciting and considering the views of all such
7 agencies and departments, the Secretary or At-
8 torney General may refer the matter to the ap-
9 propriate lead agency to determine whether to
10 list the person or entity on the List of Parties
11 Excluded from Federal Procurement, and if so,
12 for what duration and under what scope.

13 “(D) REVIEW.—Any decision to debar a
14 person or entity in accordance with this sub-
15 section shall be reviewable pursuant to part 9.4
16 of the Federal Acquisition Regulation.

17 “(9) PREEMPTION.—The provisions of this sec-
18 tion preempt any State or local law, ordinance, pol-
19 icy, or rule, including any criminal or civil fine or
20 penalty structure, relating to the hiring, continued
21 employment, or status verification for employment
22 eligibility purposes, of unauthorized aliens, except
23 that a State, locality, municipality, or political sub-
24 division may exercise its authority over business li-

1 censing and similar laws as a penalty for failure to
2 use the System as required under this section.

3 “(g) UNFAIR IMMIGRATION-RELATED EMPLOYMENT
4 PRACTICES AND THE SYSTEM.—

5 “(1) IN GENERAL.—In addition to the prohibi-
6 tions on discrimination set forth in section 274B, it
7 is an unfair immigration-related employment prac-
8 tice for a person or entity, in the course of utilizing
9 the System—

10 “(A) to use the System for screening an
11 applicant prior to the date of hire;

12 “(B) to terminate the employment of an
13 individual or take any adverse employment ac-
14 tion with respect to that individual due to a
15 tentative nonconfirmation issued by the System;

16 “(C) to use the System to screen any indi-
17 vidual for any purpose other than confirmation
18 of identity and employment authorization as
19 provided in this section;

20 “(D) to use the System to verify the iden-
21 tity and employment authorization of a current
22 employee, including an employee continuing in
23 employment, other than reverification author-
24 ized under subsection (e);

1 “(E) to use the System to discriminate
2 based on national origin or citizenship status;

3 “(F) to willfully fail to provide an indi-
4 vidual with any notice required under this title;

5 “(G) to require an individual to make an
6 inquiry under the self-verification procedures
7 described in subsection (a)(4)(B) or to provide
8 the results of such an inquiry as a condition of
9 employment, or hiring, recruiting, or referring;
10 or

11 “(H) to terminate the employment of an
12 individual or take any adverse employment ac-
13 tion with respect to that individual based upon
14 the need to verify the identity and employment
15 authorization of the individual as required by
16 subsection (b).

17 “(2) PREEMPLOYMENT SCREENING AND BACK-
18 GROUND CHECK.—Nothing in paragraph (1)(A)
19 shall be construed to preclude a preemployment
20 screening or background check that is required or
21 permitted under any other provision of law.

22 “(3) CIVIL MONEY PENALTIES FOR DISCRIMINA-
23 TORY CONDUCT.—Notwithstanding section
24 274B(g)(2)(B)(iv), the penalties that may be im-
25 posed by an administrative law judge with respect to

1 a finding that a person or entity has engaged in an
2 unfair immigration-related employment practice de-
3 scribed in paragraph (1) are—

4 “(A) not less than \$1,000 and not more
5 than \$4,000 for each individual discriminated
6 against;

7 “(B) in the case of a person or entity pre-
8 viously subject to a single order under this
9 paragraph, not less than \$4,000 and not more
10 than \$10,000 for each individual discriminated
11 against; and

12 “(C) in the case of a person or entity pre-
13 viously subject to more than one order under
14 this paragraph, not less than \$6,000 and not
15 more than \$20,000 for each individual discrimi-
16 nated against.

17 “(4) ELECTRONIC VERIFICATION COMPENSA-
18 TION ACCOUNT.—Civil money penalties collected
19 under this subsection shall be deposited in the Elec-
20 tronic Verification Compensation Account for the
21 purpose of compensating individuals for lost wages
22 as a result of a final nonconfirmation issued by the
23 System that was based on government error or omis-
24 sion, as set forth in subsection (b)(4)(F)(ii)(IV).

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1 “(h) CLARIFICATION.—All rights and remedies pro-
 2 vided under any Federal, State, or local law relating to
 3 workplace rights, including but not limited to back pay,
 4 are available to an employee despite—

5 “(1) the employee’s status as an unauthorized
 6 alien during or after the period of employment; or

7 “(2) the employer’s or employee’s failure to
 8 comply with the requirements of this section.

9 “(i) DEFINITION.—In this section, the term ‘date of
 10 hire’ means the date on which employment for pay or
 11 other remuneration commences.”.

12 (b) CONFORMING AMENDMENT.—The table of con-
 13 tents for the Immigration and Nationality Act is amended
 14 by inserting after the item relating to section 274D the
 15 following:

“Sec. 274E. Requirements for the electronic verification of employment eli-
 gibility.”.

16 **SEC. 302. MANDATORY ELECTRONIC VERIFICATION FOR**
 17 **THE AGRICULTURAL INDUSTRY.**

18 (a) IN GENERAL.—The requirements for the elec-
 19 tronic verification of identity and employment authoriza-
 20 tion described in section 274E of the Immigration and Na-
 21 tionality Act, as inserted by section 301 of this Act, shall
 22 apply to a person or entity hiring, recruiting, or referring
 23 for a fee an individual for agricultural employment in the

1 United States in accordance with the effective dates set
2 forth in subsection (b).

3 (b) EFFECTIVE DATES.—

4 (1) HIRING.—Subsection (a) shall apply to a
5 person or entity hiring an individual for agricultural
6 employment in the United States as follows:

7 (A) With respect to employers having 500
8 or more employees in the United States on the
9 date of the enactment of this Act, on the date
10 that is 6 months after completion of the appli-
11 cation period described in section 101(c).

12 (B) With respect to employers having 100
13 or more employees in the United States (but
14 less than 500 such employees) on the date of
15 the enactment of this Act, on the date that is
16 9 months after completion of the application pe-
17 riod described in section 101(c).

18 (C) With respect to employers having 20
19 or more employees in the United States (but
20 less than 100 such employees) on the date of
21 the enactment of this Act, on the date that is
22 12 months after completion of the application
23 period described in section 101(c).

24 (D) With respect to employers having one
25 or more employees in the United States, (but

1 less than 20 such employees) on the date of the
2 enactment of this Act, on the date that is 15
3 months after completion of the application pe-
4 riod described in section 101(c).

5 (2) RECRUITING AND REFERRING FOR A FEE.—
6 Subsection (a) shall apply to a person or entity re-
7 cruiting or referring for a fee an individual for agri-
8 cultural employment in the United States on the
9 date that is 12 months after completion of the appli-
10 cation period described in section 101(c).

11 (3) TRANSITION RULE.—Except as required
12 under subtitle A of title IV of the Illegal Immigra-
13 tion Reform and Immigrant Responsibility Act of
14 1996 (8 U.S.C. 1324a note) (as in effect on the day
15 before the effective date described in section
16 303(a)(4)), Executive Order No. 13465 (8 U.S.C.
17 1324a note; relating to Government procurement),
18 or any State law requiring persons or entities to use
19 the E-Verify Program described in section 403(a) of
20 the Illegal Immigration Reform and Immigrant Re-
21 sponsibility Act of 1996 (8 U.S.C. 1324a note) (as
22 in effect on the day before the effective date de-
23 scribed in section 303(a)(4)), sections 274A and
24 274B of the Immigration and Nationality Act (8
25 U.S.C. 1324a and 1324b) shall apply to a person or

1 entity hiring, recruiting, or referring an individual
2 for employment in the United States until the appli-
3 cable effective date under this subsection.

4 (4) E-VERIFY VOLUNTARY USERS AND OTHERS
5 DESIRING EARLY COMPLIANCE.—Nothing in this
6 subsection shall be construed to prohibit persons or
7 entities, including persons or entities that have vol-
8 untarily elected to participate in the E-Verify Pro-
9 gram described in section 403(a) of the Illegal Im-
10 migration Reform and Immigrant Responsibility Act
11 of 1996 (8 U.S.C. 1324a note) (as in effect on the
12 day before the effective date described in section
13 303(a)(4)), from seeking early compliance on a vol-
14 untary basis.

15 (c) RURAL ACCESS TO ASSISTANCE FOR TENTATIVE
16 NONCONFIRMATION REVIEW PROCESS.—

17 (1) IN GENERAL.—The Secretary of Homeland
18 Security shall coordinate with the Secretary of Agri-
19 culture, in consultation with the Commissioner of
20 Social Security, to create a process for individuals to
21 seek assistance in contesting a tentative noncon-
22 firmation as described in section 274E(b)(4)(D) of
23 the Immigration and Nationality Act, as inserted by
24 section 301 of this Act, at local offices or service
25 centers of the U.S. Department of Agriculture.

1 (2) STAFFING AND RESOURCES.—The Sec-
2 retary of Homeland Security and Secretary of Agri-
3 culture shall ensure that local offices and service
4 centers of the U.S. Department of Agriculture are
5 staffed appropriately and have the resources nec-
6 essary to provide information and support to individ-
7 uals seeking the assistance described in paragraph
8 (1), including by facilitating communication between
9 such individuals and the Department of Homeland
10 Security or the Social Security Administration.

11 (3) CLARIFICATION.—Nothing in this sub-
12 section shall be construed to delegate authority or
13 transfer responsibility for reviewing and resolving
14 tentative nonconfirmations from the Secretary of
15 Homeland Security and the Commissioner of Social
16 Security to the Secretary of Agriculture.

17 (d) DOCUMENT ESTABLISHING EMPLOYMENT AU-
18 THORIZATION AND IDENTITY.—In accordance with section
19 274E(b)(3)(A)(vii) of the Immigration and Nationality
20 Act, as inserted by section 301 of this Act, and not later
21 than 12 months after the completion of the application
22 period described in section 101(c) of this Act, the Sec-
23 retary of Homeland Security shall recognize documentary
24 evidence of certified agricultural worker status described
25 in section 102(a)(2) of this Act as valid proof of employ-

1 ment authorization and identity for purposes of section
2 274E(b)(3)(A) of the Immigration and Nationality Act,
3 as inserted by section 301 of this Act.

4 (e) AGRICULTURAL EMPLOYMENT.—For purposes of
5 this section, the term “agricultural employment” means
6 agricultural labor or services, as defined by section
7 101(a)(15)(H)(ii) of the Immigration and Nationality Act
8 (8 U.S.C. 1101(a)(15)(H)(ii)), as amended by this Act.

9 **SEC. 303. COORDINATION WITH E-VERIFY PROGRAM.**

10 (a) REPEAL.—

11 (1) IN GENERAL.—Subtitle A of title IV of the
12 Illegal Immigration Reform and Immigrant Respon-
13 sibility Act of 1996 (8 U.S.C. 1324a note) is re-
14 pealed.

15 (2) CLERICAL AMENDMENT.—The table of sec-
16 tions, in section 1(d) of the Illegal Immigration Re-
17 form and Immigrant Responsibility Act of 1996, is
18 amended by striking the items relating to subtitle A
19 of title IV.

20 (3) REFERENCES.—Any reference in any Fed-
21 eral, State, or local law, Executive order, rule, regu-
22 lation, or delegation of authority, or any document
23 of, or pertaining to, the Department of Homeland
24 Security, Department of Justice, or the Social Secu-
25 rity Administration, to the E-Verify Program de-

1 scribed in section 403(a) of the Illegal Immigration
2 Reform and Immigrant Responsibility Act of 1996
3 (8 U.S.C. 1324a note), or to the employment eligi-
4 bility confirmation system established under section
5 404 of the Illegal Immigration Reform and Immig-
6 rant Responsibility Act of 1996 (8 U.S.C. 1324a
7 note), is deemed to refer to the employment eligi-
8 bility confirmation system established under section
9 274E of the Immigration and Nationality Act, as in-
10 serted by section 301 of this Act.

11 (4) EFFECTIVE DATE.—This subsection, and
12 the amendments made by this subsection, shall take
13 effect on the date that is 30 days after the date on
14 which final rules are published under section 309(a).

15 (b) FORMER E-VERIFY MANDATORY USERS, IN-
16 CLUDING FEDERAL CONTRACTORS.—Beginning on the ef-
17 fective date in subsection (a)(4), the Secretary of Home-
18 land Security shall require employers required to partici-
19 pate in the E-Verify Program described in section 403(a)
20 of the Illegal Immigration Reform and Immigrant Respon-
21 sibility Act of 1996 (8 U.S.C. 1324a note) by reason of
22 any Federal, State, or local law, Executive order, rule, reg-
23 ulation, or delegation of authority, including employers re-
24 quired to participate in such program by reason of Federal
25 acquisition laws (and regulations promulgated under those

1 laws, including the Federal Acquisition Regulation), to
2 comply with the requirements of section 274E of the Im-
3 migration and Nationality Act, as inserted by section 301
4 of this Act (and any additional requirements of such Fed-
5 eral acquisition laws and regulation) in lieu of any require-
6 ment to participate in the E-Verify Program.

7 (c) FORMER E-VERIFY VOLUNTARY USERS.—Begin-
8 ning on the effective date in subsection (a)(4), the Sec-
9 retary of Homeland Security shall provide for the vol-
10 untary compliance with the requirements of section 274E
11 of the Immigration and Nationality Act, as inserted by
12 section 301 of this Act, by employers voluntarily electing
13 to participate in the E-Verify Program described in sec-
14 tion 403(a) of the Illegal Immigration Reform and Immi-
15 grant Responsibility Act of 1996 (8 U.S.C. 1324a note)
16 before such date.

17 **SEC. 304. FRAUD AND MISUSE OF DOCUMENTS.**

18 Section 1546(b) of title 18, United States Code, is
19 amended—

20 (1) in paragraph (1), by striking “identification
21 document,” and inserting “identification document
22 or document meant to establish employment author-
23 ization,”;

24 (2) in paragraph (2), by striking “identification
25 document” and inserting “identification document or

1 document meant to establish employment authoriza-
2 tion,”; and

3 (3) in the matter following paragraph (3) by in-
4 serting “or section 274E(b)” after “section
5 274A(b)”.

6 **SEC. 305. TECHNICAL AND CONFORMING AMENDMENTS.**

7 (a) UNLAWFUL EMPLOYMENT OF ALIENS.—Section
8 274A of the Immigration and Nationality Act (8 U.S.C.
9 1324a) is amended—

10 (1) in paragraph (1)(B)(ii) of subsection (a), by
11 striking “subsection (b).” and inserting “section
12 274B.”; and

13 (2) in the matter preceding paragraph (1) of
14 subsection (b), by striking “The requirements re-
15 ferred” and inserting “Except as provided in section
16 274E, the requirements referred”.

17 (b) UNFAIR IMMIGRATION-RELATED EMPLOYMENT
18 PRACTICES.—Section 274B(a)(1) of the Immigration and
19 Nationality Act (8 U.S.C. 1324b(a)(1)) is amended in the
20 matter preceding subparagraph (A), by inserting “includ-
21 ing misuse of the verification system as described in sec-
22 tion 274E(g)” after “referral for a fee,”.

1 **SEC. 306. PROTECTION OF SOCIAL SECURITY ADMINISTRA-**
2 **TION PROGRAMS.**

3 (a) **FUNDING UNDER AGREEMENT.**—Effective for
4 fiscal years beginning on or after October 1, 2019, the
5 Commissioner and the Secretary shall ensure that an
6 agreement is in place which shall—

7 (1) provide funds to the Commissioner for the
8 full costs of the responsibilities of the Commissioner
9 with respect to employment eligibility verification,
10 including under this title and the amendments made
11 by this title, and including—

12 (A) acquiring, installing, and maintaining
13 technological equipment and systems necessary
14 for the fulfillment of such responsibilities, but
15 only that portion of such costs that are attrib-
16 utable exclusively to such responsibilities; and

17 (B) responding to individuals who contest
18 a tentative nonconfirmation or administratively
19 appeal a final nonconfirmation provided with
20 respect to employment eligibility verification;

21 (2) provide such funds annually in advance of
22 the applicable quarter based on an estimating meth-
23 odology agreed to by the Commissioner and the Sec-
24 retary (except in such instances where the delayed
25 enactment of an annual appropriation may preclude
26 such quarterly payments); and

1 (3) require an annual accounting and reconcili-
2 ation of the actual costs incurred and the funds pro-
3 vided under the agreement, which shall be reviewed
4 by the Inspectors General of the Social Security Ad-
5 ministration and the Department of Homeland Secu-
6 rity.

7 (b) CONTINUATION OF EMPLOYMENT VERIFICATION
8 IN ABSENCE OF TIMELY AGREEMENT.—In any case in
9 which the agreement required under subsection (a) for any
10 fiscal year beginning on or after October 1, 2019, has not
11 been reached as of October 1 of such fiscal year, the latest
12 agreement described in such subsection shall be deemed
13 in effect on an interim basis for such fiscal year until such
14 time as an agreement required under subsection (a) is sub-
15 sequently reached, except that the terms of such interim
16 agreement shall be modified to adjust for inflation and any
17 increase or decrease in the volume of requests under the
18 employment eligibility verification system. In any case in
19 which an interim agreement applies for any fiscal year
20 under this subsection, the Commissioner and the Sec-
21 retary shall, not later than October 1 of such fiscal year,
22 notify the Committee on Ways and Means, the Committee
23 on the Judiciary, and the Committee on Appropriations
24 of the House of Representatives and the Committee on
25 Finance, the Committee on the Judiciary, and the Com-

1 mittee on Appropriations of the Senate of the failure to
2 reach the agreement required under subsection (a) for
3 such fiscal year. Until such time as the agreement re-
4 quired under subsection (a) has been reached for such fis-
5 cal year, the Commissioner and the Secretary shall, not
6 later than the end of each 90-day period after October
7 1 of such fiscal year, notify such Committees of the status
8 of negotiations between the Commissioner and the Sec-
9 retary in order to reach such an agreement.

10 **SEC. 307. REPORT ON THE IMPLEMENTATION OF THE**
11 **ELECTRONIC EMPLOYMENT VERIFICATION**
12 **SYSTEM.**

13 Not later than 24 months after the date on which
14 final rules are published under section 309(a), and annu-
15 ally thereafter, the Secretary shall submit to Congress a
16 report that includes the following:

17 (1) An assessment of the accuracy rates of the
18 responses of the electronic employment verification
19 system established under section 274E of the Immi-
20 gration and Nationality Act, as inserted by section
21 301 of this Act (referred to in this section as the
22 “System”), including tentative and final noncon-
23 firmation notices issued to employment-authorized
24 individuals and confirmation notices issued to indi-
25 viduals who are not employment-authorized.

1 (2) An assessment of any challenges faced by
2 persons or entities (including small employers) in
3 utilizing the System.

4 (3) An assessment of any challenges faced by
5 employment-authorized individuals who are issued
6 tentative or final nonconfirmation notices.

7 (4) An assessment of the incidence of unfair
8 immigration-related employment practices, as de-
9 scribed in section 274E(g) of the Immigration and
10 Nationality Act, as inserted by section 301 of this
11 Act, related to the use of the System.

12 (5) An assessment of the photo matching and
13 other identity authentication tools, as described in
14 section 274E(a)(4) of the Immigration and Nation-
15 ality Act, as inserted by section 301 of this Act, in-
16 cluding—

17 (A) an assessment of the accuracy rates of
18 such tools;

19 (B) an assessment of the effectiveness of
20 such tools at preventing identity fraud and
21 other misuse of identifying information;

22 (C) an assessment of any challenges faced
23 by persons, entities, or individuals utilizing such
24 tools; and

1 (D) an assessment of operation and main-
2 tenance costs associated with such tools.

3 (6) A summary of the activities and findings of
4 the U.S. Citizenship and Immigrations Services E-
5 Verify Monitoring and Compliance Branch, or any
6 successor office, including—

7 (A) the number, types and outcomes of au-
8 dits, investigations, and other compliance activi-
9 ties initiated by the Branch in the previous
10 year;

11 (B) the capacity of the Branch to detect
12 and prevent violations of section 274E(g) of the
13 Immigration and Nationality Act, as inserted by
14 this Act; and

15 (C) an assessment of the degree to which
16 persons and entities misuse the System, includ-
17 ing—

18 (i) use of the System before an indi-
19 vidual's date of hire;

20 (ii) failure to provide required notifi-
21 cations to individuals;

22 (iii) use of the System to interfere
23 with or otherwise impede individuals' as-
24 sertions of their rights under other laws;
25 and

1 (iv) use of the System for unauthor-
2 ized purposes; and

3 (7) An assessment of the impact of implementa-
4 tion of the System in the agricultural industry and
5 the use of the verification system in agricultural in-
6 dustry hiring and business practices.

