



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

**MONDAY, JUNE 29, 2020  
2:30 P.M.**

Committee Members:

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

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

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council Agenda & Rules Committee will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL - <https://us02web.zoom.us/j/82019851685>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial **1-669-900-9128** and Enter Meeting ID: **820 1985 1685**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Agenda & Rules Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record. City offices are currently closed and cannot accept written communications in person.

# AGENDA

## Roll Call

## Public Comment

## Review of Agendas

1. **Approval of Minutes: June 15, 2020**
2. **Review and Approve Draft Agendas:**
  - a. 7/14/20 – 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. **Discussion Regarding Impact of COVID-19 (novel coronavirus) on Meetings of Legislative Bodies**
9. **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: July 7, 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

- 10. Resolution to Incorporate the Practice of 1 Minute and 46 seconds of Mindfulness into City Council Meetings**  
**Referred: June 15, 2020**  
**Due: December 1, 2020**  
**From: Councilmember Davila (Author)**  
**Recommendation:** Adopt a resolution to amend the City Council Meeting Agendas and Council Rules of Procedures to include one minute and forty-six seconds of silence to adopt mindfulness into Council meetings to remember the loss of lives due to police violence.  
**Financial Implications:** None  
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
- 11. Commission Reorganization for Post-COVID19 Budget Recovery**  
**From: Councilmember Droste (Author), Councilmember Robinson (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor)**  
**Referred: June 15, 2020**  
**Due: December 1, 2020**  
**Recommendation:** 1. Reorganize existing commissions with the goal of achieving 20 total commissions; 2. Reorganize existing commissions within various departments to ensure that no single department is responsible for more than five commissions; 3. Reorganize commissions within the Public Works Department to ensure Public Works oversees no more than three commissions; 4. Refer to the City Manager and every policy committee to agendaize at the next meeting available to discuss commissions that are in their purview and make recommendations to the full Council on how to reorganize and address the various policy areas. Commission members should be notified and chairs should be invited to participate. Policy committee members are encouraged to consider the renaming of some commissions in order to ensure that all policy areas are addressed.  
**Financial Implications:** See report  
Contact: Lori Droste, Councilmember, District 8, (510) 981-7180

## 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.*

- None

## Items for Future Agendas

- Discussion of items to be added to future agendas

## Adjournment – Next Meeting Monday, July 13, 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.*

*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.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. 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:**

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.

\* \* \*

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 June 25, 2020.



Mark Numainville, City Clerk

**Communications**

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

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

**MONDAY, JUNE 15, 2020**

**2:30 P.M.**

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Ben Bartlett

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

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# AGENDA

**Roll Call:** 2:35 p.m. All present.

**Public Comment** – 8 speakers

## Review of Agendas

**1. Approval of Minutes: June 1, 2020**

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

**Vote:** All Ayes.

**2. Review and Approve Draft Agendas:**

a. 6/30/20 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Arreguin/Wengraf) to refer the Time Critical Item from Vice-Mayor Hahn to the Budget & Finance Committee for the June 18, 2020 agenda.

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Hahn) to approve the Agenda of 6/30/20 with the revisions noted below.

- *Time Critical Item: Balancing the Budget (Hahn) – referred to Budget & Finance Committee for the June 18, 2020 agenda*
- *Time Critical Item: Policing Approaches (Wengraf) – will be resubmitted by the author for the 7/14/20 meeting*
- *Item Added: Measure GG Tax Rate (City Manager) – added to the Consent Calendar*
- *Item Added: Millionaire Tax (Harrison) – Added to the Consent Calendar; Councilmember Davila added as a co-sponsor*
- *Item 16 Barbara Lee Legislation (Davila) – Mayor Arreguin added as a co-sponsor*
- *Item 19 Support ACA 5 (Robinson) – Councilmembers Davila and Bartlett and Mayor Arreguin added as co-sponsors*
- *Item 25 Mindfulness (Davila) – Referred to the Agenda & Rules Committee*
- *Item 26 Racism as a Public Health Crisis (Davila) – Revised item submitted; Referred to the Health, Life Enrichment, Equity & Community Committee*
- *Item 27 Identify Officers (Robinson) – Councilmembers Harrison and Davila added as co-sponsors; referred to the Public Safety Committee and the Police Review Commission*
- *Item 28 No Police Revolving Door (Robinson) – Councilmember Harrison added as a co-sponsor; referred to the Public Safety Committee and the Police Review Commission*
- *Item 29 Commission Reorganization (Droste) – Referred to Agenda & Rules Committee*

**Vote:** All Ayes.

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

- None selected

**4. Adjournments In Memory** – none

## Scheduling

### 5. Council Worksessions Schedule

- Scheduled Vision 2050 for September 29, 2020
- Moved Ohlone History to the Scheduling List

### 6. Council Referrals to Agenda Committee for Scheduling

- Requested that the Disability Commission present Navigable Cities (#3) on either 9/15/20 or 9/22/20.
- Scheduled the Telecommunications Item (#6) for a special meeting on July 7, 2020 at 4:00 p.m.

### 7. Land Use Calendar – received and filed.

## Referred Items for Review

### 8. Discussion Regarding Impact of COVID-19 (novel coronavirus) on Meetings of Legislative Bodies

**Action:** 3 speakers. Discussion held. The Committee requested that City Council Policy Committees restart meetings for essential business before the summer recess. The Committee will re-evaluate the policy committee meeting needs at the first meeting in August.

## Unscheduled Items

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

- 9. 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: July 7, 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).

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**Financial Implications:** None

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

**Action:** Scheduled for Action Calendar at June 29, 2020 meeting.

## Items for Future Agendas

- None

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 4:12 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on June 15, 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, July 14, 2020
6:00 PM

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

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL INSERT URL. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

To join by phone: Dial 1-669-900-9128 and enter Meeting ID: INSERT MEETING ID. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.

To submit an e-mail comment during the meeting to be read aloud during public comment, email clerk@cityofberkeley.info with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.

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

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

## Preliminary Matters

### Roll Call:

**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 to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, 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. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

## 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 No. 9367 Amendment: Banking Services with Wells Fargo Bank**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to continue the work of unbundling the banking services with Wells Fargo and exercise the final three-year option period to extend Contract No. 9367 with Wells Fargo through May 31, 2023, in the amount of \$3,107,500 for a total of ten (10) year contract amount not to exceed \$10,356,000. This is to ensure business continuity and allow adequate time to continue pursuing the effort to determine alternative banking and related services solutions.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 2. Revenue Contracts: Families First Coronavirus Response Act (FFCRA) Funds for Aging Services Nutrition Programs**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions authorizing the City Manager or her designee to execute any resultant revenue agreements and amendments with Alameda County to provide congregate and home-delivered meals to seniors for the following programs for Fiscal Year 2021:  
1. Congregate Meals in the amount of \$7,500; and  
2. Home Delivered Meals in the amount of \$31,500.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400
- 3. Contract No. 32000117 Amendment: Berkeley Food & Housing Project for Administrative Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32000117 with Berkeley Food & Housing Project (BFHP) to provide administrative services for Berkeley Mental Health (BMH) Flexible Spending Programs and the Russell Street Residence through June 30, 2021 in an amount not to exceed \$1,907,293. This will extend the existing contract by one year and add \$946,419 in funding.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400
- 4. Contract No. 10209 Amendment: Bay Area Hearing Voices Network for Hearing Voices Support Groups**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 10209 with vendor Bay Area Hearing Voices Network (BAHVN) to provide Hearing Voices Support Groups through June 30, 2021, increasing the amount of the contract by \$34,736 for a total not to exceed amount of \$103,178.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400

## Consent Calendar

### 5. Local Housing Trust Fund Application

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to apply for and accept funds from the State of California's Local Housing Trust Fund program in an amount not to exceed \$5,000,000.

**Financial Implications:** See report

Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400

### 6. Contract: Sandstone Environmental Engineering, Inc. for Aquatic Park Central Tide Tubes Maintenance Sediment Removal and Inspection Project

**From: City Manager**

**Recommendation:** Adopt a Resolution: 1. Approving the plans and specifications for the Aquatic Park Central Tide Tubes Maintenance Sediment Removal and Inspection Project (Bid Specification No. 20-11402-C); and 2. Accepting the bid of Sandstone Environmental Engineering, Inc. as the lowest responsive and responsible bidder on the Project; and 3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, with Sandstone Environmental Engineering, Inc., for the Aquatic Park Central Tide Tubes Maintenance Sediment Removal and Inspection Project, in an amount not to exceed \$552,862, which includes a contract amount of \$480,750 and a 15% contingency in the amount of \$72,112.

**Financial Implications:** Various Funds - \$552,862

Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

### 7. Contract No. 32000114 Amendment: Redwood Engineering Construction for James Kenney Park, Picnic, and Play Area Renovation

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 32000114 with Redwood Engineering, by increasing the construction contract amount by \$280,000 for a not-to-exceed amount of \$1,471,342 for the James Kenney Park, Picnic, and Play Area Renovation.

