



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

**MONDAY, FEBRUARY 24, 2020**

**2:30 P.M.**

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

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Ben Bartlett

**AGENDA**

**Roll Call**

**Public Comment**

**Review of Agendas**

1. **Approval of Minutes: February 10, 2020**
2. **Review and Approve Draft Agendas:**
  - a. 3/10/20 – 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

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

## 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.*

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

## Unscheduled Items

**11. Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12** *(Item contains supplemental material)*

**From: Fair Campaign Practices Commission**

**Referred: February 4, 2020**

**Due: June 23, 2020**

**Recommendation:** Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).

**Council Referral:** To refer a discussion of Officeholder Accounts and Council District (D-13) accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

**Financial Implications:** None

Contact: Samuel Harvey, Commission Secretary, (510) 981-6950

## Items for Future Agendas

- Discussion of items to be added to future agendas

## Adjournment – Next Meeting Monday, March 9, 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 February 20, 2020.

A handwritten signature in black ink, appearing to read '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, FEBRUARY 10, 2020  
2:30 P.M.

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

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf  
Alternate: Councilmember Ben Bartlett

**Roll Call:** 2:36 p.m. All present.

**Public Comment:** 4 speakers.

## Review of Agendas

### 1. Approval of Minutes: January 27, 2020

**Action:** M/S/C (Wengraf/Arreguin) to approve the minutes of 1/27/20.

**Vote:** All Ayes.

### 2. Review and Approve Draft Agendas:

a. 2/25/20 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Wengraf/Hahn) to approve the agenda of the 2/25/20 regular meeting with the revisions noted below.

**Vote:** All Ayes.

- *Ceremonial Items: Partition Remembrance, Raymond Nat Turner, StopWaste presentation postponed to April 14, 2020*
- *Item Formal Bid (City Manager) – Revised to add \$645,000 to Financial Implications*
- *Item 12 S.2012 (Wengraf) – Councilmembers Hahn and Harrison added as co-sponsors*
- *Item 13 Support for State Legislation (Wengraf) – Mayor Arreguin and Councilmembers Hahn and Harrison added as co-sponsors*
- *Item 20 Fair Chance Ordinance (Arreguin) – schedule for March 10, 2020*

#### Policy Committee Track Items

- *Item 21 Ohlone History (Hahn) – scheduled for 2/25 Consent Calendar*
- *Item 22 Street Lighting (Robinson) – scheduled for 2/25 Consent Calendar*

#### Order of Items on the Action Calendar

- Item 17 Issuance of Measure O Bonds*
- Item 18 Refinancing Measure FF Bonds*
- Item 19 Refinancing for the Animal Shelter*
- Item 14 a/b/c 1581 LeRoy Appeal*
- Item 15 2422 Fifth Street Appeal*
- Item 16 Surveillance Ordinance Reports*

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

- None Selected

4. **Adjournments In Memory**
  - Eva Cohen, Berkeley Resident

## Scheduling

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

## Referred Items for Review

8. **Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12** *(Item contains supplemental material)*  
**From: Fair Campaign Practices Commission**  
**Referred: February 4, 2020**  
**Due: June 23, 2020**  
**Recommendation:** Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).  
**Council Referral:** To refer a discussion of Officeholder Accounts and Council District (D-13) accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.  
**Financial Implications:** None  
Contact: Samuel Harvey, Commission Secretary, (510) 981-6950  
  
**Action:** Continued to next meeting and moved to Unscheduled Items.
9. **Discussion of Potential Revisions to the City Council Rules of Procedure and Order**  
  
**Action:** Continued to next meeting. Requested that an item be submitted for the March 24, 2020 Council agenda to allow for Council discussion and referral of potential amendments to the Rules of Procedure.

## 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.*

**10. 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

**Action:** Continued to next meeting and moved to Referred Items for Review.

## Unscheduled Items

**11. 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

## Items for Future Agendas

- **Discussion of items to be added to future agendas**

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 3:06 p.m.

I hereby certify that the forgoing is a true and correct record of the Agenda & Rules Committee meeting held on February 10, 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, March 10, 2020

6:00 PM

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702  
 TELECONFERENCE LOCATION – 2270 HOTEL CIRCLE NORTH, SAN DIEGO, CA 92108

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.*

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

## Preliminary Matters

### Roll Call:

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

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

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

## Consent Calendar

*The Council will first determine whether to move items on the agenda for “Action” or “Information” to the “Consent Calendar”, or move “Consent Calendar” items to “Action.” Items that remain on the “Consent Calendar” are voted on in one motion as a group. “Information” items are not discussed or acted upon at the Council meeting unless they are moved to “Action” or “Consent”.*

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

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

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

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

## Consent Calendar

- 1. Contract: Blaisdell’s Business Products for Office Supplies, Printing Paper, Small Equipment and Office Furniture**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a Contract with Blaisdell’s Business Products for the purchase of miscellaneous office supplies, printing paper, small equipment and office furniture by piggy-backing off of Omnia Partners Region 4 ESC Contract No. R190301. The contract term will commence on March 15, 2020 through March 14, 2023 with the option of two consecutive single-year renewals for a total not to exceed amount of \$2,700,000 over a five year term, subject to the City’s annual budget appropriation.  
**Financial Implications:** Various Funds - \$2,700,000  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 2. Contract: Resource Development Associates for Results Based Accountability Evaluation**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to approve a Contract and any amendments with Resource Development Associates (RDA) to provide an evaluation of mental health programs across the division utilizing the Results Based Accountability (RBA) framework for a total not to exceed amount of \$100,000 through June 30, 2022.  
**Financial Implications:** Mental Health Services Act Fund - \$100,000  
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

## Consent Calendar

- 3. Acquisition and Predevelopment Loan for 1740 San Pablo Avenue**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution: 1. Authorizing the execution of a \$7.1 million loan to BRIDGE Housing Corporation (BRIDGE) for costs related to acquisition and predevelopment of the proposed affordable housing development at 1740 San Pablo Avenue. 2. Authorizing the City Manager to execute all original or amended documents or agreements to effectuate this action.  
**Financial Implications:** See report  
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400
- 4. Designating City's Labor Negotiators Under Govt. Code Section 54957.6**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution establishing a standing list of representatives of the City of Berkeley designated to participate in Closed Sessions with the City Council to discuss labor negotiations with certain unions and unrepresented employees for negotiations between January 1, 2020 and December 31, 2020.  
**Financial Implications:** No fiscal impacts result from this action.  
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
- 5. Contract No. 31900172 Amendment: Cadalys, Inc. for Additional Software Application Consulting Services for Building Energy Saving Ordinance (BESO) Online Software System**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 31900172 with Cadalys, Inc. to provide additional application consulting services and support for the BESO online software system in an amount not to exceed \$20,000 for a total contract amount not to exceed \$65,000, and extending the term from June 7, 2019 through June 30, 2021.  
**Financial Implications:** Permit Service Center Fund - \$20,000  
Contact: Savita Chaudhary, Information Technology, (510) 981-6500
- 6. Contract No. 9263C Amendment: SSP Data Products Inc. for Barracuda Backup Solution with Hosted Cloud Storage**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 9263C with SSP Data Products Inc. for the City's Barracuda Backup Solution with hosted cloud storage, increasing the amount by \$65,081, for a total contract amount not to exceed \$365,773 for the term May 15, 2013 through June 30, 2021.  
**Financial Implications:** IT Cost Allocation Fund - \$65,081  
Contact: Savita Chaudhary, Information Technology, (510) 981-6500

## Consent Calendar

- 7. Donation: Ohlone Park Mural Garden**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting a donation of \$9,500 for the design of the Ohlone Park Mural Garden from Friends of Ohlone Park.  
**Financial Implications:** Revenue - \$9,500  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 8. Grant Application: National Fitness Campaign for Fitness Courts**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to: submit a grant application in the amount of \$150,000 to the National Fitness Campaign for up to five fitness courts; accept any grants; execute any resulting grant agreements and any amendments; and that Council authorize the implementation of the projects and appropriation of funding for related expenses, subject to securing the grant.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 9. Contract No. 7470 Amendment: 2M Associates for Construction Phase Environmental Services for the Berkeley Tuolumne Camp Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 7470 with 2M Associates for Construction Phase Environmental Services for the Berkeley Tuolumne Camp Project, increasing the contract by \$125,000 for a total amount not to exceed \$1,386,771.  
**Financial Implications:** Camps Fund - \$125,000  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 10. Contract No. 32000026 Amendment: APB General Engineering for the Hillview Road and Woodside Road Drainage Improvement Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 32000026 with APB General Engineering for the Hillview Road and Woodside Road Drainage Improvement Project, increasing the contract of \$240,000 by \$40,000 for a total amount not-to-exceed of \$280,000.  
**Financial Implications:** Clean Storm Water Fund - \$40,000  
Contact: Phillip Harrington, Public Works, (510) 981-6300

## Consent Calendar

11. **Purchase Order: Pape Machinery, Inc. for One (1) John Deere, Co. 644L 20 Ton Hybrid Wheel Loader**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcewell (previously NJPA) contract #032515-JDC and authorizing the City Manager to execute a purchase order for one 2019 John Deere Co. 644L 20 Ton Hybrid Wheel Loader with Pape Machinery, Inc. in an amount not to exceed \$457,000.  
**Financial Implications:** Zero Waste Fund - \$457,000  
Contact: Phillip Harrington, Public Works, (510) 981-6300

## Council Consent Items

12. **Oppose S.2059 - Justice for Victims of Sanctuary Cities Act of 2019**  
**From: Mayor Arreguin (Primary Author)**  
**Recommendation:** Adopt a Resolution opposing S.2059 – Justice for Victims of Sanctuary Cities Act of 2019. Send a copy of the Resolution to Congressmember Barbara Lee, Senators Diane Feinstein and Kamala Harris, and President Donald Trump.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
13. **Support of AB 1839 – California Green New Deal**  
**From: Mayor Arreguin (Primary Author)**  
**Recommendation:** Adopt a Resolution in support of Assembly Bill (AB) 1839, which would create the California Green New Deal Council with specified membership appointed by the Governor. The bill would require the California Green New Deal Council to submit a report to the Legislature no later than Jan 1, 2022. Send a copy of the Resolution to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and Rob Bonta.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
14. **Support AB 2037 – Hospital Closure Notification**  
**From: Mayor Arreguin (Primary Author); Councilmember Harrison (Author); Councilmember Hahn (Author); Councilmember Droste (Author)**  
**Recommendation:** Adopt a Resolution in support of AB 2037, which will require hospitals to provide a 180 day notice before closing or reducing emergency services. Send a copy of the Resolution to Assemblymember Buffy Wicks, State Senator Nancy Skinner, and Governor Gavin Newsom.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, (510) 981-7100

## Council Consent Items

15. **Allocation of U1 General Fund Revenues** *(Reviewed by the Land Use, Housing, and Economic Development Committee)*

**From: Councilmember Hahn (Primary Author)**

**Recommendation:** Accept the Housing Advisory Commission's (HAC) recommendations, as presented in the Measure U1 Budget draft projections table, for the allocation of U1 General Fund revenues with the following amendments:

1. Allocation of \$1M for small sites;
2. Addition of \$100K in FY 2022 and FY 2023 in organizational capacity building (BACLT);
3. Add \$150K in 2021-2023 for new programs under the category of development of new housing programs;
4. Allocations for staffing to implement programs; and
5. Allocate \$2.5M in 2023 for the Housing Trust Fund.

In addition, the Committee asked City staff for clarification of Health Housing and Community Services (HHCS) Department personnel line items of \$558,214 in FY 2020, with cost of living adjustment increases to \$577,751 (FY 2021), \$597,973 (FY 2022), and \$618,902 (FY 2023). A staff memo dated January 6, 2020 providing an overview of these costs will be submitted in Supplemental 1.

**Financial Implications:** See report

Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

16. **Letter in Support of Reviving Berkeley Bus Rapid Transit** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*

**From: Councilmember Robinson (Primary Author)**

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

**Financial Implications:** None

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

## Action Calendar

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

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

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

## Action Calendar – Public Hearings

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

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

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

### 17. **Electric Bike Share Program Franchise Amendment**

**From: City Manager**

**Recommendation:** Pursuant to Berkeley Municipal Code Chapter 9.60, conduct a public hearing and upon conclusion, adopt the first reading of an Ordinance granting 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

## Action Calendar – Old Business

### 18. **Disposition of City-Owned, Former Redevelopment Agency Property at 1631 Fifth Street** *(Continued from February 11, 2020) (Reviewed by the Land Use, Housing & Economic Development Committee)*

**From: City Manager**

**Recommendation:**

1. Adopt first reading of an Ordinance authorizing the sale of two City-owned, former Redevelopment Agency properties at 1631 Fifth Street and 1654 Fifth Street at market rate and deposit the proceeds in the City's Housing Trust Fund (HTF).
2. Direct the City Manager to issue a Request for Proposals to select a real estate broker to manage the sale.

(Note: At the June 11, 2019 meeting, Council approved a recommendation directing the City Manager to issue a Request for Proposals to select a qualified organization to purchase the single family home at 1654 Fifth Street to operate as housing for the homeless.)

**Financial Implications:** See report

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

## Action Calendar – New Business

### 19. Vision Zero Action Plan

**From: City Manager**

**Recommendation:** Adopt a Resolution approving the City of Berkeley Vision Zero Action Plan and directing the City Manager to form a Vision Zero Coordinating Committee; proceed with the “Vision Zero Program”, “Safer Streets for Everyone” and “Safer Streets by Everyone: Public Awareness” priority actions as described in the Plan; and work with the Vision Zero Coordinating Committee to develop a Vision Zero Traffic Enforcement policy before proceeding with the “Safer Streets by Everyone: Enforcement” actions described in the Plan.

**Financial Implications:** See report

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

### 20a. Smoke-Free Multi-Unit Housing Ordinance Policy and Enforcement Modifications

**From: Housing Advisory Commission**

**Recommendation:** The Commission recommends that City Council:

1. Make a short term referral directing the City Manager to correct current City Policies for enforcing BMC 12.70.035 so that these policies do not contradict the ordinance and BMC 12.70.035 requires that second and third complaints must refer to a violation or violations that occur after the 12.70.035(C) notice has been made.
2. Modify BMC 12.70.035 so that the requirement that signs be posted is enforced as part of the Residential Safety ordinance. Failure to post signage may result in fines, accordingly.
3. Modify BMC 12.70.035 so that repeated failure to provide new tenants with the City’s brochure shall be guilty of an infraction. It shall also be an infraction for landlords to tell new tenants, in contradiction to the law, that tobacco smoking by some tenants is permitted.
4. Obtain an analysis of the financial impacts of the recommended modifications to the BMC.

**Financial Implications:** See report

Contact: Mike Uberti, Commission Secretary, (510) 981-7400

### 20b. Companion Report: Smoke-Free Multi-Unit Housing Ordinance Policy and Enforcement Modifications

**From: City Manager**

**Recommendation:** The City Manager appreciates the Housing Advisory Commission’s efforts to strengthen the implementation of the Smoke-free Multi-Unit Housing ordinance and recommends that the proposed modifications be referred to the City Manager Office for an analysis of the financial and legal feasibility of the proposed changes.

**Financial Implications:** See report

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



## Action Calendar – New Business

21. **Utilize Substantial Portion of Cannabis Tax Proceeds to Fund Subsidies under 1000 Person Plan** *(Reviewed by the Budget & Finance Committee)*  
**From: Homeless Commission**  
**Recommendation:** That Council direct a substantial portion of the incoming cannabis tax proceeds to fund subsidies under the 1000 Person Plan.  
**Financial Implications:** See report  
Contact: Brittany Carnegie, Commission Secretary, (510) 981-5400

## Council Action Items

22. **Ronald V. Dellums Fair Chance Access to Housing Ordinance; Adding BMC Chapter 13.106** *(Reviewed by Land Use, Housing, and Economic Development Committee)*  
**From: Mayor Arreguin, and Councilmembers Davila, Harrison, and Bartlett**  
**Recommendation:**
1. Adopt a first reading of the Ronald V. Dellums Fair Chance Access to Housing Ordinance and;
  2. Direct the City Manager to take all necessary steps to implement this chapter including but not limited to developing administrative regulations in consultation with all relevant City Departments including the Rent Stabilization Board, preparing an annual implementation budget, designating hearing officers and other necessary staffing for administrative complaint, exploring the development of a compliance testing program similar to that used by the Seattle Office of Civil Rights, developing timelines and procedures for complaints, conducting outreach and education in partnership with the Alameda County Fair Chance Housing Coalition, and referring program costs to the June budget process.
- Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, (510) 981-7100

## Action Calendar – Policy Committee Track Items

- 23. Tenant Opportunity to Purchase Act, Adding BMC Chapter 13.89**  
**From: Mayor Arreguin (Primary Author)**  
**Recommendation:** 1. Adopt a first reading of an ordinance adding Berkeley Municipal Code Chapter 13.89, the Tenant Opportunity to Purchase Act (TOPA), that will take effect on final adoption with an implementation start upon completion of Administrative Regulations and funding of related program costs; and  
2. Direct the City Manager to take all necessary steps to implement this chapter including, but not limited to:  
1. Developing Administrative Regulations;  
2. Preparing an implementation strategy;  
3. Identifying resources to align databases from Finance, Planning, and the Rent Board to accurately reflect the properties that would be subject to TOPA;  
4. Determining necessary staffing for program administration and hearing officers for adjudication;  
5. Timelines for project “roll-out”;  
6. Determining appropriate amount of funding needed to support the acquisition of TOPA properties and recommending possible funding sources;  
7. Quantifying an annual program budget and referring such program costs to the June 2020 Budget process.  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 24. Referral: Update the definition of “Research and Development”**  
**From: Mayor Arreguin (Primary Author)**  
**Recommendation:** Refer to the Planning Commission to update the definition of “Research and Development.”  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 25. Placing a Measure on the November 3, 2020 Ballot to Increase the Berkeley City Council Salary**  
**From: Councilmember Davila (Primary Author)**  
**Recommendation:** Adopt a Resolution to submit a Ballot Measure for the November 3, 2020 Election, Amending the Berkeley Municipal Code Charter Article V. Section 19, to Increase Salaries for Members of the Berkeley City Council and the Mayor, Ensuring Elected Officials are Paid a Living Wage and Compensated Fairly for the Actual Time Spent Working for the City.  
**Financial Implications:** See report  
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

## Action Calendar – Policy Committee Track Items

- 26. Siting the African American Holistic Resource Center and Affordable Housing at 1890 Alcatraz**  
**From: Councilmember Bartlett (Primary Author)**  
**Recommendation:** That the City Council refers to the City Manager to study the feasibility of using the city-owned property located at 1890 Alcatraz Avenue (currently temporary Mental Health Division offices) for the African American Holistic Resource Center (AAHRC) and also developing affordable housing on the site. The City Manager should report back on the costs and implementation steps to repurpose the property for the AAHRC using the AAHRC Feasibility study as a guide, including what physical improvements would need to be made, and cost for ongoing operations by a non-profit. The City Manager and Planning Department should also conduct an analysis of potential site capacity looking at site context and yield and report on how much housing could be developed on the site under current zoning, including the AAHRC on the ground floor. Additionally, the City Manager and Planning Commission should incorporate the Community Preference policy in selecting applicants for the affordable housing units created by this project.  
**Financial Implications:** See report  
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130
- 27. Affirming the City of Berkeley’s Support for the People of Tibet**  
**From: Councilmember Robinson (Primary Author)**  
**Recommendation:** Adopt a resolution affirming support to the people of Tibet.  
**Financial Implications:** None  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170
- 28. Allocating Car Fees for Street Improvements**  
**From: Councilmember Robinson (Primary Author)**  
**Recommendation:** Double the annual repaving budget by adopting a resolution to allocate either 50 percent of the revenues or revenues upwards of \$6 million collected annually from the Vehicle In-Lieu Tax towards the repaving budget in the interests of street maintenance, sustainability, and bicycle and pedestrian goals.  
**Financial Implications:** See report  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

## Information Reports

- 29. Berkeley Economic Dashboards and Demographic Profile Update**  
**From: City Manager**  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 30. FY 2019 Fourth Quarter Investment Report: Ended June 30, 2019**  
**From: City Manager**  
Contact: Henry Oyekanmi, Finance, (510) 981-7300

## Information Reports

31. **FY 2020 First Quarter Investment Report: Ended September 30, 2019**  
**From: City Manager**  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
32. **Audit Status Report: Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress towards the Year 2020 Zero Waste Goal**  
**From: City Manager**  
Contact: Phillip Harrington, Public Works, (510) 981-6300
33. **Audit Status Report: Unified Vision of Zero Waste Activities Will Help Align Service Levels with Billing and Ensure Customer Equity**  
**From: City Manager**  
Contact: Phillip Harrington, Public Works, (510) 981-6300
34. **Proposed Navigable Cities Framework for Ensuring Access and Freedom-of-Movement for People with Disabilities in Berkeley**  
**From: Commission on Disability**  
Contact: Dominika Bednarska, Commission Secretary, (510) 981-6300
35. **FY 2019-2020 Peace and Justice Commission Work Plan**  
**From: Peace and Justice Commission**  
Contact: Nina Goldman, Commission Secretary, (510) 981-7000

## Public Comment – Items Not Listed on the Agenda

### Adjournment

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

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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>.

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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

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Office of the Mayor

CONSENT CALENDAR

March 10, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Oppose S.2059 - Justice for Victims of Sanctuary Cities Act of 2019

RECOMMENDATION

Adopt a Resolution opposing S.2059 – Justice for Victims of Sanctuary Cities Act of 2019. Send a copy of the Resolution to Congressman Barbara Lee, Senators Diane Feinstein and Kamala Harris, and President Donald Trump.

BACKGROUND

Berkeley has been a Sanctuary City since 1971 when it passed a resolution to protect sailors resisting the Vietnam War. Over the decades, the Sanctuary City Resolution has been updated to protect immigrant communities. In 1986, it was revised in response to a growing refugee population from civil unrest in Central America. In 2007, the Council reaffirmed our status as a city of refuge after ICE raids took place in the region. After the 2016 election, the Resolution was updated after increasing rhetoric and federal actions against the immigrant community. More recently, Berkeley became the first city to adopt a New Border Vision Resolution, calling on Congress to implement a new framework that expands public safety and protects human rights in border communities.

In the 2020 State of the Union Address, President Donald Trump spent nearly 8 minutes spreading lies and misinformation about immigration, safety, and sanctuary cities. Below are some of the claims made in the speech, accompanied with fact checks.

**Claim:** “Tragically, there are many cities in America where radical politicians have chosen to provide sanctuary for these criminal illegal aliens”.

**Fact:** Sanctuary cities help protect people from criminal elements. Many crimes against people will go unreported if they fear that their immigration status will lead to deportation. If local law enforcement ends up doing the work of federal immigration enforcement, the immigrant community is less likely to trust and interact with local law officials, undermining public safety. Public safety is not a radical idea, and it is the responsibility of a city to ensure the protection and safety of all its residents.

**Claim:** “In Sanctuary Cities, local officials order police to release dangerous criminal aliens to prey upon the public, instead of handing them over to ICE to be safely removed”.

**Fact:** No such order to release dangerous criminals exist, and is merely sharp rhetoric designed to ignite the President’s base. Berkeley, along with other sanctuary cities, do not interfere with the criminal justice process. The reality is Berkeley’s sanctuary city policy is as follows in relation to cooperation with ICE:

*Except in limited circumstances where ICE agents have a valid judicial warrant, after review and consultation with the Department Director and City Attorney, city departments, agencies, commissions, officers or employees are **not required to**:*

- *Cooperate with ICE agents*
- *Answer ICE agents’ questions*
- *Comply with an ICE Administrative Warrant*
- *Immediately comply with a subpoena served by ICE agents*
- *Speak with ICE agents at all*

*City officers or employees shall not consent to a warrantless search by ICE agents of a non-public area or non-public city records.*

**Claim:** “The State of California passed an outrageous law declaring their whole state to be a stankuary [sic] for criminal illegal immigrants – a very terrible sanctuary with catastrophic results”.

**Fact:** There are less crimes in jurisdictions that provide sanctuary compared to other jurisdictions. A 2017 report by the Center for American Progress states that “crime is statistically significantly lower in sanctuary counties compared to non-sanctuary counties. Moreover, economies are stronger in sanctuary counties—from higher median household income, less poverty, and less reliance on public assistance to higher labor force participation, higher employment-to-population ratios, and lower unemployment.” Specifically, on average there are 35.5 fewer crimes committed per 10,000 people in sanctuary jurisdictions, the average annual income is \$4,353 higher, the poverty rate is 2.3% lower, and unemployment is 1.1% lower. Multiple studies have found similar results, using government data.

One of the major takeaways from this segment of the State of the Union Address was his call for the immediate passage of S.2059, the Justice for Victims of Sanctuary Cities Act of 2019. Introduced by Senator Thom Tillis (R-NC), the bill would allow people to sue sanctuary city jurisdictions if they or a family member become the victim of a crime committed by someone who is undocumented. This bill does not give someone the right to sue a jurisdiction that is not a sanctuary city, even though someone is more likely to be a victim of a crime in a place that is not a sanctuary city.

In 2015, the City Council expressed opposition to H.R. 3009, which would have blocked certain federal funds to jurisdictions that are sanctuary cities. While it was approved by the House, it was not brought up in the Senate. Similarly, S.2059 aims to financially target sanctuary cities by greenlighting the ability to commence frivolous lawsuits against such jurisdictions. Bills such as these, which are designed to discredit and delegitimize sanctuary cities, along with justifications through anecdotal or cherry picked



examples, inversely end up having the opposite effect of its advertised intention. Ultimately, S.2059 is a false solution to a problem that does not exist.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY

Not applicable

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

- 1: Resolution
- 2: Text of S.2059

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

OPPOSING S.2059 – JUSTICE FOR VICTIMS OF SANCTUARY CITIES ACT OF 2019

WHEREAS, the City of Berkeley has long espoused our commitment to welcoming immigrants, refugees, and those in exile; and

WHEREAS, the City of Berkeley declared itself to be a City of Refuge in 1971 to protect sailors that were resisting the Vietnam War (Resolution 44,784-N.S.), reaffirmed that decision in 1986 relating to Central American refugees (Resolution 52,526-N.S.), in 2007 after ICE raids took place in Bay Area communities (Resolution 63,711-N.S.), and again in 2016 due to increased hate crimes after the election of Donald Trump, and xenophobic rhetoric used during the campaign (Resolution 67,763-N.S.); and

WHEREAS, in January 2020, the City Council adopted a resolution in support of a New Border Vision Resolution, calling on Congress to implement a new framework that expands public safety and protects human rights in border communities (Resolution 69,280-N.S.); and

WHEREAS, multiple studies have proven that jurisdictions that provide sanctuaries are safer and economically more prosperous compared to other jurisdictions. Specifically, a 2017 report by the Center for American Progress shows that on average there are 35.5 fewer crimes committed per 10,000 people in sanctuary jurisdictions, the average annual income is \$4,353 higher, the poverty rate is 2.3% lower, and unemployment is 1.1% lower; and

WHEREAS, in the interest of promoting public safety, it is important to create an environment in which people feel comfortable interacting with local law enforcement. If local law enforcement ends up doing the work of federal immigration enforcement, the immigrant community is less likely to trust and interact with local law officials, undermining public safety; and

WHEREAS, Berkeley's sanctuary city policy aims to provide that trust, by not interacting with ICE officials without interfering with the criminal justice process; and

WHEREAS, on February 4, 2020, President Donald Trump announced in his State of the Union Address his support and request for the immediate approval of S.2059 – the Justice for Victims of Sanctuary Cities At of 2019; and

WHEREAS, introduced by Senator Thom Tillis (R-NC), this bill would allow people to sue sanctuary city jurisdictions if they or a family member become the victim of a crime committed by someone who is undocumented; and

WHEREAS, S.2059 fails to acknowledge the facts and statistics around Sanctuary Cities, and if implemented could result in increased crimes and reduce the likelihood of such crimes being reported.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby opposes S.2059 – the Justice for Victims of Sanctuary Cities Act of 2019.

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

116TH CONGRESS  
1ST SESSION

# S. 2059

To provide a civil remedy for individuals harmed by sanctuary jurisdiction policies, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 9, 2019

Mr. TILLIS (for himself, Mr. GRAHAM, Mr. GRASSLEY, Mrs. BLACKBURN, Ms. ERNST, and Mr. CRUZ) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide a civil remedy for individuals harmed by sanctuary jurisdiction policies, 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 “Justice for Victims  
5 of Sanctuary Cities Act of 2019”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) SANCTUARY JURISDICTION.—

9 (A) IN GENERAL.—Except as provided in  
10 subparagraph (B), the term “sanctuary juris-

1           diction” means any State or political subdivi-  
2           sion of a State that has in effect a statute, ordi-  
3           nance, policy, or practice that prohibits or re-  
4           stricts any government entity or official from—

5                   (i) sending, receiving, maintaining, or  
6                   exchanging with any Federal, State, or  
7                   local government entity information re-  
8                   garding the citizenship or immigration sta-  
9                   tus of any alien; or

10                   (ii) complying with a request lawfully  
11                   made by the Department of Homeland Se-  
12                   curity under section 236 or 287 of the Im-  
13                   migration and Nationality Act (8 U.S.C.  
14                   1226 and 1357) to comply with a detainer  
15                   for, or notify about the release of, an alien.

16           (B) EXCEPTION.—A State or political sub-  
17           division of a State shall not be deemed a sanc-  
18           tuary jurisdiction based solely on having a pol-  
19           icy whereby its officials will not share informa-  
20           tion regarding, or comply with a request made  
21           by the Department of Homeland Security under  
22           section 236 or 287 of the Immigration and Na-  
23           tionality Act (8 U.S.C. 1226 and 1357) to com-  
24           ply with a detainer regarding, an alien who

1 comes forward as a victim or a witness to a  
2 criminal offense.

3 (2) SANCTUARY POLICY.—The term “sanctuary  
4 policy” means a statute, ordinance, policy, or prac-  
5 tice referred to in paragraph (1)(A).

6 (3) SANCTUARY-RELATED CIVIL ACTION.—The  
7 term “sanctuary-related civil action” means a civil  
8 action brought against a sanctuary jurisdiction by  
9 an individual (or the estate, survivors, or heirs of an  
10 individual) who—

11 (A) is injured or harmed by an alien who  
12 benefitted from a sanctuary policy of the sanc-  
13 tuary jurisdiction; and

14 (B) would not have been so injured or  
15 harmed but for the alien receiving the benefit of  
16 such sanctuary policy.

17 **SEC. 3. CIVIL ACTION FOR HARM BY AN ALIEN THAT BENE-**  
18 **FITTED FROM A SANCTUARY POLICY.**

19 (a) PRIVATE RIGHT OF ACTION.—

20 (1) CAUSE OF ACTION.—Any individual, or a  
21 spouse, parent, or child of such individual (if the in-  
22 dividual is deceased or permanently incapacitated),  
23 who is the victim of a murder, rape, or any felony  
24 (as defined by the State) for which an alien (as de-  
25 fined in section 101(a)(3) of the Immigration and

1 Nationality Act (8 U.S.C. 1101(a)(3))) has been ar-  
2 rested, convicted, or sentenced to a term of impris-  
3 onment of at least 1 year, may bring an action for  
4 compensatory damages against a State or a political  
5 subdivision of a State in the appropriate Federal or  
6 State court if the State or political subdivision failed  
7 to comply with—

8 (A) a request with respect to an alien that  
9 was lawfully made by the Department of Home-  
10 land Security under section 236 or 287 of the  
11 Immigration and Nationality Act (8 U.S.C.  
12 1226 and 1357); and

13 (B) a detainer for, or notify about the re-  
14 lease of, the alien.

15 (2) STATUTE OF LIMITATIONS.—An action  
16 brought under this subsection may not be brought  
17 later than 10 years after the occurrence of the  
18 crime, or death of a person as a result of such  
19 crime, whichever occurs later.

20 (3) ATTORNEY’S FEE AND OTHER COSTS.—In  
21 any action or proceeding under this subsection the  
22 court shall allow a prevailing plaintiff a reasonable  
23 attorney’s fee as part of the costs, and include ex-  
24 pert fees as part of the attorney’s fee.

25 (b) WAIVER OF IMMUNITY.—

1           (1) IN GENERAL.—Any State or political sub-  
2           division of a State that accepts a grant described in  
3           paragraph (2) from the Federal Government shall  
4           agree, as a condition of receiving such grant, to  
5           waive any immunity of such State or political sub-  
6           division relating to a sanctuary-related civil action.

7           (2) GRANTS DESCRIBED.—The grants described  
8           in this paragraph are—

9                   (A) a grant for public works and economic  
10                  development under section 201(a) of the Public  
11                  Works and Economic Development Act of 1965  
12                  (42 U.S.C. 3141(a));

13                  (B) a grant for planning and administra-  
14                  tive expenses under section 203(a) of such Act  
15                  (42 U.S.C. 3143(a));

16                  (C) a supplemental grant under section  
17                  205(b) of such Act (42 U.S.C. 3145(b));

18                  (D) a grant for training, research, and  
19                  technical assistance under section 207(a) of  
20                  such Act (42 U.S.C. 3147(a)); and

21                  (E) except as provided in paragraph (3), a  
22                  community development block grant made pur-  
23                  suant to title I of the Housing and Community  
24                  Development Act of 1974 (42 U.S.C. 5301 et  
25                  seq.).



1           (3) EXCEPTION.—Grants described in para-  
2           graph (2)(E) shall not include any disaster relief  
3           grants to address the damage in an area for which  
4           the President has declared a disaster under title IV  
5           of the Robert T. Stafford Disaster Relief and Emer-  
6           gency Assistance Act (42 U.S.C. 5170 et seq.).

7 **SEC. 4. ENSURING COOPERATION BETWEEN FEDERAL AND**  
8                                   **LOCAL LAW ENFORCEMENT OFFICERS TO**  
9                                   **SAFEGUARD OUR COMMUNITIES.**

10          (a) AUTHORITY TO COOPERATE WITH FEDERAL OF-  
11          FICIALS.—A State, a political subdivision of a State, or  
12          an officer, employee, or agent of such State or political  
13          subdivision that complies with a detainer issued by the De-  
14          partment of Homeland Security under section 236 or 287  
15          of the Immigration and Nationality Act (8 U.S.C. 1226  
16          and 1357)—

17               (1) shall be deemed to be acting as an agent of  
18               the Department of Homeland Security; and

19               (2) shall comply with section 287(d) of the Im-  
20               migration and Nationality Act (8 U.S.C. 1357(d))  
21               and section 287.5(d) of title 8, Code of Federal Reg-  
22               ulations.

23          (b) LEGAL PROCEEDINGS.—In any legal proceeding  
24          brought against a State, a political subdivision of State,  
25          or an officer, employee, or agent of such State or political

1 subdivision challenging the legality of the seizure or deten-  
2 tion of an individual pursuant to a detainer issued by the  
3 Department of Homeland Security under section 236 or  
4 287 of the Immigration and Nationality Act (8 U.S.C.  
5 1226 and 1357)—

6 (1) the State or political subdivision of a State  
7 shall not be liable for any action taken in accordance  
8 with the detainer; and

9 (2) if the actions of the officer, employee, or  
10 agent of the State or political subdivision were taken  
11 in accordance with the detainer—

12 (A) the officer, employee, or agent shall be  
13 deemed—

14 (i) to be an employee of the Federal  
15 Government and an investigative or law  
16 enforcement officer; and

17 (ii) to have been acting within the  
18 scope of his or her employment under sec-  
19 tion 1346(b) of title 28, United States  
20 Code, and chapter 171 of such title;

21 (B) section 1346(b) of title 28, United  
22 States Code, shall provide the exclusive remedy  
23 for the plaintiff; and

24 (C) the United States shall be substituted  
25 as defendant in the proceeding.

8

1       (c) RULE OF CONSTRUCTION.—Nothing in this sec-  
2 tion may be construed to provide immunity to any person  
3 who knowingly violates the civil or constitutional rights of  
4 an individual.

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Office of the Mayor

CONSENT CALENDAR  
March 10, 2020

To: Honorable Members of the City Council  
From: Mayor Jesse Arreguín  
Subject: Support of AB 1839 – California Green New Deal

RECOMMENDATION

Adopt a Resolution in support of Assembly Bill (AB) 1839, which would create the California Green New Deal Council with specified membership appointed by the Governor. The bill would require the California Green New Deal Council to submit a report to the Legislature no later than Jan 1, 2022.

Send a copy of the Resolution to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and Rob Bonta.

BACKGROUND

A report published in October from the UN Intergovernmental Panel on Climate Change warns that there is a twelve-year window for global warming to be kept to a maximum threshold of 1.5C increase above pre-industrial levels. This report emphasizes the scale and speed of transformation required at all levels of the economy and society to prevent cataclysmic climate change. “The report finds that limiting global warming to 1.5°C would require “rapid and far-reaching” transitions in land, energy, industry, buildings, transport, and cities. Global net human-caused emissions of carbon dioxide (CO2) would need to fall by about 45 percent from 2010 levels by 2030, reaching ‘net zero’ around 2050. This means that any remaining emissions would need to be balanced by removing CO2 from the air.”<sup>1</sup>

AB 1839, Introduced by Assembly Members Bonta, Chiu, Reyes and Weber, would create the California Green New Deal Council with a specified membership appointed by the governor. The Council membership will include the Secretaries of the Natural Resources Agency, Environmental Protection, Transportation, Health and Human Services, Business, Consumer Services and Housing, and Labor and Workforce Development, as well as the Director of the Office of Planning and Research.

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

AB 1839 directs this body of state leaders to submit a report by January 1, 2022 that makes recommendations on appropriate policies to achieve the following goals:

- a) Enacting measures to ensure a just transition in California for workers impacted by the phasing out of fossil fuels.
- b) Ensuring that the jobs created or maintained by climate policy are good, family-supporting jobs with career ladders, benefits and protections for workers' rights to organize, and that pipelines into these jobs are created for workers from historically disadvantaged communities, in accord with the recommendations of the climate labor report mandated in Chapter 135 of the Statutes of 2017 (Assembly Bill 398).
- c) Significantly increasing measures to assist those impacted by the effects of climate change, including, but not limited to, floods, fires, heatwaves, sea level rise, droughts, and disease.
- d) Significantly reducing disparate standard of living indices for historically impacted communities of color, including income inequality, educational achievement gaps, health care access gaps, and environmental burdens by 2030.
- e) Increasing affordable housing and public transportation by double their current availability by 2030, maximizing safe, complete streets for walking and biking, and replacing remaining gas vehicles with electric vehicles.
- f) Accelerating reductions of air pollution to avoid the most catastrophic impacts of climate change.

AB 1839 also makes important findings and declarations on the rights of all residents in the state in line with human rights, principles of environmental justice, and a just transition.

Berkeley has a strong history of leadership on climate change. Voters overwhelmingly approved Measure G in 2006, and the Berkeley Climate Action Plan was adopted in 2009 - setting the goal of reducing greenhouse gas emissions by 33% of 2000 levels by 2020, and 80% by 2050. Building on this plan, the award-winning Resiliency Strategy was developed in 2016, in part to ensure that Berkeley is "resilient and prepared for the impacts of global warming." In June 2018, the Berkeley City Council unanimously declared a climate emergency.

#### FINANCIAL IMPLICATIONS

None.

#### ENVIRONMENTAL SUSTAINABILITY

Supporting a plan for a Green New Deal will further the goals set forward in the Climate Action Plan and Resiliency Strategy by developing state policies and funding opportunities to support our city, region, state and nation's efforts responding to climate change impacts and actualizing a more resilient city.

#### CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

#### Attachments:

- 1: Resolution
- 2: Text of AB 1839

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

## IN SUPPORT OF AB 1839 CALIFORNIA GREEN NEW DEAL

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

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

WHEREAS, in 2017 the global surface temperature was over 1°C warmer than the pre-industrial base period<sup>2</sup>;and

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

WHEREAS, according to the latest climate projections, humanity is on track to warm the Earth a sustained average of 1.5°C above pre-industrial levels as soon as 2026<sup>3</sup>;and

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

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

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

WHEREAS, failure to uphold the Paris goal of keeping warming "well below 2°C" would lead to the disappearance of island nations and "certain death" for Africa, Chief Negotiator for the G77 Lumumba Stanislaus Di-Aping warned in 2009;and

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<sup>2</sup> Hansen, James, et al., Global Temperature in 2017 (18 January 2018).

<sup>3</sup> See, inter alia, Henley, B. J., and A. D. King (2017), Trajectories toward the 1.5°C Paris target: Modulation by the Interdecadal Pacific Oscillation, *Geophysical Research Letters*, 44, 4256–4262, doi: 10.1002/2017GL073480; Jacob, D., Kotova, L., Teichmann, C., Sobolowski, S. P., Vautard, R., Donnelly, C., Koutroulis, A. G., Grillakis, M. G., Tsanis, I. K., Damm, A., Saka Evi, A. and van Vliet, M. T. (2018), Climate Impacts in Europe Under +1.5°C Global Warming. *Earth's Future*, 6: 264-285. doi:10.1002/2017EF000710

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

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

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

WHEREAS, according to the National Centers for Environmental Information (NCEI), in 2017, "the U.S. was impacted by 16 separate billion-dollar disaster events tying 2011 for the record number of billion-dollar disasters for an entire calendar year," with a cumulative cost of \$309.5 billion, shattering the previous U.S. annual record cost of \$219.2 billion in 2005 due to Hurricanes Dennis, Katrina, Rita and Wilma;<sup>4</sup>and

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

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

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

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

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

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

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<sup>4</sup> In fact, NCEI notes, "2017 arguably has more events than 2011 given that [its] analysis traditionally counts all U.S. billion-dollar wildfires, as regional-scale, seasonal events, not as multiple isolated events." NOAA NCEI U.S. Billion-Dollar Weather and Climate Disasters (2018).



WHEREAS, Assembly Bill 1839 introduced by Assembly Members Bonta, Chiu, Reyes and Weber would create the California Green New Deal Council with specified membership appointed by the Governor; and

WHEREAS, The bill would require the California Green New Deal Council to submit a specified report to the Legislature no later than Jan 1. 2022

WHEREAS, Assembly Bill 1839 reflects Berkeley's climate and environmental commitments, as well as efforts to address affordable housing and homelessness; and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports Assembly Bill 1839.

BE IT FURTHER RESOLVED that copies of this Resolution be sent to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and Rob Bonta;





Office of the Mayor

CONSENT CALENDAR  
March 10, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín, Councilmembers Kate Harrison, Sophie Hahn, and Lori Droste

Subject: Support AB 2037 – Hospital Closure Notification

RECOMMENDATION

Adopt a Resolution in support of AB 2037, which will require hospitals to provide a 180 day notice before closing or reducing emergency services. Send a copy of the Resolution to Assemblymember Buffy Wicks, State Senator Nancy Skinner, and Governor Gavin Newsom.

BACKGROUND

California has seen a spike in the number of emergency department visits, despite a lack of growth in the creation of new departments. Between 2006 and 2016, the number of emergency department visits increased from 10.1 million annually to 14.6 million, an increase of 44.6%. During the same time period, the number of emergency departments in the state shrank from 337 to 334. However, the number of treatment stations in these departments has grown by 30%, showing that existing hospitals have been strained to take in significantly more patients.

Hospital closures create increased risks to the health and safety of residents of impacted areas, and place significant burdens on neighboring hospitals. When Doctors Medical Center in San Pablo closed in 2015, the number of ambulance transports in West Contra Costa County that went to the Kaiser Richmond Emergency Department increased from 31% to 52%. Berkeley's Alta Bates saw a 123% increase in ambulance transports from West Contra Costa between 2014 and 2016. It also saw a 39% increase in total patients from that area between 2013 and 2016. With Sutter Health announcing their intentions to close Alta Bates hospital by 2030, the impacts along the I-80 corridor could cripple the region's healthcare infrastructure.

Under current law, hospitals that provide emergency medical services must provide at least 90 days' notice prior to an elimination or reduction of emergency services and 30 days for closing of facilities and eliminating or relocating supplemental services (defined as an organized inpatient or outpatient service which is not required to be provided by law or regulation). The brevity of this timeline can prove dangerous to residents in the service areas of hospitals that are closing or reducing services, with neighboring hospitals unable to gather the resources needed to handle an inevitable uptick in patients.

AB 2037, introduced by Assemblymember Buffy Wicks, would increase the notice to 180 days for elimination of reduction of emergency services and closing of facilities, and 90 days eliminating or relocating supplemental services. Additional notices and postings would also be required, including written notice to the city council of the city where the health facility is located, notices posted on the health facility's website, the entrance of every community clinic within the affected county in which the health facility is located that grants voluntary permission for posting, and publications in local newspapers.

The Berkeley City Council has taken action in the past on similar bills. In May 2018, Council approved a letter in support of AB 2874, which also would have placed a 180 day notice on closures, in addition to getting written consent from the State Attorney General before closing. That bill was unable to pass the Assembly. In April 2017, Council adopted Resolution No. 67,930–N.S., in support of SB 687, which would have given the Attorney General the authority to oversee and consent to the sale/closure of non-profit hospitals. While that bill was approved by the state legislature, it was vetoed by then-Governor Jerry Brown.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY

Not applicable

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: Resolution
- 2: Text of AB 2037

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

IN SUPPORT OF AB 2037

WHEREAS, California has seen a 44.6% spike in patients visiting emergency departments between 2006 and 2016, while at the same time the number of emergency departments in the state has decreased from 337 to 334; and

WHEREAS, hospital closures create increased risks to the health and safety of residents of impacted areas, and place significant burdens on neighboring hospitals; and

WHEREAS, the closure of Doctors Medical Center in San Pablo in 2015 had a ripple effect on neighboring hospitals, with Kaiser's Richmond Medical Center taking on an additional 21% of ambulance transports in West Contra Costa County and Alta Bates seeing a 123% increase in ambulance transports and 39% increase in total patients from that area; and

WHEREAS, Sutter Health has announced their intentions to close Alta Bates hospital by 2030, which could significantly impact health infrastructure along the I-80 corridor; and

WHEREAS, under current law, hospitals that provide emergency medical services must provide at least 90 days' notice prior to an elimination or reduction of emergency services and 30 days for closing of facilities and eliminating or relocating supplemental services; and

WHEREAS, such short notices can prove dangerous to residents in the service areas of hospitals that are closing or reducing services, with neighboring hospitals unable to gather the resources needed to handle an inevitable uptick in patients; and

WHEREAS, AB 2037, introduced by Assemblymember Buffy Wicks, would increase the notice to 180 days for elimination or reduction of emergency services and closing of facilities, and 90 days eliminating or relocating supplemental services; and

WHEREAS, the bill would also require additional notifications and postings, including to the city council of the city the healthcare facility is located, the health facility's website, the entrance of every community clinic within the affected county that grants voluntary permission for posting, and local newspapers; and

WHEREAS, the Berkeley City Council has expressed support for similar bills in the past that ultimately did not become law, including AB 2874, which also would have placed a 180 day notice on closures, in addition to getting written consent from the State Attorney General before closing, and SB 687, which would have given the Attorney General the authority to oversee and consent to the sale/closure of non-profit hospitals.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports AB 2037.

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



Vice Mayor Sophie Hahn  
Councilmember District 5

CONSENT CALENDAR

March 10, 2020

To: Honorable Members of the City Council  
From: Vice Mayor & Councilmember Sophie Hahn on behalf of the  
Land Use, Housing & Economic Development Committee  
Subject: Allocation of U1 General Fund Revenues

RECOMMENDATION

Accept the Housing Advisory Commission's (HAC) recommendations, as presented in the Measure U1 Budget draft projections table, for the allocation of U1 General Fund revenues with the following amendments:

1. Allocation of \$1M for small sites;
2. Addition of \$100K in FY 2022 and FY 2023 in organizational capacity building (BACLT);
3. Add \$150K in 2021-2023 for new programs under the category of development of new housing programs;
4. Allocations for staffing to implement programs; and
5. Allocate \$2.5M in 2023 for the Housing Trust Fund.

In addition, the Committee asked City staff for clarification of Health Housing and Community Services (HHCS) Department personnel line items of \$558,214 in FY 2020, with cost of living adjustment increases to \$577,751 (FY 2021), \$597,973 (FY 2022), and \$618,902 (FY 2023). A staff memo dated January 6, 2020 providing an overview of these costs will be submitted in Supplemental 1.

POLICY COMMITTEE RECOMMENDATION

On November 21, 2019, the Land Use, Housing & Economic Development policy committee adopted the following action: M/S/C (Hahn/Droste) to move the item with a positive recommendation to accept the Housing Advisory Commission's (HAC) recommendations for the allocation of U1 General Fund revenues in the format that staff presented in the Measure U1 Budget draft projections table including the following amendments:

1. Allocation of \$1M for small sites;
2. Addition of \$100K in FY 2022 and FY 2023 in organizational capacity building (BACLT);
3. Add \$150K in 2021-2023 for new programs under the category of development of new housing programs; and

4. Allocate \$2.5M in 2023 for the Housing Trust Fund.  
Vote: All Ayes.

#### BACKGROUND

The Land Use, Housing & Economic Development policy committee considered the Housing Advisory Commission's Spring 2019 Bi-Annual Report on Funding for Housing Programs at four meetings in 2019: October 3, October 24, November 7, and November 21.

On October 3, a discussion was held on allocation of U1 General Fund revenues, and the committee requested more information on the full funding picture including allocations made, the full balance, conditions, and legal restrictions for Measure O, the Housing Trust Fund and U1 revenues. Further discussions were held on October 24 and November 7.

On November 21, the committee held a discussion and then voted unanimously to move the item with a positive recommendation to accept the Housing Advisory Commission's recommendations with amendments, as represented in the attached spreadsheet. In taking this action, the Committee carefully considered the HAC recommendations as well as materials presented by staff and worked to ensure HAC's priorities were reflected in the Committee's recommendation. At the time action was taken, the Committee was comprised of Councilmembers Ben Bartlett, Lori Droste, and Sophie Hahn.

Councilmember Hahn was asked at that time to produce this report, working with City staff. Since the November 21 meeting, there have been internal discussions among City staff and the office of Councilmember Hahn with regard to the process for presenting these materials. The attached Measure U1 Projections document is submitted exactly as approved by the Committee. Any proposed changes can be filed as a Supplemental.

#### CONTACT INFORMATION

Vice Mayor Sophie Hahn, Council District 5, (510) 981-7150

#### ATTACHMENTS/SUPPORTING MATERIALS

1. Draft Measure U1 Projections Post Land Use Policy Committee - 12-12-19
2. Housing Advisory Commission, Spring 2019 Bi-Annual Report on Funding for Housing Programs



|                                                     | FY 2018<br>Actuals | FY 2019<br>Actuals | FY 2020<br>Estimated | FY 2021<br>Estimated | FY 2022<br>Planned | FY 2023<br>Planned |
|-----------------------------------------------------|--------------------|--------------------|----------------------|----------------------|--------------------|--------------------|
| <b>Revenues</b>                                     |                    |                    |                      |                      |                    |                    |
| <i>Beginning Fund Balance</i>                       | \$5,161,615        | \$4,161,615        | \$7,953,493          | \$6,224,483          | \$4,164,575        | \$2,097,074        |
| <b>ADD: Revenues</b>                                |                    | 5,787,158          | 5,000,000            | 5,000,000            | 5,000,000          | 5,000,000          |
| <i>Transfer In/Fr Fund</i>                          |                    |                    |                      |                      |                    |                    |
| <b>Total Revenues and Available Fund Balance</b>    | 5,161,615          | 9,948,773          | 12,953,493           | 11,224,483           | 9,164,575          | 7,097,074          |
| <b>LESS: Total Expenses</b>                         | 1,000,000          | 1,995,280          | 6,729,011            | 7,059,908            | 7,067,501          | 5,618,902          |
| <b>Personnel Costs</b>                              |                    |                    |                      |                      |                    |                    |
| <i>Rent Board</i>                                   | 350,000            | 345,280            | 908,214              | 927,751              | 947,973            | 968,902            |
| <i>HHCS (Measure O/Housing Trust Fund)</i>          |                    |                    | 558,214              | 577,751              | 597,973            | 618,902            |
| <i>Finance (Rev Dev Position &amp; Admin Costs)</i> | 350,000            | 345,280            | 350,000              | 350,000              | 350,000            | 350,000            |
| <b>Non-Personnel and Other Program Costs</b>        |                    |                    |                      |                      |                    |                    |
| <b>Small Sites/Community Land Trusts</b>            | 650,000            | 1,650,000          | 5,820,797            | 6,132,157            | 6,119,528          | 4,650,000          |
| 1638 Stuart/Small Sites predev (BACLT)              |                    | 50,000             |                      |                      |                    |                    |
| 1638 Stuart/Small Sites loan (BACLT)                |                    | 950,000            |                      |                      |                    |                    |
| 2321-2323 10th St. predev (NCLT)                    |                    |                    | 50,000               |                      |                    |                    |
| RFP: 2321-2323 10th St. loan (NCLT)                 |                    |                    | 1,570,640            |                      |                    |                    |
| Small Sites Program                                 |                    |                    |                      | 1,000,000            | 1,000,000          | 1,000,000          |
| <b>Housing Trust Fund</b>                           |                    |                    |                      |                      |                    |                    |
| 2001 Ashby predev (RCD)                             |                    |                    | 368,000              |                      |                    |                    |
| 2001 Ashby predev (RCD)                             |                    |                    | 1,200,000            |                      |                    |                    |
| 2527 San Pablo Ave predev (SAHA)                    |                    |                    | 500,000              |                      |                    |                    |
| 2012 Berkeley Way reserves (BRIDGE/BFHP)            |                    |                    | 0                    | 3,000,000            | 3,023,365          |                    |
| Housing Trust Fund Program                          |                    |                    |                      |                      |                    | 2,500,000          |
| <b>Development of New Housing Programs</b>          |                    |                    |                      |                      |                    |                    |
| Organizational Capacity Bldg (BACLT)                |                    |                    | 100,000              | 100,000              | 100,000            | 100,000            |
| Berkeley Unified School District Planning Grant     |                    |                    | 150,000              |                      |                    |                    |
| New Housing Programs/Land Trust/Coops               |                    |                    |                      | 150,000              | 150,000            | 150,000            |
| <b>Anti-Displacement</b>                            |                    |                    |                      |                      |                    |                    |
| Rent Board (EDC & EBCLC)                            | 300,000            | 300,000            |                      |                      |                    |                    |
| East Bay Community Law Center (EBCLC)               | 250,000            | 250,000            | 275,000              | 275,000              | 275,000            | 275,000            |
| Housing Retention Program (EBCLC)                   |                    |                    | 250,000              | 250,000              | 250,000            | 250,000            |
| Eviction Defense Center (EDC)                       |                    |                    | 275,000              | 275,000              | 275,000            | 275,000            |
| Flexible Housing Subsidy Pool (BACS)                | 100,000            | 100,000            | 100,000              | 100,000              | 100,000            | 100,000            |
| <b>Additional City Priorities</b>                   |                    |                    |                      |                      |                    |                    |
| 1001, 1011 University Ave. acquisition              |                    |                    | 982,157              | 982,157              | 946,163            |                    |
| Fiscal Year Surplus (Shortfall)                     | 4,161,615          | 3,791,878          | (1,729,011)          | (2,059,908)          | (2,067,501)        | (618,902)          |
| Ending Fund Balance                                 | \$4,161,615        | \$7,953,493        | \$6,224,483          | \$4,164,575          | \$2,097,074        | \$1,478,172        |



Housing Advisory Commission

CONSENT CALENDAR  
September 10, 2019

To: Honorable Mayor and Members of the City Council  
 From: Housing Advisory Commission  
 Submitted by: Xavier Johnson, Chairperson, Housing Advisory Commission  
 Subject: Spring 2019 Bi-Annual Report on Funding for Housing Programs

RECOMMENDATION

Accept the Housing Advisory Commission's (HAC) recommendations for the allocation of U1 General Fund revenues to increase the supply of affordable housing and protect residents of Berkeley from homelessness.

SUMMARY

This report is the first Bi-Annual Report in 2019 that the HAC is submitting to the Council. The expenditure of \$5 million dollars of discretionary funds recommended in this Report (Small Sites/Community Land Trusts, Housing Trust Fund, and Development of New Housing Programs) is broad enough to be useful for existing, proposed, and future housing programs. In late 2019 or early 2020, the Housing Advisory Commission will submit a second bi-annual report. This forthcoming report will, to the extent feasible, report on the actual expenditures and commitments of funds for 2019, as well as lay out a clear, structured, and goals oriented process as to how the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness.

FISCAL IMPACTS OF RECOMMENDATION

The funds to pay for these recommendations come from a special Business License tax that is charged on properties consisting of five or more units. It is estimated that the revenues will total approximately \$5 million during the upcoming fiscal year. Staff time is included within the administrative costs listed in the summary table of proposed allocations.

CURRENT SITUATION AND ITS EFFECTS

At the May 2, 2019 meeting, the HAC took the following vote to adopt the Bi-Annual Housing Policy Report Subcommittee recommendations to Council, as amended by Commissioner Johnson, to Council to allocate \$5 million in General Fund revenue as follows:

|                                                                   |                    |
|-------------------------------------------------------------------|--------------------|
| Small Sites/Community Land Trusts                                 | \$1,000,000        |
| Housing Trust Fund                                                | \$2,500,000        |
| Development of New Housing Programs (Housing Co-Ops, Land Trusts) | \$250,000          |
| Anti-Displacement                                                 | \$900,000          |
| Administrative Costs                                              | \$350,000          |
| <b>Total (2019)</b>                                               | <b>\$5,000,000</b> |

M/S/C (Wright/Tregub):

Ayes: Johnson, Lewis, Sargent, Sharenko, Tregub, Wolfe and Wright. Noes: Lord. Abstain: None. Absent: Owens (unexcused) and Simon-Weisberg (excused).

**BACKGROUND**

Ballot Measure U1 charged the Housing Advisory Commission with providing annual or bi-annual recommendations to the City Council on “how and to what extent the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness.” This report is the first Bi-Annual Report in 2019 that the HAC is submitting to the Council. The expenditure of \$5 million dollars of discretionary funds recommended in this Report (Small Sites/Community Land Trusts, Housing Trust Fund, and Development of New Housing Programs) is broad enough to be useful for existing, proposed, and future housing programs.

In late 2019 or early 2020, the Housing Advisory Commission will submit a second bi-annual report. This forthcoming report will, to the extent feasible, report on the actual expenditures and commitments of funds for 2019, as well as lay out a clear, structured, and goals oriented process as to how the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness.

**ENVIRONMENTAL SUSTAINABILITY**

There are no identifiable environmental effects or opportunities associated with the subject of this report, since the City does not know at this time the locations of the housing units to be assisted.

**RATIONALE FOR RECOMMENDATION**

The actions recommended by the HAC are consistent with Berkeley’s existing housing programs and policies. Recommended expenditures support existing programs and potential new programs to be explored, such as alternative forms of housing ownership.

**ALTERNATIVE ACTIONS CONSIDERED**

Another option for the City to consider would be to deposit all U1 General Fund Revenues into the City’s Housing Trust Fund (HTF). However since one of the uses of

U1 General Fund Revenues is to protect Berkeley residents from homelessness, the HAC decided not to deposit all the funds into the HTF in order to provide revenues for anti-displacement activities. In addition, U1 General Fund Revenues are, by definition, more discretionary than other funds deposited into the HTF. This will allow the City to assist innovated programs needed given the housing affordability crisis.

CITY MANAGER

The City Manager recommends referring these recommendations to a Council Policy Committee for further discussion.

The City Council has already authorized General Fund revenue received pursuant to Measure U1 for the following projects:

- \$150,000 to the Berkeley Unified School District as a planning grant for educator housing;
- \$368,000 for Resources for Community Development predevelopment loan application for its proposed development at 2001 Ashby Avenue;
- \$900,000 for anti-displacement activities each year for FY20 and FY21; and
- \$100,000 capacity building for housing cooperatives each year for FY20 and FY21.

At the time of the writing Resources for Community Development has applied for an additional \$1.2M for a predevelopment loan for its proposed development at 2001 Ashby Avenue.

CONTACT PERSON

Mike Uberti, Commission Secretary, HHCS, (510) 981-5114

Attachments:

- 1: Spring 2019 Revised Draft Bi-Annual Report
- 2: Housing Revenues and Expenditures
- 3: Future Program Recommendations in Development by the HAC
- 4: Funding Summary Table as of May 2, 2019

To: Members of the Housing Advisory Commission

From: Xavier Johnson, Chairperson, Housing Advisory Commission

Subject: Spring 2019 Revised Draft Bi-Annual Report

Date: April 25, 2019

RECOMMENDATION

In keeping with the Housing Advisory Commission’s (HAC) annual/biannual obligation to “make recommendations...to what extent the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness,” this Report recommends the City of Berkeley allocate \$5 million in general fund revenue as follows:

|                                                                        |                           |
|------------------------------------------------------------------------|---------------------------|
| ● Small Sites/Community Land Trusts                                    | \$1,000,000               |
| ● Housing Trust Fund                                                   | \$2,500,000               |
| ● Development of New Housing Programs<br>(Housing Co-Ops, Land Trusts) | \$250,000                 |
| ● Anti-Displacement                                                    | \$900,000                 |
| ● Administrative Costs                                                 | \$350,000                 |
| <b><u>Total (2019)</u></b>                                             | <b><u>\$5,000,000</u></b> |

Further information on how the City of Berkeley should establish programs to increase the supply of affordable housing and protect Berkeley residents from homelessness will follow in future reports to the Berkeley City Council.