7 **SEC. 308. MODERNIZING AND STREAMLINING THE EMPLOY-**
8 **MENT ELIGIBILITY VERIFICATION PROCESS.**

9 Not later than 12 months after the date of the enact-
10 ment of this Act, the Secretary, in consultation with the
11 Commissioner, shall submit to Congress a plan to mod-
12 ernize and streamline the employment eligibility
13 verification process that shall include—

14 (1) procedures to allow persons and entities to
15 verify the identity and employment authorization of
16 newly hired individuals where the in-person, physical
17 examination of identity and employment authoriza-
18 tion documents is not practicable;

19 (2) a proposal to create a simplified employ-
20 ment verification process that allows employers that
21 utilize the employment eligibility verification system
22 established under section 274E of the Immigration
23 and Nationality Act, as inserted by section 301 of
24 this Act, to verify the identity and employment au-
25 thorization of individuals without also having to

1 complete and retain Form I–9, Employment Eligi-
2 bility Verification, or any subsequent replacement
3 form; and

4 (3) any other proposal that the Secretary deter-
5 mines would simplify the employment eligibility
6 verification process without compromising the integ-
7 rity or security of the system.

8 **SEC. 309. RULEMAKING AND PAPERWORK REDUCTION ACT.**

9 (a) IN GENERAL.—Not later than 180 days prior to
10 the end of the application period defined in section 101(c)
11 of this Act, the Secretary shall publish in the Federal Reg-
12 ister proposed rules implementing this title and the
13 amendments made by this title. The Secretary shall final-
14 ize such rules not later than 180 days after the date of
15 publication.

16 (b) PAPERWORK REDUCTION ACT.—

17 (1) IN GENERAL.—The requirements under
18 chapter 35 of title 44, United States Code, (com-
19 monly known as the “Paperwork Reduction Act”)
20 shall apply to any action to implement this title or
21 the amendments made by this title.

22 (2) ELECTRONIC FORMS.—All forms designated
23 or established by the Secretary that are necessary to
24 implement this title and the amendments made by
25 this title shall be made available in paper and elec-

1 tronic formats, and shall be designed in such a man-
2 ner to facilitate electronic completion, storage, and
3 transmittal.

4 (3) LIMITATION ON USE OF FORMS.—All forms
5 designated or established by the Secretary that are
6 necessary to implement this title, and the amend-
7 ments made by this title, and any information con-
8 tained in or appended to such forms, may not be
9 used for purposes other than for enforcement of this
10 Act and any other provision of Federal criminal law.
 Passed the House of Representatives December 11,
 2019.

Attest: CHERYL L. JOHNSON,
 Clerk.



Office of the Mayor

CONSENT CALENDAR

February 11, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín and Vice-Mayor Sophie Hahn

Subject: Support of HR 5609 - Homelessness Emergency Declaration Act

RECOMMENDATION

Adopt a Resolution supporting House Resolution (HR) 5609, the Homelessness Emergency Declaration Act. Send a copy of the Resolution to Representatives Josh Harder and Barbara Lee, Senators Dianne Feinstein and Kamala Harris, and President Trump.

BACKGROUND

Homelessness has increased across the nation with a significant proportion of this population unsheltered. Berkeley has seen a 14% increase in homelessness between 2017 and 2019. Alameda County saw a 43% increase during the same timeframe, while California saw a 16% increase between 2018 and 2019. Within California's homeless population 69% are unsheltered, including 79% in Alameda County and 73% in Berkeley.

Homelessness presents a multitude of problems and impacts many. It is estimated that homelessness can lead to a life expectancy that is 36 years lower than the national average. A survey of homeless individuals conducted by the University of California, San Francisco found that despite the group having a median age of 58, their health symptoms were typical of people in their 70-90s. In Berkeley, 42% of respondents in the 2019 point-in-time count reported having a psychiatric emotional condition and 41% reported having at least one disabling condition. Many people do not have access to adequate sanitation facilities, further perpetuating the risk of negative health and environmental impacts.

President Donald Trump has frequently raised the issue of homelessness, especially in California. Over the past three months, the President has made fourteen tweets relating to homelessness, with thirteen of them explicitly mentioning California or San Francisco. The President has stated that if governors ask for help from the federal government, he will provide the resources needed to address homelessness.

House Resolution (HR) 5609, introduced by U.S. Representative Josh Harder, allows Governors to request a federal emergency declaration in order to obtain federal resources, similar to the process for declaring an emergency after natural disasters. Specifically, such a declaration would allow federal agencies to provide resources to

state and local agencies relating to housing, food, transportation, mental health, and job training.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

- 1: Resolution
- 2: Text of HR 5609

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

IN SUPPORT OF HR 5609 – THE HOMELESS EMERGENCY DECLARATION ACT

WHEREAS, rates of homelessness have increased across the nation over the past few years, including a 14% increase in Berkeley and 43% increase in Alameda County between 2017-2019 and a 16% increase in California between 2018-2019; and

WHEREAS, 69% of California’s homeless population is unsheltered, including 79% in Alameda County and 73% in Berkeley; and

WHEREAS, people experiencing homelessness can see a life expectancy that is 36 years shorter than the national average; and

WHEREAS, mental health and disability is prevalent among those experiencing homelessness, with 42% of Berkeley’s homeless population reporting having a mental health issue and 41% a disabling condition, according to the 2019 point-in-time count; and

WHEREAS, many people do not have access to adequate sanitation facilities, further perpetuating the risk of negative health and environmental impacts; and

WHEREAS, the issue of homelessness has become a national issue, with President Donald Trump having tweeted 14 times about homelessness between October 2019 and January 2020, with 13 of those tweets explicitly mentioning California or San Francisco; and

WHEREAS, the President has stated that he will be willing to provide federal assistance if governors ask the federal government for help; and

WHEREAS, House Resolution (HR) 5609, the Homeless Emergency Declaration Act, introduced by U.S. Representative Josh Harder, allows Governors to request a federal emergency declaration in order to obtain federal resources, similar to the process for declaring an emergency after natural disasters; and

WHEREAS, the bill would allow federal agencies to provide resources to state and local agencies relating to housing, food, transportation, mental health, and job training.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports HR 5609, the Homeless Emergency Declaration Act.

BE IT FURTHER RESOLVED that copies of this Resolution be sent to Representatives Josh Harder and Barbara Lee, Senators Diane Feinstein and Kamala Harris, and President Donald Trump.

116TH CONGRESS
2D SESSION

H. R. 5609

To authorize the President to declare a homelessness emergency, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 15, 2020

Mr. HARDER of California introduced the following bill; which was referred to the Committee on the Budget, and in addition to the Committees on Financial Services, and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To authorize the President to declare a homelessness emergency, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Homelessness Emer-
5 gency Declaration Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Homelessness in the Central Valley and
2 across the country is a threat to public health and
3 safety.

4 (2) One-third of people in the United States ex-
5 perience homelessness are families with children.

6 (3) 1.2 million children under age 6 experience
7 homelessness.

8 (4) Sixty-nine percent of California's homeless
9 population is unsheltered.

10 (5) There are 12,396 homeless children and
11 11,000 homeless veterans in California.

12 (6) One in 5 California Community College stu-
13 dents is homeless.

14 (7) The rate of increase in homelessness is
15 cause for national concern and action.

16 (8) Incidences of homelessness grew 14 percent
17 in California between 2014 and 2018.

18 (9) On a given day, 40,000 U.S. military vet-
19 erans experience some form of homelessness.

20 (10) The experience of homelessness is dam-
21 aging to a child's mental health and development, as
22 evidenced by the fact that 40 percent of homeless
23 children experience mental health challenges.

24 (11) Homelessness is a deadly condition, de-
25 creasing life expectancy by up to 36 years.

1 **SEC. 3. ASSISTANCE FOR HOMELESSNESS EMERGENCY**
2 **DECLARATION.**

3 (a) IN GENERAL.—Upon the request of a Governor,
4 or other appropriate agency, of a State under subsection
5 (b), the President may declare a homelessness emergency.

6 (b) REQUEST FROM GOVERNOR.—The Governor, or
7 other appropriate agency, of a State that is or will be af-
8 fected by a significant number of or increase in the num-
9 ber of homeless individuals may request a declaration
10 under subsection (a).

11 (c) ASSISTANCE.—If the President declares a home-
12 lessness emergency under subsection (a), the President,
13 acting through the Federal Emergency Management
14 Agency and other appropriate Federal agencies, may pro-
15 vide homelessness emergency assistance, including housing
16 vouchers and increases in fair market rents under section
17 8 of the United States Housing Assistance Act of 1937
18 (42 U.S.C. 1437f), to States and local communities that
19 are or will be affected by the homelessness emergency, in-
20 cluding resources for establishing temporary or permanent
21 homeless shelters, emergency food assistance, transpor-
22 tation, access to physical and behavioral healthcare, and
23 access to Federal employment and job training programs.

24 (d) AUTHORIZATION OF APPROPRIATIONS.—There
25 are authorized to be appropriated such sums as may be
26 necessary to carry out this Act.

1 **SEC. 4. BUDGET ADJUSTMENT FOR HOMELESS EMER-**
2 **GENCY ASSISTANCE.**

3 Section 251(b)(2) of the Balanced Budget and Emer-
4 gency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2))
5 is amended by adding at the end the following:

6 “(H) HOMELESS EMERGENCY ASSIST-
7 ANCE.—

8 “(i) If, for any fiscal year, appropria-
9 tions for discretionary accounts are en-
10 acted that Congress designates as being
11 for homelessness emergency assistance in
12 statute, the adjustment for a fiscal year
13 shall be the total of such appropriations
14 for the fiscal year in discretionary accounts
15 designated as being for homelessness emer-
16 gency assistance.

17 “(ii) For purposes of this subpara-
18 graph, the term ‘homelessness emergency
19 assistance’ means assistance provided
20 under a determination under section 2 of
21 the Homelessness Emergency Declaration
22 Act.

23 “(iii) Appropriations considered home-
24 lessness emergency assistance under this
25 subparagraph in a fiscal year shall not be

5

1 eligible for adjustments under subpara-
2 graph (A) for the fiscal year.”.

○



CONSENT CALENDAR
February 11, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmember Rigel Robinson
Subject: Referral: Electric Moped Ride-Share Permits

RECOMMENDATION

Refer to the City Manager to rename the existing One-Way Car Share Program as the One-Way Vehicle Share Program and to amend the Program to include administrative requirements and parking permit fees for motorized bicycles that are affixed with license plates and require a driver's license for individuals to operate them (mopeds), in coordination with the City of Oakland.

POLICY COMMITTEE RECOMMENDATION

On December 5, 2019, the Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee adopted the following action:
M/S/C (Harrison/Robinson) to send the item, as revised, back to the City Council with a Positive Recommendation. Vote: All Ayes.

BACKGROUND

In the spirit of encouraging residents to choose alternative, sustainable modes of transportation, major cities across the United States are pioneering motorized bicycle sharing programs that allow users to reserve and unlock a moped for short-term use.

In 2018, a company called Revel launched a ride-share electric moped pilot program in New York City. Following initial success, Revel recently expanded the New York program from 68 to 1,000 vehicles and to an area of about 20 square miles, in addition to launching a new fleet in Washington, D.C.

Under California Vehicle Code Section 406, Revel mopeds are legally classified as motorized bicycles: two-wheeled or three-wheeled devices "having fully operative pedals for propulsion by human power, or having no pedals if powered solely by electrical energy, and an automatic transmission and a motor that produces less than 4 gross brake horsepower and is capable of propelling the device at a maximum speed of not more than 30 miles per hour on level ground."¹

Section 12804.9 of the Vehicle Code provides that motorized bicycles or mopeds fall under the M2 vehicle classification, which typically requires an M2 endorsement in addition to a Class A, B, or C driver's license. The Vehicle Code makes an exemption

¹ https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=406.&lawCode=VEH

for short-term moped rentals of 48 hours or less, requiring only a valid driver's license for such rides.² However, short-term rental moped operators must still follow all other regulations that apply to non-rental operators, including wearing an approved safety helmet when riding on public roads.³

As an added safety precaution, Revel's Rental Agreement includes requirements that are more stringent than the Vehicle Code's provisions. In addition to holding a valid driver's license, Revel requires users to be 21 or older and pass a DMV background check to verify that they have a safe driving record. Each motorized bicycle has a DMV-issued license plate, comes with two USDOT certified helmets stored in the back compartment, and travels up to a maximum speed of 30 miles per hour. The mopeds are parked and driven on the street, not the sidewalk, and park compactly at a rate of seven motorized bicycles per one car-sized space. Revel also provides free training courses to registered users.

Electric mopeds present an alternative to lighter, smaller e-scooters, which have prompted accessibility concerns due to riders parking them on sidewalks. Unlike e-scooters, electric mopeds cannot be operated or parked on the sidewalk and come equipped with helmets. Additionally, the license plate requirement creates a greater degree of accountability, and allows for identification and sanction of users who violate traffic laws.

Revel mopeds are emissions-free, electrically powered, and noise-free. Maintenance staff move around the city to replace the batteries on-site, so the vehicles do not require EV charging infrastructure. In addition to providing a zero-emissions transit option, Revel is priced affordably, with rides costing a base price of \$1 plus 25 cents per minute. They offer an equitable access rider program with a 40 percent discount for underserved communities, and only employ full-time, benefited workers.

Offering an electric moped ride-share option in the City of Berkeley is consistent with the draft Electric Mobility Roadmap, which lays out a vision for a fossil-free transportation system in Berkeley.⁴ The Roadmap's primary goals include increasing the accessibility of shared electric mobility options and promoting equity in electric mobility. Equity in Access Strategy 3b names membership and fee discounts, such as the one offered by Revel, as a key way to ensure financial access to shared mobility systems for historically underserved, low-income communities of color.

Issuing a One-Way Vehicle Share permit to Revel would not violate the terms of the City's exclusivity agreement with Bay Area Motivate for bicycle ride-share. Revel

²

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=12804.9.&lawCode=VEH

³ <https://www.kctlegal.com/blog/2017/june/california-scooter-and-moped-driving-laws/>

⁴ https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Energy/2019-10-23_EC_Item%205_Berkeley%20Electric%20Mobility%20Roadmap%20Public%20Review%20Draft%2010.14.19.pdf

mopeds classify as motorized bicycles under the Vehicle Code, which is separately defined from electric-assisted or human-powered bicycles. Section 1.13 of the Motivate agreement explicitly states that “‘Bicycle’ shall not include motorized vehicles, including scooters or mopeds. For the avoidance of doubt, electric assisted bicycles constitute Bicycles and do not constitute motorized vehicles.”⁵

In 2017, the City of Oakland and the City of Berkeley worked together to establish a One-Way Car Share permit program and issue parking permits to Gig Car Share, the country’s first multi-jurisdictional car sharing program. A similar multi-jurisdictional moped sharing program could further expand accessibility and transit options for residents.

Currently, Revel is working with the Oakland Department of Transportation and has submitted an application to the Berkeley Transportation Division seeking approval as a Qualified Car-Share Organization as a means of operating a moped sharing program. However, the City of Berkeley has not yet established parking permit fees scaled to mopeds, which this referral seeks to address. Following the model of the Gig Car Share program, staff should work with their counterparts in Oakland to implement consistent regulations across the two jurisdictions. Both Revel’s application and the proposed revision to Oakland’s Free Floating Zone Permit and Master Residential Parking Permit Terms and Conditions to accommodate electric mopeds are attached.

In developing the permit requirements, staff should evaluate and address any safety and logistical concerns that come with motorcycle parking in dead space. Staff should work with Revel in determining appropriate rebalancing criteria. Staff should also establish a process by which other electric moped rideshare providers may apply for parking permits.

FINANCIAL IMPLICATIONS

Staff time to amend the existing One-Way Car Share Program and revise the Free-Floating Parking Permit to accommodate ride-share motorized bicycle parking.

ENVIRONMENTAL SUSTAINABILITY

Transportation is the biggest source of carbon emissions in California and makes up 60 percent of emissions in the City of Berkeley.⁶ In order to meet our statewide and citywide climate goals, governments must find a way to actively seek out and encourage the use of greener transportation options.

Smaller vehicle ride-sharing services, such as Revel, can be part of the solution by providing more sustainable micro-mobility options. Around 35 percent of car rides in the United States are trips of 2 miles or less, and this percentage is even higher for urban areas.⁷ According to Revel’s 2018 Brooklyn Pilot Rider Feedback, 50 percent of riders report using Revel to replace taxis, Ubers, Lyfts, and personal vehicle trips. By providing

⁵ https://sanjose.granicus.com/MetaViewer.php?view_id=&event_id=1475&meta_id=544265

⁶ <https://www.cityofberkeley.info/recordsonline/api/Document/AS1qYEO88qcY6lps8nwbGgL4jGxxlSquza3ESIDOTS6DL2nWl1jPxxzLJVhyvQgYDIiKpuJDdT3oigVB31dHEfM%3D/>

⁷ <https://slate.com/business/2019/08/revel-moped-scooters-nyc-washington.html>

zero-emission electric mopeds as an alternative to cars, the City of Berkeley can reduce transportation sector carbon emissions and reliance on gas-powered vehicles.

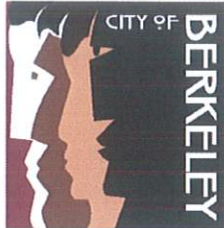
CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Rachel Alper, Intern

Attachments:

- 1: Application by Revel to the Transportation Division
- 2: Draft City of Oakland Free Floating Zone Permit and Master Residential Parking Permit Terms and Conditions Revisions
- 3: Revel Informational Packet



Department of Public Works
Transportation Division

Application for Qualification One-Way Car Share Program

Please read the *Qualified Car Share Organization Terms and Conditions* for the One-Way Car Share Program before completing and submitting this application

Company Name:Revel Transit, Inc.
Street Address: 68 3rd. Street
City, State, Zip:Brooklyn, NY, 11231
Contact Name:Daniella Henry
Contact Email:Daniella.henry@gorevel.com
Contact Phone:860-212-8088
Company Website:www.gorevel.com
Berkeley Business License # (if already obtained):

Please answer the following below.

Describe your company's organizational structure and names/ positions of the executive team. See Attached.
Does your organization currently operate membership-based car sharing and, if so, where? See Attached.
Does your organization currently operate one-way car sharing and, if so, where? See Attached.

Application for Qualification – One-way Car Share Program

<p>Describe your organization’s planned one-way car share operations in Berkeley as well as regionally. See Attached.</p>	<p>For office use only</p>
<p>What are or will be your membership requirements? See Attached.</p>	<p>For office use only</p>
<p>Describe the company’s insurance coverage for each shared vehicle and for each member operating the vehicle during the period of use, including liability coverage, personal injury protection, uninsured/ underinsured motorist and collision/ comprehensive deductible. See Attached.</p>	<p>For office use only</p>
<p>Quantify your company’s initial fleet size and how the vehicles will be geographically distributed to serve the City of Berkeley. See Attached.</p>	<p>For office use only</p>
<p>Describe how members use the company’s reservation system and the devices (phone, computer, smart phone, etc.) that can be used to make or change a reservation. See Attached.</p>	<p>For office use only</p>

Application for Qualification – One-way Car Share Program

<p>Describe all of the ways that members can find one-way car share vehicles (phone, computer, smart phone, etc.). See Attached.</p>	<p>For office use only</p>
<p>Describe all of the methods by which members can access the company's rental vehicles (fobs, credit cards, smart phones, etc.) and the hours and days that vehicles are available See Attached.</p>	<p>For office use only</p>
<p>Describe how members pay for vehicle use and the rates you plan to charge. See Attached.</p>	<p>For office use only</p>
<p>Describe how your company's rental vehicles are tracked in real time. See Attached.</p>	<p>For office use only</p>
<p>Indicate when your company would be ready to launch one-way car share in Berkeley. See Attached.</p>	<p>For office use only</p>
<p>Submit photos or renderings of your company's branded vehicles with this application.</p>	<p>For office use only</p>

Application for Qualification – One-way Car Share Program

By signing this form, I attest that the above statements are true and that I have the authority to sign on behalf of the company Revel Transit, Inc.