**Financial Implications:** Parks Tax Fund - \$1,471,342

Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

### 8. City Consent to Declaration of Easements Between 2009 Addison and 2015 Addison

**From: City Manager**

**Recommendation:** Adopt first reading of an Ordinance authorizing the City Manager to give City consent to an amended declaration of easements for safety and access between 2015 Addison Street, which is owned by the Berkeley Repertory Theater, and 2009 Addison Street, owned by the Joint Powers Financing Authority, leased by the City of Berkeley, and subleased to the Berkeley Repertory Theater.

**Financial Implications:** None

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

## Consent Calendar

9. **Contract: Shaw Industries, Inc. for Civic Center Building Carpet Replacement Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution: 1. Pursuant to City Charter Article XI Section 67.2 requirements, accepting the California Multiple Award Schedule bid procedures; 2. Approving the California Multiple Award Schedule Contract with Shaw Industries, Inc. for Carpet Replacements at the Civic Center Building. 3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the terms and conditions of the agreements with Shaw Industries, Inc. in an amount not to exceed \$116,635.39, which includes a contingency of \$19,439.23.  
**Financial Implications:** Capital Improvement Fund - \$116,635  
Contact: Phillip Harrington, Public Works, (510) 981-6300
10. **Contract No. 9730B Amendment: Fairbanks Scales, Inc. for Preventative Maintenance and Repairs on the Various Scales at the Berkeley Transfer Station**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9730B with Fairbanks Scales, Inc. for preventative maintenance and repairs on the various scales at the City's Solid Waste Management Center Transfer Station Facility to increase the contract amount by \$50,000 for a total contract amount not to exceed \$190,000, and to extend the contract term by two years to June 30, 2023.  
**Financial Implications:** Zero Waste Fund - \$190,000  
Contact: Phillip Harrington, Public Works, (510) 981-6300

## Action Calendar

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

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

*The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.*

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

## Action Calendar – 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, use the "raise hand" function to be recognized and to determine the number of persons interested in speaking at that time.*

## Action Calendar – Public Hearings

*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.*

### 11. **Permanent Local Housing Allocation Application**

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion, adopt a Resolution authorizing the City Manager to apply for and accept funds from the State of California's Permanent Local Housing Allocation program in an amount not to exceed \$7,761,504 to support local affordable housing and homeless services initiatives.

**Financial Implications:** See report

Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400

### 12. **California Public Finance Authority Bond Financing for 1717 University Avenue**

**From: City Manager**

**Recommendation:** Conduct a public hearing under the requirements of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and the Internal Revenue Code of 1986, as amended, and upon conclusion, adopt a Resolution approving the issuance of the bonds by the California Public Finance Authority (CalPFA) for the benefit of the 1717 University Avenue rental housing development.

**Financial Implications:** See report

Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400

### 13. **ZAB Appeal: 1533 Beverly Place, Administrative Use Permit #ZP2018-0153**

**From: City Manager**

**Recommendation:** Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the decision of the Zoning Adjustments Board to approve Administrative Use Permit #ZP2018-0153 to enlarge an existing 1,212 square-foot, one-story single-family dwelling with a non-conforming front setback on a 4,200 square-foot lot by constructing a 1,035 square-foot addition, including a new second story that would increase the average building height from 16 feet 3½ inches to 23 feet 7½ inches, and adding a fifth bedroom, and dismiss the appeal.

**Financial Implications:** None

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

## Action Calendar – Old Business

**14. Safety for All: The George Floyd Community Safety Act - Budget Request to Hire a Consultant to Perform Police Call and Response Data Analysis**

*(Continued from June 16, 2020)*

**From: Councilmember Bartlett (Author), Mayor Arreguin (Co-Sponsor), Councilmember Harrison (Co-Sponsor)**

**Recommendation:**

1. Refer to the Thursday, 6/18/2020 Budget & Finance Policy Committee and the FY 2020-21 Budget Process the \$150,000 to: a. Hire a consultant to conduct a data-driven analysis of police calls and responses to determine the quantity and proportion of these calls that can be responded to by non-police services. The third-party consultant must be hired and engaged in work within three months of the item's passage. b. Hire a consultant to conduct an analysis of the Berkeley Police Department's budget and its expenditures by call type. The third-party consultant must be hired and engaged in work within three months of the item's passage.
2. Direct the City Manager to implement initiatives and reforms that reduce the footprint of the police department and limit the police's response to violent and criminal service calls.

**Financial Implications:** See report

Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

## Action Calendar – Old Business

### 15. Changes to the Berkeley Municipal Code and City of Berkeley Policies with Respect to Local Emergency Declarations and First Amendment Curfews

*(Continued from June 16, 2020)*

**From: Councilmember Hahn (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Harrison (Co-Sponsor), Mayor Arreguin (Co-Sponsor)**

**Recommendation:**

1. Direct the City Manager to return to the City Council for adoption amendments to the Berkeley Municipal Code and/or policies to approve that clarify and codify the following with respect to the declaration of a Local Emergency:

a. A Local Emergency can only be declared by the Director of Emergency Services if a regular or special meeting and session of the City Council cannot be called due to physical impossibility of holding a meeting, because a quorum cannot be established, or because the urgency of the Local Emergency is such that waiting 24 hours for the City Council to convene a session and/or Special Meeting would endanger the community;

b. Should the Director declare a Local Emergency without action of the City Council (due to one of the reasons stated at (a), above), Council ratification of such action occurs at the first possible opportunity, even if it requires calling a Special Meeting and/or session of the Council; and

c. The applicable statutory and legal standards (Federal, State and Local) for calling a Local Emergency shall be presented to the City Council when seeking declaration or ratification of a Local Emergency, along with facts to support meeting those standards, so that the City Council, likely acting under rushed and exigent circumstances, is able to make a carefully considered and fact-based determination that declaration of such Local Emergency conforms with the legal standards and is supported by facts.

2. Direct the City Manager to return to the City Council for adoption amendments to the Berkeley Municipal Code and/or policies to approve that clarify and codify policies, terms and procedures for the order, scope, terms, duration, and all other elements and conditions of curfews called in response to, or likely to have the effect of limiting or banning, planned, expected or reasonably foreseeable first amendment activity, including rallies, marches, demonstrations and assemblies of all kinds (“First Amendment Curfews”), as enumerated (1-8) under the “Background” section of this item, below.

3. Advise the City Manager and/or Director of Emergency Services that approval of this item represents the will and direction of the City Council with respect to declarations of Local Emergencies and imposition of First Amendment Curfews, and should the occasion to declare a Local Emergency or impose a First Amendment curfew arise prior to formal Council adoption of the requested amendments and policies, the City Manager and/or Director of Emergency Services shall, to the greatest extent possible under existing law, strive to encompass actionable elements, and meet spirit, of this item.

**Financial Implications:** See report

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



## Action Calendar – New Business

### 16. Renaming Shattuck Avenue 'East'

**From: City Manager**

**Recommendation:** Adopt a Resolution renaming the two block portion of Shattuck Avenue 'East' from Center Street to University Avenue, including the eastern facing block faces of Shattuck Square and Berkeley Square to one of six names recommended by the Public Works Commission (PWC) and affirming the western segment of Shattuck Avenue, including the western facing block faces of Shattuck Square and Berkeley Square will be known as Shattuck Avenue.

**Financial Implications:** See report

Contact: Jordan Klein, Economic Development, (510) 981-7530

### 17a. Compiling Commission Recommendations in a Reference Manual

**From: Homeless Commission**

**Recommendation:** The Homeless Commission recommends that Council refer to staff to develop a procedure for staff secretaries to all City of Berkeley commissions to compile all commission recommendations, whether in report or letter form, in a binder. Such binder shall also track the outcomes of all commission recommendations including action taken by Council and subsequent implementation of Council action. One copy of the binder shall remain with the staff secretary; another copy of the binder shall be available as a resource in the City Clerk's office. The City Clerk shall index all subject matters of commission proposals so that there is cross-referencing of all subjects that commissions have addressed. This reference manual shall be available for use by commissions to share information, the Mayor and Council, staff and members of the public. The City Clerk shall also provide this information online.

**Financial Implications:** See report

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

### 17b. Companion Report: Compiling Commission Recommendations in a Reference Manual

**From: City Manager**

**Recommendation:** Refer the commission recommendation to the City Manager to 1) consider the impacts on staffing levels, approved Strategic Plan projects, and existing baseline services in the context of the projected budget shortfall for FY 2021 and the hiring freeze currently in effect; and 2) work within existing resources to facilitate information sharing among commissions on items referred from the City Council.