SUMMARY

The City of Berkeley (City) is currently experiencing a major shortfall in funding for affordable housing for its residents, and many existing residents find that they are unable to keep up with rising rents and may face displacement from their current homes. The purpose of U1, a ballot measure that passed by a majority of Berkeley’s residents in November 2016 was to increase funding for these two vitals areas (increasing the supply of affordable housing and preventing displacement). However, since these funds are part of the General Fund, the City actually has the option of spending them on non-housing related expenditures.

Measure U1 charged the Housing Advisory Commission with providing annual or bi-annual recommendations to the City Council on “how and to what extent the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness.” This report is the first Bi-Annual Report in 2019 that the HAC is submitting to the Council. The expenditure of \$5 million dollars of discretionary funds recommended in this Report (Small Sites/Community Land Trusts,

Housing Trust Fund, and Development of New Housing Programs) is broad enough to be useful for existing, proposed, and future housing programs.

In late 2019 or early 2020, the Housing Advisory Commission will submit a second bi-annual report. This forthcoming report will, to the extent feasible, report on the actual expenditures and commitments of funds for 2019, as well as lay out a clear, structured, and goals oriented process as to how the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness.

### FISCAL IMPACTS OF RECOMMENDATION

This report recommends the allocation of \$5 million dollars in General Fund revenue. It is acknowledged that the City has already, in some cases temporarily and in other cases indefinitely, committed various sources of revenue to various projects. To truly be able to maximize the allocation and effectiveness of resources this recommendation suggests the City will have to take into account all available funding sources and commitments made by the City; this will ensure there are no more additional unfunded commitments moving forward.

### CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley continues to be in the midst of a major housing crisis. U1 directed the Housing Advisory Commission to look at all possible avenues and strategies the City can take to increase the supply of affordable housing and protect Berkeley residents from homelessness.

### BACKGROUND

This report provides the following information:

1. *History*  
The history of Measure U1, as well as the previous reports the Housing Advisory Commission has issued.
2. *Current Funding for Affordable Housing and Prevention of Displacement:*  
An approximate summary of expenditures and allocations for affordable housing and prevention of homelessness. While this list is subject to constant change, and the number of sources grows, this list offers some context and background on some of the many resources currently available to the City.

3. *Recommendations for 2019 Expenditures*

Recommendations for future expenditures for housing as well as potential programs and ideas, will be more thoroughly explored and evaluated by the Housing Advisory Commission as part of its regular business.

4. *Potential Future Recommendations under Consideration by the Housing Advisory Commission*

As part of our 2018 Work Plan, the HAC came up with numerous ideas for programs and funding that it is currently evaluating and reviewing. While the HAC is beginning to start the 2019 process, we thought it was important to review the ideas that are still in the works and under review.

1. *History*

Measure U1, which was passed in November 2016, authorized an increase in the Business License Tax charged on properties that consist of five or more residential units. In addition and separately, Measure U1 provided that the HAC will make recommendations on how and to what extent the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness. After the measure passed, it was incorporated into Berkeley's Municipal Code. The HAC was required under measure U1 to provide a report to the City Council and specified that HAC make annual or bi-annual recommendations to the Council. The HAC has chosen to set as its timeline April and October as reporting dates for each year.

In its first annual report to the City Council in 2018, the HAC recommended funding at these levels for the following uses:

|                                         |                 |
|-----------------------------------------|-----------------|
| ● Anti-Displacement                     | \$550,000       |
| ● Small Sites Program                   | \$1,000,000     |
| ● Housing Trust Fund                    | \$2,000,000     |
| ● Reserve for pipeline housing programs | \$400,000       |
| ● Administrative Costs                  | <u>\$50,000</u> |

|       |             |
|-------|-------------|
| Total | \$4,000,000 |
|-------|-------------|

This report is the second report to the City Council and is the first Bi-Annual Report for 2019. It provides information to the City Council to assist the Council in its decision-making regarding the allocation of funds to increase the supply of affordable housing and protect residents of Berkeley from homelessness.

2. Current Funding for Affordable Housing and Prevention of Displacement

The City of Berkeley has a number of sources of funding available to expand the supply of affordable housing and prevent homelessness. The subcommittee decided it would be good to understand the overall level of funds designated for affordable housing and homelessness prevention. First, Table 1 provides information on the most recent commitments from General Fund revenue

Secondly, working with staff, the subcommittee obtained information on housing related expenditure and allocations from several local sources including General Funds, In-Lieu and Housing Mitigation Fees, and federal sources, such as HOME and CDBG. This information is summarized in Table 2 and more information on actual expenditures is presented in Attachment 1.<sup>1</sup> Finally Attachment 3 provides information on committed expenditures.

**Table 1: Allocations<sup>2</sup>**

|                                           | Allocation       |
|-------------------------------------------|------------------|
| <b>COMMITTED EXPENDITURES</b>             |                  |
| <i>Anti-Displacement</i>                  |                  |
| FY 2018                                   |                  |
| Eviction Defense (Rent Board)             | \$300,000        |
| Retention - East Bay Comm Law Center HHCS | \$250,000        |
| Rapid Rehousing HHCS                      | \$100,000        |
| <i>Subtotal</i>                           | <i>\$650,000</i> |
| FY 2019 EXPENDITURES                      |                  |
| Eviction Defense (Rent Board)             | \$300,000        |
| Retention - East Bay Comm Law Center HHCS | \$250,000        |
| Rapid Rehousing HHCS                      | \$100,000        |
| <i>Subtotal</i>                           | <i>\$650,000</i> |
| <i>STAFF AND ADMIN. FY 2018</i>           |                  |
| Staff Position                            | \$150,757        |
| Other Administrative Costs                | \$199,243        |

<sup>1</sup> Note: The total HOME funds listed in Table 2 do not include funding for public services projects, planning and administration, public facilities, and all ESG, since these uses do not fall directly under the policy framework for U1. ESG is primarily used to help those who are already homeless.

<sup>2</sup>As of February 2019. Also, Table 1 does not include expenditures from ESG or City's matching funds for ESG. See tables in Attachment 1  
Source: City Staff



Attachment 1: Spring 2019 Revised Draft Bi-Annual Report

|                                              |                    |
|----------------------------------------------|--------------------|
| Subtotal                                     | \$350,000          |
| <i>HOUSING</i>                               |                    |
| Future Small Sites Program Activities - HHCS | \$950,000          |
| Organizational Capacity Building (BACLT)     | \$50,000           |
| Subtotal                                     | \$1,000,000        |
| <b>TOTAL: COMMITTED AND ASSIGNED</b>         | <b>\$2,650,000</b> |

**Table 2: FY 2018-19 Committed and Reserved Funds for Housing**

| <i>Committed Housing Trust Funds</i>                     | <i>CDBG</i> | <i>Home</i> | <i>Local Funds (1)</i> | <i>Total</i> |
|----------------------------------------------------------|-------------|-------------|------------------------|--------------|
| Bridge/Berkeley Food & Housing                           |             |             | \$3,967,548            | \$3,967,548  |
| 1638 Stuart St (BACLT Small Sites)                       |             |             | \$50,000               | \$50,000     |
| SAHA (Oxford Street)                                     |             |             | \$25,000               | \$25,000     |
| SAHA/Grayson Apartments                                  | \$876,000   | \$1,020,827 | \$598,173              | \$2,495,000  |
| Subtotal                                                 |             |             |                        | \$6,537,548  |
| <i>Development - Reserved</i>                            |             |             |                        |              |
| Bridge/Berkeley Food & Housing(2)                        |             |             |                        | \$23,500,000 |
| BACLT Small Sites                                        |             |             | \$950,000              | \$950,000    |
| SAHA (2)                                                 |             |             |                        | \$6,000,000  |
| Subtotal                                                 |             |             |                        | \$30,450,000 |
| Total HOME Projects                                      |             |             |                        | \$813,509    |
| Community Allocations for Housing Development and Rehab. |             |             |                        | \$451,662    |
| <i>Prevention of Displacement</i>                        |             |             |                        |              |
| FY 2018                                                  |             |             | \$650,000              | \$650,000    |
| FY 2019                                                  |             |             | \$650,000              | \$650,000    |
| Subtotal                                                 |             |             |                        | \$1,300,000  |

Attachment 1: Spring 2019 Revised Draft Bi-Annual Report

|                                           |  |  |  |                     |
|-------------------------------------------|--|--|--|---------------------|
| <i>Staffing and Administration</i>        |  |  |  |                     |
| Subtotal                                  |  |  |  | \$350,000           |
| <b>TOTAL FUNDS COMMITTED AND RESERVED</b> |  |  |  | <b>\$39,902,719</b> |

- 1) Local funding sources include Housing Trust Funds, U1 and additional General Funds.
- 2) No sources indicated.

Finally, the City passed Measure O in Fall 2018. This measure authorized the City to issue up to \$135 million in bonds to be paid for by an increase in the property tax for 36 years. These bonds can be used “to fund housing for "low-, very low-, low-, median, and middle-income individuals and working families, including teachers, seniors, veterans, the homeless, students, people with disabilities, and other vulnerable populations," according to ballot language. These bonds have not yet been issued, so the future financial resources from this bond measure are not included in this report.3.

*Recommendations for 2019 Expenditures*

Table 3 provides the Housing Advisory Commission’s funding recommendations for 2019 designed to increase the supply of affordable housing and protect Berkeley residents from homelessness. It should be noted that there is some overlap. For example, funding for a small sites program could be provided by the Housing Trust Fund, and a small sites program could also be based on a land trust model. In addition, this is not intended to be an exhaustive list of the City’s expenditures for increasing the supply of affordable housing or for protecting residents from homelessness.

**Table 3: 2019 Funding Recommendations**

|                                                      |             | <b>% of Committed Funds</b> |
|------------------------------------------------------|-------------|-----------------------------|
| Anti-Displacement                                    | \$900,000   | 18%                         |
| Administrative Costs                                 | \$350,000   | 7%                          |
| Small Sites/Community Land Trusts                    | \$1,000,000 | 20%                         |
| Housing Trust Fund                                   | \$2,500,000 | 50%                         |
| Development of New Housing Programs (Housing Co-Ops) | \$250,000   | 5%                          |
| Total (2019)                                         | \$5,000,000 | 100%                        |

#### 4. Potential Future Recommendations under Consideration by the Housing Advisory Commission

As part of the 2018 work plan, the Housing Advisory Commission identified numerous potential programs, which it is in the process of evaluating and designing. Moving forward, the HAC may put some of these ideas forward to the City Council. The current nine members of the Housing Commission responded to a poll regarding some of the strategies/programs included in the most recent Work Plan.<sup>3</sup> Table 4 presents poll results. The poll required a “yes” or “no” vote.

- The strategies supported by all commissioners included funds for the Housing Trust Fund and Community Land Trusts.
- Those strategies supported by almost all of the Commissioners included anti-displacement services, expansion of the small sites program, and group equity/zero equity co-ops.
- Finally, home sharing and supportive mental health services received support from less than two-thirds of the Commissioners, but still a majority of the members.<sup>4</sup>

Since a majority of Commissioners supported all these activities/strategies, they represent a good starting point for recommendations on how 2019/20 housing funds could be allocated. With the exception of home sharing and supportive mental health services, three-quarters of the commissioners supported the other strategies listed in Table 4.

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<sup>3</sup> A more detailed description of these Work Plan recommendations can be found at [https://www.cityofberkeley.info/uploadedFiles/Housing/Commissions/Commission\\_for\\_Housing\\_Advisory/2018-7-11%20HAC%20Agenda%20Packet%20COMPLETE\(2\).pdf](https://www.cityofberkeley.info/uploadedFiles/Housing/Commissions/Commission_for_Housing_Advisory/2018-7-11%20HAC%20Agenda%20Packet%20COMPLETE(2).pdf)

<sup>4</sup>According to two commissioners who provided comments, mental health services are outside the auspices of the HAC and Housing Division. Another member indicated that they need more information in order to assess support for these services. Additional comments included in the poll results are included in Attachment 2.

**Table 4: Commissioner Poll Results**

| <b>Activities/Strategies</b>                                                             | <b>Percent Supporting</b> |
|------------------------------------------------------------------------------------------|---------------------------|
| East Bay Community Law Center to help tenants who are at-risk of displacement (1)        | 88%                       |
| Supportive Mental Health Services to assist Residents who have housing remain housed (1) | 63%                       |
| Expand Supply of Affordable Housing (Small Sites Program)                                | 89%                       |
| Housing Trust Fund (for leveraging of new construction)                                  | 100%                      |
| ADU Development                                                                          | 78%                       |
| Tenant Option to Purchase                                                                | 78%                       |
| Group Equity and Zero Equity Co-ops (1)                                                  | 88%                       |
| Community Land Trusts                                                                    | 100%                      |
| Home Sharing                                                                             | 56%                       |

- (1) The percentage of HAC members supporting these three issues is based on responses from eight out of nine members of the HAC. One of the members did not vote on these three strategies, because the member indicated more information was needed to provide input.

Attachment 2: Housing Revenues and Expenditures

**Table 1.1:  
February 2019 U1 Revenues**

|                      |                    |
|----------------------|--------------------|
| FY 2018 Revenues     | \$5,161,615        |
| FY 2019 YTD Revenues | \$865,451          |
| <b>Total</b>         | <b>\$6,027,066</b> |

Source: City of Berkeley

**Table 1.2: February 2019 Committed Expenditures Preventing Homelessness**

| Use                                              | Anti-Displacement FY18 | Anti-Displacement FY19 |
|--------------------------------------------------|------------------------|------------------------|
| Eviction Defense - Rent Board                    | \$300,000              | \$300,000              |
| Retention - East Bay Community Law Center - HHCS | \$250,000              | \$250,000              |
| Rapid Rehousing - HHCS                           | \$100,000              | \$100,000              |
| <b>Total</b>                                     | <b>\$650,000</b>       | <b>\$650,000</b>       |

Source: City of Berkeley

**Table 1.3: February 2019 Committed Expenditures Increasing Housing Supply**

|                                                                 |                    |
|-----------------------------------------------------------------|--------------------|
| Future Small Sites Program Activities – HHCS (not yet provided) | \$950,000          |
| Organizational Capacity Building (BACLT Contract)               | \$50,000           |
| <b>Sub-Total</b>                                                | <b>\$1,000,000</b> |

Source: City of Berkeley

**Table 1.4: Staff and Administrative Costs Funded by the General Fund**

|                                             |                  |
|---------------------------------------------|------------------|
| Finance Development Spec II Position - FY18 | \$150,757        |
| Other Administrative Costs - Fin FY18       | \$199,243        |
| <b>Sub-total</b>                            | <b>\$350,000</b> |

**Table 1.5: HOME Projects Allocations FY 2018-2019**

|                                            |                  |
|--------------------------------------------|------------------|
| HOME Admin.                                | \$81,351         |
| CHDO Operating Funds                       | \$28,115         |
| Housing Trust Fund                         | \$704,043        |
| <b>Subtotal HOME Projects FY 2018-2019</b> | <b>\$813,509</b> |

Source: City of Berkeley Annual Action Plan. (Does not include all funding)

### Attachment 3: Future Program Recommendations in Development by the HAC

Additional comments written on the Commissioner's Poll include the following:

- Small Sites Program - Perhaps use funds for organizational/program development minor support rather than support for purchasing sites at this time. Developers that have experience in affordable housing development should only be considered given the financial risks of this type of development and the complexities of small scattered-site developments.
- Tenant Option to Purchase - This is good for apartment buildings that contain fewer than 20 units. This approach could be combined with the institutional structure of Community Land Trusts. CLTs are an important model that can be used to support these types of ownership structures.
- Group Equity and Zero Equity Co-ops - It is possible that those most interested in co-ops would be UC Berkeley students. Is this the City of Berkeley's priority given the transient nature of university students?
- Home Sharing - Assistance to a service organization like HIP Housing is a good idea, but this strategy is a service and not affordable housing development of new units. Also, the City should be very careful with supporting this type of service given potential for abuse by tenants and/or landlords.

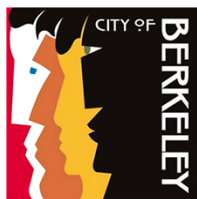
## Attachment 4: Summary Table as of May 2, 2019

|                                                 | CDBG 2018-19     | HOME 2018-19       | Housing Trust Fund | Other           | General Fund<br>2018-19 | General Fund<br>2019-2020 | No Source           | Total               |
|-------------------------------------------------|------------------|--------------------|--------------------|-----------------|-------------------------|---------------------------|---------------------|---------------------|
| <b>Committed-New Affordable Housing</b>         |                  |                    |                    |                 |                         |                           |                     |                     |
| Bridge/Berkeley Food & Housing Project          |                  |                    | \$3,967,548        |                 |                         |                           | \$23,500,000        | \$27,467,548        |
| SAHA (Oxford Street)                            |                  |                    | \$25,000           |                 |                         |                           |                     | \$25,000            |
| SAHA (Grayson Apartments)                       | \$876,000        | \$1,020,827        | \$598,173          |                 |                         |                           |                     | \$2,495,000         |
| SAHA (Oxford Street)                            |                  |                    |                    |                 |                         |                           | \$6,000,000         |                     |
| <b>Subtotal-New Affordable Housing</b>          | <b>\$876,000</b> | <b>\$1,020,827</b> | <b>\$4,590,721</b> |                 |                         |                           | <b>\$29,500,000</b> | <b>\$35,987,548</b> |
| <b>Committed-Preservation</b>                   |                  |                    |                    |                 |                         |                           |                     |                     |
| BACLT Small Sites Program (1638 Stuart St.)     |                  |                    |                    |                 | \$950,000               |                           |                     | \$950,000           |
| BACLT Small Sites Capacity Building             |                  |                    |                    |                 | \$50,000                |                           |                     | \$50,000            |
| Housing Development & Rehabilitation            | \$380,613        |                    |                    | \$56,230        | \$14,819                |                           |                     | \$451,662           |
| <b>Subtotal-Preservation</b>                    | <b>\$380,613</b> |                    |                    | <b>\$56,230</b> | <b>\$1,014,819</b>      |                           |                     | <b>\$1,451,662</b>  |
| <b>Home Projects Allocations (FY 2018-2019)</b> |                  |                    |                    |                 |                         |                           |                     |                     |
| Administration                                  |                  | \$81,351           |                    |                 |                         |                           |                     | \$81,351            |
| CHDO Operating Funds                            |                  | \$28,115           |                    |                 |                         |                           |                     | \$28,115            |
| Housing Trust Fund                              |                  |                    | \$704,043          |                 |                         |                           |                     | \$704,043           |
| <b>Subtotal Home Projects</b>                   |                  | <b>\$109,466</b>   | <b>\$704,043</b>   |                 |                         |                           |                     | <b>\$813,509</b>    |
| <b>Committed-Anti-Displacement</b>              |                  |                    |                    |                 |                         |                           |                     |                     |
| Eviction Defense-Rent Board                     |                  |                    |                    |                 | \$300,000               | \$300,000                 |                     | \$600,000           |
| East Bay Community Law Center                   |                  |                    |                    |                 | \$250,000               | \$250,000                 |                     | \$500,000           |
| Rapid Re-Housing                                |                  |                    |                    |                 | \$100,000               | \$100,000                 |                     | \$200,000           |
| <b>Subtotal – Anti- Displacement</b>            |                  |                    |                    |                 | <b>\$650,000</b>        | <b>\$650,000</b>          |                     | <b>\$1,300,000</b>  |
| <b>Administrative Overhead</b>                  |                  |                    |                    |                 |                         |                           |                     |                     |
| Finance Development Specialist II               |                  |                    |                    |                 |                         | \$150,757                 |                     |                     |
| Other Administrative Costs                      |                  |                    |                    |                 |                         | \$199,243                 |                     |                     |
| <b>Subtotal-Administrative Overhead</b>         |                  |                    |                    |                 |                         | <b>\$350,000</b>          |                     | <b>\$350,000</b>    |

|                                           | CDBG 2018-19       | Home 2018-19       | Housing Trust Fund | Other           | General Fund<br>2018-19 | General Fund<br>2019-2020 | No Source           | Total               |
|-------------------------------------------|--------------------|--------------------|--------------------|-----------------|-------------------------|---------------------------|---------------------|---------------------|
| <b>Total Funds Committed and Reserved</b> | <b>\$1,256,613</b> | <b>\$1,130,293</b> | <b>\$5,294,764</b> | <b>\$56,230</b> | <b>\$1,664,819</b>      | <b>\$1,000,000</b>        | <b>\$29,500,000</b> | <b>\$39,902,719</b> |







CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 March 10, 2020

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

RECOMMENDATION

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

POLICY COMMITTEE RECOMMENDATION

On February 18, 2020, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Robinson/Harrison) to send the item, as revised by the committee, with a positive recommendation back to City Council. Vote: Ayes – Robinson, Harrison; Noes – None; Abstain – Davila; Absent – None.

BACKGROUND

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

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

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

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

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

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

project are community benefits that enhance the streetscape for pedestrians, bicyclists, and local businesses alike.<sup>4</sup>

The AC Transit East Bay Bus Rapid Transit project was originally proposed to be implemented as a three-city project, connecting the Cities of Berkeley, Oakland, and San Leandro. The proposal would have provided bus service connecting the Downtown Berkeley and Bay Fair BART stations that was 18 percent faster, more frequent, and more reliable than current service. By 2015, BRT was expected to attract 6,820 new riders to transit per weekday over the no-build alternative, reducing vehicle miles traveled (VMT) by 6.2 million per year.<sup>5</sup>

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

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

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

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

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

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

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

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

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

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

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

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

In October, the City of Berkeley released a draft of the Berkeley Electric Mobility Roadmap.<sup>14</sup> The draft roadmap proposes that “The City will support opportunities to explore and advance bus rapid transit routes, using electric buses, which can provide mobility and health benefits particularly for low-income communities of color.”

In October, the Council unanimously passed a referral to move forward with the Telegraph Public Realm Plan shared streets proposal, which will reconfigure the first four blocks of Telegraph Avenue to prioritize pedestrians, bicyclists, and buses over automobile thru traffic.<sup>15</sup> Over the next few years, the City will be identifying and applying for regional funding sources, going through multiple stages of design and planning, and engaging in community outreach and public input. This presents a unique opportunity for Telegraph Avenue to be reintegrated into the Bus Rapid Transit plan.

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

#### FINANCIAL IMPLICATIONS

None.

#### ENVIRONMENTAL SUSTAINABILITY

The City of Berkeley's Climate Action Plan supports BRT as a key strategy to reducing carbon emissions, stating that the City should “continue timely assessment and

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

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

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

<sup>14</sup> <https://www.cityofberkeley.info/EVCharging/>

<sup>15</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/10\\_Oct/Documents/2019-10-29\\_Item\\_30\\_Referral\\_Telegraph\\_Shared\\_Streets\\_-\\_Rev.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/10_Oct/Documents/2019-10-29_Item_30_Referral_Telegraph_Shared_Streets_-_Rev.aspx)

development of proposed East Bay Bus Rapid Transit (BRT) system.” The Plan stresses the importance of BRT “given the expected significant increase in the Bay Area’s population (and associated traffic congestion) in that same time period.”<sup>16</sup> Implementation of Bus Rapid Transit will reduce vehicle miles traveled (VMT) by 6.2 million per year.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Attachments:

1: Letter

2: BRT for Berkeley: A Proposal for Consideration

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

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<sup>16</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/Berkeley%20Climate%20Action%20Plan.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Berkeley%20Climate%20Action%20Plan.pdf)



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

**Date:** January 28, 2020

**Re:** In Support of Reviving Berkeley Bus Rapid Transit

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

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

In 2010, the Berkeley City Council rejected the Bus Rapid Transit project by a 4-2-2 vote, citing stakeholder concerns about traffic, parking, and loading. However, as the Bay Area faces increasing challenges around climate and housing, the dire need for efficient, reliable public transportation has never been clearer. The current City Council understands these needs and believes that dedicated bus lanes are the best way to move our city towards a sustainable future. Therefore, the City of Berkeley is formally requesting that AC Transit consider expanding Bus Rapid Transit into Berkeley on Telegraph Avenue at the first possible opportunity. Furthermore, the City of Berkeley encourages the installation of BRT elements in the near term where possible along Telegraph such as dedicated lanes, boarding islands, and signal synchronization, while maintaining consideration of local bus routes and bicycle access.

Since Council rejected the Bus Rapid Transit proposal 2010, Berkeley's political environment and the needs of its residents have changed. Demand for efficient public transportation is growing, and a burgeoning housing crisis is pushing residents to live farther from their jobs. Berkeley residents are commuting to Oakland and San Leandro, and vice versa. UC Berkeley students, the vast majority of whom do not use a car, are living farther from campus or commuting from home. A dedicated bus lane on Telegraph would build much-needed public transit infrastructure into a densifying neighborhood that increasingly relies on multimodal transportation, and more intimately connect Berkeley and Oakland.

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

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

**Sincerely,**

**The Berkeley City Council**





Housing Advisory Commission

ACTION CALENDAR

March 10, 2020

To: Honorable Mayor and Members of the City Council  
 From: Housing Advisory Commission  
 Submitted by: Xavier Johnson, Chairperson, Housing Advisory Commission  
 Subject: Smoke-Free Multi-Unit Housing Ordinance Policy and Enforcement Modifications

RECOMMENDATION

The Commission recommends that City Council:

1. Make a short term referral directing the City Manager to correct current City Policies for enforcing BMC 12.70.035 so that these policies do not contradict the ordinance and BMC 12.70.035 requires that second and third complaints must refer to a violation or violations that occur after the 12.70.035(C) notice has been made.
2. Modify BMC 12.70.035 so that the requirement that signs be posted is enforced as part of the Residential Safety ordinance. Failure to post signage may result in fines, accordingly.
3. Modify BMC 12.70.035 so that repeated failure to provide new tenants with the City's brochure shall be guilty of an infraction. It shall also be an infraction for landlords to tell new tenants, in contradiction to the law, that tobacco smoking by some tenants is permitted.
4. Obtain an analysis of the financial impacts of the recommended modifications to the BMC.

SUMMARY

This recommendation proposes changes to the Berkeley Municipal Code to increase enforcement and information about the residential smoking policies by improving enforcement and regulation of our current policies.

FISCAL IMPACTS OF RECOMMENDATION

The fiscal impacts for this recommendation are unknown at this time.

### CURRENT SITUATION AND ITS EFFECTS

Under the current laws within the City of Berkeley, multi-unit residential property owners are required to provide signage as well as informational brochures. Despite these requirements, code enforcement and other city programs do not presently cite property owners for the failure to provide adequate signage or information to the tenants.

In addition, there are numerous inconsistencies between the ordinance, the informational materials, and administrative processes that the City of Berkeley utilizes. The recommendations in this report are designed to ensure more effective enforcement while at the same time balancing the due process rights of all parties involved.

At its October 3, 2019 meeting the Housing Advisory Commission made the following recommendations:

Action: M/S/C (Sharenko/Lord) to recommend that City Council:

1. Make a short term referral directing the City Manager to correct current City Policies for enforcing BMC 12.70.035 so that these policies do not contradict the ordinance. Details of the contradictions between policy and law are explained below. Additionally, modify BMC 12.70.035 to require that second and third complaints must refer to a violation or violations that occur after the 12.70.035(C) notice has been made.
2. Modify BMC 12.70.035 so that the requirement that signs be posted is enforced as part of the Residential Safety ordinance. Failure to post signage may result in fines, accordingly.
3. Modify BMC 12.70.035 so that repeated failure to provide new tenants with the City's brochure shall be guilty of an infraction. It shall also be an infraction for landlords to tell new tenants, in contradiction to the law, that tobacco smoking by some tenants is permitted.
4. Obtain an analysis of the financial impacts of the recommended modifications to the BMC.

Vote: Ayes: Berg, Johnson, Lord, Mendonca, Sargent, Sharenko, Simon-Weisberg, Wolfe and Wright. Noes: None. Abstain: None. Absent: Owens (excused).

### BACKGROUND

The Housing Advisory Commission has received numerous complaints of the pitfalls and challenges present in our current system of enforcing the no smoking ordinance. Namely, there appears to be little means of recourse available to tenants, and little advertisement that the City even has a no-smoking policy. Over a number of meetings the HAC has discussed various ideas and strategies to address these concerns. This



report presents a number of approaches approved by the Commission after much thought.

#### ENVIRONMENTAL SUSTAINABILITY

There is a net improvement to the environment by advancing these policies as they will help to ensure better air quality for residents specifically and more generally in the City of Berkeley as more enforcement will lead to reduced smoking in residential areas.

#### RATIONALE FOR RECOMMENDATION

##### **1. Aligning enforcement policy with the law**

The complaint form on the City's website contains a statement of policy (in an "Information Sheet") that is not consistent with ordinance. Item 5 on the information sheet reads (emphasis in the original):

"If it is the second complaint within a six month period a note is made and no additional notice will be sent to the person(s) responsible. The second complaint can be made by the same resident as the first complaint or by a resident in another unit in the same building. **The second complaint must be dated at least 10 days after the date of the notice sent by City of Berkeley to the person(s) responsible.** You may call the Tobacco Prevention Program (see #10) for this information."

The highlighted section is the problem. BMC 12.70.035(D) says:

"If within a six-month period following issuance of a notice under subdivision C, the City receives at least two complaints from residents of at least two separate units of the same multi-unit residence [...] *the person(s) responsible for the violation shall be guilty of an infraction* [...]" [emphasis added].

The 10-day delay rule, imposed by policy, contradicts the plain language of the law which contains no such delay period.

Presumably the delay period is meant to ensure that the person(s) responsible for the violation have time to receive, read, and act upon the warning. It may in fact be a reasonable ground for appeal that the second and third complaints arrived too quickly for the person(s) accused to have corrected the problem. Nevertheless, in individual circumstances, it might also be an unreasonable ground for appeal.

In any event, the ordinance does not support the 10-day delay policy.

It may be helpful to modify BMC 12.70.035(D) to make it clear that second and third complaints must refer to a violation or violations that occur after section (C) notice has been made.

It may be helpful to modify BMC 12.70.035(D) to use the date of delivery of a notice, and for the City to send notices using the USPS confirmed delivery service.

Returning to the policy declarations on the "Information Sheet", the City declares in item 6 (emphasis in the original):

If it is the third complaint, information about the person(s) responsible is sent to the City Enforcement team and a citation may be issued. ***Please note that the issuance of a citation is an absolutely discretionary process based on the City's resources, competing time constraints, and whether it is clear that the complaints are being filed in good faith.*** Only two complaints may be made by tenants in the same unit. All three complaints may not be made by tenants in the same unit.

The Code Enforcement Officer and City Attorney no doubt enjoy broad prosecutorial discretion but the statement above declares a policy wide open for prosecutorial abuse.

Criteria such as "competing time constraints" and "based on the City's resources" are so vague as to mean nothing more than "we'll enforce it if we feel like it". Further, there are no criteria or checks on the judgment of whether or not a complaint was made in good faith.

Such reservations of discretion are intimidating and excessive for what should be, in many cases, a nearly ministerial process of checking the complaint forms and issuing a citation.

The City Manager should form policy that if the Code Enforcement team decides not to issue an infraction, they must clearly state the reasons for their decision and inform the complaint filers of these reasons. Complaint filers must have a right to appeal and, if appropriate, amend their complaints with further evidence.

## **2. Enforce signage violations under the Residential Safety Program**

Smoke free housing is a safety issue and the signage is part of how that condition is maintained. Since such signage is unambiguously part of the condition of the physical structure, it should be treated as a building code requirement enforced under the Residential Safety program.

## **3. Enforcing brochure requirements**

Evidence from the Berkeley Considers survey and heard by HAC commissioners strongly suggests that in many cases, making everyone aware of the ordinance is enough for some tobacco smokers to change their behavior.

The City should take that seriously, and take steps to boost awareness of the ordinance.

Based on anecdotal evidence, tenants seem generally to have never received the brochure that informs them of their rights and responsibilities under the ordinance. In the Berkeley Considers survey, several respondents indicated their surprise at learning there is such an ordinance.

Making systematic violations of the brochure requirement an infraction provides tenants with an alternative mode of complaint that can potentially help resolve ongoing violations without risking personal retaliation for pointing the finger at a particular tobacco smoker or smokers.

Here, prosecutorial discretion can be again aided by policy. Upon credible evidence that a landlord is in violation, the Code Enforcement Officer might (by policy) issue a first warning to the property owner or landlord, and send the brochure to all units.

Finally, in one instance, an ad for tenants advises potential applicants that the building is "slowly transitioning" to non-smoking, implying that smoking is permitted and lawful by existing tenants. Systematically misinforming potential tenants of their rights should be treated as a violation of the brochure provision.

#### ALTERNATIVE ACTIONS CONSIDERED

The Commission considered allowing the first complaint, the complaint which triggers a warning, to be made in confidence. The commission also considered affirmatively stating that City enforcement officials may provide evidence of violations based on their personal observations. Objections were raised that such provisions might be unconstitutional and, even if not, would be used to unfairly evict tenants.

#### CITY MANAGER

See companion report.

#### CONTACT PERSON

Mike Uberti, Commission Secretary, HHCS, (510) 981-5114





Homeless Commission

## ACTION CALENDAR

March 10, 2020

To: Honorable Mayor and Members of the City Council  
 From: Homeless Commission  
 Submitted by: Carole Marasovic, Chairperson, Homeless Commission  
 Subject: Utilize Substantial Portion of Cannabis Tax Proceeds to Fund Subsidies under 1000 Person Plan

### RECOMMENDATION

That Council direct a substantial portion of the incoming cannabis tax proceeds to fund subsidies under the 1000 Person Plan.

### POLICY COMMITTEE RECOMMENDATION

On February 13, 2020, the Budget and Finance Committee adopted the following action: M/S/C (Arreguin/Droste) to move the item with a negative recommendation back to the City Council and request that Council consider allocating additional general fund funding for permanent housing subsidies. Vote: Ayes - Arreguin, Droste; Noes – None; Abstain – Davila; Absent – None.

### SUMMARY

In November, 2019, the City of Berkeley will begin receiving revenue from cannabis tax proceeds.

As the numbers of homeless persons continue to grow in Berkeley and Measure P monies may not be sufficient, Council should consider allocating a substantial amount of the cannabis tax proceeds towards funding subsidies under the 1000 Person Plan.

### FISCAL IMPACTS OF RECOMMENDATION

Cannabis tax monies would provide partial funding of the 1000 Person Plan subsidies.

### CURRENT SITUATION AND ITS EFFECTS

The numbers of homeless persons continue to grow in Berkeley with no end in sight.

On April 30, 2019, Council heard the City of Berkeley Homeless Services Coordinator present the 1000 Person Plan proposing that over 570 subsidies be funded by the City over 5 years to house the growing homeless population.

The numbers of homeless persons, based on the Homeless Count, has increased in Alameda County by 43% from 2017 to 2019. Berkeley is waiting for the Berkeley-

specific numbers to be released from the County. In the interim, it has been estimated that as many as 2,000 persons experience homelessness in Berkeley in a year.

In order to house people under the 1000 Person Plan, monies need to be allocated. The only perceived current source of possible revenue is Measure P monies which either may not be wholly granted for this purpose and/or may not be substantial enough for the 1000 Person Plan to begin fulfilling its purpose.

#### BACKGROUND

The Homeless Commission voted at its July 10, 2019 meeting as follows:

**Action:** M/S/C Mulligan/ Hirpara that the Homeless Commission recommends that a substantial amount of the proceeds from the cannabis tax be allocated towards funding subsidies under the 1000 Person Plan.

**Vote:** Ayes: Hill, Mulligan, Marasovic, Hirpara, Kealoha-Blake.  
Noes: None. *Abstain:* None. *Absent:* Behm-Steinberg.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects.

#### RATIONALE FOR RECOMMENDATION

Monies are needed to fund the over 570 subsidies recommended under the 1000 Person Plan. Measure P monies may not be sufficient and additional funding may be needed to fulfill the mission.

#### ALTERNATIVE ACTIONS CONSIDERED

The only alternative is to rely only on Measure P monies.

#### CITY MANAGER

The City Manager does not recommend that the City Council take action on this item at this point in time. This recommendation is based on the following:

- Measures O, U1, and P, which were passed in 2016 and 2018, provide significant resources to address homelessness. Measure O provides for the sale of bonds to increase the supply of affordable housing. City staff anticipates selling \$35 million in bonds towards the end of 2019 / early 2020 that will be used to fund the Berkeley Way Project and other affordable housing projects. Measures U1 and P are both general taxes that are deposited into the City's General Fund. As such, revenues from Measure U1 and P could be allocated to implement programs that address homelessness as discussed in the 1000 Person Plan. In addition to the new revenue streams that have been recently adopted by Berkeley voters, the State continues to allocate funding to address homelessness. For example, the \$4.0 million Homeless Emergency Aid Program (HEAP) allocation to Berkeley is being used to fund the STAIR Center, Dorothy Day House shelter, sanitation and trash

services to encampments, and other City priorities. City staff will continue to track the various programs created by the state and will pursue opportunities as they arise.

- There are a number of commissions (i.e. Community Health, Cannabis, and Civic Arts Commission) that are preparing recommendations for City Council as to how cannabis revenues could be deployed to support education, arts and equity programs. By not taking action at this time, City Council would be able to consider feedback from other commissions.
- The Health, Housing and Community Services Department and Planning and Development Department are working on a number of cannabis related initiatives that pertain to education and enforcement. As the programs take shape, it is likely that resources will be needed for implementation. Delaying action on this item will provide City Council with an opportunity to consider recommendations from city staff.

CONTACT PERSON

Kristen S. Lee, Housing & Community Services Manager, HHCS, (510) 981-5427.







Office of the Mayor

ACTION CALENDAR

March 10, 2020

To: Honorable Mayor and Members of the City Council

From: Mayor Jesse Arreguín, Councilmembers Cheryl Davila, Kate Harrison, Ben Bartlett

Subject: Ronald V. Dellums Fair Chance Access to Housing Ordinance; Adding BMC Chapter 13.106

RECOMMENDATION

1. Adopt a first reading of the Ronald V. Dellums Fair Chance Access to Housing Ordinance, adding Berkeley Municipal Code Chapter 13.106 and;
2. Direct the City Manager to take all necessary steps to implement this chapter including but not limited to developing administrative regulations in consultation with all relevant City Departments including the Rent Stabilization Board, preparing an annual implementation budget, designating hearing officers and other necessary staffing for administrative complaint, exploring the development of a compliance testing program similar to that used by the Seattle Office of Civil Rights, developing timelines and procedures for complaints, conducting outreach and education in partnership with the Alameda County Fair Chance Housing Coalition, and referring program costs to the June budget process.

POLICY COMMITTEE RECOMMENDATION

On November 7, 2019, the Land Use, Housing, and Economic Development Committee adopted the following action: M/S/C (Droste/Hahn) to move the item with amendments and subject to additional technical revisions with a positive recommendation. Vote: All Ayes.

BACKGROUND

The City of Berkeley, along with other California urban areas, has seen an unprecedented increase in homelessness, with dire public health and safety consequences. This proposed Fair Chance Housing Ordinance serves as critical strategy to house currently unhoused people and also prevent more people from becoming homeless.

Structural barriers faced by formerly incarcerated people continue to exist, with the persistent use of criminal records blocking housing opportunities for many. A lack of access to stable housing increases the risk of recidivism, furthering the cycle caused by an inequitable criminal justice system. A 2019 survey by UC Berkeley's Goldman

School for Public Policy found that a third of formerly incarcerated Alameda County residents had experienced homelessness or housing insecurity, and 54% had been denied either housing or the opportunity to live with a family member because of their criminal record.

Multiple jurisdictions across the country, including regional neighbors such as Oakland, San Francisco and Richmond, have passed a Fair Chance Housing Ordinance, which prohibits landlords from prohibiting tenancy based on an individual's criminal history. The Berkeley Housing Element calls for the creation and enforcement of fair housing laws.

In October 2018, the City Council unanimously approved a referral to the City Manager and the 4x4 Committee to establish a Fair Chance Housing Ordinance. The 4x4 Committee discussed this during their meetings in May and June 2019, in consultation with the Alameda County Fair Chance Housing Coalition led by the Just Cities/ Dellums Institute for Social Justice, and various stakeholders.

The Fair Chance Ordinance was moved to the Land Use, Housing and Economic Committee where it was first discussed on July 18, 2019. The ordinance was discussed in depth over the course of five committee meetings. Several key amendments were accepted by the author and advocates based on input from property owners. These noted "exemptions" in the summary section on page four were the result of concerns raised about: (1) small Housing Providers not having access to information and/or the capacity to implement many changes into their existing systems; and (2) owner occupied Housing Providers having special considerations.

On November 7, 2019 the committee took the following action:

*M/S/C (Droste/Hahn) to move the item with amendments and subject to additional technical revisions with a positive recommendation. Vote: All Ayes.*

The final Committee amendments:

- Clarified definitions of "Adverse Action", "Aggrieved Person", "Close Family Member" and "Housing".
- Refined the terms of the exemptions for use of Background Check Reports
- Requested that the City Attorney make technical revisions to ensure appropriate formatting and define the locations where Housing Providers must post notices required under the Ordinance.

Subsequent to the Committee's action, the Mayor reviewed the ordinance to ensure that the language was clear and also compared our ordinance to the recently adopted Oakland Fair Chance Ordinance and has proposed new clarifying changes.

**SUMMARY**

As research and lived experience demonstrate, formerly incarcerated people experience significant barriers beyond the high cost of rent that prevent them from securing housing. They are screened out when applying to rent housing due to criminal background checks in private rental, nonprofit affordable housing, and public housing units. Even living with family members is not always a viable solution as it may put their family’s housing at risk-- rental agreements may prohibit or limit people with criminal histories from residing in the units. Fair Chance Housing is legislation that prohibits the use of criminal histories for most offenses in determining access to housing. It also bans the use of advertising language that excludes people with arrest records, conviction records, or criminal history. In short, Fair Chance Housing legislation removes structural barriers to housing and enables landlords to consider the merits of individual housing applications—providing people with a fair chance.

Led by Just Cities/the Dellums Institute for Social Justice, The Alameda County Fair Chance Housing Coalition has been working to remove such structural exclusionary barriers for people coming home from prison. The purposes of the Fair Chance Housing Ordinance are to: (1) increase access to housing for formerly incarcerated individuals and their family members; (2) reduce the homelessness and family separation that result from blanket exclusion of housing applicants based solely on criminal background checks; (3) reduce recidivism by removing structural barriers to stable housing; (4) provide formerly incarcerated people with a fair opportunity to reclaim their lives and effectively reintegrate into the Berkeley community; and (5) maintain existing safeguards for owners.

*The table below summarizes the main policy terms organized by the type of housing provider.*

| Housing Provider                          | Criminal Background Check                                              | Due Process                    | Reporting to City                  | Potential Remedies for Violations                                     |
|-------------------------------------------|------------------------------------------------------------------------|--------------------------------|------------------------------------|-----------------------------------------------------------------------|
| Private (Non-Affordable Housing Provider) | No                                                                     | City Complaint or Sue in Court | None                               | City complaint w/ fine. Court action w/ damages or injunctive relief. |
| Publicly Subsidized & Not HUD Funded      | No                                                                     | City Complaint or Sue in Court | Annual certification of compliance | City complaint w/ fine. Court action w/ damages or injunctive relief. |
| HUD Funded                                | Following due process protections, can check on 2 crimes per HUD rules | City Complaint or Sue in Court | Annual certification of compliance | City complaint w/ fine. Court action w/ damages or injunctive relief. |

*ORDINANCE PROHIBITIONS:*

The proposed ordinance prohibits ALL landlords from:

- (a) Advertising or using a policy that automatically excludes people with criminal histories from rental housing,
- (b) Asking about or requiring disclosure of someone's criminal history, or
- (c) Taking adverse action against an applicant or tenant based on his or her criminal history.

*EXEMPTIONS:*

- The following properties where the owner occupies the property are exempt from the ordinance: permitted ADUs, single family homes, duplexes, and triplexes.
- Property owners renting their primary dwelling when they are on sabbatical.
- Tenants renting out available bedrooms in the unit in which they reside.
- Pursuant to State law, landlords can review and consider whether an applicant is on the State operated registry of lifetime sex offenders in order to protect the safety of at risk people. This review should happen after a conditional offer has been made and upon receipt of written consent of the applicant. If a housing denial is based upon the registry information, the landlord must provide that information to the applicant and provide the applicant with the opportunity to rebut or provide mitigating information.
- Landlords of HUD funded housing have a partial exemption from the ordinance if they are complying with federal regulations that require them to automatically exclude tenants based on certain types of criminal history (lifetime sex offender registration requirement or making meth on a federally assisted housing property). However, the landlord should follow due process protections including obtaining written consent from the applicant. The landlord must also provide the background check information to the applicant and provide the applicant with the opportunity to rebut or provide mitigating information.

## CURRENT SITUATION AND ITS EFFECTS

Information below is based upon research conducted by the Just Cities Team, former senior government officials and academic researchers. The Just Cities Policy Justice Memo is included in Attachment 2.

### **SUMMARY OF FLAWS WITH CRIMINAL BACKGROUND DATABASE SYSTEMS**

Research shows that government repositories of criminal records are routinely incomplete, thus making commercial criminal background reports inaccurate and/or misleading. In 2006, the U.S. Department of Justice (DOJ) found that an estimated 50% of FBI arrest records, which are used by many background check companies, were missing information on the final disposition of the cases in question.<sup>1</sup> In 2016, the DOJ found that an estimated 32% of records in state criminal history repositories were missing final disposition data.<sup>2</sup> Incomplete data at the state and federal levels undermine the fairness and accuracy of commercial criminal background reports, which rely upon governmental data. In particular, out-of-date information about the final disposition of a case means that data about arrests are routinely listed in background reports even when the charges were eventually dropped, reduced, or disproven in court.

The consequences of these database gaps are significant. According to the National Employment Law Project (NELP), “one third of felony arrests do not result in conviction and many others are reduced to misdemeanors.”<sup>3</sup> While industry-wide data on the inaccuracies of commercial criminal background reports are unavailable, the NELP estimates that 1.8 million workers are subject to FBI checks that include faulty or incomplete information each year. Further, many on-line databases accessible through search engines are also inaccurate, even representing persons without criminal records as having been arrested or convicted.

The lack of accurate disposition data is one of many issues that undermine the accuracy of private criminal background reports. According to a review by the National Consumer Law Center, such reports suffer from a range of problems, including: the publication of sealed or expunged records; the misclassification of crimes (e.g. reporting a misdemeanor as a felony); the assignment of crimes to an individual who did not commit them, otherwise known as a “false positive”; and the display of data in a misleading manner (e.g. reporting a single arrest multiple times because it appears in

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<sup>1</sup> U.S. Department of Justice. (2006). *The Attorney General's Report on Criminal History Background Checks*, p. 3.

<sup>2</sup> National Consortium of Justice Statistics. (2018). *Survey of State Criminal History Information Systems, 2016: A Criminal Justice Information Policy Report*, p. 2.

<sup>3</sup> National Employment Law Project. (2013). *Wanted: Accurate FBI Background Checks for Employment*, pp. 1-2.

multiple databases).<sup>4</sup> Unlike government screens, such commercial background checks are conducted using basic personal information, like names. In the late 1990s, a task force consisting of state and federal agencies found that, compared with fingerprint-based checks, name-based checks resulted in a false-positive rate of 5.5%.<sup>5</sup> This means that around 1 in 20 apparent identifications of a crime was ascribed to a person who did not in fact commit that crime.

### **SUMMARY OF HOUSING ACCESS BARRIERS FOR PEOPLE WITH CRIMINAL RECORDS**

Alameda County service providers and national researchers have documented barriers to access to both private rental and publicly subsidized affordable housing faced by formerly incarcerated residents.<sup>6</sup> Results of a 2019 Goldman School survey and interviews of formerly incarcerated persons in Alameda County found that many formerly incarcerated persons could not stay in public housing with a relative or family member due to public housing rules or were denied private or public rental housing due to their incarceration record.<sup>7</sup> In addition, a recent survey by the Berkeley Property Owners Association found that the majority of landlord survey respondents conducted criminal background checks. We note that persons paroled from incarceration are generally required to be returned to the county of their residence (CA Penal Code 3003); therefore, parolees from this area will be returning home.

### **SUMMARY OF PUBLIC HEALTH & SAFETY IMPACTS FROM HOUSING BARRIERS:**

As the state with the second highest population of people currently in prison or jail in the country,<sup>8</sup> California will need to house formerly incarcerated people as they reenter society in a highly impacted housing market. Alameda County has a total of 7,900 people on probation or parole.<sup>9</sup> Incarceration and lack of housing can lead to severely

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<sup>4</sup> National Consumer Law Center. (2012). *Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses*, p. 15.

<sup>5</sup> National Association of Professional Background Screeners. (2005). *The National Crime Information Center: A Review and Evaluation*, pp. 11-2.

<sup>6</sup> See Corinne Carey, No Second Chance: People with Criminal Records Denied Access to Public Housing, 36 University of Toledo Law Review 545; Caterina Gouvis Roman and Jeremy Travis, Urban Institute, Taking Stock: Housing, Homelessness and Prisoner Re-Entry (2004); and Every Door Closed: Barriers Facing Parents With Criminal Records, CLASP and CLS Report, Chapter 3, “Criminal Records and Subsidized Housing: Families Losing the Opportunity for Decent Shelter”.

<sup>7</sup> Rodriguez, Anthony (2019) “A Just Return Home: Identifying and Removing Barriers to Housing for Formerly Incarcerated Residents Through Suggested Policies for County of Alameda” Report for Just Cities and Goldman School of Public Policy. p.23

<sup>8</sup> California 2017 raw numbers. “State-by-State Data.” The Sentencing Project. Accessed October 4, 2019. <https://www.sentencingproject.org/the-facts/#detail?state1Option=U.S.Total&state2Option=0>

<sup>9</sup> Total population in probation, Q4 2018 “Alameda County Probation Department Data Dashboard”. Alameda County. Accessed October 4, 2019. <https://www.acgov.org/probation/dashboard.htm>.

limited economic opportunity, thereby increasing the chances of recidivism and public safety impacts.

Research has shown that access to stable and affordable housing enables people to successfully re-integrate into society. For example, a study in Maryland<sup>10</sup> found that providing supportive housing to recently released incarcerated persons reduced the chances that they would be rearrested in the first year. A government study conducted in the United Kingdom found that stable housing was associated with a 20% reduction in the chance of being reconvicted.<sup>11</sup>

Extensive research also shows the direct link between incarceration history, homelessness, and health.<sup>12</sup> For example, a recent participatory action research project between Just Cities, The Village, and the UC Berkeley Goldman School for Public Policy's Center for Civility & Democratic Engagement found that 73% of unhoused residents interviewed in Oakland's encampments were formerly incarcerated.<sup>13</sup> Based upon anecdotal and other data, we believe that unhoused people in Berkeley are also disproportionately formerly incarcerated. For example, in the 2017 Point in Time count for Berkeley homeless residents, one of the top six reasons listed for the primary cause of homelessness was incarceration (6% of respondents). In addition, there are an estimated 10 million children nationwide that are impacted by a parent or close relative who are in the criminal justice system.<sup>14</sup> These children suffer from an increased rate of depression, antisocial behavior, drug use, and suicide.<sup>15</sup>

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<sup>10</sup> Kirk, David S., Geoffrey C. Barnes, Jordan M. Hyatt, and Brook W. Kearley. "The Impact of Residential Change and Housing Stability on Recidivism: Pilot Results from the Maryland Opportunities through Vouchers Experiment (MOVE)." *Journal of Experimental Criminology* 14, no. 2 (2017): 213–26. <https://doi.org/10.1007/s11292-017-9317-z>.

<sup>11</sup> Kirk, David S., Geoffrey C. Barnes, Jordan M. Hyatt, and Brook W. Kearley. "The Impact of Residential Change and Housing Stability on Recidivism: Pilot Results from the Maryland Opportunities through Vouchers Experiment (MOVE)." *Journal of Experimental Criminology* 14, no. 2 (2017): 213–26. <https://doi.org/10.1007/s11292-017-9317-z>.

<sup>12</sup> Roman, Caterina Gouvis, and Jeremy Travis. "Taking Stock: Housing, Homelessness, and Prisoner Reentry." *PsycEXTRA Dataset*, 2004. [http://webarchive.urban.org/UploadedPDF/411096\\_taking\\_stock.pdf](http://webarchive.urban.org/UploadedPDF/411096_taking_stock.pdf) p.7-8

<sup>13</sup> Tsai, Tim. "Standing Together: A Prevention-Oriented Approach to Ending Homelessness in Oakland." <http://bit.ly/HomelessPrevention2019> p.12

<sup>14</sup> Hirsch, Amy E, Sharon M Dietrich, Rue Landau, Peter D Schneider, Irv Ackelsberg, Judith Bernstein-Baker, and Joseph Hohenstein. *Every Door Closed: Barriers Facing Parents with Criminal Records*. Philadelphia, PA: Community Legal Services, Inc, 2002. p.1  
[https://www.clasp.org/sites/default/files/publications/2018/01/every\\_door\\_closed.pdf](https://www.clasp.org/sites/default/files/publications/2018/01/every_door_closed.pdf)

<sup>15</sup> Davis, Laurel, and Rebecca J. Shlafer. "Mental Health of Adolescents with Currently and Formerly Incarcerated Parents." *Journal of Adolescence* 54 (2017): 120–34. <https://doi.org/10.1016/j.adolescence.2016.10.006>.

Shlafer, Rebecca J, Erica Gerrity, Ebony Ruhland, and Marc Wheeler. "Children with Incarcerated Parents – Considering Children's Outcomes in the Context of Complex Family Experiences." *Children, Youth, and Family Consortium*, 2013. <https://www.prisonpolicy.org/scans/umn/June2013ereview.pdf> p.3

**SUMMARY OF RACIAL DISPARITY:**

There is an extreme racial disparity in criminal conviction and incarceration rates, which translates to a racial disparity in access to housing.

There are statistical racial disparities at every stage of the criminal justice system. Research has demonstrated that African Americans are more likely to be stopped by police,<sup>16</sup> prosecuted disproportionately, and punished more harshly than other ethnic groups.<sup>17</sup> As a result, Black men—one third of whom are likely to serve time in prison or jail at some point in their lives—are incarcerated at a rate that is five times that of White men. Racial bias in plea-bargaining, which accounts for the vast majority of new criminal convictions, is a significant source of the disparity in incarceration. In a recent study of more than 48,000 cases in Wisconsin, legal scholar Carlos Berdejó found that White defendants were 25% more likely than Black ones to have their most serious charge either dropped or reduced to a less serious charge.<sup>18</sup> As a result, Whites who were initially charged with a felony were an estimated 15% more likely to end up convicted of a misdemeanor instead. In addition, Whites who were initially charged with a misdemeanor were an estimated 75% more likely to be convicted of a crime carrying no possible incarceration, or not convicted at all.<sup>19</sup>

These disparities are even more acute in California. According to the Public Policy Institute of California, in 2017, African Americans made up 5.6% of the state's adult men but 28.5% of its male prisoners.<sup>20</sup> As a result, Black men were ten times more likely than White men to be incarcerated. Latino men were more than twice as likely as White men to be incarcerated. There were significant disparities among Black women, too, who were five times more likely than White women to be incarcerated.<sup>21</sup> Inequalities in incarceration were driven in part by inequalities in policing. Again, according to the Public Policy Institute of California, Black male residents were three times more likely than White ones to be arrested in 2016.<sup>22</sup>

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<sup>16</sup> "Findings" Stanford Open Policing Project. Accessed October 4, 2019. <https://openpolicing.stanford.edu/findings/>.

<sup>17</sup> Porter, Nicole D., Nazgol Ghandnoosh, Josh Rovner, and Jean Chung. "Racial Disparity." The Sentencing Project, September 30, 2019. <https://www.sentencingproject.org/issues/racial-disparity/>.

<sup>18</sup> Berdejó, Carlos. (2018). [Criminalizing Race: Racial Disparities in Plea-Bargaining](#). *Boston College Law Review*, 59(4), pp. 1189-91.

<sup>19</sup> Berdejó, Carlos. (2018). [Criminalizing Race: Racial Disparities in Plea-Bargaining](#). *Boston College Law Review*, 59(4), pp. 1189-91.

<sup>20</sup> Public Policy Institute of California. (2019). [California's Prison Population](#), p. 1.

<sup>21</sup> Public Policy Institute of California. (2019). [California's Prison Population](#), p. 1.

<sup>22</sup> Public Policy Institute of California. (2019). [Racial Disparities in California Arrests](#), p. 1.



Here in Alameda County, 48% of probationers are African American<sup>23</sup> even though African Americans make up only 11% of the population.<sup>24</sup>

This means that both nationally and locally, a disproportionate number of African Americans are impacted by criminal background checks in housing applications.

### ALTERNATIVE ACTIONS CONSIDERED

Berkeley's Fair Chance Ordinance builds upon the work of other coalitions and communities to advance fair chance housing policies, namely in the cities of Oakland, Richmond, Seattle, and Portland. Seattle and Portland have first in time housing policies which limit landlord discretion in the selection of their tenants. Alameda County cities do not have such a policy.

Comparison between the Berkeley proposal and policies enacted by the cities of Oakland, Richmond, Seattle, and Portland:

- Similar to Oakland, Seattle and Portland, the Berkeley proposal would apply to all housing units, private and publicly subsidized.
- Similar to Oakland, Richmond and Seattle, the Berkeley proposal would enable Housing Providers who are funded by HUD to conduct limited criminal records checks and subject to due process protections for the applicant.
- Similar to Richmond, the Berkeley proposal would provide for a private right of action in addition to City enforcement. The City of Seattle, instead, utilizes its robust Department of Civil Rights which enforces civil rights violations.
- Unlike Portland and Seattle, the Berkeley proposal DOES NOT have a first in time tenant acceptance requirement. In addition, the Berkeley proposal maintains landlord discretion in the review of relevant information including landlord references, employment and income status, and credit report checks.

Less comprehensive versions of fair chance policies have passed in other cities including San Francisco; Urbana, Illinois; Madison, Wisconsin; New York, New York; and Newark, New Jersey.

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<sup>23</sup> Total population in probation, Q4 2018 "Alameda County Probation Department Data Dashboard". Alameda County. Accessed October 4, 2019. <https://www.acgov.org/probation/dashboard.htm>.

<sup>24</sup> "U.S. Census Bureau QuickFacts: Alameda County, California." United States Census Bureau. Accessed October 4, 2019. <https://www.census.gov/quickfacts/alamedacountycalifornia>.

CONSULTATION/OUTREACH OVERVIEW AND RESULTS*Transformative Policymaking Process:*

The development of the Fair Chance Housing policy and ordinance was a partnership effort between the City sponsors and the Alameda County Fair Chance Housing Coalition leaders that followed the principles of democratic participatory policymaking. In the process led by the Just Cities team, people most impacted by the policy problems—formerly incarcerated residents and their family members—identified both the policy problems and also the policy solutions. A team of researchers from UC Berkeley Goldman School of Public Policy, policy experts, lawyers, and former City of Oakland senior officials from the City Administrator and City Attorney’s offices provided research, policy, and legal support. The Coalition leaders also selected government officials to sponsor their proposed policy based upon their partnership criteria. More information about this transformative policymaking process and the policy research rationale behind the ordinance is included in the Just Cities’ Policy Justice Memo, Attachment 2.

We are grateful for the dedicated leadership and hard work of the Coalition’s leaders: John Jones III with Just Cities, Ms. Towanda Sherry with Faith in Action East Bay, Ms. Anita Wills with Essie Justice Group, and Katie Dixon, Taqwaa Bonner, and Succati Shaw with All of Us or None. The technical assistance and research partners included Margaretta Lin, Richard Illgen, and Alex Werth from Just Cities; Dan Lindheim, Larry Rosenthal, Tim Tsai, and Anthony Rodriguez from the Goldman School’s Center for Civility and Democratic Engagement; Lisa Sitkin from the National Housing Law Project; and Tamisha Walker from the Safe Return Project.