Furthermore, I attest that I have read and agree to the *Qualified Car Share Organization Terms and Conditions* for the One-Way Car Share Program.

Signature and Date

For office use only

Qualified

Conditionally qualified:

More information required:

Denied

Signed by: _____ Date: _____

Print name: _____ Position: _____



REVEL APPLICATION FOR ONE-WAR CAR SHARE PROGRAM

September 17, 2019

Describe your company's organizational structure and names/positions of the executive team.

Founded in March 2018 in New York City, Revel is an all-electric member-based shared moped company. Revel provides and maintains a fleet of vehicles available to the public for point-to-point rides. All riders must be at least 21 years of age and hold a valid driver's license, Revel provides standard insurance coverage.

Revel fits into cities' transportation networks, as they exist today. Vehicles operate and park in the street and are equipped with license plates to ensure rider accountability. The system thrives in neighborhoods with limited transit options, lower rates of car ownership and those historically underserved by companies offering innovative mobility solutions. As cities are looking for ways to make transportation more accessible to residents, Revel provides a unique transportation option built to make getting around convenient, affordable and fun.

Revel's Vehicle



Revels are 100% emissions-free all electric vehicles.¹ Powered by a Lithium ion battery, Revel's innovative design features a side

kickstand and auto turn off blinkers. The vehicle's weight is well distributed giving the rider better balance and command than is typical for comparable vehicle models. Each Revel is manufactured for one or two riders and comes with two USDOT-certified helmets stored in a helmet case on the vehicle at all times.



Two "dead space" locations

Brooklyn, New York 2019

Each Revel is "street legal", that is it has received a USDOT-issued Vehicle Identification Number and is registered and issued a license-plate through the applicable state Department of Motor Vehicles. Every Revel is covered by liability

insurance for each vehicle and for each member operating the vehicle during the period of use. Because the vehicle's motor does not have a displacement over 50 cubic centimeters, and does not exceed a maximum speed of 30mph, a motorcycle license is not required.

Additionally, as cities grapple with shrinking parking availability in the midst of rapid population growth, Revels are space efficient. Requiring no more than three feet of the curb they easily fit in "dead space" where other vehicles are too large to park. A curbside parking spot for one car could fit up to five Revels.

Revel Organization: See attached for Revel's executive team organizational chart.

- Key Contact to the City of Berkeley: Haley Rubinson, Director of Business Development
 - Revel's Director of Business Development develops and executes the company's expansion strategy to enter into new city markets. She manages stakeholder engagement, regulatory affairs, external affairs and partnerships across all Revel's partner cities.
- Project Manager for the City of Berkeley: Jonathan Brims, Director of New Markets
 - Revel's Director of New Markets spearheads our efforts to plan and execute the deployment of Revel solutions in new cities. He is accountable for all aspects of launching new markets, including recruiting and hiring the local management and operations teams; identifying local office/warehouse space; and procuring the tools and equipment necessary to support local operations.

Does your organization currently operate membership-based car sharing and, if so, where?

Founded in March 2018, Revel is a membership based all-electric moped sharing company. Potential members must be at least 21 years of age and hold a valid driver's license. Potential members must upload a photo of their driver's license, take a selfie and upload their debit or credit card information. Revel then screens every potential user's driving history for incidents such as excessive speeding violations and DUIs. Once a potential member successfully passes the screening process, they can access vehicles on the Revel app. Revel currently operates 1000 vehicles in New York City and 400 vehicles in Washington D.C.

Does your organization currently operate one-way car sharing and, if so, where?

Revel provides and maintains a fleet of vehicles available to members for point-to-point rides, including one-way trips. As mentioned above, Revel currently operates in New York City and Washington, D.C.

Describe your organization's planned one-way car share operations in Berkeley as well as regionally.

Revel will establish a physical presence within the City of Berkeley, hiring locally-based employees on the ground so we remain responsive to our customers, government and our communities. We plan to hire a Berkeley-based team to manage both day-to day operations as well as long-term planning in coordination with the management team reflected in the attached personnel chart. Regionally, if amenable to all relevant government stakeholders, we look forward to launching a similar operation in the City of

Oakland at the same time as Berkeley. Hiring a local team will be top priority and we are committed to hiring a Head of Operations and a Head of Public Affairs as well as a fleet management team in advance of the launch.

a) Responsibility of Management Team performing the work

- Head of Public Affairs, Berkeley - Oakland
 - **Experience required:** *10+ years of professional work experience in transportation, management consulting, political campaigns or similar fast-paced work setting * At least 5 years experience leading large teams *Experience working closely and communicating effectively with internal and external stakeholders in an ever-changing, rapid *growth environment with tight deadlines * Comfortable representing Revel in front of community boards and other stakeholder groups * Are capable of taking on responsibilities outside of your core role * Bring high energy and motivational leadership * Experience navigating city and state regulatory structures * You take your work seriously but not yourself.
 - **Responsible for:** *Be accountable for all aspects of public affairs, including community engagement, in the Berkeley area. Salary commensurate with experience.
- Head of Operations, Berkeley - Oakland
 - **Experience Required:** *10+ years of professional work experience in transportation, operations, logistics or similar fast-paced work setting * 5+ years experience managing large teams of varying experience levels * Quickly identify, troubleshoot and resolve problems * Excellent verbal and written communication skills, with experience reporting to senior company management * High energy and able to motivate and manage any personality type * Can articulate clearly and persuasively in positive or negative situations * Experience maintaining vehicles and/or a strong mechanical aptitude * Adaptable, decisive, and able to juggle competing priorities * Ability to work weekends and evenings * Relevant OSHA accreditation preferred * Experience working with Lithium Ion batteries preferred * You take your work seriously but not yourself.
 - **Responsible for:** *Lead team of warehouse and field Operations Managers whose teams are tasked with maintaining, cleaning and charging our Berkeley moped fleet * Oversee recruitment, hiring and training of Operations Managers and Associates * Coordinate with Launch team for pre-launch warehouse build out and fleet scale up * Accountable for the safety, quality, and availability of our vehicles * Accountable for lithium ion battery inventory, including storage and charging for entire Berkeley fleet * Ensure operations team continually analyzes, improves, and sets best practices for maintaining our fleet * Prioritize issues reported to our customer service team.
- Fleet Management Team:
 - Revel does not do gig economy. The company hires full-time employees and offers commensurate benefits. We are staffed 24/7, with operations

employees working shifts throughout the day and with live customer service representatives available at all times our vehicles are in service.

- Fleet positions will include warehouse and fleet operations staff, including mechanics, battery swappers and safety leads.

b) Policies and Procedures that will be utilized to ensure safety and prompt service

- Safety is the number one priority at Revel. We have incorporated the following features, policies and procedures into our vehicle and operations. Further, we take a high touch approach to our business with operations, customer service, data/analytics and other functions performed in-house by Revel employees. This level of accountability allows us to stay attuned to our customers, as well as everyone else who interacts with our service so we can be immediately responsive should new safety or service issues arise.
 - Drivers must be at least 21 years old with a valid license and safe driving record; before registration is complete Revel performs DMV background checks to verify riders' information. Users must also submit a selfie to verify they are the license-holders.
 - Available in-app and on our website, riders are given information (through text, video, infographics) on how to safely and responsibly operate and park. Additionally, each vehicle has prominently placed stickers with printed information on how to ride and park; use the throttle; reminders on fastening helmets; and key 'Rules of the 'Road'.
 - As part of our Rental agreement, users must accept the terms of our 'Rules of the Ride' (attached) which are aimed at safe operation of our vehicle and obeying applicable traffic and parking laws. Failure to do so may result in fines and suspension or termination of a rider's Membership.
 - Two USDOT certified helmets equipped with eye protection shields are stored in each Revel at all times. Riders must wear helmets, per Revel's Rental Agreement.
 - As motor vehicles, Revel's travel in traffic lanes, park curbside and have safety equipment consistent with or exceeding state DMV and insurance board standards.
 - Speed throttled at 30mph to keep up with traffic, license plates ensure accountability.
 - Revel offers free in-person lessons to existing and potential riders 7 days a week.
 - Immediate multi-lingual (currently English and Spanish) customer support from Revel employees is available during operating hours.
 - Revel has field technicians and mechanics working 24/7 so there is always an employee ready to respond to any issue at any time. It is also Revel's policy to engage with regulators, law enforcement and other key city officials in any city we operate. All will have a direct cell phone number and email address for a locally-based senior management employee to contact at any time, day or night if needed.

c) Plan of how Revel will provide services

- Revel will provide an initial fleet of 500 electric motor scooters (Revels) titled

and registered with the California Department of Motor Vehicles by December 1, 2019. All Revels in the Berkeley fleet will be:

- Zero-emission
- Powered by a Lithium ion battery
- Equipped with a kickstand
- Equipped with automatic shut-off turning signals
- Equipped with a helmet case containing two USDOT certified helmets
- Equipped with a speed governor that ensures the vehicle will not travel in excess of 30 mph on level ground
- Equipped with geo-fencing technology
- Like in New York and Washington D.C., Revel will maintain operating hours of 5am to midnight to start but will consider extending operating hours once the city is used to the service and demand permits. Revel will provide all signage, supplies and equipment necessary to operate in the program areas. Revel will secure an adequate facility within the City of Berkeley for the purpose of Revel operations.
- Revel will hire a Head of Operations and Head of Public Affairs as well as a fleet operations team tasked with maintaining the vehicles at maximum capacity, including maintenance and charging. Customer support and data needs will be managed by our New York-based team, who will be in constant contact with the Berkeley-based operations team. We will secure a location in the Berkeley area which will house all our operations in advance of the launch date.
- Like our other programs, Berkeley riders will download the Revel app to sign up for the vehicle sharing service. After uploading a license and a ‘selfie’, Revel will ensure that the potential user has a responsible driving record, e.g. no prior DUI violations or excessive speeding tickets. After determining that the potential user meets the Revel safety standard, the user can unlock any vehicle, unlock and access either of two USDOT-certified helmets (a Revel is manufactured to accommodate two riders) that are stored in the Revel helmet case at all times. In short, riders use the Revel app to find a nearby Revel, reserve it, ride where they need to go, and park it in a legal parking spot when done. The cost per ride will be \$1 to unlock, .25/minute to ride, .10/minute to park. We are also committed to equitable riding that is accessible to all residents and will offer the Revel Access program, which gives a 40 percent discount for riders on any form of government assistance, to qualifying Berkeley riders. This is consistent with the current pricing of our existing fleet.
- Revels are licensed vehicles and therefore travel in traffic lanes, adhere to all rules of the road, including parking regulations, and have DMV safety equipment. While Revels are “street-legal”, their speed is throttled at 30mph and no motorcycle license is required. Each Revel has an alarm system that is activated if the Revel is moved when locked, along with a rocking back wheel mechanism.

d) Regional Plan

What are or will be your membership requirements

- Revel members must:
 - be 21 years of age or older

- have a valid driver's license
- upload a "selfie" for the driving record screening
- have a responsible driving record, e.g. no prior DUI violations or excessive speeding tickets
- agree and adhere to our user agreement including
 - adhere to all rules of the road
 - follow parking regulations
 - wear a helmet at all times
 - passenger must be 18 years of age or older

Describe the company's insurance coverage for each shared vehicle and for each member operating the vehicle during the period of use, including liability coverage, personal injury protection, uninsured/underinsured motorist and collision/comprehensive deductible.

Every Revel is covered by liability insurance for each vehicle and for each member operating the vehicle during the period of use. Every Revel is covered by general liability insurance up to a million and up to \$50,000 for each member operating a Revel. Every Revel is covered by liability insurance for each vehicle and for each member operating the vehicle during the period of use.

Commercial General Liability:

- Each occurrence \$1,000,000
- Damage to rented premises \$50,000
- Medical expenses \$5,000
- Personal & adv injury 1,000,000
- General aggregate \$2,000,000
- Products \$2,000,000

Company: Y-Risk

- Address: 29 Mill St, Unionville, CT 06085
- Phone Number: 860-559-4099 (cell)
- Point of Contact: Bernie Horovitz
- Email Address: bernieh@yrisk.com
- Services Provided: Partner & CEO of Y-Risk (insurance provider)

Quantify you company's initial fleet size and how the vehicles will be geographically distributed to serve the City of Berkeley

Revel would initially deploy 500 mopeds in geographically distributed locations throughout Berkeley that would demonstratively serve Berkeley residents. As in other cities that we operate in, we would work together with the City of Berkeley to ensure that out operating area covered neighborhoods that have historically lacked transit access.

Describe how members use the company's reservation system and the devices (phone, computer, smart phone, etc.) that can be used to make or change a reservation.

During the sign-up process to use Revel, members are required to upload a photo of their driver's license and take a selfie to confirm the rider is the actual license holder. Then the system does a DMV record check to confirm the driver's license is not suspended; the holder is at least 21 years of age and that they have a safe driving history. A record of recent DUI's, speeding or multiple recent moving violations would trigger a flag to review or reject the registration. Once a rider's account is approved, accessing a Revel is as follows:

1. Open the Revel app on a smart phone to find a nearby vehicle.
2. Click to reserve (up to 15 minutes), once at vehicle click to start and unlock helmet case.
3. Take a free "safety minute" to fasten helmet, check mirrors, get comfortable.
4. Begin ride and park in a legal parking spot when you reach your destination.
5. Close out the ride with one click.

Describe all of the ways that members can find one-way car share vehicles (phone, computer, smart phone, etc.).

Members can access Revels through any phone that can access a phone app and that has a camera that can take a selfie. Members must put a debit or credit card on file to use the service. Revels are available to members every day between the hours of 5 a.m. and midnight.

Describe how members pay for vehicle use and the rates you plan to charge

Members pay through a debit or credit card registered to their Revel account. Revel has a flat \$19 fee to run a background check on every rider's driving history. If approved, Revel users pay a \$1 unlock fee and each additional minute is \$0.25. Further, as another example of our commitment to the communities we serve, we are proud to offer our Revel Access program, providing a 40% discount for Revel users that qualify for affordable assistance programs, including SNAP benefits and affordable housing. Revel members that qualify for the Access program also receive a credit to their account to offset the \$19 fee to run the background check.

Describe how your company's rental vehicles are tracked in real time

All of our vehicles contain a telematics device that communicates vehicle data to us, including but not limited to, vehicle location. Information is collected every second, and stored in our database.

Indicate when your company would be ready to launch one-way car share in Berkeley.

We would be ready to launch December 1.

Photos and renderings of your company's branded vehicles with this application.



Our team has the ability to execute.



Frank Reig
Co-Founder & CEO
VP, Energy & Industrials, GLG

Paul Suhey
Co-Founder & COO
Advanced Design Engineer,
Exxon



Haley Rubinson
Director of Business Development
Managing Director, Tusk Ventures



Michael Pellegrino
Director of Operations
Director of Launch, Motivate



Joseph Nowicki
Director of Data Science & Analytics
VP, Data Science, Hugu



Kristy Zoshak
Director of Community
Trade Commissioner Tech,
Canadian Embassy



Lauren Vriens
NYC GM



Theresa Magliano
NYC Senior Operations Manager
Head of Ops, Marley Spoon



Kaitlin Day
Customer Experience
Manager
Manager, Customer Care at
The Body Shop



Alexandria Borlabi
Finance Manager
Manager, Financial Planning
at Flocabulary



Mikaela Jordan
Senior Data Analyst
– Data Analyst at RAPP



Daniella Henry
Policy and Gov't Affairs Manager
Senior Policy Advisor, NYC Mayor



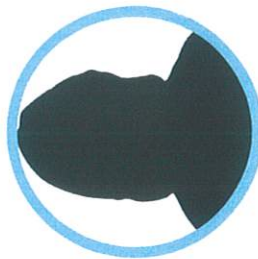
Helen Stackhouse
Marketing & Design Manager
Creative Services Manager, Lytt



Jonathan Brims
New Market Launch Manager
Chief Strategy Officer,
Immersive Robotics

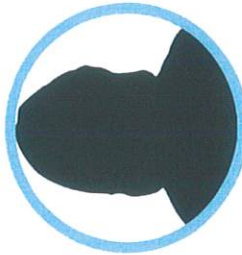
By December 1, 2019

Berkeley Head of Operations



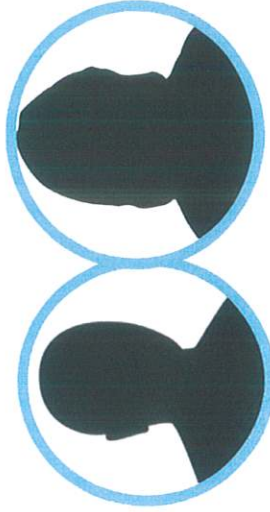
CEO of our critical
markets

*Berkeley Head of Public
Affairs*



Manage day-to day
operations

Berkeley Fleet Operations Staff



Warehouse and field
operations









City of Oakland

**FREE-FLOATING ZONE PARKING PERMIT (FFZPP) AND MASTER
RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS**

Department of Transportation | Parking & Mobility

6/13/2019

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL
PARKING PERMIT (MRPP) TERMS AND CONDITIONS

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FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL
PARKING PERMIT (MRPP) TERMS AND CONDITIONS

Car Sharing Staff Contact:

Michael Ford, Ph.D., C.P.P.

mford@oaklandca.gov

(510) 238-7670

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

DEFINITIONS

"Car sharing" is defined as a membership-based service, available to all qualified drivers in a community, which allows members to make motor vehicle trips with the use of a rented motor vehicle without a separate written requirement for each trip. (Oakland Municipal Code 10.44.030)

"Car sharing organization" is an organization that provides members with access to a minimum of 20 shared-use motor vehicles at geographically distributed locations with hourly, daily, and/or weekly rates (or fractions thereof) that include insurance. The Department of Transportation will maintain a list of the criteria necessary to become a "qualified" car sharing organization as well as a list of qualified car sharing organizations entitled to apply for car sharing-related permits. (Oakland Municipal Code 10.44.030)

"Car sharing vehicle" is a motor vehicle made accessible by a car sharing organization for use by its members. Each car sharing organization shall display its identifying emblem on any car sharing vehicle using on-street spaces. (Oakland Municipal Code 10.44.030)

"Master Residential Parking Permit" (MRPP) refers to the permit that entitles car sharing vehicles with master residential parking permits to park in any residential permit parking area. (Oakland Municipal Code 10.44.030)

"Motor vehicle" means and includes automobile, truck, motorcycle or other motor driven form of transportation not in excess of 10,000 pounds in gross vehicle weight rating. (Oakland Municipal Code 10.44.030)

"Free-floating Zone Parking Permit" (FFZPP) is a permit that entitles members of a permitted car sharing organization to lawfully park car sharing vehicles in metered and unmetered spaces with duration limits of two hours or longer for up to 72 hours within a designated zone. (Oakland Municipal Code 10.71.030)

"Free-floating zone area" is the area agreed upon by the car sharing organization permit holder and the Department of Transportation, which bounds the permitted parking area for permit holder's car sharing vehicles within Oakland. (Oakland Municipal Code 10.71.030)

"Qualified Car Share Organization" (QCSO) is a car sharing organization that has been approved by the Department of Transportation for a Free-floating zone parking permit and/or Master residential parking permit.

"Parking permit" means a permit issued under this chapter which, when displayed upon a motor vehicle, as described herein, shall exempt said motor vehicle from parking time restrictions established pursuant to this chapter. (Oakland Municipal Code 10.44.030)

AUTHORITY

In ordinance 13301 C.M.S. and a companion resolution, 85459 C.M.S., the City Council delegated the authority to the Director of Transportation or a designee to approve the criteria and

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

administrative rules to issue the Free-Floating Zone Parking Permit (FFZPP) and the Master Residential Parking Permit (MRPP).