**Financial Implications:** See report

Contact: Mark Numainville, City Clerk, (510) 981-6900; Brittany Carnegie, Commission Secretary, (510) 981-5400

## Action Calendar – Policy Committee Track Items

**18. Providing our Unhoused Community in the City of Berkeley with Menstrual Products**

**From: Councilmember Davila (Author)**

**Recommendation:**

1. Adopt a Resolution to create an allocation of the budget towards annual purchasing of menstrual products and dispensers that will be distributed in three ways: A. Regularly scheduled replenishment of dispensers across public restrooms B. Provide supplies to the City supported shelters, mental health offices, shower programs, and navigation centers C. Homeless Outreach to include distribution to encampments and RV dwellers
2. Resolution will allocate \$10,000 of the budget for the first year, and \$8,000 for every consecutive year

**Financial Implications:** See report

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

**19. Amending Council Rules of Procedures such that items submitted by the Mayor or Councilmembers be placed directly on the City Council Agenda to allow the whole City Council to review and take action on the submitted item to ensure equity in the process**

**From: Councilmember Davila (Author)**

**Recommendation:** Adopt a Resolution to amend Council Rules of Procedures Section C-1 and G-1 such that items submitted by the Mayor or Councilmembers be placed directly on the City Council agenda rather than beginning with submission to commissions or Council Policy Committees to ensure equity in the process.

**Financial Implications:** None

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

**20. Declare Juneteenth as a City Holiday for the City of Berkeley**

**From: Councilmember Davila (Author)**

**Recommendation:**

1. Adopt a resolution declaring Juneteenth as a City Holiday for the City of Berkeley
2. Send copies of this resolution to State Assemblywoman Buffy Wicks, State Senator Nancy Skinner, and United States Congresswoman Barbara Lee.

**Financial Implications:** See report

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

## Action Calendar – Policy Committee Track Items

### 21. Support Redistribution of City Resources and Operations from the Berkeley Police

**From: Councilmember Davila (Author)**

**Recommendation:** Adopt a resolution supporting Redistribution of City Resources and Operations from the Berkeley Police, and taking the following actions: 1.

Request that any function that is currently served by Berkeley Police but would be better served by trained city staff or community partners should be transferred out of the police department with all due haste 2. These functions include all non-emergency calls, mental health calls (including wellness checks), calls related to intoxication, calls related to homelessness, calls involving domestic violence, and any other calls that can be served by any other city resource, and 3. The current proposed police budget for 2021 (\$72,774,334) will be reduced by an amount of 50% (\$36,387,167) or greater and funding of community programs and non-police city agencies will be increased by a commensurate amount, and 4. Reducing the Berkeley Police Department budget by at least 50 percent will allow funding for but not limited to youth programs or community groups and programs, housing and homeless services, food security, mental health services, healthcare, creation of new city jobs, and public health services. 5. Calls involving domestic violence, homelessness, and mental health require specialized responding staff who have been trained in de-escalation and are able to provide direct services to Berkeley residents who are in crisis. The City Auditor is hereby directed to prepare a report to Council that reveals the amount of funding that will become available as a result of these reductions in police responsibilities. 6. The City Manager will identify the expertise needed for non-police responses to these calls, taking into account comparable approaches including CAHOOTS as well as existing local programs which could possibly expand with additional funding such as: the Berkeley Free Clinic, Building Opportunities for Self Sustainability (BOSS), and the Women's Daytime Drop-in Center, Consider the Homeless and others, and initiate an RFP process for community organizations to provide those services. 7. The City Manager should create a plan for a non-police hotline that can receive 911 calls and connect those calls with non-police resources as appropriate, either by expanding the 311 mandate or creating a new city agency (perhaps 811 recognizing 8 to Abolish). 8. The City Council requests the Berkeley Unified School District and all Berkeley schools. both public and private to end programs that bring police officers into the schools, and to do everything within their power to protect undocumented students and families and to safeguard their information and prevent it from being shared with from police, including ICE (Immigration and Customs Enforcement). 9. That general fund dollars are not to be expended to pay out settlements resulting from police officer negligence, brutality, or murder. Those settlements will henceforth be deducted from police department budgets. 10. That the Police Review Commission and Peace and Justice Commission are instructed to form a joint committee to annually review police responsibilities and make recommendations to the City Council regarding additional functions that could better be served by non-police staff.

**Financial Implications:** See report

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

## Action Calendar – Policy Committee Track Items

**22. Referral to City Manager to Re-imagine Policing Approaches to Public Safety Using a Process of Robust Community Engagement, to Develop a Path Forward to Transforming Public Safety and Policing in Berkeley**

**From: Councilmember Wengraf (Author), Councilmember Davila (Co-Sponsor)**

**Recommendation:** We must have our communities of color, particularly our African American community, at the forefront of conversations to re-imagine approaches to policing and public safety in Berkeley. The people most disparately impacted must have a vital role in the creation of new ways to enhance accountability, compassion and transparency as we move forward to address racial inequities and disparate outcomes of policing in Berkeley.

This item is an urgent referral to the City Manager to act quickly and thoughtfully in creating substantial community engagement to develop a new model for policing in Berkeley, to address racial inequities, ensure community health and safety needs are met, and to build trust within our communities of color.

This work should begin with public, transparent community forums to listen, learn and receive people’s ideas about how policing should be re-imagined and transformed so that communities of color can be safer within their neighborhoods, the City of Berkeley, and trust in the Berkeley Police Department can begin to be rebuilt. The City Manager will send a list of recommendations to the full Council for review and public input.

**Financial Implications:** Staff time

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

**23. BerkDOT: Reimagining Transportation for a Racially Just Future**

**From: Councilmember Robinson (Author), Councilmember Droste (Author), Councilmember Bartlett (Author), Mayor Arreguin (Author)**

**Recommendation:** Refer to the City Manager, the FY 2021-22 budget process, and the proposed community engagement process to reimagine public safety to pursue the creation of a Berkeley Department of Transportation (BerkDOT) to ensure a racial justice lens in traffic enforcement and the development of transportation policy, programs, & infrastructure.

**Financial Implications:** See report

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

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

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

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be posted on the City's website at <http://www.cityofberkeley.info>.

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

**COMMUNICATION ACCESS INFORMATION:**

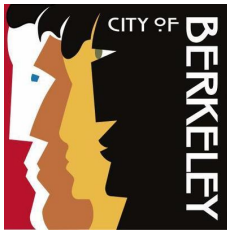
To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.



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

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Councilmember Ben Bartlett  
City of Berkeley, District 3

## EMERGENCY ITEM AGENDA MATERIAL

**Meeting date:** June 16, 2020  
**Item Description:** Safety for All: The George Floyd Community Safety Act - Budget Request to Hire a Consultant to Perform Police Call and Response Data Analysis  
**Submitted by:** Councilmember Ben Bartlett (Author), Mayor Jesse Arreguin, and Councilmembers Kate Harrison (Co-Sponsor)

### Rationale:

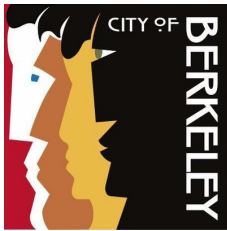
Pursuant to California Government Code Section 54954.2(b) (2), Councilmember Ben Bartlett submits the attached item to the City Council for placement on the June 16, 2020 meeting agenda. Gov. Code Section 54954.2(b) (2) states that “Upon a determination by a two-thirds vote of the members of a legislative body presents at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).”

This item meets the criteria for “immediate action” as follows:

- 1) The budget is being considered and there is public outcry for Council to take action.
- 2) Racism Is a Public Health Emergency.
- 3) Council is considering numerous police items right now.

Hundreds of thousands of people in every state have marched in solidarity to call for an end to police brutality, to demand police accountability, and to reform law enforcement, bringing justice to the Black lives and people of color who have been wrongfully harmed at the hands of the criminal justice system. Police brutality has taken the lives of 46-year-old Black man George Floyd, 26-year-old Black woman Breonna Taylor, and countless other people of color. Often resorting to violent means of punishment, police officers are not trained to handle noncriminal and nonviolent situations. Unfortunately, the lack of sufficient data and reporting has allowed police misconduct to be swept under the rug, which has increased police militarization, failed to prioritize community safety, and prevented providing the civilian with the necessary treatment to resolve the situation.

To respond to urgent calls for police transparency and accountability, this item requests the City Manager to hire third-party consultants to conduct a data-driven analysis of the Berkeley Police Department’s calls, responses, budget, and expenditures to determine which calls can be serviced to non-law enforcement agencies, ensuring noncriminal and nonviolent situations are properly handled by trained community professionals.



Councilmember Ben Bartlett  
City of Berkeley, District 3

ACTION CALENDAR

July 14, 2020

*(Continued from June 16, 2020)*

To: Honorable Mayor and Members of the City Council  
From: Councilmember Ben Bartlett (Author), Mayor Jesse Arreguin, and  
Councilmembers Kate Harrison (Co-Sponsor)  
Subject: Safety for All: The George Floyd Community Safety Act - Budget Request to  
Hire a Consultant to Perform Police Call and Response Data Analysis

RECOMMENDATION:

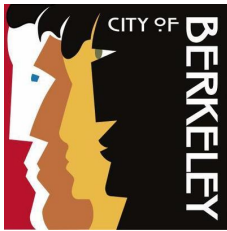
1. Refer to the Thursday, 6/18/2020 Budget & Finance Policy Committee and the FY 2020-21 Budget Process the \$150,000 to
  - a. Hire a consultant to conduct a data-driven analysis of police calls and responses to determine the quantity and proportion of these calls that can be responded to by non-police services. The third-party consultant must be hired and engaged in work within three months of the item's passage.
  - b. Hire a consultant to conduct an analysis of the Berkeley Police Department's budget and its expenditures by call type. The third-party consultant must be hired and engaged in work within three months of the item's passage.
2. Direct the City Manager to:
  - a. Implement initiatives and reforms that reduce the footprint of the police department and limit the police's response to violent and criminal service calls.