The Coalition partners and supporters include: All of Us or None, Berkeley NAACP, Berkeley Oakland Support Services (BOSS), Community Works, Church by the Side of the Road, East Bay Community Law Center, East Bay for Everyone, East Bay Young Democrats, Essie Justice Group, Friends of Adeline, Just Cities, Justice Reinvestment Coalition, Laney College Restoring Our Communities Center, League of Women Voters for Oakland, Make Oakland Better Now, McGee Baptist Church, National Housing Law Project, Our Beloved Community Action Network, PolicyLink, Root & Rebound, Safe Return Project, Sierra Club, Tech Equity Collaborative, Underground Scholars of UC Berkeley, and The Way Church.

*External Stakeholders Consulted*

This ordinance was crafted after more than seven public hearings before the City of Berkeley’s 4x4 and Land-Use, Housing & Economic Development Committees, multiple meetings with the leaders of the Berkeley Property Owners association, the Berkeley

Housing Authority, Seattle Office of Civil Rights and a community forum with Berkeley residents and community organizations.

### *Internal Stakeholders Consulted*

This ordinance was developed in close consultation with the City Attorney's office, as well as feedback and support from the Berkeley Rent Stabilization Board.

### *Results*

As a result of this consultation, outreach and committee processes the ordinance has been amended and improved. For example, Close Family Members were included in the definition of aggrieved person based on the lived experience of one of the POLs. Through the Policy Committee process, exemptions were included for owner-occupants, property owners renting their unit while on sabbatical, as well as ADUs, single-family homes, duplexes and triplexes. This principle of choice with whom you live was extended to tenants as a result of this process.

## RATIONALE FOR RECOMMENDATION

### *POLICY GOALS:*

1. Remove current structural barriers faced by formerly incarcerated people when they apply for private or publicly subsidized housing to enable them to be considered on the merits of their present situation, rather than the albatross of their past.
2. Create a due process system that a) enables formerly incarcerated people the ability to complain to the City and also sue to enforce their rights under the Ordinance; and b) builds on the City's current administrative systems and capacity.
3. Design policy terms based upon an understanding of the different application and review processes by private and multiple kinds of Affordable Housing providers.
4. Create reporting requirements that are streamlined and also help Affordable Housing providers transform their current application and review systems.
5. Avoid unintended consequences by not having burdensome or complex requirements for landlords.
6. Address the realities and special considerations of landlords who reside on their rental property that are smaller buildings, e.g. triplexes and smaller.

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

The effective date of the Ordinance is thirty days after final adoption of the ordinance. However, like in Oakland, a Housing Provider will not be liable for a violation within 180 days after the final adoption of the Ordinance unless the Provider has received a warning letter from the City regarding a violation of the Ordinance.

The Fair Chance Housing Ordinance applies to all Berkeley Housing Providers, with exemptions noted above. All applicants subject to an adverse action have a right to file a complaint with the City Manager within a year of the date of their application to be evaluated through an administrative hearing process. In the case of a hearing the public and complainant would be informed of available City or community resources to assist in the filing of the complaint or preparing for the hearing, including the gathering of evidence. The City can enforce any violation of the ordinance, with or without a complaint, under B.M.C. 1.28.

Similar to existing local tenant law, private right of action and attorney's fees for the prevailing applicant are awarded. The applicants and the City may avail themselves of any or all of these enforcement mechanisms to ensure compliance and an appropriate remedy for any violation.

In the case an applicant is denied access to private housing they are entitled to any notices required by state and federal law, and may also request a reason for the denial. Landlords are required to maintain documentation of any conviction history that they obtain on applicants for at least three years. Landlord retaliation is explicitly prohibited under this ordinance.

Under the ordinance Affordable Housing is defined as any housing provider receiving direct local, county, state, or federal subsidy. Section 8 landlords are excluded from the definition of Affordable Housing provider since the Housing Authority conducts the background checks for Section 8 voucher holders and because of Berkeley's source of income anti-discrimination law<sup>25</sup>.

HUD funded housing providers may conduct a limited background check if required by federal requirements. The housing provider must seek written consent from the applicant, provide the applicant with a copy of the criminal background report, and provide the applicant with the opportunity to provide rebutting or mitigating information.

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<sup>25</sup> City of Berkeley Municipal Code 13.31.020 Discrimination based on source of income prohibited.

Only publicly subsidized housing providers would submit an annual certification of compliance to the City utilizing a City template as provided by Administrative Regulations. The Coalition would like to work with the City on designing the compliance template.

The City Manager or their designee would provide an annual status report to the City Council and public including: a) which Affordable Housing providers submitted an annual certification of compliance; b) number of complaints filed with the City and the resolution; c) information from local service providers and community organizations on the number of court cases filed and the resolution or other compliance information. It is especially critical in the early years of new legislation for the City Council and the public to know about the implementation status of the legislation and whether any aspects need to be refined.

Additionally, the City Manager should explore alternatives to a complaint based enforcement process that might prove more effective. For example, staff from Seattle's Office of Civil Rights shared that their most effective measure of enforcement is their compliance testing program. In addition to accepting complaints, Seattle staff submits housing applications across the city to discern compliance with anti-discrimination laws. Good faith actors found to be in violation are offered technical assistance in the form of education and training prior to any penalties being assessed. Just as in Seattle, a testing program might contribute to broader Berkeley enforcement efforts.

#### *Addressing Common Concerns and Misconceptions*

Under this ordinance, landlords maintain their discretion to use accurate information that is critical to assessing whether an applicant will be a good tenant. This ordinance does not prevent the use of credit checks, income verification, or references from informing a landlord's decision-making process. Unlike jurisdictions that have passed similar ordinances, Berkeley does not have first-in-time laws that require a landlord to accept the first qualified applicant as their tenant.

Contrary to misconceptions, the Fair Chance Housing Ordinance does not impact landlords' ability to remove troublesome tenants. Existing state and local laws remain intact that address the rights of landlords and tenants to manage problematic behaviors. B.M.C. 13.76.130 outlines reasons for a "just-cause" eviction including refusal to pay rent, substantial violation of the terms of a lease, or substantial damages to the property.

One of the “just-cause” terms for an eviction allowed in B.M.C. 13.76.130 (A.5.) expressly allows eviction for illegal activities pursuant to subdivision 4 of the Code of Civil Procedure Section 1161. Thus, if a tenant commits certain serious violations, under Cal. Code of Civ. Proc. § 1161(4), a landlord can issue a three-day unconditional quit notice to vacate. The tenant must move out of the unit within three days of receiving the notice or they may face eviction.

Landlords must always use their best judgement when selecting tenants. The Fair Chance Housing Ordinance prohibits the use of problematic, error-prone databases as a tool in these evaluations. Existing remedies and laws remain to support landlords’ with troublesome or criminal tenants.

### *City Funding for Additional Community Outreach and Education*

As City experience has informed us, effective implementation of new legislation requires informing both the regulated groups and members of the protected groups of the new laws. In sharing their lessons learned about their Fair Chance Housing policy, the City of Seattle’s Civil Rights Office strongly recommended City investment in community outreach and education efforts. The City of Oakland Community and Economic Development committee unanimously passed a motion to include City funds for Fair Chance Housing community outreach and enforcement as part of their mid-cycle budget process. The Alameda County Fair Chance Housing Coalition have been in conversation with private funders and Alameda County about their potential investment in countywide community outreach and education to ensure effective implementation of the Fair Chance Housing policies being passed in Alameda County.

The City of Berkeley should participate in a countywide coordinated community outreach and education program and allocate appropriate funding as determined by the City Manager during the next budget cycle towards these critical efforts.

### REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES AND LAWS

In 2014 the City Council unanimously passed a Fair Chance Ordinance to extend its existing policy, passed in 2008, to eliminate disclosure of conviction history information from the City’s job application, or “Ban the Box” policy, to private employers within the City of Berkeley<sup>26</sup>. Fair Chance Housing legislation is proposed in this same spirit of acknowledging and reconciling some of the harm and injustice caused by our criminal “justice” system of mass incarceration.

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<sup>26</sup> [http://www.cityofberkeley.info/Clerk/City\\_Council/2014/10\\_Oct/Documents/2014-10-21\\_Item\\_25\\_Fair\\_Chance\\_Ordinance.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2014/10_Oct/Documents/2014-10-21_Item_25_Fair_Chance_Ordinance.aspx)

FINANCIAL IMPLICATIONS

Costs associated with the adoption of this Ordinance include development and mailing of required notices, public education, annual reporting, and administrative enforcement (investigation and processing of complaints).

The coalition has indicated that they have partners interested in supporting the city with community education and a participatory action impact study.

Given the direct connection between housing barriers for formerly incarcerated people and homelessness, we believe that removing these barriers may reduce the number of homeless persons and result in potential City cost savings overtime.

ENVIRONMENTAL SUSTAINABILITY

Not applicable

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: Ordinance
- 2: Berkeley Fair Chance Housing Policy Brief-Just Cities, December





ORDINANCE NO. -N.S.

**PROHIBITING ~~CONSIDERATION OF CRIMINAL HISTORIES IN SCREENING APPLICATIONS FOR RENTAL HOUSING THE USE OF CRIMINAL HISTORY IN HOUSING DECISIONS~~**

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

Section 1. That Berkeley Municipal Code Chapter 13.106 is hereby added to read as follows:

**Chapter 13.106**

**Prohibiting the Use of Criminal History in Housing Decisions**

**Sections:**

- 13.106.010 Title**
- 13.106.020 Findings**
- 13.106.030 Definitions**
- 13.106.040 Use of Criminal History in Housing Decisions**
- 13.106.050 Requirements for Housing Providers**
- 13.106.060 Retaliation Prohibited**
- 13.106.070 Recordkeeping and Confidentiality**
- 13.106.080 Implementation**
- 13.106.090 Administrative Complaints**
- 13.106.100 Enforcement**
- 13.106.110 ~~Severability~~No Conflict with State or Federal Law**
- 13.106.120 ~~Effective Date~~Severability**

**13.106.010 Title**

This Chapter shall be known as the “Ronald V. Dellums Fair Chance Access to Housing ~~and Public Health and Safety~~ Ordinance.” and may be shortened to the “Fair Chance Housing Ordinance”.

**13.106.020 Findings**

- A. Mass incarceration is a national and local crisis and restoring the rights of people affected by mass incarceration is a national priority.
- B. The U.S. Department of Justice has estimated one in every three adults in the United States has either an arrest or conviction record.
- C. Studies have found that private criminal databases pull source information from inadequate records and lack accountability procedures to ensure that the database records provided to Housing Providers are accurate. Housing Providers in conducting criminal background checks are relying on such inaccurate information in evaluating housing applications.
- D. Formerly incarcerated persons face barriers to access to both private rental and publicly subsidized affordable housing.

- E. Homelessness is a critical issue in Berkeley and formerly incarcerated people are disproportionately affected by homelessness, which can prevent a formerly incarcerated person from getting a job, from visiting with their children, and from fulfilling other needs that are fundamental to reintegrating with the community after incarceration.
- F. The unmet housing needs of formerly incarcerated people in Berkeley are an acute challenge to the dignity, public health and safety, and equal opportunity for this population and the broader community.
- G. Research has found that access to housing reduces recidivism, and the lack of housing can be a significant barrier to successful reintegration after incarceration.
- H. Reliance on criminal history to select tenants impedes formerly incarcerated persons from gaining access to housing in the City of Berkeley, to the detriment of health, welfare, and public safety of the City's residents.

### 13.106.30 Definitions

- A. "Adverse Action" means to take one of the following actions based on ~~based on~~ a person's Criminal or Conviction History:
  - 1. Failing or refusing to rent or lease Housing to a person;
  - 2. Failing or refusing to continue to rent or lease Housing to a person;
  - 3. Reducing the amount or term of any person's subsidy for Housing;
  - 4. Treating an Applicant or tenant differently from other applicants or tenants, including but not limited to, taking such actions as requiring higher security deposit or rent;
  - 5. Treating a person as ineligible for a tenant-based rental assistance program, including but not limited to, the Section 8 ~~tenant-based voucher~~ Housing Choice Voucher ~~p~~Program (42 U.S.C. Section 1437f); or
  - 6. Failing to permit a tenant's Close Family Member to occupy a rental unit while the occupying tenant remains in occupancy.
- B. "Affordable Housing" shall mean any Housing that (1) has received or is receiving City, County, State, or Federal funding, tax credits, or other subsidies connected in whole or in part to developing, rehabilitating, restricting rents, subsidizing ownership, or otherwise providing rental housing for extremely low income, very low income, low income, and moderate income households (collectively, "Public Funding"), with the exception of Housing where the only Public Funding received is in the form of a Local, State or Federal tenant-based voucher, such as through the Section 8 ~~tenant-based~~ Housing Choice voucher ~~Voucher p~~Program (42 U.S.C. Section 1437f); or (2) is subject to affordability and related requirements pursuant to the City's Below Market-Rate Rental Housing Program, including but not limited to the Affordable Housing Mitigation Fee Ordinance (Chapter Section 22.20.065), the State Density Bonus law (California Government Code Sections 65915-65918 and Chapter 23C.14), and the Low Income Inclusionary Live/Work Units Ordinance (Section 23E.20.080).

- C. "Affordable Housing Provider" shall mean any Housing Provider that owns, master leases, manages, or develops Affordable Housing in the City. Any agent, such as a property management company, that makes tenancy decisions on behalf of the above-described Housing Providers, and any government agency, including but not limited to the Berkeley Housing Authority, that makes eligibility decisions for tenant-based rental assistance programs, including but not limited to the Section 8 ~~Housing Choice Voucher p~~Program (42 U.S.C. Section 1437f), shall also be considered an "Affordable Housing Provider."
- D. "Aggrieved Person" means an Applicant who believes they were subject to an Adverse Action; a tenant who believes they or their Close Family Member was subject to an Adverse Action based on the application of an Applicant to reside in such family member's rental unit; or a tenant who believes they were subject to an Adverse Action based on the failure or refusal to permit a person to reside in such tenant's rental unit to replace an existing tenant, add a new tenant, or to sublet to a subtenant.
- E. "Applicant" means a person who seeks information about, visits, or applies to rent or lease Housing; who applies for a tenant-based rental assistance program, including but not limited to the Section 8 ~~Housing Choice Voucher p~~Program (42 U.S.C. ~~section1437f~~Section 1437f); who seeks to be added as a household member to an existing lease for Housing; or, with respect to any Criminal History that occurred prior to the beginning of the person's tenancy, who currently rents or has a lease for Housing.
- F. "Arrest" means a record from any jurisdiction that ~~does not result in a Conviction and~~ includes information indicating that a person has been questioned, apprehended, taken into custody or detained, or held for investigation by a law enforcement, police, or prosecutorial agency and/or charged with, indicted, ~~and/or tried, and/or convicted or and~~ acquitted for any felony, misdemeanor, or other criminal offense.
- G. "Background Check Report" means any report regarding an Applicant's Criminal History, including but not limited to those produced by the California Department of Justice, the Federal Bureau of Investigation, other law enforcement agencies, courts, or any consumer reporting or tenant screening agency.
- H. "Close Family Member" means a spouse, ~~registered~~ domestic partner, child, sibling, parent, grandparent, or grandchild.
- I. "Conviction" means a record from any jurisdiction that includes information indicating that a person has been convicted ~~of a felony or misdemeanor or other of a~~ criminal offense ~~and for which the person was placed on probation, fined, imprisoned and/or paroled.~~
- J. "Criminal History" means information transmitted orally or in writing or by any other means, and obtained from any source, including but not limited to the person to whom the information pertains, a government agency, or a Background Check Report, regarding one or more Convictions or Arrests; a Conviction that has been sealed, dismissed, vacated, expunged, ~~sealed~~, voided, invalidated, or otherwise rendered inoperative by judicial action or by statute (for example, under California Penal Code Sections 1203.1 or 1203.4); a determination or adjudication in the juvenile justice system; a matter considered in or processed through the juvenile justice system; or participation in or completion of a diversion or a deferral of judgment program.
- K. "Housing" means any residential rental housing, building, or unit in the City of Berkeley, with the exception of the following:

**Commented [TT1]:** Jay suggested this change to clarify who would actually qualify to make this complaint. He felt it was important to be able to discern who can trigger the hearing process.

1. Single Family Dwellings where one or more owners occupies the dwelling as their principal residence;
  2. Single Family Dwellings with ~~an~~ Accessory Dwelling Units, as defined in Section 23F.04.010, where either the main or an Accessory Dwelling Unit is occupied by one or more owners as their principal residence;
  3. Duplexes or triplexes where one of the units is occupied by one or more owners as their principal residence;
  4. Units rented pursuant to Section 13.76.130 A.10; and
  5. Tenant-occupied units where an occupying tenant seeks to replace an existing co-tenant, add an additional co-tenant, or sublet the unit, provided that the occupying tenant remains in occupancy.
- L. "Housing Provider" shall mean any Person that owns, master leases, manages, or develops Housing in the City. For the purpose of this definition, "Person" includes one or more individuals, partnerships, organizations, trade or professional associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and any political or civil subdivision or agency or instrumentality of the City. In addition, Any agent, such as a property management company, that makes tenancy decisions on behalf of the above-described Persons, and any government agency, including but not limited to the Berkeley Housing Authority, that makes eligibility decisions for tenant-based rental assistance programs, including but not limited to the Section 8 Housing Choice Voucher Program program (42 U.S.C. Section 1437f), shall also be considered a "Housing Provider".
- ~~M. "Person" shall mean one or more individuals, partnerships, organizations, trade or professional associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, or any political or civil subdivision or agency or instrumentality of the City.~~

#### **13.106.040 Use of Criminal History in Housing Decisions**

- A. Except as provided in Paragraphs B and C of this Section, a Housing Provider shall not, at any time or by any means, whether direct or indirect, inquire about an Applicant's Criminal History, require an Applicant to disclose their Criminal History, require an Applicant to authorize the release of their Criminal History or, if such information is received, base an Adverse Action in whole or in part on an Applicant's Criminal History.
- B. It shall not be a violation of this Chapter for a Housing Provider to comply with Federal or State laws that require the Housing Provider to automatically exclude tenants based on certain types of criminal history (e.g. Ineligibility of Dangerous Sex Offenders for Admission to Public Housing (42 U.S.C. Section 13663(a); Ineligibility of Individuals Convicted for Manufacturing Methamphetamine on Premises of Federally Assisted Housing for Admission to Public Housing and Housing Choice Voucher Programs (24 C.F.R. Section 982.553));<sup>1</sup> However, if such a requirement applies, the Housing Provider shall not inquire about, require disclosure of, or, if such information is received, review an Applicant's Criminal History until the Housing Provider first does the following: (1) informs the Applicant in advance that the Housing Provider will check for certain types of criminal history; (2) requests and obtains written consent, or if the Applicant objects, provides the applicant the

~~opportunity to withdraw their application; (3) complies with the requirements in subsections D and E of this Section. provided that if such a requirement applies, Applicant's Criminal History until the Housing Provider has first obtained written consent and followed Paragraphs D and E of this Section:~~

~~B.—Any Adverse Action based on Criminal History obtained pursuant to this Paragraph shall be limited to actions required to comply with State or Federal law.~~

- ~~1. Determined that the Applicant is qualified to rent the Housing under all of the Housing Provider's criteria for assessing Applicants except for any criteria related to Criminal History;~~
- ~~2. Provided to the Applicant a conditional lease agreement that commits the Housing to the Applicant as long as the Applicant meets the Housing Provider's Criminal History criteria; and~~
- ~~3. Informed the Applicant in advance that the Housing Provider will be obtaining information about the Applicant's Criminal History and obtained the written consent of the Applicant to obtain such information.~~

~~The Applicant may elect to withhold such consent and withdraw their application. Any Adverse Action based on Criminal History obtained pursuant to this Paragraph shall be limited to actions required to comply with State or Federal law.~~

C. In compliance with state law, in order to protect persons at risk pursuant to Penal Code Section 290.46(j)(1), the A Housing Provider may review the State registry of lifetime sex offenders operated by the State of California Department of Justice; provided, ~~however, that~~ (1) the Housing Provider has stated the lifetime sex offender screening requirement in writing in the rental application; and (2) the Housing Provider may shall not inquire about, require disclosure of, or, if such information is received, review an Applicant's Criminal History until the Housing Provider has first:

1. Determined that the Applicant is qualified to rent the Housing under all of the Housing Provider's criteria for assessing Applicants except for any criteria related to Criminal History;
2. Provided to the Applicant a conditional lease-rental agreement that commits the Housing to the Applicant as long as the Applicant meets the Housing Provider's Criminal History and other qualifying criteria; and
3. Informed the Applicant in advance that the Housing Provider will checking the sex offender registry and~~obtaining information about the Applicant's Criminal History and~~ obtained the written consent of the Applicant to obtain such information.

The Applicant may elect to withhold such consent and withdraw their application. Any use of information obtained by a Housing Provider pursuant to this Paragraph shall comply with California Penal Code Section 290.46(l).

D. A Housing Provider's request to obtain written consent from the Applicant to obtain information about the Applicant's Criminal History under Paragraphs B or C of this Section shall inform the Applicant that the Housing Provider may be required to share information about the Applicant's Criminal History with the City of Berkeley for purposes of enforcing the requirements of this Chapter.

- E. If any Adverse Action is based in whole or in part on the Applicant's Criminal History, the Housing Provider shall provide a written notice to the Applicant regarding the Adverse Action that includes, at a minimum, the reason(s) for the Adverse Action, instructions on how to file a complaint about the Adverse Action with the City, a list of local legal service providers including contact information, and the Applicant with a copy of any Background Check Report or other information related to the Applicant's Criminal History that served as a basis for the Adverse Action. The Housing Provider shall provide the Applicant an opportunity to respond with rebutting or mitigating information prior to the denial of the Applicant's housing application. present evidence that information about the Applicant's Criminal History is inaccurate or of mitigating circumstances related to the Applicant's Criminal History. The Housing Provider shall not require reimbursement or payment from the Applicant for the cost of providing any information required under this Paragraph.

### 13.106.050 Requirements for Housing Providers

- A. It shall be unlawful for any Housing Provider subject to the requirements of this Chapter to produce or disseminate any advertisement related to Housing that expresses stating, directly or indirectly, that any person with Criminal History will not be considered for the rental or lease of real property or may not apply for the rental or lease of real property, Criminal History will be considered in connection with the rental or lease of real property, except as required by State or Federal law.
- B. The City shall publish and make available to Housing Providers, in English, Spanish, and all languages spoken by more than five percent (5%) of the City's population, a notice that informs Applicants for Housing of their rights under this Chapter. The notice shall contain the following information:
1. A description of the restrictions and requirements of this Chapter;
  2. Instructions for submitting a complaint to the City regarding a violation of this Chapter; and
  3. Information about community resources available to assist an Applicant in connection with a violation of this Chapter.
- C. Housing Providers subject to the requirements of this Chapter shall prominently display the notice made available pursuant to Section 13.106.50.B. in their application materials, on their websites, and at any rental or leasing offices.
- D. In addition to the requirements in Paragraphs A-C of this Section, Affordable Housing Providers shall:
1. Provide any Applicant subject to an Adverse Action a written notice regarding the Adverse Action that includes, at a minimum, the reason(s) for the Adverse Action; instructions regarding how to file a complaint about the Adverse Action with the City, including the deadlines set forth in Section 13.106.090.A; a list of local legal services providers, including contact information; and a copy of any Background Check Report or other Criminal History obtained by the Affordable Housing Provider; and
  2. Submit to the City an annual certificate of compliance with the requirements of this Chapter in the form provided by the City.

**13.106.060 Retaliation Prohibited**

It shall be a violation of this Chapter to interfere with, ~~or restrain,~~ or deny the exercise of, or the attempt to exercise, any right protected under this Chapter, or to take any Adverse Action against any Person because the Person exercised or attempted in good faith to exercise any right protected under this Chapter.

**13.106.070 Recordkeeping and Confidentiality**

- A. Housing Providers shall maintain a record of any Criminal History obtained for any Applicant for Housing for a period of at least three years. To the maximum extent permitted by law, any information obtained regarding an Applicant's Criminal History shall remain confidential.
- B. Nothing in this section shall prohibit a Housing Provider from complying with a request by the City to provide records for purposes of enforcing the requirements of this Chapter.

**13.106.080 Implementation**

- A. The City Manager or their designee shall take all necessary steps to implement this Chapter, including but not limited to the following:
  - 1. Developing any notice required for purposes of implementing the requirements of this Chapter, the annual compliance certification form, and other implementation documents, including written materials for Housing Providers and potential Applicants; and
  - 2. Conducting outreach to and preparing a plan to provide ongoing training about the requirements Chapter for Housing Providers.

The City Manager is authorized to adopt ~~administrative~~ Administrative regulations Regulations necessary to implement the requirements of this Chapter.

- B. The City Manager or their designee shall provide an annual public report to the City Council on the implementation and enforcement of this Chapter. The annual report shall include, at a minimum: (1) a summary of the annual compliance certifications submitted by Affordable Housing Providers; (2) the number of complaints filed with the City regarding violations of this Chapter and the outcomes of such complaints; (3) and the number of notices filed with the City regarding actions brought under Section 13.106.100.C and the outcomes of any such actions.

**13.106.90 Administrative Complaints**

- A. Any Applicant subject to an Adverse Action or their Close Family Member who believes the Adverse Action was based on a violation of this Chapter shall have the right to submit a complaint to the City within one year of the date the Applicant submitted an application to the Housing Provider or the date of the violation, whichever is earlier. The City will schedule an administrative hearing before a hearing officer designated by the City Manager within 90 days of the date of submission of the complaint. The deadlines set forth in this Paragraph may be extended with the consent of all parties.
- B. The parties shall have the following rights at an administrative hearing conducted pursuant to this Section:

1. To have an advocate of their choosing to represent them at the hearing;
  2. To present any relevant witnesses and evidence, which will be considered without regard to the admissibility under the Rules of Evidence applicable to a judicial proceeding;
  3. To examine the other party's evidence and to rebut and cross-examine any witnesses;
  4. To have a translator present at the hearing, when translation is reasonably necessary and reasonably available;
  5. To request any reasonable accommodation needed to participate in the hearing process; and
  6. To record the hearing.
- C. Where the City determines that a violation of the Chapter has occurred, the City shall issue a determination and order any appropriate relief under this Chapter.

#### **13.106.100 Enforcement**

- A. The City may issue an ~~administrative~~ Administrative citation-Citation under Chapter 1.28 to any Person who violates any provision of this Chapter.
- B. The City Attorney may bring an action on behalf of the City seeking injunctive relief to restrain or enjoin any violation of this Chapter.
- C. Any Aggrieved Person who believes that the provisions of this Chapter have been violated shall have a private right of action for injunctive relief, and actual damages or statutory damages up to three times the amount of one month's rent that the Housing Provider charged for the unit in question at the time of the violation. In addition to actual or statutory damages, a court may award punitive damages where it is proven by clear and convincing evidence that a violation of this Chapter has been committed with oppression, fraud, or malice. In any action brought under this Chapter, the court may award reasonable attorneys' fees and cost of action pursuant to Code of Civil Procedure section 1021.5. The right to file an action under this Paragraph is independent of the right to file an administrative complaint under Section 13.106.90 and does not require an Applicant to have filed a prior complaint with the City of Berkeley.
- D. When permitted by law, an award of actual damages under this Chapter may include an award for mental and/or emotional distress and/or suffering. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the court if a defendant is found to have acted in knowing violation of, or in reckless disregard of, the provisions of this Chapter.
- E. In an action brought by the City Attorney pursuant to this Section, a court of competent jurisdiction may order that a civil penalty be assessed against the Housing Provider to vindicate the public interest, which penalty shall be payable to the City of Berkeley. The civil penalty assessed against a Housing Provider shall be at least one thousand dollars (\$1,000) and shall not exceed ten thousand dollars (\$10,000) for each violation of this



Chapter. A defendant shall be liable for an additional civil penalty of up to five thousand dollars (\$5,000) for each violation of this Chapter committed against a person who is disabled within the meaning of California Government Code section 12926 *et seq.*, or is aged sixty-five (65) or over.

- F. An attorney who represents an Applicant in litigation against a Housing Provider brought under this Chapter shall provide notice to the City within ten (10) days of filing court action against the Housing Provider, and inform the City of the outcome of the court action within ten (10) days of any final judgment.

**13.106.110 No Conflict with State or Federal Law**

This Chapter is not intended to conflict with state or federal law. If there is a conflict between the provisions of federal or state law and this Article, federal or state law shall control.

**13.106.1210 Severability**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

**13.106.120**

**Section 2. —Effective Date**

The provisions of this Chapter shall take effect upon thirty days after final adoption of this ordinance. A Housing Provider shall not be liable for a violation within 180 days after final adoption of this Chapter, unless the Housing Provider has first received a warning letter from the City regarding a violation of the Ordinance.

The provisions of this Chapter shall take effect on July 1September 1, 2020.

**Section 3. Notice to Housing Providers**

The City Manager is directed to cause notice of this Ordinance to be mailed to all residential rental property owners subject to this Chapter within 90 days of final adoption of this Ordinance.

**Section 4. Posting**

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.



**DATE:** October 28, 2019, updated January 23, 2020

**TO:** City of Berkeley Mayor Jesse Arreguin and Land Use Committee

**FROM:** Just Cities: Margaretta Lin, JD, MA, Executive Director; John Jones III, Director of Community & Political Engagement; Richard Illgen, Senior Advisor; Tim Tsai, MPP, Policy Justice Research Associate; Alex Werth, PhD, Research Consultant

**SUBJECT:** Fair Chance Housing Ordinance that removes structural barriers for people with criminal histories in applications for rental housing

## **SUMMARY**

As research and lived experience demonstrate, formerly incarcerated people experience significant barriers beyond the high cost of rent that prevent them from securing housing. They are screened out when applying to rent housing due to criminal background checks in private rental, nonprofit affordable housing, and public housing units. Even living with family members is not always a viable solution as it may put their family's housing at risk-- rental agreements may prohibit or limit people with criminal histories from residing in the units. Fair Chance Housing is legislation that prohibits the use of criminal histories for most offenses in determining access to housing. It also bans the use of advertising language that excludes people with arrest records, conviction records, or criminal history. In short, Fair Chance Housing legislation removes structural barriers to housing and enables landlords to consider the merits of individual housing applications—providing people with a fair chance.

Led by Just Cities/the Dellums Institute for Social Justice, The **Alameda County Fair Chance Housing Coalition** has been working to remove such structural exclusionary barriers for people coming home from prison. The Coalition partners and supporters include: All of Us or None, Berkeley NAACP, Berkeley Oakland Support Services (BOSS), Community Works, Church by the Side of the Road, East Bay Community Law Center, East Bay for Everyone, East Bay Young Democrats, Essie Justice Group, Friends of Adeline, Just Cities, Justice Reinvestment Coalition, Laney College Restoring Our Communities Center, League of Women Voters for Oakland, Make Oakland Better Now, McGee Baptist Church, National Housing Law Project, Our Beloved Community Action Network, PolicyLink, Root & Rebound, Safe Return Project, Tech Equity Collaborative, Underground Scholars of UC Berkeley, and The Way Church.

The Fair Chance Housing Ordinance would result in:

- 1) Clear rules and standards for all landlords regarding the use of criminal background checks in the housing application process and the elimination of the current arbitrary system that relies on inaccurate criminal background databases.



- 2) Landlords assessing the merits of individual housing applications rather than the current status of blanket exclusion of applications solely on the basis of criminal records.
- 3) Formerly incarcerated people and their family members having access to safe, stable, and affordable housing that they need in order to reclaim their lives and effectively re-integrate into the community.
- 4) Decrease in recidivism rates by removing structural barriers to stable housing, including with family members, for formerly incarcerated people.

## **BACKGROUND**

### **SUMMARY OF FLAWS WITH CRIMINAL BACKGROUND DATABASE SYSTEMS**

Research shows that government repositories of criminal records are routinely incomplete, thus making commercial criminal background reports inaccurate and/or misleading. In 2006, the U.S. Department of Justice (DOJ) found that an estimated 50% of FBI arrest records, which are used by many background check companies, were missing information on the final disposition of the cases in question.<sup>1</sup> In 2016, the DOJ found that an estimated 32% of records in state criminal history repositories were missing final disposition data.<sup>2</sup> Incomplete data at the state and federal levels undermine the fairness and accuracy of commercial criminal background reports, which rely upon governmental data. In particular, out-of-date information about the final disposition of a case means that data about arrests are routinely listed in background reports even when the charges were eventually dropped, reduced, or disproven in court.

The consequences of these database gaps are significant. According to the National Employment Law Project (NELP), “one third of felony arrests do not result in conviction and many others are reduced to misdemeanors.”<sup>3</sup> While industry-wide data on the inaccuracies of commercial criminal background reports are unavailable, the NELP estimates that 1.8 million workers are subject to FBI checks that include faulty or incomplete information each year. Further, many on-line databases accessible through search engines are also inaccurate, even representing persons without criminal records as having been arrested or convicted.

The lack of accurate disposition data is one of many issues that undermine the accuracy of private criminal background reports. According to a review by the National Consumer Law Center, such reports suffer from a range of problems, including: the publication of sealed or expunged records; the

<sup>1</sup> U.S. Department of Justice. (2006). *The Attorney General’s Report on Criminal History Background Checks*, p. 3.

<sup>2</sup> National Consortium of Justice Statistics. (2018). *Survey of State Criminal History Information Systems, 2016: A Criminal Justice Information Policy Report*, p. 2.

<sup>3</sup> National Employment Law Project. (2013). *Wanted: Accurate FBI Background Checks for Employment*, pp. 1-2.

misclassification of crimes (e.g. reporting a misdemeanor as a felony); the assignment of crimes to an individual who did not commit them, otherwise known as a “false positive”; and the display of data in a misleading manner (e.g. reporting a single arrest multiple times because it appears in multiple databases).<sup>4</sup> Unlike government screens, such commercial background checks are conducted using basic personal information, like names. In the late 1990s, a task force consisting of state and federal agencies found that, compared with fingerprint-based checks, name-based checks resulted in a false-positive rate of 5.5%.<sup>5</sup> This means that around 1 in 20 apparent identifications of a crime was ascribed to a person who did not in fact commit that crime.

### **SUMMARY OF HOUSING ACCESS BARRIERS FOR PEOPLE WITH CRIMINAL RECORDS**

Alameda County service providers and national researchers have documented barriers to access to both private rental and publicly subsidized affordable housing faced by formerly incarcerated residents.<sup>6</sup> Results of a 2019 Goldman School survey and interviews of formerly incarcerated persons in Alameda County found that many formerly incarcerated persons could not stay in public housing with a relative or family member due to public housing rules or were denied private or public rental housing due to their incarceration record.<sup>7</sup> In addition, a recent survey by the Berkeley Property Owners Association found that the majority of landlord survey respondents conducted criminal background checks. We note that persons paroled from incarceration are generally to be returned to the county of their residence (CA Penal Code 3003); therefore, parolees from this area will be returning home.

### **SUMMARY OF PUBLIC HEALTH & SAFETY IMPACTS FROM HOUSING BARRIERS:**

As the state with the second highest population of people currently in prison or jail in the country,<sup>8</sup> California will need to house formerly incarcerated people as they reenter society in a highly impacted housing market. Alameda County has a total of 7,900 people on probation or parole.<sup>9</sup> Incarceration and lack of housing can lead to severely limited economic opportunity, thereby increasing the chances of recidivism and public safety impacts.

<sup>4</sup> National Consumer Law Center. (2012). *Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses*, p. 15.

<sup>5</sup> National Association of Professional Background Screeners. (2005). *The National Crime Information Center: A Review and Evaluation*, pp. 11-2.

<sup>6</sup> See Corinne Carey, No Second Chance: People with Criminal Records Denied Access to Public Housing, 36 University of Toledo Law Review 545; Caterina Gouvis Roman and Jeremy Travis, Urban Institute, Taking Stock: Housing, Homelessness and Prisoner Re-Entry (2004); and Every Door Closed: Barriers Facing Parents With Criminal Records, CLASP and CLS Report, Chapter 3, “Criminal Records and Subsidized Housing: Families Losing the Opportunity for Decent Shelter”.

<sup>7</sup> Rodriguez, Anthony (2019) “A Just Return Home: Identifying and Removing Barriers to Housing for Formerly Incarcerated Residents Through Suggested Policies for County of Alameda” Report for Just Cities and Goldman School of Public Policy. p.23

<sup>8</sup> California 2017 raw numbers. “State-by-State Data.” The Sentencing Project. Accessed October 4, 2019. <https://www.sentencingproject.org/the-facts/#detail?state1Option=U.S.Total&state2Option=0>

<sup>9</sup> Total population in probation, Q4 2018 “Alameda County Probation Department Data Dashboard”. Alameda County. Accessed October 4, 2019. <https://www.acgov.org/probation/dashboard.htm>.

Research has shown that access to stable and affordable housing enables people to successfully re-integrate into society. For example, two studies in Ohio<sup>10</sup> and Maryland<sup>11</sup> found that providing housing subsidies or public housing to recently released incarcerated persons reduced the chances that they would be rearrested in the first year. A government study conducted in the United Kingdom found that stable housing was associated with a 20% reduction in the chance of being reconvicted.<sup>12</sup>

Extensive research also shows the direct link between incarceration history, homelessness, and health.<sup>13</sup> For example, a recent participatory action research project between Just Cities, The Village, and the UC Berkeley Goldman School for Public Policy's Center for Civility & Democratic Engagement found that 73% of unhoused residents interviewed in Oakland's encampments were formerly incarcerated!<sup>14</sup> Based upon anecdotal and other data, we believe that unhoused people in Berkeley are also disproportionately formerly incarcerated. For example, in the 2017 Point in Time count for Berkeley homeless residents, one of the top six reasons listed for the primary cause of homelessness was incarceration (6% of respondents).

In addition, there are an estimated 10 million children nationwide that are impacted by a parent or close relative who are in the criminal justice system.<sup>15</sup> These children suffer from an increased rate of depression, antisocial behavior, drug use, and suicide.<sup>16</sup>

### **SUMMARY OF RACIAL DISPARITY:**

There is an extreme racial disparity in criminal conviction and incarceration rates, which translates to a racial disparity in access to housing.

<sup>10</sup> Fontaine, Jocelyn, Douglas Gilchrist-Scott, John Roman, Samuel Taxy, and Caterina Roman. "Supportive Housing for Returning Prisoners: Outcomes and Impacts of the Returning Home-Ohio Pilot Project." PsycEXTRA Dataset, August 2012. <https://doi.org/10.1037/e527702013-001>.

<sup>11</sup> Kirk, David S., Geoffrey C. Barnes, Jordan M. Hyatt, and Brook W. Kearley. "The Impact of Residential Change and Housing Stability on Recidivism: Pilot Results from the Maryland Opportunities through Vouchers Experiment (MOVE)." *Journal of Experimental Criminology* 14, no. 2 (2017): 213–26. <https://doi.org/10.1007/s11292-017-9317-z>.

<sup>12</sup> Kirk, David S., Geoffrey C. Barnes, Jordan M. Hyatt, and Brook W. Kearley. "The Impact of Residential Change and Housing Stability on Recidivism: Pilot Results from the Maryland Opportunities through Vouchers Experiment (MOVE)." *Journal of Experimental Criminology* 14, no. 2 (2017): 213–26. <https://doi.org/10.1007/s11292-017-9317-z>.

<sup>13</sup> Roman, Caterina Gouvis, and Jeremy Travis. "Taking Stock: Housing, Homelessness, and Prisoner Reentry." PsycEXTRA Dataset, 2004. [http://webarchive.urban.org/UploadedPDF/411096\\_taking\\_stock.pdf](http://webarchive.urban.org/UploadedPDF/411096_taking_stock.pdf) p.7-8

<sup>14</sup> Tsai, Tim. "Standing Together: A Prevention-Oriented Approach to Ending Homelessness in Oakland." <http://bit.ly/HomelessPrevention2019> p.12

<sup>15</sup> Hirsch, Amy E, Sharon M Dietrich, Rue Landau, Peter D Schneider, Irv Ackelsberg, Judith Bernstein-Baker, and Joseph Hohenstein. *Every Door Closed: Barriers Facing Parents with Criminal Records*. Philadelphia, PA: Community Legal Services, Inc, 2002. p.1 [https://www.clasp.org/sites/default/files/publications/2018/01/every\\_door\\_closed.pdf](https://www.clasp.org/sites/default/files/publications/2018/01/every_door_closed.pdf)

<sup>16</sup> Davis, Laurel, and Rebecca J. Shlafer. "Mental Health of Adolescents with Currently and Formerly Incarcerated Parents." *Journal of Adolescence* 54 (2017): 120–34. <https://doi.org/10.1016/j.adolescence.2016.10.006>. Shlafer, Rebecca J, Erica Gerrity, Ebony Ruhland, and Marc Wheeler. "Children with Incarcerated Parents – Considering Children's Outcomes in the Context of Complex Family Experiences." *Children, Youth, and Family Consortium*, 2013. <https://www.prisonpolicy.org/scans/umn/June2013ereview.pdf>. p.3

There are statistical racial disparities at every stage of the criminal justice system. Research has demonstrated that African Americans are more likely to be stopped by police,<sup>17</sup> prosecuted disproportionately, and punished more harshly than other ethnic groups.<sup>18</sup> As a result, Black men—one third of whom are likely to serve time in prison or jail at some point in their lives—are incarcerated at a rate that is five times that of White men. Racial bias in plea-bargaining, which accounts for the vast majority of new criminal convictions, is a significant source of the disparity in incarceration. In a recent study of more than 48,000 cases in Wisconsin, legal scholar Carlos Berdejó found that White defendants were 25% more likely than Black ones to have their most serious charge either dropped or reduced to a less serious charge.<sup>19</sup> As a result, Whites who were initially charged with a felony were an estimated 15% more likely to end up convicted of a misdemeanor instead. In addition, Whites who were initially charged with a misdemeanor were an estimated 75% more likely to be convicted of a crime carrying no possible incarceration, or not convicted at all.<sup>20</sup>

These disparities are even more acute in California. According to the Public Policy Institute of California, in 2017, African Americans made up 5.6% of the state’s adult men but 28.5% of its male prisoners.<sup>21</sup> As a result, Black men were ten times more likely than White men to be incarcerated. Latino men were more than twice as likely as White men to be incarcerated. There were significant disparities among Black women, too, who were five times more likely than White women to be incarcerated.<sup>22</sup> Inequalities in incarceration were driven in part by inequalities in policing. Again, according to the Public Policy Institute of California, Black male residents were three times more likely than White ones to be arrested in 2016.<sup>23</sup>

Here in Alameda County, 48% of probationers are African American<sup>24</sup> even though African Americans make up only 11% of the population.<sup>25</sup>

**This means that both nationally and locally, a disproportionate number of African Americans are impacted by criminal background checks in housing applications.**

<sup>17</sup> “Findings” Stanford Open Policing Project. Accessed October 4, 2019. <https://openpolicing.stanford.edu/findings/>.

<sup>18</sup> Porter, Nicole D., Nazgol Ghandnoosh, Josh Rovner, and Jean Chung. “Racial Disparity.” The Sentencing Project, September 30, 2019. <https://www.sentencingproject.org/issues/racial-disparity/>.

<sup>19</sup> Berdejó, Carlos. (2018). [Criminalizing Race: Racial Disparities in Plea-Bargaining](#). *Boston College Law Review*, 59(4), pp. 1189-91.

<sup>20</sup> Berdejó, Carlos. (2018). [Criminalizing Race: Racial Disparities in Plea-Bargaining](#). *Boston College Law Review*, 59(4), pp. 1189-91.

<sup>21</sup> Public Policy Institute of California. (2019). [California’s Prison Population](#), p. 1.

<sup>22</sup> Public Policy Institute of California. (2019). [California’s Prison Population](#), p. 1.

<sup>23</sup> Public Policy Institute of California. (2019). [Racial Disparities in California Arrests](#), p. 1.

<sup>24</sup> Total population in probation, Q4 2018 “Alameda County Probation Department Data Dashboard”. Alameda County. Accessed October 4, 2019. <https://www.acgov.org/probation/dashboard.htm>.

<sup>25</sup> “U.S. Census Bureau QuickFacts: Alameda County, California.” United States Census Bureau. Accessed October 4, 2019. <https://www.census.gov/quickfacts/alamedacountycalifornia>.



### **SUMMARY OF HUD GUIDANCE:**

On or about April 4, 2016, the United States Department of Housing and Urban Development issued the “Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions” in which it states that “Policies that exclude persons based on criminal history must be tailored to serve the housing provider’s substantial, legitimate, nondiscriminatory interest and take into consideration such factors as the type of the crime and the length of the time since conviction.”

### **SUMMARY OF OTHER FAIR CHANCE HOUSING POLICIES:**

The Coalition’s efforts build upon the remarkable work of other coalitions and communities to advance fair chance housing policies, namely in the cities of Richmond, Seattle, and Portland. In 2016, the Safe Return Project and its coalition partners including the Dellums Institute worked with the City of Richmond to pass legislation to remove housing barriers for formerly incarcerated residents to access any publicly subsidized housing. In 2017, Seattle community leaders in the Mayor’s Fair Housing Task Force worked with the City of Seattle to enact legislation that removed housing barriers for formerly incarcerated residents to access private or publicly subsidized rental housing. In 2019, the City of Portland enacted a Fair Chance Housing policy similar to Seattle’s policy.

We note that the cities of Seattle and Portland have first in time housing policies which limit landlord discretion in the selection of their tenants. Alameda County cities do not have such a policy.

Here’s a summary of the main comparison between the Berkeley proposal and policies enacted by the cities of Richmond, Seattle, and Portland:

- Similar to Seattle and Portland, the Berkeley proposal would apply to all housing units, private and publicly subsidized.
- Similar to Richmond and Seattle, the Berkeley proposal would enable Housing Providers who are funded by HUD to conduct criminal records checks after a Conditional Offer of Housing has been granted and subject to certain procedures.
- Similar to Richmond, the Berkeley proposal would provide for a private right of action in addition to City enforcement. The City of Seattle, instead, utilizes its robust Department of Civil Rights which enforces civil rights violations.
- Similar to Seattle, the Berkeley proposal would prohibit the use of criminal records checks in the housing application process, with the exception that allows for the review of sex offender registry.
- Unlike Portland and Seattle, the Berkeley proposal DOES NOT have a first in time tenant acceptance requirement. In addition, the Berkeley proposal maintains landlord discretion in the review of relevant information including landlord references, employment and income status, and credit report checks.



Less comprehensive versions of fair chance policies have passed in other cities including San Francisco; Urbana, Illinois; Madison, Wisconsin; New York, New York; and Newark, New Jersey.

**POLICY DEVELOPMENT PROCESS--CENTERING PEOPLE MOST IMPACTED BY THE POLICY PROBLEM:**

Building on their successful anti-displacement funding efforts with Alameda County and the cities of Berkeley and Oakland in 2017, the Our Beloved Community Action Network<sup>26</sup> (BCAN) leaders led by Just Cities/the Dellums Institute resolved to work together to address the removal of housing barriers for formerly incarcerated people. Through the advocacy of BCAN partner, the TechEquity Collaborative, the Chan Zuckerberg Initiative has provided resources for the development of the Alameda County Fair Chance Housing Coalition, including a leadership development program for formerly incarcerated people or their family members—the Policy and Outreach Leaders (POLs). The following community leaders have served as the POLs: Ms. Towanda Sherry, Ms. Anita Wills, Katie Dixon, and Taqwaa Bonner.

With support from Just Cities staff, the POLs have convened community forums and listening sessions with formerly incarcerated people and their family members, as well as participated in multiple research and policy design workshops. They have also worked with the UC Berkeley Goldman School of Public Policy’s Center on Civility and Democratic Engagement to design and implement a survey to assess the individual, family, and community impacts of today’s housing barriers for people with criminal records. In addition, Richard Illgen, former Oakland Deputy City Attorney, the Safe Return Project, and the National Housing Law Project have provided technical assistance to Just Cities and the POLs in developing the draft ordinance.

**SUMMARY OF FAIR CHANCE HOUSING POLICY TERMS**

The following is a summary of the proposed Fair Chance Housing policy. These policies were crafted after more than seven public hearings before the City of Berkeley’s 4x4 and Land Use Committees; multiple meetings with the leaders of the Berkeley Property Owners Association; community forums with Berkeley residents and community organizations; and separate meetings with the Mayor and Council offices.

**NAMED AFTER CONGRESSMAN RON DELLUMS:**

The Coalition is proposing to name the Fair Chance Housing policy after former Berkeley City Councilmember, Congressman, Oakland Mayor, and world humanitarian Ronald V. Dellums in honor of his legacy and to inspire policymakers across the nation to champion human rights. Congressman Dellums passed away in July 2018. For over fifty years, Ron Dellums practiced courageous and principled leadership to advance the human rights and needs of all peoples, especially those who have

<sup>26</sup> For more information about the **Our Beloved Community Action Network**: <http://dellumsinstitute.org/bcan>





been discriminated against and marginalized. He was born in 1935 and grew up in a segregated West Oakland. He had a troubled youth and almost did not graduate from high school. After serving in the Marines, Ron Dellums became a UC Berkeley trained psychiatric social worker and a community organizer. At the age of 31, Ron Dellums was on his way to a PhD program at Brandeis when he was recruited by activists to serve on the Berkeley City Council.

As Berkeley City Councilmember from 1967 to 1970, Ron Dellums championed progressive values of anti-war, peace, and justice including opposition to the death penalty, development of the People's Park and opposition to the declaration of martial law by then Governor Ronald Reagan, and successfully forcing BART to put train tracks in Berkeley underground.

As Congressperson representing Berkeley and Oakland from 1970 to 1997, Ron Dellums was the first African American to represent the district and one of the first Democratic Socialists in Congress. He was elected to Congress as an anti-Vietnam War activist and a prominent member of President Nixon's infamous "enemies list." Yet, he rose to become Chair of the powerful House Armed Services Committee, while maintaining his integrity, activism, and principles. Decades ahead of the "mainstream," his initially lonely efforts against Apartheid in South Africa, and against the major nuclear war-fighting systems, all eventually became the official positions of the nation. He was a staunch critic of discrimination in the military, a key supporter of gay rights in the military, and consistently challenged the militarization of U.S. foreign policy, while advocating for improving the living conditions of military personnel. Ron Dellums also chaired the House DC Committee where he pushed for meaningful Home Rule and Statehood for the District of Columbia, and also focused on the problems in America's cities. He was equally well known for presenting comprehensive policy proposals including the Dellums Alternative Military Budget and the Congressional Black Caucus Alternative Budget. He authored comprehensive bills to provide free healthcare to all Americans, a national comprehensive housing program, and climate change legislation.

After leaving Congress, Dellums led the development of his envisioned Marshall Plan for HIV/AIDS resulting in the federal PEPFAR programs which has saved 17 million lives in Sub-Saharan Africa, and the Dellums Commission on Boys and Men of Color, the precursor to President Obama's My Brother's Keeper initiative.

Already in his 70s, Ron Dellums was drafted to serve as Mayor of Oakland from 2007 to 2010, where he opened up City Hall for Oakland's people to develop Oakland as a model city for the world. To institutionalize civic engagement, Ron Dellums created 41 Citizen Task Forces that involved over 800 residents and resulted in policy changes such as the adoption of an industrial lands policy to facilitate economic development and jobs for Oakland residents and strategies to improve air quality from Port operations. He created a Re-Entry Services program out of the Mayor's office that welcomed formerly incarcerated residents home and helped them find jobs, housing, and support. Ron Dellums developed a comprehensive public safety plan which resulted in a 38% decline in homicides and a 25% decline in



all Part I (major) crimes. He reformed the Oakland Police Department and advanced community and constitutional policing. He led unprecedented City efforts involving business, labor, education, and community leaders to develop a comprehensive vision for a sustainable and equitable local economy, which resulted in \$550 million of new funding for projects and the generation of over 14,000 jobs during the Great Recession.

In 2016, at the tender age of 80, Ron Dellums co-founded the Dellums Institute for Social Justice to create a platform for the collective advancement of racial and social justice.

By naming the Fair Chance Housing Ordinance after Ronald V. Dellums, we seek to inspire community youth to believe in their potential for greatness and government officials to lead with courage, integrity, compassion for the most marginalized, and big vision for justice.

#### **POLICY GOALS:**

1. Remove current structural barriers faced by formerly incarcerated people when they apply for private or publicly subsidized housing to enable them to be considered on the merits of their present situation, rather than the albatross of their past.
2. Create a due process system that a) enables formerly incarcerated people the ability to complain to the City and also sue to enforce their rights under the Ordinance; and b) builds on the City's current administrative systems and capacity.
3. Design policy terms based upon an understanding of the different application and review processes by private and multiple kinds of Affordable Housing providers.
4. Create reporting requirements that are streamlined and also helps Affordable Housing providers transform their current application and review systems.
5. Avoid unintended consequences by not having burdensome or complex requirements for landlords.
6. Address the realities and special considerations of landlords who reside on their rental property that are smaller buildings, e.g. triplexes and smaller.



**MAIN PROPOSED POLICY TERMS:**

The following is a summary of the proposed fair chance housing policy.

| Housing Provider                          | Criminal Background Check                                              | Due Process                    | Reporting to City                  | Potential Remedies for Violations                                     |
|-------------------------------------------|------------------------------------------------------------------------|--------------------------------|------------------------------------|-----------------------------------------------------------------------|
| Private (Non-Affordable Housing Provider) | No                                                                     | City Complaint or Sue in Court | None                               | City complaint w/ fine. Court action w/ damages or injunctive relief. |
| Publicly Subsidized & Not HUD Funded      | No                                                                     | City Complaint or Sue in Court | Annual certification of compliance | City complaint w/ fine. Court action w/ damages or injunctive relief. |
| HUD Funded                                | Following due process protections, can check on 2 crimes per HUD rules | City Complaint or Sue in Court | Annual certification of compliance | City complaint w/ fine. Court action w/ damages or injunctive relief. |

**CRIMINAL BACKGROUND CHECKS:**

The proposed ordinance prohibits ALL landlords from:

- (a) Advertising or using a policy that automatically excludes people with criminal histories from rental housing,
- (b) Asking about or requiring disclosure of someone’s criminal history, or
- (c) Taking adverse action against an applicant or tenant based on his or her criminal history.

Exemptions to the ordinance:

- The following properties where the owner occupies the property are exempt from the ordinance: ADUs, single family homes, duplexes, and triplexes.
- Property owners renting their primary dwelling when they are on sabbatical.
- Tenants renting out available bedrooms in the unit in which they reside.
- Pursuant to State law, landlords can review and consider whether an applicant is on the State operated registry of lifetime sex offenders after a conditional offer has been made and upon written consent from the applicant. If a housing denial is based upon the registry information, the landlord must provide that information to the applicant and provide the applicant with the opportunity to rebut or provide mitigating information.
- Landlords of HUD funded housing have a partial exemption from the ordinance if they are complying with federal regulations that require them to automatically exclude tenants based on certain types of criminal history (lifetime sex offender registration requirement or manufacturing meth on a federally assisted housing property). However, the landlord can only conduct the background check upon written consent from the applicant. If a housing denial is based upon one of the two HUD prescribed crimes, the landlord must provide the background check information to the applicant and provide the applicant with the opportunity to rebut or provide mitigating information.

**IMPLEMENTATION & ENFORCEMENT:**

 1. Private Rental Housing Application & Complaint Process

- Denial: If an applicant has been denied housing, they are entitled to any notices required by state and federal law and can also request that the landlord provide a reason for the denial.
- Due Process, Remedies & Enforcement—See below

 2. Affordable Housing Rental Housing Application and Appeal/Complaint Process

- Definition: any housing provider receiving direct local, county, state, or federal subsidy. We have removed Section 8 landlords from the definition of Affordable Housing provider since the Housing Authority conducts the background checks for Section 8 voucher holders and because of Berkeley's source of income anti-discrimination law.
- Background Check, Denial, and Due Process Protections: For HUD funded housing providers, the housing provider may conduct a criminal background check if required by federal requirements. The housing provider must ensure that the applicant provided prior written consent to the criminal background check, receive a copy of any criminal background check, and has the opportunity to respond with rebutting or mitigating information before the applicant is denied housing.
- Annual Reports: only publicly subsidized housing providers would submit an annual certification of compliance to the City utilizing a City template. The Coalition would like to work with the City on designing the compliance template.

 3. Due Process, Remedies and Enforcement for Both Private & Publicly Subsidized Rental Housing

- Complaint Process:
  - The applicant would have the right to file a complaint with the City Manager's designated hearing officer within one year from the date of application for housing.
  - The public and complainant would be informed of available City or community resources to assist in the filing of the complaint or preparing for the hearing, including the gathering of evidence.
- Similar to current local tenant law, private right of action and attorney's fees for the prevailing applicant are provided.
- Berkeley's current administrative penalty system is also integrated into the proposal.



- Landlord retaliation is explicitly prohibited.
- Landlords are required to maintain documentation of any conviction history that they obtain on applicants for at least three years.
- Effective date of the ordinance is 6 months after its adoption.
- The City Manager or their designee would provide an annual status report to the City Council and public including: a) which Affordable Housing providers submitted an annual certification of compliance; b) number of complaints filed with the City and the resolution; c) information from local service providers and community organizations on the number of court cases filed and the resolution or other compliance information.

## **CONCLUSION**

In the words of Just Cities' Director of Community & Political Engagement, John Arthur Jones III,

*The only place in America where one is guaranteed a roof over their head is in prison/jail. This Ordinance will take steps towards addressing the major intersection of Mass Incarceration and Housing barriers- BOTH resulting from policies and programs that were created and/or sanctioned by government- locally, statewide and nationally. In addition to constituting a human right, housing is also a Public Health and Public Safety issue. The impact of having a criminal record severely harms and impacts those who have never been arrested, including the children, parents, partners, and loved ones of those who are formerly incarcerated. Just as criminal records cannot and does not strip one of the legal duty of paying taxes, neither legally should having a criminal record strip anyone of one of the most quintessential elements of human rights- and that is housing.*





Office of the Mayor

ACTION CALENDAR

March 10, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Tenant Opportunity to Purchase Act, Adding BMC Chapter 13.89

RECOMMENDATION

1. Adopt a first reading of an ordinance adding Berkeley Municipal Code Chapter 13.89, the Tenant Opportunity to Purchase Act (TOPA), that will take effect on final adoption with an implementation start upon completion of Administrative Regulations and funding of related program costs; and
2. Direct the City Manager to take all necessary steps to implement this chapter including, but not limited to:
  1. Developing Administrative Regulations;
  2. Preparing an implementation strategy;
  3. Identifying resources to align databases from Finance, Planning, and the Rent Board to accurately reflect the properties that would be subject to TOPA;
  4. Determining necessary staffing for program administration and hearing officers for adjudication;
  5. Timelines for project “roll-out”;
  6. Determining appropriate amount of funding needed to support the acquisition of TOPA properties and recommending possible funding sources;
  7. Quantifying an annual program budget and referring such program costs to the June 2020 Budget process.

SUMMARY

TOPA is a policy that empowers tenants to determine the future of their housing when an Owner is ready to sell, by giving tenants the opportunity to collectively purchase the property they live in. It does this by creating legal rights for tenants to purchase or assign rights to an affordable housing developer, and providing technical assistance, education, and financing to help make these purchases possible. TOPA provides a way to stabilize existing housing for tenants and preserve affordable housing in Berkeley. It

also creates pathways for tenants to become first-time homeowners and facilitates democratic residential ownership. TOPA will apply to all rental properties in Berkeley, subject to a number of exemptions, including owner-occupied Single Family/Owner Occupied properties, including those with an Accessory Dwelling Unit (ADU) or other secondary dwelling unit, that do not have a homeowner exemption registered with the County Tax Assessor.

The first right to purchase is conferred to tenants, and includes a right of first offer, right of first refusal, and a right for tenants to assign rights to a qualified affordable housing organization. If tenants waive their rights, the list of qualified affordable housing organizations have a second opportunity to purchase the property within shorter timelines. Qualified affordable housing organizations must be committed to permanent affordability and democratic residential control. Assigning rights in this manner also benefits the affordable housing developers, especially community land trusts, as the tenant buy-in is often critical to the successful management of the property.

The policy is designed to maintain properties purchased under TOPA as permanently affordable for future generations. Any TOPA property that receives City investment would be deed restricted to ensure that the property remains permanently affordable. TOPA properties that are purchased without City investment would also have a deed restricted upper limit for property appreciation. This would result in the accessibility of those properties to serve tenants around 80% AMI.

Multi-tenant buildings that include a mix of TOPA buyers and tenants who wish to continue renting will be required to ensure tenant protections and the enforcement of tenant's rights. This will prevent any internal displacement caused by the exercising of TOPA rights.

TOPA sales have longer escrow periods in order to provide tenants time to organize, engage technical assistance, form an organization that would qualify for financing, and obtain the necessary financing to close a transaction. In order to incentivize owners to participate in a TOPA sale, since it may potentially take more time, upon close of escrow the City would refund to the seller the City's portion of the Real Property Transfer Tax (.75%) not including the proportional amount attributed to Measure P. Recent transactions, including asking vs. sales price and days on the market were gathered from *Zillow* and provided in Attachment 2.