INTENT

The intent of the FFZPP is to facilitate car sharing within Oakland by establishing a permit that entitles a permitted car sharing vehicle to lawfully park in metered and unmetered spaces with duration limits of two hours or longer for up to 72 hours within a designated free-floating zone area. The concept for the FFZPP is based on the idea that Qualified Car Sharing Organizations should be able to pre-pay an estimate of meter fees for parking activity of point-to-point car sharing vehicles within a designated free-floating zone area. The estimate will be reconciled with actual parking activity after the term of the FFZPP.

The intent of the MRPP is to facilitate car sharing within Oakland by establishing a permit that entitles a permitted car sharing vehicle to lawfully park in all residential permit parking areas (RPP) areas for up to seventy-two (72) hours. The concept for the MRPP is based on the idea that car sharing vehicles should be entitled to the same on-street parking privileges of private automobiles. Because car sharing vehicles will rotate throughout the City, the vehicles will require access to all RPP areas.

FLEET DEPLOYMENT AND REBALANCING

In order to evenly distribute vehicles during initial deployment and ongoing operations, no more than two vehicles shall be parked by applicant as part of fleet "rebalancing" per block face or per 500 linear feet of curb, whichever is shorter. In addition, no more than one vehicle should be "rebalanced" to block faces where one or more of applicant's vehicles have already been parked by a customer. All rebalancing vehicle trips shall be clearly noted as such in vehicle trip and/or parking records provided to the City.

PRIVILEGES OF THE FREE-FLOATING ZONE PARKING PERMIT

The following privileges will be extended to the Permittee:

1. **Waiver of parking duration time limits for two hours or longer within an approved free-floating zone area:** The FFZPP allows Permitted car sharing vehicles to be parked up to 72 hours without the direct payment of a meter on the public right-of-way, in legal and not otherwise restricted parking spaces within an approved free-floating zone area. Restricted parking spaces include those with one or more regulating signs (such as Vanpool spaces), which cannot be used by Permittee during the specified restricted times shown on the sign(s), as well as meters with time limits of less than two hours. The Permittee should consult *Title 10 – Vehicles and Traffic, Oakland Municipal Code*, for a list of City parking restrictions.
2. **Ability of the Permittee to pre-pay estimated parking fees accrued by its car sharing vehicles in the approved free-floating zone area over the calendar year:** The FFZPP fee estimates the average parking meter fees that a single car sharing vehicle will accrue

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

over the course of one year (12 calendar months). With this Permit, the Permittee agrees to pay the fee published in the Master Fee Schedule at the beginning of the permit term as in lieu fee for its members' estimated parking meter usage. Members of the Permitted Qualified Car Sharing Organization should not pay meters with time limits of two hours or longer while parking FFZPP Permitted vehicles in an approved zone. It is expected that the Permittee will track actual parking events of members within the approved free-floating zone area and report parking activity to the City of Oakland on a monthly or quarterly basis. At the end of the Permit term, the City will invoice the Permittee for any parking fee shortfall, which will need to be paid within 30 days. If the Permittee has overpaid at the start of the Permit term, then either credit will be applied towards a renewal of permits or a reimbursement check will be sent to the Permittee.

Mopeds and motorcycles: Members parking mopeds or motorcycles in a metered zone but parked between metered spaces (at the parking "T" if one exists and/or in front of the parking meter if one exists), perpendicular to the curb in such a way as to not obstruct other vehicles from parking on either side, will not be required to reimburse the City for meter revenue. Members parking permitted mopeds or motorcycles in such a way that prevents another vehicle from parking in either adjacent space, or in a designated motorcycle parking area will be required to reimburse the City through the meter deposit. Permittee will educate its members about proper parking procedures.

3. **Ability to request signage:** The intention of the FFZPP is to designate an area within which it's possible to park without dedicating specific locations in the right of way for parking for car sharing vehicles. However, there are circumstances in which signage might be necessary to signify the right of Permitted car sharing vehicles to park in an approved area. In such circumstances, the Permittee can request that the City approve, install, and remove signage and sidewalk and/or street markings designating an approved home zone. The Permittee shall not install, paint, mark, or remove any signs, markings, or other demarcations on City property including on the street or the sidewalk. The City is not responsible for any damage caused to Permittee installed signage and/or markings.
4. **Option to request up to four (4) changes to the approved free-floating zone area during the term of the Permit:** The City of Oakland authorizes the Permittee to change the approved initial free-floating zone area up to four times during the term of the Permit. As long as the Permittee demonstrates to the City that changes to the free-floating zone area continue to meet the City's eligibility criteria (see Establishment of A Free-Floating Zone on page 8), the City will automatically approve the change to the free-floating zone area. If the changed free-floating zone area deviates from the criteria, the Permittee will need to submit the changes to the free-floating zone area for the City's approval before the Permittee can shift operations. Upon receipt of the changed free-floating zone area, the City will have ten (10) business days to respond to the changed boundary.

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

5. **Ability to park a moped or motorcycle within designated moped or motorcycle parking areas:** In addition to the privileges described above, FFZP permits obtained for mopeds or motorcycles grant members the ability to park them in designated motorcycle parking areas without direct payment of the meter fee when displaying their FFZP permits. Meter fees will be deducted from the FFZP deposit at the end of the permit year.

PRIVILEGES OF THE MASTER RESIDENTIAL PARKING PERMIT

The following privileges will be extended to the Permittee:

1. **Ability to park a permitted car sharing vehicle for longer than two (2) hours but no longer than seventy-two (72) hours in a residential permit parking area:** The Master Residential Parking Permit (MRPP) allows Permitted car sharing vehicles to be parked up to 72 hours in legal and not otherwise restricted parking spaces within an RPP area. Restricted parking spaces include those with one or more regulating signs (such as blue curb or disabled spaces), which cannot be used by Permittee during the specified restricted times shown on the sign(s). Permitted motorcycles or mopeds must park perpendicular to the curb, with one wheel touching the curb.

The Permittee should consult *Title 10 – Vehicles and Traffic - Chapter 10.44 – Residential Permit Parking Program* of the Oakland Municipal Code, for a list of City parking restrictions in RPP areas.

2. **Ability to park a permitted car sharing vehicle in any residential permit parking areas in Oakland:** The MRPP allows Permitted car sharing vehicles to park in any RPP area regardless of the residential address of the car sharing member operating the vehicle. Please see attached map of RPP areas.
3. **Ability to request signage:** The intention of the MRPP is to allow car sharing vehicles to rotate within and among RPP areas without dedicating specific locations in the right of way for parking for car sharing vehicles. However, there are circumstances in which signage might be necessary to signify the right of Permitted car sharing vehicles to park in an approved area. In such circumstances, the Permittee can request that the City approve, install, and remove signage and sidewalk and/or street markings in RPP areas. The Permittee shall not install, paint, mark, or remove any signs, markings, or other demarcations on City property including on the street or the sidewalk. The City is not responsible for any damage caused to Permittee installed signage and/or markings.

ELIGIBLE PERMITTEES

An eligible applicant for a FFZPP and/or a MRPP must have obtained a certificate, which acknowledges that the buyer is a Qualified Car Sharing Organization in Oakland, or a letter that indicates that the buyer is a Conditionally Qualified Car Sharing Organization. The Qualified Car Share Organization must also possess a business license to operate in the City of Oakland.

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

PERMIT STRUCTURE

The FFZPP and MRPP shall have two components: a Fleet Permit granted to a Qualified Car Sharing Organization (Qualified CSO) and an individual Permit, which is granted to a specific vehicle. To purchase individual FFZPP and/or MRPP Permits, an applicant must file an application for a fleet permit with the City. A Qualified CSO is only entitled to receive one FFZPP Fleet Permit, one MRPP Fleet Permit, or one combined FFZPP/MRPP permit per year.

Permits are issued to individual Qualified Car Sharing Organizations, and they may not be traded or resold.

PERMIT TERM

The FFZPP shall last for one year on a fiscal year schedule. For instance, the 2018 Permit will be in effect from July 1, 2018, to June 30, 2019. A Qualified Car Sharing Organization who receives an FFZPP Fleet Permit after July in the calendar year will have the option to pro-rate individual Permit fees to the month purchased. The option to renew permits to Permittees in good standing will be presented in June of the Permit year.

The Fleet Master Residential Parking Permit (Fleet MRPP) shall last for one year on a fiscal year schedule. For instance, the 2018 Permit will be in effect from July 1, 2018, to June 30, 2019. Qualified Car Sharing Organizations (Qualified CSOs) who receive a Fleet MRPP after July in the calendar year will have the option to pro-rate individual Permit fees at the discount schedule extended to Residential Parking Permits. For instance, a Qualified CSO that purchases MRPPs in the first half of the calendar year will have to pay the full Permit fee, but will only pay 70% of the Permit fee if purchased in the second half of the calendar year. Please see the FY 16-17 Master Fee Schedule for more information about proration:

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/BudgetOffice/OAK056277>.

The option to renew permits to Permittees in good standing will be presented in June of the Permit year.

PERMIT CAP AND FLEET SIZE

Each Qualified Car Sharing Organization (Qualified CSO) applying for FFZPPs can be issued no more than one Fleet Permit, which entitles a fleet of car sharing vehicles owned by a Qualified Car Sharing Organization to purchase individual FFZPPs. This Fleet Permit will allow the City to batch process renewals, vehicle registrations, parking citations, etc., with Permittees. The City has not adopted a cap on the number of car sharing vehicles a QCSO can include in a Permitted Fleet, but in the Car Sharing Principles (85459 C.M.S.), the City limited the number of individual FFZPPs to 400 per year during the pilot program (the first two years that the FFZPP is available for sale). If this cap presents a hindrance to operators and the realization of the City's car sharing principles, the City will make adjustments to the cap.

An FFZPP Fleet Permit applicant, however, cannot purchase more individual FFZPPs than with which it can initiate service during that Permit term. For instance, if an applicant has 30 vehicles

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

ready to be used in a Free-Floating model, but it requests to purchase 40 individual FFZPPs, the additional 10 permits will be denied or revoked upon discovery that they are not in use.

A Fleet MRPP applicant cannot purchase more individual MRPPs than with which it can initiate service during that Permit term. For instance, if an applicant has 30 vehicles ready to be used in a Free-Floating model, but requests to purchase 40 individual MRPPs, the additional 10 permits will be denied or revoked upon discovery that they are not in use.

EVIDENCE OF PERMIT

A separate, individual, revocable FFZPP will be issued to each vehicle and/or license plate registered by the Permittee. As evidence of the Permit, the City of Oakland will issue 1) a paper Permit, and 2) a sticker to be affixed to the lower left corner of the rear bumper. The sticker will take the following form:

1. A mini-sticker that features the City's logo and the serial number of the Permit to be affixed to a larger bumper sticker provided by the Qualified Car Sharing Organization (Qualified CSO) of a similar size to the Residential Parking Permit sticker. The larger bumper sticker provided by the Qualified CSO must display the following information:
 - a. A title indicating that the Permitted vehicle has special parking privileges
 - b. The license plate number of the Permitted vehicle
 - c. The date the Permit expires in that Permitted year
 - d. Sufficient space for the City's mini sticker
 - e. The zone designation of the Qualified CSO's approved Free-Floating Parking Zone.

If the FFZPP Permittee also purchases Master Residential Parking Permits (MRPPs) for its car sharing vehicles and chooses to affix City-issued mini-stickers to bumper stickers, the City will have opportunity to combine the mini-sticker for the FFZPP and the mini-sticker for the MRPP into one combined sticker.

Alternative arrangements for the sticker can be made at the request of the Qualified CSO. To inquire, please contact the car share contact.

ESTABLISHMENT OF A FREE-FLOATING ZONE AREA

It is the obligation of the Qualified Car Sharing Organization (Qualified CSO) to propose a Free-Floating Parking Zone ("free-floating zone area") in which to establish car sharing services as permitted by the FFZPP Fleet Permit. In the form of a map (file type to be specified by the City), the boundaries of the free-floating zone area will be submitted to the Department of Transportation as the initial step in the FFZPP Fleet Permit application process. Once the boundaries of the FFZPP have been approved (criteria outlined below), the Qualified CSO will submit information about its fleet of car sharing vehicles to the Parking Permits Supervisor in the Revenue Department.

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

As specified in the Municipal Code (*Title 10 – Vehicles and Traffic*), the Permittee is allowed up to four (4) changes of the free-floating zone area during the term of the Permit. Any proposed changes to the boundaries within the Permit term must be submitted to the Department of Transportation. As long as the Permittee demonstrates to the City that changes to the free-floating zone area continue to meet the City’s eligibility criteria of the free-floating zone area boundary and that there are no outstanding claims by neighborhood associations and/or business groups, the City will automatically approve the change to the free-floating zone area. If the Permittee requires an exception from the eligibility criteria, then the Permittee will need to receive the City’s approval of the changes before the Permittee can adjust operations or inform members of the new free-floating zone area.

The Permittee must notify its members about changes to the free-floating zone area at least three (3) days before the Permittee adjusts the zone.

If changes to the operating area proposed by Permittee will significantly restrict access of neighborhoods or neighborhood commercial districts to car sharing services, the Permittee must contact any City-recognized neighborhood organizations and/or business associations that are impacted and provide an opportunity for neighborhood input.

The City may provide a list and/or map of any and all parts of the free-floating zone area that the Permittee’s permits will not be honored. The Permittee’s permits will not be valid when the vehicle is parked in these areas and therefore must follow the same rules and regulations as any other motor vehicle.

Eligibility Criteria of Free-Floating Zone Area:

1. The free-floating zone area must be situated in part or completely within the City of Oakland’s boundaries.
2. The free-floating zone area must be representative of Oakland’s geographic and socioeconomic diversity. Within 3 (three) months of FFZP approval or renewal, at least 50 percent (50%) of the free-floating zone area must encompass all or parts of census tracts that have been designated Communities of Concern by the Metropolitan Transportation Commission (MTC). Details about the Communities of Concern designation can be found on the MTC’s data portal: <http://opendata.mtc.ca.gov/datasets?q=Policy> . This criterion has been recommended to ensure that the City’s programs are accessible to all residents.
3. If a street or block face would like to be included in a free-floating zone area, and the Permittee has denied the request of the appropriate neighborhood association and/or business group, the City reserves the right to withhold approval of subsequent changes to the free-floating zone area or renewal of the FFZPPs until the complaints with said groups have been resolved. The neighborhood association and/or business group must file notice of the request to be included in a given free-floating zone area with the City at least ten (10) business days before a specific date of a requested action. The City must

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

notify the affected Permittee within ten (10) business days that the City has received such a request from a neighborhood association and/or business group.

4. If, after six (6) months of inclusion in a free-floating zone area, neighborhood organizations and/or business groups within the zone protest the inclusion of a street or block face in a free-floating zone area, said groups can petition the City to have its street included on the black out list of streets with overriding parking restrictions. At least two-thirds (2/3) of residents on a given street or block face must sign a petition to remove said street and/or block face from a free-floating zone area. The City requires that the petitioning neighborhood and/or business group make an effort to negotiate the parking behavior directly with the Permittee operating in the free-floating zone area before bringing a petition to the Shared Mobility Coordinator or designee of the City Traffic Engineer.
5. The free-floating zone area is only valid and operational so long as the Permittee holds active FFZPPs granted by the City.
6. If the applicant's free-floating zone area does not include Communities of Concern (as designated by MTC) located in East Oakland (defined as areas to the east of 14th Avenue), then an Expansion Plan must be submitted to the Department of Transportation within three (3) months of the receipt or renewal of applicant's FZPP's. The Expansion Plan must include an expected timeline for expanding service to Communities of Concern in East Oakland, a map or maps depicting the proposed service area changes over time, and any actions that the applicant requests from the City in order to expand service.

OUTREACH TO NEIGHBORHOOD ASSOCIATIONS AND BUSINESS GROUPS

After the City grants the applicant an FFZPP, MRPP, or combined FFZPP-MRPP permit, the Permittee must request at least one (1) meeting with each neighborhood associations and/or business group located within the approved Free-Floating Parking Zone ("free-floating zone area") and/or Master Residential Parking Area Zone. When a free-floating zone area expands, the City expects the Permittee to request at least one (1) meeting with each neighborhood associations and/or business group located in the expanded free-floating zone area. Prior to designating or expanding a free-floating zone, the applicant must provide the City with a proposed list of neighborhood associations and business groups which it intends to meet with. The Department of Transportation must then approve the proposed list of meetings. After those meetings are completed, the applicant must provide the City with evidence of attendance (such as a sign-in sheet or meeting agenda) and meeting notes.

The Permittee shall not advertise or publish the City's participation in this Permit program prior to receiving the FFZPP, MRPP, or combined FFZPP-MRPP permit.

PERMIT FEES AND PAYMENT RECONCILIATION

The Permittee agrees to pay all permit and other appropriate fees to the City.

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

Free-Floating Parking Zone

The Free-Floating Parking Zone (FFZPP or “free-floating zone area”) Permit fees are published in the Master Fee Schedule. For Fiscal Year 19-20, the cost of an FFZPP is \$220 per car sharing vehicle per year. The intent of this fee is to create an upfront estimate of the expected meter usage of a car sharing vehicle within the approved free-floating zone area. Over the course of the term of the Permit, the Permittee will track actual parking meter usage per vehicle, report that usage to the City, and within 30 days after the last day of the permit term, i.e. July 31 of the following year, reconcile the actual dollar value of parking meter usage estimated pre-payment.

For motorcycles and mopeds, the FFZP is one-fifth the cost of the standard FFZP fee, to account for the smaller size of these vehicles and the small number of designated motorcycle parking areas. For fiscal Year 19-20, the motorcycle and moped FFZP is \$44

In the case of overpayment, the City will credit the surcharge towards a Permit renewal or the Permittee will invoice the City for the balance by the last business day of the subsequent month. In the case of underpayment, the City will invoice the Permittee for the balance by the last business day of the subsequent month.

The Permit fees are based on the anticipated average number of vehicles in the Permittee’s fleet in Oakland. For an FFZPP Permittee with a free-floating zone area that spans multiple municipalities including Oakland, the Permittee will calculate an estimate of the average number of vehicles which will park overnight, based on the share of parking meters, the share of parking spaces, or the share of the area within Oakland of the multi-jurisdiction free-floating zone area. Documentation of the estimate of the average number of vehicles should be included with the Permit application. These fees are to be assessed at the beginning of each Permit term and when additional vehicles are added to the fleet (no fees will be assessed for substitute vehicles).

Meter recovery fees are based on the actual time car sharing vehicles parked at meters. These fees are to be assessed for the fleet at the end of each quarter or Permit term and will reflect the total meter usage for that quarter.

If a Permittee increases its fleet size during the Permit term, the Permittee must report to the City the number of new vehicles to be added to their fleet Permit. These vehicles must be added to the Permit and the FFZPP fee must be paid for these vehicles. The City may charge a pro-rated Permit fee for each vehicle added (see the Permit Term section).

Master Residential Parking Permit

The Master Residential Parking Permit (MRPP) fees are published in the Master Fee Schedule. For Fiscal Year 19-20, the cost of an MRPP is \$105 per car sharing vehicle per year.

The intent of this fee is to allow car sharing vehicles equivalent curbside parking privileges to private vehicles in residential areas. Because car share vehicles are expected to rotate in an unpredictable fashion within and among residential parking areas, the City deems it necessary to open all residential parking areas to car sharing vehicles; the City has valued this privilege at approximately three (3) times the value of a standard Residential Parking Permit (RPP). The cost

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

of a new RPP was \$35 at program inception, but has since risen to \$84. Thus the City derived the \$105 Permit fee from three (3) times the cost of the \$35 fee. In FY 19-20, the fee for the MRPP is likely to increase with the updated cost of the RPP (see the **Error! Reference source not found.** on page **Error! Bookmark not defined.**)

INSURANCE REQUIREMENTS

The Permittee shall maintain in force at its own expense, each type of insurance noted below:

1. Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that is satisfactory to the City. This insurance shall include personal and advertising injury liability, products and completed operations. Coverage shall be written on an occurrence basis. The limit per occurrence shall not be less than \$2,000,000 or as may be required by subsequent amendment and shall provide that the City of Oakland, and its agents, officers, and employees are Additional Insured.
2. Automobile Liability insurance with a combined single limit of not less than \$2,000,000 per occurrence for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.
3. On all types of insurance. There shall be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without 30-days written notice from the Permittee or its insurer(s) to the City.
4. Certificates of insurance. As evidence of the insurance coverages required by this permit, the Permittee shall furnish acceptable insurance certificates to the City at the time Permittee returns signed permits. This certificate will specify all of the parties who are Additional Insured and will include the 30-day cancellation clause that provides that the insurance shall not terminate or be cancelled without 30-days written notice first being given to the City Auditor. Insuring companies or entities are subject to City acceptance. If requested, complete policy copies shall be provided to the City. The Permittee shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.
5. The Department of Transportation will automatically revoke this permit without further action if this insurance is permitted to lapse, is canceled, or for any other reason becomes inoperative.