CURRENT SITUATION

In all 50 states and more than 145 cities, Americans are calling to end police violence and brutality, to legitimize police accountability, and to transform the police system to protect the safety of communities and people of color. Police violence and brutality led to the death of a 46-year-old Black man George Floyd and the murders of other Black people, igniting a flame that has been brewing for a long time. These events of police violence gave rise to a wave of demonstrations and demands for change, including many in the City of Berkeley.

Due to the Coronavirus pandemic, the City of Berkeley is facing a nearly 30+ million dollar budget deficit, sharply stalling economic growth with effects that parallel the Great Depression. At the same time, the City is projected to undergo an increase in people experiencing homelessness, trauma, and mental health crises. Therefore, the City must ensure that each dollar is spent for the residents' best interest and will produce the maximum return.





Councilmember Ben Bartlett  
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In order to better respond to the needs of the Berkeley community, it is critical that the Council takes local-level action on police reform. In particular, the City must examine the types of calls and responses from the police department and analyze the agency's budgets and expenditures according to call type.

As a component of the **REDUCE, IMPROVE, RE-INVEST** framework, this item works towards the REDUCE goal: *the City should implement initiatives and reforms that reduce the footprint of the police department and limit the police's response to violent and criminal service calls.* Specifically, this item proposes to hire an outside consultant to conduct an analysis of police calls and responses as well as the department budget.

With military-style techniques and structure, police officers are trained to combat crime in a manner that exerts violence through punishments, establishing a monopoly on force in communities. While law enforcement is supposed to protect our communities and keep us safe, crime waves from the 1970s and 1980s have transformed the police community into a body for crime control, maintaining such focus until modern-day despite declines in criminal activity<sup>1</sup>. With this focus on crime control, police officers lack the necessary training to adequately respond to noncriminal and nonviolent crimes. Non Criminal crimes refer to issues involving mental health, the unhoused community, school discipline, and neighborhood civil disputes<sup>2</sup>. Nonviolent crimes are categorized as property, drug, and public order offenses where injury or force is absent<sup>3</sup>. When police respond to these types of matters, they resort to violent means of arrest or problem escalation because they are ill-equipped and not trained to resolve the underlying issues.

According to the Vera Institute of Justice's report between 1980 and 2016, more than 10.5 million arrests are made every year; only 4.83 percent of those arrests were for violent offenses<sup>4</sup>. Eighty percent of these arrests were for low-level offenses, such as "disorderly conduct," non-traffic offenses, civil violations, and other offenses. This criminalization may be attributed to the arrest quotas for police productivity, which promotes punishment by rewarding the number of arrests for police funding instead of

<sup>1</sup> <https://www.theatlantic.com/ideas/archive/2020/06/first-step-figuring-out-what-police-are/612793/>

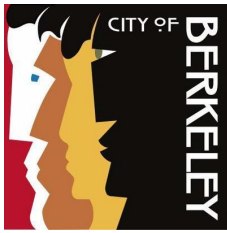
<sup>2</sup> <https://www.latimes.com/california/story/2020-06-12/san-francisco-police-reforms-stop-response-noncriminal-calls>

<sup>3</sup>

<https://www.bjs.gov/content/pub/ascii/pnoesp.txt#:~:text=Nonviolent%20crimes%20are%20defined%20as%20possession%2C%20burglary%2C%20and%20larceny.>

<sup>4</sup>

<https://arresttrends.vera.org/arrests?compare%5Boffense%5D%5Bpart1%5D=part1&compare%5Boffense%5D%5Bpart2%5D=part2#infographic>



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finding solutions to these issues<sup>5</sup>. This high percentage of low-level offenses resulted in arrest when other nonviolent, rehabilitative methods could have occurred from the solutions of community workers with the experience to handle these situations.

It is imperative that the City of Berkeley develops, implements, and enforces a clear and effective roadmap towards making real change, ending anti-Black racism, stopping police violence, and holding police accountable for their actions. Thus, the Council should direct the City Manager to hire third party consultants to conduct a data-driven analysis of police calls and responses as well as their budget and expenditures in order to determine ways in which experienced community workers can reduce the police footprint by addressing noncriminal situations. We recommend that community workers also resolve nonviolent situations.

## BACKGROUND

In order to achieve the aforementioned goals, the City must implement a series of important law enforcement reforms and take action by initiating the following:

### **REDUCE:**

#### **I. Hire a consultant to conduct a data driven analysis of police calls and responses.**

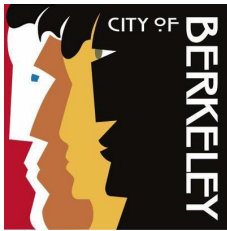
University of Denver Political Science Professor Laurel Eckhouse stated, “One method of reducing police presence... is to separate and reassign to other authorities various problems currently delegated to the police... such as the problems of people who don’t have housing... mental health issues... and even things like traffic<sup>6</sup>.” Community organizations, civilian workers trained in mental health situations, or neighborhood problem-solvers would better address these specific issues due to their experience, ensuring that the police are not the only force addressing these issues and promoting community vitality<sup>7</sup>.

Conducting a data driven analysis of police calls and responses would signify a report of the calls and responses that police receive and would inform the city where to better allocate resources to resolve specific issues. Noncriminal and nonviolent activities can thus be properly addressed by those who are equipped to handle these situations and would relieve law enforcement from these calls to then pursue more serious criminal situations. For example, the San Francisco Police Department receives approximately 40,000 calls per year about homeless

<sup>5</sup> <https://theintercept.com/2019/01/31/arrests-policing-vera-institute-of-justice/>

<sup>6</sup> <https://www.stanforddaily.com/2020/06/04/police-abolition-looks-like-palo-alto/>

<sup>7</sup> <https://www.theatlantic.com/ideas/archive/2020/06/first-step-figuring-out-what-police-are/612793/>



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people on the streets<sup>8</sup>. Social workers who can help unhoused citizens and those with mental health disorders are better equipped to help these citizens receive proper treatment while also protecting the safety of our communities, which would give law enforcement time to handle other crimes.

One suggestion to reduce the costs of policing is to boost productivity by allocating a portion of the calls for service to community organizations who have the resources and training to handle such situations<sup>9</sup>. For example, in Mesa, Arizona from 2006 to 2008, a third of calls for service are handled by civilians; these calls are for incidents of “vehicle burglaries, unsecured buildings, accidents, loose dogs, stolen vehicles, traffic hazards, and residential burglaries<sup>10</sup>.” Approximately half of calls for service in Mesa are handled by police officers, but among those, there are ways to reduce police authority. For example, 11 percent of those calls that police officers handled were in response to burglary alarms, where 99 percent were false. Six percent of those calls included “juveniles disturbing the peace.” This situation in Mesa demonstrates the possibility of reduced police force in exchange for community based response teams who can better resolve these issues with their experience.

The City Manager should hire a third party consultant within three months of this item’s passage to conduct the data analysis, ensuring that the report is completed in an impartial and timely manner.

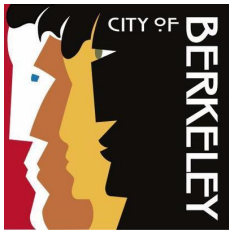
The third party consultant should create a report with the following information by analyzing and gathering the data from the police department, reporting their findings to the City every two years. We recommend the following data to be considered for analysis:

- a. Number of calls the police department receives per day, week, month, and year, which will be categorized into noncriminal, misdemeanor, nonviolent felony, and serious and violent felony calls.
- b. Demographics for these calls
- c. Characteristics of traffic stops
  - i. Quantity
  - ii. Type/reason
  - iii. Number of those resulting in searchings paired with the frequency at which illegal items were found
  - iv. Police response (i.e. citation, arrest, use of force)

<sup>8</sup> <https://www.latimes.com/california/story/2020-06-12/san-francisco-police-reforms-stop-response-noncriminal-calls>

<sup>9</sup> <https://www.ncjrs.gov/pdffiles1/nij/231096.pdf>

<sup>10</sup> <https://www.ncjrs.gov/pdffiles1/nij/231096.pdf>



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- v. Demographics of the civilian in the traffic stop that is broken into type of stop and whether a search occurred
- d. Number of complaints against an officer
  - i. Enumerate the officers with a high number of complaints
  - ii. Reason behind the complaints.

With the results of the data analysis, the City can determine the portion of calls that the community crisis worker pilot can properly address with the resources and experience they have.