Moving forward a TOPA policy will require detailed Administrative Regulations and a well-funded infrastructure to administer and enforce the policy. There is also a vital need to provide adequate education, legal and technical assistance to tenants as part of the implementation. Finally, a more robust and vibrant acquisition fund will be required that can work efficiently with the TOPA ordinance. This funding could be accommodated through the Small Sites Program with potential funding coming from



Measure U1 tax receipts, the Housing Trust Fund, and Measure O or through another funding mechanism including grants.

### BACKGROUND

Since 2015, Mayor Arreguin and community-based organizations such as the East Bay Community Law Center (EBCLC) and Northern California Land Trust (NCLT) have been researching TOPA's effectiveness as an anti-displacement strategy in Berkeley, to be paired with a robust Small Sites acquisition program.

On February 14, 2017, Mayor Arreguin introduced a Council item entitled "*Small Sites Acquisition Program and Tenant Opportunity to Purchase Act*"<sup>1</sup> which among other provisions, referred to the City Manager to:

Review and develop an ordinance modeled after Washington D.C.'s Tenant Opportunity to Purchase Act that offers existing tenants the first right of refusal when property owners place rental property on the sale market, which can be transferred to a qualifying affordable housing provider.

On May 30 and November 28, 2017, the Berkeley City Council adopted the "*Affordable Housing Action Plan*"<sup>2</sup> which included a referral to staff to develop a Tenant Opportunity to Purchase Ordinance (TOPA) modeled after a Washington DC law that was enacted in 1980. On June 11, 2019, City staff returned to Council with an Information item<sup>3</sup> that outlined its research and discussed the administration and implementation requirements. This item was referred to the Agenda & Rules Committee for scheduling at a future Council meeting. On September 24, 2019, the information item was included on the Consent Calendar with an action of "received and filed".

Since the last date of Council action, the Mayor's Office has been working to develop a TOPA ordinance, which has been drafted by the East Bay Community Law Center (EBCLC), with a diverse group of stakeholders including EBCLC, the Northern California Community Land Trust (NCLT), Bay Area Community Land Trust (BACLt), tenant advocates, legal professionals that specialize in tenant rights, experts familiar with the Washington DC policy and its implementation history, and City of Berkeley staff from the City Attorney's Office, Planning Department, HHCS, Finance and the Rent Board.

Additionally, in September 2019, City Planning staff and the East Bay Community Law Center applied for a grant from the San Francisco Foundation as part of the Partnership

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<sup>1</sup> [https://www.cityofberkeley.info/.../2017-02-14\\_Item\\_18b\\_Small\\_Sites\\_Acquisition.aspx](https://www.cityofberkeley.info/.../2017-02-14_Item_18b_Small_Sites_Acquisition.aspx)

<sup>2</sup> [https://www.cityofberkeley.info/.../2017-11-14\\_Item\\_26\\_Implementation\\_Plan\\_for\\_Affordable\\_Housing.aspx](https://www.cityofberkeley.info/.../2017-11-14_Item_26_Implementation_Plan_for_Affordable_Housing.aspx)

<sup>3</sup> [https://www.cityofberkeley.info/.../2019-06-11\\_Item\\_50\\_Referral\\_Response\\_Tenant\\_Opportunity\\_to\\_Purchase.aspx](https://www.cityofberkeley.info/.../2019-06-11_Item_50_Referral_Response_Tenant_Opportunity_to_Purchase.aspx)

for the Bay's Future initiative. The Grant purpose was to be used for technical assistance to jurisdictions for projects focused on protection and preservation of affordable housing that result in measurable benefits for tenants. Staff applied for the grant in response to the Berkeley City Council directive, in part, to develop a TOPA policy as part of the City's Housing Action Plan (HAP), adopted in 2017.

On February 4, 2020 the San Francisco Foundation officially announced the awards, one being the City of Berkeley and the East Bay Community Law Center, for the purposes of developing a Tenant Opportunity to Purchase ordinance and a Local Housing Preference Policy.<sup>4</sup>

## CURRENT SITUATION AND ITS EFFECTS

### ***Housing Affordability and Regional Impacts***

At the end of 1998, just before State-mandated vacancy decontrol took effect, the average rent in Berkeley's 20,000 apartments built before 1980 was \$720 a month. Twenty years later the average rent for these same units is \$1,956. If rents had risen only by the rate of inflation, they would average \$1,150 a month. In the last five years alone, rents have increased by 50 percent. Similarly, in 2000 the median home price in Berkeley was \$380,000, rising to \$704,000 in 2013 and by 2019 it had reached \$1,300,000.<sup>5</sup>

Rents in Berkeley and the greater Bay Area continue to rise, with low vacancy rates.<sup>6</sup> Future trends are indicating additional loss of naturally occurring affordable housing, according to the County of Alameda Regional Analysis of Impediments to Fair Housing Choice (IFHC). As an example: for decades, a 13-unit complex on Solano Ave. housed a mix of residents — including, teachers, business owners and a 96-year-old woman. The property is rent-controlled and subject to Berkeley's eviction protections, but the owners invoked the Ellis Act that permits full-building evictions if the property is removed from the rental market altogether (the owners intend to convert the building to a "tenancy-in-common" and sell the units at market rates).<sup>7</sup>

Anecdotal research, received from local real estate brokers over the past two months, indicate a desire to increase returns on investment as well as concerns about buyers moving away from the multi-unit property market.<sup>8</sup> Due to rent control, tenant protections and eviction laws some owners are looking to sell multi-unit properties, however existing tenant rents impact the sales price. Some of the methods being utilized to raise rents, and therefore increase the property value for sale, include paying

<sup>4</sup> <https://sff.org/partnership-for-the-bays-future-marks-one-year-anniversary/>

<sup>5</sup> [Housing for a Diverse, Equitable and Creative Berkeley, July 16, 2019](#)

<sup>6</sup> <https://www.huduser.gov/portal/publications/pdf/OaklandCA-comp-17.pdf>

<sup>7</sup> <https://www.berkeleyside.com/2019/12/10/theyve-been-evicted-from-a-north-berkeley-building-now-they-want-to-buy-it-with-help-from-a-land-trust>

<sup>8</sup> <https://www.fool.com/millionaires/real-estate-market/articles/8-real-estate-market-predictions-2020/>

tenants to move out of the building, evictions for cause (when a case can be made), owner-move-in evictions, and Condo/Tenants-in-Common conversions.

### ***Economic Factors***

As the Bay Area region experiences increased economic growth and a high demand for housing, this growth is causing housing prices to rise that then displaces low-income residents. As seen throughout the IFHC report, low-income residents tend to also be minority residents. Therefore, continued growth of the region could lead to more displacement of minority residents and increased segregation unless certain actions are taken to encourage economic and racial/ethnic integration and access to stable affordable units in a range of sizes. Contributing factors affecting disproportionate housing needs include:

- Lack of private investments in specific neighborhoods
- The availability of affordable units in a range of sizes
- Displacement of residents due to economic pressures
- Limited supply of affordable housing within neighborhoods
- Lack of economic support for low income home ownership

The National Low-Income Housing Coalition (NLIHC) *2018 Out of Reach Study* listed the Bay Area region as one of the least affordable areas in the United States. To be able to afford a two-bedroom market rate unit in Alameda County, a household would need to earn \$44.79 per hour or \$93,163 annually (“housing wage”). Comparatively, the average housing wage for California is \$32.68 per hour or \$67,974 annually.

Regional Policy 6, as recommended by the IFHC, is to:

Increase homeownership among low- and moderate-income households by allocating funds for homeownership programs that support low- and moderate-income households. This would include down payment assistance, first time home buyer programs, Mortgage Credit Certificate, below market rate (BMR) homeownership programs and financial literacy and homebuyer education classes. There is also a requirement to promote the programs and any other existing programs through marketing efforts.<sup>9</sup>

### ***National Research on Ownership***

While today’s economy is strong and job growth high, there is a growing gap between rates of economic growth and the levels of income. Wages can be growing but not at the same rate as the economy. Many low to middle income people do not have enough money to cover the basic needs due to rising costs – especially in housing. These lower

<sup>9</sup> <http://www.acgov.org/cda/hcd/documents/Draft-AI-Combined2019-10-24.pdf>

earnings lead to fewer assets and less wealth. For most Americans the greatest source of their wealth is their home, but home ownership is considerably lower than in past decades. Among African Americans, home ownership has decreased to a 60-year low.<sup>10</sup>

Providing ownership options for tenants is a mechanism to sustain affordability. According to the *Urban Institute's Opportunity and Ownership Project*, creating ownership within existing rental units provides opportunities for low income renters that will keep their housing costs stable over many years. They suggest that, rather than providing housing subsidies at the Federal and State level for new construction, investing in existing housing would provide many more units at an affordable level (new construction – especially in a good economy – is increasingly expensive).<sup>11</sup>

Further academic analysis from the *Joint Center for Housing Studies, Harvard University* states: “Public policies attempt to subsidize these barriers to home buying for low-income people through tax policies, grants and other strategies. Current policies are, at best, inefficient and inequitable, and, at worst, ineffective. A more systematic approach would adhere to a set of operating principles including achieving scale, focusing on moving renters to ownership, targeting subsidies to underserved populations, creating incentives for repayment, and maximizing efficiency”.<sup>12</sup>

### ***City of Berkeley Housing Policies and TOPA Opportunity***

Housing development has accelerated in Berkeley and while new permits issued from January 1, 2017 through December 31, 2018 exceed Regional Housing Needs Allocation (RHNA) requirements for above moderate incomes by 141%, affordable housing development is well below regional goals. The following table shows Berkeley's progress toward its RHNA goals through December 2018.<sup>13</sup>

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<sup>10</sup> <http://wbur.org/hereandnow/2020/02/10/job-economy-middle-class>

<sup>11</sup> <https://www.urban.org/sites/default/files/publication/46626/411523-Promoting-Homeownership-among-Low-Income-Households.PDF>

<sup>12</sup> <https://www.jchs.harvard.edu/sites/default/files/hbtl-08.pdf>

<sup>13</sup> [Item 13 Annual Housing Pipeline Report](#)

| Progress towards 2014-2022 RHNA: Approved Building Permits<br>January 1, 2014 – December 31, 2018 |                        |                       |                      |                       |              |              |       |
|---------------------------------------------------------------------------------------------------|------------------------|-----------------------|----------------------|-----------------------|--------------|--------------|-------|
| Building Permit Action Year                                                                       | Ext Low<br><30%<br>AMI | VLI<br>31%-50%<br>AMI | LI<br>51%-80%<br>AMI | MOD<br>81-120%<br>AMI | BMR<br>Total | Above<br>MOD | Total |
| January 1, 2014 – December 31, 2018                                                               | 0                      | 174                   | 66                   | 0                     | 240          | 1,975        | 2,215 |
| RHNA                                                                                              | 266                    | 266                   | 442                  | 584                   | 1,558        | 1,401        | 2,959 |
| Remaining RHNA Capacity Requirement                                                               | 266                    | 92                    | 376                  | 584                   |              | -574         |       |
| Percent of Goal Achieved                                                                          | 0%                     | 65%                   | 15%                  | 0%                    |              | 141%         |       |
| The current RHNA is for an 8.8-year period, from January 1, 2014 through October 31, 2022.        |                        |                       |                      |                       |              |              |       |

Housing affordability is the first objective of the *Housing Element of the City of Berkeley General Plan*. Policy H-1 - Extremely Low, Very Low, Low, and Moderate-Income Housing sets the goal of increasing housing affordable to residents with lower incomes and outlines a number of actions to achieve this goal, including encouraging incentives for affordable housing development.<sup>14</sup>

The Berkeley City Council, in the referenced *Housing Action Plan* (HAP), stated support for Non-profit housing developers and Community Land Trust acquisition of property to stabilize rents through a Small Sites Program. Two such recent transactions, at 2321-2323 Tenth Street and 1640 Stuart Street, have resulted in maintaining 16 units at below-market rates. This policy also stated consideration for the creation of limited and non-equity cooperatives affiliated with a democratic community land trust. This program was initially funded through Measure U1 tax receipts with an option of also utilizing Housing Trust Fund resources.

Until 1996, Berkeley condominium conversions provided the tenants a first right to purchase their unit, as did policies in Santa Monica whose policy was more far reaching.

TOPA working group members estimate that approximately 42% of all Berkeley residential properties would fall under TOPA. This estimate was based on an analysis of the property type, homeowner exemption and number of units from the 2018/2019 Alameda Property Tax roll. It is not reflective of the total **number** of units that would benefit from a TOPA Ordinance. (See Attachment 3).

### **Washington D.C. TOPA**

Washington D.C. passed the Tenant Opportunity to Purchase Act (TOPA) in 1980. This policy regulates the conversion of use, sale and transfer of rental housing. Tenants have the first right of refusal to purchase their buildings and also can assign their rights to third parties, such as affordable housing developers. The impact of this policy has been immense with approximately 30% of annual multi-unit sales going through the

<sup>14</sup> [https://www.cityofberkeley.info/Planning\\_and\\_Development/Home/General\\_Plan\\_-\\_Housing\\_Element.aspx](https://www.cityofberkeley.info/Planning_and_Development/Home/General_Plan_-_Housing_Element.aspx)

TOPA process. Since 2002, this policy has helped preserve over 3,500 units of affordable housing, 2,000 of which have been preserved since 2013.<sup>15</sup> The growing impact of TOPA is due to massive and sustained increases in DC's Housing Production Trust Fund, collaborative efforts to identify and harness other funding/financing, as well as sustained support for the community based organizations that help tenants understand and exercise their TOPA rights.

In order to fund the program, Washington DC dedicates \$10M per year in Housing Trust Fund (HTF) allocations directly to TOPA and the Housing Production Trust Fund which has \$40M for affordable housing preservation.

TOPA has also helped to create many limited equity cooperatives (LECs) in DC, which currently number 4,400 units across 99 buildings.<sup>16</sup> The DC Limited Equity Cooperative Task Force, formed in 2018, came out with recommendations in October 2019 to increase the number of LEC units in DC by 45% by 2025 (additional 2000 units). TOPA will be a major vehicle to create these additional units. The task force has also identified how to improve/expand existing policy, financing and technical assistance to support the health of existing and future LECs.

Finally, TOPA has led to the creation of hundreds of tenant associations across Washington, DC. Many of these tenant associations were the main leaders and organizers in creating the DC Tenants Union in 2019.<sup>17</sup> The Tenants Union is focused on supporting rent control and other tenant protection policies and plans to build power and solidarity across tenant associations from different parts of the city. (See Attachment 4)

### ***San Francisco COPA***<sup>18</sup>

In April 2019, the San Francisco Board of Supervisors passed, by a unanimous vote, the Community Opportunity to Purchase Act (COPA). COPA is designed to stabilize communities by preventing displacement and preserving affordable housing and applies to the sale of any non-condo residential building of 3 or more units. It gives qualified non-profit organizations a right of first offer prior to the property going on the market and a right of first refusal when the owner has a bona fide offer from a potential buyer.

Nonprofit buyers have a limited time (25 days) to work with tenants, exercise their rights under COPA and enter into a Purchase-Sale agreement. Recent articles are indicating challenges to the prescribed timeframes.<sup>19</sup> While a seller is not required to accept the

<sup>15</sup> [https://www.dcfpi.org/wp-content/uploads/2013/09/9-24-13-First\\_Right\\_Purchase\\_Paper-Final.pdf](https://www.dcfpi.org/wp-content/uploads/2013/09/9-24-13-First_Right_Purchase_Paper-Final.pdf)

<sup>16</sup> <https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/Greysteel-%20D.C.%20Multifamily%20Market%20Statistics.pdf>

<sup>17</sup> <https://www.streetsemmedia.org/article/dc-residents-launch-a-city-wide-tenant-union-in-hopes-to-foster-solidarity-across-the-district/#.XjSX3i2ZOt8>

<sup>18</sup> <https://sfmohcd.org/community-opportunity-purchase-act-copa>

<sup>19</sup> <https://www.sfchronicle.com/bayarea/article/City-officials-want-landlord-to-delay-sale-of-76-15002958.php>

offer, the qualified nonprofit also has a right of first refusal to match a competing offer. At closing, deed restrictions are placed on the building restricting the building to affordable housing for the life of the building with a mean value of rents not to exceed 80% AMI.

The building could eventually be transferred to tenant ownership under a Limited Equity Cooperative or other model, as long as permanent affordability deed restrictions are maintained. The ordinance includes incentives, including partial exemption from the City's transfer tax and the potential for qualified nonprofits to facilitate sellers' efforts to obtain federal tax benefits.

San Francisco will set aside \$40M – 90M in a specific MOHCD fund to support first time home buyers and its Small Sites Program that could also support the COPA ordinance. This fund provides resources for deposits, down payments and bridge loans until permanent financing is in place.

### ***Oakland TOPA***

Inspired by the Moms-for-Housing advocates, on January 30, 2020 at the Oakland City Council's Rules and Legislation Committee meeting, a TOPA ordinance was introduced and is scheduled for a vote in the Community and Economic Development Committee in March 2020. From there it could go to a full City Council vote.<sup>20</sup> Oakland Mayor Libby Schaaf has already expressed support for the ordinance.

The Oakland ordinance has been developed since 2018 by a group of community land trusts, tenant advocacy organizations, and the East Bay Community Law Center, whose draft ordinance for Berkeley provided a foundation for Oakland's ordinance. The Oakland ordinance largely mirrors this proposal but will also reportedly include a COPA option for non-profits to buy vacant properties.

The political will for TOPA in Oakland was prompted by Moms 4 Housing — a group of homeless women who took over an empty, investor-owned house in West Oakland for two months before they were evicted and arrested. Their actions garnered national attention and symbolize the Bay Area's housing and homelessness crisis.

Since the eviction of the Moms 4 Housing, the property owner has agreed to negotiate to sell the house to the nonprofit Oakland Community Land Trust. They have also agreed to give the land trust or other nonprofits a chance to buy dozens of other single-family homes it owns in Oakland.

### ***New York State TOPA***

At the end of January 2020, New York State Sen. Zellnor Myrie, who represents Central Brooklyn, announced that he is in the process of drafting new legislation that would give

<sup>20</sup> <https://www.mercurynews.com/2020/01/30/oakland-councilwoman-to-introduce-moms-4-housing-inspired-ordinance/>

tenants the first right to buy their landlord's property should it come up for sale. Myrie stated that "Landlords who claim they will be unable to keep their buildings in good repair or cover the cost of capital improvements" would have an opportunity, in the New York rent-regulated market, to "keep tenants in their homes, create a path to ownership and maintain buildings,"

This Tenant Opportunity to Purchase Act is said to be modeled after right-of-first-refusal statutes in Washington D.C.<sup>21</sup>

### ***Financing for TOPA projects***

Financing for TOPA projects is expected to be provided from a combination of city subsidies, the private capital of tenants, and loans from community-oriented banks and lending institutions like credit unions, CDFIs, local banks, future public banks and others. In this sense, TOPA effectively leverages both private and public financing in advancing permanent affordability.<sup>22</sup>

#### Subsidies

In order to make TOPA effective and responsive to the full scale of anticipated community needs<sup>23</sup>, the City will need to enlarge the current Small Sites Program (SSP), or create a new fund, to a minimum of \$10-15 million dollars per year and reconfigure SSP guidelines to align with TOPA. While TOPA projects can benefit from existing streams of affordable housing funding, the scale of community need far outweighs the existing funding sources. As demonstrated by the case of the D.C. TOPA, it was only with substantial financing added to its Housing Production Trust Fund that the ordinance became an effective way to prevent and fight displacement - DC has an annual \$116M for their Housing Production Trust Fund (HPTF), with a minimum of \$10M set aside for TOPA projects. However, D.C. typically spends more out of its HPTF on TOPA - in FY2018, DC spent close to \$22.5M on TOPA acquisition projects with additional funds for rehab in some instances (449 units over 9 projects). Without similar enhancement of SSP, or another funding source, TOPA will not be able to produce the necessary impactful levels of affordability needed to meet the crisis, particularly for those

<sup>21</sup> <https://therealdeal.com/2020/01/31/bill-make-landlords-give-tenants-first-shot-to-buy-buildings/>

<sup>22</sup> While financing percentages of each project may vary substantially according to building costs, tenant resources, and subsidy availability a combination of these financing streams is expected to be a part of most if not all TOPA projects.

<sup>23</sup> 2019 real estate transaction data for Berkeley show that approximately 250 multi-unit buildings (duplexes and up) sold. Assuming similar sales volume and that a similar percentage (32%) of tenant groups exercise their right to purchase as under the D.C. ordinance we anticipate potentially 80 projects annually, with a greater number of smaller unit buildings participating than occur in DC.



of very-low, low and moderate income who may not be able to leverage their own private capital to get a loan.

#### Private Capital of Tenants

Single family home households and tenants of multi-unit buildings with mixed income units would be able to purchase buildings on their own or with smaller amounts of subsidy involved because these tenants will most likely be able to pay a higher debt service coverage ratio in order to obtain a mortgage from an institutional lender to acquire a property. This could allow higher income tenants with private capital to assist lower income tenants with less capital by securing a blanket mortgage to purchase the building for mutual benefit. This would also benefit “missing middle” income tenants who may not be able to purchase homes on their own, in the current market, but might have enough private capital saved to contribute to the purchase of their building.

#### Loans from Institutional Lenders

Many banks are willing to work with re-sale restricted properties such as those created by TOPA, the majority of which are local commercial lenders, credit unions, cooperative banks, and Community Development Finance Institutions (CDFIs).<sup>24</sup> However, even mainstream primary lenders have told community partners (NCLT & BACL T) that there is no inherent obstacle to lending to resale restricted properties such as a community land trust (CLT)<sup>25</sup> or limited equity housing cooperative (and LEHC) since they are valid forms of California non-profit corporation. In fact, many mainstream primary lenders have provided CLT loans for single family homes.<sup>26</sup> Additionally, there is nothing to prevent newly formed tenant organizations from acquiring property collectively as it is not uncommon for lenders to process and begin underwriting loan applications from newly formed corporate entities during the acquisition phase. While the most common form of ownership is an LLC, there have also been many instances of newly created 501(c)3 non-profit corporations like the non-profit public<sup>27</sup> or mutual benefit<sup>28</sup> corporation, the legal entity that is the basis of the limited equity housing cooperative, which have been successful in acquiring loans.<sup>29</sup>

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<sup>24</sup> For example Clearinghouse CDFI, Community Bank of the Bay, National Housing Trust, Capital Impact Partners, Heritage Bank (formerly Presidio Bank), and the Local Initiatives Support Corporation (LISC).

<sup>25</sup> [https://www.lisc.org/media/filer\\_public/f0/e0/f0e07be0-1ca5-4720-b78c-3a0d7a0181dd/022519\\_white\\_paper\\_community\\_land\\_trusts.pdf](https://www.lisc.org/media/filer_public/f0/e0/f0e07be0-1ca5-4720-b78c-3a0d7a0181dd/022519_white_paper_community_land_trusts.pdf)

<sup>26</sup> [http://www.freddiemac.com/singlefamily/land\\_trust\\_mortgages\\_faq.html](http://www.freddiemac.com/singlefamily/land_trust_mortgages_faq.html), <https://groundedsolutions.org/tools-for-success/resource-library/mortgage-financing-options>

<sup>27</sup> [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CORP&sectionNum=5151](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CORP&sectionNum=5151).

<sup>28</sup> [https://leginfo.legislature.ca.gov/faces/codes\\_displayexpandedbranch.xhtml?tocCode=CORP&division=2.&title=1.&part=3.&chapter=&article=](https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=CORP&division=2.&title=1.&part=3.&chapter=&article=)

<sup>29</sup> For example: Derby Walker House in Berkeley, California and Columbus United in San Francisco CA.

An important factor to note is that the loans that would be provided to TOPA tenants are commercial loans, not consumer loans, because the borrower is not a natural person, but rather a corporate entity (even though the owners of the entity will be owner-occupants of the property), which means they are for a shorter term of 10-15 years. The loan approval process for such commercial loans, from lenders willing to loan on such re-sale restricted properties, tends to range from 90 to 120 days depending on the lender & lender type (e.g. CDFIs tend to take longer). The most limiting factor in this estimate is the ability of the borrowing entity (the tenant group) to timely respond to lender's underwriting requests. This variable can be dramatically improved and streamlined with a robust technical assistance program through the City and Supportive Partners.

The most important considerations for an institutional lender in underwriting a loan for a tenant organized entity (including LEHCs<sup>30</sup>) will be:

**Repayment of the Loan:** First and foremost, the lender will look at the fair market value of the underlying property (that there is adequate loan to value ratio); and secondly, they look at net operating income of the property, and that there is adequate debt service coverage ratio. In other words, the primary underwriting is of the property itself, similar to how a lender would look at a residential rental property.

**Viability & Validity of the Borrowing Entity:** As stated above, the lender can start the loan review and underwriting process while the entity is still being formed. However, they will require that the Articles of Incorporation have been filed to start the process. A condition of loan closing will be that the entity is duly formed (i.e. that the Secretary of State has approved the Articles, typically a 30-day process; and that all other governing docs, such as by-laws, have been finalized). This condition being met will also be necessary for the entity to properly take title.

**Stability of Property/Asset Management:** This is determined by the capacity of the tenants to manage and maintain the property, fill vacancies, properly budget income & expenses for the property. In self-managed properties, banks will look to the experience of the individuals, their internal property management plan, and any partnerships/alliances with outside property management firms or organizations. A second option is for the tenant organization to hire a professional property management firm, which can be an expedient way to get loan approval

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<sup>30</sup> <https://groundedsolutions.org/sites/default/files/2018-11/Limited%20Equity%20Co-ops%20by%20Community%20Land%20Trusts.pdf>

and through the acquisition process, while a tenant group develops the skills and leadership necessary to self-manage in the future.

Credit enhancements, supporting partners and other backstop mechanisms: Many existing resident initiated purchases that were structured in models such as LEHC's and limited equity condominiums overcame underwriting challenges through backstop mechanisms such as a Community Land Trust, other organizational partner and/or municipality providing a credit enhancement such as a loan guarantee or co-signature on the primary mortgage.

### ALTERNATIVE ACTIONS CONSIDERED

#### *No Action*

Taking no action could, over time, further reduce naturally occurring affordable housing. It would also take away an opportunity for lower income tenants to participate in the ownership of their residence and increase their personal wealth – the historic driver of lower to middle class wealth creation.<sup>31</sup>

No Action would direct Housing Trust Fund, Measure U1 and other assets primarily to the construction of new affordable housing projects. It would also require no investment of other City General Fund/Other Resources in administrative implementation and oversight.

#### ***Support the Repeal of Costa Hawkins***

For over twenty years, the Costa-Hawkins Rental Housing Act (*California Civil Code Sections 1954.50-1954.535*) has impacted California renters and the affordability of housing. A statewide law backed by the real estate industry that passed in 1995, Costa-Hawkins ties the hands of cities when it comes to protecting tenants and stabilizing rents:

- Cities can't pass vacancy control; if a tenant leaves or is forced out of a rent-controlled unit, a landlord can raise the rent to whatever the market will bear upon new tenancy;
- Cities can't extend rent control to any rented condominiums, single-family homes, and any new housing built after 1995.

Since Costa-Hawkins passed, tenants have paid ever increasing rents and been forced from their communities or into homelessness due to high housing costs. Additionally,

<sup>31</sup> <https://www.cato.org/publications/policy-analysis/exploring-wealth-inequality#poverty-matters-not-inequality>

since the Great Recession, roughly tens of thousands of single-family home rentals have been purchased by investors all across the state and nationwide.

On October 27, 2015, the Berkeley City Council unanimously adopted a resolution calling on the Governor and State Legislature to repeal the Costa-Hawkins Rental Housing Act.<sup>32</sup>

Costa-Hawkins was also a key part of a 2009 court decision, *Palmer v. the City of Los Angeles*, that found that the imposition of local inclusionary housing requirements for rental housing was in conflict with Costa-Hawkins. In 2017, former Governor Jerry Brown signed AB 1505 to restore the ability for California cities to require developers include affordable units in new rental projects. Additionally, in 2019 the State passed historic legislation, AB 1482, which implemented a cap on rents for non-controlled units of 5% plus CPI, and just cause for eviction statewide. These protections will apply to most housing units not currently deed restricted or controlled, including those exempt from rent control under Costa-Hawkins.

There has been movement among tenant rights advocates to repeal Costa Hawkins to give cities the option to expand and strengthen rent control policies. The latest effort is a statewide ballot measure similar to Proposition 10, which California voters rejected in 2018. Should this new measure succeed, cities would still need to go through the process of passing new legislation before the repeal would have any effect.<sup>33</sup>

While new statewide rent control legislation might provide some relief to tenants, it is still unknown as to what properties would be included in the legislation, what level of rent increases would be allowed. It would not give tenants an option to participate in the ownership of their properties nor would there be deeded restrictions to provide rent stabilization for years into the future.

### ***Rely on Regional Policy***

The current need for deed restricted affordable units in Alameda County is 52,591 according to California Housing Partnership.<sup>34</sup> Much work is being done on the regional level to address this crisis. In January 2019, the Metropolitan Transportation Commission (MTC) released the *CASA Compact: A 15-Year Emergency Policy Package to Confront the Housing Crisis in the San Francisco Bay Area*.<sup>35</sup> This report was the product of over two years of stakeholder meetings with elected officials, builders, affordable housing developers and other housing professionals to study the root causes and develop solutions to the region's housing crisis. The CASA Compact

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<sup>32</sup> [https://ci.berkeley.ca.us/.../2015-10-27\\_Item\\_16\\_Urging\\_the\\_State\\_Legislature.aspx](https://ci.berkeley.ca.us/.../2015-10-27_Item_16_Urging_the_State_Legislature.aspx)

<sup>33</sup> <https://la.curbed.com/2018/1/12/16883276/rent-control-california-costa-hawkins-explained>

<sup>34</sup> <https://1p08d91kd0c03rlxhmhtydpr-wpengine.netdna-ssl.com/wp-content/uploads/2019/05/Alameda-HNR-2019-Final.pdf>

<sup>35</sup> [https://mtc.ca.gov/sites/default/files/CASA\\_Compact.pdf](https://mtc.ca.gov/sites/default/files/CASA_Compact.pdf)

provides a roadmap for regional action on housing affordability. It recommends a series of policies and programs to Produce, Preserve and Protect housing and renters in the Bay Area. Preservation of existing naturally occurring affordable housing as a key strategy and the plan recommended a variety of regional funding sources to help acquire and rehabilitate existing housing to preserve affordability. This year, the Association of Bay Area Governments (ABAG) and MTC are considering the placement of a regional housing finance measure on the November 2020 ballot.

In addition, ABAG and MTC are currently developing *Plan Bay Area 2050*, the region's Transportation Plan and Sustainable Communities Strategy, which will identify where growth should be concentrated and how to ensure that the Bay Area is affordable, equitable, sustainable and resilient for the future. The Plan will be aligned with the Regional Housing Needs Allocation (RHNA) which will take into account the number of affordable housing units for which each community is responsible for and the number of units required for each income level. Preservation of existing housing is a policy strategy already proposed in the draft Blueprint.

Alameda County Measure A1, the county affordable housing bond approved by voters in 2016, has provided new resources to create new affordable units. Approximately 1,000 new units are in some stage of development. The bond could yield approximately 3,500 affordable units countywide.

While this work is promising, it has a long horizon and the need to maintaining existing affordable housing units is immediate.

### ***Investor Only TOPA Application***

An "investor only" approach would craft a TOPA ordinance that would apply to owners with a 50% or greater ownership position in 3 or more rental units within the City of Berkeley.

There is great difficulty in identifying what properties would fall under this approach. Many investors create Limited Liability Companies (LLCs) for legal protection. Without review of the underlying documents, the City would not know the make-up of ownership and whether one or more owners own greater than 50% in each individual property in an LLC or LLCs. There are also many properties that are owned in Trust. The beneficiaries of these trusts could own different percentages of each property and in this situation trust documents would need to be obtained and analyzed for each property owned. While it might be possible to create a database that would identify all rented properties in Berkeley and the ownership entities, the ownership participation and owner names associated with properties could be impossible and could change from property to property.

This approach would require significant resources for enforcement, for a City agency to determine who has a 50% or more ownership interest in every rental property, and to count up the number of rental units owned by each owner to determine which properties TOPA applies to. This could cause confusion by tenants and owners as to the basic question of whether TOPA applies to a given property and could undermine TOPA's effectiveness and usefulness overall.

When analyzing the number of properties that would fall under an Investor Only TOPA, recent property tax rolls were reviewed and sorted by ownership name/entity. The applicability standard with this approach would yield approximately 1/3 the potential properties that would fall under a TOPA ordinance. (See Attachment 2)

### ***San Francisco COPA Model***

The San Francisco COPA model would provide a first right to purchase to nonprofit qualified organizations. Tenants do not have a say in the nonprofit provider that will own their building and there are no pathways for tenant ownership or democratic control by the tenants once the property changed hands. SF COPA does not provide the facilitated resident ownership models as does the Berkeley TOPA Ordinance.

Timeframes to respond to exercise the COPA are short and have resulted in lost opportunities.<sup>36</sup> Incentives that are available to sellers that participate in the SF COPA have been used as a model for the TOPA Ordinance in Berkeley.

SF COPA does have some valuable elements which have been incorporated into the TOPA ordinance in Berkeley, such as a right of first offer and accompanying incentives to sellers who accept the initial offer, as well as a vetting process for qualified affordable housing organizations who can purchase.

The SF COPA makes more sense given the rental housing stock in San Francisco is generally larger buildings. Utilizing a SF COPA Model for Berkeley would result in 50% fewer TOPA opportunities than the Investor Only TOPA application.

At a time when investor ownership is the greatest percentage of the multi-unit property ownership TOPA, when exercised by tenant organizations, is in keeping with the value Berkeley incorporates into its equity policies.

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<sup>36</sup> [SF Chronicle, City Officials Want Landlord to Delay Sale](#)

CONSULTATION/OUTREACH OVERVIEW AND RESULTS***City Staff Research***

As part of the 2017 referral to the City Manager to create a TOPA policy, City staff in the Health, Housing and Community Services Department (HHCS) conducted research and interviews with a variety of stakeholders about TOPA policy and implementation including:

- Apartment and Office Building Association of Metropolitan Washington
- City of Los Angeles, Office of the Chief Legislative Analyst
- City of San Francisco, Office of Supervisor Sandra Lee Fewer
- DC Association of Realtors
- East Bay Community Law Center
- Housing Counseling Services (City-funded technical assistance provider)
- Latino Economic Development Corporation (City-funded technical assistance provider)
- Washington, DC Department of Housing and Community Development, Rental and Sales Division

The research staff presented the Council informed the development of this ordinance.

***Tenant Outreach and Focus Groups***

In addition to a number of TOPA workshops conducted for Berkeley community members over the years, EBCLC designed and conducted tenant-centered focus groups for the purpose of eliciting feedback on key provisions of the TOPA Ordinance to inform policy proposals. EBCLC identified key questions, had a purposeful recruitment strategy during which they reached out to a number of tenant organizations to gauge interest in participating, and prepared participants via orientations beforehand to provide background on TOPA and answer any questions. Two focus groups were held with a total of nine participants, and there was a post-focus group survey with additional questions.

With the exception of one homeowner participant, all focus group participants were Berkeley tenants and included three Section 8 voucher holders and almost all were low-income, with varying levels including 80% of AMI, 50% of AMI, and 30% of AMI and below. Participants lived in property types ranging from multi-family to single family, an ADU and senior housing. Out of the four people of color, two identified as Latino/Hispanic, one as Black/African American, and one as Asian/Pacific Islander. An even spread of ages from 25 to 60+ years of age were represented with five participants identifying as female, three as male, and one as non-binary. All participants had some form of high school education, six having at least a bachelor's degree.

Tenants were engaged through presentations, simulations, and written feedback on two core provisions of TOPA: timelines and permanent affordability restrictions. The decision points for the timelines included eliciting feedback on the amount of time it would take to submit a statement of interest and submit an offer. To perform these milestones, tenants were advised that they would need to organize a tenant meeting, gather financial information, and decide on ownership type. The results showed that tenants needed more time across all property types. Considerations for timelines that were raised during focus groups included the time necessary for tenants to build consensus, gather financial information, receive guidance on options of assigning rights vs. purchasing, and learning about first-time homeownership, including a cost-benefit analysis.

Participants identified the following supportive service needs: City-sponsored workshops, financial assistance in the form of subsidy and financial advising, centralized forms and documents regarding a clear articulation of TOPA rights and process, legal assistance, and mediation services especially for multi-family homes. Overall, tenants were excited about the prospect of being able to purchase or assign their rights to an affordable housing organization. However, tenants would like to ensure that non-profits are held to a high standard of care.

Permanent affordability requirements for all TOPA projects were presented, as well as the major trade-offs of equity building and future affordability. Participants were asked for their impressions on the fairness of permanent affordability in exchange for the bundle of rights that TOPA provides to tenants. Overall, there was a strong sense from participants that they would want to use the TOPA rights to buy the property they live in primarily for the purpose of staying there, and that keeping the property affordability for future generations was more important than individual profit gain or reaping a high appreciation on the property. All of the participants agreed that permanent affordability needs to be a part of any TOPA transaction.

General feedback from the focus groups demonstrated that there is support for a TOPA policy, although it is contingent on resources such as financial and technical assistance. There is a strong sense among low-income tenants that technical and financial assistance are necessary for them to exercise their TOPA rights.

The focus groups, despite the small sample size, provided useful feedback to inform the policy. Nonetheless, EBCLC, NCLT, and BACLT intend to continue reaching out to more residents and groups, especially those representing low-income people of color and particularly groups most impacted by the displacement crisis, to do outreach and solicit feedback as necessary.



***Lender/financing overview***

The TOPA working group has contacted the following banks and lending institutions in recent months: Clearinghouse CDFI, Community Bank of the Bay, National Housing Trust, Capital Impact Partners, Heritage Bank (formerly Presidio Bank), and the Local Initiatives Support Corporation (LISC). Early conversations with these lenders, as reflected previously, indicate that there is interest in funding TOPA projects so long as they meet the necessary requirements. Again, in the case of most lenders, they do not offer 30-year consumer loans for these types of projects, but instead offer the more typical 10-15 year term commercial acquisition loans. However, TOPA working group members have been in conversation with several of these lenders who have interest in creating a new/hybrid type of consumer/commercial loan geared towards the owner-occupants of LEHC properties. This would ideally be a fully amortized 30 year loan, backed by the types of investments which offer the more favorable interest rates typical of consumer (owner-occupied) mortgages. With a solid potential demand for more of these types of loans through TOPA, there could be the momentum needed to persuade lenders to advance this concept.

***Research of rental sales professionals***

Real estate professionals from four different organizations were interviewed and asked about asking vs. sales price and also length of time the properties were on the market, including escrow time. Additionally, several online resources and articles were reviewed to greater understand buyers of multi-tenant properties and market speculation expectations for 2020. Comments gathered directly from real estate professionals included:

- Berkeley/Oakland property is seen as a safe investment because selling prices don't usually go below asking prices
- Due to rent control, tenant protections and eviction laws investors are looking to move out of property ownership in Berkeley/Oakland
- It is difficult to make improvements on properties due to inability to raise rents and recoup improvement investment costs
- Property desirability depends on tenant occupation, property condition, cash flow, location and zoning (depending on buyers intended use)
- Selling time is longer and price is lower for multi-unit properties with rent-controlled units because it is difficult to make profitable returns on investment
- Larger companies that buy multi-unit properties are often looking to redevelop

Property sale and time on the market, gathered from *Zillow*, is included in Attachment 2.

In order to ensure that TOPA ordinance development would align with the work of the San Francisco Foundation grant, additional outreach will continue during the City

Council Committee process. Feedback from proposed meetings with Berkeley Property Owners Association and BRIDGE Association of Realtors will be included as Attachment 5.

#### RATIONALE FOR RECOMMENDATION

Taking no action or waiting for significant changes in state rental laws or for more affordable housing production will continue to exacerbate the housing affordability crisis. The need to provide more options for low income tenants is immediate.

Increasing affordable housing is a policy priority for Berkeley. The most cost-effective way to do so is creating sustained affordability within existing housing stock. The recommendation to apply TOPA to all properties with the exception of Single Family/Owner Occupied Residences including those with ADUs, will at least **triple** the number of units that could be made available to tenants under TOPA (compared to other options that were considered). This policy would provide ownership opportunity for low income tenants or stabilize rents, keeping their housing cost affordable for generations. Furthermore, maximizing the number of units that could invoke the TOPA policy would justify the City's investment of resources for purchase, administration and enforcement.

Legislation of a Tenant Opportunity to Purchase Act (TOPA) has inherent and significant benefits for tenants, including:

- Effective anti-displacement tool by giving tenants options to stay in their home
- Creates pathways to homeownership for tenants, thereby helping low-income families of color to have permanency in Berkeley and build equity
- Stabilizes rents and keeps rental properties from converting to market-rate
- Levels the playing field for tenants and affordable housing developers by providing an opportunity for them to purchase properties, and incentivizing owners to sell to them when the owner is ready
- Provides Tenants empowerment and control of their housing
- Preserves existing, naturally occurring affordable units
- Creates more affordable housing by converting rental properties to deed-restricted permanently affordable properties
- Provides an opportunity for tenants to stay in their homes without fear of eviction

Future regional housing policy will require greater accountability for housing production and more requirements to provide affordable units. Converting existing housing stock to affordable units could help Berkeley meet these required housing goals.

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

Optimally, the goal for the TOPA policy to be in full force and effect would be following funding in the June 2020 Budget process. In order to meet that goal, additional work must be completed:

- Develop Administrative Regulations. The fellow awarded to the Planning Department by the San Francisco Foundation for the Bay's Challenge Grant will be working with the East Bay Community Law Center in developing the Administrative Regulations and Implementation Plan for the TOPA Ordinance.
- Database development. A consultant should be hired to create an accurate database of all rental properties that will support many other existing programs, such as the Rental Housing Safety Program, Measure U1, Below Market Rate units and measuring RHNA goals. This could be accomplished in much the same manner as the database for short term rentals.
- Program administration, oversight and enforcement. Adequate funding to support the administration, oversight and enforcement must be identified. The Rent Board is willing to assume the role as the administering body and will also adjudicate any claims of noncompliance through their hearing officer processes.
- Funding for Program Costs. Quantifying adequate project costs, that would be included in a budget referral, are a component of the required actions contained herein. The City must be prepared to fully fund the program however, future State housing incentives and regional philanthropy could help offset City investment and such opportunities should be followed and pursued by the City Manager and the administering body.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES AND LAWS

TOPA aligns with the Berkeley plans, programs, policies and laws in the following way:

City of Berkeley 2019-2020 Strategic Plan

- Create affordable housing and housing support services for our most vulnerable community members
- Champion and demonstrate social and racial equity
- Foster a dynamic, sustainable and locally based economy

Housing Element of the General Plan*Objectives*

- Housing Affordability. Berkeley residents should have access to quality housing at a range of prices and rents. Housing is least affordable for people at the lowest income levels, and City resources should focus on this area of need.
- Maintenance of Existing Housing. Existing housing should be maintained and improved.
- Fair and Accessible Housing. The City should continue to enforce fair housing laws and encourage housing that is universally accessible.
- Public Participation. Berkeley should continue to improve the role of the neighborhood residents and community organizations in housing and community development decision making.

*Policies and Actions*

- Policy H-1 Affordable Housing. Increase the number of housing units affordable to Berkeley residents with lower income levels.
- Policy H-2 Funding Sources. Aggressively search out, advocate for, and develop additional sources of funds for permanently affordable housing, including housing for people with extremely low incomes and special needs.
- Policy H-3 Permanent Affordability. Ensure that below market rate rental housing remains affordable for the longest period that is economically and legally feasible.
- Policy H-4 Economic Diversity. Encourage inclusion of households with a range of incomes in housing developments through both regulatory requirements and incentives.
- Policy H-5 Rent Stabilization. Protect tenants from large rent increases, arbitrary evictions, hardship from relocation and the loss of their homes.
- Policy H-6 Rental Housing Conservation and Condominium Conversion. Preserve existing rental housing by limiting conversion of rental properties to condominiums.
- Policy H-7 Low-Income Homebuyers. Support efforts that provide opportunities for successful home ownership for residents and workers in the City of Berkeley.
- Policy H-8 Maintain Housing. Maintain and preserve the existing supply of housing in the City.

Affordable Housing Action Plan adopted November 28, 2017:

High Priority #2: Develop an ordinance modeled after Washington D.C.'s Tenant Opportunity to Purchase Act (TOPA) that offers existing tenants the first right of

refusal when property owners place rental property on the sale market, which can be transferred to a qualifying affordable housing provider.

#### Rent Stabilization and Eviction for Good Cause Ordinance

In June 1980, Berkeley residents passed the City's comprehensive rent stabilization law known as the Rent Stabilization and Eviction for Good Cause Ordinance (BMC Chapter 13.76). The Ordinance regulated most residential rents in Berkeley and provided tenants with increased protection against unwarranted evictions and is intended to maintain affordable housing and preserve community diversity. However, in 1995, the California Legislature enacted Costa-Hawkins Rental Housing Act. Since that time owners may now set a market rent for most tenancies once a new tenant occupies a unit. While there are some tenants that remain in previous units under the Berkeley Rent Stabilization Ordinance, their rents increase by a set percentage annually. Landlords of rent stabilized units are motivated to get their long tenants to move out, therefore putting these tenants at risk of eviction. TOPA aligns with the spirit of the 1980 law in that it would stabilize the rents in TOPA acquired properties.

#### Housing for a Diverse, Equitable and Creative Berkeley: Proposing a Framework for Berkeley's Affordable Housing

Referred to the Housing Advisory Commission, Measure O Committee, and Homeless Services Panel of Experts in July 2019, the proposed Framework presents a vision for affordable housing policy and proposes aligning funding streams with existing and new programs. It is intended to guide the work of City Commissions and the Council in implementing Measure U1, Measure O and Measure P and City housing policies. The Framework also sets an ambitious goal of 30% of all housing being dedicated as subsidized affordable housing. Among the many policies and programs recommended, it specifically calls out the acquisition and preservation of existing housing and democratic ownership and control. These strategies are identified as key to preventing displacement, preserving affordability and building wealth. TOPA is also called out as a policy strategy. The Framework is under review by Commissions and has not been adopted by the City Council.

#### Regional Policies

ABAG and MTC are developing a regional transportation and land use plan to address the region's housing crisis through 2050. Along with determining the allocation by city, it is also looking at revenue generation and financing methods to support the need for low income housing. TOPA could help Berkeley meet its low-income regional allocation and there is also a possibility that funds generated through ABAG policy could help fund some TOPA projects in the future.

FINANCIAL IMPLICATIONS

*Revenue impact of Incentive to Sellers*

Based on transactions from November 1, 2018 to November 30, 2019, 245 multi-unit residential (including mixed use) properties transferred hands for a total of \$9.65M in base transfer tax revenue. Half of the base transfer tax from these properties is approximately \$4.825M; this would be the amount the City would forgo with the TOPA program.

|                                                                                                    |          |
|----------------------------------------------------------------------------------------------------|----------|
| Total Base Transfer Tax from November 2018 to November 2019 from multi-unit residential properties | \$ 9.65M |
| Eligible amount for TOPA rebate (1/2 of transfer tax)                                              | \$ 4.83M |

| % participation in TOPA | Revenue Loss in Millions |
|-------------------------|--------------------------|
| 100%                    | \$ 4.83                  |
| 50%                     | \$ 2.41                  |
| 25%                     | \$ 1.21                  |
| 10%                     | \$ 0.48                  |

The City currently has a Seismic Retrofit Refund Program which provides refunds for voluntary seismic upgrades to residential properties. Up to one-third of the base 1.5% transfer tax may be refunded on a dollar-for-dollar basis. This program applies to structures that are used exclusively for residential purposes, or any mixed-use structure that contains two or more dwelling units.

If half of the base transfer tax is given to sellers via the TOPA program, this will have a negative impact on the Seismic Retrofit Refund Program. It should be noted that the Planning Department is making an effort to enhance the seismic program to include other qualifying measures (regarding energy efficiency) that require a permit. The amount available for rebate would significantly be reduced due to the lower base amount once TOPA is implemented.

*Cost for Administration, Education, Outreach and Purchase Support*

Council can consider additional policies to support TOPA acquisitions that would supplement current funding sources such as: Small Sites Program, Measure U1 tax

receipts, Housing Trust Fund and other government resources that might come in the future. One consideration would be the establishment of a Housing Accelerator Fund similar to that established in San Francisco. Acquisition support could include, but not be limited to, purchase deposits, appraisals, down payment assistance, capital improvements and capital reserves.

Additional resources for implementation, administration, enforcement and adjudication are being referred to the City Manager to determine the appropriate level of funding to support the program:

- Cost of administration (including notices, database management, rental cost history and adjustments for non-ownership units)
- Cost of tenant education/outreach/purchase support/adjudication

The estimates below draw on D.C.'s workload experience and tenant participation rate to generate expected staffing needs. Berkeley and D.C. could have a comparable number of sales each year covered under TOPA, but D.C.'s housing stock features much larger buildings that require more organizing and technical assistance support.

Budget estimates are broken down into 2 priorities:

1. Ongoing staffing support for Supportive Partners
2. Pre-development and project management needs for Qualified Organizations

Staff for "Supportive Partners" (i.e. technical assistance, on-going)

Berkeley's TOPA requires tenants to work with a Supportive Partner in order to exercise their rights to purchase under the policy. Supportive partners function in a supportive role to assist tenants in exercising their rights. This may include education, outreach, organizing, supporting tenants through the purchase, connecting tenants to resources, and counseling tenants on first-time homeownership and collective ownership structures.

Washington D.C. funds the equivalent of 8 FTE staff to provide direct outreach and resident organizing support under TOPA, which is broadly comparable to the scope of work envisioned for the Supportive Partners. This level of staffing support provides assistance for 30 transactions per year. Given the slightly reduced organizing workload with smaller buildings, we anticipate a need going forward for 6 FTE staff in order to adequately and professionally support the anticipated number of tenant groups exploring their TOPA rights and either purchasing or assigning their rights. Expected costs for 6 FTE staff positions for Supportive Partners. Salary costs vary but an anticipated average cost of \$125,000/year per FTE assuming a salary of

between \$60,000 to \$75,000 plus taxes, benefits and insurance was assumed for estimating.

Total: 6 FTE at \$125,000 each = \$750,000

Costs for pre-development work and project management needs of Qualified Organizations (on-going)

An essential part of the program is sufficient project management capacity at the Qualified Organizations to support the development of TOPA projects. Again, referring to the D.C. model, the City helps support the project management capacity via developer fees. Since this capacity was built up over 40 years of TOPA implementation, it is anticipated that Berkeley will need to support start-up capacity and allow for ongoing support through pre-development funds related to specific TOPA projects.

For the first year of TOPA, Qualified Organizations will need to be able to request pre-development funds of ~\$25,000 per project from the City. The City's existing pre-development loan process provides an excellent model for covering the out of pocket costs of projects, but typically does not cover the staffing and project management costs at that phase.

Due to the unique nature of TOPA project staffing, close work with residents is expected to be a substantial portion of the development workload. If there is a large volume of TOPA projects at once, the Qualified Organizations will likely need a mechanism to advance a portion of developer's fees to cover early-stage project management. This could mean that Qualified Organizations serving Berkeley may each need a project manager staff to support the volume of projects.

ENVIRONMENTAL SUSTAINABILITY

Creating and preserving affordable housing in Berkeley will allow lower income individuals and families to live closer to transit and to their workplaces, reducing greenhouse gas emissions. Preserving and refurbishing existing housing stock is an important environmental strategy, as reuse/repair/refurbishment of materials avoids spending resources on a new building construction, and the disposal of construction debris. Finally, increasing affordable housing in Berkeley will make the City more economically and racially equitable, which is a goal in Berkeley's *Resilience Strategy*.



CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

1. Ordinance
2. Zillow Multi Unit Property Sale Information
3. Berkeley Properties and TOPA Applicability
4. DC Apartment Buildings and TOPA
5. [Future feedback from BRIDGE and BPOA]

ORDINANCE NO. -N.S.

TENANT OPPORTUNITY TO PURCHASE ACT

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

Section 1. Title

This Ordinance shall be known as the “Tenant Opportunity to Purchase Act”.

Section 2. That Berkeley Municipal Code Chapter 13.89 is created to read as follows:

**Chapter 13.89**

**TENANT OPPORTUNITY TO PURCHASE ACT**

**Sections**

- 13.89.010 Findings**
- 13.89.020 Definitions**
- 13.89.030 “Sale” Defined**
- 13.89.040 Authority**
- 13.89.050 Applicability**
- 13.89.060 Exemptions**
- 13.89.070 First Right to Purchase**
- 13.89.080 Tenant Decision-Making; Tenant Organizations**
- 13.89.090 Qualified Organizations**
- 13.89.100 Supportive Partners**
- 13.89.110 Assignment of Rights**
- 13.89.120 Waiver of Rights**
- 13.89.130 Notice Requirements**

- 13.89.140 Right of First Offer**
- 13.89.150 Right of First Refusal**
- 13.89.160 Third Party Rights**
- 13.89.170 Right to Appraisal**
  - 13.89.180 Contract Negotiations**
  - 13.89.190 No Selling of Rights**
  - 13.89.200 Tenant Protections**
  - 13.89.210 Price Stabilization**
  - 13.89.220 Incentives**
  - 13.89.230 Enforcement**
  - 13.89.240 Statutory Construction**
  - 13.89.250 Administration and Reports**
  - 13.89.260 Severability**

**13.89.010 Findings.**

- A. As the Bay Area region experiences increased economic growth and a high demand for housing, housing prices continue to rise which leads to displacement of low-income residents.
- B. In April 2019, the average rent for an apartment was \$3,191. To be able to afford a two-bedroom fair market rate unit, a household would need to earn \$44.79/hour or \$93,163 annually. Comparatively, the average for California is \$32.68/hour or \$67,974 annually.
- C. The Department of Housing and Urban Development (“HUD”) sets the income standards for housing vouchers based on the Area Median Income (“AMI”). In 2019, for a Berkeley family of four to qualify as extremely low income at 30% AMI, their income could not exceed \$37,150, very low income at 50% AMI could not exceed \$61,950 and low income at 80% AMI could not exceed \$98,550.
- D. Housing production in Berkeley has accelerated but there remains a significant unmet need for affordable housing for low-income people. Between January 1, 2014 and December 31, 2018, Berkeley permitted 141% above moderate income units (+120% AMI), 0% moderate income units (81-120% AMI), 15% low income units (51 - 80% AMI),

65% very low income units (31 - 50% AMI) and 0% extremely low income units (less than 30% AMI) toward meeting the Association of Bay Area Governments' ("ABAG") RHNA goals.

- E. The current need for affordable housing units in Alameda County is 52,591 units. Approximately 20% of residents in Berkeley are living in poverty.
- F. The lack of affordable housing for Berkeley's low-income communities is resulting in Berkeley residents having no option but to leave the City entirely or risk becoming homeless. Currently, there are an estimated 2,000 people who experience homelessness in Berkeley each year, and in December 2019 the Council extended its declaration of a homeless shelter crisis to January 2022.
- G. Affordable housing preservation and anti-displacement strategies will help keep low income tenants in their homes and is codified in the Berkeley General Plan Housing Element. Furthermore, production and maintaining affordable housing, at all income levels, is a stated priority of the City Council in its Housing Action Plan.
- H. This program finds that in the interest of preventing the displacement of lower-income tenants and preserving affordable housing, it is necessary and appropriate to require that the owners of rental properties in the City offer tenants the first opportunity to purchase and, in some cases defined herein, Qualified Organizations the second opportunity to purchase the property before it may be sold on the market to a third-party purchaser.
- I. The purpose of this chapter is to promote the health, safety, and general welfare of the residents of the City of Berkeley and the economic stability and viability of neighborhoods and ensure protection of the socioeconomic diversity and social fabric of the City.

### **13.89.020 Definitions.**

For the purposes of this Chapter, the following words and phrases shall have the meanings set forth below. **Unless the context clearly indicates otherwise, the singular term includes the plural and the plural term includes the singular.**

- A. "Accessory Dwelling Unit" (ADU) has the same meaning as in Chapter 23C.24 and includes a Junior ADU.
- B. "Administrative Regulation" means such rules and regulations the City shall issue to further the purposes of this Chapter.
- C. "AMI" means Area Median Income established by the U.S. Department of Housing and Urban Development (HUD), pursuant to 42 U.S.C. Chapter 1427 et seq., to establish local income classification levels.

- D. "Appraised value" means the value of the Rental Housing Accommodation as of the date of the appraisal, based on an objective, independent property valuation, performed according to professional appraisal industry standards.
- E. "Bona fide offer of sale" means an offer of sale for a Rental Housing Accommodation:
1. For a price and other material terms at least as favorable to a Tenant, Tenant Organization, and Qualified Organization as those that the Owner has offered, accepted, or is considering offering or accepting, from a Purchaser in an arm's length third-party contract; or
  2. In the absence of an arm's length third-party contract, an offer of sale containing a sales price less than or equal to a price and other material terms comparable to that at which a willing seller and a willing buyer would sell and purchase the Rental Housing Accommodation, or an appraised value.
- F. "The City" means the City of Berkeley, including any departments within the City that are assigned any responsibilities under this Chapter.
- G. "City Manager" is defined as the City Manager or his or her delegate
- H. "CPI" means the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-Hayward metropolitan area. If publication of the Consumer Price Index ceases, or if it is otherwise unavailable or is altered in a way as to be unusable, the City shall determine the use of an appropriate substitute index published by the United States Department of Labor, Bureau of Labor Statistics or any successor agency.
- I. "Days" means calendar days unless otherwise stated.
- J. "Governing Document" means a constitution, articles, bylaws, operating agreement, or other writings that governs the purpose and operation of a Tenant Organization and the rights and obligations of its members, which shall include provisions on the Tenant Organization's decision-making processes and appointing officers and other authorized agents to act on its behalf.
- K. "Governing Principles" means the governance and management principles stated in a Tenant Organization's Governing Documents.
- L. "Highest and best use" means the reasonably probable legal use of a property that is physically possible, appropriately supported, and financially feasible and that results in the highest value of the property.
- M. "Limited Equity Housing Cooperative" means the form of ownership defined in Section 11003.4(a) of the Business and Professions Code, which limits the increase of share values to below 10 percent annually, as well as prohibits more than 10 percent of the

total development cost of the cooperative housing units to be provided by share purchasers pursuant to Sections 11003.4 and Section 11003.2 of the Business and Professions Code, and that also meets the criteria of Sections 817 and 817.1 of the Civil Code.

- N. "Majority" means an affirmative vote of more than fifty percent (50%) required for decision-making under this Chapter.
- O. "Matter-of-right" means a land use, development density, or structural dimension to which a property owner is entitled by current zoning regulations or law.
- P. "Owner" means one or more persons, corporation, partnership, limited liability company, trustee, or any other entity, who is the owner of record of the Rental Housing Accommodation at the time of giving notice of intention to sell, and each person, corporation, partnership, limited liability company, trustee, or any other entity, who, directly or indirectly, owns 50 percent or more of the equity interests in the Rental Housing Accommodation at the time of giving notice of intention to sell. For purposes of complying with the notice requirements described in this Chapter, "Owner" may refer to any person acting as an authorized agent of the Owner.
- Q. "Qualified Organization" is defined in Section [Qualified Organizations].
- R. "Rent" has the same meaning as in the Rent Stabilization and Eviction for Good Cause Ordinance (section 13.76.040.E). It means the consideration, including any deposit, bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units and housing services. Such consideration shall include, but not be limited to, monies and fair market value of goods or services rendered to or for the benefit of an Owner under the Rental Agreement.
- S. "Rental Agreement" has the same meaning as in the Rent Stabilization and Eviction for Good Cause Ordinance (section 13.76.040.F). It means an agreement, oral, written or implied, between an Owner and a Tenant for use or occupancy of a unit and for housing services.
- T. "Rental Housing Accommodation" means any real property, including the land appurtenant thereto, containing one or more Rental Units and located in the City of Berkeley.
- U. "Rental Unit" or "unit" has the same meaning as in the Rent Stabilization and Good Cause Ordinance (Chapter 13.76) and accompanying regulation 403. It means any unit in any real property, including the land appurtenant thereto, that is available for rent for residential use or occupancy (including units covered by the Berkeley Live/Work Ordinance No. 5217-NS), located in the City of Berkeley, together with all housing services connected with the use or occupancy of such property such as common areas and recreational facilities held out for use by the Tenant.