PERMIT APPLICATION AND SERVICE INITIATION

To apply for and receive a FFZPP or MRPP, as well as initiate the car sharing service, the applicant will follow the following steps:

1. Apply for and obtain a Qualified Car Sharing Organization Certificate.

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

2. Submit to the Department of Transportation a proposed free-floating zone area map.
3. Submit an FFZPP Fleet Permit and/or MRPP application with 1) the Qualified Car Sharing Organization Certificate, 2) the City-approved free-floating zone area map 3) the applicable information about the car sharing vehicles in the fleet, 4) the payment for Permit fees, and 5) other supporting documentation, as needed.
4. Conduct outreach meetings, as appropriate.
5. Receive Permits and apply sticker decals to car sharing vehicles.

Documentation of these steps, an estimated timeline of the application process, and other updates will be posted to the City's website: <https://www.oaklandca.gov/services/dot/car-share-program>

The City expects Permittees to initiate the car sharing services during the Permit term in which the Permits were purchased. If the Permittee does not initiate car sharing services during the Permit term in which the Permits were purchased, the unused Permits will be revoked and ineligible to renew in a subsequent Permit term.

Because the City recognizes the first two years of sales of these permits as the Pilot Program, the period within which to initiate service is the entire Permit term. For instance, a Permittee that receives Permits on April 1, 2016 will have until December 31, 2016 to initiate car sharing services. In subsequent years, the time period between when the Permits are issued and when car sharing services are initiated may be shortened.

DATA REPORTING AND RECORD KEEPING

Reporting to the City

The Permittee agrees to survey members at least once (1 time) per Permit term, consult with the City on questions included in the survey, and provide results of the annual survey to the Car Share Contact in the Department of Transportation.

The Permittee is also required to report, on a monthly or quarterly basis, information regarding the fleet and membership. The goal of these reports is to better understand how the entire car share system is being utilized and to better inform future policy changes. The Permittee will work with the City to provide the following information on their company's operations, such as:

1. Number of vehicles in fleet
2. Parking locations of vehicles
3. Fleet usage
4. Total number of members
5. Member Survey and General Demographics

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

Information submitted to the City is subject to the City of Oakland's Sunshine Ordinance (Oakland Municipal Code Chapter 2.20 – Public Meetings and Public Records) and the California Public Records Act (Government Code Section 6250 et seq.). If the Permittee believes that any material it submits constitutes trade secrets, privileged information, or confidential commercial or financial data, then the Permittee should mark those items as confidential or proprietary. The City is not bound by the Permittee's determination as to whether materials are subject to disclosure under CPRA and reserves the right to independently determine whether the materials are required to be made available for inspection or otherwise produced under CPRA. If the City receives a request for such information marked as confidential, it will notify the Permittee. If a suit is filed to compel disclosure of such information, the City will notify the Permittee, and the Permittee shall be responsible for taking appropriate action to defend against disclosure of its confidential information, and will hold the City harmless from any costs or liability resulting from any CPRA litigation.

The Permittee shall furnish to the City a report each month, quarter or Permit term (as determined by the Permittee and the City), due within 30 days from end of that quarter or term, containing monthly summary data related to parking events in the Free-Floating Parking Zone for the prior quarter. This data should detail the time parked in the meter zones as well as sum up the meter usage costs in relation to FFPP deposits. Should the Permittee's FFZPP and/or MRPP include the Montclair Flexible Parking Rate District or any future flexible parking rate districts, the Permittee must track the parking meter rate changes and apply them to the parking events, which can change as often as every sixty days. This data will be used to evaluate quarterly or term charges related to metered parking fees. If the City Council approves any changes to metered parking rates or meter districts during the Permit term, the Permit fee will be adjusted to reflect the changes. Changes to meter rates will be published within the City's Master Fee Schedule.

The Permittee will agree to work with and provide access to members to independent researchers, who will study to the environmental, social, and economic impacts of the two- year expansion of car sharing in Oakland as a part of the car sharing grant awarded to the City of Oakland from the Metropolitan Transportation Commission (85459 C.M.S.). The City will provide details about the evaluation to Permittees during the Permit application process.

Records

The Permittee shall retain and maintain all records and documents relating to the Permit for five (5) years after the date in which this Permit terminates, and shall make them available for inspection and audit by authorized representatives of the City. Permittee shall make available all requested data and records at reasonable locations within the City of Oakland at any time during normal business hours, and as often as the City deems necessary. If records are not made available within the City of Oakland, the Permittee shall pay the city's travel costs to the location where the records are maintained. Failure to make requested records available for audit by the date requested may result in termination of the permit.

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

ENFORCEMENT

Parking Enforcement

The City will train its parking enforcement technicians in the new privileges associated with the FFZPP and MRPP, and equip technicians with approved area maps. The Department of Transportation will be responsible for keeping the parking enforcement staff apprised of changes to a Permittee's approved free-floating zone area and new sales of MRPPs.

With the exceptions of the aforementioned privileges bestowed to car sharing vehicles and Permittees (see Privileges of the Free-Floating Zone Parking Permit on page 4), car sharing vehicles are subject to all other traffic and parking regulations outlined in *Title 10 – Vehicles and Traffic* of the Oakland Municipal Code. Parking enforcement technicians will issue citations to car sharing vehicles for violations as they would private automobiles. Permittees with outstanding parking citations will not be allowed to renew FFZPPs or MRPPs until citations have been resolved with the Parking Operations Division.

Financial and Field Audits

The City reserves the right to conduct a financial review and/or audit of the Permittee. If the City commences an audit of a Permittee, the Permittee will be notified of the forthcoming audit at least thirty (30) days in advance of the audit by mail and by email. Details of the financial information to be provided to the City will be included in the notification.

The Permittee shall establish and maintain a reasonable accounting system that enables the City to readily identify the Permittee's assets, expenses, costs of goods, and use of funds. The City and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to the Terms and Conditions of the permit, including, but not limited to those kept by the Permittee, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files; all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. The City shall have the right to conduct an audit or examination no more than two (2) times per calendar year.

The City reserves the right to conduct field audits of car sharing vehicles in which parking enforcement officers record locations of parked car sharing vehicles and cross-check them against reports of parking activity provided to the City by the Permittee. The Permittee shall, at all times during the term of the permit and for a period of five (5) years after the permit term, maintain such records, together with such supporting or underlying documents and materials. The Permittee shall at any time requested by the City, whether during or after the permit term, make such records available for inspection and audit by the City. Such records shall be made available to the City during normal business hours and subject to a thirty (30) day written notice by electronic mail and first-class U.S. Postal Service delivery. In the event that no such location

**FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL
PARKING PERMIT (MRPP) TERMS AND CONDITIONS**

is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the City. The Permittee shall ensure the City has these rights with the Permittee's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Permittee and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Permittee's obligations to the City. Costs of any audits and examinations conducted under the authority of this right to audit and not addressed elsewhere in this contract will be borne by the City. The City will issue a warning to the Permittee if it fails either a financial or field audit. The Permittee risks revocation of some or all individual FFZPPs or MRPPs, if the Permittee fails to take measures to address the audit failure or repeats a failure in a subsequent audit.

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

REVOCAATION

The City of Oakland reserves the right to revoke a FFZPP or MRPP at any time upon written notice of revocation sent to both the Permittee's mailing and email addresses listed on the Permittee's Application submitted to the City.

The Permittee agrees to surrender such permit in accordance with the instructions in the notice of revocation. In the event that the City revokes a FFZPP or MRPP, Permittee shall cease operations in the public right of way within ten (10) business days from the date the notice of revocation was mailed and emailed by the City to the Permittee.

If the Permittee wishes to contest the revocation of a permit, the Permittee may contact, within ten (10) days of the date of revocation, the Supervisor of the Shared Mobility Coordinator, appropriate transportation manager within the City of Oakland or the Supervisor of the Parking Permits and Citations Office within the Department of Finance and Management to explain any basis for why the Permit should not be revoked.

In circumstances that pose a serious threat to public health or safety, the City reserves the right to immediately revoke an FFZPP and/or MRPP effective on the date the notice of revocation is mailed and emailed to the Permittee. The City shall state the public health or safety reasons that require immediate revocation in the notice of revocation. In such circumstances, the Permittee shall be required to immediately remove the car sharing vehicle from the public right of way.

This permit is revocable by the City Traffic Engineer at any time in the event the public's need requires it, or the Permittee fails to comply with the conditions of this Permit. No expenditure of money hereunder, lapse of time, or other act or thing shall operate as an estoppel against the City of Oakland, or be held to give the Permittee any vested or other right. Upon the expiration of this permit, or upon its sooner revocation by the City Traffic Engineer, the City shall no longer provide said right of this Permit.

INDEMNIFICATION

Permittee shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Permittee or loss of or damage to property, arising directly or indirectly from Permittee's performance of this Permit, including, but not limited to, Permittee's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Permittee, its subpermittees or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

In addition to Permittee's obligation to indemnify City, Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Permittee by City and continues at all times thereafter. Permittee shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Permit.

Permittee shall indemnify, defend and hold harmless the City of Oakland, its officers, agents and employees from and against all claims, demands, suits, actions, damages, liabilities, costs and expenses of whatsoever nature, including all attorney fees and costs, relating to, resulting from or arising out of the permitted activities. This Permit is personal to the Permittee and may not be transferred, assigned or otherwise conveyed. Identification of vehicle as belonging to this car sharing organization must be clearly visible on the vehicle, in contrasting colors with letters two inches high or larger.

COMPLIANCE WITH ADDITIONAL TERMS AND CONDITIONS

Permittee agrees to comply with any and all additional written terms and conditions required by the City of Oakland for participation in the Car Sharing Program. Permittee acknowledges that these written terms and conditions may be changed, amended, or revised at any time by the City upon written notification to the Permittee. By acceptance of a FFZPP and/or MRPP, Permittee agrees to comply with any changed, amended or revised written terms and conditions within thirty (30) days of written notification by the City. Failure to comply with any or all terms and conditions required by the City in the FFZPP and/or the MRPP can result in the revocation of any or all FFZPPs and/or MRPPs issued to the Permittee upon written notice of revocation by the City.

COMPLIANCE WITH APPLICABLE LAW

The Permittee represents and certifies, under penalty of perjury, that the Car Share Organization and the car sharing vehicles on whose behalf the Permittee is seeking this Permit is in compliance with all California Vehicle Code requirements, FFZPP requirements, and Qualified Car Sharing Organization criteria set forth here and in the City's Municipal Code.

RESPONSIBILITIES OF PERMITTEE

It is responsibility of the Permittee to:

1. Operate a legitimate car sharing service that benefits the residents of Oakland.
2. Maintain its Qualified Car Sharing Organization status during the term of the FFZPP and/or MRPP.

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL PARKING PERMIT (MRPP) TERMS AND CONDITIONS

3. Maintain adequate and sufficient insurance coverage.
4. Conduct outreach to Oakland residents and businesses, as appropriate.
5. Ensure that car sharing vehicles display evidence of the FFZPP and/or MRPP.
6. For FFZPP Only: Maintain an approved Free-Floating Parking Zone.
7. For FFZPP Only: Submit documentation of changes of the free-floating zone area no more than four (4) times within the Permit term.
8. Track and report to the City parking activity of car sharing vehicles within the free-floating zone area or within residential permit parking areas.
9. Pay upfront Permit fees as specified in the Master Fee Schedule, and reconcile balance differences at the end of the Permit term with respect to the amount of actual parking activity.
10. Pay the City all citations and towing fees incurred by the Permittee's car sharing vehicles, however the pass-through of fees to the member is justified wherein the member is the responsible party, according to the California Vehicle Code and/or the Oakland Municipal Code.
11. Report changes in license plate numbers, vehicle registrations, and other required vehicle information to the Parking Operations Supervisor, as changes to the Permitted fleet occur during the term of the permit.
12. Facilitate the City's financial and/or field audits and take steps to address the City's recommendations from the audits.
13. Meet all the requirements of the FFZPP and MRPP.

RESPONSIBILITIES OF THE CITY

It is the responsibility of the City to:

1. Fulfill the objectives of the Car Sharing Policy (85459 C.M.S.).
2. Administer a fair, timely, and efficient FFZPP process.
3. Coordinate internally to communicate changes to maps, Permits, Permit fees, etc. between divisions and departments.
4. Keep records of Qualified Car Sharing Organization certifications and Permits granted.
5. Approve the list of outreach activities proposed by the applicant prior to establishing or expanding a free-floating zone area.

FREE-FLOATING ZONE PARKING PERMIT (FFZPP) and MASTER RESIDENTIAL
PARKING PERMIT (MRPP) TERMS AND CONDITIONS

6. Conduct outreach to Oakland residents and businesses, as appropriate.
7. Respond to concerns and petitions of Oakland residents and businesses, as appropriate.
8. Assess Permit fees as defined in the Master Fee Schedule.
9. Enforce the Traffic and Vehicle Code.
10. Conduct audits of Permittees to ensure that car sharing services follow regulations and accurately report parking activity, as needed.
11. Receive and analyze reports of parking activity.
12. Respond to requests from Permittees, as defined in the FFZPP Terms and Conditions, in a timely and efficient manner
13. Keep Permittees apprised of changes to Permit terms and conditions, parking and curb designations, and parking meter rates and permit fees.
14. Keep Permittees apprised of changes to key City personnel and provide a staff contact to car sharing organizations.

Revel

Fall 2019



REVEL

Meet Revel. Seamless integration into the existing transportation network.

Street Legal

Every vehicle has a DMV-issued license plate and requires a drivers license to operate. No motorcycle license required.

Space Efficient

Parks in curb dead space. An average parking spot fits 7 mopeds

Affordable

Cheaper than UberX, Lyft, UberPool

Sustainable

100% of the fleet is 100% emissions-free. Electrically powered, they're also noise-free

Multiple uses

Great for short trips, middle mile and complete trips. Replace car trips, relieve/supplement congested transit lines



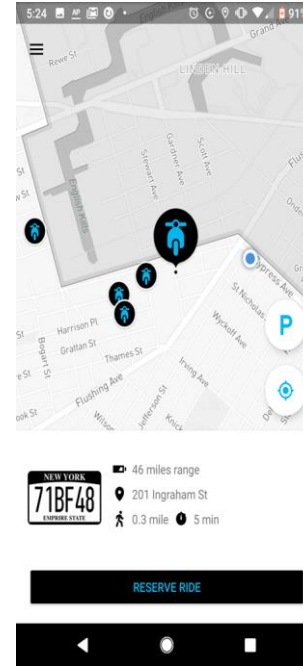
REVEL

How it works.

1. Open the Revel app to find a nearby vehicle.
2. Click to reserve (up to 15 min), at vehicle click to start and unlock helmet case.
3. Begin ride and park in a legal parking spot when you reach your destination. Close ride.



Open the App



Locate nearest Revel



Reserve and ride wherever you need to go!

REVEL

Safety is paramount.

- Drivers must be at least **21 years old** with a **valid license** and safe driving record.
 - ✓ Before registration is complete Revel performs background checks to verify riders' information.
 - ✓ Users must also submit a selfie to verify they are the license-holders.
- **2 USDOT certified helmets** equipped with eye protection shields are stored in each Revel at all times.
- As motor vehicles, Revel's **travel in traffic lanes, park curbside** and have safety equipment consistent with or exceeding state DMV and insurance board standards.
- Speed **throttled at 30mph** to keep up with traffic, license plates ensure accountability.



REVEL

We're committed to free safety education for all.

- Revel offers free in-person lessons to existing and potential riders 7 days a week
- Each trip begins with a safety checklist
- Ride ends with reminders to ensure proper parking
- Our team is available to provide immediate customer support during operating hours



REVEL

Our pilot has been a success.

July 2018 – April 2019: 68 e-mopeds in Bushwick, Greenpoint & Williamsburg

27,000+ rides

2.5 mi avg ride

3,500+ users

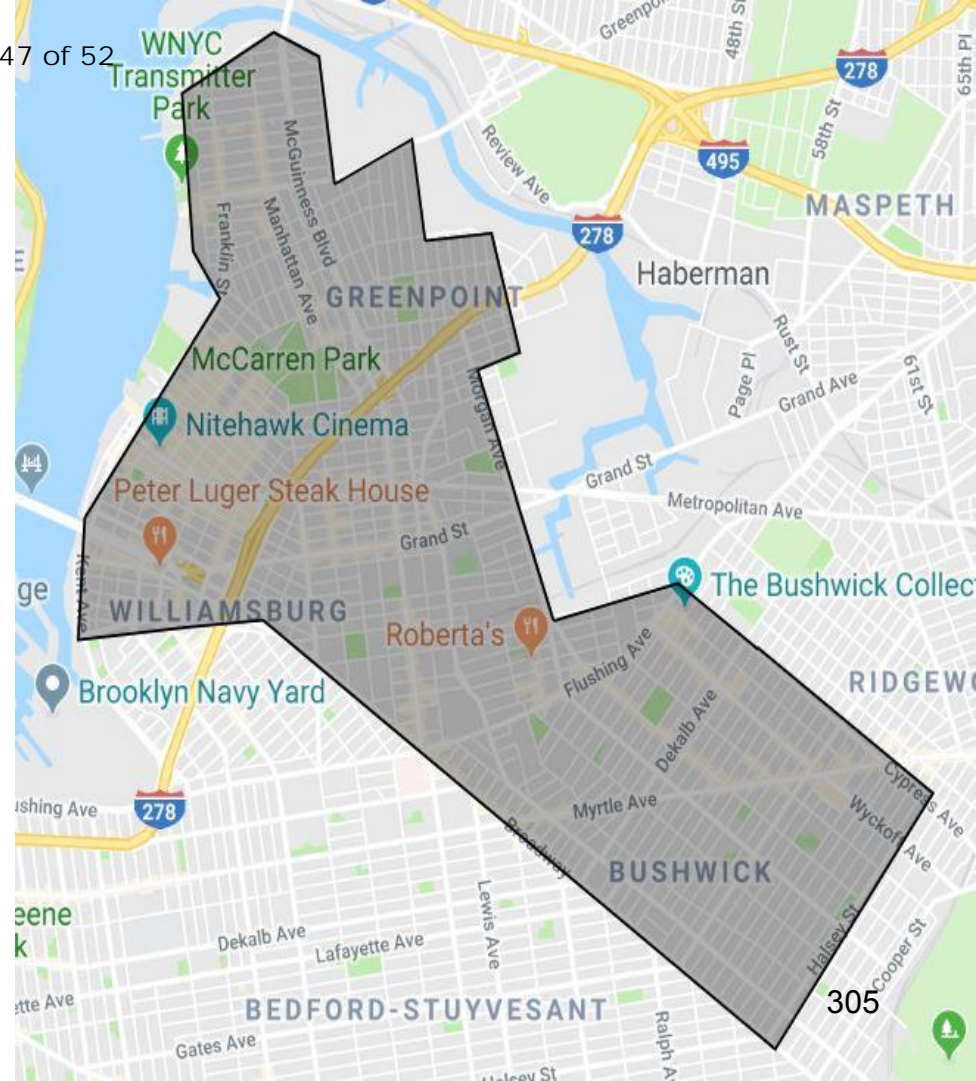
>200 lessons

Customer Reviews

“Shockingly easy to use, incredible customer service, and neighborhood-to-neighborhood no-brainer. So glad it’s here, it better be to stay.”