## II. Hire a consultant to conduct an analysis of the police department budget.

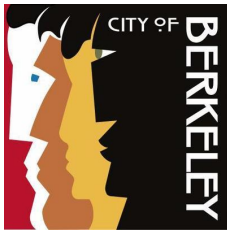
Using the analysis generated by a review of police call and response data, a third party consultant should be hired to analyze the police department's expenditures and budgets for various calls of service and report their findings to the City every two years.

According to the 2019 budget, the Berkeley Police Department's expenditures were approximately \$69 million, which consists of 5.6 percent of the city's net expenditures. However, for the 2020 budget, the BPD is expected to have \$74 million in expenditures, reflecting a \$5 million increase from the previous year and approximately \$8 million higher than 2017's expenditures<sup>11</sup>. Unfortunately, anecdotal evidence suggests that only 20 percent of police time is spent on solving crime and the majority is spent towards addressing those experiencing homelessness and mental health crises. The City should reallocate resources to a crisis worker entity who would be tasked with responding to noncriminal calls. We recommend that nonviolent calls also be addressed by this entity. This would give police officers more time to focus on crime, leading to better outcomes for public safety, community health, and a higher quality of life.

In Canada, Police Information and Statistics Committee police services Waterloo Police Regional Service and Ontario Provincial Police collaborated with Justice Canada and Public Safety to collect data on their calls for service and determine the costs of policing<sup>12</sup>. Their research reported that in 2013, bylaw complaints were listed as the most frequent call for service in Waterloo at 8,769 calls and non-crime policing activities were listed as the most frequent. In contrast, the only criminal activity listed in the top 10 generated calls were domestic dispute, theft under \$5000, and major violent crime in property damage. Considering the most frequent of costly calls are noncriminal activities such as selective traffic

<sup>11</sup> <https://www.cityofberkeley.info/uploadedFiles/Manager/Budget/FY-2020-2021-Adopted-Budget-Book.pdf>

<sup>12</sup> <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2015-r018/index-en.aspx#c-1-i>



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enforcement programs (\$22,212.45 in sum of total unit service time in hours) and vehicle stops (\$206,668.13), the greatest cost in calls were for noncriminal activities. As noncriminal activities result in the greatest costs, it would be more efficient for community workers to handle these situations in order to reduce police department costs, allowing trained professionals to resolve the issue and giving police officers time to spend on more serious criminal offenses.

By analyzing the budget expenditures for the police for each call type, the community can divest from the police and reallocate those funds for trained community organizations who can handle noncriminal and nonviolent offenses. Considering the significantly delayed response to former requests for the police department's budget, the data analysis should be conducted by a third party consultant that is hired and engaged in active service within three months of this item's passage, ensuring that the police department's budget information is transparent to the public and reported in an impartial, timely manner.

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

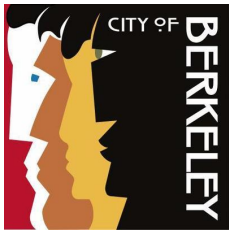
The City Manager provides regular reports on crime in Berkeley and on the policies of the Berkeley Police Department<sup>13</sup>. The data on serious crime is collected annually by the Federal Bureau of Investigation (FBI), which consists of over 17,000 law enforcement agencies that represent over 90 percent of the United States population. The FBI's Uniform Crime Report (UCR) reports crime statistics on violent crimes (including murder, rape, robbery, and aggravated assault) and property crimes (including burglary, larceny, auto theft, and arson). This data allows the BPD to analyze national and local crime trends, determine effectiveness of response to crime, and plan for future policies and resource allocation. Additionally, the City of Berkeley implements the Daily Calls for Service Log that the community can access to see the volume and nature of police activity.

Currently, Utah requires agencies to report tactical deployment and forcible entries where such reports are summarized by the Utah Commission on Criminal and Juvenile Justice. Utah Law Enforcement Transparency reporting interface was added to Utah Criminal Justice Information System in 2014 through the use of federal grant funding. Law enforcement agencies are required to report incidents of forcible entry and the deployment of tactical groups, representing data collection of police use of force<sup>14</sup>.

However, these reports do not analyze the demographics or types of calls and responses from the BPD, which makes it difficult to hold police officers accountable for

<sup>13</sup> [https://www.cityofberkeley.info/Police/Home/Annual\\_Crime\\_Reports.aspx](https://www.cityofberkeley.info/Police/Home/Annual_Crime_Reports.aspx)

<sup>14</sup> <https://justice.utah.gov/Documents/CCJJ/LETR/2018%20LET%20Annual%20Report.html>



Councilmember Ben Bartlett  
City of Berkeley, District 3

the mistreatment of individuals. Without this information, it becomes difficult to determine how to decrease the police footprint or implement safer policing practices if the analysis only pertains to the quantity and types of arrests and does not include the background, call of service, reason, demographics, complaints against the police officer, and other important factors to the BPD's response.

Despite voluntary data sharing and crime reports, data collection still remains vague and insufficient, leaving many unanswered questions regarding the number of instances of and reasons for use of force, complaint process against police officers, and other information about police actions. This lack of clarity allows police misconduct to perpetuate due to the lack of research that would hold police departments accountable.

#### ACTIONS/ALTERNATIVES CONSIDERED

One possible alternative to the community response teams would be to implement better training procedures so that police officers are more equipped to handle nonviolent and noncriminal activities. For example, the state of Washington requires both violence de-escalation and mental health training for police officers<sup>15</sup>. Such reform may render the data analysis on the types of calls unnecessary because the police department would be trained to handle all services regardless of the type of call.

However, training police officers to handle situations such as mental health or homelessness would signify an increase in funding for the police department to provide such training services. Not only would this type of training be difficult to maneuver when police forces are currently trained in a militarized manner, but it would be more efficient for community professionals to peacefully and properly resolve such issues since they have already engaged in this training and experience for years.

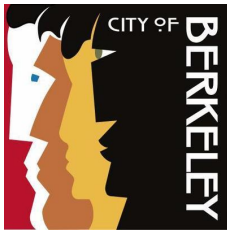
Reforming police training may be beneficial, but in this case, it would also indicate the lack of basis for reporting the police department's types of calls and responses, which is necessary to hold the police accountable and ensure safer practices. While reporting the data analysis could still occur without the community crisis workers, only having the police department manage all situations would increase their authority over the communities, which would lead to increased militarization of the police forces if other community organizations do not intervene or hold them accountable.

#### OUTREACH OVERVIEW AND RESULTS

The District 3 Office has consulted with David Muhammad, who is the Executive Director of the National Institute for Criminal Justice Reform; the former Chief Probation Officer in Alameda County; and the former Deputy Commissioner of Probation in New

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<sup>15</sup> <https://www.theatlantic.com/ideas/archive/2020/06/how-actually-fix-americas-police/612520/>



Councilmember Ben Bartlett  
City of Berkeley, District 3

York City. David Muhammad is a leading expert on criminal justice who has helped inform our response to the current situation.

The District 3 Office has also consulted with Marcus McKinney, the Senior Director of Government Affairs & Public Policy at the Center for Policing Equity.

The District 3 Office has also consulted with Professor Tracey L. Meares, Walton Hale Hamilton Professor and Faculty Director of the Justice Collaboratory at Yale Law School.

#### RATIONALE FOR RECOMMENDATION

Police departments across the country enforce policies and practices that breed a culture of violence resulting in killings--like those of Floyd and Moore, and of countless other people of color. These authoritative, militarized behaviors are often rooted in anti-Black racism, and such behavior must stop being acceptable. Transformation of police departments, their role, and relationship to our communities requires a change in culture, accountability, training, policies, and practices.

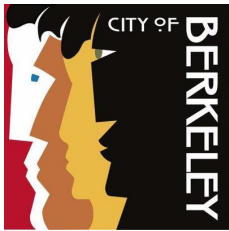
To prioritize community safety and reduce police violence, the City must hire a third party consultant to analyze police data in order to decide how to divest from the police to fund experienced community workers who can adequately resolve noncriminal and nonviolent situations. These community workers would protect the community from violence and emphasize revitalization and rehabilitation over the punishment that police officers often enforce. Implementing a data-driven analysis on police data would increase the transparency of the police department and hold them accountable, detecting the issues within the police force that community response teams can help heal. The Council must make informed legislative decisions that will reduce police footprint, improve current practices of law enforcement, and reinvest in the community for the safety of our civilians.

#### FISCAL IMPACTS OF RECOMMENDATION

The third party consultant/s would cost approximately \$150,000 to \$200,000. It is up to the City Manager to hire the third party consultants who will analyze the data of the police department's calls, responses, budget, and expenditures. Consultants must be hired and engaged in service within three months if this item passes. These consultants would ensure that noncriminal situations are handled by those with the necessary training, which may lead to a decrease in repeat offenses when community workers properly resolve the situation and guide civilians to helpful resources.

#### ENVIRONMENTAL SUSTAINABILITY

We do not expect this recommendation to have significant negative impacts on environmental sustainability.