- V. "Rent Board" or "Board" has the same meaning as in the Rent Stabilization and Good Cause Ordinance (section 13.76.040.A).
- W. "Rent Stabilization and Eviction for Good Cause Ordinance" means Chapter 13.76 of the Berkeley Municipal Code.
- X. "Sale" or "sell" is defined in Section ["Sale" Defined].
- Y. "Single Family Home" means any Rental Housing Accommodation comprised of no more than one Rental Unit, whether or not the Rental Unit has one or more Tenant Households. A Single Family Home includes a condominium dwelling.
- Z. "Supportive Partner" is defined in Section [Supportive Partner].
- AA. "Tenant" means one or more renter, tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy, or benefits of a Rental Unit within a Rental Housing Accommodation. "Tenant" does not include transient guests who use or occupy a unit for less than fourteen consecutive days.
- BB. "Tenant Household" means one or more Tenants, whether or not related by blood, marriage or adoption, sharing a dwelling unit in a living arrangement usually characterized by sharing living expenses, such as rent or mortgage payments, food costs and utilities, as well as maintaining a single lease or Rental Agreement for all members of the household and other similar characteristics indicative of a single household.
- CC. "Tenant-occupied unit" means any Rental Unit currently occupied by one or more Tenants.
- DD. "Tenant Organization" means Tenants who have organized themselves as a legal entity that:
1. Can acquire an interest in real property;
  2. Represents at least a majority of the Tenant-occupied Rental Units in a Rental Housing Accommodation as of the date of the Owner's notice of intent to sell pursuant to Section [Right of First Offer];
  3. Has adopted a Governing Document and Governing Principles; and
  4. Has appointed officers and any other authorized agents specifically designated to execute contracts act on its behalf.
- EE. "Third-party Purchaser" means any person or entity other than a Tenant, Tenant Organization, or Qualified Organization, engaged or seeking to engage, in purchasing a Rental Housing Accommodation from an Owner under this Chapter.

FF. "TOPA Buyer" means a Tenant, Tenant Organization, or Qualified Organization who is purchasing or has purchased a Rental Housing Accommodation from an Owner under this Chapter.

GG. "Under threat of eminent domain" refers to the commencement of the process of eminent domain, including but not limited to, any formal or informal contact with the owner by the government or government agents regarding the potential or ongoing assertion of eminent domain, and any hearings or court proceedings regarding the same.

**13.89.030 "Sale" Defined.**

A. "Sale" or "sell" includes, but is not limited to:

The transfer, in exchange for money or any other thing of economic value, of a present interest in the Rental Housing Accommodation, including beneficial use, where the value of the present interest is the fee interest in the Rental Housing Accommodation, or substantially equal to the value of that fee interest.

For purposes of this Section ["Sale" Defined], a transfer may include those completed in one transaction or a series of transactions over a period of time.

**13.89.040 Authority.**

The City Manager and their designees are authorized to enforce the provisions of this Chapter, and for such purposes, shall have the powers of a law enforcement officer. The City Manager is authorized to establish standards, policies, and procedures for the implementation of the provisions of this chapter to further the purpose set forth herein.

**13.89.050 Applicability.**

TOPA shall apply to all Rental Housing Accommodations unless exempted herein.

**13.89.060 Exemptions.**

A. Residential Property Types Exempted. The following properties are not Covered Properties for purposes of this Chapter:

1. Properties owned by the local, state, or federal government.
2. Properties owned by and operated as a hospital, convent, monastery, extended care facility, convalescent home, or dormitories owned by educational institutions.
3. A Single Family Home that an Owner occupies as their principal residence as defined in Administrative Regulations.



4. A Single Family Home with an ADU or other secondary dwelling unit, where an Owner occupies either the Single Family Home or the secondary unit as their principal residence as defined in Administrative Regulations.
5. Properties owned by cooperative corporations, owned, occupied, and controlled by a majority of residents.
6. Properties defined as “assisted housing developments” pursuant to California Government Code Section 65863.10(a)(3) so long as the provisions of California Government Code Section 65863.10, 65863.11, and 65863.13 apply.
7. Properties properly licensed as a hotel or motel.

#### B. Transfers Exempted

1. An inter-vivos transfer, even though for consideration, between spouses, domestic partners, parent and child, siblings, grandparent and grandchild.
2. A transfer for consideration, by a decedent’s estate to members of the decedent’s family if the consideration arising from the transfer will pass from the decedent’s estate to, or solely for the benefit of, charity.
  - a. For the purposes of (this subsection X), the term “members of the decedent’s family” includes:
    - i. A spouse, domestic partner, parent, child, grandparent, grandchild
    - ii. A trust for the primary benefit of a spouse, domestic partner, parent, child, grandparent, or grandchild
3. A transfer of bare legal title into a revocable trust, without actual consideration for the transfer, where the transferor is the current beneficiary of the trust.
4. A transfer to a named beneficiary of a revocable trust by reason of the death of the grantor of the revocable trust.
5. A transfer pursuant to court order or court-approved settlement.
6. A transfer by eminent domain or under threat of eminent domain.

#### C. Exemption Procedures and Burden of Proof.

1. Burden of Proof. The burden of proof to establish that a property type or planned transaction is exempt under this Chapter is on the Owner of the Rental Housing Accommodation.

2. The Owner of a Rental Housing Accommodation who believes that they should be granted an exemption under this Section [Exemptions] shall comply with procedures that the City shall create for claiming an exemption.

D. Voluntary Election to Participate. An Owner whose property or planned transaction is exempt from this Chapter pursuant to Sections [Applicability and Exemptions] may elect to subject their property to this Chapter by complying with procedures that the City shall create through Administrative Regulations, provided that the Owner who voluntarily subjects their property to this Chapter shall comply with this Chapter in its entirety. Each Tenant living in such property shall be granted all of the rights described in this Chapter, including the opportunity to decide whether to exercise their First Right of Purchase. No Owner shall be eligible for incentives described in Section [Incentives] without complying with this Chapter in its entirety.

### **13.89.70 First Right to Purchase.**

This Chapter shall be construed to confer upon each Tenant a First Right to Purchase a Rental Housing Accommodation, subject to the exemptions in Section [Exemptions], in a manner consistent with this Chapter. The First Right to Purchase shall consist of both a Right of First Offer, as set forth in Section [Right of First Offer], and a Right of First Refusal, as set forth in Section [Right of First Refusal]. The First Right to Purchase is conferred to each Tenant but shall be exercised collectively pursuant to Section [Tenant Decision-Making]. The First Right to Purchase shall include the right to assign these rights to a Qualified Organization as set forth in Section [Assignment]. The First Right to Purchase shall be conferred where the Owner intends to sell the Rental Housing Accommodation. This Chapter shall not be construed to limit the right of first offer provided under Chapter 21.28.

### **13.89.080 Tenant Decision-Making; Tenant Organizations.**

- A. **Tenant Decision-Making.** Except in the case of a duly formed Tenant Organization with its own adopted Governing Document, any action required of Tenants under this Chapter shall be approved by one of the following decision-making standards:
1. At least a Majority of Tenant-occupied units, in the case of a Rental Housing Accommodation with more than one Tenant-occupied unit.
  2. At least a Majority of Tenant Households, in the case of a Rental Housing Accommodation with only one Tenant-occupied unit but multiple Tenant Households.
  3. The Tenant Household, in the case of a Rental Housing Accommodation with only one Tenant Household.

## B. Tenant Organizations.

1. In order to submit an offer of purchase pursuant to Section [Right of First Offer to Purchase] and respond to the Owner's Offer of Sale pursuant to Section [Right of First Refusal], Tenants shall:
  - a. Form a Tenant Organization, approved by the requirements described in subsection [Tenant Decision-Making], unless such a Tenant Organization already exists in a form desired by the Tenants.
    - i. Exception to Form Tenant Organization. If there is only one Tenant Household in a Rental Housing Accommodation, the Tenant Household may exercise the Right of First Offer and Right of First Refusal without forming a Tenant Organization pursuant to subsection [Formation Requirement]; however, the Tenant Household shall still comply with subsections [Supportive Partner] and [TO Registration].
  - b. Select a Supportive Partner, as defined in Section [Supportive Partner].
  - c. Deliver an application for registration of the Tenant Organization, or the Tenant Household, if applicable, to the City, and a copy to the Owner, by hand or by certified mail by the deadline of submitting an offer of purchase pursuant to Section [Right of First Offer]. The application shall include: the name, address, and phone number of Tenant officers and the Supportive Partner; a copy of the Formation Document, as filed; a copy of the Governing Document; documented approval that the Tenant Organization represents subsection [Tenant Decision-Making, A1 or A2) as of the time of registration; and such other information as the City may reasonably require. Tenants may form and register the Tenant Organization with the City pursuant to this subsection [Tenant Organizations], at any time; provided that this Section [Tenant Decision-Making; TO] shall not be construed to alter the time periods within which a Tenant Organization may exercise the rights afforded by this Chapter.
2. Upon registration with the City, the Tenant Organization shall constitute the sole representative of the Tenants.

### 13.89.090 Qualified Organizations

A. The City Manager shall establish an administrative process for certifying organizations that meet the following minimum criteria:

1. The organization is a bona fide nonprofit, as evidenced by the fact that it is exempt from federal income tax under 26 U.S.C. § 501(c)(3), or a California cooperative corporation, as evidenced by its articles of incorporation;
2. The organization has demonstrated a commitment to democratic residential control, as evidenced by its ownership and governance structure and relationship with residents;
3. The organization has agreed to transfer ownership of the Rental Housing Accommodation to the Tenants when feasible if Tenants so wish;
4. The organization has demonstrated a commitment to the provision of affordable housing for low, very low, and extremely low income City residents, and to prevent the displacement of such residents;
5. The organization has agreed to obligate itself and any successors in interest to maintain the permanent affordability of the Rental Housing Accommodation, in accordance with Section [Price Stabilization];
6. The organization has demonstrated a commitment to community engagement, as evidenced by relationships with neighborhood-based organizations or tenant counseling organizations;
7. The organization has demonstrated the capacity (including, but not limited to, the legal and financial capacity) to effectively acquire and manage residential real property at multiple locations within the Bay Area's nine counties;
8. The organization has acquired or partnered with another housing development organization to acquire at least one residential building using any public or community funding, or has acquired or partnered with another nonprofit organization to acquire any residential buildings; and
9. The organization has agreed to attend mandatory training to be determined, from time to time, by the City.

Notwithstanding any other requirement of this section, the Berkeley Housing Authority shall be deemed a Qualified Organization for purposes of this Chapter.

**B. Certification, Term, and Renewal.** Organizations that the City Manager certifies as having met the criteria in subsection [QO Criteria] shall be known as "Qualified Organizations." An organization's certification as a Qualified Organization shall be valid for four years. The City Manager shall solicit new applications for Qualified Organization status at least once each calendar year, at which time existing Qualified Organizations shall be eligible to apply for renewed certification as Qualified Organizations.

**C. Existence and Publication of Qualified Organizations List.** The City Manager shall publish on its website, and make available upon request, a list of Qualified Organizations. In addition to such other information as the City Manager may include, this list shall include contact information for each Qualified Organization. This contact information shall include, but need not be limited to, a mailing address, an e-mail address that the Qualified Organization monitors regularly, and a telephone number.

**D. Disqualification of Qualified Organization and Conflicts of Interest.** The City Manager shall promptly investigate any complaint alleging that a Qualified Organization has failed to comply with this Chapter. Subject to Administrative Regulations, if, after providing the Qualified Organization with notice and opportunity to be heard, the City Manager determines that an organization listed as a Qualified Organization has failed to comply with this Chapter, the City Manager may suspend or revoke that organization's certification as a Qualified Organization. The City Manager shall establish a process for addressing potential and actual conflicts of interests that may arise among Supportive Partners, Qualified Organizations, and Tenants through Administrative Regulations.

### **13.89.100 Supportive Partners**

A. The City Manager shall establish an administrative process for certifying individuals or organizations that meet the following minimum criteria:

1. The individual or organization has demonstrated ability and capacity to guide and support Tenants in forming a Tenant Organization;
2. The individual or organization has demonstrated ability and capacity to assist Tenants in understanding and exercising their rights under this Chapter;
3. The individual or organization has demonstrated expertise, or existing partnerships with other organizations with demonstrated expertise, to counsel Tenants on first-time homeownership and collective ownership structures;
4. The individual or organization has a demonstrated commitment to creating democratic resident-controlled housing; and
5. The individual or organization has agreed to attend mandatory trainings, to be determined, from time to time, by the City.

**B. Certification, Term, and Renewal.** Individuals and organizations that the City Manager certifies as having met the criteria in subsection [SP Criteria] shall be known as "Supportive Partners." An individual or organization's certification as a Supportive Partner shall be valid for four years. The City Manager shall solicit new applications for Supportive Partner status at least once each calendar year, at which time existing

Supportive Partners shall be eligible to apply for renewed certification as Supportive Partners.

**C. Purpose of Supportive Partner.** A Supportive Partner functions in a supportive role to assist Tenants in exercising their rights under this Chapter. This Chapter does not confer any rights to a Supportive Partner. A Supportive Partner is distinct from a Qualified Organization who is conferred subordinated rights under this Chapter as described in Section 13.89.070. The City Manager may determine that a Qualified Organization described in Section 13.89.090 who meets the criteria in subsection 13.89.100A is also eligible to serve as a Supportive Partner. The City may also serve as a Supportive Partner.

**D. Existence and Publication of Supportive Partners List.** The City Manager shall publish on its website, and make available upon request, a list of Supportive Partners. In addition to such other information as the City Manager may include, this list shall include contact information for each Supportive Partner. This contact information shall include, but need not be limited to, a mailing address, an e-mail address that the Supportive Partner monitors regularly, and a telephone number.

**E. Disqualification of Supportive Partner and Conflicts of Interest.** The City Manager shall promptly investigate any complaint alleging that a Supportive Partner has failed to comply with this Chapter. Subject to Administrative Regulations, if, after providing the Supportive Partner with notice and opportunity to be heard, the City Manager determines that an individual or organization listed as a Supportive Partner has failed to comply with this Chapter, the City Manager may suspend or revoke that individual or organization's certification as a Supportive Partner. The City Manager shall establish a process for addressing potential and actual conflicts of interests that may arise among Supportive Partners, Qualified Organizations, and Tenants through Administrative Regulations.

### **13.89.110 Assignment of Rights**

- A. A Tenant or Tenant Organization may assign rights under this Chapter in compliance with subsection [Tenant Decision-Making] to a Qualified Organization of their choice.
- B. Subject to Administrative Regulations, the assignment of rights described in this Section shall occur prior to the Tenant or Tenant Organization waiving their rights pursuant to Section [Waiver of Rights] ], and only during the process provided in Section [Statement of Interest] and Section [Right of First Offer]. Except as provided in section 13.89.120, the waiver and assignment of rights shall made in a written agreement executed by the Tenant or Tenant Organization and the Qualified Organization.
- C. Qualified Organizations shall not accept any payment, consideration, or reward in exchange for the assignment of rights under this Section.

**13.89.120 Waiver of Rights**

- A. Tenants may affirmatively waive their rights before the time periods specified in Sections [Right of First Offer] and [Right of First Refusal] elapse by notifying the Owner in writing, signed by the Tenants and in compliance with Section [Tenant Decision-Making; Tenant Organizations].
- B. Tenants' failure to complete actions required under Sections [Right of First Offer] and [Right of First Refusal] within the allotted time periods and any extensions thereof shall be deemed a waiver of Tenants' rights.

**13.89.130 Notice Requirements**

Any notices required or permitted by this Chapter shall also comply with Administrative Regulations.

**13.89.140 Right of First Offer**

- A. **General Construction.** Before an Owner of a Rental Housing Accommodation may offer it for sale to, solicit any offer to purchase from, or accept any unsolicited offer to purchase from, any Third Party Purchaser, the Owner shall give the Tenant of the Rental Housing Accommodation the first opportunity to make an offer as set forth in this Section.
- B. **Joint Notification.** In accordance with Section [Notice Requirements]], the Owner shall:
  - a) Notify each Tenant of the Owner's intent to Sell the Rental Housing Accommodation by certified mail and by posting a copy of the notice in a conspicuous place in common areas of the Rental Housing Accommodation.
  - i) The notice shall include, at a minimum:
    - (1) A statement that the Owner intends to sell the Rental Housing Accommodation.
    - (2) A statement of the rights of Tenants and Qualified Organizations and the accompanying timelines described in this Chapter.
    - (3) A statement of the rights of Tenants and Qualified Organizations and the accompanying timelines described in this Chapter.
    - (4) A statement that the Owner shall make the related disclosures described in this Chapter available to the Tenant.
    - (5) A statement in English, Chinese, and Spanish stating that if the Tenant requires the notice in a language other than English, they can contact the City and request the notice in their language and/or the assistance of an interpreter.
  - b) Notify each Qualified Organization, at the same time as notifying Tenants, of the Owner's intent to Sell the Rental Housing Accommodation, by sending an e-mail to each of the e-mail addresses included on the City's list

of Qualified Organizations described in Section [Qualified Organizations, subsection B “Existence and Publication of Qualified Organizations List”].

- c) File a copy of the notices with proof that they have been sent to the Tenants and Qualified Organizations with the City or its designated agency, at the same time notice is sent to Tenants and Qualified Organizations.

C. **Related Disclosures.** When the Owner, pursuant to [this Section], notifies each Tenant and Qualified Organization of its intent to sell a Rental Housing Accommodation, the Owner shall also provide each Tenant and Qualified Organization with the following information, at minimum:

1. A floor plan of the property;
2. An itemized list of monthly operating expenses, utility consumption rates, and capital expenditures for each of the two preceding calendar years;
3. A list of any known defects and hazards, and any related costs for repair;
4. The most recent rent roll: a list of occupied units and list of vacant units, including the rate of rent for each unit and any escalations and lease expirations.
5. Covenants, Conditions, & Restrictions and reserves, in the case of a condominium dwelling;
6. Any other disclosures required by California state law.

D. **Time to Submit a Statement of Interest.**

1. Upon receipt of the notice and disclosures described in subsections [Joint Notification and Related Disclosures], Tenants shall deliver one statement of interest to the Owner on behalf of the Rental Housing Accommodation.
2. Tenants shall have 20 days in a Rental Housing Accommodation comprised of 1 or 2 units, and 30 days in a Rental Housing Accommodation with 3 or more units, to deliver the statement of interest. Tenants in a Rental Housing Accommodation with 30 or more units shall be granted one extension of up to 15 days upon request, for a total of 45 days. If the Tenants waive their rights in accordance with Section [Waiver of Rights], Qualified Organizations shall have the remaining time or a minimum of 5 days, whichever is greater, to deliver a statement of interest to the Owner.
  - a) The statement of interest shall be a clear expression from the Tenants that they intend to further consider making an offer to purchase the Rental Housing Accommodation or further consider assigning their rights to a Qualified Organization.
  - b) The statement of interest shall also include documentation demonstrating that the Tenants’ decision was supported by the standard described in Section [Tenant Decision-Making].
  - c) If the Tenants waive their rights in accordance with Section [Waiver of Rights], the Owner shall notify all Qualified Organizations, via e-mail, on the same day that Tenants waive their rights, of the right of each Qualified Organization to submit a statement of interest to the Owner.



- d) Upon receipt of this notice, a Qualified Organization that intends to further consider making an offer to purchase the Rental Housing Accommodation shall deliver a statement of interest to the Owner and every other Qualified Organization via e-mail within the time periods in subsection [description of remaining time for QOs in this subsection above].
- e) The statement of interest shall be a clear expression that the Qualified Organization intends to further consider making an offer to purchase the Rental Housing Accommodation.
- f) If a Qualified Organization has delivered a statement of interest consistent with subsection [above], the Owner shall, subject to seeking Tenant approval for disclosure of any confidential or personal information, disclose to each such Qualified Organization, via e-mail, the names of Tenants in each occupied unit of the Rental Housing Accommodation, as well as any available contact information for each Tenant.
- g) If Tenants and Qualified Organizations do not deliver a statement of interest within the time periods specified in [this subsection], the Owner may immediately proceed to offer the Rental Housing Accommodation for sale to, and solicit offers of purchase from, prospective Third Party Purchasers, subject to the Right of First Refusal in Section [Right of First Refusal].

**E. Time to Submit Offer.**

1. **Rental Housing Accommodation with only one Tenant Household.** The following procedures apply to offers to purchase a Rental Housing Accommodation with only one Tenant Household.
  - a. Upon receipt of a statement of interest from Tenants consistent with Section [Time to Submit a Statement of Interest], an Owner shall afford the Tenants an additional 21 days to select a Supportive Partner and submit an offer to purchase the Rental Housing Accommodation. If the Tenants waive their rights in accordance with Section [Waiver of Rights], Qualified Organizations shall have the remaining time or a minimum of 5 days, whichever is greater, to submit an offer to the Owner.
  - b. If the Tenants waive their rights in accordance with Section [Waiver of Rights], the Owner shall notify all Qualified Organizations, via email, of their rights to submit an offer. Upon receipt of this notice, each Qualified Organization that intends to purchase the Rental Housing Accommodation shall submit an offer to the Owner within the time period specified in subsection [description of remaining time for QOs in this subsection above].
2. **2-unit property and Single Family Home with multiple Tenant Households.** The following procedures apply to offers to purchase a Rental Housing Accommodation with 2 units or a Single Family Home with multiple Tenant Households, unless subject to subsection [Rental Housing Accommodations with one Tenant Household].

- a. Upon receipt of a statement of interest from Tenants consistent with Section [Time to Submit Statement of Interest], an Owner shall afford the Tenants an additional 45 days to form a Tenant Organization, select a Supportive Partner, and deliver an offer to purchase the Rental Housing Accommodation. If the Tenants waive their rights in accordance with Section [Waiver of Rights], Qualified Organizations shall have the remaining time or a minimum of 5 days, whichever is greater, to deliver an offer to the Owner.
  - b. If the Tenants waive their rights in accordance with Section [Waiver of Rights], the Owner shall notify all Qualified Organizations, via e-mail, of their rights to submit an offer. Upon receipt of this notice, each Qualified Organization that intends to purchase the Rental Housing Accommodation shall deliver an offer within the time period specified in subsection [description of remaining time for QOs in this subsection above].
3. **3 or more unit properties.** The following procedures apply to offers to purchase a Rental Housing Accommodation with 3 or more units, unless subject to subsection [Rental Housing Accommodation with one Tenant Household].
  - a. Upon receipt of a Statement of Interest from Tenants consistent with Section [Time to Submit Statement of Interest], an Owner shall afford Tenants an additional 60 days to form a Tenant Organization, select a Supportive Partner, and deliver an offer to purchase the Rental Housing Accommodation. Tenants in a Rental Housing Accommodation with 10-29 units shall be granted one extension of up to 30 days upon request, for a total of 90 days to submit an offer to the Owner. Tenants in a Rental Housing Accommodation with 30 or more units shall be granted two extensions of up to 30 days each, for a total of 120 days to deliver an offer to the Owner. If the Tenants waive their rights in accordance with Section [Waiver of Rights] Qualified Organizations shall have the remaining time within these time periods and any extensions thereof, or a minimum of 5 days, whichever is greater, to deliver an offer to the Owner.
  - b. If the Tenants waive their rights in accordance with Section [Waiver of Rights], the Owner shall notify all Qualified Organizations, via email, of their rights to submit an offer. Upon receipt of this notice, each Qualified Organization that intends to purchase the Rental Housing Accommodation shall deliver an offer within the time period specified in subsection [description of remaining time for QOs in this subsection above].
4. **Price Stabilization Agreement.** Within these timeframes for submitting an offer, the Tenant, Tenant Organization, or Qualified Organization that submits an offer to the Owner shall also submit an agreement to the City pursuant to Section [Price Stabilization subsection B] agreeing to be bound by requirements of Section [Price Stabilization].

F. **Owner Free to Accept or Reject Offer.** The Owner is free to accept or reject any offer of purchase from a Tenant, Tenant Organization or Qualified Organization. Any such acceptance or rejection shall be communicated in writing.

1. **Incentives to Accept Offer.** If the Owner accepts any such offer of purchase from a Tenant, Tenant Organization or a Qualified Organization, the Owner may be eligible to receive incentives pursuant to Section [Incentives].
2. **Rejection of Offer.** If the Owner rejects all such offers of purchase, the Owner may immediately offer the Rental Housing Accommodation for sale to, and solicit offers of purchase from, prospective Third Party Purchasers, subject to the Right of First Refusal described in Section [Right of First Refusal].
3. **Lapse of Time.** If 90 days elapse from the date of an Owner's rejection of an offer from a Tenant, Tenant Organization or a Qualified Organization, and the Owner has not provided an offer of sale as described in Section [Right of First Refusal], the Owner shall comply anew with this Section [Right of First Offer].

G. **Time to Secure Financing.**

1. **Single Family Home with a one Tenant Household.** The following procedures apply to a purchase of a Single Family Home with only one Tenant Household.
  - a. The Owner shall afford the Tenant or Qualified Organization 30 days after the date of the entering into contract to secure financing.
  - b. If, within 30 days after the date of contracting, the Tenant or Qualified Organization presents the Owner with the written decision of a lending institution or agency that states that the institution or agency estimates that a decision with respect to financing or financial assistance will be made within 45 days after the date of contracting, the Owner shall afford the Tenant or Qualified Organization an extension of time consistent with the written estimate.
  - c. If the Tenant or Qualified Organization do not secure financing and close the transaction within the timeframes described in subsections [Time to Secure Financing and Time to Close] and any extensions thereof, the Owner may immediately proceed to offer the Rental Housing Accommodation for sale to, and to solicit offers of purchase from prospective Third Party Purchasers other than the Tenant or Qualified Organization.
2. **2-unit property and Single Family Home with multiple Tenant Households.** The following procedures apply to a purchase of a Rental Housing Accommodation with 2 units or a Single Family Home with multiple Tenant Households.

- a. The Owner shall afford the Tenant Organization or Qualified Organization 90 days after the date of entering into contract to secure financing.
    - b. If, within 90 days after the date of contracting, the Tenant Organization or Qualified Organization presents the Owner with the written decision of a lending institution or agency that states that the institution or agency estimates that a decision with respect to financing or financial assistance will be made within 120 days after the date of contracting, the Owner shall afford the Tenant Organization or Qualified Organization an extension of time consistent with the written estimate.
    - c. If the Tenant Organization or Qualified Organization do not secure financing and close the transaction within the timeframes described in subsections [Time to Secure Financing and Time to Close] and any extensions thereof, the Owner may immediately proceed to offer the Rental Housing Accommodation for sale to, and to solicit offers of purchase from prospective Third-Party Purchasers other than the Tenant Organization or Qualified Organization.
  3. **3 or more unit properties.** The following procedures apply to purchases of Rental Housing Accommodations with 3 or more units.
    - a. The Owner shall afford the Tenant Organization or Qualified Organization 120 days after the date of entering into contract to secure financing.
    - b. If, within 120 days after the date of contracting, the Tenant Organization or Qualified Organization presents the Owner with the written decision of a lending institution or agency that states that the institution or agency estimates that a decision with respect to financing or financial assistance will be made within 160 days after the date of contracting, the Owner shall afford the Tenant Organization or Qualified Organization an extension of time consistent with the written estimate.
    - c. If the Tenant Organization or Qualified Organization do not secure financing and close the deal within the timeframes described in subsections [Time to Secure Financing and Time to Close] and any extensions thereof, the Owner may immediately proceed to offer the Rental Housing Accommodation for sale to, and to solicit offers of purchase from prospective Third-Party Purchasers other than the Tenant Organization or Qualified Organization.
- H. **Time to Close.** In addition to the time periods in subsection [Time to Secure Financing], the Owner shall afford each Tenant, Tenant Organization, or Qualified Organization with an additional 14 days to close. So long as the Tenant, Tenant

Organization, or Qualified Organization is diligently pursuing the close, the Owner shall afford them a reasonable extension beyond this 14-day period to close.

**13.89.150 Right of First Refusal**

**A. General Construction.** This Section [Right of First Refusal] shall be construed to confer a Right of First Refusal only upon each Tenant, Tenant Organization, and Qualified Organization that exercised the Right of First Offer pursuant to Section [Right of First Offer].

**B. Offer of sale to Tenant, Tenant Organizations, and Qualified Organizations.** Before an Owner of a Rental Housing Accommodation may sell a Rental Housing Accommodation, the Owner shall give each Tenant, Tenant Organization, or Qualified Organization that previously made an offer to purchase that Rental Housing Accommodation pursuant to Section [Right of First Offer], an opportunity to purchase the Rental Housing Accommodation at a price and terms that represent a Bona Fide Offer of Sale.

1. The Owner's offer of sale shall include, at minimum:
  - a. The asking price and terms of the sale. The terms and conditions shall be consistent with the applicable timeframes described in Sections [Time to Accept Offer, Time to Secure Financing, and Time to Close];
  - b. A statement as to whether a contract with a Third-party Purchaser exists for the sale of the Rental Housing Accommodation, and if so, a copy of such contract; and
  - c. A statement in English, Chinese, and Spanish stating that if the Tenant requires the offer of sale in a language other than English, they may contact the City and request the offer of sale in their language and/or the assistance of an interpreter.
2. If a Tenant or Tenant Organization is receiving the offer of sale, the Owner shall deliver the items in subsection [Offer of sale, subsection a] to each Tenant or Tenant Organization by providing a written copy of the offer of sale by certified mail.
3. If a Qualified Organization is receiving the offer of sale, the Owner shall deliver the items in subsection [Offer of sale, subsection a] to each Qualified Organization that previously made an offer to purchase the Rental Housing Accommodation. The Owner shall submit an offer of sale to each such Qualified Organization on the same day, and to the extent possible, at the same time, by e-mail.
4. If the Owner has a contract with a Third-Party Purchaser for the sale of the Rental Housing Accommodation, the Owner shall deliver all of the items in

subsection [Offer of sale, part a] to each Tenant, Tenant Organization or Qualified Organization within 2 days of entering into contract with the Third-Party Purchaser.

5. The Owner shall also provide the City with a written copy of the offer of sale and a statement certifying that the items in subsection [Offer of sale, subsection a] were delivered to each Tenant, Tenant Organization, or Qualified Organization.

**C. Bona Fide Offer of Sale.**

1. For purposes of this section, a “Bona Fide Offer of Sale” means an offer of sale for a Rental Housing Accommodation that is either:
  - a. For a price and other material terms at least as favorable to a Tenant, Tenant Organization or Qualified Organization as those that the Owner has offered, accepted, or is considering offering or accepting, from a Third Party Purchaser in an arm’s length third-party contract; or
  - b. In the absence of an arm’s length third-party contract, an offer of sale containing a sales price less than or equal to a price and other material terms comparable to that at which a willing seller and a willing buyer would sell and purchase the Rental Housing Accommodation, or an appraised value.

**D. Time to Accept Offer.**

1. **Rental Housing Accommodation with one Tenant Household.** The following procedures apply to a Rental Housing Accommodation with only one Tenant Household.
  - a. Upon receipt of the offer of sale from the Owner, a Tenant or Qualified Organization shall have 10 days to accept the offer of sale, provided, however, that the deadline to accept any offer of sale shall be extended to allow the Tenant or Qualified Organization to exercise their Right to an Appraisal pursuant to Section [Right to an Appraisal], if they believe that the offer of sale is not a Bona Fide Offer of Sale.
2. **Rental Housing Accommodation with multiple Tenant Households.** The following procedures apply to a Rental Housing Accommodation with multiple Tenant Households.
  - a. Upon receipt of the offer of sale from the Owner, a Tenant Organization shall have 30 days to accept the offer of sale.
  - b. Upon receipt of the offer of sale from the Owner, a Qualified Organization shall have 14 days to accept the offer of sale.
  - c. The deadline to accept any offer of sale shall be extended to allow the Tenant or Qualified Organization to exercise their Right to an

Appraisal pursuant to Section [Right to an Appraisal], if they believe that the offer of sale is not a Bona Fide Offer of Sale.

3. If, during these time periods, any Qualified Organization that has received such offer of sale decides to accept the Owner's offer of sale, that Qualified Organization shall notify the Owner and every other Qualified Organization of that decision by e-mail. After a Qualified Organization notifies the Owner of its decision to accept the Owner's offer of sale (that is, before any other Qualified Organization so noticed the Owner), that Qualified Organization shall be deemed to have accepted the offer of sale, and no other Qualified Organization may accept the Owner's offer of sale, whether or not the time periods in this subsection have elapsed.

**E. Time to Secure Financing and Close.** If a Tenant, Tenant Organization, or Qualified Organization accept an Owner's offer of sale in accordance with this Section [Right of First Refusal], the Owner shall afford such Tenant, Tenant Organization, or Qualified Organization time to secure financing and close, consistent with Sections [Time to Secure Financing and Time to Close].

**F. Rejection of Offer.** If each Tenant, Tenant Organization, and Qualified Organization that received an offer of sale consistent with this Section [Right of First Refusal] rejects that offer of sale or fails to respond within the timelines described in this Section, the Owner may immediately proceed with the sale of the Rental Housing Accommodation to a Third-Party Purchaser consistent with the price and material terms of that offer of sale.

### **13.89.160 Third-Party Rights**

The right of a third party to purchase a Rental Housing Accommodation is conditional upon the exercise of Tenant, Tenant Organization, and Qualified Organization rights under this Chapter. The time periods for submitting and accepting an offer, securing financing, and closing under this Chapter are minimum periods, and the Owner may afford any Tenant, Tenant Organization, and Qualified Organization a reasonable extension of such period, without liability under a third party contract. Third Party Purchasers are presumed to act with full knowledge of the rights of Tenants, Tenant Organizations, and Qualified Organizations and public policy under this Chapter.

### **13.89.170 Right to Appraisal**

- A. This Section shall apply whenever an offer of sale is made to a Tenant, Tenant Organization, or Qualified Organizations as required by this Chapter and the offer is made in the absence of an arm's-length third-party contract.
- B. **Request for Appraisal.** The Tenant, Tenant Organization, or Qualified Organization that receives an Owner's offer of sale may challenge that offer of sale as not being a Bona Fide Offer of Sale, and request an appraisal to determine the fair market value of the Rental Housing Accommodation. The party

requesting the appraisal shall be deemed the “petitioner” for purposes of this subsection. The petitioner shall deliver the written request for an appraisal to the City and the Owner by hand or by certified mail within 3 days of receiving the offer of sale.

- C. **Time for Appraisal.** Beginning with the date of receipt of a written request for an appraisal, and for each day thereafter until the petitioner receives the appraisal, the time periods described in Section [Time to Accept Offer] shall be extended by an additional day up to ten (10) business days.
- D. **Selection of Appraiser.** The petitioner shall select an appraiser from a list of independent, qualified appraisers, that the City shall maintain. City approved appraisers shall hold an active appraiser license issued by the California Bureau of Real Estate Appraiser and shall be able to conduct an objective, independent property valuation, performed according to professional industry standards. All appraisers shall undergo training organized by the City before they are approved and added to the City’s list.
- E. **Cost of Appraisal.** The petitioner, Owner, and the City, shall each be responsible for one-third of the total cost of the appraisal.
- F. **Appraisal Procedures and Standards.** The Owner shall give the appraiser full, unfettered access to the property. The Owner shall respond within 3 days to any request for information from the appraiser. The petitioner may give the appraiser information relevant to the valuation of the property. The appraisal shall be completed expeditiously according to standard industry timeframes. An appraised value shall only be based on rights an owner has as a matter-of-right as of the date of the alleged Bona Fide Offer of Sale, including any existing right an Owner may have to convert the property to another use. Within these restrictions, an appraised value may take into consideration the highest and best use of the property.
- G. **Validity of Appraisal.** The determination of the appraised value of the Rental Housing Accommodation, in accordance with this Section, shall become the sales price of the Rental Housing Accommodation in the Bona Fide Offer of Sale, unless:
  - a. The Owner and the petitioner agree upon a different sales price of the Rental Housing Accommodation; or
  - b. The Owner elects to withdraw the offer of sale altogether within 14 days of receipt of the appraisal.
    - i. The Owner shall withdraw the Offer of Sale by delivering a written notice by hand or by certified mail to the City and to the petitioner.
    - ii. Upon withdrawal, the Owner shall reimburse the petitioner and the City for their share of the cost of the appraisal within 14 days of delivery of written notice of withdrawal.
    - iii. An Owner who withdraws an offer of sale in accordance with this subsection shall be precluded from proceeding to sell the Rental Housing Accommodation to a Third-Party Purchaser without



complying with this Chapter anew and honoring the First Right of Purchase of Tenants and Qualified Organizations.

- c. The petitioner elects to withdraw the offer of sale altogether within 14 days of receipt of the appraisal.
  - i. The petitioner shall withdraw the Offer of Sale by delivering a written notice by hand or by certified mail to the City and to the Owner.
  - ii. Upon withdrawal, the petitioner shall reimburse the Owner and the City for their share of the cost of the appraisal within 14 days of delivery of written notice of withdrawal.

### **13.89.180 Contract Negotiation**

**A. Bargaining in good faith.** The Owner and any Tenant, Tenant Organization, and/or Qualified Organization shall bargain in good faith regarding the terms of any Offer for Sale. Any one of the following constitutes prima facie evidence of bargaining without good faith:

- 1. The failure of an Owner to offer a Tenant, Tenant Organization, or Qualified Organization a price and other material terms at least as favorable as that offered to a Third Party Purchaser.
- 2. Any requirement by an Owner that a Tenant, Tenant Organization, or Qualified Organization waive any right under this Chapter.
- 3. The intentional failure of an Owner, Tenant, Tenant Organization, or Qualified Organization to comply with the provisions of this Chapter.

**B. Reduced price.** If the Owner sells or contracts to sell the Rental Housing Accommodation to a Third-Party Purchaser for a price less than the price offered to the Tenant, Tenant Organization, or Qualified Organization in the offer of sale, or for other terms, which would constitute bargaining without good faith, the Owner shall comply anew with all requirements of this Chapter, as applicable.

**C. Termination of rights.** The intentional failure of any Tenant, Tenant Organization, or Qualified Organization to comply with the provisions of this Chapter shall result in the termination of their rights under this Chapter.

### **13.89.190 No Selling of Rights**

- A. A Tenant, Tenant Organization, or Qualified Organization shall not sell any rights under this Chapter.
- B. An Owner shall not coerce a Tenant or Tenant Organization to waive their rights under this Chapter.

**13.89.200 Tenant Protections**

- A. No Tenant in the Rental Housing Accommodation, including those Tenants who do not exercise rights to purchase under this Chapter, may be evicted by the TOPA Buyer, except for good cause in compliance with the City's Rent Stabilization and Eviction for Good Cause Ordinance and applicable state law.
- B. Should the maximum allowable rent provision of the City's Rent Stabilization and Eviction for Good Cause Ordinance not apply, TOPA Buyers shall adjust the rent annually to allow an increase of no more than the increase in the CPI plus a reasonable, pro rata share of capital improvements for common areas or agreed to capital improvements for the unit in accordance with Administrative Regulations and subject to Section [Price Stabilization re: rent restrictions]. These rent increase limits shall only apply to units that can be controlled in compliance with Costa-Hawkins Rental Housing Act.
- C. TOPA Buyers shall not refuse to provide Rental Housing Accommodations to any person based on the source of funds used to pay for the Rental Housing Accommodations, including but not limited to any funds provided by Berkeley Housing Authority Section 8 vouchers or any other subsidy program established by the Federal, State or County and the City of Berkeley, the City's Shelter Plus Care Program certificates or any future rent subsidy from the City or other governmental entity made available to extremely low to moderate low income households for vacant units in the purchased Rental Housing Accommodation, and shall comply with sections 13.31.010 and 13.31.020.

**13.89.210 Price Stabilization**

- A. Rental Housing Accommodation purchased by a TOPA Buyer under this Chapter shall be subject to permanent affordability restrictions as set forth in this Section and Administrative Regulations created with the intent of fulfilling the purpose of this Chapter.
- B. "Permanent affordability" means that future rents and future sales prices of the Rental Housing Accommodation, or separate ownership interests in the Rental Housing Accommodation, shall be made affordable to households with targeted income levels.
- C. Term. Subject to Administrative Regulations, permanent affordability standards shall restrict the use of the Rental Housing Accommodation to require that permanent affordability restrictions remain in force for 99 years and with an option to renew at year 100. This subsection is not to be construed to apply only to community land trusts.
- D. In exchange for the rights conferred under this Chapter, each TOPA Buyer agrees to maintain the permanent affordability of the Rental Housing Accommodation. No TOPA Buyer shall be entitled to contract under this Chapter without executing an agreement with the City to limit the future appreciation of the Rental Housing Accommodation and

only sell, or rent, to income-eligible households in accordance with this Section [Price Stabilization] and relevant standards and exemptions created by the City through Administrative Regulations. Under this agreement, each TOPA Buyer shall represent to the City that they agree to be bound by the permanent affordability requirements under this Section.. The TOPA Buyer shall deliver this agreement to the City no later than the deadline for submitting an offer provided under Section [Right of First Offer].

E. For a Tenant or Tenant Organization purchasing a Rental Housing Accommodation, permanent affordability standards created by the City shall:

1. Restrict the resale price of the Rental Housing Accommodation, or separate ownership interests in the Rental Housing Accommodation, by limiting the annual market appreciation of the Rental Housing Accommodation, or separate ownership interest, to an increase of no more than 25 percent of the appreciated value as determined by the difference between an appraisal made at the time of purchase and the appraisal made at the time of sale. The City may create standards to limit the annual market appreciation at less than 25 percent through Administrative Regulation;
2. Ensure that a unit in which a Tenant determines to remain a renter following a purchase under this Chapter shall be maintained as a unit subject to the requirements of Section [Tenant Protections - rent control mandate], unless the City determines a valid exemption or alternative standard should apply for such unit assisted by the City or other public subsidy program which is subject to separate permanent affordability requirements; and
3. At minimum, make the restricted resale price of the Rental Housing Accommodation, or ownership interests in the Rental Housing Accommodation, available only to households with income at or below the average AMIs of the initial TOPA Buyers as of the initial purchase date of the Rental Housing Accommodation, as verified and recorded by the City as of the initial purchase date.

F. For Qualified Organizations purchasing the Rental Housing Accommodation, permanent affordability standards created by the City shall:

1. Restrict the resale price of the Rental Housing Accommodation, or separate ownership interests in the Rental Housing Accommodation, by limiting the annual market appreciation of the Rental Housing Accommodation, or separate ownership interest, to an increase of no more than the percentage change in the regional CPI or AMI plus credits for capital improvements, at a minimum, but in no event more than 25 percent of the appreciated value as determined by the difference between an appraisal made at the time of purchase and the appraisal made at the time of sale;

2. Ensure that a unit in which a Tenant determines to remain a renter following a purchase under this Chapter shall be maintained as a unit subject to the requirements of Section [Tenant Protections - rent control mandate], unless the City determines a valid exemption or alternative standard should apply for such unit assisted by the City or other public subsidy program which is subject to separate permanent affordability requirement; and
3. Prioritize making vacant or vacated units in the Rental Housing Accommodation available to Households with income at or below 30 percent, 50 percent, and 80 percent of AMI.

G. Mechanism. Permanent affordability restrictions shall materialize as at least one of the following:

1. A restrictive covenant placed on the recorded title deed to the Rental Housing Accommodation that runs with the land and is enforceable by the City against the TOPA Buyer and its successors, and one of the following:
  - a. Other affordability restrictions in land leases or other recorded documents not specifically listed in this subsection, so long as the City determines that such restrictions are enforceable and likely to be enforced such as a recorded mortgage promissory note and/or regulatory agreements with the City where City subsidies are involved.
2. A community land trust lease, which is a 99-year renewable land lease with affordability and owner-occupancy restrictions.
3. A Limited Equity Housing Cooperative.

H. Required Recordings and Filings.

1. All covenants created in accordance with this Section [Price Stabilization] shall be recorded before or simultaneously with the close of escrow in the office of the county recorder where the Rental Housing Accommodation is located and shall contain a legal description of the Rental Housing Accommodation, indexed to the name of the TOPA Buyer as grantee.
2. Each TOPA Buyer of the Rental Housing Accommodation will be required to file a document annually with the City in which the TOPA Buyer affirmatively states the rents and share price for each unit in the Rental Housing Accommodation. The City may engage a third party monitoring agent to monitor the compliance of this subsection [annual certification], pursuant to Administrative Regulations.

I. Exemption from the City's Affordable Housing Mitigation Fee.

Qualified Organizations and Tenant Organizations shall not be subject to the payment of the City's affordable housing mitigation fee pursuant to the

Condominium Conversion Ordinance, Chapter 21.28, if converting units in the Rental Housing Accommodation to limited equity condominiums for the purpose of providing permanently affordable housing opportunities subject to and in compliance with the requirements of this Section [Price Stabilization] and Administrative Regulations.

**13.89.220 Incentives**

- A. Access to Buyers.** The City shall endeavor to maintain and publicize the list of Qualified Organizations described in Section XXX in a manner that, to the maximum extent feasible, promotes the existence of the Qualified Organizations as a readily accessible pool of potential buyers for Covered Properties. The City shall, to the maximum extent permitted by law and otherwise feasible, publicize the existence of this list in a manner intended to facilitate voluntary sales to Qualified Organizations in a manner that avoids or minimizes the need for a broker, other search costs, or other transactions.
- B. Partial City Transfer-Tax Exemption.** As set forth in Section XXX of the XXXX Municipal Code, the increased tax rate imposed by subsections XXX Section XXX shall not apply with respect to any deed, instrument or writing that affects a transfer under Section XXX of this Chapter, as Section XXX exists as of the effective date of the Ordinance.
- C. Potential Federal Tax Benefits.** Any Qualified Organization that purchases a Rental Housing Accommodation under the right of first offer set forth in Section XXX shall, to the maximum extent permitted by law and otherwise feasible, be obliged to work with the Owner in good faith to facilitate an exchange of real property of the kind described in 26 U.S.C. § 1031, for the purpose of facilitating the Owner's realization of any federal tax benefits available under that section of the Internal Revenue Code.
- D. Information to Owners.** The City shall produce an information sheet describing the benefits of an Owner's decision to accept a Tenants' or Qualified Organization's offer of purchase made in connection with the first right to purchase forth in Sections [Right of First Offer] and [Right of First Refusal]. The information sheet shall further explain that, even if a Owner does not accept a Tenants' or Qualified Organizations' offer to purchase a Rental Housing Accommodation pursuant to the right of first offer set forth in Section [Right of First Offer], the Rental Housing Accommodation will still be subject to the right of first refusal set forth in Section [Right of First Refusal]. The information sheet shall contain a field in which the Owner may acknowledge, in writing, that the Owner (or the Owner's authorized representative) has read and understood the information sheet. A Tenant, Tenant Organization, or Qualified Organization that makes an offer to purchase a Rental Housing Accommodation under the right of first offer set forth in Section XXX shall include a copy of, or link to, this information sheet with that offer of Purchase, but any failure to comply with this

Section XXX shall have no effect on a Qualified Organization's exercise of the right of first offer set forth in Section XXX.

**13.89.230 Enforcement**

**A. Powers and Duties of the City.**

1. The City is authorized to take all appropriate action, including but not limited to the actions specified in Section [Authority], to implement and enforce this Chapter.

**B. Implementation**

1. The City Manager shall promulgate rules and regulations consistent with this Chapter.
2. The City shall adopt regulations to implement a petition and hearing procedure for administering the enforcement of this Chapter.
3. The City shall establish and make available standard documents to assist Owners, Tenants, Tenant Organizations, and Qualified Organizations in complying with the requirements of this Chapter through an online portal, provided that use of such documents does not necessarily establish compliance.
4. **Owner Certification and Disclosures.** Every Owner of a residential property in the City shall, within 15 days of the sale of the residential property, submit to the City a signed declaration, under penalty of perjury, affirming that the sale of that residential property complied with the requirements of this Chapter. Such declaration shall include the address of the relevant residential property and the name of each new Owner of the Rental Housing Accommodation. The City shall publish all such addresses on its website. Failure to file a declaration required by this subsection [Owner Certification] shall result in the penalty described in subsection [Civil Penalties].

**C. Enforcement**

1. **Civil Action.** Any party may seek enforcement of any right or provision under this Chapter through a civil action filed with a court of competent jurisdiction and, upon prevailing, shall be entitled to remedies, including those described in Section [Penalties and Remedies].
2. **Penalties and Remedies.**
  - a. **Civil Penalties.** An Owner who willfully or knowingly violates any provision of this Chapter shall be subject to a cumulative civil penalty imposed by the

City in the amount of up to [\$1,000] per day, per Tenant-occupied unit in a Rental Housing Accommodation, for each day from the date the violation began until the requirements of this Chapter are satisfied, payable to [the Housing Trust Fund established by the City].

- b. **Legal Remedies.** Remedies in civil action brought under this Section [Enforcement] shall include the following, which may be imposed cumulatively:
  - i. Damages in an amount sufficient to remedy the harm to the plaintiff;
  - ii. In the event that an Owner sells a Rental Housing Accommodation without complying with the requirements of this Chapter, and if the Owner's violation of this Chapter was knowing or willful, mandatory civil penalties in an amount proportional to the culpability of the Owner and the value of the Rental Housing Accommodation. There shall be a rebuttable presumption that this amount is equal to 10 percent of the sale price of the Rental Housing Accommodation for a willful or knowing violation of this Chapter, 20 percent of the sale price for a second willful or knowing violation, and 30 percent of the sale price for each subsequent willful or knowing violation. Civil penalties assessed under this subsection [Owner's knowing and willful violation] shall be payable to the Housing Trust Fund established by the City; and
  - iii. Reasonable attorneys' fees.
- b. **Equitable Remedies.** In addition to any other remedy or enforcement measure that a Tenant, Tenant Organization, Qualified Organization, or the City may seek under subsection [Legal Remedies], any court of competent jurisdiction may enjoin any Sale or other action of an Owner that would be made in violation of this Chapter.

**13.89.240 Statutory Construction.**

The purpose of this Chapter is to prevent the displacement of lower-income Tenants from the City and to preserve affordable housing by providing an opportunity for Tenants to own or remain renters in the properties in which Tenants reside as provided in this Chapter. If a court finds ambiguity and there is any reasonable interpretation of this Chapter that favors the rights of the Tenant then the court should resolve ambiguity toward the end of strengthening the legal rights of the Tenant or Tenant Organization to the maximum extent permissible under law.

**13.89.250 Administration and Reports**

- A. The City Manager shall report annually on the status of the Tenant Opportunity to Purchase Act Program to the City Council or to such City Council Committee as the City Council may designate. Such reports shall include, but shall not be limited to the following:
  - 1. Statistics on the number and types of sales of tenant occupied properties
  - 2. Statistics on the number of Tenants and Qualified Organizations that invoke action under this chapter.
  - 3. Number and types of units covered by this Chapter.
  - 4. Any other information the City Council or Committee may request.
  
- B. The City shall make available translation services in languages other than English, where requested in advance by a Tenant, Tenant Organization, Qualified Organization, Owner, or member of the public as it relates to TOPA, to interpret and translate documents and procedures as needed.

**13.89.260 Severability**

If any word, phrase, clause, sentence, subsection, section, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason by a decision of a court of competent jurisdiction, then such word, phrase, clause, sentence, subsection, section, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this Chapter, and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or words had been declared invalid or unconstitutional.

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.



| BERKELEY                                 |            |             |                     |             |
|------------------------------------------|------------|-------------|---------------------|-------------|
| Address                                  | Details    | Market Time | Asking Price        | Sale Price  |
| 1500 Ward St,<br>Berkeley, CA 94703      | 8 bd, 4 ba | 472 days    | \$1,354,000 (-9.1%) |             |
| 1616 Prince st                           | 5 units    | 111 Days    | \$1,500,000         |             |
| 1257 Francisco St,<br>Berkeley, CA 94702 | 6 units    | 118 days    | \$3,325,000 (-5%)   |             |
| 2326 Mckinley Ave,<br>Berkeley, CA 94703 | 4 units    | 226 days    | \$2,650,000 (-8.6%) |             |
| 1901 9th St,<br>Berkeley, CA 94710       | 2 units    | 57 days     | \$995,000 (-10%)    |             |
| 1947 Virginia St                         | 3 units    | 28 days     | \$1,300,000         | \$1,460,000 |
| 1235 Carrison St                         | 4 units    | 52 days     | \$999,000           | \$999,000   |
| 2919 Fulton st                           | 4 Units    | 112 days    | \$1,695,000         | \$1,550,000 |
| 2330 Grant st                            | 4 units    | 45 days     | \$1,225,000         | \$1,320,000 |
| 906 Channing Way                         | 4 units    | 30 days     | \$1,500,000         | \$1,710,000 |
| 1610 Russell St                          | 10 Units   | 38 days     | \$2,440,000         | \$2,500,000 |
| 1235 Carrison st                         | 4 units    | 45 days     | \$999,000           | \$999,000   |
| 1308 Hopkins st                          | 5 units    | 89 days     | \$1,795, 000        | \$1,900,000 |
| 2875 California st.                      | 8 units    | 61 days     | \$2,100,000         | \$2,178,000 |
| 2919 Fulton st.                          | 4 Units    | 106 days    | \$1,695,000         | \$1,550,000 |
| 1627 Posen Ave                           | 3 Units    | 76 days     | \$1,385,000         | \$1,660,000 |

| Oakland         |         |             |              |            |
|-----------------|---------|-------------|--------------|------------|
| Address         | Details | Market Time | Asking Price | Sale Price |
| 663 Apgar st    | 4 units | 40 days     | 1,400,000    | 1,295,000  |
| 411 Lusk st     | 2 units | 300 days    | 749,000      | 650,000    |
| 211 monte vista | 4 units | 53 days     | 1,500,000    | 1,594,000  |
| 3942 Wilda ave  | 4 units | 53 days     | 1,500,000    | 1,594,000  |
| 295 Mather st   | 3 units | 55 days     | 1,295,000    | 1,286,000  |
| 1808 90th ave   | 4 units | 250 days    | 729,000      | 899,000    |
| 1524 11th ave   | 4 units | 112 days    | 1,380,000    | 1,310,000  |

All data consolidated from Zillow during January 2020

### BERKELEY PROPERTIES AND TOPA APPLICABILITY

| BERKELEY PROPERTY TYPE & NUMBER   |               | # OF PROPERTY TYPE W/ TOPA RIGHTS                                           |                                                                                                                          |
|-----------------------------------|---------------|-----------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| Housing Type                      | Total Number  | <u>Previous Investor Applicability Standard:</u><br>Owner w/3+ rental units | <u>Proposed Applicability Standard:</u> All rental properties; exempt owner-occupied SF homes, including those with ADUs |
| SF/Townhouse                      | 17,131        | 323                                                                         | 3,906                                                                                                                    |
| Condo                             | 2,286         | 362                                                                         | 1,246                                                                                                                    |
| Duplex/2 units                    | 1,869         | 247                                                                         | 1,869                                                                                                                    |
| Triplex/Duplex w SF/3 units       | 725           | 429                                                                         | 725                                                                                                                      |
| Fourplex/Triplex w SF/4 units     | 683           | 679                                                                         | 683                                                                                                                      |
| 2-4 SF homes                      | 681           | 82                                                                          | 681                                                                                                                      |
| 2-4 units w/rooming house         | 44            | 12                                                                          | 44                                                                                                                       |
| 5+ homes/SF converted to 5+ units | 144           | 144                                                                         | 144                                                                                                                      |
| Multi 5+ units                    | 1,174         | 1,174                                                                       | 1,174                                                                                                                    |
|                                   |               |                                                                             |                                                                                                                          |
| <b>TOTAL</b>                      | <b>24,737</b> | <b>3452</b>                                                                 | <b>10,472</b>                                                                                                            |



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## ATTACHMENT 4

### DC Apartment buildings and TOPA

As of March 2018, at least 40% of DC's residential units (6.5% of its residential buildings) fell under TOPA; this included 7,510 apartment buildings with 120,619 units. The total number of residential housing units in the city at that time was 297,531 units, 103,250 of which were owner occupied and an unknown number of single-family homes, condominiums and cooperatives that were rented.<sup>1</sup>

From 2002-2018, at least 3,500 units were preserved through TOPA.<sup>2</sup> The city of DC does not have comprehensive TOPA data from before 2002. As of 2019, 4,400 Limited Equity Cooperative (LEC) units existed across 99 buildings; many of these LECs were created through TOPA.<sup>3</sup>

DC multifamily sales data from 2014-2015 is helpful in understanding the number of TOPA sales that happen every two years.<sup>4</sup> During that time period, 131 sales of multi-family buildings took place. 32% of these sales (42 buildings) went through the TOPA process. Another 14 sales transacted outside of TOPA but were offered directly to the tenants. Therefore, every two years it is likely that at least 0.6-0.7% of the existing DC rental stock is going through the TOPA process or being purchased by tenants.

More recent data from the DC Department of Housing and Community Development (DHCD) highlights that larger multifamily buildings are the TOPA transactions most often supported with subsidy from DC's Housing Production Trust Fund. DHCD closed funding for 13 TOPA projects of 832 units in FY17 and 9 TOPA projects of 449 units in FY18.<sup>5</sup> In FY19, DHCD funded acquisitions for 15 TOPA projects, 2 of which were sold to tenants creating an LEC.<sup>6</sup>

<sup>1</sup> *Stock of the District's Housing Stock*. Taylor, Yes Sayin. D.C. Policy Center. March 2018. [https://www.dcpolicycenter.org/wp-content/uploads/2018/03/DC-Policy-Center-Housing-Report.final\\_March25.pdf](https://www.dcpolicycenter.org/wp-content/uploads/2018/03/DC-Policy-Center-Housing-Report.final_March25.pdf)

<sup>2</sup> *DC's First Right Purchase Program Helps to Preserve Affordable Housing*. Reed, Jenny. DC Fiscal Policy Institute. September 2013. [https://www.dcfpi.org/wp-content/uploads/2013/09/9-24-13-First\\_Right\\_Purchase\\_Paper-Final.pdf](https://www.dcfpi.org/wp-content/uploads/2013/09/9-24-13-First_Right_Purchase_Paper-Final.pdf)

*DC Multifamily Market Statistics - Multifamily Sales 2014-2015*. Greysteel. 2016. <https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/Greysteel-%20D.C.%20Multifamily%20Market%20Statistics.pdf>

*Building a Local Housing Preservation Ecosystem*. DC Department of Housing and Community Development. November 2018. <http://oakclt.org/wp-content/uploads/2018/12/Oakland-TOPA-Final.pdf>

<sup>3</sup> *Final Report*. DC Limited Equity Cooperative Task Force. October 2019. [https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/page\\_content/attachments/Final%20LEC%20Recommendations\\_10.21.19.pdf](https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/page_content/attachments/Final%20LEC%20Recommendations_10.21.19.pdf)

<sup>4</sup> *DC Multifamily Market Statistics - Multifamily Sales 2014-2015*. Greysteel. 2016. <https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/Greysteel-%20D.C.%20Multifamily%20Market%20Statistics.pdf>. This data doesn't include single-family or condo sales that went through the TOPA process.

<sup>5</sup> DC DHCD Performance Oversight Hearing responses to DC Council. February 2019. <https://dccouncil.us/wp-content/uploads/2019/02/dhcd19.pdf>

<sup>6</sup> DC DHCD Performance Oversight Hearing responses to DC Council. February 2020. <https://dccouncil.us/wp-content/uploads/2020/02/dhcd.pdf>

## Criticisms of DC TOPA

Criticism 1: DC TOPA promotes tenant capitalism instead of combating displacement and preserving affordable housing.

Response:

Berkeley's TOPA ordinance is distinguishable from DC TOPA in these three ways:

- 1) Tenants cannot sell their rights.
- 2) Tenants can only assign their rights to Qualified Organizations (QOs) that the city vets. These QOs are affordable housing developers and must meet a list of criteria outlined in the ordinance, such as strict commitments to maintaining the property as affordable, tenant engagement, and other relevant experience.
- 3) All housing purchased through TOPA, whether by tenants or QOs, will have some form of permanent affordability restrictions to ensure affordability for future owners/renters.

Also, despite tenants in DC being able to sell their TOPA rights and receive buyouts from third parties, DC TOPA has still helped preserve thousands of units of housing. Since 2002, at least 3,500 units have been purchased through TOPA, most with public subsidy. The total number of units purchased/preserved through TOPA since its passage in 1980 is obviously much larger, but accurate data was not recorded until 2002. In 2002, DC established its Housing Production Trust Fund, which now has an annual allocation of \$116 million.

Criticism 2: DC TOPA attracts bad actors that hold up owners for money and add time to the sales process. This is why DC got rid of TOPA for Single Family Accommodations (SFAs).

Response:

DC TOPA covered SFAs for 39 years. In 2019, the TOPA law was amended to exempt all SFAs. Unfortunately, a couple of bad actors had convinced several tenants living in owner-occupied Single Family Homes to sell their TOPA rights and then these bad actors held up owners for additional money.