“Best customer service I’ve ever experienced, ever.”

“I never knew how much fun and exciting it would be until I got on it and I love it, I can see this company going far.”



REVEL

2018 Brooklyn Pilot: Rider Feedback

90% Would take fewer car trips if Revel were available throughout all of Brooklyn and Queens

50% Report using Revel to replace taxi/Uber/Lyft/personal vehicle trips

70% Would use Revel at least once a week if it were available throughout all of Brooklyn and Queens

90% Would recommend Revel to their friends

REVEL

Data and rider feedback have helped us make Revel even better.

2018



\$4 for 20 minutes, \$0.25 each additional minute

Center kickstand, common for mopeds, motorcycles

Manual turn-off blinkers, common for mopeds

200lbs of weight centralized

Safety / education material on our website

Seat ~32" from the ground

2019



\$1 unlock fee, \$0.25 each additional minute

Side kickstand, common for bicycles

Auto turn-off blinkers, common for typical passenger vehicles

200lbs of weight distributed for improved balance and command over the vehicle

Safety / education material on both our website and app

Seat ~29" from the ground

307

REVEL NYC Expansion 2019

As a result of such a successful pilot, with support from local leaders, on May 28th we expanded our fleet of 68 vehicles in three neighborhoods to a fleet of **1000** across approximately **20**.

In just the first month **tens of thousands of new users** signed up, with vehicles averaging **7+ trips per day**.



REVEL

Moving forward in 2019.

- We have **expanded our footprint in NYC**, in August we **launched a fleet in Washington DC** and plan to launch in additional cities across the United States.
- We will engage early and often with cities. Our approach is to **listen, deploy, learn and refine**.
- Our goal is to fit seamlessly into cities' existing transportation networks, offering a new option for all residents. Particularly in neighborhoods with **limited transit options, lower rates of car ownership**, and those **historically underserved** by companies offering innovative mobility solutions.
- We are also committed to **equitable riding** that is **accessible to all residents**. We will continue to offer an **equitable access rider program** with a **40 percent discount** off our standard pricing. We will also invest in marketing to traditionally underserved communities.
- **Revel doesn't do gig economy**. We staff full-time employees with benefits including health insurance and 401k. We will also establish a physical presence in every city we operate, with locally-based employees on the ground so we remain responsive to our customers, city government and our community.

REVEL

We're here to help.

Our approach is to listen, deploy, learn and refine.

Call (or text) us anytime with questions, concerns or if you want to take a test ride!

Daniella Henry, Associate Director, Policy
860-212-8088/Daniella.Henry@gorevel.com

Haley Rubinson, Director of Business Development
917-572-5122/haley.rubinson@gorevel.com





Health, Life Enrichment, Equity,
and Community Committee

ACTION CALENDAR

February 11, 2020

(Continued from January 21, 2020)

To: Honorable Mayor and Members of the City Council
 From: Health, Life Enrichment, Equity, and Community Committee
 Subject: Recommendations Related to Code Enforcement and Receivership Actions

RECOMMENDATION

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee took action to send an item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;
- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

POLICY COMMITTEE RECOMMENDATION

On June 11, 2019, the City Council referred to the Health, Life Enrichment, Equity & Community Committee to create a policy that receivership should only be used when the property is a danger to the public, and as a last resort, and only upon approval of the Council.

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee adopted the following action:

M/S/C (Hahn/Kesarwani) to send the item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;
- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

Vote: All Ayes.

CONTACT PERSON

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

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

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

Attachments:

1: Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding (Housing Advisory Commission)

2: Recommendation to Bring Justice to Mr. Leonard Powell and to Change Certain Policies to Ensure Housing Stability for Homeowners and Tenants (Peace and Justice Commission)

3: Draft Plan for Public Meeting on Receivership (Councilmember Ben Bartlett)



Housing Advisory Commission

ACTION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Housing Advisory Commission

Submitted by: Xavier Johnson, Chairperson, Housing Advisory Commission

Subject: Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding

RECOMMENDATION

Establish policies that will provide housing stability for homeowners and tenants. The City Council should set in place clear, objective, and equitable standards for conducting code enforcement actions and ensure that due process rights of affected homeowners and/or tenants are preserved.

Commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Leonard Powell. It should also refer this matter to the City Auditor. The fact finding should, among other things, focus on any actions taken by the Receiver in the case of Mr. Powell and any communications that the City has had with the Receiver. The HAC recognizes that additional steps may be necessary in regard to this matter, and may forward additional recommendations to the City Council at a later date.

POLICY COMMITTEE RECOMMENDATION

On June 11, 2019, the City Council referred this item to the Health, Life Enrichment, Equity & Community Committee to create a policy that receivership should only be used when the property is a danger to the public, and as a last resort, and only upon approval of the Council.

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee adopted the following action:

M/S/C (Hahn/Kesarwani) to send the item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;

- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

Vote: All Ayes.

FISCAL IMPACTS OF RECOMMENDATION

Staff time.

CURRENT SITUATION AND ITS EFFECTS

Several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell. The City requested that Mr. Powell address these violations. Although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed. Since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance. However, many more repairs were made, bringing the total costs to over \$600,000.

The house is now certified by the City for occupancy. However, Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans.

BACKGROUND

Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family. Since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him. The conversion from a duplex to a single family home was done without permits and inspections.

Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised. The HAC believes that more fact finding will be very beneficial for the Berkeley community for three main reasons. (1) What triggered the code enforcement actions specifically against Mr. Powell, when in fact, there are many single family homes in various neighborhoods throughout the City (including the hills) that lack code compliance? (2) How did costs increase so quickly, so that the costs of repair are almost equivalent to the costs of new construction (excluding land)? (3) How can lower- and moderate-income households be protected from displacement if similar code enforcement actions are taken by the City and if these owners do not have access to financing to address these violations?

The Housing Advisory Action adopted the following motion at its March 7, 2019 meeting:

Action: M/S/C (Tregub/Wolfe) to recommend to City Council that it set in place the policies that would provide housing stability for homeowners and tenants. The City Council should set in place clear, objective, and equitable standards for conducting code enforcement actions and ensure that due process rights of affected homeowners and/or tenants are preserved. In addition, the HAC recommends that the City Council commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Powell. It should also refer this matter to the City Auditor. The fact finding should, among other things, focus on any actions taken by the Receiver in the case of Mr. Powell and any communications that the City has had with the Receiver. The HAC recognizes that additional steps may be necessary in regard to this matter, and may forward additional recommendations to the City Council at a later date.

Vote: Ayes: Abdeshahian, Johnson, Sharenko, Simon-Weisberg, Tregub, Wolfe and Wright. Noes: None. Abstain: Lord. Absent: Owens (excused) and Sargent (excused).

ENVIRONMENTAL SUSTAINABILITY

This recommendation to undertake fact finding into what happened at 1911 Harmon Street does not impact the environment directly. However, if this recommendation ultimately reduces displacement, then this could contribute to reductions in vehicle miles traveled and greenhouse gas emission reductions.

RATIONALE FOR RECOMMENDATION

This recommendation is an important complement to ongoing local, regional, and state efforts to prevent displacement due to code violations that exceed households' abilities to pay. Both renters and homeowners can be negatively impacted by these code violations. Therefore efforts to address them in a constructive and expeditious manner would be consistent with the HAC's and City of Berkeley's other ongoing priorities.

ALTERNATIVE ACTIONS CONSIDERED

The Housing Advisory Commission will be examining ways to assist lower- and moderate-income homeowners in the future whose homes have code violations, but who lack the financing to abate all the violations in a timely manner.

CITY MANAGER

See June 11, 2019 companion report.

CONTACT PERSON

Mike Uberti, Acting Commission Secretary, HHCS, (510) 981-5114



Peace and Justice Commission

ACTION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Peace and Justice Commission

Submitted by: Igor Tregub, Chairperson, Housing Advisory Commission

Subject: Recommendation to Bring Justice to Mr. Leonard Powell and to Change Certain Policies to Ensure Housing Stability for Homeowners and Tenants

RECOMMENDATION

The Peace and Justice (PJC) recommends that the Berkeley City Council take the following actions:

The Peace and Justice Commission (PJC) recommends that the City Council send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and allowing Mr. Powell and his friends and family time to make the necessary financial arrangements.

PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.
2. The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged

code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and

3. The City shall explore the use of anti-displacement funds to assist *low-income* homeowners and/or tenants residing on the premises with legal matters of *forced* relocation, expenses, and/or other needs as applicable and appropriate.
4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.
5. "Reimburse" Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds.

POLICY COMMITTEE RECOMMENDATION

On June 11, 2019, the City Council referred this item to the Health, Life Enrichment, Equity & Community Committee to create a policy that receivership should only be used when the property is a danger to the public, and as a last resort, and only upon approval of the Council.

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee adopted the following action:

- M/S/C (Hahn/Kesarwani) to send the item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:
- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
 - b. How various code enforcement issues at residential properties are currently handled;
 - c. Timeframe and mechanisms for achieving code compliance at residential properties;
 - d. Any existing assistance programs available to support property owners found to have code violations;
 - e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
 - f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

Vote: All Ayes.

FISCAL IMPACTS OF RECOMMENDATION

Staff time and up to \$68,000 if recommendation (5) above is adopted.

CURRENT SITUATION AND ITS EFFECTS

Several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell. The City requested that Mr. Powell address these violations. Although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed. Since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance. However, many more repairs were made, bringing the total costs to over \$600,000.

The house is now certified by the City for occupancy. However, Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans.

BACKGROUND

At its regularly scheduled March 4, 2019 meeting, the PJC took the following action:

Action: To authorize the Chair to draft proposed letter from the Council to the judge and adopt recommendations to council as amended

Motion by: Lippman

Seconded by: Bohn

Ayes: al-Bazian, Bohn, Chen, Gussmann, Lippman, Maran, Meola, Morizawa, Pierce, Rodriguez, Tregub

Noes: None

Abstain: None

Absent: Han, Pancoast

Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family. Since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him. The conversion from a duplex to a single family home was done without permits and inspections.

Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised. The PJC believes that more fact finding will be very beneficial for the Berkeley community for three main reasons. (1) What triggered the code enforcement actions specifically against Mr. Powell, when in fact, there are many single family homes in various neighborhoods throughout the City (including the hills) that lack code compliance? (2) How did costs increase so quickly, so that the costs of repair are almost equivalent to the costs of new construction (excluding land)? (3) How can lower- and moderate-income households be protected from displacement if similar code enforcement actions are taken by the City and if these owners do not have access to financing to address these violations? Further, the PJC feels that adoption of these recommendations would ensure that the City take steps to make Mr. Powell whole and allow him to recover possession of his property upon the abatement of any remaining code violations.

ENVIRONMENTAL SUSTAINABILITY

These recommendations do not impact the environment directly. However, if the application of these recommendations ultimately reduces displacement, then this could contribute to reductions in vehicle miles traveled and greenhouse gas emission reductions.

RATIONALE FOR RECOMMENDATION

These recommendations are an important complement to ongoing local, regional, and state efforts to prevent displacement due to code violations that exceed households' abilities to pay. They are also consistent with the Peace and Justice Commission's charter and goals.

ALTERNATIVE ACTIONS CONSIDERED

Several additional recommendations were also suggested to the PJC by community members. The PJC elected to focus only on those recommendations that it deemed to be most constructive toward the achievement of the goals enumerated above and resulting in interests that further equity and justice for Berkeley homeowners and tenants.

CITY MANAGER

See June 11, 2019 companion report.

CONTACT PERSON

Nina Goldman, Commission Secretary, 981-7000

Attachments:

1. Letter to Judge Brand

**RESOLUTION
IN SUPPORT OF BRINGING JUSTICE TO MR. LEONARD POWELL AND TO
CHANGE CERTAIN POLICIES TO ENSURE HOUSING STABILITY FOR
HOMEOWNERS AND TENANTS**

Whereas Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family; and

Whereas since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him; and

Whereas the conversion from a duplex to a single family home was done without permits and inspections; and

Whereas several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell; and

Whereas although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed; and

Whereas since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance; and

Whereas many more repairs were made than were requested, bringing the total costs to over \$600,000; and

Whereas the house is now certified by the City for occupancy; and

Whereas Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans; and

Whereas Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised; and

Whereas at its regularly scheduled March 4, 2019 meeting, the Berkeley Peace and Justice Commission (PJC) took the following action:

Action: To authorize the Chair to draft proposed letter from the Council to the judge and adopt recommendations to council as amended

Motion by: Lippman

Seconded by: Bohn

Ayes: al-Bazian, Bohn, Chen, Gussmann, Lippman, Maran, Meola, Morizawa, Pierce, Rodriguez, Tregub

Noes: None

Abstain: None

Absent: Han, Pancoast; and

; and

Whereas the Peace and Justice Commission (PJC) recommends that the City Council send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and allowing Mr. Powell and his friends and family time to make the necessary financial arrangements; and

Whereas PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.
2. The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and
3. The City shall explore the use of anti-displacement funds to assist *low-income* homeowners and/or tenants residing on the premises with legal matters of *forced* relocation, expenses, and/or other needs as applicable and appropriate.
4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.
5. "Reimburse" Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds; and

Now, Therefore, Be it Resolved that the Berkeley City Council adopt the actions recommended by the PJC.

[Month] [Day], 2019

The Honorable Jeffrey Brand
Judge, Alameda County Superior Court
24405 Amador Street, Department 511
Hayward, California 94544

Fax: (510) 690-2824
Email: dept511@alameda.courts.ca.gov

Re: **Mr. Leonard Powell - Alameda County Case No. RG1576267**
1911 Harmon Street
Berkeley, California

Dear Judge Brand:

The Berkeley City Council writes to express concern over the case of Mr. Leonard Powell, a longtime resident, homeowner and valued member of our community. We write to thank you for the fairness and justice of your recent decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and for allowing Mr. Powell and his friends and family time to make the necessary financial arrangements. We hope to see a speedy and just resolution to this longtime case.

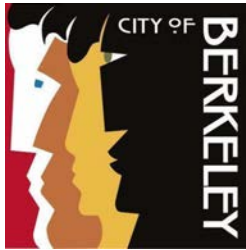
This case began when police accompanied by Berkeley Code Enforcement entered Mr. Powell's home during the investigation of an alleged drug crime by a family member. No criminal charges were levied. However, code violations originally estimated at between \$200,000 and \$300,000 have now ballooned to more than \$700,000, threatening Mr. Powell and his family with the loss of their home, loss of the inheritance, loss of their equity and security.

While we understand that the court appointed a receiver to correct the outstanding code violations, the work appears to have exceeded the original purpose and now the outstanding fines are too much for Mr. Powell to pay. Certainly Mr. Powell should not have let conditions deteriorate to the point of requiring such drastic action. However, given his age and limited income, we hope that you continue to exercise your discretion toward an outcome that is in the interest of justice.

Thank you for your time and consideration.

Sincerely,

Jesse Arreguin
Mayor, City of Berkeley
On behalf of the Berkeley City Council



Councilmember Ben Bartlett

Attachment 3

City of Berkeley, District
 2180 Milvia Street, 5th Floor
 Berkeley, CA 94704
 PHONE: 510-981-7130
 EMAIL: bbartlett@cityofberkeley.info

September 23rd, 2019

Draft Plan for Public Meeting on Receivership

Format of the Public Meeting:

1. Community Panel discussing their experience
2. Take Public Comments
3. Presentation from City Staff/ Departments
4. Councilmembers make comments
5. Take questions from Public
 - a. 5-10 questions at a time
6. City/Panel answers questions
7. Councilmembers make comments
8. A second round of questions if time permits

Goals for the meeting and what's to be presented:

- Understand how receivership works
- City of Berkeley's role in receivership
- Who ends up under receivership
 - Circumstances leading to receivership
- Opportunities/Challenges
 - Listening session: Hear from the community

Potential invites

Departments:

Planning/ Code-Enforcement Department
 City Manager/ City Attorney Office
 City Finance Department

City Staff (from Community Input):

Greg Daniel – Director of Code Enforcement
 Mark Adams – Berkeley City Inspector
 Alex Roshal – Official in Berkeley Housing Dept.
 Raquel Molina – Official in Berkeley Housing Dept.
 Shallon Allen – Official in Berkeley Finance Dept.
 Brent Nelson – Housing Dept. Inspector
 Zach Cowan – Berkeley City Attorney
 Savith Iyengar – Deputy City Attorney
 Laura McKinney – Deputy City Attorney
 Dee Williams-Ridley – Berkeley City Manager
 Farimah Brown – City Attorney

Community members (from Community Input):

Leonard Powell – Owner of the house
 Roland Powell – Mr. Powell's son
 Audrey Shields – Current Attorney for Mr. Powell
 Gerard Keena – Court-appointed receiver
 Nathaniel Marston – Attorney for Mr. Keena
 Steve Martinot – Writer, reporter on the affair, member of Friends of Adeline
 Willie Phillips – Community Organizer, Member of Friends of Adeline
 Eugene Turitz – Writer on the affair, Member of Friends of Adeline
 Mr. Willis and members of the Probate Court protest group
 Manuel Juarez – Attorney for Mr. Powell

POLICY COMMITTEE RECOMMENDATION

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee adopted the following action:

M/S/C (Hahn/Kesarwani) to send the item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;
- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

Vote: All Ayes.



Cheryl Davila
Councilmember
District 2

REVISED AGENDA MATERIAL

Meeting Date: February 11, 2020

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

Submitted by: Councilmember Cheryl Davila

Amended the title of the Resolution to replace the word "Prohibit" with "Discourage".

Edited necessary text to reflect the change in sentiment from 'banning' to 'limiting' the use of cell phones.

Included a RESOLVED Clause to explicitly prohibit the use of cell phones and technological devices during Closed Session meetings.

Corrected small grammatical errors.



Cheryl Davila
Councilmember
District 2

ACTION CALENDAR
February 11, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

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

RECOMMENDATION

Adopt a Resolution Discouraging 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 limited as much as possible during City Council meetings. The use of digital technologies outside of the City-provided equipment, upon which Agenda Items and notes can be stored, is distracting and disrespectful to the democratic process.

The use of cellphones and telecommunications should explicitly be prohibited during City Council Closed Sessions meetings, as they are confidential. All council meetings require the full and utmost attention of attendees.

The City Manager is recommended to submit an item to the Council to amend the Council Rules of Procedure and Order to include a moratorium on the use of cell phones by Councilmembers on the dais during council meetings.

POLICY COMMITTEE RECOMMENDATION

On January 13, 2020, the Agenda and Rules Committee adopted the following action: M/S/C (Arreguin/Harrison) to approve the item with a Qualified Positive Recommendation, revised to recommend that the Rules of Procedure be amended to state that the use of digital communication such as e-mail and texting is discouraged by members of the Council during regular and special meetings. In addition, the Rules will be amended to prohibit the use of any digital devices during closed session meetings except for the use of City-issued digital devices for the sole purpose of reviewing notes and agendas. Vote: All Ayes.

FISCAL IMPACTS OF RECOMMENDATION

Limiting the use of communication technologies would be a fiscally responsible decision in order to ensure greater time efficiency and productivity in City-funded meetings.

ENVIRONMENTAL SUSTAINABILITY

The public will benefit by having an undistracted Council with their undivided attention.

BACKGROUND

After serving three consecutive years on Berkeley City Council, it has become clear that 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, staff, 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. Recently, 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 may result in a lack of transparency. Additionally, if 3 or more Councilmembers are 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 from ethical democracy, and ought to be minimized.

CONTACT PERSON

Cheryl Davila
Councilmember District 2
510.981.7120
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

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

RESOLUTION OF THE COUNCIL OF THE CITY OF BERKELEY DISCOURAGING 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, and Anaheim, 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 discouraged for Berkeley City Councilmember; and

BE IT FURTHER RESOLVED that the use cell phones during Closed Session Meetings be explicitly prohibited for Berkeley City Councilmembers; and

BE IT FURTHER RESOLVED that while communications regarding Council items should be minimized, 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 council meetings.