Councilmember Ben Bartlett  
City of Berkeley, District 3

### OUTCOMES AND EVALUATION

If this item is passed, third party consultants would be hired by the City and engaged in data analysis within three months of passage. These consultants would produce biennial reports regarding the Berkeley Police Department's types of calls and responses as well as the budgets and expenditures in order to inform the City how to reallocate funds from the police into a community response team with better experience to handle noncriminal situations. We recommend that nonviolent situations also be addressed by community crisis workers.

### CONTACT PERSON

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### ATTACHMENTS

1. Cover Letter - Safety for All: George Floyd Community Safety Act
  - <https://drive.google.com/file/d/16pqqd9J6NPRzh6298Bgazo7jw1qxTK6Y/view?usp=sharing>





**SOPHIE HAHN**  
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## **EMERGENCY ITEM AGENDA MATERIAL**

**Meeting Date:** June 9, 2020  
**Item Description:** Emergency Declaration and First Amendment Curfew Criteria  
**Submitted By:** Vice Mayor Sophie Hahn (Author), Councilmembers Ben Bartlett and Kate Harrison, and Mayor Jesse Arreguin (Co-Sponsors)

This item is submitted as an Immediate Action Item pursuant to Section III.D.4.b of the Berkeley Council Rules of Procedure.

In light of ongoing demonstrations throughout California and across the Bay Area in response to illegal police killings of Black individuals, there is a need for immediate action to establish policy on the order, scope, terms, duration and other conditions and elements of curfews in the City of Berkeley.

The Council must immediately take action because demonstrations have occurred in recent days and there is evidence of planning for [additional demonstrations](#) similar to the ones that prompted the recent curfew in the City of Berkeley. Such demonstrations, including potentially challenging situations in which bad actors infiltrate groups of peaceful protestors, can place outsized demands on police and others responsible for ensuring public order and safety. In addition, the City must be prepared to protect the constitutional rights of individuals who wish to peacefully assemble and protest injustices in Berkeley and beyond.

Sadly, we know that unjust and discriminatory killings of Black individuals will continue. According to a Washington Post [database](#) tracking police killings, more than 1000 people have been shot and killed by the police in the past year, with Black Americans killed at more than twice the rate of white Americans. Shocking incidents happen all the time. In the past few days, we have had a slaying in Vallejo and a shooting in Oakland of individuals of color. Because such events occur with sad frequency, protests in opposition could arise at any time as well, potentially prompting the City to seek another declaration of Local Emergency, and curfew. Therefore, new policies must be established immediately.

The Agenda for the June 9 City Council Special Meeting was published on the afternoon of June 2, prior to the meeting at which the Council approved an emergency resolution from the City Manager imposing a curfew in response to scheduled demonstrations. Therefore, the need to take immediate action to establish a policy on curfews came to the attention of the Council after the publishing of the Agenda.



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ACTION CALENDAR  
July 14, 2020  
(Continued from June 16, 2020)

**To:** Honorable Members of the City Council  
**From:** Vice Mayor Sophie Hahn (Author), Councilmembers Ben Bartlett and Kate Harrison, and Mayor Jesse Arreguin (Co-Sponsors)  
**Subject:** Changes to the Berkeley Municipal Code and City of Berkeley Policies with Respect to Local Emergency Declarations and First Amendment Curfews

RECOMMENDATION

1. Direct the City Manager to return to the City Council for adoption amendments to the Berkeley Municipal Code and/or policies to approve that clarify and codify the following with respect to the declaration of a Local Emergency:
  - a. A Local Emergency can only be declared by the Director of Emergency Services if a regular or special meeting and session of the City Council cannot be called due to physical impossibility of holding a meeting, because a quorum cannot be established, or because the urgency of the Local Emergency is such that waiting 24 hours for the City Council to convene a session and/or Special Meeting would endanger the community;
  - b. Should the Director declare a Local Emergency without action of the City Council (due to one of the reasons stated at (a), above), Council ratification of such action occurs at the first possible opportunity, even if it requires calling a Special Meeting and/or session of the Council; and
  - c. The applicable statutory and legal standards (Federal, State and Local) for calling a Local Emergency shall be presented to the City Council when seeking declaration or ratification of a Local Emergency, along with facts to support meeting those standards, so that the City Council, likely acting under rushed and exigent circumstances, is able to make a carefully considered and fact-based determination that declaration of such Local Emergency conforms with the legal standards and is supported by facts.
2. Direct the City Manager to return to the City Council for adoption amendments to the Berkeley Municipal Code and/or policies to approve that clarify and codify policies, terms and procedures for the order, scope, terms, duration, and all other elements and conditions of curfews called in response to, or likely to have the effect of limiting or banning, planned, expected or reasonably foreseeable first amendment activity,

including rallies, marches, demonstrations and assemblies of all kinds (“First Amendment Curfews”),as enumerated (1-8) under the “Background” section of this item, below.

3. Advise the City Manager and/or Director of Emergency Services that approval of this item represents the will and direction of the City Council with respect to declarations of Local Emergencies and imposition of First Amendment Curfews, and should the occasion to declare a Local Emergency or impose a First Amendment curfew arise prior to formal Council adoption of the requested amendments and policies, the City Manager and/or Director of Emergency Services shall, to the greatest extent possible under existing law, strive to encompass actionable elements, and meet spirit, of this item.

**BACKGROUND:**

*“Those who won our . . . revolution were not cowards. . . They did not exalt order at the cost of liberty. . . . Only an emergency can justify repression [of speech]. . . . The fact that speech is likely to result in some violence or in destruction of property is not enough to justify its suppression. There must be the probability of serious injury to the State. Among free men, the deterrents ordinarily to be applied to prevent crime are education and punishment for violations of the law, not abridgment of the rights of free speech and assembly.”* US Supreme Court Justice Brandeis, *Whitney v. California*, 274 U.S. 357, 377–78 (1927) (Brandeis, J., concurring)

State law and the Berkeley Municipal Code both include provisions for the calling of a Local Emergency. Once a Local Emergency has been called, the power to impose curfews is in the hands of the Director of Emergency Services (“Director”), with ratification by the City Council.

This item seeks to achieve two goals:

First, the Berkeley Municipal Code only allows the Director to proclaim a Local Emergency if the City Council is not “in session.” If the City Council is “in session,” the City Council must call the Local Emergency. It also requires the City Council to ratify a Local Emergency called by the Director within seven days, or the proclamation has no further effect.

**2.88.040 Director of Emergency Services--Powers and duties.**

- A. The Director of Emergency Services is empowered:

1. If, in the Director’s judgment, the conditions will require the combined forces of other political subdivisions to combat, to request the City Council to proclaim the existence of a "Local Emergency" if the City Council is in session, or to issue such proclamation if the City Council is not in session. Whenever a Local Emergency is proclaimed by the Director, the City Council shall take action ratifying said proclamation within seven days of issuance or the proclamation shall have no further force and effect;

This item directs the City Manager to return to the City Council amendments to the Berkeley Municipal Code and/or a policy to adopt that emphasize and clarify that the City Council is the body empowered to call Local Emergencies, and the Director of Emergency Services must present a proclamation of Local Emergency either at a Regular meeting of the City Council, or call for a Council session and/or Special Meeting to be immediately convened, and the Director may only call a Local Emergency himself in circumstances where, despite the requirement to convene the City Council, it is either (1) extremely difficult or impossible for the City Council to meet, such as a major wildfire or earthquake that renders both physical and virtual meetings physically difficult or impossible, or (2) after convening a session and/or Special Meeting, or at a Regular Meeting of the Council, a quorum cannot be established, or (3) if the emergency is so extreme and dangers to the community so grave and imminent that waiting for a Regular or Special Meeting or session of the City Council to be convened would endanger the community.

Further, the item requests clarification that City Council ratification of a declaration of Local Emergency by the Director should take place as quickly as possible, at the first possible occasion that a Special City Council meeting or session can be convened.

Second, once a Local Emergency has been declared, the Director of Emergency Services has the following powers under BMC Section 2.88.04(A)(6)(a):

To make and issue lawful rules and regulations on matters reasonably related to the protection of life, public health or safety, or improved property as affected by such emergencies; provided, however, such rules and regulations must be confirmed at the earliest practicable time by the City Council, shall be in writing, and shall be given widespread publicity and notice

It is according to this power that a curfew can be imposed by the Director.

A second set of BMC amendments and policies will address imposition of certain types of curfews. This item directs the City Manager to return to the City Council for adoption amendments to the Berkeley Municipal Code and/or policies to approve that clarify and codify new procedures and requirements applicable curfews which may be called in response to, or are likely to have the effect of limiting or banning, planned, expected or reasonably foreseeable first amendment activity, including rallies, marches, demonstrations and assemblies of all kinds, hereinafter referred to as "First Amendment Curfews".

Establishment of all curfews impacts constitutional rights, most notably the 5th Amendment protection against government deprivation of "life, liberty, or property, without due process of law." By limiting movement of individuals during the period of the curfew in the locations where a curfew is imposed, liberty is impacted. Thus, imposition of any curfew and must meet a high standard.