Berkeley's ordinance considered all of this. This is why Berkeley's ordinance does not allow tenants to sell their rights, and therefore prevents bad actors from being able to enter the TOPA process. In addition, Berkeley's TOPA ordinance requires tenants to work with a supportive partner after they have expressed interested in purchasing. Supportive partners will help tenants understand their TOPA rights, how to make corporate decisions, as well as the possible financial costs and support for the transaction.

Finally, Berkeley's housing stock is comprised primarily of small sites and many SFAs, which are not appropriate for most large-scale affordable housing subsidies. TOPA presents a great opportunity to bring these rental properties under permanent affordability and provide much-needed protections to tenants in SFAs who currently have little to no protections. Berkeley's TOPA ordinance also has an exemption for owner-occupied SFAs and owner-occupied SFAs with a secondary dwelling unit if either unit is owner-occupied.



TO: Honorable Members of the City Council

FROM: Mayor Arreguín

SUBJECT: Referral: Update the definition of "Research and Development"

RECOMMENDATION

Refer to the Planning Commission to update the definition of "Research and Development."

BACKGROUND

In the 21st century, Research and Development has evolved to take on many new forms, such that it can be performed in spaces that may, at first glance, appear to be an office or light industrial environment rather than a traditional "laboratory" with, for example, benches and sinks.

The Planning Commission is encouraged to update the definition of "Research and Development"<sup>1</sup> to reflect evolving business practices and consider language such as:

Research and Development: An establishment comprised of laboratory or other associated and ancillary space, engaged in one or more of the following activities: industrial, technological, biological or scientific research; product design; associated software development; development and testing; and limited fabrication and/or manufacturing necessary for the production and assemblage of prototypical products."

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

No environmental impact.

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<sup>1</sup> BMC — 23F.04.010 Definitions

CONTACT

Mayor Jesse Arreguín

mayor@cityofberkeley.info | 510-981-7100



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
March 10, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Cheryl Davila  
Subject: Placing a Measure on the November 3, 2020 Ballot to Increase the Berkeley City Council Salary

RECOMMENDATION

Adopt a Resolution to submit a Ballot Measure for the November 3, 2020 Election, Amending the Berkeley Municipal Code Charter Article V. Section 19, to Increase Salaries for Members of the Berkeley City Council and the Mayor, Ensuring Elected Officials are Paid a Living Wage and Compensated Fairly for the Actual Time Spent Working for the City.

FISCAL IMPACTS OF RECOMMENDATION

To be determined.

CURRENT SITUATION AND ITS EFFECTS

Being an elected official to the City of Berkeley is a great honor. The job of governing our City is a huge task, requiring an immense amount of time, attention, and fortitude. The compensation for City Councilmembers does not reflect a living wage suitable for residing in Berkeley or the Bay Area at large. Participation on the Council is financially challenging for people without other streams of income. In order for the City of Berkeley to adequately represent the needs of its residents, their elected representatives must be a reflection of the community. Currently, due to the salaries paid to City Councilmembers, the Council struggles to accurately represent the economic diversity of Berkeley residents, particularly low-income citizens. The salaries may deter some candidates, especially low-income citizens, from entering into the political arena and running for office.

Currently, the salaries paid to City Councilmembers are based on a calculation of 20 hours of work per month. Full attendance at City Council meetings including special and closed sessions is reflected in the chart below.

| Year                   | # of City Council Meetings | # of Hours of City Council Meetings | # of City Council Packet Pages to read | # of Pages to Hours (1page per minute) |
|------------------------|----------------------------|-------------------------------------|----------------------------------------|----------------------------------------|
| 2017                   | 71                         | 203:51                              | 17155                                  | 285.9166667                            |
| 2018                   | 71                         | 221:20                              | 24037                                  | 400.6166667                            |
| 2019                   | 68                         | 192:13                              | 22360                                  | 372.6666667                            |
| 2020                   | 6                          | 17:51                               | 2034                                   | 33.9                                   |
| <b>Total 2017-2020</b> | <b>216</b>                 | <b>635:15</b>                       | <b>65586</b>                           | <b>1093.1</b>                          |

Attendance to additional Policy Committees (of which each Councilmember must serve on at least 2) can result in up to another 7 hours plus per month. These calculations do not account for the amount of time it takes to adequately prepare for City Council or Policy Committee meetings, including reading thousands of pages of Agenda Packets, speaking with constituents, researching and writing legislations, chairing meetings, or attending and hosting community events. Upon calculation of the total hours spent in City Council meetings, Policy Committees, reading in preparation for meetings, and engaging with constituents in 2019, one Councilmember dedicated 688 total hours (averaging 57.3 hours per month) in 138 meetings in 2019. Thus, payment of 20 hours per month does not accurately reflect the amount of hours Councilmembers actually work.

**Council Policy Committees Year 2019**

|                                                                           | # of Meetings | # of Hours      | # of Pages  | # of Pages to Hours/ 60 (1page per minute) |
|---------------------------------------------------------------------------|---------------|-----------------|-------------|--------------------------------------------|
| Budget/ Finance                                                           | 8             | 22:56:00        | 54          | 0.9                                        |
| Facilities, Infrastructure, Transportation, Environment, & Sustainability | 11            | 14:43:00        | 1203        | 20.05                                      |
| Health, Life Enrichment, Equity & Community Committee                     | 2             | 4:46:00         | 119         | 1.983                                      |
| <b>Total</b>                                                              | <b>21</b>     | <b>42:25:00</b> | <b>1376</b> | <b>22.93</b>                               |

**Additional Committees Year 2019**

|                             | # of Meetings | # of Hours      | # of Pages | # of Pages to Hours/ 60 (1page per minute) |
|-----------------------------|---------------|-----------------|------------|--------------------------------------------|
| Mental Health Commission    | 10            | 19:24:00        | 673        | 11.216                                     |
| Oakland Airport Noise Forum | 4             | 5:46:00         | 95         | 1.583                                      |
| 4x4                         | 5             | 10:25:00        | 127        | 2.116                                      |
| 3x3                         | 3             | 3:00:00         | 3          | 0.05                                       |
| <b>Total</b>                | <b>22</b>     | <b>38:35:00</b> | <b>898</b> | <b>14.967</b>                              |

Currently the median household income in Berkeley is \$86,497, while the annual gross income for Berkeley City Councilmembers is \$38,694.97. The median household income in Berkeley increased 47% over the last decade<sup>1</sup>, but the compensation for serving on the City Council has not followed this trend. Meanwhile, the average cost of rent in the City of Berkeley has risen to \$3,183 per month<sup>2</sup>. The compensation provided for City Council salaries therefore does not even allow Councilmembers to afford a year's worth of rent in the City they represent. This suggests that City Council positions are reserved for home-owners, those who are

<sup>1</sup> <http://www.city-data.com/income/income-Berkeley-California.html>

<sup>2</sup> <https://www.rentcafe.com/average-rent-market-trends/us/ca/berkeley/>



independently wealthy, or are supported by their partners. Beyond this, the circumstances surrounding low salaries may cultivate opportunities to supplement income by other unethical means. As the City of Berkeley strives to be a beacon for diversity in terms of identity and ideology, the compensation for Councilmembers does not demonstrate such values, particularly for young adults and People of Color (who still make significantly less than their Caucasian counterparts in Berkeley).

**Summary of 2019 Meetings, Events, and Time Spent Preparing for Council Business**

| 2019                                           | Total Hours      | # Meetings |
|------------------------------------------------|------------------|------------|
| City Council Meetings                          | 192:13:00        | 68         |
| Policy Committees                              | 42:25:00         | 21         |
| Other Committees                               | 38:35:00         | 22         |
| Preparing for meetings /Reading agenda packets | 373:00:00        | -          |
| Community Events                               | 42:00:00         | 27         |
| <b>Total</b>                                   | <b>688:13:00</b> | <b>138</b> |

The issue of equity, diversity, and transparency in city government has been raised by the voters in Berkeley previously. Ballot Measure X1. Public Financing Program Act, was adopted in 2016. This provided alternative campaign funding streams for candidates who capped their donations to \$50 per person<sup>3</sup>. The intention of this Measure, which passed with 64.85% approval, was to “reduce the impact of wealth as a determinant of whether a person becomes a candidate” and reform the campaign financing system, which “violates the rights of all citizens to equal and meaningful participation in the democratic process.” Not only should people of limited means be able to campaign, they should also be able to afford serving as a representative if elected. Low salaries for Councilmembers could continue to deter many candidates from running for a seat.

Base salaries for the Mayor and members of the City Council are set by the City Charter, Article V, Section 19. The City Charter should be amended by a Ballot Measure on the November 3, 2020 Election to create greater opportunities for economically-diverse representatives to serve on the Berkeley City Council.

ENVIRONMENTAL SUSTAINABILITY

Creates a sustainable income for City Councilmembers, thereby creating less opportunity for unethical temptations.

CONTACT PERSON

Cheryl Davila  
 Councilmember District 2  
 510.981.7120

ATTACHMENTS

1. Resolution
2. Number of hours District 2 Councilmember spent in City Council Meetings and Policy Committee Meetings with almost perfect attendance. Calculated from Roll Call to Adjournment.

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

ADOPT A RESOLUTION TO SUBMIT A BALLOT MEASURE FOR THE NOVEMBER 3, 2020 ELECTION, AMENDING THE BERKELEY MUNICIPAL CODE CHARTER ARTICLE V.

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<sup>3</sup> [https://www.cityofberkeley.info/Clerk/Elections/Ballot\\_Measure\\_Archive\\_Page.aspx](https://www.cityofberkeley.info/Clerk/Elections/Ballot_Measure_Archive_Page.aspx)

SECTION 19 TO INCREASE SALARIES FOR MEMBERS OF THE BERKELEY CITY COUNCIL AND THE MAYOR, ENSURING ELECTED OFFICIALS ARE PAID A LIVING WAGE AND COMPENSATED FAIRLY FOR THE ACTUAL TIME SPENT WORKING FOR THE CITY.

WHEREAS, The median household income in the City of Berkeley is now \$86,497; and

WHEREAS, The average monthly rent in the City of Berkeley is \$3,183; and

WHEREAS, The current annual compensation for Berkeley City Councilmembers is \$38,694.97, constituting a monthly rate of \$3,224.58, which is not a living wage in the San Francisco Bay Area; and

WHEREAS, Berkeley City Councilmembers are paid for working 20 hours per month or 240 hours per year; and

WHEREAS, Attendance at City Council meetings alone averages 17 hours per month; and

WHEREAS, In addition to attending City Council meetings, Councilmembers are also expected to participate in at least two Policy Committees, which can more than double the time spent conducting official city business; and

WHEREAS, Upon calculation of all time spent in Council meetings, Policy Committees, and additional City Commissions, preparing for meetings by reading the agenda packets, and engaging with constituents, 688 total hours were spent in 138 meetings in 2019, averaging 57.3 hours of work per month.

WHEREAS, Beyond being physically present at meetings, Councilmembers must prepare by reading thousands of pages of written material in agenda packets, researching and drafting legislation, speaking with constituents, hosting and attending community events; and

WHEREAS, Under the current pay structure, none of the additional hours of labor are compensated for Councilmembers; and

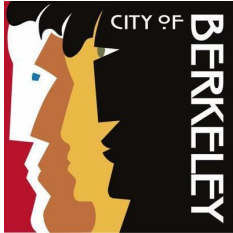
WHEREAS, The Berkeley City Council ought to reflect the Economic diversity of the City's residents; and

WHEREAS, Without paying City Councilmembers a living wage, serving on the Council may be financial prohibitive for low-income community members, particularly renters, younger candidates, and People of Color; and

WHEREAS, Residents of the City of Berkeley have demonstrated their legislative priorities to increase access to diverse candidates in representative government by passing the 2016 Ballot Measure X1, generating the Fair Elections Fund; and

WHEREAS, Base salaries for the Mayor and members of the City Council are set by the City Charter, Article V, Section 19, and amending the Charter would require a Ballot Measure;

THEREFORE BE IT RESOLVED that the City Council adopt a resolution to submit a Ballot Measure for the November 3, 2020 Election to amend the Berkeley Municipal Code Charter Article 5. Section 19 Salaries to increase for the members of the Berkeley City Council and the Mayor, ensuring elected officials are paid a living wage and compensated fairly for the actual time spent working for the City.



Councilmember Ben Bartlett  
 City of Berkeley, District  
 2180 Milvia Street, 5<sup>th</sup> Floor  
 Berkeley, CA 94704  
 PHONE: 510-981-7130  
 EMAIL: [bbartlett@cityofberkeley.info](mailto:bbartlett@cityofberkeley.info)

CONSENT CALENDAR  
 March 10, 2020

To: The Honorable Mayor & Members of the City Council  
 From: Councilmember Ben Bartlett  
 Subject: Siting the African American Holistic Resource Center and Affordable Housing at 1890 Alcatraz

### RECOMMENDATION

That the City Council refers to the City Manager to study the feasibility of using the city-owned property located at 1890 Alcatraz Avenue (currently temporary Mental Health Division offices) for the African American Holistic Resource Center (AAHRC) and also developing affordable housing on the site. The City Manager should report back on the costs and implementation steps to repurpose the property for the AAHRC using the AAHRC Feasibility study as a guide, including what physical improvements would need to be made, and cost for ongoing operations by a non-profit. The City Manager and Planning Department should also conduct an analysis of potential site capacity looking at site context and yield and report on how much housing could be developed on the site under current zoning, including the AAHRC on the ground floor. Additionally, the City Manager and Planning Commission should incorporate the Community Preference policy in selecting applicants for the affordable housing units created by this project.

### BACKGROUND

#### **African American Holistic Resource Center**

Members from the African American/Black Professional & Community Network (AABPCN) and Berkeley NAACP (BNAACP) have been advocating and leading efforts — in the city for the past 8 years — for the creation of the African American Holistic Resource Center (AAHRC). Members of the AABPCN shared the vision for the AAHRC and began gathering information from the community via focus groups, town hall meetings, small group discussions, and formal presentations to several Berkeley Commissions, the Berkeley City Council, and other stakeholder groups.

The 2016 City of Berkeley Community Health Commission report strongly recommends that the City of Berkeley “take immediate action steps towards the development and support of the African American Holistic Resource Center in South Berkeley”<sup>1</sup>. The Peace and Justice Commission also submitted a letter of support to the City Council. Following the commission reports and community advocacy, councilmembers responded with overwhelming support for the development of the AAHRC, and they

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<sup>1</sup> Kwanele, Babalwa, and Barbara A. White. 2018. *African American Holistic Resource Center FEASIBILITY STUDY*. Research Study, Berkeley: Neguse Consulting

allocated funding for a feasibility study, as well as other required activities needed for the establishment of the facility.

The City Manager supported the AAHRC project by adding the African American Holistic Resource Center in the City of Berkeley's Strategic Work Plan; the AAHRC is also included in the Mayor's and the District 3 Councilmember's work plans. In February of 2018, the Department of Health, Housing, and Community Services provided funding to start the AAHRC feasibility study and signed a contract with a consultant to collaborate with members of the AAHRC Steering Committee to complete the AAHRC feasibility study. In 2019, the findings were released.

### **Right to Return**

Minority groups in Berkeley have been, and continue to be, pushed out of the neighborhoods in which they live. Such displacement has a long-term negative impact on Black residents in the City of Berkeley and the entire citizenship in the city. Right to Return policies allow those who are evicted as a result of rent increases or new developments to return to the areas from which they were displaced, consistent with the Fair Housing Act.

### **Community Preference Policies**

Community preference policies work to prioritize former residents of gentrified neighborhoods and low-income individuals in affordable housing decisions. As of today, the City of Berkeley does not operate any housing or participate in the review of applicants for affordable units. Rather, each individual property has the autonomy to seek out and select applicants for their affordable units, in addition to maintaining their own waitlists. Currently, preferences are available for seniors, those with special needs (defined as those with a documented mental, physical, or psychological disability), families, and people emerging from homelessness. It is important to distinguish community preference policies, which give priority to these applicants, from policies that guarantee housing.

### **CURRENT SITUATION**

The results from the feasibility study recommend a series of steps to develop the AAHRC, which include:

- (1) acquiring professional expertise in the areas of funding and building design
- (2) securing a physical location for the AAHRC
- (3) beginning a fundraising campaign
- (4) starting marketing and promotions, and
- (5) continuing community engagement.

In the Adeline Corridor draft plan, the City of Berkeley aspires to convert many of the areas surrounding Adeline Way into affordable housing, hoping that at least 50% of the housing projects will be affordable. Some of the buildings around that area are publicly owned, but many others are privately owned. In order to ensure that we achieve our goal in maximizing affordable housing, the city should demolish and repurpose the

city-owned building located at 1890 Alcatraz Ave. As the facility is currently used by Berkeley Mental Health until their clinic is completed within 6 months, the building should later be developed into the African American Holistic Resource Center, with affordable housing and neighborhood preferences on top. Such preferences mean that previous residents who were displaced out of this neighborhood have a higher chance of living in one of these units. Therefore, it is in the City's best interest to repurpose the use of this property for the AAHRC and low-income housing.

#### REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

The plan is to have the AAHRC be a state-of-the-art, green building between 5,000-6,000 square feet that includes the following features:

- Ecologically responsible building with plenty of natural light
- Two classrooms
- Multipurpose room with dividing wall (seating for 250)
- Dance studio
- Library (will have spaces for the South Berkeley Legacy Project and a children's section)
- Children's playroom/game room
- Computer lab
- Classroom kitchen
- Medical screening room
- Two private therapy rooms
- Lockers in hallway
- Utility room
- Four bathrooms (one with a shower)
- Reception/waiting area
- Built-in projectors and AV equipment in classrooms, multipurpose room and library
- Facility completely ADA compliant

There are two existing potential blueprints that support plans for the AAHRC. The first blueprint houses everything on one main floor, and the second blueprint breaks up the design into two floors.<sup>2</sup>

#### RATIONALE FOR RECOMMENDATION

The African American/Black community in Berkeley has the highest rate of morbidity and mortality of any racial/ethnic group. According to the City of Berkeley's Health Status Summary Report 2018, "African Americans are 2.3 times more likely to die in a given year from any condition compared to Whites". The report further indicates that "The risk of an African American mother having a low-birth weight (LBW) rate baby is 2.5 times higher than the risk for White mothers".<sup>3</sup>

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<sup>2</sup> Kwanele, Babalwa, and Barbara A. White. 2018. *African American Holistic Resource Center FEASIBILITY STUDY*. Research Study, Berkeley: Neguse Consulting

<sup>3</sup> Kwanele, Babalwa, and Barbara A. White. 2018. *African American Holistic Resource Center FEASIBILITY STUDY*. Research Study, Berkeley: Neguse Consulting

In comparing 2013 and 2018 COB Health Status Summary Reports, the rate of poverty among African American families has quadrupled. During a five-year period the poverty rate for African Americans has gone from two times more likely to live in poverty to eight times more likely to live in poverty in the City of Berkeley. It is well documented that poverty is linked to poor health outcomes and a shorter life expectancy. Unfortunately even without the role of poverty, middle class and affluent Black people's health is worse compared to their white counterparts in Berkeley.

Preliminary research of African American/Black Resource Centers nationwide found that most centers are located on college campuses or affiliated with colleges and universities. The few African American/Black Resource Centers that are not located on or in partnership with a college or university are membership-based organizations. Having a resource center in the City of Berkeley that is accessible to all black communities is vital because the feasibility study found that various inequities disproportionately impact the health, wealth, education, and safety of African Americans across their lifespan. These inequalities include, but are not limited to, birth outcomes, morbidity and mortality rates, which indicates that they are not thriving in the City of Berkeley. Culturally appropriate integrated services and community-defined practices that are embedded in the creation of a holistic system of care must be developed, or the Black population will continue to decline.

Furthermore, the expansion of affordable housing provided by this project is crucial to ensuring the vitality of the Black community in Berkeley. As gentrification continuously pushes Black people and other people of color out of the City, including some long-term residents who maintain employment in Berkeley, the city becomes less inclusive. Right to Return policies allow those who have been displaced by gentrification to return to their home neighborhoods and thus, upholds Berkeley's status as a diverse and welcoming city.

#### ENVIRONMENTAL SUSTAINABILITY

The building would meet the requirements of the California State Green Building Code (CALGreen). This will ensure that the building maximizes savings through the efficient use of energy and water and limit construction impacts on the natural environment and the surrounding community.

If contaminants are found on the property during demolition and/or reconstruction, then a mitigation process must be determined to ensure that the construction team and building occupants are not affected. Also, according to Proposition 65, it is mandatory to warn individuals who live or work in or near a contaminated property or land about the risks associated with carcinogens and/or other health-related risks. In addition, the property must pass the Alameda County's Environmental Health Agency's regulations for land use. The reconstruction of this building will comply with all these standards.

### FISCAL IMPACTS

Building the AAHRC has a number of different fiscal impacts. The exact cost of demolishing the existing building and constructing the new building has yet to be determined. The current estimated costs to renovate the AAHRC facility range from \$300 per square foot to \$380 per square foot. A projected space of 5,000-5,700 square feet to be used to develop the building will have a construction budget that ranges between approximately \$1.6 million to \$2 million. The estimated cost to build affordable housing units above the AAHRC is about \$600,000 per unit.<sup>4</sup> Other costs associated with permits and meeting regulation standards may apply.

### CONTACT PERSON

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[jzwong@cityofberkeley.info](mailto:jzwong@cityofberkeley.info)

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<sup>4</sup> Cortright, Joe. 2017. "Why Is 'Affordable' Housing So Expensive to Build?" *City Lab*. 19 Oct. Accessed Aug. 19, 2019. <https://www.citylab.com/equity/2017/10/why-is-affordable-housing-so-expensive-to-build/543399/>







CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 March 10, 2020

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Rigel Robinson  
 Subject: Affirming the City of Berkeley's Support for the People of Tibet

RECOMMENDATION

Adopt a resolution affirming support to the people of Tibet.

BACKGROUND

The City of Berkeley has a diverse population including many Tibetan Americans. A large part of this population is concerned about human rights and freedom in the United States and around the world. Tibetan Americans, including those residing in the City of Berkeley, have expressed concern at the Chinese Government's (1) travel restrictions against Tibetans and United States citizens; (2) restrictive regulations on religious affairs in Tibet; (3) censorship of Buddhist literature and information in Tibet; (4) demolition of Tibetan Buddhist sites; (5) imprisonment of Tibetan prisoners of conscience; and (6) declarations that "Decision-making power over the reincarnation of the Dalai Lama and over the end of survival of his lineage resides with the central government of China"

On March 10, 2020, Californians, including Tibetan Americans, residing in Berkeley and surrounding regions will gather to commemorate the 61st anniversary of the Tibetan National Uprising against the Chinese invasion and occupation of Tibet.

The United States has a long history of support to the Tibetan people, including the passage of the Tibetan Policy Act of 2002 (subtitle B of title VI of Public Law 107-228; 22 U.S.C. 6901 note), signed into law on September 30, 2002, which encapsulates policy and programmatic initiatives and supports the aspirations of the Tibetan people to safeguard their distinct identity.

The City of Berkeley was pleased to welcome His Holiness the Dalai Lama, a true champion of world peace and religious harmony, when he visited the Tibetan Community Center in February 2014.

This resolution would establish March 10th, 2020 as "Tibet Day" in Berkeley, acknowledging the struggles and hardships for Tibetan residents of the City of Berkeley. It would also recognize and support current and historic Congressional initiatives on Tibet.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY

None

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Attachments:

1: Resolution

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

AFFIRMING THE CITY OF BERKELEY'S SUPPORT FOR THE PEOPLE OF TIBET

WHEREAS, On March 10, 2020, Californians, including Tibetan Americans, residing in Berkeley and surrounding regions will gather to commemorate the 61st anniversary of the Tibetan National Uprising against Chinese invasion and occupation of Tibet; and

WHEREAS, the City of Berkeley has a diverse population, including many Tibetan Americans, who are concerned about human rights and freedom in the United States and throughout the world; and

WHEREAS, the United States has a long history of support to the Tibetan people, including the passage of the Tibetan Policy Act of 2002 (subtitle B of title VI of Public Law 107-228; 22 U.S.C. 6901 note), signed into law on September 30, 2002, which encapsulates policy and programmatic initiatives and supports the aspirations of the Tibetan people to safeguard their distinct identity; and

WHEREAS, on October 17, 2007, His Holiness the 14th Dalai Lama was awarded the Congressional Gold Medal in recognition of his many enduring and outstanding contributions to peace, nonviolence, human rights, and religious understanding; and

WHEREAS, the City of Berkeley was pleased to welcome His Holiness the Dalai Lama, a true champion of world peace and religious harmony, when he visited the Tibetan Community Center in February 2014; and

WHEREAS, The State Department's 2017 Country Reports on Human Rights Practices said of the situation in Tibet: "The most significant human rights issues included: disappearances; torture by government authorities; arbitrary detentions, including political prisoners; and government curtailment of the freedoms of speech, religion, association, assembly, and movement"; and

WHEREAS, Tibetan Americans, including those residing in Berkeley City, have been expressing concern at the Chinese Government's:

- (1) travel restrictions against Tibetans and United States citizens;
- (2) restrictive regulations on religious affairs in Tibet;
- (3) censorship of Buddhist literature and information in Tibet;
- (4) demolition of Tibetan Buddhist sites;
- (5) imprisonment of Tibetan prisoners of conscience; and
- (6) declarations that "Decision-making power over the reincarnation of the Dalai Lama and over the end of survival of his lineage resides with the central government of China"; and

WHEREAS, Tibetan Americans residing in California have been facing discriminations at the hands of Chinese consulates while applying for visas to visit Tibet; and

WHEREAS, the Reciprocal Access to Tibet Act signed into law on December 19, 2018 highlights China's attempts to isolate Tibet and seeks to promote access for United States diplomats and other officials, journalists, and other citizens, including Tibetan Americans, to Tibet; and

WHEREAS, since 2009, 166 Tibetans have self-immolated to protest against China's rule in Tibet and most Tibetans publicly call for the return of the Dalai Lama to Tibet;

WHEREAS, the city of Berkeley has a long history of support for Tibet and the Tibetan people; and

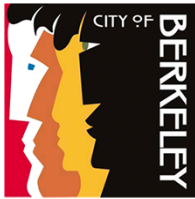
WHEREAS, The Berkeley City Council affirms the determination of the Tibetan people in Tibet and outside, including the Tibetan Americans, to retain their heritage and protect it from destruction against overwhelming odds through non-violent and peaceful means.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that March 10, 2020, the 61st anniversary of the Tibetan national uprising, shall be officially recognized as "Tibet Day" and the Tibetan flag shall be raised at the City Hall.

BE IT FURTHER RESOLVED that the Berkeley City Council supports the initiatives on Tibet in the United States Congress.

BE IT FURTHER RESOLVED, that the City of Berkeley stands in solidarity with His Holiness the Dalai Lama, the Tibetan people and their just, peaceful and non-violent movement to remind the world of the occupation and ongoing suppression of human rights and freedom in Tibet and the continuous degradation of culture, religion, land and identity of the Tibetan people by China.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the President of the United States, elected federal representatives, the Governor of California, and the United Nations High Commissioner for Human Rights in Geneva, Switzerland.



CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 March 10, 2020

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Rigel Robinson  
 Subject: Allocating Car Fees for Street Improvements

RECOMMENDATION

Double the annual repaving budget by adopting a resolution to allocate either 50 percent of the revenues or revenues upwards of \$6 million collected annually from the Vehicle In-Lieu Tax towards the repaving budget in the interests of street maintenance, sustainability, and bicycle and pedestrian goals.

PROPOSED POLICY COMMITTEE TRACK

Facilities, Infrastructure, Transportation, Environment, & Sustainability Committee, for discussion alongside the referral to the committee to consider “Potential Bonding and Funding Opportunities for Improving the PCI of Residential Streets, and Creating a Paving Master Plan.”

BACKGROUND

At present, the repaving budget is assembled from a variety of sources, including the State Transportation Tax, Measure B, Measure BB, Measure F, the Capital Improvement Fund, the Road Repair & Accountability Act of 2017, Measure T1, and various grants. Together, these sources of funding result in an annual repaving budget of more than \$6 million. The annual repaving budget is expected to exceed \$7 million in coming years.<sup>1</sup>

Recently, the City has accomplished a significant volume of repaving. Berkeley’s citywide Pavement Condition Index (PCI) has increased from 57 in 2017 to 59.7 in 2019. This change, while seemingly modest, is a significant step in the right direction. However, a massive increase in the repaving budget is necessary for citywide PCI to meet “satisfactory” levels, determined by the American Society for Testing and Materials to begin at a PCI of 70.

<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/12\\_Dec/Documents/2019-12-3\\_Item\\_30b\\_Companion\\_Report\\_Recommendation\\_for\\_the\\_Five-Year\\_Street.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/12_Dec/Documents/2019-12-3_Item_30b_Companion_Report_Recommendation_for_the_Five-Year_Street.aspx)

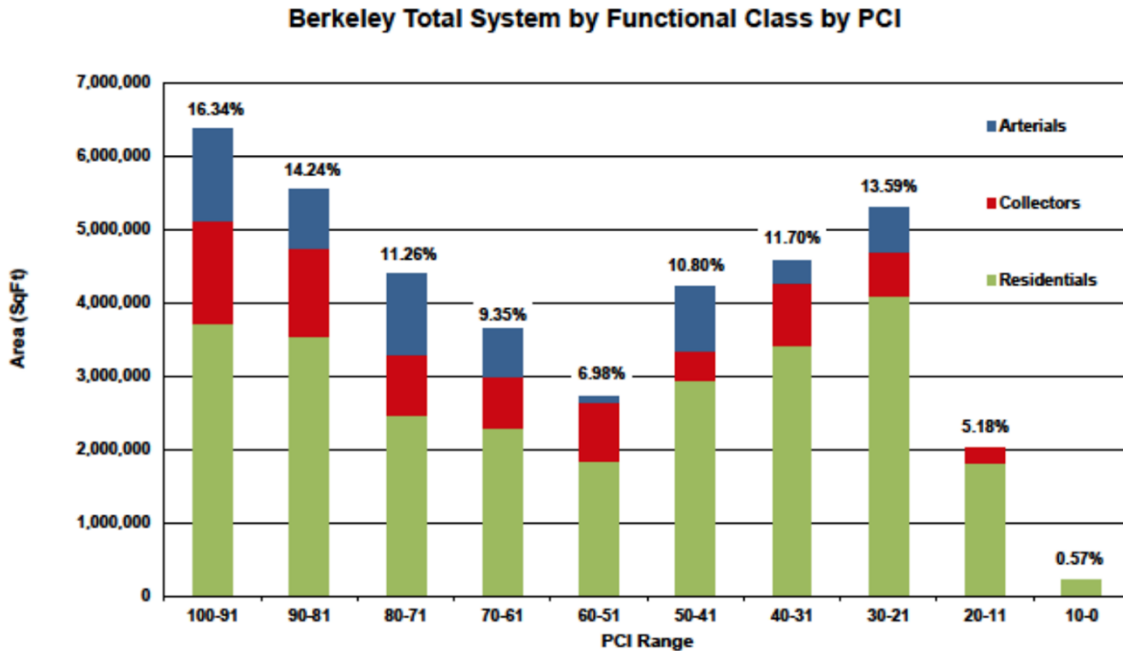
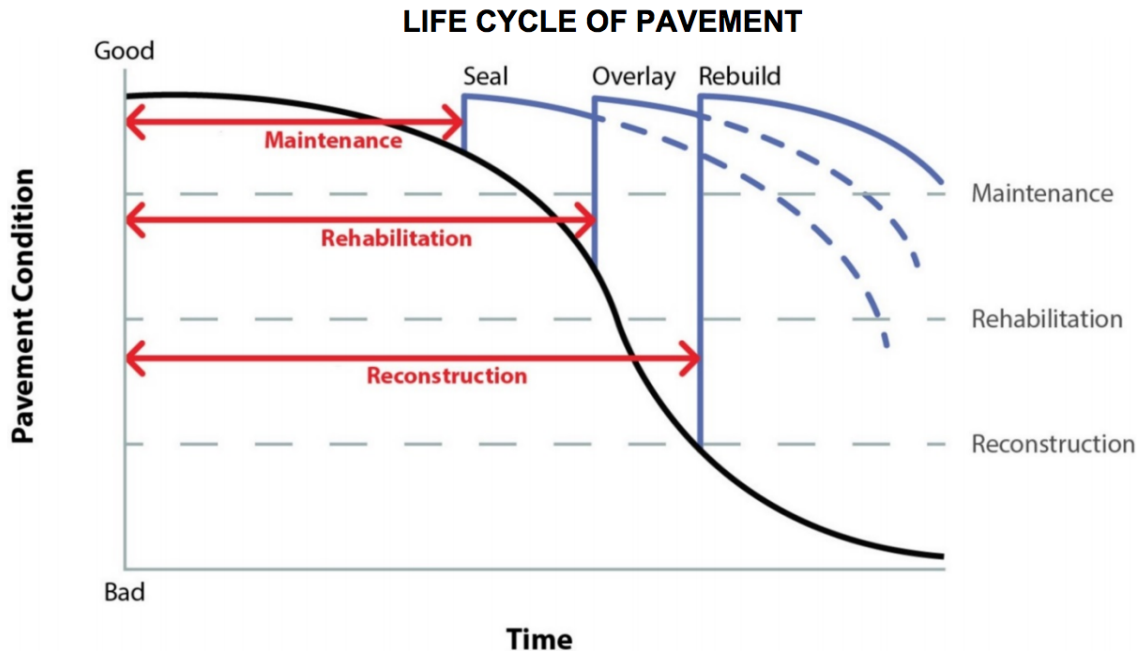
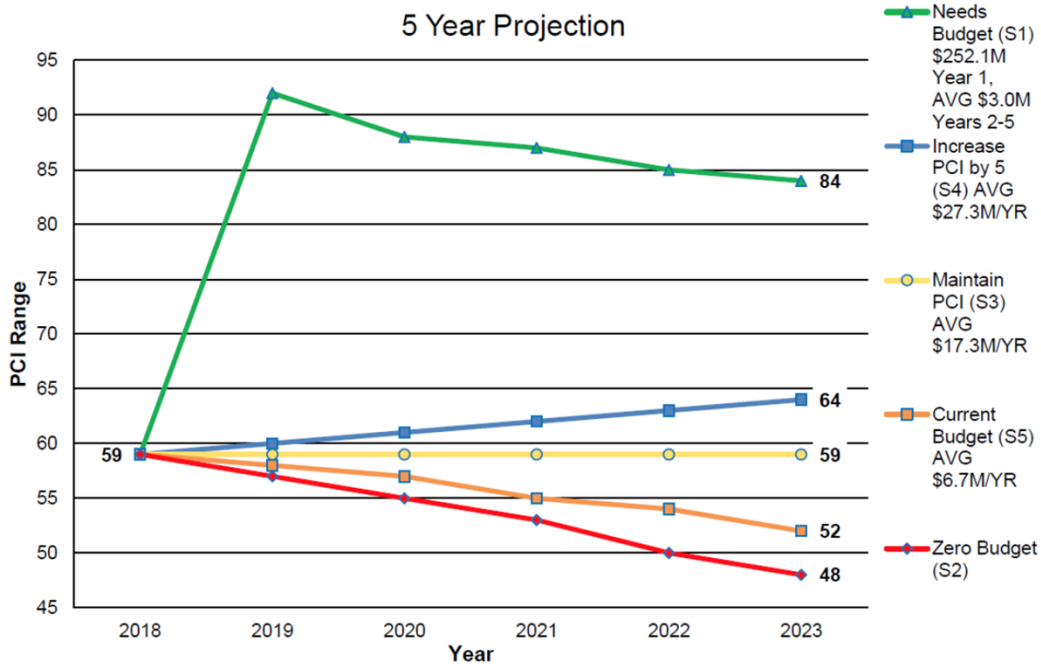


Table from MTC's P-TAP Round 19 Final Report by PEI



Data presented by Public Works staff during the most recent adoption of the Five-Year Street Rehabilitation Plan demonstrates the urgency of our street repaving needs. At current funding levels, our citywide PCI is set to decline to 52 by 2023. It would take an additional \$10.6 million per year to maintain our current PCI of 59 until 2023. Meaningful

improvement in PCI would thus necessitate an even more dramatic increase in funding for street repaving.



Per the July 1st, 2019 off-agenda report documenting the City’s upgraded general obligation bond rating, the City has experienced several years of significant budget surpluses.<sup>2</sup> Thanks to strong revenue growth and expenditure management, the City’s budget is in outstanding shape. There has perhaps not been a better time in recent memory to make significant, urgent investments in street infrastructure that will result in future savings.

The Vehicle In-Lieu Tax, also known as the Motor Vehicle License Fee (VLF), is an annual fee “levied for the privilege of operating a vehicle on the public highways of California.”<sup>3</sup> The effective rate of the tax is 0.65 percent of each vehicle’s market value, adjusted for depreciation. Pursuant to the State Constitution, the tax is collected by the State of California and distributed to local governments.

Approximately 75 percent of the State’s total Vehicle In-Lieu Tax revenue is split between cities and counties as “base VLF,” which can be used by local governments for

<sup>2</sup> [https://www.google.com/url?client=internal-element-cse&cx=017385055954264103894:kn5xiwd8ubm&q=https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_General/City%27s%2520General%2520Obligation%2520Bond%2520Rating%2520Upgraded%2520070119.pdf&sa=U&ved=2ahUKEwibysGVgrXnAhVkhzQIHaweCtEQFjAAegQIABAC&usq=AOvVaw39R6h3zWdCofRIBeuCpjPx](https://www.google.com/url?client=internal-element-cse&cx=017385055954264103894:kn5xiwd8ubm&q=https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/City%27s%2520General%2520Obligation%2520Bond%2520Rating%2520Upgraded%2520070119.pdf&sa=U&ved=2ahUKEwibysGVgrXnAhVkhzQIHaweCtEQFjAAegQIABAC&usq=AOvVaw39R6h3zWdCofRIBeuCpjPx)

<sup>3</sup> [https://arev.assembly.ca.gov/sites/arev.assembly.ca.gov/files/publications/Chapter\\_3F.pdf](https://arev.assembly.ca.gov/sites/arev.assembly.ca.gov/files/publications/Chapter_3F.pdf)

any spending purpose. Currently, Berkeley's share of this revenue goes directly into the City's General Fund. The remaining 25 percent is allocated to counties and is restricted to funding various health, mental health, and social services programs.

As documented in the FY19 Comprehensive Annual Financial Report, the City of Berkeley's Vehicle In-Lieu Tax revenue was \$12,482,284.<sup>4</sup> Vehicle In-Lieu Taxes "increased by \$.7 million or 5.6% in FY 2019 to \$12.5 million from \$11.8 million in FY 2018."

| VLF               | Actual Revenue |              |              | Projected Revenue |              |              |
|-------------------|----------------|--------------|--------------|-------------------|--------------|--------------|
|                   | FY 2017        | FY 2018      | FY 2019      | FY 2020           | FY 2021      | FY 2022      |
| Total Collections | \$10,994,452   | \$11,822,917 | \$12,540,784 | \$13,207,440      | \$13,801,774 | \$14,284,837 |
| \$ Change         | 685,650        | 828,465      | 717,867      | 666,656           | 594,334      | 483,063      |
| % Change          | 6.65%          | 7.53%        | 6.1%         | 5.32%             | 4.5%         | 3.5%         |

Source: City of Berkeley FY 2020-2021 Adopted Biennial Budget, page 90

### FINANCIAL IMPLICATIONS

No impact to the amount of fees collected. Designating 50 percent of the Vehicle In-Lieu Tax to the repaving budget would constitute approximately a 93 percent increase in the repaving budget according to FY19 numbers, enabling a significant increase in the total amount of repaving work that the City can accomplish per year.

Since the costs of street repaving increase dramatically as streets deteriorate, there are significant long-term cost savings associated with repaving more streets immediately. According to the "Failing Streets" audit report presented to Council in 2011, streets in "fair" or "poor" condition cost 3.5 to 8.6 times the price of preventive maintenance to resurface. Repairing streets in "failed" condition costs almost 32 times the price of preventive maintenance, since a full reconstruction is needed.<sup>5</sup> According to the 2019 staff companion report for the Five-Year Street Rehabilitation Plan, maintenance treatments cost between \$8-27 per square yard, while rehabilitation treatments cost between \$52-104 per square yard.

Additionally, simultaneously building in pedestrian and bicycle improvements while repaving streets results in significantly safer streets, alleviating time and cost burdens for first responders.

<sup>4</sup> [https://www.cityofberkeley.info/Finance/Home/Financial\\_Reports.aspx](https://www.cityofberkeley.info/Finance/Home/Financial_Reports.aspx)

<sup>5</sup> [https://www.berkeleyside.com/wp-content/uploads/2013/06/2011-11-15\\_Item\\_09\\_Failing\\_Streets.pdf](https://www.berkeleyside.com/wp-content/uploads/2013/06/2011-11-15_Item_09_Failing_Streets.pdf)



### ENVIRONMENTAL SUSTAINABILITY

Street repaving presents a valuable opportunity to implement critical sustainability projects all over the city, particularly via the 15 percent of the repaving budget allocated for demonstration projects. These may include pedestrian and bicycle improvements, green infrastructure projects, permeable pavers, and more. Additionally, newer repaving practices such as Full Depth Reclamation are being adopted as more environmentally conscious alternatives to traditional repaving.

Transportation accounts for 60 percent of Berkeley's community-wide GHG emissions. Poor street conditions make more environmentally friendly modes of transportation, such as walking or biking, less safe and therefore less attractive to residents.

Maintaining quality, safe streets and implementing complete street components is critical to encouraging sustainable modes of transportation and reaching the City's target of reducing GHG emissions by 80 percent below 2000 levels by 2050. This resolution is consistent with the City's Climate Action Plan, which envisions "public transit, walking, cycling, and other sustainability modes" as the "primary means of transportation for Berkeley residents and visitors."

### ALTERNATIVES CONSIDERED

The City is actively considering other revenue sources for street maintenance. During the February 11th Council meeting, Council discussed several options, including a half-cent sales tax, revenue bond, and general obligation bond.<sup>6</sup>

Allocating parking revenues towards the repaving budget was another alternative considered. As documented in the FY19 Comprehensive Annual Financial Report, total operating revenues for off-street parking were \$3,833,654. Total operating revenues for parking meters were \$10,381,385. However, these revenues are currently dedicated towards debt obligations for the newly-constructed Center Street Garage. Furthermore, unlike the Vehicle In-Lieu Tax which is collected by the State, parking revenues require collection efforts by City staff. Any reallocation of parking revenues would need to address potential impact on staff needs. That said, consideration should be made of the difference between parking revenues and parking fines, and whether fines should also be allocated towards repaving needs.

Reallocation of the Vehicle In-Lieu Tax from the General Fund to the repaving budget is the City's most compelling option at this time.

### CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

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<sup>6</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/02\\_Feb/Documents/2020-02-11\\_Presentations\\_Item\\_18\\_Pres\\_CMO\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/02_Feb/Documents/2020-02-11_Presentations_Item_18_Pres_CMO_pdf.aspx)

Attachments:  
1: Resolution

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

## A RESOLUTION DOUBLING THE REPAVING BUDGET BY ALLOCATING REVENUES FROM THE VEHICLE IN-LIEU TAX TOWARDS STREETS

WHEREAS, the condition of the City's streets is a top priority of the Council and City of Berkeley residents, who have overwhelmingly supported measures to improve streets such as Measure T1 and Measure M; and

WHEREAS, the average Pavement Condition Index (PCI) in the City of Berkeley is 59.7, below the "satisfactory" level of 70 as determined by the American Society for Testing and Materials; and

WHEREAS, the current annual repaving budget of \$6.7 million is projected to result in a decrease in PCI to 52, and an additional \$10.6 million per year is needed to maintain the current PCI; and

WHEREAS, the City of Berkeley budget is in strong shape due to years of robust revenue growth, expenditure management, and financial reserve policies, recently resulting in the City's upgraded general obligation bond rating of "MIG 1," the highest possible rating for short-term municipal notes; and

WHEREAS, repaving streets in a timely manner is associated with significant long-term cost savings because neglected, low-PCI streets require pavement treatments that are up to 32 times more cost-intensive; and

WHEREAS, maintaining and repaving streets while simultaneously implementing complete street components is critical to encouraging the use of sustainable modes of transportation and achieving the City's Vision Zero and Climate Action goals; and

WHEREAS, the Vehicle In-Lieu Tax is an annual state fee, collected from automobile owners for the privilege of operating a vehicle on public roads, that should be reinvested in infrastructure that creates safe road conditions for drivers, bicyclists, public transit users, and pedestrians alike; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that 50 percent of the revenues collected annually from the Vehicle In-Lieu Tax shall be allocated from the General Fund towards the repaving budget in the interests of street maintenance, sustainability, and bicycle and pedestrian goals.

**OR**

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that revenues upwards of \$6 million collected annually from the Vehicle In-Lieu Tax shall be

allocated from the General Fund towards the repaving budget in the interests of street maintenance, sustainability, and bicycle and pedestrian goals.



Commission on Disability

INFORMATION CALENDAR

March 10, 2020

To: Honorable Mayor and Members of the City Council

From: Commission on Disability

Submitted by: Alex Ghenis, Chairperson, Commission on Disability

Subject: Proposed Navigable Cities Framework for Ensuring Access and Freedom-of-Movement for People with Disabilities in Berkeley

INTRODUCTION

The Commission on Disability recently agreed upon a series of priorities for 2019 and early 2020. One of these priorities is a proposed “Navigable Cities” framework to guide investments, regulations, and other actions in the City of Berkeley. An initial Navigable Cities framework was approved by the Commission in its meeting on April 3, 2019. The framework features three (3) Principles of Navigable Cities and four (4) initiatives that the Commission on Disability will pursue throughout 2020. The full Navigable Cities outline is attached to this informational item.

The Commission on Disability requests that the City Council review and support the Navigable City framework, principals and initiatives. The Commission will provide updates to the City Council on progress moving forward, including any information discovered by the Commission, proposed action items for the City Council, etc. (Item approved 5/1/2019 to be submitted with photos. Motion: Singer, Second: Ramirez, Walsh: Aye, Smith: Aye, Ghenis: Aye, Weiss: Aye, Leeder: LOA, Abstain: 0. Photos approved 11/6/2019: Motion: Leeder, Second: Singer, Smith: Aye, Walsh: Aye, Ghenis: Aye, Ramirez: Aye, Absent: 0 Abstain: 0)

The full principles and initiatives of Navigable Cities are featured in the attached document. They are summarized here:

Principles:

1. All people residing in and/or visiting the City of Berkeley have the right to efficient, convenient and barrier-free movement.
2. People with disabilities (PWDs) often have distinct transportation-related needs and may be less able to navigate around items obstructing pathways.

3. Changes to commercial activities and government policies (whether in Berkeley, the Bay Area, the State of California, or the United States as a whole) can have notable impacts on navigability.

#### Initiatives:

1. Support smooth, barrier-free pathways frequently used by PWDs.
2. Ensure that new transportation services provide appropriate access to PWDs and do not negatively impact navigability.
3. Provide appropriate input on plans to adjust the layout of neighborhoods, urban centers, streets, pathways, etc.
4. Address the availability and accessibility of appropriate parking options, especially in city-owned and/or city-maintained parking lots/garages.

#### CURRENT SITUATION AND ITS EFFECTS

Proposed “navigable cities” framework for ensuring access and freedom-of-movement for people with disabilities in Berkeley is a Strategic Plan Priority Project, advancing our goal to champion and demonstrate social and racial equity.

The City of Berkeley contains hundreds of miles of streets, sidewalks and other public spaces (e.g. outdoor plazas and parks). Many streets, sidewalks, bicycle pathways and other public spaces do not provide smooth navigation for people with disabilities (PWDs), who collectively represent around 15% of the City’s residents and visitors. In addition, Berkeley features many transportation options including pedestrian and bicycle pathways, BART, buses, paratransit, nonprofit transportation services, transportation network companies (TNCs, e.g. Uber & Lyft), bike-sharing services, etc.; however, not all of these provide full access to people with disabilities, endangering independence and potentially violating civil rights. Examples of inaccessibility include:

- Not all sidewalks feature “curb cuts” at intersections, meaning that individuals using wheelchairs or scooters must essentially take detours – either a full block, or to a nearby driveway. Exiting through driveways may present dangers, such as a lack of visibility to oncoming cars.
- Many sidewalks are excessively uneven, for example as tree roots push soils upward and displace sections of sidewalk. The exact nature of sidewalk damage varies across the City – some feature clear vertical breaks between sidewalk segments, while some sidewalks have “bumps” and cracks.
- Construction of new buildings and maintenance to pathways blocks sidewalks, forcing individuals to use designated temporary pathways or cross streets entirely. Certain pathways do not feature appropriate accessibility – such as ramps from sidewalks to street-level pathways – or are otherwise difficult to navigate.

- “Shared mobility” services – e.g. ride-sharing and shared bicycles (Ford Go-Bike, etc.) – do not always feature fully-accessible products and services. For example, TNCs have only recently introduced wheelchair-accessible vehicles, which still feature delays compared to TNCs’ regular time frames. Bike-sharing services do not provide alternative, accessible options for individuals with limited balance who could otherwise ride tricycles. Proposed motorized scooters likewise do not provide accessible options, and scooter-riders on sidewalks present dangers to many PWDs.
- Items which are present in the middle of sidewalks and other public spaces may pose barriers to some PWDs; these items include the large sign downtown announcing BART and bus schedules, as well as informational kiosks being explored by City Council and staff. Barriers are of particular concern to individuals who are blind or low-vision and have become familiar with Berkeley’s pathways without obstacles.

These items and more represent ongoing barriers and progressing problems for PWDs in Berkeley. The Commission on Disability is concerned by a lack of accessibility, in general and especially considering Berkeley’s identity as the home of the modern disability rights movement.

#### BACKGROUND

None noted, aside from the information above.

#### ENVIRONMENTAL SUSTAINABILITY

The Commission on Disability believes that pursuing a Navigable Cities framework will present opportunities to improve environmental sustainability. For example, more easily navigable pedestrian pathways and accessible alternatives to shared bicycles will enable PWDs to reduce reliance on personally-operated vehicles and related carbon emissions. The Commission will consider sustainability in its Navigable Cities initiatives.

#### POSSIBLE FUTURE ACTION

Unknown.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Unknown.

#### CONTACT PERSON

Dominika Bednarska, Disability Services Specialist  
(510) 981-6418

#### Attachments:

1: Attachments: Pictures and image descriptions of sidewalk issues.

**From:** Shira Leeder [mailto:shira@leeder.com]

**Sent:** Tuesday, September 24, 2019 2:34 AM

**To:** Helen Walsh <branach@comcast.net>; Bednarska, Dominika <DBednarska@cityofberkeley.info>; Alex Ghenis <alex.ghenis@gmail.com>

**Subject:** Re: Shira's unsafe sidewalk experience Photos and notes

Photo 1: Rose and Henry streets pass the Safeway.

Side uneven tree roots causing cracks and uneven pavement making it unsafe for wheelchair users especially those with mobility equipments and seniors, it's like a roller coaster going down a deep grade drop.

Photo 2: 2 blocks away from Rose and Henry around apt 137 uneven side walk by tree. Side walk goes up then angles down very unsafe for wheelchair uses and those with mobility devices.

Photo 3: Up from last photo uneven sidewalk pavement unsafe for wheelchair and those with mobility devices and baby strollers.

Photo 4: by bus stop Berryman street uneven pavement unsafe for wheelchair, mobility devices and baby strollers to pass. The sidewalk needs to be repaved the entire block because the sidewalk is bumpy and dangerous and too narrow. I have to go in the streets where vehicles are and it is risky because of taking chances of being hit and killed.

Photo 5: Sutter and Amador streets by bus stop uneven pavement bump in front of curb cut making it unsafe to pass. I have to use bike lane against traffic or with traffic depending on where I am going especially going home when going toward Solano Avenue. That whole two or three blocks of that since from Shattuck and Rose going toward Sutter street needs to be repaved and put several stop signs or pedestrians safely signals.

Photo 6: No curb cut, drive way cracked sidewalk and street, gravel ditch my wheelchair has to go up or down. This is by the bus stop. The sidewalks are too narrow and at a down incline.

Photo 7: Using bike lane in opposite direction no other cross walks or ways to get to sidewalk. I have to ride in the streets / bike lanes if the sidewalks are too bumpy and hazardous and if there are tree roots issues or construction zones,

Photo 8: No curb cut from bike lane using only cross walk to cross street, no stop sign cars go fast and not stop especially at night time with no street lights and signal to walk in the crosswalk without risking of being hit and killed by vehicles passing by.

On Monday, September 23, 2019, 3:25:08 PM PDT, Helen Walsh <[branach@comcast.net](mailto:branach@comcast.net)> wrote:

Photo 1: Rose and Henry

side uneven tree roots causing cracks and uneven pavement making it unsafe for wheelchair users.



Photo 2: 2 blocks away from Rose and Henry around apt 137 uneven side walk by tree. Side walk goes up then angles down very unsafe for wheelchair uses.

Photo 3: Up from last photo uneven sidewalk pavement unsafe for wheelchair.

Photo 4: by bus stop Berryman street uneven pavement unsafe for wheelchair to pass.

Photo 5: Sutter street by bus stop uneven pavement bump in front of curb cut making it unsafe to pass. I have to use bike lane against traffic or with traffic depending on where I am going.

Photo 6: No curb cut, drive way cracked sidewalk and street, gravel ditch my wheelchair has to go up or down. This is by bus stop.

Photo 7: using bike lane in opposite direction no other cross walks or ways to get to sidewalk.

Photo 8: no curb cut from bike lane using only cross walk to cross street. no stop sign cars go fast.

iSent from the Event Horizon



























**From:** MARTHA SINGER [mailto:marthasinger@me.com]  
**Sent:** Wednesday, November 06, 2019 3:06 PM  
**To:** Bednarska, Dominika <DBednarska@cityofberkeley.info>  
**Subject:** sidewalk obstacles domingo ave



MARTHA SINGER MD  
[marthasinger@mac.com](mailto:marthasinger@mac.com)



Peace and Justice Commission

INFORMATION CALENDAR

March 10, 2020

To: Honorable Mayor and Members of the City Council  
 From: Peace and Justice Commission  
 Submitted by: Igor Tregub, Chairperson, Peace and Justice Commission  
 Subject: FY 2019-2020 Peace and Justice Commission Work Plan

INTRODUCTION

At its January 6, 2020 meeting, the Peace and Justice Commission adopted its Fiscal Year (FY) 2019-2020 Work Plan (Attachment 1).

CURRENT SITUATION AND ITS EFFECTS

The Peace and Justice Commission began discussing updates to its FY 2017-2018 Work Plan (the last time it had been updated) in July 2019. On February 3, 2020, it adopted the attached work plan through the action detailed below.

**Approve Final Fiscal Year 2019-2020 Peace and Justice Commission Work Plan**

**M/S/C:** al-Bazian, Morizawa

**Ayes:** al-Bazian, Bohn, Lippman, Maran, Meola, Morizawa, Pierce\*, Tregub

**Noes:** None

**Abstain:** None

**Absent:** Askary, Gussman, Pancoast, Rodriguez

**Excused:** None

\*Commissioner was not eligible to participate.

BACKGROUND

In 2016, the City Council adopted direction to commissioners to submit a work plan annually.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental sustainability impact associated with the adoption of this work plan.

POSSIBLE FUTURE ACTION

The commission is working on several priorities in alignment with this work plan, and may bring them to the Council for action in the future.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Fiscal impacts will depend on the actions recommended and the Council's decision.

CONTACT PERSON

Nina Goldman, Interim Secretary, City Manager's Office, (510) 981-7537

Attachment 1: FY 2019-2020 Work Plan



## Appendix 1: Peace and Justice Committee Fiscal Year 2019-2020 Work Plan

### Mission Statement:

The Peace and Justice Commission advises the Berkeley City Council and the Berkeley Unified School District Board on all matters relating to the City of Berkeley's role in issues of peace and social justice. (BMC Section 3.68.070.A.) Under its mandate, the Commission also helps create citizen awareness around issues of social justice, holds public hearings and community forums, initiates and encourage research programs, develops ways to resolve conflict which do not involve violence, acts as a liaison between community groups organizing around issues of peace and social justice and City government, and assists the Director of Finance in the evaluation of financial institutions for socially responsible investing.

#### I. Resolutions and communications to Council and the Board of Education.

The Commission will continue to discuss and, where appropriate, recommend for action resolutions, letters, and other action items on international, federal, state, and local issues that are consistent with BMC Section 3.68.070.A. Address homelessness, racial and gender justice, policing policy (including external BPD relationships), protection of Ohlone sacred sites, civil liberties, international peace with justice, and other social issues as they arise throughout the year with proposals and communications as appropriate.

#### II. Other existing responsibilities and subcommittees.

- a. Continue the established responsibility for Nuclear Free Berkeley Act oversight and waiver process, as proposals are submitted to the Commission by City staff. Continue to collaborate with the international movement against nuclear weapons.
- b. Socially Responsible Investing and Procurement Policy Subcommittee (SRIPP).
  - i. Improve and institutionalize the City's commitment to Socially Responsible investing, banking, and procurement.<sup>1</sup>
  - ii. Implement the Commission-generated resolution – passed by the City Council in July 2019 – to develop a Socially Responsible Investment and Procurement Policy.
  - iii. Work with the Berkeley Unified School District (BUSD) Board Policy Committee to establish an effective Sweatshop-Free Berkeley Schools Policy.
- c. Through a subcommittee initiated in 2019, engage with the BUSD student community on issues of common concern, including but not limited to voter registration, sexual

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<sup>1</sup> BMC Section 3.68.070.K: “The [Peace and Justice] Commission shall perform the following functions...K. Assist the Director of Finance in the annual evaluation of financial institutions for qualification of City investments...and advise the City Council on matters relating to the responsible investment of public funds in accordance with the responsible investment policy established by Resolution No. 55,141A-NS.

harassment, relationship between BUSD and the Berkeley Technology Academy, issues of diversity and representation at Berkeley High School, student safety, collaboration with the Berkeley Youth Commission on mutual concerns, and expanding resources for unhoused or housing-insecure youth in Berkeley.<sup>2</sup>

- d. Regional Sanctuary Community Working Group. The Commission is exploring ways to coordinate with other Sanctuary communities (cities and counties) through the Mayor's Sanctuary City Task Force.
- e. The Commission will continue to support the development of the African American Holistic Resource Center and its acquisition of a permanent home.
- f. The Commission will continue to support the ratification of the Convention on the Rights of People with Disabilities and to extend the City of Berkeley's long-standing focus on promoting and protecting the legal rights of persons with disabilities. The City has held a leading position in the field of disability rights for many years, and is well-known nationally and internationally as an incubator for grassroots non-profit organizations working in that field. The Commission will continue to partner on this issue with other commissions with overlapping jurisdiction, including the Commission on Disability, Commission on Aging, Mental Health Commission, and Commission on the Status of Women.

### III. Proposed new projects.

- a. The Commission will explore a proposal for a "Social Justice Framework on Human Needs in Berkeley."

#### I. Background:

##### CRPD

The Peace & Justice Commission established the Subcommittee on the Convention on the Rights of Persons with Disabilities (the Subcommittee) in 2014, in order to institutionalize the City of Berkeley's long-standing focus on promoting and protecting the legal rights of persons with disabilities. The City has held a leading position in the field of disability rights for many years, and is well-known nationally and internationally as an incubator for grassroots non-profit organizations working in that field.

Together with representatives from four other City of Berkeley Commissions: the Commission on the Status of Women, the Commission on Disability, the Commission on Mental Health, and the Commission on Aging, the Subcommittee published its Mission Statement; requested the Peace & Justice Commission to ask the City Council to write to the

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<sup>2</sup> The BUSD Subcommittee, comprised largely of commissioners appointed by BUSD Board Members, will be requested to provide a detailed work plan that the Commission can approve in early 2020.

U.S. Senate urging ratification of the Convention on the Rights of Persons with Disabilities (duly done in 2015); and held public forums on the issue in the spring of 2018 and 2019.

### Nuclear-Free Berkeley

The Nuclear Free Berkeley Act came into force in 1986 (Chapter 12.90.070 Section 030D). The Peace & Justice Commission established the Subcommittee on The Nuclear Free Berkeley Act (NFBA) to oversee and reinforce compliance with the terms of the Act. The Subcommittee's activities have included:

- recommendation against a waiver for continuation of the Berkeley Public Library's contracts with 3M (2009-2010);
- consideration of a waiver for the City of Berkeley Public Health Division's proposal on medical supplies (2012);
- recommendation of a waiver for the SkyDeck Business Incubator-Accelerator Contract (2012);
- recommendation (February 7, 2013) to the Regents of the University of California that it phase out responsibility for operating the Nuclear Weapons Laboratories in Livermore and Los Alamos;
- a letter from the City of Berkeley to President Obama in 2014 urging support of a ban on nuclear weapons.