Office of the Mayor

ACTION CALENDAR
February 11, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Amending B.M.C. Chapter 13.78 to Prohibit Additional Fees for Roommate Replacements and Lease Renewals and Terminations

RECOMMENDATION

Adopt first reading of an Ordinance to amend Berkeley Municipal Code (B.M.C.) Chapter 13.78 (Tenant Screening Fees Ordinance) to prohibit property owners from assessing additional fees on roommate replacements, lease renewals and terminations.

BACKGROUND

California Civil Code Section 1950.6 permits property owners to charge applicants a fee to purchase a consumer credit report and to validate, review, or otherwise process an application for the rent or lease of residential rental property. State law sets a cap on the amount that can be charged for a rental application screening fee at \$30.00, with increases annually based on the CPI. The fee is currently set at \$53.11. The fee cannot exceed the costs of the services needed to review the application.

In April 2011, the Berkeley City Council unanimously approved Ordinance No. 7171-N.S., to add Chapter 13.78 to the Berkeley Municipal Code relating to tenant screening fees. This was enacted to advance implementation of state law by requiring a copy of California Civil Code Section 1950.6 (the state tenant screening fee law) and information regarding the current maximum allowable fee as set by state law, be given to all applicants who pay an application fee for rental housing. The ordinance also provides a private right of action for individual tenants if an owner is found to be in violation of the ordinance.

In October 2014, B.M.C. Chapter 13.78 was amended to designate the Rent Stabilization Board to calculate the maximum allowable Tenant Screening Fee in accordance to California Civil Code Section 1950.6.

Recently, multiple tenants have contacted the Rent Stabilization Board and the Mayor's Office to express concern over property owners assessing additional fees for lease renewals, replacing roommates, or when a tenant vacates prior to the expiration of the lease term. These fees are in addition to screening fees permitted under state law.

This practice is not expressly permitted under state law and places additional financial burdens on a tenant's right to move out, and adding or replacing roommates. With rents in Berkeley and the Bay Area some of the highest in the country, these fees make it financially prohibitive for existing tenants to pay rental costs, continue existing leases or move out to seek new housing accommodations. In order to prevent displacement and keep housing affordable, the City should

update B.M.C. Chapter 13.78 to make explicit that such fees are unlawful in the City of Berkeley.

The proposed ordinance would prohibit landlords from charging these additional fees in the City of Berkeley for lease renewals, roommate replacements and vacating the lease prior to the expiration of the lease term. The ordinance would not prohibit landlords from charging screening fees on proposed roommates, or prohibit a landlord from recovering any charges, fees or damages associated with termination of tenancies that are authorized under California Civil Code Section 1951.2.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects associated with this recommendation.

FISCAL IMPACTS OF RECOMMENDATION

No additional fiscal impact. The ordinance is enforced through the civil court process.

RATIONALE FOR RECOMMENDATION

As we approach the lease renewal season, these amendments will clarify existing protections for tenants who are targeted by excessive fees.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1: Ordinance

ORDINANCE NO.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.78 TO PROHIBIT NON-REFUNDABLE APPLICATION FEES ASSOCIATED WITH EXISTING TENANCIES AND LEASE TERMINATION FEES

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

Section 1. That Berkeley Municipal Code Chapter 13.78 is hereby amended to read as follows:

Chapter 13.78
TENANT SCREENING AND LEASE FEES

Sections:

- 13.78.010 Notification of state law limitation on tenant screening fees.
- 13.78.015 Calculation and publication of maximum allowable tenant screening fee.
- 13.78.016 Prohibition of non-refundable application fees associated with existing tenancies.
- 13.78.017 Prohibition of lease termination fees.
- 13.78.018 Applicability to existing rental agreements.
- 13.78.020 Remedies – Civil penalty – Not exclusive.

13.78.010 Notification of state law limitation on tenant screening fees.

When an owner of residential rental property or ~~his or her~~ the owner's agent receives a request to rent residential property in the City of Berkeley from an applicant and ~~he or she~~ the owner charges that applicant a fee to purchase a consumer credit report and to validate, review, or otherwise process an application for the rent or lease of residential rental property, ~~he or she~~ the owner shall provide, either in the rental application or in a separate disclosure prior to receipt of the fee, a clear and conspicuous tenant screening fee rights statement and a statement of the maximum fee cap permitted under California Civil Code Section 1950.6(b). The "Tenant Screening Fee Rights Statement" shall mean the following statement or a statement substantially similar to the following statement:

"Pursuant to California law you have tenant screening fee rights, including the right to a copy of your consumer credit report if one is obtained with your screening fee, a refund of any unused portion of the fee and a receipt of the costs of the screening. For more information about your rights, please visit <https://www.codepublishing.com/CA/Berkeley/cgi/NewSmartCompile.pl?path=Berkeley13/Berkeley1378/Berkeley1378.html>~~[URL to be provided by City].~~"

13.78.015 Calculation and publication of maximum allowable tenant screening fee.

Beginning on January 1, 2015, the Rent Stabilization Board shall calculate and publish on an annual basis the maximum allowable tenant screening fee in accordance with California Civil Code Section 1950.6(b).

13.78.016 Prohibition of Non-refundable Application Fees Associated with Existing Tenancies

It is unlawful for an owner of residential rental property or the owner's agent to charge a non-refundable fee to any existing tenant for the purpose of renewing a tenancy, in whole or in part,

including any fee associated with the departure of a roommate or to request to add or replace a roommate in a pre-existing household.

Nothing in this law is intended to disallow a property owner, or the owner's agent, to charge a "tenant screening fee" as permitted under California Civil Code Section 1950.6 to any tenant, including any new or additional roommate who seeks to be added to an existing rental agreement or lease, seeking to rent or lease residential rental property.

13.78.017 Prohibition of Lease Termination Fees

It is unlawful for an owner of residential property, or the owner's agent, to charge any fee for the termination of their tenancy prior to the expiration of a lease. Nothing in this section shall prohibit a landlord from recovering any charges, fees or damages, associated with termination of tenancies that are authorized under California Civil Code Section 1951.2.

13.78.018 Applicability to Existing Rental Agreements

This chapter is applicable to all residential rental agreements regardless of any contractual language in any rental agreement or lease to the contrary. Any provision of an existing rental agreement or lease that violates the provisions of this chapter shall be null, void, and unenforceable.

13.78.019 Reserved

13.78.020 Remedies – Civil penalty – Not exclusive.

A. The remedies provided under this section are in addition to any the City or any person might have under applicable law.

B. Any owner of residential rental property shall be liable to any applicant or tenant harmed for a civil penalty of two hundred fifty dollars (\$250.00) if the owner fails to comply with any part of this Chapter.

C. Any person aggrieved by the owner's failure to comply with this Chapter may bring a civil action against the owner of the residential rental property for all appropriate relief including damages and costs which ~~she or he~~ the applicant may have incurred as a result of the owner's failure to comply with this Chapter.

D. In any action to recover damages resulting from a violation of this Chapter the prevailing plaintiff(s) shall be entitled to reasonable attorneys' fees in addition to other costs, and in addition to any liability for damages

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR
February 11, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmembers Cheryl Davila and Ben Bartlett
Subject: Installation of William Byron Rumford Plaque

RECOMMENDATION

Adopt a Resolution authorizing the installation of a plaque to honor William Byron Rumford in the public right of way.

FISCAL IMPACTS OF RECOMMENDATION

Estimated \$2,000 for costs of installation.

CURRENT SITUATION AND ITS EFFECTS

One of the City of Berkeley's Strategic Plan goals is to champion and demonstrate social and racial equity. Honoring one of our City's most important African American leaders by raising his visibility supports this goal.

More than a year ago the Berkeley City Council approved funding from the Mayor and Councilmembers' discretionary accounts to fund the plaque. Through the Together We Can Make It Happen Foundation a beautiful plaque honoring William Byron Rumford was made.

This item authorizes the placement of that plaque in the public right of way at the most favorable location for public viewing and safety on Sacramento Street near the intersection of Tyler Street walkway.

BACKGROUND

William Byron Rumford graduated from pharmacy school at the University of California, San Francisco, in 1931 and a short time later moved to Berkeley. He opened a pharmacy which quickly became a gathering place for Black people across the Bay Area, and where he often posted voting recommendations in the windows.

February 11, 2020

In 1942 Rumford was appointed by the Berkeley Mayor to the Emergency Housing Committee, which sought to find housing for wartime laborers. He also helped organize the Berkeley Interracial Committee that assisted new arrivals from the South. Additionally, Mr. Rumford actively opposed Japanese American internment and supported social justice causes.

In 1944, Governor Earl Warren appointed Rumford to the Rent Control Board, a state agency that was part of a federal wartime program to keep rents down. Building on his strong reputation and achievements, Mr. Rumford ran for and was elected to the California State Assembly in 1948.

Rumford was an impactful legislator, writing successful bills to reduce job discrimination in schools and racial bias in the California National Guard, as well as a law that made it illegal for insurance companies to refuse to cover Black motorists. Rumford's signature legislation that ultimately became the California Fair Housing Act of 1963, or the Rumford Act, that banned racial discrimination in the selling or renting of real estate.

ENVIRONMENTAL SUSTAINABILITY

No environmental implications.

RATIONALE FOR RECOMMENDATION

As the first black person to be elected to a Northern California Assembly office, Mr. Rumford made incredibly valuable contributions to our state and our community. Honoring him and raising his profile through placement of an educational plaque in the city helps inspire future generations.

CONTACT PERSON

Cheryl Davila
Councilmember District 2
510.981.7120
cdavila@cityofberkeley.info

ATTACHMENTS: Resolution: Adopt a Resolution authorizing the installation of a plaque to honor William Byron Rumford

February 11, 2020

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

AUTHORIZATION TO PLACE COMMEMORATIVE PLAQUE FOR WILLIAM BYRON RUMFORD IN PUBLIC RIGHT OF WAY

WHEREAS, The City of Berkeley strives to champion and demonstrate social and racial equity; and

WHEREAS, William Byron Rumford was a revolutionary figure from Berkeley, who served as the first Black Assembly Member elected to a Northern Californian office;

WHEREAS, William Byron Rumford authored the California Fair Housing Act of 1963 which banned racial discrimination in the selling or renting of real estate; and

WHEREAS, The City of Berkeley seeks to honor William Byron Rumford through installing descriptive and beautiful plaque; and

WHEREAS, The Council of the City of Berkeley previously authorized funds for the honorary plaque;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley previously authorized and created plaque honoring William Byron Rumford be placed in the public right of way on Sacramento Street near the intersection of Tyler Street.



Councilmember Ben Bartlett
 City of Berkeley, District 3
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 Berkeley, CA 94704
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CONSENT CALENDAR

February 11th, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett

Subject: 2-Lane Option on Adeline St. between MLK Way and Ward St.

RECOMMENDATION:

Refer to the City Manager to analyze the potential for a major redesign of the section of Adeline St. between MLK Way and Ward St., to improve the public space to increase safety for pedestrians, cyclists, and people living with disabilities, while also meeting the needs of public transit and emergency vehicles. The analysis should prioritize a 2-lane option that reduces the width of the street and creates many benefits for our community. Refer \$250,000 to the budget process to fund this important project.

BACKGROUND:

The purpose of this referral is to advance safety, economic vitality, and environmental sustainability by redesigning a key section of Adeline St. – an area with a high concentration of destinations that serve many people in our community. This referral is consistent with the City’s Vision Zero efforts as well as the City’s Pedestrian and Bicycle Plans and Climate Action Plan.

The analysis should prioritize analyzing the implementation of a “road diet” on Adeline St. between MLK Way and Ward St., and should consider many factors, including:

- Enhanced safety for all users
- Assessment of on-street parking demand and curbside activities, such as commercial deliveries, bus stops, and space for mobility services to pick up and drop off riders
- Coordination with AC Transit regarding stop locations and amenities
- Consideration of emergency vehicles
- Detailed assessment of load-bearing capacity of the BART tunnel, and resulting constraints on potential public space, landscaping, facilities, or structures on top of the tunnel
- Detailed balancing of public space programming needs and street redesign
- Detailed balancing of streetscape maintenance needs and available funding

Historically, Adeline carried streetcars that connected downtown Berkeley with urban centers and freight facilities in Oakland and Emeryville to the south and west. The area originally developed as part of a string of streetcar suburbs and was known historically as the Lorin District. Eventually, the automobile replaced the streetcar as the dominant mode of transportation and Berkeley continued to develop, then the city and the California Department of Transportation, completely reconfigured streets in the area to accommodate cars. Many of the challenges that the street currently poses, stream from this period, such as Adeline's wide 180 feet right-of-way and the sharp angle of the Ashby– Adeline intersection, which resulted from the widening of Ashby and a resulting misalignment at Adeline.¹

In 1970, several blocks of residential and commercial buildings were demolished to build the Ashby BART station and parking lots in the triangular area between Adeline, Ashby, and Grove Street [now Martin Luther King Jr. Way (MLK)]. Recently, the Ed Roberts Campus, a center for disability advocacy nonprofits, was constructed on Adeline across from the Ashby BART station, which could greatly increase pedestrian activity in the area, to and from the BART station. In more recent years, there has been the construction of bike lanes and implementation of Rectangular Rapid Flashing Beacons System, which slightly increased the safety of traffic for pedestrians, but the street is still the subject of speeding and multiple collisions.

According to a collision analysis conducted by the California Statewide Integrated Traffic Records System, Adeline Street and Alcatraz Avenue is one of the three Berkeley intersections tied for the highest number of collisions among Martin Luther King Jr Way and University Avenue, Hearst Avenue and Oxford Street, and Adeline Street and Alcatraz Avenue. Twenty-two collisions have occurred at just this intersection alone between 2001 and 2012.²

Road Diets have had success in other locations such as Oakland and San Francisco. In 2016, Oakland got a road diet on Telegraph Avenue, between 20th and 29th street. This road diet resulted in collisions dropping by 40%, and there were no pedestrian crosswalk collisions for the first time in five years. The amount of people walking and riding bikes increased; in fact, more than 60% of bikers and pedestrians reported feeling safer on the streets. Also, speeding decreased and retail sales in the area increased 9

¹ Griswold, Julia B., et al. *Old Road, New Directions Plan for Adeline Street in Berkeley, California*. Berkeley: University of California Transportation Center, 2012. PDF.
<<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.359.6459&rep=rep1&type=pdf>>

² Vogel, Cassandra. "City of Berkeley unveils updates to bicycle plan." 1 Sept. 2016. *The Daily California*. Web. 16 Oct. 2019. <<https://www.dailycal.org/2016/09/01/city-berkeley-unveils-updates-bicycle-plan/>>

percent.³ San Francisco tested a road diet on Valencia Street for a one-year period. If it was unsuccessful, the street would be returned to its original condition. The project was successful, and studies saw a 20 percent decrease in total collisions, including a 36 percent reduction in collisions involving pedestrians. While the number of bicycle collisions increased, the amount of bicyclists increased by 140%, far surpassing the total bicycle collisions.⁴ Due to the reduction in the number of lanes, people have had concerns of increased traffic with both cities, but this was not an issue. Because of the safety of the road, more people walked and rode bikes, resulting in less cars on the road. In occasions where there was an increase in traffic on other road diets, commute time increased by seconds, not minutes. In general, with both cities, the road diets delivered the results expected.

Current Situation:

South Berkeley Now! and many community members have put forth a vision for a road diet along Adeline St. Among many other benefits, advancing a road diet could create a permanent space for the Flea Market, which must be permanently preserved and strengthened. A road diet could also enable more linear park space along Adeline St.

Fiscal Impact:

This item refers \$250,000 to the budget process to enable the referred analysis.

Environmental Sustainability:

A road diet would enable a range of low-carbon transportation modes.

Rationale for Recommendation:

The 2-lane option for Adeline Street from MLK Way to Ward St., which signifies a road diet, would create a safer environment for the Adeline Corridor that would pave the way for more space on this road utilized for a variety of purposes. A road diet is defined by the “conversion of a four-lane undivided road to a three-lane undivided road made up of two through lanes and a center two-way left-turn lane.”⁵ According to the U.S.

³ Blair, Steve, Steve Goldenberg and Tom Willging |. "My Word: There are safe, successful road diets in Oakland." 7 Mar. 2018. *East Bay Times*. web. 25 Oct. 2019. <<https://www.eastbaytimes.com/2018/03/07/my-word-there-are-safe-successful-road-diets-in-oakland/>>

⁴ Browne, Karalee and Melissa Kuehne. "Road Diets Make Streets Leaner, Safer and More Efficient." 1 Feb. 2015. *Western City*. web. 25 Oct. 2019. <<http://www.westerncity.com/article/road-diets-make-streets-leaner-safer-and-more-efficient>>

⁵ “Road Diet Informational Guide - Safety: Federal Highway Administration.” U.S. Department of Transportation Federal Highway Administration, https://safety.fhwa.dot.gov/road_diets/guidance/info_guide/es.cfm.

Department of Transportation Federal Highway Administration, a road diet leads to a decrease in the number and severity of crashes, namely a 47 to 19 percent reduction in crashes⁶.

Other benefits of a road include⁷:

- Improved safety by reducing the speed differential
- Pedestrian islands that can reduce pedestrian-related crashes by up to 46 percent
- Creation of bicycle lanes, transportation drop-off zones, parking spaces, buffers, etc.
- Fewer travel lanes that make pedestrian crossings less complex and allow for wider travel lanes
- Two-way left turn lane that provides a dedicated left turn lane

The road diet would allow for more access to transportation lanes and thus, foster more opportunities for jobs, affordable housing, quality schools, safer streets, etc. However, these various benefits of the road diet can only be fully achieved with proper implementation that accounts for safety, operational, and livability impacts. Therefore, this item recommends for a road diet study on the Adeline Corridor to determine how to create the best road diet for a safer neighborhood on this street.

ALTERNATIVES CONSIDERED

Although hiring police to monitor speed on this street is another viable option, the city of Berkeley lacks the adequate funding for constant 24/7 monitoring from the patrol cars. Furthermore, patrol cars would not create pedestrian islands nor bicycle lanes, both of which would increase the safety of civilians and bicyclists by allowing more space on the road and reducing the speed differential. In contrast to the police cars, the road diet would grant more space on the road for more important and useful options, such as housing and a public plaza for the Flea Market. The road diet, in the long term, would lead to a safer and more prosperous environment on the Adeline Corridor.

CONTACT PERSON

⁶ Ibid.

⁷ "Road Diet Informational Guide - Safety: Federal Highway Administration." U.S. Department of Transportation Federal Highway Administration, https://safety.fhwa.dot.gov/road_diets/guidance/info_guide/ch2.cfm#s21.

Councilmember Ben Bartlett
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Kate Harrison
Councilmember District 4

ACTION CALENDAR
February 11, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmembers Harrison
Subject: Referral to the Budget Process: Eliminate the Permit Service Center Fund and Direct Revenues to the General Fund

RECOMMENDATION

Referral to the Fiscal Year 2021-2022 Budget Process to direct all revenues associated with the Permit Service Center to the General Fund, amount included in a line item. All City Departments currently funded through the PSC Fund should have their funding from the General Fund increased appropriately.

BACKGROUND

According to records going back to 2002, though conceivably longer, the supermajority of the Planning Department's funding is raised through the Permit Service Center (PSC) revenue. The PSC collects fees in exchange for permit services, etc. The percentage upon which the Planning Department relies on the PSC has increased in the past 5 years. Given that the PSC is the primary funding mechanism of the Department, an appearance of a conflict of interest exists whereby employees of the Planning Department could be influenced and incentivized to increase issuance of permits or change planning regulations to increase the issuance of permits to increase funding to the Department. It is in the public interest to have impartial decisions on the "physical, social, and environmental future" of Berkeley (BMC 2.61.040). Redirecting the PSC revenue to the General Fund would ensure there is no potential of straying from this goal.

FISCAL YEAR	PLANNING BUDGET	EXPENDITURES FROM GENERAL FUND	EXPENDITURES FROM PSC	PERCENTAGE OF EXPENDITURES FROM PSC
2015	14,492,842	1,604,589	10,252,358	70.7%
2016	15,881,505	1,639,989	11,685,788	73.6%
2017	16,700,110	1,561,673	12,430,176	74.4%
2018	18,917,631	1,691,487	13,684,752	72.3%
2019	21,372,934	1,975,461	15,746,105	73.7%
2020	24,506,913	2,426,051	18,080,779	73.8%
2021	25,032,888	2,475,253	18,478,599	73.8%

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The Permit Service Center Fund currently contributes to the budgets of six City Departments, though none as significant a percentage as Planning.