Under any curfew, first amendment activity - free speech - is also curtailed, by implication. If residents are confined to their homes some or all of the day and night due to safety concerns

and dangerous conditions after a disaster, they cannot assemble publicly for any purpose, and their first amendment rights have been curtailed. But there is a difference between a curfew that is called in the wake of a major disaster such as an earthquake or fire, to protect people from dangerous conditions, and a curfew that is called specifically in response to, or anticipation of, first amendment activity. This item asks for amendments to the Berkeley Municipal Code and/or the drafting of new policies that establish higher standards and more robust processes and policies with respect to potential First Amendment Curfews.

After an earthquake, fire, landslide or other major disaster, if a curfew is imposed to avoid the possibility that individuals out at night, for example, will be hurt by falling debris, encounter live electrical wires, or fall into sinkholes, the nexus between potential harm to community members and the calling of a curfew is clear and relatively uncontroversial. The fact that the curfew also precludes a rally, protest, funeral or other assembly is incidental.

But when a curfew is issued primarily to limit or preclude assemblies, free speech and the right to “peaceably assemble” is the direct target of the curfew, and higher standards must apply. The City Council should be the body to review the statutory and legal standards for imposition of a First Amendment Curfew, to review the facts, and to evaluate whether the intrusion on First Amendment rights is necessary to address a compelling interest, narrowly tailored to achieving that purpose, and uses the least restrictive means to achieve the purpose.

Changes to the BMC and/or new policies relating to First Amendment Curfews should include, at a minimum, the following:

1. An assertion or codification that the First Amendment shall not be infringed upon by the City of Berkeley without establishing that the proposed intrusion on First Amendment rights is necessary to address a compelling interest, narrowly tailored to achieving that purpose, and uses the least restrictive means to achieve the purpose
2. Imposition of First Amendment Curfews, if any, shall be by action of the City Council at a Regular or Special meeting, except in circumstances where it is extremely difficult or impossible for the City Council to meet, such as a major wildfire or earthquake that renders both physical and virtual meetings physically difficult or impossible, or if a quorum of the City Council cannot be established, in which case the Director of Emergency Services may impose a First Amendment Curfew that meets the requirements of all applicable Federal, State and local laws, legal standards, and policies. A curfew imposed by the Director must be ratified by the City Council within the following 24 hours, except if it is extremely difficult or impossible for the City Council to meet either physically or virtually, or a quorum of the City Council cannot be convened at a regular or special meeting.
3. A First Amendment Curfew and each and every element of such curfew, including but not limited to the curfew’s physical boundaries; times of day or night; duration; and the individuals/businesses/establishments, modes of transportation, and other activities or

elements to which it applies; shall not be imposed unless specific findings are made, based on substantial evidence, that:

- a. Each element of such curfew is narrowly tailored to meet specific violence or conditions which pose a clear and present danger of imminent violence likely to be perpetrated in each covered location (residential vs. commercial/manufacturing areas, specific residential or commercial/manufacturing areas, specific types of establishments such as bars, dispensaries, big box stores, etc.), using the covered modes (pedestrians, bike riders, people in vehicles, parking, etc.), during the covered times (morning, mid day, afternoon, evening, etc.), for the covered duration (one day, half day, etc.), and in, by or during all other conditions to which the order applies, and
- b. All reasonable alternatives and more narrowly tailored means to avoid or address specific violence or conditions which pose a clear and present danger of imminent violence, as well as any new rules or regulations which may be promulgated short of a curfew in those locations, even if more expensive to deploy, for those individuals and modes, during those times and for that duration, and for all other conditions to which the curfew applies, have been explored and found to be deficient in their ability to address specific violence or conditions which pose a clear and present danger of imminent violence, and only a curfew can reasonably provide for the necessary public safety and welfare.

All reasonable alternative means, considered and rejected, to address threats related to each covered location, population, mode or other condition or element of the curfew, shall be described in the report provided to the City Council upon the Director of Emergency Services' request for Council to impose such curfew, or upon the Director's request for ratification of a curfew imposed by the Director.

4. First Amendment Curfew orders must clearly state and/or designate on a map the specific areas to be covered, list the covered individuals/businesses, modes, times, duration and any other elements and conditions to which the order applies, and explain the specific violence or conditions which pose a clear and present danger of imminent violence, that justify imposition of the curfew to each element of the order. First Amendment Curfews may not be based on fear of violence alone; there must be specific, identified threats and/or a reasonable basis to believe threats might materialize in the locations, at the times, and by the means being banned or restricted by the curfew order.
5. A First Amendment Curfew can provide a specific number of days, or unlimited days, for which the curfew is suggested to apply. However, First Amendment Curfews can only be ordered by the City Council or, if necessary, by the Director of Emergency Services, for one twenty-four hour period at a time, and may only be extended or re-imposed, if at all, through additional action taken by the the City Council at a regular or special meeting or by the Director.

Notwithstanding the above, if, after 7 consecutive days of the City Council issuing daily First Amendment Curfew orders or the Director of Emergency Services issuing daily orders for the City Council's ratification, the Council or the Director wishes, on the 8th day, to issue a First Amendment Curfew order for a period longer than one day, the City Council, by a vote of  $\frac{2}{3}$ , or the Director, may issue or ratify curfew orders of up to 7 days in duration.

6. An overall finding must be made by the City Council or Director, in imposing a First Amendment Curfew, that reasonable alternative measures that burden substantially less speech would fail to achieve the City's interests, even if more complicated or costly to implement, and the added value of the curfew will make a substantial positive impact on public safety without unduly impacting rights guaranteed under local, state and federal laws, and in particular the First, Fifth and Fourteenth amendments of the US Constitution.
7. To the greatest extent possible, First Amendment Curfew orders shall refrain from using vague standards for enforcement and exemptions, that may result in selective, disparate or biased enforcement.
8. To mirror the notice requirements of Berkeley Municipal Code Section 2.88.040(6)(a), which requires "widespread publicity and notice" of a declaration of Local Emergency, and to meet ensure that a First Amendment Curfew is only enforceable against individuals who do not obey the curfew "after due notice, oral or written, has been given to said persons," and, to the greatest extent possible under the time constraints and physical conditions (lack of electricity or internet, widespread destruction in the event of a sudden wildfire or earthquake, etc.) which exist at the time a First Amendment order is ordered, the City of Berkeley shall publicize the First Amendment Curfew through, at a minimum, the following means:
  - a. By posting a notice at all locations where formal notices are regularly posted
  - b. By posting a notice prominently on the Home Page of the City of Berkeley website and on other appropriate pages of the website
  - c. By publicizing notice of the order through major City of Berkeley and police department social media accounts
  - d. By providing a copy of the notice to a broad array of traditional Bay Area media outlets including paper and online newspapers, radio and television stations, and other similar media
  - e. If the order applies only to specific locations within the City of Berkeley, by posting temporary signs on street fixtures and poles in such area(s), and in particular at major entrances to such areas such as on arterials and collector streets as they enter such restricted areas.
  - f. And by other means of broadcasting notice of the order to the general public.

In addition, notice and a reasonable opportunity to comply with the curfew (a “warning”) shall be provided to all individuals against whom enforcement is contemplated, by announcing the order through amplified communications and providing a verbal warning and reasonable opportunity to comply before enforcement.

FINANCIAL IMPLICATIONS

Cost of holding additional virtual or in-person meetings of the City Council to ensure rights guaranteed by the Constitution of the United States of America are upheld in all actions to declare Local Emergencies and impose First Amendment Curfews in the City of Berkeley.

CONTACT INFORMATION

Vice Mayor Sophie Hahn, Council District 5, 510-682-5905 (Cell)

ATTACHMENTS

1. ACLU of Northern California’s June 3, 2020 letter to Alameda County Sheriff Ahern
2. Karen J. Pita Loor, *When Protest Is The Disaster: Constitutional Implications of State and Local Emergency Power*, 43 SEATTLE U. L. REV. 1 (2019)





Attachment  
Not Received

This attachment has not been received from the  
submitting office.

**City Clerk Department**  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

**The City of Berkeley, City Council's Web site:**  
<http://www.cityofberkeley.info/citycouncil/>





Homeless Commission

ACTION CALENDAR

July 14, 2020

To: Honorable Mayor and Members of the City Council

From: Homeless Commission

Submitted by: Carole Marasovic, Chairperson, Homeless Commission

Subject: Compiling Commission Recommendations in a Reference Manual

RECOMMENDATION

The Homeless Commission recommends that Council refer to staff to develop a procedure for staff secretaries to all City of Berkeley commissions to compile all commission recommendations, whether in report or letter form, in a binder. Such binder shall also track the outcomes of all commission recommendations including action taken by Council and subsequent implementation of Council action. One copy of the binder shall remain with the staff secretary; another copy of the binder shall be available as a resource in the City Clerk's office. The City Clerk shall index all subject matters of commission proposals so that there is cross-referencing of all subjects that commissions have addressed. This reference manual shall be available for use by commissions to share information, the Mayor and Council, staff and members of the public. The City Clerk shall also provide this information online.