More recently, in light of the Award of the Nobel Peace Prize in 2017 to the International Campaign to Abolish Nuclear Weapons (ICAN), whose goal is international adherence to and full implementation of the Treaty on the Prohibition of Nuclear Weapons (the Treaty), the Peace and Justice Commission will seek to collaborate further with ICAN on activities of mutual concern. We would note that the California State Senate and the California State Assembly voted affirmatively on a bill in September 2018 to urge U.S. Senate adoption of the Treaty. Strong support comes also from the International Red Cross Red Crescent Movement; NuclearBan.US, The City of Los Angeles, California; the City of Takoma Park, Maryland; Physicians for Social Responsibility; and the U.S. Conference of Mayors, among others.

### Indigenous Peoples

Between December 2015 and January 2016, the Berkeley City Council, upon the recommendation of the Peace and Justice Commission, adopted five important resolutions supporting the treaty rights of indigenous people in Berkeley. The resolutions included: recognition of the Ohlone people as the original inhabitants of Berkeley and the Bay Area, pledging to work in good faith with Ohlone representatives; implementing the UN Declaration on the Rights of Indigenous Peoples as municipal policy; endorsing the upgrading of the Declaration to a Convention; honoring the Berkeley Shellmound

indigenous site; and urging the East Bay Regional Parks District to protect the Ohlone place of origin sacred site.

The resolution on the Berkeley Shellmound mandated that “free, prior, and informed consent of the Ohlone and other indigenous peoples of the region should be integral to any alteration planning for the Berkeley Shellmound site, in accordance with the provisions of the United Nations Declaration on the Rights of Indigenous Peoples.”

In 2020 the Peace and Justice Commission will support the implementation of these resolutions with particular attention to proposed development of the Berkeley Shellmound site.

#### Sweatshop-Free Berkeley

The Sweatshop-Free Berkeley Policy now has a zero dollar threshold per supplier per year for textile products purchased by the City. This threshold is an improvement over the previous minimum of \$1,000 purchase per supplier for the Policy to apply. However, the policy is complaint-driven, so the burden is on community members to research the supply chain for each supplier. The SRIPP Subcommittee proposes to establish a mechanism for suppliers to show that they are using Sweatshop Free products for City purchases.

The Policy governs textile purchases only. The goal is to identify sweat-free alternatives for technology purchases so tech can be covered as well.

The BUSD, through the School Board Policy Committee, is in the process of establishing a Sweatshop-Free Schools Policy for athletic supplies. The SRIPP Subcommittee and the Commission are supporting the BUSD to ensure the development of an effective policy.

| Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i> |                                                                                                                                                                 |
|-------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Scheduled Dates                                                               |                                                                                                                                                                 |
| March 17                                                                      | <ol style="list-style-type: none"> <li>1. CIP Update (PRW and Public Works)</li> <li>2. Measure T1 Update</li> </ol>                                            |
| May 5                                                                         | <ol style="list-style-type: none"> <li>1. Budget Update</li> <li>2. Crime Report</li> </ol>                                                                     |
| June 23                                                                       | <ol style="list-style-type: none"> <li>1. Climate Action Plan/Resiliency Update</li> <li>2. Digital Strategic Plan/FUND\$ Replacement/Website Update</li> </ol> |
| July 21                                                                       | <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> </ol>                                                                                                |
| Sept. 29                                                                      | <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> </ol>                                                                                                |
| Oct. 20                                                                       | <ol style="list-style-type: none"> <li>1. Update: Berkeley’s 2020 Vision</li> <li>2. BMASP/Berkeley Pier-WETA Ferry</li> </ol>                                  |

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

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

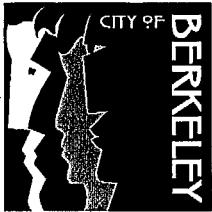
|    | <b>City Council Referrals to the Agenda Committee and Unfinished Business for Scheduling</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <p><b>68. Revisions to Ordinance No. 7,521--N.S. in the Berkeley Municipal Code to increase compliance with the city's short-term rental ordinance</b> (<i>Referred from the July 24, 2018 agenda. Agenda Committee to revisit in April 2019.</i>) <b>March 18, 2019 Action:</b> <i>Item to be agendized at future Agenda and Rules Committee Meeting pending scheduling confirmation from City Manager.</i></p> <p><b>From: Councilmember Worthington</b></p> <p><b>Recommendation:</b> Refer the City Manager to look into adopting revisions to Ordinance No. 7,521--N.S by modeling after the Home-Sharing Ordinance of the City of Santa Monica and the Residential Unit Conversion Ordinance of the City of San Francisco in order to increase compliance with city regulations on short-term rentals of unlicensed properties.</p> <p><b>Financial Implications:</b> Minimal</p> <p>Contact: Kriss Worthington, Councilmember, District 7, 981-7170</p>                                                                                                  |
| 2. | <p><b>36. Referral Response: Issue a Request for Information to Explore Grant Writing Services from Specialized Municipal Grant-Writing Firms, and Report Back to Council</b> (<i>Referred from the October 15, 2019 agenda</i>)</p> <p><b>From: City Manager</b></p> <p>Contact: Henry Oyekanmi, Finance, 981-7300</p> <p><i>Note: Will be considered in FY 2021 Budget Process</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 3. | <p><b>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</b> (<i>Reviewed by Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee</i>) (<i>Referred from the January 21, 2020 agenda</i>)</p> <p><b>From: Councilmember Harrison</b></p> <p><b>Recommendation:</b></p> <ol style="list-style-type: none"> <li>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.</li> <li>2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods.</li> </ol> <p><b>Financial Implications:</b> See report</p> <p>Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140</p> <p><i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p> |

| CITY CLERK DEPARTMENT                                             |                      |                       |                                         |                   |
|-------------------------------------------------------------------|----------------------|-----------------------|-----------------------------------------|-------------------|
| WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS                  |                      |                       |                                         |                   |
| BEFORE THE CITY COUNCIL                                           |                      |                       |                                         |                   |
| Address                                                           | Board/<br>Commission | Appeal Period<br>Ends | Determination<br>on Appeal<br>Submitted | Public<br>Hearing |
| <b>NOD – Notices of Decision</b>                                  |                      |                       |                                         |                   |
|                                                                   |                      |                       |                                         |                   |
|                                                                   |                      |                       |                                         |                   |
|                                                                   |                      |                       |                                         |                   |
|                                                                   |                      |                       |                                         |                   |
| <b>Public Hearings Scheduled</b>                                  |                      |                       |                                         |                   |
| 2422 Fifth St (construct mixed-use building)                      | ZAB                  |                       |                                         | 2/25/2020         |
| 1581 Le Roy Ave (convert vacant elementary school property)       | ZAB                  |                       |                                         | 2/25/2020         |
| 1581 Le Roy Ave (convert vacant elementary school property)       | LPC                  |                       |                                         | 2/25/2020         |
| 0 Euclid Ave - Berryman Reservoir (denial of 4G telecom facility) | ZAB                  |                       |                                         | TBD               |
|                                                                   |                      |                       |                                         |                   |
|                                                                   |                      |                       |                                         |                   |
| <b>Remanded to ZAB or LPC</b>                                     |                      |                       |                                         |                   |
| 1155-73 Hearst Ave (develop two parcels)                          | ZAB                  |                       |                                         |                   |
| 90-Day Deadline: May 19, 2019                                     |                      |                       |                                         |                   |
|                                                                   |                      |                       |                                         |                   |
|                                                                   |                      |                       |                                         |                   |
| <b>Notes</b>                                                      |                      |                       |                                         |                   |
|                                                                   |                      |                       |                                         |                   |
|                                                                   |                      |                       |                                         |                   |
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2/19/2020







Cheryl Davila  
Councilmember  
District 2

**RECEIVED AT  
COUNCIL MEETING OF:**

JAN 13 2020

OFFICE OF THE CITY CLERK

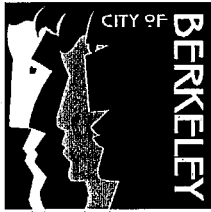
CITY OF BERKELEY

## **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](mailto:cdavila@cityofberkeley.info)

#### ATTACHMENTS:

1. Resolution

### RESOLUTION NO. XXXX

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

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

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

BE IT FURTHER RESOLVED, the City Council directed the City 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.

## **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)

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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)

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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)

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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.

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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)

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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.)

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- 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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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].

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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.)

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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)

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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.")

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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!

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

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

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

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

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

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

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

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

## 6. **TESTING:**

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

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

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

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

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

## 8. **RECERTIFICATION:**

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



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

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

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

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

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

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

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

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

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

o Size of antennas, equipment boxes, and cabling;

o Painting of attachments to match mounting structures;

o Consistency with the character of historic neighborhoods;

o Aesthetic standards for residential neighborhoods, including "any minimum setback from dwellings, parks, or playgrounds and minimum setback from dwellings, parks, or playgrounds; maximum structure heights; or limitations on the use of small, decorative structures as mounting locations." (Boulder Report)

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

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

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

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

FISCAL IMPACTS OF RECOMMENDATION

None.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

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

ATTACHMENTS:

1. Resolution

RESOLUTION NO. XXXX

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)

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· 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.**





# The Berkeley City Council Rules of Procedure and Order

Adopted by Resolution No. 69,283–N.S. and  
amended by Resolution No. 69,295–N.S.

Effective February 11, 2020

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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 a limit 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 except during recess periods; 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, as appropriate to the charge or responsibilities of such subcommittee. 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 four Authors and Co-Sponsors, in any combination that includes at least one Author.

Authors must be listed in the original item as submitted by the Primary Author. Co-Sponsors 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
2. 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's Primary 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 points of analysis in Appendix B - Guidelines for Developing and Writing Council Agenda Items.
3. "Author" means the Mayor or other Councilmembers who actually authored an item by contributing to the ideas, research, writing or other material elements.
4. "Primary Author" means the Mayor or Councilmember listed first on the item. The Primary Author is the sole contact for the City Manager with respect to the item. Communication with other Authors and Co-Sponsors, if any, is the responsibility of the Primary Author.
5. "Co-Sponsor" means the Mayor or other Councilmembers who wish to indicate their strong support for the item, but are not Authors, and are designated by the Primary Author to be co-sponsors of the council agenda item.
6. "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.
7. "Packet" means the agenda plus all its corresponding agenda items.
8. "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.

9. "Continued Business" Items carried over from a prior agenda of a meeting occurring less than 11 days earlier.
10. "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 are subject to review, referral, and scheduling by the Agenda & Rules Committee pursuant to the rules and limitations contained herein. The Agenda & Rules Committee shall be a standing committee of the City Council.

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

- i. Refer the item to a commission for further analysis (Primary Author may decline and request Policy Committee assignment).
- ii. Refer the item to the City Manager for further analysis (Primary Author may decline and request Policy Committee assignment).
- iii. Refer the item back to the Primary Author for adherence to required form or for additional analysis as required in Section III.B.2 (Primary Author may decline and request Policy Committee assignment).
- iv. Refer the item to a Policy Committee.
- v. Schedule the item for the agenda under consideration or one of the next three full Council agendas.

For referrals under Chapter III.C.1.a.i, ii, or iii, the Primary Author must inform the City Clerk within 24 hours of the adjournment of the Agenda & Rules Committee meeting whether they prefer to:

- 1) re-submit the item for a future meeting with modifications as suggested by the Agenda & Rules Committee; or
- 2) pull the item completely; or
- 3) 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; or
- 4) accept the referral of the Agenda & Rules Committee in sub paragraphs III.C.1.a. i, ii, or iii, or request Policy Committee assignment.

If the Primary Author requests a Policy Committee assignment, the item will appear on the next draft agenda presented to the Agenda & Rules Committee for assignment.

In the event that the City Clerk does not receive guidance from the Primary Author of the referred item within 24 hours of the Agenda & Rules Committee's adjournment, the item will appear on the next draft agenda for consideration by the Agenda & Rules Committee.

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 unless referred for policy review to 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. Refer the item to a Policy Committee for review.
  4. 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 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 Primary 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. The Agenda & Rules Committee may request a presentation by staff in consultation with the City Manager.

**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 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.8.
  - 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.

#### 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 be listed as Authors or Co-Sponsors on an item provided that one of the Authors or Co-Sponsors 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, who also can not be an Author or Co-Sponsor, will serve as a committee member in place of the non-participating Author or Co-Sponsor.
- d. All three members of a Policy Committee may not be Authors or Co-Sponsors of an item that will be heard by the committee.
- e. Only one Author or Co-Sponsor 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 who is not a member of the committee is present to participate in the discussion of their item, no other non-committee member 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 revised or supplemental 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 Primary Author's request that the item remain in committee until a date certain (more than one extension may be requested by the Primary 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 Primary 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 City Clerk 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.

Policy Committees may add discussion topics that are within their purview to their agenda with the concurrence of a majority 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 Primary 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 Primary 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, public comment on consent and information items, and adoption of the Consent Calendar, 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, below.

**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. Written Communications**

Written communications 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.

**G. 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.

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## 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 or motion 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. Robert's Rules of Order**

Robert's 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, a motion for the previous question, which, if passed by a 2/3 vote, 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.

**L. Use of Cellular Phones and Electronic Devices**

The use of cell phones during City Council meetings is discouraged for the Mayor and Councilmembers. While communications regarding Council items should be minimized, personal communications between family members and/or caregivers can be taken outside in the case of emergencies. 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 electronic devices such as laptop computers and tablets.

The use cell phones during Closed Session Meetings is explicitly prohibited for the Mayor and Councilmembers.



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## VI. FACILITIES

### A. Meeting Location 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 Primary 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 Primary 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

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### 1. **Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

### 2. **Consent/Action/Information Calendar**

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

### 3. **Recommendation**

Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

Common action options include:

- Adopt first reading of ordinance
- Adopt a resolution
- Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
- Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
- Referral to a Commission or to a Standing or Ad Hoc Council Committee
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

**4. Summary Statement/ “Current situation and its effects”**

A short resume of the circumstances that give rise to the need for the recommended action(s).

- Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
- Example (fictional):  
*Winter rains are lasting longer than expected. Berkeley’s winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley’s winter shelters open until the end of April, and refers to the Budget Process \$40,000 to cover costs of an additional two months of shelter operations.*

**5. Background**

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

**6. Review of Existing Plans, Programs, Policies and Laws**

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

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.

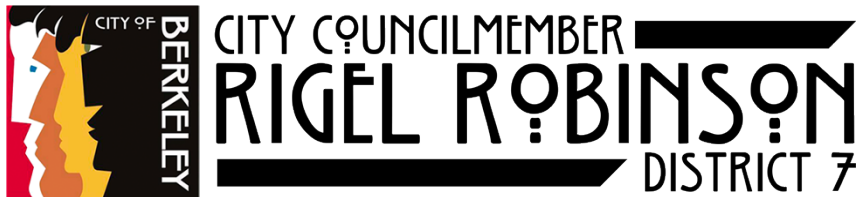
**13. Outcomes and Evaluation**

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**





CONSENT CALENDAR  
December 10, 2019

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

### RECOMMENDATION

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

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

### CURRENT SITUATION

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

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

### BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### FINANCIAL IMPLICATIONS

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

#### ENVIRONMENTAL SUSTAINABILITY

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

#### CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

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

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

Attachments:

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

2: San Francisco Mandatory Recycling and Composting Ordinance

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

3: Recycling Rules Alameda County

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

# SB 1383

## Reducing Short-Lived Climate Pollutants in California

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



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

### Presentation Introduction

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

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

### Overview of Presentation

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

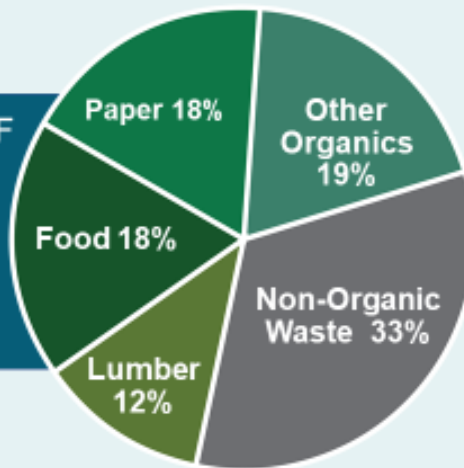
### Additional Resources

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



## Organic Waste Is the Largest Waste Stream in California

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



California's Waste Stream

IN CALIFORNIA, MILLIONS ARE  
**FOOD INSECURE**

1 IN 8 CALIFORNIANS  
1 IN 5 CHILDREN



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

CalRecycle 

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

# CLIMATE CHANGE NEGATIVELY IMPACTS CALIFORNIA

Landfilled Organic Waste Emits

## Methane Gas— A Super Pollutant

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

Methane Gas Contributes to  
Climate Change in California



**CALIFORNIA**  
is already experiencing  
the impacts of  
**CLIMATE CHANGE**

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

CalRecycle 

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


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

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

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

## SB 1383 Requirements

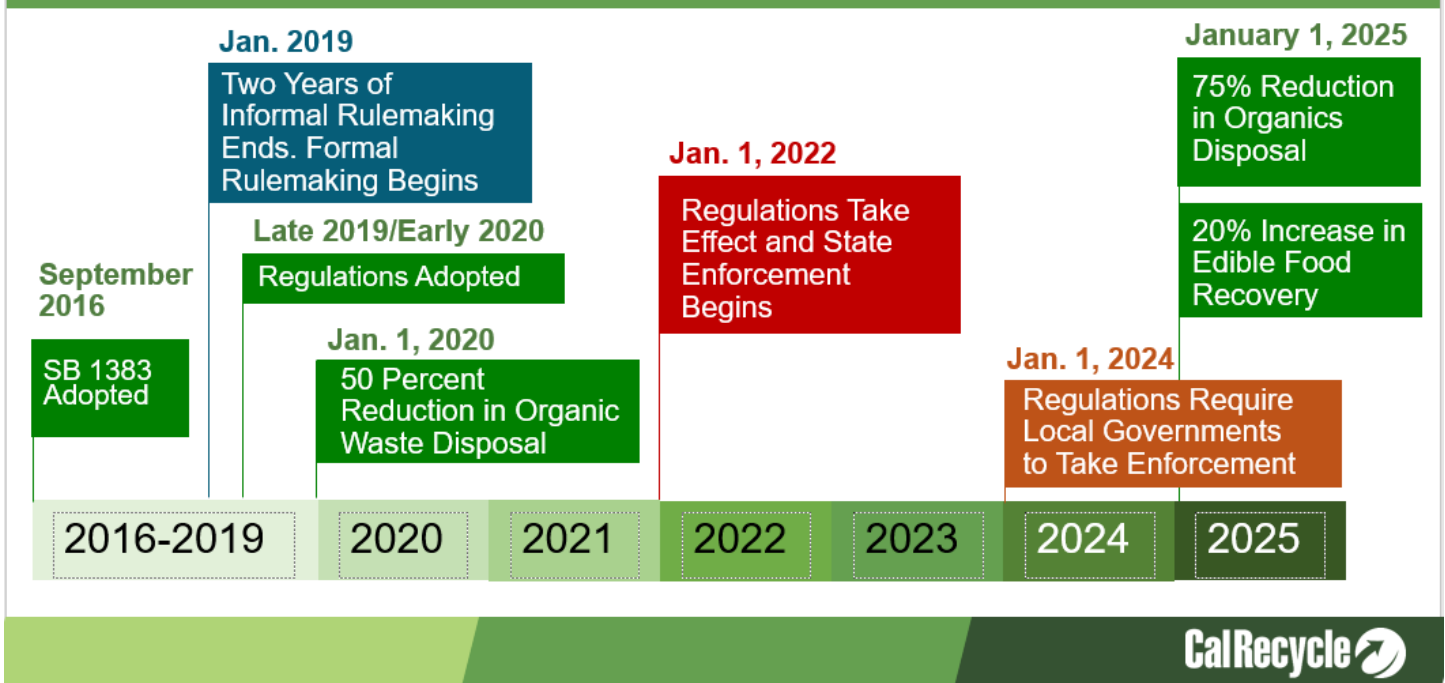
|      |                                                                                                        |
|------|--------------------------------------------------------------------------------------------------------|
| 2020 | 50 PERCENT REDUCTION IN LANDFILLED ORGANIC WASTE<br>(11.5 Million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



### Overview of SB 1383:

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

# SB 1383 Key Implementation Dates



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

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

## Formal Rulemaking

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

## Regulations Take Effect

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

## Jurisdictions Must Initiate Enforcement

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

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

## SB 1383 Key Jurisdiction Dates

2022



Provide Organics Collection Service to All Residents and Businesses



Establish Edible Food Recovery Program



Conduct Education and Outreach



Procurement



Capacity Planning

2024



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

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

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

## JURISDICTION RESPONSIBILITIES

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



**Conduct Education  
and Outreach to  
Community**



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



**Establish Edible  
Food Recovery  
Program**



**Procure Recyclable  
and Recovered  
Organic Products**



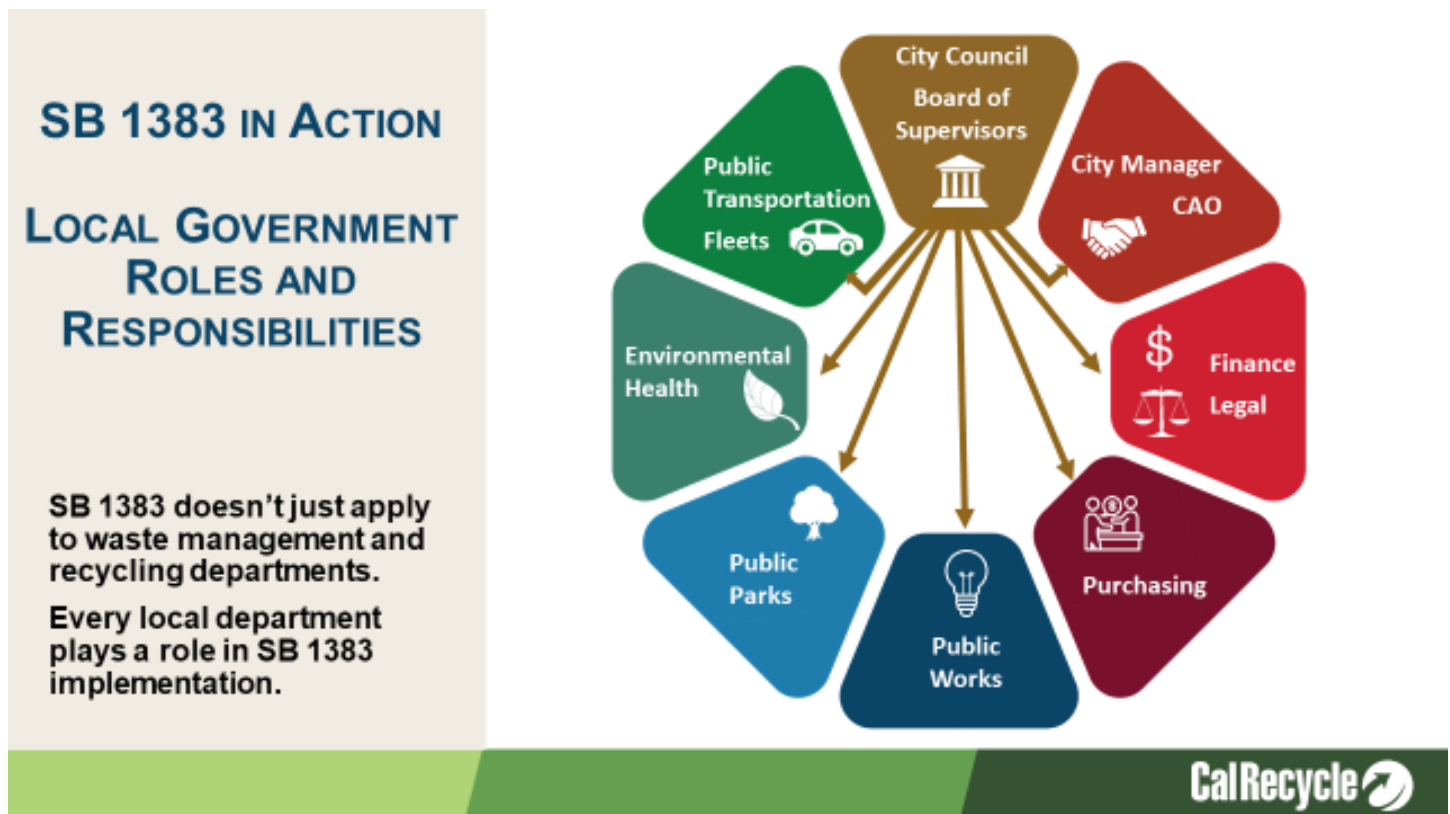
**Monitor Compliance  
and Conduct  
Enforcement**

**CalRecycle**

Jurisdictions will be required to adequately resource these programs:

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

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



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

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

## SB 1383 IN ACTION

### JURISDICTION REQUIREMENTS






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

## Organic Waste Collection Services



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

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



**Two-Container Collection Service**

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



**One-Container Collection Service**

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

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

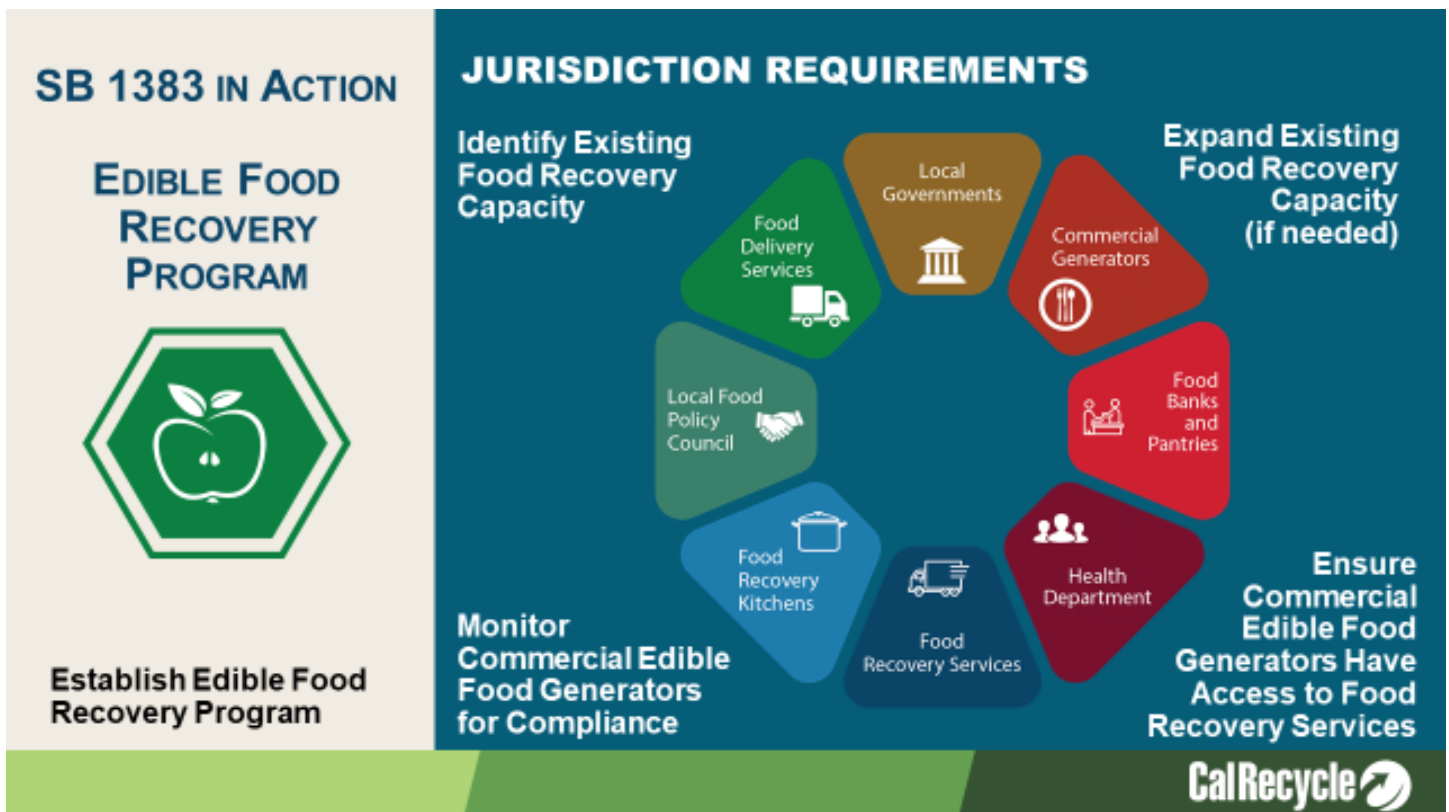


*(Note to presenter: You might customize this slide to reflect the collection system for residential and commercial recycling programs. Remember this law/regulation is about all organic waste so that means the fibers, foodwaste, greenwaste, manure, etc.)*

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



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



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

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

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

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

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

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

**SB 1383 IN ACTION**

**EDUCATION REQUIREMENTS**

**JURISDICTION REQUIREMENTS**

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

Jurisdictions must provide print or electronic communication.

Jurisdictions May Supplement with Direct Communication.

Appropriate educational material must be provided to linguistically isolated households

Conduct Education and Outreach to Community

CalRecycle


Jurisdictions must conduct education and outreach to:

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

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

## SB 1383 IN ACTION

### PROCUREMENT REQUIREMENTS



**Procure Recycled and Recovered Organic Products**


## JURISDICTION REQUIREMENTS


### COMPOST, RNG & ELECTRICITY

- Minimum Procurement

### PAPER PROCUREMENT REQUIREMENTS

- Recycled Content
- Recyclability





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

# Construction & Landscaping Requirements



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

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



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

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

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

# ORGANIC WASTE RECYCLING INFRASTRUCTURE



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



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

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

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

## SB 1383 IN ACTION

### CAPACITY PLANNING



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

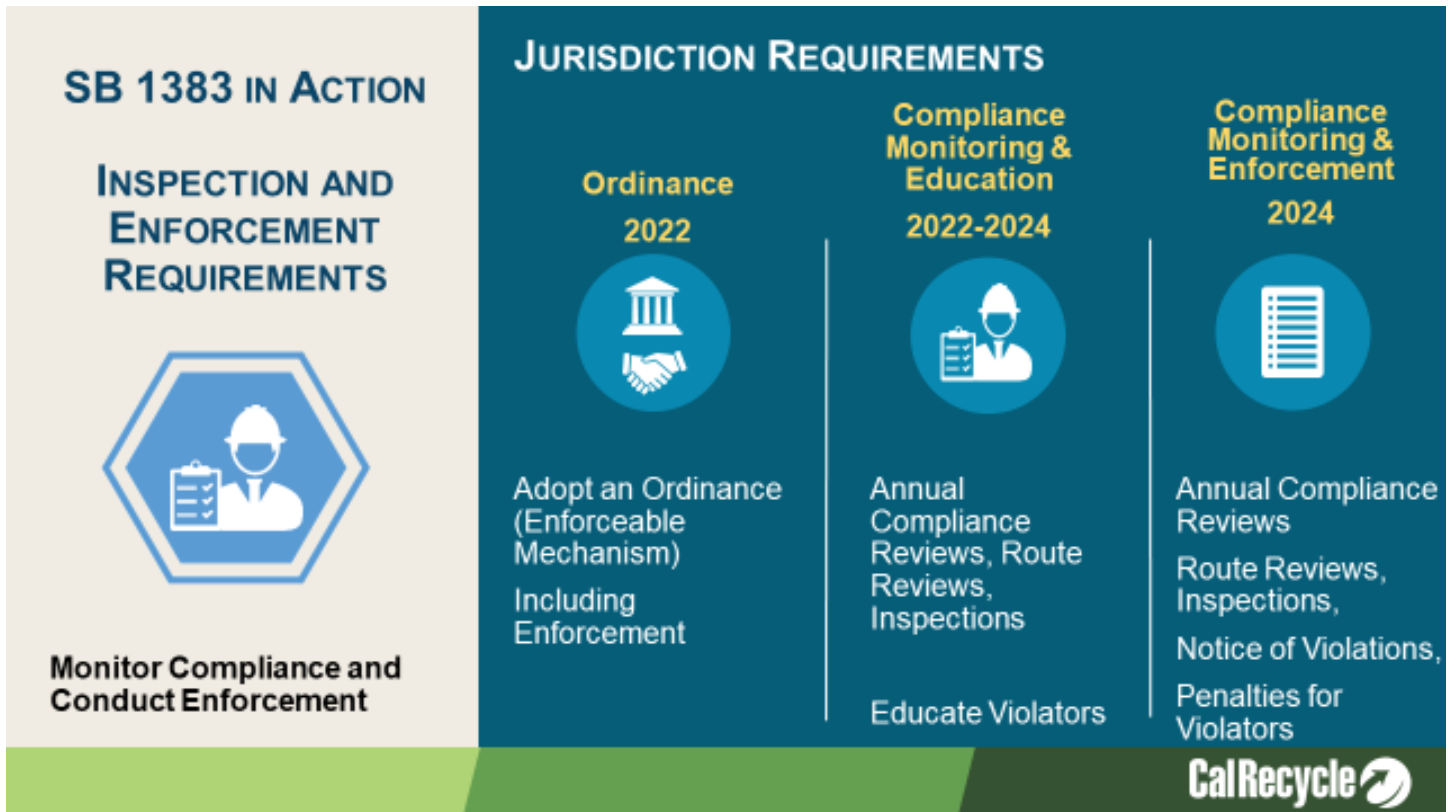


CalRecycle 

#### Key Points:

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

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



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

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

**JURISDICTION ENFORCEMENT REQUIREMENTS**

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

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

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

CalRecycle

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

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



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

## JURISDICTION ENFORCEMENT REQUIREMENTS ON COMMERCIAL FOOD GENERATORS



## Must Have Enforcement and Inspection Program that Includes:

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

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



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

### Edible Food Recovery Program

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

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



**Maintain Records and Report to CalRecycle**

**Recordkeeping Requirements:**

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



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

The infographic is divided into two main sections. The left section, on a light beige background, features a circular icon of a classical building with columns, labeled 'STATE ENFORCEMENT', and the CalRecycle logo below it. The right section, on a dark blue background, is titled 'CALRECYCLE OVERSIGHT (BEGINS IN 2022)' and is organized into three vertical columns, each with a circular icon and a list of actions.

| STATE ENFORCEMENT | CALRECYCLE OVERSIGHT (BEGINS IN 2022)                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                      |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                   | <p><b>Authorize Waivers</b></p> <ul style="list-style-type: none"> <li>• Low Population</li> <li>• Rural Areas</li> </ul> <p><b>Emergency Circumstances</b></p> <p><b>Oversee and Monitor</b></p> <ul style="list-style-type: none"> <li>• State Agencies and Facilities</li> <li>• Local Education Agencies</li> </ul> | <p><b>Oversee and Monitor for Compliance</b></p> <p><b>Jurisdiction Review</b></p> <ul style="list-style-type: none"> <li>• Conduct joint inspections with jurisdictions</li> <li>• Review Implementation Record</li> </ul> | <p><b>If Violations</b></p> <ul style="list-style-type: none"> <li>• Issue Notices of Violation</li> <li>• May Authorize Corrective Action Plan</li> <li>• Allows up to 24 months to address barriers outside of a jurisdiction's control</li> </ul> |
|                   |                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                      |

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

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

For example:

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

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

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

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

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

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

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

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



**CalRecycle**  
**STAY ENGAGED**

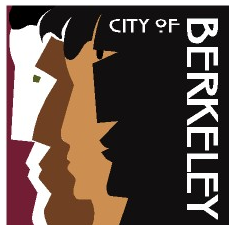
-  <https://www2.calrecycle.ca.gov/Listservs/Subscribe/152>
-  <https://www.calrecycle.ca.gov/organics/slcp>
-  **Presenter's Contact Info**

**CalRecycle** 

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

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





[First Last name]  
Councilmember District [District No.]

## **SUPPLEMENTAL REVISED AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** February 4, 2020

**Item Number:** 2

**Item Description:** Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

**Submitted by:** Councilmember Hahn

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.



**SOPHIE HAHN**

Berkeley City Council, District 5  
2180 Milvia Street, 5th Floor  
Berkeley, CA 94704  
(510) 981-7150  
shahn@cityofberkeley.info

ACTION CALENDAR

February 4, 2020

To: Honorable Mayor and Members of the City Council  
From: Vice Mayor Sophie Hahn  
Subject: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.<sup>1</sup> They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses Officeholder Accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, etc. Cities can place limits on Officeholder Accounts, as Oakland has done.<sup>2</sup> Officeholder Accounts must be registered as official "Committees" and adhere to strict public reporting requirements, like campaign accounts. They provide full transparency to the public about sources and uses of funds.

The FCPC bases its recommendation to prohibit Officeholder Accounts on arguments about "equity" and potential "corruption" in elections. The report refers repeatedly to "challengers" and "incumbents," suggesting that Officeholder Accounts are vehicles for unfairness in the election context.

I believe that the FCPC's recommendations reflect a misunderstanding of the purpose and uses of Officeholder Accounts, equating them with campaign accounts and suggesting that they create an imbalance between community members who apparently have already decided to run against an incumbent (so-called "challengers") and elected officials who are presumed to be

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<sup>1</sup> <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

<sup>2</sup> <http://www2.oaklandnet.com/w/OAK052051>



always running for office. The recommendations do not take into account some important framing: the question of what funds are otherwise available to pay for Officeholder-type expenses for Officeholders or members of the public. Contrary to the conclusions of the FCPC, I believe Officeholder accounts are an important vehicle to redress a significant disadvantage for elected officials, whose ability to exercise free speech in the community and participate in conferences and events related to their profession is constrained by virtue of holding public office, as compared to community members, whose speech rights are unrestricted in any manner whatsoever, and who can raise money to use for whatever purposes they desire.

Outlawing Officeholder Accounts is also posited as a means to create equity between more and less wealthy Officeholders, on the theory that less affluent Officeholders will have less access to fundraising for Officeholder Accounts than more affluent Officeholders. Because there are no prohibition on using personal funds for many of the purposes for which Officeholder Account funds can be used, prohibiting Officeholder Accounts I believe has the opposite effect; it leaves more affluent Officeholders with the ability to pay for Officeholder expenses from personal funds, without providing an avenue for less affluent Officeholders, who may not have available personal funds, to raise money from their supporters to pay for such Officeholder expenses.

The question of whether Officeholder Accounts should be allowed in Berkeley plays out in the context of a number of rules and realities that are important to framing any analysis.

First, by State Law, elected officials are prohibited from using public funds for a variety of communications that many constituents nevertheless expect. For example, an elected official may not use public funds to send a mailing announcing municipal information to constituents, “such as a newsletter or brochure, [...] delivered, by any means [...] to a person’s residence, place of employment or business, or post office box.”<sup>3</sup> Nor may an elected official mail an item using public funds that features a reference to the elected official affiliated with their public position.<sup>4</sup> Note that Electronic newsletters are not covered by these rules, and can and do include all of these features, even if the newsletter service is paid for by the public entity. That said, while technically not required, many elected officials prefer to use email newsletter distribution services (Constant Contact, MailChimp, Nationbuilder, etc.) paid for with personal (or “Officeholder”) funds, to operate in the spirit of the original rules against using public funds for communications that include a photo of, or references to, the elected official.

Without the ability to raise funds for an Officeholder Account, for an elected official to send a paper newsletter to constituents or to use an email newsletter service that is not paid for with public funds, they must use personal funds. A printed newsletter mailed to 5-6,000 households (a typical number of households in a Berkeley City Council District) can easily cost \$5,000+, and an electronic mail service subscription typically costs \$10 (for the most basic service) to \$45 per month, a cost of \$120.00 to over \$500 per year - in personal funds.

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<sup>3</sup> <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

<sup>4</sup> <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

Second, Berkeley City Councilmembers and the Mayor of Berkeley are not paid enough for there to be any reasonable expectation that personal funds should be used for these types of expenses.<sup>5</sup> For many Councilmembers and/or the Mayor, work hours are full time - or more - and there is no other source of income.

Finally, and most importantly, local elected officials are restricted from accepting money or gifts. An elected official cannot under any circumstances raise money to pay for Officeholder expenses such as printed communications, email newsletter services, travel and admission to industry conferences for which the elected official is not an official delegate (e.g., conferences on City Planning, Green Cities, Municipal Finance, etc.), and other expenses related to holding office that are not covered by public funds. Again, without the possibility of an Officeholder Account, an elected official generally must use personal funds for these expenses, allowing more affluent elected officials to participate while placing a hardship or in some cases a prohibition on the ability of less affluent elected officials to undertake these Officeholder-type activities - which support expected communications with constituents and participation in industry activities that improve the elected official's effectiveness.

The elected official's inability to raise funds from others must be contrasted with the ability of a community member - a potential "challenger" who has not yet declared themselves to be an actual candidate - or perhaps a neighborhood association, business or corporation (Chevron, for example) - to engage in similar activities. Nothing restricts any community member or organization from using their own funds - or funds obtained from anyone - a wealthy friend, a corporation, a local business, a community organization or their neighbors - for any purpose whatsoever.

Someone who doesn't like the job an elected official is doing could raise money from family or connections anywhere in the community - or the world - and mail a letter to every person in the District or City criticizing the elected official, or buy up every billboard or banner ad on Facebook or Berkeleyside to broadcast their point of view. By contrast, the elected official, without access to an Officeholder Account, could only use personal funds to "speak" with their own printed letter, billboard or advertisement. Community members (including future "challengers") can also attend any and all conferences they want, engage in travel to visit interesting cities and projects that might inform their thoughts on how a city should be run, and pay for those things with money raised from friends, colleagues, businesses, corporations, foreign governments - *anyone*. They are private citizens with full first amendment rights and have no limitations, no reporting requirements, no requirements of transparency or accountability whatsoever.

The imbalance is significant. Outside of the campaign setting, where all declared candidates can raise funds and must abide by the same rules of spending and communications, *elected officials cannot raise money for any expenses whatsoever, from any source, while community*

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<sup>5</sup> Councilmembers receive annual compensation of approximately \$36,000, while the Mayor receives annual compensation of approximately \$55,000.<sup>5</sup>

*members, including organizations and private companies, can raise as much money as they want from any sources, and use that money for anything they choose.*

Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system, which can limit their ability to “speak” and engage in other activities members of the public are able to undertake without restriction. Officeholder Accounts restore some flexibility by allowing elected officials to raise money for expenses related to holding office, so long as the sources and uses of those funds is made transparent.

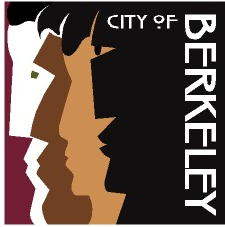
By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of funds beyond the State’s restrictions, to ensure funds are not used for things like family members’ travel, as is currently allowed by the State. Oakland has taken this approach, and has a set of Officeholder Account regulations that provide a good starting point for Berkeley to consider.<sup>6</sup>

I respectfully ask for a vote to send the question of potential allowance for, and regulation of, Officeholder Accounts to the Agenda and Rules Committee for further consideration.

CONTACT: Sophie Hahn, District 5: (510) 981-7150

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<sup>6</sup> <http://www2.oaklandnet.com/w/OAK052051>



Fair Campaign Practices Commission

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** February 4, 2020

**Item Number:** 2

**Item Description:** Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

**Submitted by:** Samuel Harvey; Deputy City Attorney / Secretary, Fair Campaign Practices Commission

Attachment 4 to the report (“Memorandum signed by City Attorney Manuela Albuquerque”) included an attachment which was erroneously omitted from the Council item. Attached is Attachment 4 (for context) along with the additional pages which should be included to appear as pages 16 -17 of the item.



Office of the  
City Attorney

**DATE:** December 28, 1999

**TO:** BARBARA GILBERT,  
Aide to Mayor Shirley Dean

**FROM:** MANUELA ALBUQUERQUE, City Attorney *MA*  
By: CAMILLE COUREY, Deputy City Attorney

**SUBJECT:** APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.<sup>1</sup> For similar reasons, the BERA does not

<sup>1</sup> However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert

Re: Application of Berkeley Election Reform Act To Officeholder Accounts

December 28, 1999

Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.<sup>2</sup> Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission  
Sherry Kelly, City Clerk

City Attorney Opinion Index: ILE 1. and IILG.

CCM

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<sup>2</sup> Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

CITY OF BERKELEY

DATE: December 9, 1991

Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso,  Secretary & Staff Counsel

SUBJECT: APPLICABILITY OF BERA'S CONTRIBUTION LIMIT TO FUNDS RAISED FOR OFFICEHOLDER EXPENSES

BACKGROUND AND ISSUE

I received the attached letter from Richard N. Lerner, treasurer of Friends of Loni Hancock Committee ("Committee"), regarding the applicability of BERA's (Berkeley Election Reform Act) \$250 contribution limit to funds raised to cover officeholder expenses. The Committee would like to raise money to cover activities by the Mayor for which the City has not allocated funds, for example, distribution of a newsletter and international travel to visit Berkeley Sister Cities.

Thus, the issue presented to the Commission is as follows: Is BERA's \$250 contribution limit applicable to funds raised for officeholder expenses?

CONCLUSION

No. The BERA's contribution limitation is only applicable to money raised "in aid of or in opposition to the nomination or election" of a candidate. Since the Committee intends to raise these funds for activities unrelated to the nomination or election of the Mayor, they are not subject to the BERA's \$250 contribution limitation. However, such funds must be reported as contributions under the State Political Reform Act and their expenditure itemized on the disclosure forms.

ANALYSIS

The BERA prohibits candidates for elective office from soliciting or accepting a contribution of more than \$250 from any one contributor. (BERA section 2.12.415.) Thus, funds which fall within BERA's definition of a contribution, are subject to the \$250 limit. In order to determine whether funds raised for officeholder expenses are subject to the contribution limitation, BERA's definition of contribution must be reviewed.

The BERA defines contribution, in part, as follows:

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or

in opposition to the nomination or election of one or more candidates . . . . (Emphasis added.)

Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election for elective office, such funds do not fall within the BERA's definition and are therefore not subject to its \$250 limitation.

However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.<sup>1/</sup> (Government Code section 82015.) Additionally, since the court's ruling in SEIU v. FPPC invalidated the state's \$1,000 contribution limit, funds raised for officeholder expenses are not subject to any limitation.

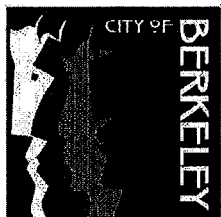
As a final precaution, the Committee should be advised that the FPPC has issued regulations concerning officeholder expenses and it should review them with respect to their interaction with the BERA.

Attachment

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<sup>1/</sup>I spoke with the FPPC's legal staff and confirmed that funds raised for officeholder expenses must be reported as contributions on the campaign disclosure forms.





Office of the City Auditor  
Ann-Marie Hogan, City Auditor

## MEMORANDUM

**Date:** March 14, 2017  
**To:** Councilmember Harrison  
**From:** Ann-Marie Hogan, City Auditor  
**Re:** Council Expense Reimbursement Guidance

The purpose of this memo is to provide you with forms for, links to, and general guidance on Council expense and reimbursement policies. In some cases, the restrictions on expenses for Council Members are more restrictive and more complex than those for City employees, because of state law. You must contact my office prior to incurring expenses for attendance at a conference, seminar, or training, or making travel arrangements. The purchase of routine office supplies should be made using the City's standard procurement procedures and vendors, using a purchase order, but on those occasions when you must pay for something personally and then request reimbursement, you will also need to submit the request to my office. For information regarding the City's procurement procedures, see Administrative Regulation 3.4<sup>1</sup>. Once your City email is active, we'll send this memo to you via email, so you can click on the links to the City's intranet. Please feel free to contact me if you or your staff have questions.

In July 2006, the Berkeley City Council passed Resolution No. 63,412–N.S. to comply with state bill AB1234, which requires all cities to adopt an expense reimbursement policy for legislators in local government, and sets specific requirements for that policy. In September 2013, at the recommendation of the City Attorney, Council rescinded Resolution No. 63,412–N.S. and replaced it with Resolution No. 66,295–N.S. (See attached.) Council adopted the new resolution to incorporate a budget relinquishment and grant policy, and also to clarify the criteria and spending limitations associated with reimbursements for the Mayor and Council Members. Some of the spending limitations include:

- **Mileage and Transit**:- Mileage is reimbursed at the current year's IRS mileage rate and must be accompanied by supporting documentation, such as a Google Maps printout. Use the most economical mode of transportation practical.
- **Meals**: Meals are reimbursed at the per diem rates set forth in City Administrative Regulation 3.9, or the actual cost of the meal, whichever is *lower*.<sup>2</sup> The per diem rate covers the meal, tax,

<sup>1</sup> Administrative Regulation 3.4: <http://icobweb/AR/PDF/AR3-4.pdf>

<sup>2</sup> Administrative Regulation 3.9: [http://icobweb/AR/PDF/2016/Administrative Regulation 3.9.pdf](http://icobweb/AR/PDF/2016/Administrative%20Regulation%203.9.pdf)

tip, and nonalcoholic beverages (alcoholic beverages are not reimbursable). The per diem rate also applies when Council Members are requesting reimbursement for meals paid on behalf of individuals who are conducting city related business, such as Legislative Assistants. Council Members must submit original receipts, a list of attendees and the Statement of Municipal Purpose form (explaining how the expense benefits the City), as part of the reimbursement request. Any expense in excess of the individual meal allowance will not be reimbursed. The current per diem rates are:

- Breakfast \$10
  - Lunch \$15
  - Dinner \$26
- **Airfare:** Airfare is reimbursed based on the most economical mode and class of transportation reasonably consistent with scheduling needs. We suggest that you attach a printout of available fares with your request. Please note that the current language in Resolution No. 66,295–N.S. is out of date because it references a program that is no longer available. This will be corrected in Council’s next revision of that resolution.
  - **Lodging:** Lodging for conferences will be reimbursed at the available group rates. If lodging at the conference rate is not available, reimbursement will be based on either the published conference rate or the government rates published by the U.S. General Services Administration, whichever is greater. Where no conference rate is published, the reimbursement rate will be based on the government rate or the median rate listed on discount travel websites, whichever is greater. Trivago, Priceline, Kayak, Orbitz, Travelocity, and Expedia are examples of travel sites that provide discount rates and may be used to identify a reasonable median rate. Include a printout of the published conference rate, government rate, or travel site rates with the reimbursement request as applicable. Council Members can look up rates by using the U.S. General Services Administration’s Per Diem Rates Look-Up tool.<sup>3</sup> Council Members should select the specific location they are traveling to in the look-up tool.
  - **Registration:** Generally, Council Members should use a purchase order for conference, seminar, and training registrations as defined by Administrative Regulation 3.9. However, Council Members may use their credit card to register, if that is the vendor’s required form of payment. Council Members may not submit their reimbursement request until after the event has taken place, and must include proof of payment, and should include evidence of attendance with their request. Resolution No. 66,295–N.S. also requires that Council members provide a report to Council on training they attend, but we will be recommending that this requirement be deleted since it is not required by AB1234.

<sup>3</sup> Hotel fee tool: <http://www.gsa.gov/portal/category/100120>

When completing a reimbursement request, Council Members must complete and provide the following:

1. FN-024 payment voucher: available in Administration Regulation 3.14<sup>4</sup>, on the City's intranet<sup>5</sup>, or by contacting Accounts Payable at (510) 981-7310. All three sources provide guidance for completing this form.
2. Statement of municipal purpose form: available in City Auditor's Groupware section or by contacting the City Auditor's Office at (510) 981-6750 or auditor@cityofberkeley.info.
3. Supporting documentation: Council member original receipts, proof of payment, official per diem rates, etc.

Council Members must include account codes on the FN-024 payment voucher. The City's standard account codes are *14 digits* long and include both an element and an object code as the last four digits. The most commonly used element and object codes are:

- 4064: mileage/transportation (including taxi or ride-sharing service, such as Uber or Lyft)
- 4063: registration
- 4062: meals and lodging related to conferences, seminars, training, workshops, and similar
- 4061: airfare
- 5550: meals and food for city business, events, functions, and similar business meals

City Administrative Regulation (A.R.) 3.9 establishes the policies and procedures for reimbursing expenses incurred by City staff to attend conferences, meetings, seminars, trainings, and workshops. The regulation complements Resolution No. 66,295–N.S., which establishes the procedures for Council Members. A.R. 3.9 includes the following exceptions for Mayor and Council Members' expenses:

- **Attendance and travel request form:** The Mayor, Council Members, and Legislative Assistants are not required to submit an Attendance and Travel Request form. (A.R. 3.9, page two)
- **Paying for another employee's expenses:** The Mayor, Council Members, and Legislative Assistants may be reimbursed for paying for other legislative staff's or Council Members' expenses incurred for city related business. This is an exception to A.R. 3.9, noted on page three.
- **Business meals:** The Mayor and Council Members may be reimbursed for meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents). City Auditor review and approval is required. Council Members must describe the purpose of their business meal, e.g. issues discussed and how they relate to adopted priorities of Council, on the Statement of Municipal Purpose form and list the attendees. *Meals are reimbursed at the per diem rates as listed above, or the actual cost of the meal, whichever is lower.* (A.R. 3.9, page four) **Note that AB1234 requires that members of a legislative body shall**

<sup>4</sup> A.R. 3.14: <http://icobweb/AR/PDF/AR3-14.pdf>

<sup>5</sup> City Intranet: <http://icobweb/finance/GroupwareAP.FN-024&PettyCash.htm>

**provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.**

- **Receipts:** The Mayor, Council Members, and Legislative Assistants must submit meal receipts. Meals are reimbursed at the per diem rates as listed above, or the actual cost of the meal, whichever is lower. (A.R. 3.9, page four)

cc: Sheila Soo, Administrative Assistant, Auditor's Office

RESOLUTION NO. 66,295-N.S.

CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

WHEREAS, each fiscal year, the City Council appropriates funds in the Mayor and Councilmember's departmental budgets to cover the costs of Mayor and Council staff and non-personnel expenditures which are reasonable and necessary for the performance of the duties of Mayor and Councilmember; and

WHEREAS, the Council needs to ensure that the expenditures are incurred and paid in conformity with the requirements of the City Charter; and

WHEREAS, AB 1234, adopted in 2005 and codified as Government Code Sections 53232, et. seq., requires that all cities adopt an expense reimbursement policy for Mayor and Council expenses; and

WHEREAS, on July 25, 2006, the City Council adopted Resolution No. 63,412-N.S. to establish the expenditure and reimbursement policy required by state law; and

WHEREAS, the Councilmember Office Budget Relinquishment and Grant Policy generally falls under the purview of the existing City Expenditures and Expense Reimbursement for Mayor and Council.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Councilmember Office Budget Relinquishment and Grant Policy enumerated in Exhibit A is incorporated by reference into the policy for City Expenditures and Expense Reimbursement for Mayor and Council.

BE IT FURTHER RESOLVED that Resolution No. 63,412-N.S. and any amendments thereto are hereby rescinded.

BE IT FURTHER RESOLVED that the policy concerning City Expenditures and Expense Reimbursement for Mayor and Council departments is hereby adopted to read as follows:

**CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS**

**I. City Expenditures for Mayor and Council**

The Mayor and Council members shall purchase all office supplies, office equipment, furniture, computers, or any other product, good, or service for the actual and necessary expense of their office in the manner normally applicable to all other purchases of goods and services by the City. Such expenses may include membership in organizations of elected officials and the purchase of newspapers and periodicals that provide information needed for the performance of official duties.

## **II. Reimbursement of Actual and Necessary Expense of Office**

The Mayor and Council members and their staff may be reimbursed for the actual and necessary expenses for the categories of activities set forth below under "Authorized Activities."

### **A. Authorized Activities.**

Travel, meals and/or other food, incidentals, and lodging incurred in connection with the following types of activities set forth below constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled:

1. Communicating with representatives of local, regional, state and national government on City policy positions;
2. Attending educational seminars designed to improve officials' skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City's interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City's interests where the primary purpose of the event is to discuss subjects which relate to City business;
6. Implementing City approved policies;
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum as set forth in this Resolution and meets applicable federal and state standards as to when meal reimbursement may be allowed; and
8. Expenditures for these purposes approved in advance by a Mayor or Council member and undertaken by that person's staff.

Expenditures for all other activities require prior approval by the City Council and must meet an articulated municipal purpose that must be recited in the report proposing the expenditure and the resolution authorizing the expenditure. The policy for relinquishments and grants from Councilmember office budgets is enumerated in Exhibit A.

### **B. Unauthorized Expenses**

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related

- expenses), or other recreational and cultural events;
5. Alcoholic beverages;
  6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
  7. Personal losses incurred while on City business.

Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

### C. Particular Types of Authorized Expenditures Defined

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
3. **Airfare.** Airfares that are equal to or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities, the California State Association of Counties and the State of California are presumed to be the most economical and reasonable for purposes of reimbursement under this policy. Reimbursement for travel must not exceed the rates available through the League program as published by the California Department of General Services.
4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those published by the California Department of General Services shall be considered the most economical and reasonable for purposes of reimbursement under this policy.
6. **Taxis/Shuttles.** Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than

the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.

7. **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rates. If lodging at the conference rate is not available, reimbursement will be based on either the published conference rate or government rates as published by the Federal General Services Agency, whichever is greater. Where no conference rate is published, the reimbursement will be based on the government rate or the median rate listed on priceline.com or similar service, whichever is greater.
8. **Meals.** Meal expenses and associated gratuities will be reimbursed at the rate set forth in Administrative Regulation 3.9.
9. **Telephone/Fax/Cellular.** Council members will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus long-distances charges for those calls.
10. **Airport Parking.** Airport parking must be used for travel exceeding 24-hours.
11. **Other Travel Related Expenses.** Baggage handling fees of up to \$1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.
12. **Miscellaneous Office Products.** Notwithstanding the requirement in Section I, occasionally an elected officer or officer's staff may need to make an immediate small out of pocket purchase of office supplies that are normally ordered by the City for which payment is paid directly to the vendor. The City in accordance with the applicable City Manager Administrative Regulation concerning petty cash refunds may reimburse such purchases.

**D. Cash Advance Policy for Airfare and Hotel Only (per A.R, 3.9)**

From time to time, it may be necessary for an official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the City Auditor, and copied to the City Manager, ten (10) working days prior to the need for the advance with the following information:

1. The purpose of the expenditure(s);
2. Whether the expenditure is for an authorized activity
3. The benefit to the residents of the City.
4. The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
5. The dates of the expenditure(s).



Any unused advance must be returned to the City within five (5) working days of the official's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

**E. Expense Report Content and Submission Deadline**

1. A Statement of Expense must be completed, signed and submitted to the City Auditor for review and forwarding to the Finance Department for payment. The Statement of Expense must document that the expense in question met the requirements of this Resolution. For example, if the meeting is with a legislator, the local agency official should explain whose meals were purchased, what issues were discussed and how those relate to the City's adopted legislative positions and priorities.
2. Officials must submit their Statement of Expense reports to the Auditor's Office within 60 days of an expense being incurred, accompanied by receipts documenting each expense. Restaurant receipts, in addition to any credit card receipts, are also part of the necessary documentation. Receipts for gratuities and tolls under \$5 are not required.
3. Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

**F. Audits of Expense Reports**

All expenses are subject to verification by the City Auditor of compliance with this policy.

**G. Reports**

At the following City Council meeting, each official shall briefly report on meetings attended at City expense. If multiple officials attended, a joint report may be made.

**H. Compliance with Laws**

City officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act.

**I. Violation of This Policy**

Use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following:

1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to \$1,000 per day and three times the value of the resources used; and
5. prosecution for misuse of public resources.

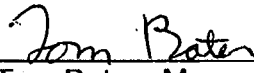
\*\*\*\*\*

The foregoing Resolution was adopted by the Berkeley City Council on September 10, 2013 by the following vote:

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

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Tom Bates, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, CMC, City Clerk

## **Councilmember Office Budget Relinquishment and Grant Policy**

### Introduction – Limitations on the Expenditure of Public Funds

The basic purpose of the City as an entity is to exist and function as a *municipality*. This is also reflected in the Charter, which limits the Council's powers only to those "municipal affairs adequate to a complete system of local government". (Section 38.)

Exercises of this power may not be used solely to further the interests of particular individuals, although they may incidentally benefit private interests:

The exercise of the police power is available only for the purpose of promoting the general welfare, the interests of the public as distinguished from those of individuals or persons. It cannot be used to promote private gain or advantage, except so far as the same may also promote the public interest and welfare, and it is the latter, and not the former, effect which forms the basis of the power and warrants its exercise.  
(*Binford v. Boyd* (1918) 178 Cal. 458, 461.)

The Council's basic powers circumscribe its ability to spend public funds. In other words, the Council cannot spend public funds for purposes that are beyond its authority in the first place. Thus the City may only use its funds for municipal purposes. In any given case the crucial inquiry is whether an expenditure serves such a purpose.