Fiscal Year 2018

DEPARTMENT	TOTAL BUDGET	EXPENDITURES FROM PSC	PERCENTAGE OF EXPENDITURES FROM PSC
CITY MANAGER	6,732,466	172,903	2.6%
HEALTH, HOUSING, AND COMMUNITY SERVICES	46,862,927	99,181	0.2%
HUMAN RESOURCES	3,810,616	201,800	5.3%
INFORMATION TECHNOLOGY	16,278,315	632,862	3.9%
PUBLIC WORKS	150,508,109	869,581	0.6%

The Permit Service Center Fund is a fiscally unsustainable source from which to fund full-time employees. According to the financial forecast of the FY 2018-FY 2019 Proposed Budget Book (Attachment 2), the PSC Fund is facing an annual operating shortfall. Absent an increase in revenue, the Fund balance will be almost depleted in a few years. According to this forecast, the Planning Department will conceivably need to receive a higher percentage of its funding from the General Fund within the next five years.

The Permit Service Center is a significant source of income for Berkeley. By maintaining the PSC and its revenue sources, but eliminating the separate PSC Fund and directing all revenue to the General Fund, more areas of the City will be able to utilize these significant resources. Funding the Planning Department through the General Fund minimizes conflict of interest and ensures the longevity of the Department, so that funding is not dependent on a rapidly depleting fund.

FINANCIAL IMPLICATIONS

None. This is not a change in revenue or in expenditures, but rather a redirecting of where revenue is housed. Assuming that Planning decisions are made without consideration of the PSC fund, this change should not affect City revenue in any way.

ENVIRONMENTAL IMPACTS

Consistent with Berkeley's climate and sustainability goals.

ATTACHMENTS:

1. Planning Department Financial Summary, FY 2018-2019 Proposed Budget
2. Permit Service Center Fund Financial Forecast, FY 2018-2019 Proposed Budget

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, (510)981-7140

PLANNING DEPARTMENT FINANCIAL SUMMARY

	FY 2015 Actual	FY 2016 Actual	FY 2017 Adopted	FY 2018 Proposed	FY 2019 Proposed
EXPENDITURES					
<i>By Type:</i>					
Salaries and Benefits	10,277,329	11,350,877	12,715,282	14,703,497	14,853,981
Services and Materials	3,071,261	3,119,351	1,715,505	1,288,178	1,310,255
Capital Outlay	44,542	120,343	44,602	54,500	59,500
Internal Services	166,562	1,177,094	127,171	780,816	787,773
Indirect Cost Transfer	933,148	113,840	1,175,552	1,374,451	1,380,308
	14,492,842	15,881,505	15,778,112	18,201,442	18,391,817
<i>By Division:</i>					
Office of the Director	1,663,828	1,779,119	1,829,553	1,783,395	1,806,135
Permit Service Center	1,036,022	1,113,335	1,214,817	1,499,956	1,525,357
Redevelopment	333,549	-	-	-	-
Toxics Management	1,158,528	1,150,900	1,317,252	1,351,459	1,361,566
Energy & Sustainability	849,879	974,064	1,134,367	1,310,064	1,320,684
Land Use	3,875,814	4,702,331	4,303,221	4,951,939	4,994,822
Building & Safety	5,575,222	6,161,756	5,978,902	7,304,629	7,383,253
	14,492,842	15,881,505	15,778,112	18,201,442	18,391,817
<i>By Fund:</i>					
General Fund	1,604,589	1,639,989	1,757,849	1,963,737	1,980,963
Capital Improvement Fund	16,176	16,369	18,041	20,280	20,452
State/County Grants	87,161	316,853	111,801	146,742	147,579
Successor Agency	468,079	95,403	68,104	-	-
Rental Housing Safety	994,757	963,132	1,033,428	1,107,139	1,120,452
Parks Tax	-	-	-	-	-
Zero Waste	22,549	24,152	24,308	26,639	26,925
Sewer	31,710	23,529	33,140	46,714	47,093
Clean Storm Water	127,483	119,975	161,608	141,928	142,737
Permit Service Center	10,252,358	11,685,788	11,625,238	13,683,836	13,832,703
Unified Program (CUPA)	855,420	855,315	944,795	871,313	878,821
Other Funds	32,560	141,000	-	193,114	194,092
	14,492,842	15,881,505	15,778,112	18,201,442	18,391,817
General Fund FTE					
	9.81	9.52	10.47	10.48	10.48
Total FTE					
	70.00	76.50	83.95	92.08	92.08

FINANCIAL FORECASTS: OTHER OPERATING FUNDS**PERMIT SERVICE CENTER FUND**

The Permit Service Center Fund serves as the fund for the collection of zoning fees, building fees, and plan check fees. The fees are established by the City Council through a public hearing and adoption of a resolution establishing a fee schedule.

Analysis & Revenue Projections

The fund is maintaining a positive fund balance over the next few years but is facing an annual operating shortfall. Absent an increase in revenues, the fund balance will be almost gone by the end of FY 2021 and balancing measures will be needed.

Fund Forecast

	FY 2016 Actual	FY 2017 Adopted	FY 2017 Projected	FY 2018 Proposed	FY 2019 Proposed	FY 2020 Proposed	FY 2021 Proposed
Beginning Balance	12,617,224	11,233,859	11,233,859	5,626,658	4,302,796	3,276,322	1,956,777
Revenues	14,897,395	12,479,588	12,779,588	14,367,695	14,831,446	15,276,389	15,734,681
Building Fees	10,219,246	9,179,365	9,179,365	10,511,733	10,827,989	11,152,829	11,487,414
Land Use Fees	1,595,867	1,410,384	1,410,384	1,453,000	1,496,000	1,540,880	1,587,106
Other	3,082,282	1,889,839	2,189,839	2,402,962	2,507,457	2,582,681	2,660,161
Expenditures	16,280,760	13,535,357	18,386,789	15,691,557	15,857,920	16,595,935	17,378,230
Personnel	9,320,006	10,528,873	10,219,202	12,172,410	12,300,244	13,038,259	13,820,554
Non-Personnel	6,960,754	3,006,484	8,167,587	3,519,147	3,557,676	3,557,676	3,557,676
Annual Surplus/Shortfall	-1,383,365	-1,055,769	-5,607,201	-1,323,862	-1,026,474	-1,319,545	-1,643,549
Ending Balance	11,233,859	10,178,090	5,626,658	4,302,796	3,276,322	1,956,777	313,228

Revenue Assumptions

- Revenues assume a 3% growth annually.

Expenditures Assumptions

- FY 2018 & FY 2019 Proposed Personnel includes approved cost of living increases and updated benefit rates.
- FY 2020 & FY 2021 Projected Personnel assumes no cost of living increases and 6% increases for benefit costs annually.



Commission on Disability

INFORMATION CALENDAR

February 11, 2020

To: Honorable Mayor and Members of the City Council
 From: Commission on Disability
 Submitted by: Alexis Ghenis, Chairperson, Commission on Disability
 Subject: Commission on Disability FY 2019-20 Annual Workplan

INTRODUCTION

Commissions were asked to submit an updated Workplan that aligns with the fiscal year. Motion: Singer, Second: Walsh, Ghenis: Aye, Leeder: Aye, Ramirez: Aye

CURRENT SITUATION AND ITS EFFECTS

The Commission on Disability Fiscal Year 2019-20 Annual Workplan is a Strategic Plan Priority Project, advancing our goal to champion and demonstrate social and racial equity.

Commission on Disability ▪ FY 2019-20 Annual Workplan

1. Improved Transportation and Mobility

Pursue “Navigable Cities” for all pathways used by people with disabilities (sidewalks, ramps, curb cuts, crosswalks, bike lanes, etc.), addressing topics including smooth construction and eliminating barriers (e.g. business signs, parked vehicles and scooters/bicycles). Research safety concerns, especially at intersections and other crosswalks, and propose relevant adjustments to City policies and infrastructure. Pursue policies to guarantee equal access to all transportation options and/or appropriate alternatives, including but not limited to paratransit, transportation network companies (TNCs), bicycle and scooter rentals (e.g. Ford GoBike, Lime, etc.), and taxis. Keep up-to-date on roadway/neighborhood redesigns that may affect pathways and/or parking; provide input to ensure full access for people with disabilities. Explore parking options and access, especially in city-owned or regulated garages and parking lots.

2. Public Input and Public Outreach for COD

Implement communication channels with other city Commissions; pursue “cross-membership” with other commissions, where COD members request to be appointed to other commissions with vacancies; prioritize commissions whose coverage affects people with disabilities (e.g. peace & justice, zero waste, planning, homelessness, etc.). Raise awareness of COD within the disability community and relevant stakeholders (e.g. neighborhood and business associations) and invite community members and stakeholders to attend COD meetings.

3. Disability Access in all Berkeley Policies and Processes

Ensure that City of Berkeley processes fully serve people with disabilities and that accessibility is considered in all policies. Develop templates for full City Council consent and action items to include impacts on accessibility and community members with disabilities. Improve accessibility of city websites, meeting spaces, and buildings (including directions/signage to accessible entrances).

4. Accessible and Affordable Housing

Explore the expansion and improved availability of accessible housing for people with disabilities, including going beyond baseline ADA access requirements in new construction (e.g. adding automatic door openers, units with roll-in showers and other universal access features, etc.). Also consider retrofits of existing buildings, whether single-family homes or multi-unit apartments/condominiums. Address affordability as a key factor for housing.

5. Homeless people with Disabilities

Support Berkeley's population of homeless residents with disabilities. Collaborate with local service providers to address disability-related needs, such as access to healthcare or repairs of medical equipment (wheelchairs, scooters, walkers, etc.). Improve quality and range of housing alternatives; provide input on recreational vehicle (RV) ordinances and availability of permanent or semi-permanent RV parking areas.

6. Emergency/Disaster Preparedness

Receive information and ongoing updates, participate and make recommendations as appropriate about Berkeley's BEACON and CERT programs.

7. Student Life and Disability Awareness

Improve communication and collaboration with Berkeley's many students with disabilities, providing community engagement and leadership opportunities and supports for independent living. Address all populations including students with disabilities in elementary through high school, Berkeley City College, UC Berkeley, and private entities.

ENVIRONMENTAL SUSTAINABILITY:

None.

POSSIBLE FUTURE ACTION:

None.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None.

CONTACT PERSON

Dominika Bednarska, Disability Services Specialist, Public Works, (510) 981 6418.

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

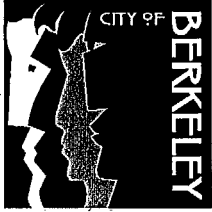
Unscheduled Workshops
<ol style="list-style-type: none"> 1. Cannabis Health Considerations 2. Vision 2050

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

	City Council Referrals to the Agenda Committee and Unfinished Business for Scheduling
1.	<p>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 (<i>Referred from the July 24, 2018 agenda. Agenda Committee to revisit in April 2019.</i>) March 18, 2019 Action: Item to be agendized at future Agenda and Rules Committee Meeting pending scheduling confirmation from City Manager.</p> <p>From: Councilmember Worthington</p> <p>Recommendation: 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>Financial Implications: Minimal</p> <p>Contact: Kriss Worthington, Councilmember, District 7, 981-7170</p>
2.	<p>36. Referral Response: Issue a Request for Information to Explore Grant Writing Services from Specialized Municipal Grant-Writing Firms, and Report Back to Council (<i>Referred from the October 15, 2019 agenda</i>)</p> <p>From: City Manager</p> <p>Contact: Henry Oyekanmi, Finance, 981-7300</p> <p><i>Note: Will be considered in FY 2021 Budget Process</i></p>
3.	<p>28. Repealing and Reenacting BMC Chapter 13.104, Wage Theft Prevention (<i>Referred from the November 12, 2019 agenda</i>)</p> <p>From: Mayor Arreguin and Councilmembers Harrison, Droste, and Hahn</p> <p>Recommendation: 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>Financial Implications: Staff time</p> <p>Contact: Jesse Arreguin, Mayor, (510) 981-7100</p>
4.	<p>47. Amending Chapter 19.32 of the Berkeley Municipal Code to Require Kitchen Exhaust Hood Ventilation in Residential and Condominium Units Prior to Execution of a Contract for Sale or Close of Escrow (<i>Reviewed by Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee</i>) (<i>Referred from the January 21, 2020 agenda</i>)</p> <p>From: Councilmember Harrison</p> <p>Recommendation:</p> <ol style="list-style-type: none"> 1. Adopt an ordinance amending Berkeley Municipal Code (BMC) 19.32 to require kitchen exhaust ventilation in residential and condominium units prior to execution of a contract for sale or close of escrow. 2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods. <p>Financial Implications: See report</p> <p>Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140</p> <p><i>Note: Referred to Agenda & Rules for future scheduling.</i></p>

CITY CLERK DEPARTMENT				
WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS BEFORE THE CITY COUNCIL				
Address	Board/ Commission	Appeal Period Ends	Determination on Appeal Submitted	Public Hearing
NOD – Notices of Decision				
1332-1334 Oxford St (alter residential parcel)	ZAB	1/29/2020		
1516 Carleton St (construct single-family dwelling units)	ZAB	1/29/2020		
1332 Alcatraz Ave (establish sixth bedroom)	ZAB	1/29/2020		
Public Hearings Scheduled				
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
Remanded to ZAB or LPC				
1155-73 Hearst Ave (develop two parcels)	ZAB			
90-Day Deadline: May 19, 2019				
Notes				

1/15/2020



Cheryl Davila
Councilmember
District 2

**RECEIVED AT
COUNCIL MEETING OF:**

JAN 13 2020

OFFICE OF THE CITY CLERK

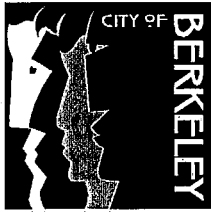
CITY OF BERKELEY

REVISED AGENDA MATERIAL

Item Description: Updating Berkeley Telecom Ordinances and BMC codes

Submitted by: Councilmember Cheryl Davila

Updated agenda report action and resolution revising recommended action and formatting.



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

Adopt a resolution directing ~~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

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 ~~Manager~~ 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.

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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

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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.

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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.

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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!

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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.

**** 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.



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.

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"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

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Councilmember, District 2
510.981.7120
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.]

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.

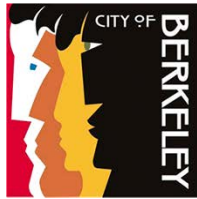
Except during construction, or essential maintenance, automobiles and trucks, of an allowed weight, shall be allowed to park at the site of the underground chamber. If maintenance is required within the underground chamber the Permittees shall place a notice on the parked car or truck, to be moved within 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.

**** 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.¹

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.²

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.³ This successful policy laid the

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

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

³ <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 2025.⁴ 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.⁵

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.⁶

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 2050.⁷

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.⁸ 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 2019.⁹ 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

⁴ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1383

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

⁶ http://ncrarecycles.org/wp-content/uploads/2018/10/SB1383_Final-May-Draft-Edible-Regs-Only.pdf

⁷ <https://ww3.arb.ca.gov/cc/cc.htm>

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

⁹ <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.¹⁰

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."¹¹

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

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

¹¹ 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

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.

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>



- 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 CO₂

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 (CO₂) 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_{2.5}).
 - 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

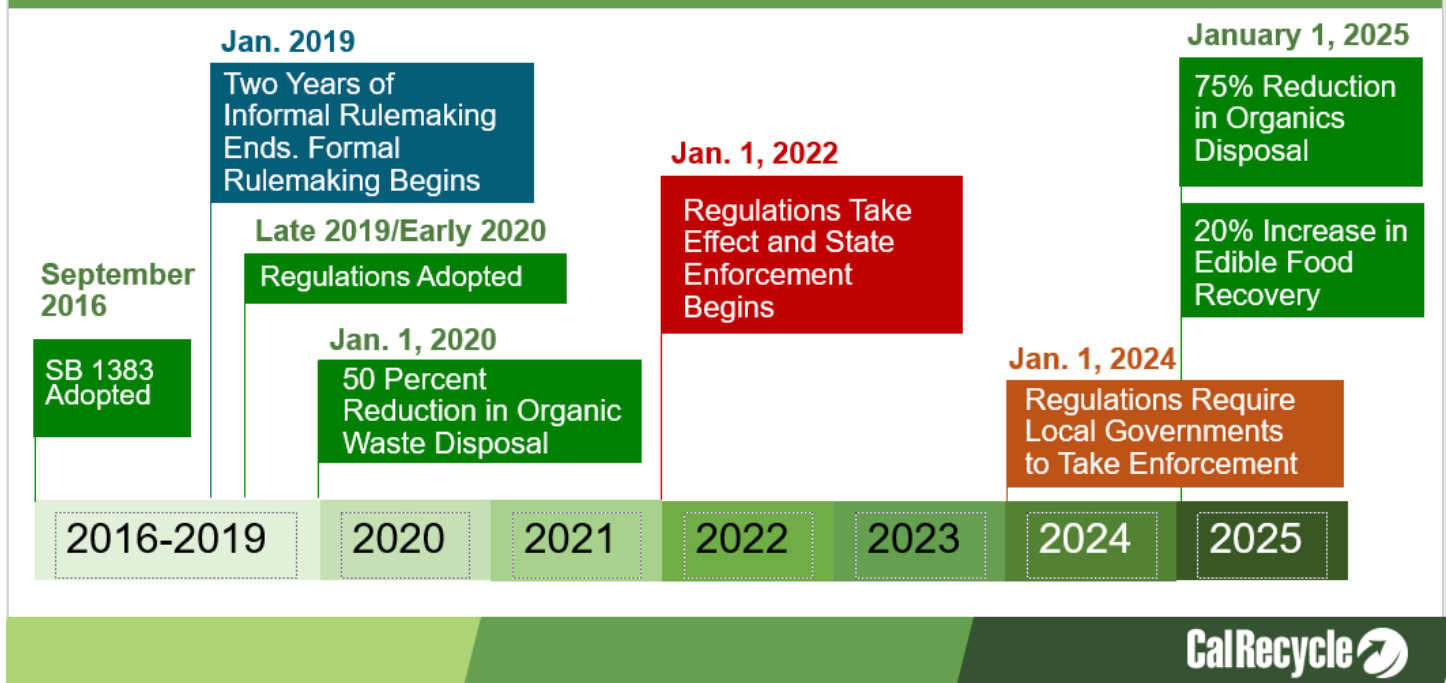
2020	50 PERCENT REDUCTION IN LANDFILLED ORGANIC WASTE (11.5 Million Tons Allowed Organic Waste Disposal)
2022	REGULATIONS TAKE EFFECT
2025	75 PERCENT REDUCTION IN LANDFILLED ORGANIC WASTE (5.7 Million Tons Allowed Organic Waste Disposal)
2025	20 PERCENT INCREASE IN RECOVERY OF CURRENTLY DISPOSED EDIBLE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

CalRecycle

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 and 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 ≥ 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



(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:

				
Organic Collection Services	Hauler Program	Contamination Minimization	Waivers	Education & Outreach
				
Edible Food Recovery Program	Recycled Organic Waste Procurement	Recycled Paper Procurement	Commercial Edible Food Generators	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 classical building icon and the CalRecycle logo. The right section, 'CALRECYCLE OVERSIGHT (BEGINS IN 2022)', is split into three vertical columns, each with an 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.

The graphic features the CalRecycle logo on the left, consisting of a green circle with a white arrow pointing up and to the right, above the text "CalRecycle" in blue and "STAY ENGAGED" in green. To the right are three green call-to-action buttons: the top one has an envelope icon and the URL <https://www2.calrecycle.ca.gov/Listservs/Subscribe/152>; the middle one has a laptop icon and the URL <https://www.calrecycle.ca.gov/organics/slcp>; the bottom one has a speech bubble icon and the text "Presenter's Contact Info". A dark green footer bar at the bottom right contains the CalRecycle logo.

(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.

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

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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 15th 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