The determination of what constitutes a public purpose is primarily a matter for the legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis.  
(*County of Alameda v. Carlson* (1971) 5 Cal.3d 730, 745-746.)

If the courts find that there is a valid public purpose, they next examine whether the government's actions are reasonably related to effectuating this purpose. (*Tip Top Foods, Inc. v. Lyng* (1972) 28 Cal.App.3d 533, 541.) Public appropriations granted to private interests will not be considered unlawful diversions of public funds when the transaction serves the public interest, merely granting an incidental benefit to the private individual. (*Cane v. City and County of San Francisco* (1978) 78 Cal.App.3d 654, 660.)

### Criteria for Grants of City Funds from Councilmember Office Budgets

Relinquishments and grants for purposes and recipients that fall within the categories listed in Table 1 may be "pre-approved" each fiscal year by Council resolution.

Table 1.

| Recipient                                                                                                                                       | Purpose                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The City (e.g., the Berkeley Public Library, the Berkeley Animal Shelter)                                                                       | Any purpose already being undertaken, because it already serves a public purpose. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.                                                                                              |
| BUSD and other public agencies operating in Berkeley                                                                                            | Any purpose already being undertaken, because it already serves a public purpose, assuming the activity is in Berkeley. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.                                                        |
| Entities with which the City is co-sponsoring a public event in Berkeley (e.g., Earth Day, Solano Stroll).                                      | City co-sponsorship suggests but is not conclusive of public purpose; public purpose would need to be stated, and all such events should be open to the public at no cost. Alternatively, a list of ongoing events that have been determined to serve a public purpose could be developed. |
| Entities in Berkeley to which the City already contributes funds for municipal purposes (e.g., affordable housing or social service nonprofits) | To advance the same public purposes for which the entities are funded. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.                                                                                                         |

Proposed relinquishments and grants that do not meet the criteria for pre-approval, but that meet an appropriate municipal purpose, may be approved by resolution with a majority vote of the City Council.

# CITY OF BERKELEY ADMINISTRATIVE REGULATIONS

**A.R. NUMBER: 3.4**  
**ORIGINAL DATE: 07/94**  
**POSTING DATE: 4/14/2009**  
**PAGE 1 of 5 PAGES**

## **SUBJECT: Purchasing Policy & Purchasing Manual**

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### **PURPOSE**

To ensure that the City receives the most favorable price, quality, and/or service available for all purchases, while adhering to City Council directives. The Precautionary Principle (PP) and Environmentally Preferable Purchasing Policies (EP3) should be considered whenever feasible, and in accordance with the adopted budget. Furthermore, the complete AR provides City employees with appropriate procedures to knowledgeably participate in the procurement process. This is the Executive Summary of AR 3.4, with an introduction to procedures for the City's Purchasing Policy. The Purchasing Manual is the full AR 3.4, and includes the complete policy and procedures. The City Purchasing Manual can be found online at Groupware – Finance: Purchasing Manual.

### **POLICY**

It is the policy of the City Manager that all City purchases, with only specified and approved exceptions, shall be made through a competitive process. Regardless of the value of the purchase, more than one documented quotation, bid, or proposal is strongly encouraged. The City Council periodically sets or adjusts cost levels of purchases for Council review and approval, and the parameters for the formally documented competitive processes.

Responsibility for City Purchases rests with designated positions for implementation of this policy:

1. The City maintains a centralized General Services office through which all purchases of goods and services are processed. Each Department originates requests for procurement.
2. Departments are responsible for requesting the type and quality of product or service required. Sole and single source contracts are discouraged, but may be utilized if approved as provided in the Purchasing Manual. The FUNDS system maintains lists of vendors cross-referenced to commodities and services.
3. The General Services Division is ultimately responsible for determining the means of purchase and the appropriate vendor. All purchases made will be of a quality consistent with the ultimate use intended and will be based on best value to the City of Berkeley, not necessarily on the lowest obtainable price.
4. Only the City Manager has the authority to enter into a contract/agreement, except purchase orders, with a vendor. The authority to enter into a Purchase Order has been delegated to the General Services Manager.
5. A comprehensive list of City restrictions on procurement are addressed in Section I of the manual. In addition to those restrictions prescribed by law the following are prohibitions requested by City Council.

- 
- A) On January 29, 2008 Council requested the City Manager prohibit purchases from Chevron Corporation whenever possible.
- B) On October 28, 2008 Council requested the City Manager research limiting the purchase of bottled water. In response, the City Manager directed staff to eliminate as much as possible the purchasing of individual bottles of water. Bottled water can still be purchased for emergency preparedness and for field events where health and safety are a concern. For all other events, carafes and tap water should be used.

### PROCEDURE

See the current version of the City Purchasing Manual, available online at [Groupware – Finance: Purchasing Manual](#), for complete information and procedures. The following is the table of contents for the Purchasing Manual:

- I. General Procedures, Responsibilities and Requirements
- II. Purchasing Requirements by Price
- III. Purchasing Procedures
- IV. Glossary of Terms
- V. Frequently Asked Questions (FAQs)
- VI. Requirement on Contracting with Certain Entities (Forms & Council Actions)
- VII. Council Guidelines on Purchasing Services and Goods
- VIII. How to Guide
- IX. Reports (In Development)
- X. Forms

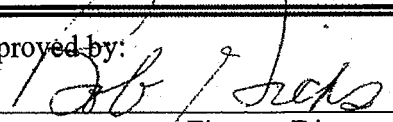
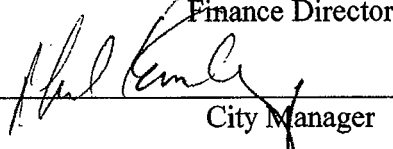
### DEFINITIONS

1. **Procurement:** Procurement refers to the process of managing activities associated with an organization's need to obtain the goods and services required for its operation. To ensure that the correct amount of the product or service is received at the appropriate time, specific steps are taken in the procurement process, including: value assurance; determining which commodities or services are best; choosing the right suppliers and vendors; negotiating the best prices; and awarding contracts. For General Services to conduct the procurement process responsibly, its functions include spend analysis, sourcing, supplier implementation, transaction management, category management, and supplier performance management.
2. **Purchasing:** The processing of a purchase order. The key steps in the process are: departments place and approve requisitions; General Services or departments find the item (sourcing); General Services issues the purchase order (PO); and General Services sends PO to vendor. Upon fulfillment of the order, the City is invoiced and the vendor is paid.

3. Purchasing Requisition (PR): A purchasing requisition is a document that instructs General Services to spend a designated and approved amount from a specific department/division budget account for needed goods or services.
4. Purchase Order (PO): A purchase order is used for the purchase of goods. The PO represents a contractual agreement that is enforceable under law. To have an enforceable contract there must be agreement of the parties, which consists of an offer by one party, acceptance of that offer by the other party, and mutual consideration.
5. Blue-Backed Contract: A blue backed contract is used for the purchase of services. A blue-backed contract represents a contractual agreement that is enforceable under law. To have an enforceable contract there must be agreement of the parties, which consists of an offer by one party, acceptance of that offer by the other party, and mutual consideration.

**Attachments:**

1. Purchasing Thresholds: Ordinance No. 6,875 – N.S.
2. Purchasing Thresholds: Ordinance No. 7,035 – N.S.

|                                                                                                                   |                                                                                                                                                                                                                                                                       |
|-------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>RESPONSIBLE DEPARTMENT:</b><br/>Finance Department</p> <p><b>TO BE REVIEWED/REVISED:</b><br/>Every year</p> | <p>Approved by:</p> <p><br/>_____<br/>Finance Director</p> <p><br/>_____<br/>City Manager</p> |
|-------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## ATTACHMENT 1

## ORDINANCE NO. 6,875-N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 7.18.010B REGARDING EXPENDITURES FOR SPECIFIC IMPROVEMENTS, INCLUDING PLAY AREA IMPROVEMENTS AND EQUIPMENT WHICH EXCEED \$200,000; AMENDING SECTION 7.18.010C REGARDING EXPENDITURES FOR THE PURCHASE OF SUPPLIES, EQUIPMENT, AND MATERIALS WHICH EXCEED \$100,000; AND AMENDING SECTION 7.18.020A REGARDING EXPENDITURE LIMITATIONS IN CASE OF EMERGENCY

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

Section 1. That Berkeley Municipal Code Section 7.18.010 is amended as follows:

**Section 7.18.010 Expenditures pursuant to Chapter Article XI, Sections 67 and 67.5.**

A. Except as otherwise provided in this Title, expenditures pursuant to Article XI, Sections 67 and 67.5 of the Charter of the City of Berkeley, which exceed the amount of \$25,000 shall require Council approval.

B. Expenditures for specific improvements (public projects), including play area improvements and equipment in public parks which exceed the amount of \$200,000 shall require Council approval pursuant to Article XI, Section 67 of the Charter of the City of Berkeley.

C. Expenditures for the purchase of supplies, equipment, and materials which exceed the amount of \$100,000 shall require Council approval.

Section 2. That Berkeley Municipal Code Section 7.18.020A is amended as follows:

**Section 7.18.020 Expenditures pursuant to Charter Article XI, Section 67.4 Emergencies.**

A. Expenditures pursuant to Article XI, Section 67.4 of the Charter of the City which exceed the amount of \$100,000 shall require Council approval; and expenditures for public construction projects and playground improvements and equipment which exceed the amount of \$200,000 shall require Council approval.

B. Notwithstanding subsection A of this section, in the event of a declared emergency under Chapter 2.88, the expenditure limitation under Article XI, Section 67.4 of the Charter of the City shall be an amount not exceeding the amount appropriated by the Council in the most recent appropriation ordinance for the fund from which an expenditure is made and for the purpose authorized for such fund.

C. Whenever purchases are made pursuant to this section, the City Manager shall promptly inform the Council as to the nature and amount.

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

\*\*\*\*\*



ATTACHMENT 2

ORDINANCE NO: 7,035-N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 7.18.010 REGARDING EXPENDITURES FOR SERVICE CONTRACTS TO INCREASE CITY MANAGER'S AUTHORITY

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

Section 1. That Berkeley Municipal Code Section 7.18.010 is amended to read as follows:

Section 7.18.010 Expenditures pursuant to Chapter Article XI, Sections 67 and 67.5.

A. Except as otherwise provided in this Title, expenditures pursuant to Article XI, Sections 67 and 67.5 of the Charter of the City of Berkeley, which exceed the amount of \$50,000 shall require Council approval.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on April 22, 2008, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Capitelli, Maio, Moore, Olds, Wozniak and Bates.

Noes: Spring and Worthington.

Absent: None.

At a regular meeting of the Council of the City of Berkeley held on May 6, 2008, this Ordinance was adopted by the following vote:

Ayes: Anderson, Capitelli, Maio, Moore, Olds, Wozniak and Bates.

Noes: Spring and Worthington.

Absent: None.

ATTEST: Deanna Despain  
Deanna Despain, Deputy City Clerk

Tom Bates  
Tom Bates, Mayor

Date signed: 9 May 08

# CITY OF BERKELEY

## ADMINISTRATIVE REGULATIONS

**SUBJECT: Attendance and Payment of Expenses Associated with Conferences, Meetings, Seminars, Trainings, and Workshops**

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### PURPOSE

To establish policies and procedures for City staff to obtain approval to attend conferences, meetings, seminars, trainings, and workshops; and to establish procedures for the City's direct payment of authorized expenses incurred by an individual for attendance at an approved event or meeting. Obtaining approval of an Attendance & Travel (A&T) Request for an event or meeting, along with associated expenses, ensures that appropriate supervisors and Department Directors have determined an employee's attendance at an event or meeting benefits the City, and that expenses are consistent and in line with the department's adopted budget.

This Administrative Regulation (AR) also complements **Resolution No. 66,295, City Council Expenditure and Reimbursement Policies** for the Mayor and Council (Attachment B); and **Resolution No. 63,413, Establishing Travel and Training Reimbursement Policy for Board and Commission Members** of the Rent Stabilization Board, Board of Library Trustees, and members of other boards or commissions (Attachment C).

### POLICY

It is the policy of the City Manager to authorize Department Directors and Supervisors to approve an employee's request to attend, and to receive payment for expenses associated with conferences, meetings, seminars, training, and workshops.

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## I. APPROVALS

**Note: Employee Must Submit and Obtain Approval for A&T Request before incurring any allowable expenses**

City Approval to attend and incur authorized expenses for an eligible event is based on the following factors:

- A. Expectation that the City will derive a specific benefit from staff attendance.
- B. Employee submission of the authorized A&T Request form (the current version in Groupware), and receipt of approval from her/his Supervisor &/or Department Director in advance of an authorized event, including approval for all associated expenses.
- C. All expenditures and reimbursements for the Mayor and Council must adhere to Resolution No. 66,295 and be approved by the City Auditor.
- D. For routine and, or, recurring meetings an A&T Request must be submitted, approved, and on file in the department in advance of the initial date, and must be renewed annually for each fiscal year.
- E. Department Directors are to complete and submit an A&T Request; no other signature is required for approval.
- F. Exceptions to use of the A&T Request form are: Mayor, Council, and Legislative Assistants (when allowed under Resolution No. 66,295); and members of the Rent Stabilization Board, and Board of Library Trustees. Resolution No. 66,295 or Resolution No. 63,413 governs their approvals, expenditures, and related matters.
- G. Expenditures are provided for in the adopted budget for the employee's department. For specific procedures, see item III. Allowable Expenses.

## II. EXPENDITURES BASICS

Expenditures must be documented in accordance with all related City ARs and other associated policies, using current forms (published in Groupware), including and not limited to:

- AR 3.4 Purchasing Manual: Employees and Mayor/Council must make full use of the City's Procurement procedures and submit purchase requisitions to generate payment for registration prior to travel. Note: Expenses for Board/Commission members and other non-staff or elected officials eligible to attend an event pursuant to the standards in Resolution No. 63,413 must have payments processed by the designated board or commission Secretary, using FN-024 Payment Vouchers through Accounts Payable.
- AR 3.14 FN-024 Voucher Processing
- AR 7.2 Use of Private Vehicles and Mileage Reimbursement
- Auto Record for Mileage Reimbursement: for further details, see AR 7.2 and Transportation: Private Vehicle, below.

- 
- City Council Resolution No. 66,295 City Council Expenditure and Reimbursement Policies.
  - City Council Resolution No. 63,413 Establishing Travel and Training Reimbursement Policy for Board and Commission Members.

In addition:

- Statement of Expense forms and receipts, for reconciliation of an advance &/or reimbursement of expenses incurred, must be submitted to Finance – Accounts Payable within 60 calendar days (30 days for Council/Commission, unless revised) after conclusion of the event. Statement of Expense forms and receipts submitted after this date may not be processed, and individuals assume full, personal responsibility for the costs they incurred.
- Advances or reimbursements to an employee are restricted to expenses for that employee only – they may not cover the expenses of any other employee. Exception to this restriction is for reimbursements only of expenses for Mayor and Council and their Legislative Assistants.

See item V. Advance Payments and Reconciliation.

### III. ALLOWABLE EXPENSES

Expenditures should adhere to the following guidelines. In the event that expenses are incurred that exceed these guidelines, the cost borne or reimbursed by the City will be limited to those that fall within these guidelines, unless approved by an appropriate, designated authority. Proof of payment for all expenses must be provided when reconciling the Statement of Expense form, except as indicated.

- A. **Registration:** Registration fee charged for an authorized conference, meeting, seminar, training or workshop is allowable. Employees should register in a timely manner to take advantage of registration discounts. Payments can be made by Purchase Orders (PO). See also: Payments by Check Using a Purchase Order, below.
- B. **Transportation:** Employees must use the most economical mode and class of transportation reasonably consistent with scheduling needs, coordination with other employees traveling together, and cargo space requirements, and following the most direct and time-efficient route incorporating these factors. If an employee chooses a more expensive mode of travel based on personal criteria, reimbursement will be for the lesser cost of transportation.
  1. **Public Transit** should be used for travel to events and meetings outside the City of Berkeley and in other locations, where accessible by transit. Receipts are not required for these expenses.
  2. **Fleet Vehicle:** see AR 7.1 Use of Fleet Vehicles for details.
  3. **Private Vehicle:** see AR 7.2 Use of Private Vehicles & Mileage Reimbursement for details. If use of a private vehicle is authorized, mileage is reimbursed at IRS

rates currently in effect, in addition to parking fees, bridge and road tolls, which are also reimbursable.

- Unless an alternative is proposed by a department and acceptable to Accounts Payable, expenses for approved use of a private vehicle should be submitted with other expenses associated with attendance at an authorized event or meeting on the Statement of Expense.
4. **Rental Vehicle** charges may be reimbursed under this provision with Department Director approval. Rental fees, receipted fuel expenses, and authorized parking fees, **bridge and road tolls will be reimbursed**.
  5. **Air/Train** fares for reimbursement under this policy should be the most economical and reasonable amount available after the Attendance and Travel Request is approved.
  6. **Travel to/from Airports: Employees will be reimbursed for the most economical and appropriate means**; if there's any question about this, obtain department approval before incurring the expense.
  7. **Taxi or Shuttle** fares may be reimbursed with receipts.
- C. **Lodging:** Cost of accommodations will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay.
1. When travel status is more than twelve (12) hours; or when the location is more than 50 miles from the employee's worksite and residence based on odometer, MapQuest or other reliable documentation; or when an event begins before 8:00am or ends after 5:00pm and a documented evening event requires the employee's attendance.
  2. If lodging is associated with a conference, employees should register in a timely manner to take advantage of discounts or conference rates. Lodging expenses that exceed the group rate published by the conference sponsor must be approved by an appropriate, designated authority.
  3. For non-conference lodging, travelers must request government rates, when available and must be authorized by Department Director.
  4. Costs to upgrade rooms from the basic accommodations provided are not reimbursable, unless authorized by the Department Director.
- D. **Meals: Meals are reimbursable only if travel status is over twelve hours or requires overnight lodging.**
1. **Meal expenses**, including non-alcoholic beverages, tax, and tips, are reimbursable up to a total per diem of \$51: the amounts per meal are \$10 breakfast; \$15 lunch; \$26 dinner; and receipts are not required. Expenses above the authorized amounts are the responsibility of the employee.
  2. **Breakfast &/or evening meetings with meals**, which are scheduled before conferences or meetings commence, or after they adjourn, and that require the employee's attendance, will be considered for reimbursement when

documentation is submitted reflecting the requirement of the employee's attendance for the meeting and location.

3. **Meals included with registration or lodging that are taken at additional expense** will only be considered for reimbursement at the authorized per diem by approval of the Department Director when documentation is submitted reflecting the necessity of this expense, such as:
  4. **Meals during approved travel time** to/from an event or meeting destination may be reimbursable with approval by the employee's Department Director, at the authorized amount for the individual meal(s) (see Meal expenses, above).
  5. **NOTE:** Business meals with other employees, commissioners or elected officials of the City of Berkeley are specifically NOT reimbursable. Exceptions for Mayor and Council must be reviewed and approved by the City Auditor. City funds may also NOT be used for expenses related to holiday activities or other office parties or events, unless exempted by AR 3.3.
- E. **Other Travel Related Expenses:** Expenses for which City staff or officials receive reimbursement from another agency are not reimbursable.

#### IV. PAYMENTS BY CHECK USING A PURCHASE ORDER

Generally, General Services – Procurement will process a PO within three working days, and a check could be issued in the next AP check run. It is the department responsibility to notify Procurement staff when the requisition is approved to ensure timely processing of the PO in order to issue the check promptly. Departments may have internal procedures that require additional time, and employees are expected to familiarize themselves with these internal deadlines.

- A. Expenses for registration should be paid by check using a Purchase Order (PO). This includes online registration when "pay by check" is an option.
- B. Use of an employee's credit card or personal check for registration is only permitted and eligible for reimbursement when time does not permit issuing a City check for payment, and is approved by the Department Director.
- C. Resolution No. 66,295 or Resolution No. 63,413 governs any exceptions for Mayor and Council, or for the Rent Stabilization Board or Board of Library Trustees.
- D. Expenses for accommodations, if lodging is included in the event package, should be paid with the registration fee using a Purchase Order (PO).

#### V. ADVANCE PAYMENTS & RECONCILIATION

An approved A&T Request is required for any request for an advance. Advances are extended only to employees in classifications that are not included on the list of **Classifications NOT eligible for advances**. Advances are limited to approved air/train fare and lodging only.

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In addition:

- Registration or meals, and other transportation expenses may not be advanced to any employee.
- Advances to an employee are restricted to expenses for that employee only – they may not cover the expenses of another employee.
- Departments must maintain a Tracking Worksheet that documents employees' advance requests and reconciliations. These Worksheets must be submitted to the Auditor's Office by the 10<sup>th</sup> working day of each calendar quarter (January, April, July, October), along with copies of correspondence to those employees who have advance reconciliations outstanding. The Auditor's Office will review departmental travel advance worksheets on a sample basis.
- If an advance is issued to an employee and the employee does not attend the event, whether due to personal circumstances, the event being cancelled, or the City intervened to cancel the employee's attendance, the employee must seek recovery of charges and remit the full refunded amount to the City.

**A. Requesting an Advance**

1. Requests for an advance must be submitted to Finance – Accounts Payable at least 10 working days before the event start date. Employees are expected to familiarize themselves with any additional internal deadlines or procedures their departments may require.
2. Requests for an advance must include:
3. Approved Attendance and Travel Request, with documentation showing dates and time, and rates offered for travel and accommodations, including meals provided with the event.
4. Completed FN-024 Payment Voucher (current version on Groupware) with required signatures of approval and all specified back-up documentation. See AR 3.14 for details.

**B. Reconciling an Advance**

1. Each travel advance must be reconciled before an employee can request another; employees are not eligible for multiple advances.
2. Attendance must be documented in the form of a receipt, sign in sheet, or certificate of attendance.
3. Employees must submit a Statement of Expense and receipts to appropriate department staff within 60 calendar days of conclusion of the event (30 days for Council/Commission, unless revised). Statement of Expense forms and receipts submitted after this date may not be processed, and the employee assumes full, personal responsibility for the costs she/he incurred. If an employee fails to reconcile an advance within this timeframe, the City may take disciplinary action.

4. When an advance exceeds the expenses incurred, the employee is responsible for paying the difference by cash or check payable to the City of Berkeley for the balance at the time of reconciliation. Payment is submitted to the City Treasury and a copy of the CR edit report must be attached to the employee's Statement of Expense, in addition to all required original receipts.
5. When an advance is less than the expenses incurred, departments submit an FN-024 Payment Voucher payable to the employee for the difference, along with the employee's Statement of Expense and original receipts for expenses incurred.

## VI. EXPENSE REIMBURSEMENT

See Allowable Expenses, above, for expenses that qualify for reimbursement, and the acceptable rates and limitations for those expenses. To obtain reimbursement of approved expenses incurred:

- A. Employees must submit a completed FN-024 Payment Voucher, and Statement of Expense, and receipts to appropriate department staff within 60 calendar days after conclusion of the event. Statement of Expense forms and receipts submitted after this date may not be processed, and the employee assumes full, personal responsibility for the costs she/he incurred.
- B. Reimbursements to an employee are restricted to expenses for that employee only – they may not cover the expenses of another employee.
- C. Tips, except where documented, are not reimbursable.
- D. Reimbursements are processed by FN-024 Payment Voucher (see AR 3.14) and must include:
  1. Authorized signature/s (see AR 3.12).
  2. Attendance and Travel Request approved by Supervisor &/or Department Director.
  3. Documentation of attendance at the event or meeting (receipt, certificate, sign-in sheet).
  4. Statement of Expense, completed with all required original receipts.
  5. Auto Record for Mileage Reimbursement, if use of a private vehicle was authorized (see AR 7.2 for details and instructions) and these are the only expenses for reimbursement associated with the event.

## VII. OTHER EXCEPTIONS

Any exception not already identified within other sections of this AR must be submitted to, and approved by the employee's Department Director. For Mayor, Council, Legislative Assistants, Rent Stabilization Board or Board of Library Trustees, exceptions must be approved as set forth in the appropriate Resolution.



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Employees may request an exception to the reimbursement rules when original receipts, or other proof of payment such as a canceled check, cannot be provided to verify expenses. The Supervisor and Department Director (or designee) must approve requests for an exception that require the "Approval of Payment Exception" portion of the Statement of Expense and state the necessity for the exception. In addition, the Finance Director must also approve any payment exceptions.

**VIII. DEFINITIONS** (related to Attendance at Conferences, Workshops, Training, Seminars, Meetings)

**Advance**: Payment to an employee with an approved Attendance & Travel Request to purchase air/train travel and qualifying lodging reservations and incur expenses associated with attending the forthcoming event or meeting. See procedures for Requesting an Advance, and Reconciling an Advance.

**Event: Conference**: A gathering of persons associated with a professional, membership or support organization for discussing matters of common concern, which may include presentations, programs and exhibits related to municipal government &/or related functions.

**Event: Workshop, Training Session, or Seminar**: A usually brief intensive educational program for a relatively small group of people that focuses on techniques and skills in a particular field.

**Meeting: Non-Routine Meeting**: A formally arranged gathering for a common purpose that the City will derive a specific benefit from staff attendance.

**Meeting: Routine or Recurring Meeting**: A gathering that occurs in predictable intervals for a common purpose, where attendance is part of the employee's usual role and responsibilities.

**Overnight Stay**: Out-of-town accommodations (room and specified meals) required for an employee to attend an approved event or eligible meeting (see Allowable Expenses for details).

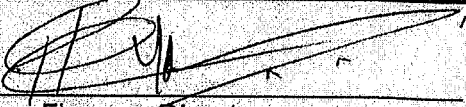
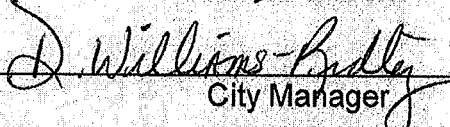
**Payment Documentation**: Documentation is required to provide tangible proof of payment for approved goods or services, and usually specifies: issuer and receiver of receipt; date; purpose or commodity; and dollar amount of the expense. Acceptable back-up for reimbursable expenses includes: original receipts, cancelled checks (copies of front and back), proof of credit card charge and payment (receipt and copy of statement), and printed online payment confirmation with name and amount. Photocopies of receipts are not acceptable.

**Point of Origin**: Location, if other than Worksite, from which authorized travel may originate or to which travel may conclude, related to attendance at an approved event and calculation of expenses for reimbursement.

**Worksite**: Main office or work location where an employee usually performs her/his regular job duties with the City of Berkeley.

**IX. ATTACHMENTS/LINKS**

- A. Classifications NOT eligible for advances
- B. Resolution 66,295 (Mayor/Council Departments)
- C. Resolution 63,413 (Rent Board/Library Trustees)
- D. Attendance & Travel Request
- E. Statement of Expense
- F. AR 7.2 Use of Private Vehicles & Mileage Reimbursement
- G. Auto Record for Mileage Reimbursement
- H. FN-024 Payment Voucher

|                                                      |                                                                                                                       |
|------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|
| <b>RESPONSIBLE DEPARTMENT:</b><br>Finance Department | Approved by: <br>Finance Director |
| <b>TO BE REVIEWED/REVISED:</b><br>Every year         | <br>City Manager                  |

## Attachment A

| JOB CODE | REP UNIT | CLASSIFICATION TITLES<br>INELIGIBLE FOR A TRAVEL<br>ADVANCE | JOB CODE | REP UNIT | CLASSIFICATION TITLES<br>INELIGIBLE FOR A TRAVEL<br>ADVANCE |
|----------|----------|-------------------------------------------------------------|----------|----------|-------------------------------------------------------------|
| 1350     | M        | Accounting Manager                                          | 1374     | Z1       | Economic Development Manager                                |
| 1317     | M        | Animal Services Manager                                     | 2923     | M        | Economic Development Project Mgr.                           |
| 1213     | Z1       | Assistant City Attorney                                     | 1417     | Z1       | Emergency Services Manager                                  |
| 1118     | Z1       | Assistant City Manager                                      | 1402     | Z1       | Employee Relations Officer                                  |
| 8174     | Z1       | Assistant Fire Chief                                        | 1426     | M        | Energy Officer                                              |
| 1801     | Z1       | Assistant to the City Manager                               | 1348     | M        | Equipment Superintendent                                    |
| 1301     | Z1       | Audit Manager                                               | 1121     | Z5       | Executive Director of Rent Board                            |
| 1323     | Z1       | Budget Manager                                              | 1344     | M        | Facilities Maintenance Superintendent                       |
| 1306     | M        | Building and Safety Manager                                 | 8155     | B        | Fire Apparatus Operator EMT                                 |
| 1320     | Z1       | Capital Improvement Programs Manager                        | 8167     | B        | Fire Captain EMT                                            |
| 1107     | Z1       | City Attorney                                               | 1105     | Z1       | Fire Chief                                                  |
| 1102     | Z1       | City Auditor                                                | 8158     | B        | Fire Lieutenant EMT                                         |
| 1120     | Z1       | City Clerk                                                  | 8164     | B        | Fire Lieutenant Training EMT                                |
| 1101     | Z1       | City Manager                                                | 8160     | B        | Fire Prevention Inspector I EMT                             |
| 1315     | M        | Customer Services Manager                                   | 8161     | B        | Fire Prevention Inspector II EMT                            |
| 2303     | Z2       | Deputy City Attorney II                                     | 1418     | Z1       | Fire Prevention Manager                                     |
| 2311     | Z2       | Deputy City Attorney III                                    | 1321     | M        | General Services Manager                                    |
| 1366     | Z1       | Deputy City Auditor for Payroll Mgmt.                       | 1377     | M        | Hazardous Materials Manager                                 |
| 1219     | Z1       | Deputy City Clerk                                           | 1223     | Z1       | Health Officer                                              |
| 1103     | Z1       | Deputy City Manager                                         | 1224     | Z1       | Health Officer (Cert)                                       |
| 1227     | Z1       | Deputy Director of Finance                                  | 1363     | M        | Housing Authority Manager                                   |
| 1229     | Z1       | Deputy Director of Health & Human Services                  | 1352     | M        | Housing Services Manager                                    |
| 1211     | Z1       | Deputy Director of Library Services                         | 1380     | Z1       | Human Resources Manager                                     |
| 1228     | Z1       | Deputy Director of Parks, Recreation & Waterfront           | 1221     | Z1       | Information Systems Manager                                 |
| 1230     | Z1       | Deputy Director of Planning                                 | 1354     | M        | Land Use Planning Manager                                   |
| 1205     | Z1       | Deputy Director of Public Works                             | 1803     | Z5       | Library Building Project Manager                            |
| 1209     | Z1       | Deputy Director of Public Works (Reg)                       | 1466     | Z2       | Library Financial Manager                                   |
| 1204     | Z1       | Deputy Fire Chief                                           | 1465     | Z5       | Library Network Administrator                               |
| 8182     | B        | Deputy Fire Marshal EMT                                     | 1373     | M        | Manager of Economic Development                             |
| 1203     | Z1       | Deputy Police Chief                                         | 1310     | M        | Manager of Engineering                                      |
| 1123     | Z1       | Director of Community Development                           | 1368     | M        | Manager of Environmental Health                             |
| 1104     | Z1       | Director of Finance                                         | 1360     | M        | Manager of Health Promotion                                 |
| 1125     | Z1       | Director of Health and Human Services                       | 1339     | M        | Manager of Mental Health Services                           |
| 1126     | Z1       | Director of Housing                                         | 1362     | M        | Manager of Program Planning and Administration              |
| 1108     | Z1       | Director of Human Resources                                 | 8186     | Z1       | Paramedic Program Supervisor                                |
| 1127     | Z1       | Director of Information Technology                          | 8111     | B        | Paramedic Supervisor I                                      |
| 1115     | Z1       | Director of Library Services                                | 8113     | B        | Paramedic Supervisor II                                     |
| 1112     | Z1       | Director of Parks, Recreation & Waterfront                  | 1327     | M        | Parking Services Manager                                    |
| 1124     | Z1       | Director of Planning                                        | 1332     | M        | Parks Superintendent                                        |
| 1111     | Z1       | Director of Public Works                                    | 1326     | M        | Planning Manager                                            |

| JOB CODE | REP UNIT | CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE | JOB CODE | REP UNIT | CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE |
|----------|----------|-------------------------------------------------------|----------|----------|-------------------------------------------------------|
| 1307     | M        | Disability Programs Manager                           |          |          |                                                       |
| 8148     | E        | Police Captain                                        | 1353     | M        | Revenue Collection Manager                            |
| 1110     | Z1       | Police Chief                                          | 2716     | Z2       | Senior Human Resources Analyst                        |
| 8145     | F        | Police Inspector                                      | 1325     | M        | Seniors Program Administrator                         |
| 8147     | F        | Police Lieutenant                                     | 1314     | M        | Solid Waste and Recycling Manager                     |
| 1473     | Z1       | Police Review Commission Officer                      | 2316     | Z2       | Staff Attorney II                                     |
| 8142     | F        | Police Sergeant                                       | 2317     | Z2       | Staff Attorney III                                    |
| 2458     | Z1       | Psychiatrist Supervisor                               | 1404     | M        | Supervising Civil Engineer                            |
| 1322     | M        | Public Safety Business Manager                        | 1476     | M        | Supervising Systems Analyst                           |
| 1312     | M        | Public Works Maintenance Superintendent               | 1340     | M        | Supervising Traffic Engineer                          |
| 1475     | M        | Real Property Administrator                           | 2712     | Z2       | Training Officer                                      |
| 2890     | M        | Recycling Program Manager                             | 1369     | M        | Waterfront Manager                                    |
|          |          |                                                       |          |          |                                                       |

**RESOLUTION NO. 66,295-N.S.**

**CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES**

WHEREAS, each fiscal year, the City Council appropriates funds in the Mayor and Councilmember's departmental budgets to cover the costs of Mayor and Council staff and non-personnel expenditures which are reasonable and necessary for the performance of the duties of Mayor and Councilmember; and

WHEREAS, the Council needs to ensure that the expenditures are incurred and paid in conformity with the requirements of the City Charter; and

WHEREAS, AB 1234, adopted in 2005 and codified as Government Code Sections 53232, et. seq., requires that all cities adopt an expense reimbursement policy for Mayor and Council expenses; and

WHEREAS, on July 25, 2006, the City Council adopted Resolution No. 63,412-N.S. to establish the expenditure and reimbursement policy required by state law; and

WHEREAS, the Councilmember Office Budget Relinquishment and Grant Policy generally falls under the purview of the existing City Expenditures and Expense Reimbursement for Mayor and Council.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Councilmember Office Budget Relinquishment and Grant Policy enumerated in Exhibit A is incorporated by reference into the policy for City Expenditures and Expense Reimbursement for Mayor and Council.

BE IT FURTHER RESOLVED that Resolution No. 63,412-N.S. and any amendments thereto are hereby rescinded.

BE IT FURTHER RESOLVED that the policy concerning City Expenditures and Expense Reimbursement for Mayor and Council departments is hereby adopted to read as follows:

**CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS**

**I. City Expenditures for Mayor and Council**

The Mayor and Council members shall purchase all office supplies, office equipment, furniture, computers, or any other product, good, or service for the actual and necessary expense of their office in the manner normally applicable to all other purchases of goods and services by the City. Such expenses may include membership in organizations of elected officials and the purchase of newspapers and periodicals that provide information needed for the performance of official duties.

## **II. Reimbursement of Actual and Necessary Expense of Office**

The Mayor and Council members and their staff may be reimbursed for the actual and necessary expenses for the categories of activities set forth below under "Authorized Activities."

### **A. Authorized Activities.**

Travel, meals and/or other food, incidentals, and lodging incurred in connection with the following types of activities set forth below constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled:

1. Communicating with representatives of local, regional, state and national government on City policy positions;
2. Attending educational seminars designed to improve officials' skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City's interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City's interests where the primary purpose of the event is to discuss subjects which relate to City business;
6. Implementing City approved policies;
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum as set forth in this Resolution and meets applicable federal and state standards as to when meal reimbursement may be allowed; and
8. Expenditures for these purposes approved in advance by a Mayor or Council member and undertaken by that person's staff.

Expenditures for all other activities require prior approval by the City Council and must meet an articulated municipal purpose that must be recited in the report proposing the expenditure and the resolution authorizing the expenditure. The policy for relinquishments and grants from Councilmember office budgets is enumerated in Exhibit A.

### **B. Unauthorized Expenses**

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related

- expenses), or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
7. Personal losses incurred while on City business.

Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

### C. Particular Types of Authorized Expenditures Defined

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
3. **Airfare.** Airfares that are equal to or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities, the California State Association of Counties and the State of California are presumed to be the most economical and reasonable for purposes of reimbursement under this policy. Reimbursement for travel must not exceed the rates available through the League program as published by the California Department of General Services.
4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those published by the California Department of General Services shall be considered the most economical and reasonable for purposes of reimbursement under this policy.
6. **Taxis/Shuttles.** Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than

the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.

7. **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rates. If lodging at the conference rate is not available, reimbursement will be based on either the published conference rate or government rates as published by the Federal General Services Agency, whichever is greater. Where no conference rate is published, the reimbursement will be based on the government rate or the median rate listed on priceline.com or similar service, whichever is greater.
8. **Meals.** Meal expenses and associated gratuities will be reimbursed at the rate set forth in Administrative Regulation 3.9.
9. **Telephone/Fax/Cellular.** Council members will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus long-distances charges for those calls.
10. **Airport Parking.** Airport parking must be used for travel exceeding 24-hours.
11. **Other Travel Related Expenses.** Baggage handling fees of up to \$1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.
12. **Miscellaneous Office Products.** Notwithstanding the requirement in Section I, occasionally an elected officer or officer's staff may need to make an immediate small out of pocket purchase of office supplies that are normally ordered by the City for which payment is paid directly to the vendor. The City in accordance with the applicable City Manager Administrative Regulation concerning petty cash refunds may reimburse such purchases.

**D. Cash Advance Policy for Airfare and Hotel Only (per A.R, 3.9)**

From time to time, it may be necessary for an official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the City Auditor, and copied to the City Manager, ten (10) working days prior to the need for the advance with the following information:

1. The purpose of the expenditure(s);
2. Whether the expenditure is for an authorized activity
3. The benefit to the residents of the City.
4. The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
5. The dates of the expenditure(s).



Any unused advance must be returned to the City within five (5) working days of the official's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

**E. Expense Report Content and Submission Deadline**

1. A Statement of Expense must be completed, signed and submitted to the City Auditor for review and forwarding to the Finance Department for payment. The Statement of Expense must document that the expense in question met the requirements of this Resolution. For example, if the meeting is with a legislator, the local agency official should explain whose meals were purchased, what issues were discussed and how those relate to the City's adopted legislative positions and priorities.
2. Officials must submit their Statement of Expense reports to the Auditor's Office within 60 days of an expense being incurred, accompanied by receipts documenting each expense. Restaurant receipts, in addition to any credit card receipts, are also part of the necessary documentation. Receipts for gratuities and tolls under \$5 are not required.
3. Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

**F. Audits of Expense Reports**

All expenses are subject to verification by the City Auditor of compliance with this policy.

**G. Reports**

At the following City Council meeting, each official shall briefly report on meetings attended at City expense. If multiple officials attended, a joint report may be made.

**H. Compliance with Laws**

City officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act.

**I. Violation of This Policy**

Use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following:

1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to \$1,000 per day and three times the value of the resources used; and
5. prosecution for misuse of public resources.

\*\*\*\*\*

The foregoing Resolution was adopted by the Berkeley City Council on September 10, 2013 by the following vote:

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

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Tom Bates, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, CMC, City Clerk

## **Councilmember Office Budget Relinquishment and Grant Policy**

### Introduction – Limitations on the Expenditure of Public Funds

The basic purpose of the City as an entity is to exist and function as a *municipality*. This is also reflected in the Charter, which limits the Council's powers only to those "municipal affairs adequate to a complete system of local government". (Section 38.)

Exercises of this power may not be used solely to further the interests of particular individuals, although they may incidentally benefit private interests:

The exercise of the police power is available only for the purpose of promoting the general welfare, the interests of the public as distinguished from those of individuals or persons. It cannot be used to promote private gain or advantage, except so far as the same may also promote the public interest and welfare, and it is the latter, and not the former, effect which forms the basis of the power and warrants its exercise.  
(*Binford v. Boyd* (1918) 178 Cal. 458, 461.)

The Council's basic powers circumscribe its ability to spend public funds. In other words, the Council cannot spend public funds for purposes that are beyond its authority in the first place. Thus the City may only use its funds for municipal purposes. In any given case the crucial inquiry is whether an expenditure serves such a purpose.

The determination of what constitutes a public purpose is primarily a matter for the legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis.  
(*County of Alameda v. Carlson* (1971) 5 Cal.3d 730, 745-746.)

If the courts find that there is a valid public purpose, they next examine whether the government's actions are reasonably related to effectuating this purpose. (*Tip Top Foods, Inc. v. Lyng* (1972) 28 Cal.App.3d 533, 541.) Public appropriations granted to private interests will not be considered unlawful diversions of public funds when the transaction serves the public interest, merely granting an incidental benefit to the private individual. (*Cane v. City and County of San Francisco* (1978) 78 Cal.App.3d 654, 660.)

### Criteria for Grants of City Funds from Councilmember Office Budgets

Relinquishments and grants for purposes and recipients that fall within the categories listed in Table 1 may be "pre-approved" each fiscal year by Council resolution.

Table 1.

| Recipient                                                                                                                                       | Purpose                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The City (e.g., the Berkeley Public Library, the Berkeley Animal Shelter)                                                                       | Any purpose already being undertaken, because it already serves a public purpose. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.                                                                                              |
| BUSD and other public agencies operating in Berkeley                                                                                            | Any purpose already being undertaken, because it already serves a public purpose, assuming the activity is in Berkeley. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.                                                        |
| Entities with which the City is co-sponsoring a public event in Berkeley (e.g., Earth Day, Solano Stroll).                                      | City co-sponsorship suggests but is not conclusive of public purpose; public purpose would need to be stated, and all such events should be open to the public at no cost. Alternatively, a list of ongoing events that have been determined to serve a public purpose could be developed. |
| Entities in Berkeley to which the City already contributes funds for municipal purposes (e.g., affordable housing or social service nonprofits) | To advance the same public purposes for which the entities are funded. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.                                                                                                         |

Proposed relinquishments and grants that do not meet the criteria for pre-approval, but that meet an appropriate municipal purpose, may be approved by resolution with a majority vote of the City Council.

RESOLUTION NO. 63,413-N.S.

ESTABLISHING TRAVEL AND TRAINING REIMBURSEMENT POLICY FOR  
BOARD AND COMMISSION MEMBERS

WHEREAS, AB 1234, a new state law, requires that all cities adopt an expense reimbursement policy before a legislative body member may receive reimbursement for necessary expenses of office; and

WHEREAS, the Rent Stabilization Board and Board of Library Trustees occasionally authorize their Board members to attend specific training seminars and meetings which are designed to facilitate the Board members' performance of their duties; and

WHEREAS, the City Manager will occasionally authorize the use of City funds for a board or commission member from other boards or commissions to attend training programs or conferences designed to improve that official's skill and information level; and

WHEREAS, the Council has adopted an Expenditure and Reimbursement Policy for the Council and Mayor that sets forth those travel and training expenses for which Council will be reimbursed.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the following policy is adopted for reimbursement of board and commission members for travel and training expenses.

**TRAVEL AND TRAINING REIMBURSEMENT FOR BOARDS/COMMISSIONS**

**A. Authorized Activities.**

Travel, meals and lodging incurred in connection with attending educational seminars designed to improve officials' skill and information levels constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled. For members of most of the City's boards and commission, other than the Board of Library Trustees and Rent Stabilization Board, such activities will occur only on rare occasions when approved by the City Manager and determined to be within the City's budget. The member of the body attending the educational event shall provide a brief report of the activity to the legislative body at a public meeting subsequent to the seminar. The Rent Stabilization Board may also receive travel meals and lodging incurred in connection with communicating with representatives of local, regional, state and national government on Board policy positions to the extent permitted by the Board.

**B. Unauthorized Expenses**

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;

3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related expenses), or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
7. Personal losses incurred while on City business. Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

**C. Particular Types of Authorized Expenditures Defined**

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
3. **Airfare.** Airfares that are equal to or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities, the California State Association of Counties and the State of California are presumed to be the most economical and reasonable for purposes of reimbursement under this policy.
4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those available through the State of California's website (<http://www.catravelmart.com/default.htm>) shall be considered the most economical and reasonable for purposes of reimbursement under this policy.

6. **Taxis/Shuttles.** Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.
7. **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business which reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference sponsor for the meeting in question. Travelers must request government rates, when available. In the event that government rates are not available at a given time or in a given area, lodging rates that do not exceed the IRS per diem rates for a given area are presumed reasonable and hence reimbursable.
8. **Meals.** Meal expenses and associated gratuities should be moderate, taking into account community standards and the prevailing restaurant costs of the area. A helpful source of guidance is Internal Revenue Service per diem rates for meals and incidental expenses, which include adjustments for higher costs locations (*see* Publication 1542 at [www.irs.gov](http://www.irs.gov) or [www.policyworks.gov/perdiem](http://www.policyworks.gov/perdiem)).
9. **Telephone/Fax/Cellular.** Officials will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus long-distances charges for those calls.
10. **Airport Parking.** Airport parking must be used for travel exceeding 24-hours.
11. **Other Travel Related Expenses.** Baggage handling fees of up to \$1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.

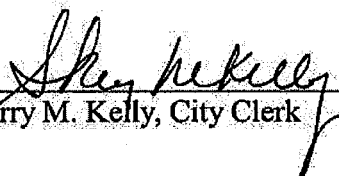
The foregoing Resolution was adopted by the Berkeley City Council on July 25, 2006 by the following vote:

Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Mayor Bates.

Noes: None.

Absent: None.

Attest:

  
 Sherry M. Kelly, City Clerk

  
 Tom Bates, Mayor

# CITY OF BERKELEY ADMINISTRATIVE REGULATIONS

A.R. NUMBER: 3.14  
ORIGINAL DATE: 03/01/96  
POSTING DATE: 08/30/07  
PAGE 1 of 7 PAGES

## SUBJECT: FN-024 Voucher Processing

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### PURPOSE

This AR establishes criteria and procedures for payments using an FN-024.

### POLICY

It is the policy of the City Manager that an FN-024 Payment Vouchers (see Groupware – Finance) is limited to making payments for the following purposes.

- A. City Employees, Mayor and Councilmembers, Commissioners<sup>1</sup>, or Library Trustees:
1. Employee travel advances and reimbursements (see AR 3.9 and forms in Groupware – Finance)
  2. Employee reimbursements for authorized use of a private vehicle (see AR 7.2 &/or AR 3.19 in process and form Auto Record for Mileage Reimbursement published in Groupware – Finance)
  3. Mayor and Council reimbursement for authorized expenses<sup>2</sup> (see Resolution 63,412-NS)
  4. Commissioner and Library Trustee<sup>3</sup> payments<sup>Note</sup> (see AR 3.2 for eligibility criteria; and Resolution 63,413-NS)
- B. Refunds
- C. Other Designated Payments:
1. State and Federal taxes
  2. Loan repayment
  3. Various payments associated with payroll and employee benefits
  4. Certain 1-time miscellaneous items under \$5,000
  5. Police Department Special Enforcement Unit Cash Fund (Special Investigative Bureau/SIB)\*

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<sup>1</sup> “Commissioner” includes Rent Stabilization Board Commissioners for reimbursements or other approved payments.

<sup>2</sup> Requires review by the City Auditor; SIB reimbursement payment also requires approval by City Auditor.

<sup>3</sup> These payments to Commissioners (not including Rent Board) and Library Trustees, are for “... authorized payment in lieu of expenses to members of all Council-appointed boards, commissions, committees, task forces and joint subcommittees who meet certain criteria ...” See AR 3.2 for complete details.



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All other goods and services, including subscriptions and membership dues, must be paid by Purchase Order (see AR 3.4 and the online Purchasing Manual). The Director of Finance must approve any exceptions before purchases are made on behalf of the City.

See AR 3.3, Petty Cash Accounts and forms in Groupware – Finance, for reimbursement for purchases \$50 and under.

### **PROCEDURE**

These steps take you through how to make correct entries and complete an FN-024 Payment Voucher; note that WORDS PRINTED LIKE THIS designate a field for your entries on the Voucher form.

- FN-024 Payments
- Payments to City Employees, Elected Officials, or Qualifying Commissioners
- Payments for Refunds
- Other Designated Payments
- Additional Instructions for all FN-024 Payment Vouchers
- Check Printing & Disbursement
- Related items on Groupware – Finance

### **FN-024 Payments**

Use FUNDS\$ GMBA Master Inquiry [FUNDS\$ > 7 > 1 > 2] to confirm all vendor information, including the designated Name on Checks field displayed at the bottom of the FUNDS\$ screen.

1. For an existing vendor/payee: if there are any differences between the data in GMBA Vendor Master file and the remittance information: please notify Finance – General Services: go to Groupware > Finance > Procurement Materials & Forms: Vendor Information Application, and use this form to update/correct the vendor information, and submit it to General Services.
2. For any new vendor or payee: an original and signed Vendor Information Application and/or W-9 (as applicable for vendor/payment) must be on file with Finance – General Services. In the interim, fax a copy to General Services; then attach a copy of completed Vendor Application and/or W-9 to the FN-024; the signed original/s must be mailed within 3 days.
  - a. Vendor Information Application: go to Groupware > Finance > Procurement Materials & Forms: Vendor Information Application, and have the vendor/payee complete this form.
  - b. Tax Payer ID & Certification Form W-9, or go to <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

### **Payments to City Employees, Elected Officials, Qualifying Commissioners, or Library Trustees**

#### **A. Vendor Information**

1. VENDOR NAME: enter the name of individual, followed by "EMPLOYEE," "MAYOR," "COUNCIL," "COMMISSIONER," "RENT BOARD" or "LIBRARY TRUSTEE," as applicable, and highlight the individual's designation.

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2. VENDOR NO.: enter the number for the individual, as found in FUNDS\$ GMBA Vendor Master Inquiry.
  3. ADDRESS: enter the department and division of payee or Commissioner's mailing address.
  4. Payments to employees, Mayor and Council must be picked up from AP: complete the line for Pick Up Check at AP as instructed under the section Check Printing & Disbursement, below.  
Payments to qualifying Commissioners<sup>4</sup> or Library trustees will be mailed. If payment will be picked up rather than mailed out, complete the line for Pick Up Check at AP as instructed under the section Check Printing & Disbursement, below.

NOTE: FN-024s for Mayor/Council official reimbursements, qualifying Commissioner stipends, and Library Trustees must be reviewed by the City Auditor prior to submitting to Accounts Payable for payment processing. SIB payments must be reviewed and approved by the City Auditor.

- B. Description & Purpose (FUNDS\$ limits this to approximately 25 characters per description field)
  1. DESCRIPTION 1: enter conference name, period/s of mileage reimbursement, or Board or Commission meeting date/s.
  2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for payment is being made on an FN-024, rather than a Purchase Order.
- C. Invoice Information
  1. INVOICE #: enter conference invoice # or date/s. (FUNDS\$ limit of approximately 15 characters)
  2. INVOICE DATE: for advances or reimbursements to an employee, Mayor, Councilmember or Commissioner\*, enter the date of the conference or the last date of the reimbursement period.

### Payments for Refunds

- A. Vendor Information
  1. VENDOR NAME: enter payee name followed by "MISC REFUND" and **highlight** it.
  2. VENDOR NO.: enter the assigned miscellaneous vendor number.
  3. ADDRESS: enter the payee mailing address.
  4. Requests for refunds that include deductions for fees should clearly state the original amount paid to the City, the reason for the deduction, and the balance for the refund owed to payee.
  5. Original receipts must be submitted for a refund. If an original receipt is not available, a completed and signed Customer Request for Refund Without Receipt must be attached.
- B. Description & Purpose (FUNDS\$ limits this to approximately 25 characters per description field)
  1. DESCRIPTION 1: enter nature of purchase or service.

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<sup>4</sup> Including members of the Rent Stabilization Board for reimbursements or other approved payments.

- 
2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for refund is being made.

C. Invoice Information

1. INVOICE #: for refunds, use the receipt number. (FUNDS\$ limit of approximately 15 characters)
2. INVOICE Date: for refunds, enter the original payment date from the original receipt.

**Other Designated Payments** (see list under Policy on 1<sup>st</sup> page)

A. Vendor Information

**FIRST** – For all FN-024 Payments: follow instructions for the initial procedure, above. Then:

1. VENDOR NAME: enter the payee name as it appears in FUNDS\$ GMBA Master Inquiry.
2. VENDOR NO.: enter the vendor # as it appears in FUNDS\$ GMBA Master Inquiry.
3. ADDRESS: when correct information is confirmed or corrected in GMBA, this can be blank.

B. Description & Purpose (FUNDS\$ limits these to approximately 25 characters per description field)

1. DESCRIPTION 1: enter nature of purchase or service.
2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for payment is being made on an FN-024, rather than a Purchase Order.

C. Invoice Information

1. INVOICE #: enter exactly as it appears on the vendor invoice, with dashes, hyphens, etc; if there is no invoice number, use the statement date as the invoice number (FUNDS\$ has a limit of approximately 15 characters).
2. INVOICE Date: enter the invoice or statement date.

**Additional Instructions for all FN-024 Payment Vouchers**

A. Account Codes & Project Code

1. Prior to submitting an FN-024, departments must confirm the account codes and project code used are active, correct for the expenditure, and have sufficient, unencumbered balances.
2. If needed, departments must process any budget adjustments prior to submitting the FN-024.
3. Accounts Payable will return FN-024s to departments for inactive budget or project codes, and/or improper budget codes, or insufficient funds.

B. Authorized Signatures

Each department must complete an Authorized Signatures Card with the designated staff authorized to approve invoices and FN-024s (see AR 3.12 and the Authorized Signatures Card form on Groupware – Finance). When there are changes in personnel authorized to approve an FN-024, the Authorized Signatures Card must be updated with Accounts Payable. 1.

PREPARED BY: signature of the person responsible for completing the FN-024.

- 
2. **AUTHORIZED DEPT SIGNATURE:** must be signed by authorized personnel, as reflected by the Authorized Signatures Card currently on file with Accounts Payable. FN-024s signed by unauthorized personnel will be returned.
- C. Limitations & Justification for 1-time Miscellaneous Items
1. A 1-time request for payment made on an FN-024, which would otherwise be made using a Purchase Order, means 1-time ever – not once a year or once-in-awhile. 1-time requests are only allowed for payments less than \$5,000.
  2. If a request for payment is being made on an FN-024 that would otherwise be made using a Purchase Order, there must be a justification provided on, or attached to, the FN-024. The Finance Director must approve the justification for use of an FN-024 prior to it being submitted for payment.
- D. Compiling the FN-024 Package: Form & Attachments
1. Place the FN-024 on top, with all required documentation stapled to the upper left-hand corner.
  2. If there is documentation required to be included with payment to the vendor, you must provide copies of this documentation, along with an envelope or mailing label addressed to the vendor. This is in addition to documentation required for Accounts Payable. Attach the documentation (duplicate copies and/or mailing stubs) to the upper right-hand corner.
  3. For payment of two or more items on a single FN-024, list each item separately, with its corresponding amount and account codes, on the FN-024. Attach an adding machine tape that totals the original items, and balances to the total on the FN-024.
  4. Employee reimbursements for authorized use of a private vehicle require an attached corresponding Auto Record for Mileage Reimbursement, available in Groupware. In addition, attach an adding machine tape totaling and balancing to the FN-024 for the period submitted.



### **Check Printing & Disbursement**

1. Checks are usually printed weekly on Thursdays. FN-024s received in Accounts Payable by 5:00pm Monday will be processed for printing that week. Changes to this schedule will be emailed to departmental AP processing personnel and/or posted on the City's intranet.
2. Vendor checks will be mailed; see Compiling the FN-024 Package: Form & Attachments for specific requirements. If payment will be picked up rather than mailed, see instructions below.
3. Employee, Mayor, and Council checks will be available to pick up at Accounts Payable after 4:00pm on Thursday.
4. Pick Up Check at Accounts Payable: If it's been indicated on the FN-024 that a designated person will pick up the check, a City employee may sign for and pick up vendor checks. However, vendors may not pick up checks themselves from Finance – Accounts Payable. If payment will be picked up by an employee, rather than mailed out, complete the line in the upper right hand side of the FN-024 for Pick Up Check at AP: enter and **highlight** the name of authorized person the payment may be released to. This employee will be notified by email when the check is available to be picked up from Finance – Accounts Payable.

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**EXCEPTIONS**

Any exceptions to this AR must be approved in writing by the Director of Finance.

|                                                              |                                                                                                                                   |
|--------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| <p><b>RESPONSIBLE DEPARTMENT:</b><br/>Finance Department</p> | <p>Approved by:<br/><br/>Finance Director</p> |
| <p><b>TO BE REVIEWED/REVISED:</b><br/>Every year</p>         | <p><br/>City Manager</p>                      |

**The following items are related to this AR, and can be found on Groupware – Finance:**

1. FN-024 Payment Voucher – Excel file
2. FN-024 Payment Voucher – PDF file
3. AR 3.12 Authorized Signatures for Invoices and FN-024 Payment Vouchers
4. Authorized Signatures Card
5. Vendor Information Application
6. Tax Payer ID & Certification Form W-9
7. Customer Request for Refund Without Receipt
8. Attendance & Travel Expense Forms – web page with links to individual forms



Fair Campaign Practices Commission

PUBLIC HEARING

February 4, 2020

To: Honorable Mayor and Members of the City Council  
From: Fair Campaign Practices Commission  
Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission  
Subject: Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See [Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission](#)).

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

**Action:** M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.

**Vote:** Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused).

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

## BACKGROUND

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

## **Definition of an Officeholder Account**

Under state law, an "officeholder account" refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for "paying expenses associated with holding public office." Officeholder Account funds cannot be used to pay "campaign expenses." This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, [Section 18531.62](#) (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA's reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley's [Public Access Portal](#).) If, however, a complaint is filed that an Officeholder Account is used for



campaign contributions or to pay “campaign expenses,” BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda’s conclusions remain valid and are still controlling guidance.

### **Contributions to Officeholder Accounts**

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official’s Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

### **Expenditures from Officeholder Accounts**

Except for the restriction that Officeholder Account funds cannot be used for “campaign expenses,” BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a “campaign expense,” would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder’s position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent’s name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not “campaign expenses,” also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.<sup>1</sup> Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

## Recommendation

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. ([Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10](#))

### Part 8 - OFFICEHOLDER ACCOUNTS

#### 12.06.810 - Officeholder account prohibited.

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

#### **2.12.157 Officeholder Account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

#### **2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

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<sup>1</sup> Under state law applicable to state elected officials, officeholders may use campaign contributions for “expenses that are associated with holding office.” (Govt. Code, § 89510.) To qualify, expenditures must be “reasonably related to a legislative or governmental purpose.” (*Id.*, § 89512.) “Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.” (*Ibid.*)

- C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPCC guidelines.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identified environmental effects related to the recommendation in this report.

#### RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

#### ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

#### CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

#### CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

#### Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

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

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE  
CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

**BMC 2.12.157 Officeholder account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

**BMC 2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate’s ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

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


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## GOVERNMENT CODE - GOV

**TITLE 9. POLITICAL REFORM [81000 - 91014]** ( Title 9 added June 4, 1974, by initiative Proposition 9. )

**CHAPTER 5. Limitations on Contributions [85100 - 85802]** ( Chapter 5 added June 7, 1988, by initiative Proposition 73. )

### ARTICLE 3. Contribution Limitations [85300 - 85321]

( Article 3 added June 7, 1988, by initiative Proposition 73. )

**85316.** (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

(A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.

(B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.

(C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.

(B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.

(C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18531.62. Elected State Officeholder Bank Accounts.**

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

(1) "Officeholder" means an elected state officer.

(2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.

(3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).

(4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder

account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office.

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:



(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees.

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of

organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision (e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

- (A) Paying outstanding officeholder expenses.
- (B) Repaying contributions to contributors to the officeholder account.
- (C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

**HISTORY**

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.
2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).



Office of the  
City Attorney

**DATE:** December 28, 1999

**TO:** BARBARA GILBERT,  
Aide to Mayor Shirley Dean

**FROM:** MANUELA ALBUQUERQUE, City Attorney *MA*  
By: CAMILLE COUREY, Deputy City Attorney

**SUBJECT:** APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.<sup>1</sup> For similar reasons, the BERA does not

<sup>1</sup> However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert

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apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.<sup>2</sup> Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission  
Sherry Kelly, City Clerk

City Attorney Opinion Index: ILE 1. and IILG.

CCM

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<sup>2</sup> Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT**

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **January 30, 2020**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley 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. 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 at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

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Pursuant to Berkeley Municipal Code Section 2.12.051

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I hereby certify that the Notice for this Public Hearing 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 30, 2020.

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Mark Numainville, City Clerk