SUMMARY

This recommendation would create a reference manual which would track the work of City advisory commissions and the outcomes and implementation of their recommendations. It would serve to provide information-sharing between commissions when they work on similar or overlapping issues. It would provide a reference manual for all City commissioners, Mayor and Council, staff and members of the public.

FISCAL IMPACTS OF RECOMMENDATION

Staff would have to assess the cost, and staff time, of providing this manual and maintaining it. The cost would seem to be outweighed by the benefits of information sharing and coordination between commissions and providing easily accessible information to all including the public.

CURRENT SITUATION AND ITS EFFECTS

Currently, commissions often operate without knowledge of how other commissions are approaching similar or overlapping issues. There is no single resource to go to view information other than reviewing individual commissions' minutes. Recommendations occasionally have not been tracked and have fallen by the wayside. The work output of commissions, producing recommendations, cannot always be evaluated or reviewed in

detail because there is no reference manual for commission recommendations. At a recent strategic plan session conducted by the City Manager's office educating commissioners, across all commissions, of the strategic plan, when receiving input from commissioners in attendance, several commissioners, from multiple commissions, indicated that they wanted to access additional knowledge how other commissions are addressing the same or similar, related issues. In addition, some commissions have placed information sharing between commissions on their agendas and/or addressed the need for information sharing, between commissions, on their agendas

#### BACKGROUND

The Homeless Commission voted on March 11, 2020 as follows:

**Action:** M/S/C Hirpara/ Hill to approve and send the recommendation to Council as written.

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

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects except the use of a nominal amount of additional paper.

#### RATIONALE FOR RECOMMENDATION

Binders, and online access, as described in the recommendation would provide for better tracking of recommendations and outcomes including Council action and subsequent implementation of outcomes. This reference manual would provide better coordination between commissions when they are addressing similar or overlapping subject matters. This reference manual would also provide easily accessible information for not only commissioners but also Mayor and Council, staff and members of the public.

#### ALTERNATIVE ACTIONS CONSIDERED

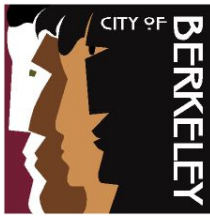
An alternative would be for no action to be taken.

#### CITY MANAGER

See companion report.

#### CONTACT PERSON

Brittany Carnegie, Homeless Commission Secretary, HHCS, 510-981-5415



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
July 14, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Providing our Unhoused Community in the City of Berkeley with Menstrual Products

RECOMMENDATION

1. Adopt a Resolution to create an allocation of the budget towards annual purchasing of menstrual products and dispensers that will be distributed in three ways:
  - A. Regularly scheduled replenishment of dispensers across public restrooms
  - B. Provide supplies to the City supported shelters, mental health offices, shower programs, and navigation centers
  - C. Homeless Outreach to include distribution to encampments and RV dwellers
2. Resolution will allocate \$10,000 of the budget for the first year, and \$8,000 for every consecutive year.

RATIONALE FOR RECOMMENDATION

The City of Berkeley spent \$6.5 million of the general fund to combat homelessness in 2019. Women who are not housed typically struggle with the lack of access to proper sanitary needs such as showers, tampons, and sanitary menstrual pads. It is necessary to treat menstrual products equally similar to toilet paper and soap. The lack of access to menstrual products leads to increased health disparities and other issues such as infections. Moreover, menstrual equity is part of a larger goal to bridge the financial inequities that women face.

BACKGROUND

The City of Berkeley spent close to \$20 million on providing homeless services. About \$6.5 million came from its general fund, about \$9.5 million came from regional, state, and federal funds and \$3.9 million were one-time funds from the state's Homeless Emergency Aid Program.

Many women have been utilizing the shower program that was expanded due to the Covid-19 pandemic, adding the West Campus pool, a new location, and extending its hours at Willard. The City now includes Dignity on Wheels, the mobile shower program that also includes washer, dryers, toilets, showers, and case management services to enable more opportunity for our

community experiencing homelessness to maintain dignity and humility during the COVID-19 pandemic.

Menstrual products are the most needed by women's shelters, but the least donated due to the large stigma around menstruation. The topic often not discussed, stops people from thinking about the issue which only intensifies inaccessibility to menstrual products for individuals who may need them most.

Menstrual products are costly for the average person, especially those women experiencing houselessness. Women in the United States spend approximately \$150-\$300 annually on menstrual products, or \$12-\$25 a month. Homeless women may have to make the decision between purchasing menstrual products or buying their other essentials for that day.

Lack of accessibility to menstrual products can cause the homeless to use whatever they have available to contain their menstrual needs. Additionally, the lack of clean water for the homeless means that with makeshift products, these individuals are incredibly susceptible to numerous infections.

Working towards menstrual equity is not just beneficial for social justice, but also is to bridge healthcare injustices. Some use socks, paper towels, plastic bags, toilet paper, or clothing in place of hygiene products. This can lead to infections such as urinary tract infections (UTI), yeast infections, and more.

Reducing the stigma around menstruation, bridging gender and healthcare injustices, especially for those who are most impacted, is the responsibility of all.

#### FINANCIAL IMPLICATIONS

An estimate of \$10,000 for the first year, with the purchase of about 10 dispensers to place across public restrooms in the City of Berkeley that are easily accessible to the homeless, as well as the purchasing of upwards of 70,000 menstrual products annually. Each following year, the estimate is \$8,000, accounting for the fact that dispensers are a one time cost.

Estimated price of dispenser (holds around 20 tampons + around 10 pads): \$200

Estimated price of 500 pack of tampons: \$50

Estimated price of 599 pack of pads: \$55

#### ENVIRONMENTAL SUSTAINABILITY

None, so long as there are proper disposal methods in restrooms and homeless camps for the products.

#### CONTACT PERSONS

Cheryl Davila

Councilmember District 2

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ATTACHMENTS:

1. Resolution

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA, PROVIDING OUR HOUSELESSNESS COMMUNITY WITH MENSTRUAL PRODUCTS WHEREAS, The City of Berkeley spent close to \$20 million on providing homeless services. About \$6.5 million came from its general fund, about \$9.5 million came from regional, state, and federal funds and \$3.9 million were one-time funds from the state's Homeless Emergency Aid Program; and

WHEREAS, Many women have been utilizing the shower program that was expanded due to the Covid-19 pandemic, adding the West Campus pool, a new location, and extending its hours at Willard. The City now includes Dignity on Wheels, the mobile shower program that also includes washer, dryers, toilets, showers, and case management services to enable more opportunity for our community experiencing homelessness to maintain dignity and humility during the COVID-19 pandemic; and

WHEREAS, Menstrual products are the most needed by women's shelters, but the least donated due to the large stigma around menstruation. The topic often not discussed, stops people from thinking about the issue which only intensifies inaccessibility to menstrual products for individuals who may need them most; and

WHEREAS, Menstrual products are costly for the average person, especially those women experiencing houselessness. Women in the United States spend approximately \$150-\$300 annually on menstrual products, or \$12-\$25 a month. Homeless women may have to make the decision between purchasing menstrual products or buying their other essentials for that day; and

WHEREAS, Lack of accessibility to menstrual products can cause the homeless to use whatever they have available to contain their menstrual needs. Additionally, the lack of clean water for the homeless means that with makeshift products, these individuals are incredibly susceptible to numerous infections; and

WHEREAS, Working towards menstrual equity is not just beneficial for social justice, but also is to bridge healthcare injustices. Some use socks, paper towels, plastic bags, toilet paper, or clothing in place of hygiene products. This can lead to infections such as urinary tract infections (UTI), yeast infections, and more; and

WHEREAS, Reducing the stigma around menstruation, bridging gender and healthcare injustices, especially for those who are most impacted, is the responsibility of all; and

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley, California supports not only the increased accessibility of feminine hygiene products for the homeless in order to combat healthcare injustices, but also the reduction of stigmatization surrounding menstruation. Specifically, the Council of the City of Berkeley calls for:



1. Create an allocation of the budget towards annual purchasing of menstrual products and dispensers that will be distributed in three ways:
  - A. Regularly scheduled replenishment of dispensers across public restrooms
  - B. Provide supplies to the City supported shelters, mental health offices, shower programs, and navigation centers
  - C. Homeless Outreach to include distribution to encampments and RV dwellers
2. Resolution will allocate \$10,000 of the budget for the first year, and \$8,000 for every consecutive year.





Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
July 14, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Amending Council Rules of Procedures such that items submitted by the Mayor or Councilmembers be placed directly on the City Council Agenda to allow the whole City Council to review and take action on the submitted item to ensure equity in the process.

#### RECOMMENDATION

Adopt a Resolution to amend Council Rules of Procedures Section C-1 and G-1 such that items submitted by the Mayor or Councilmembers be placed directly on the City Council agenda rather than beginning with submission to commissions or Council Policy Committees to ensure equity in the process.

#### BACKGROUND

Section C-1 of the Council Rules and Procedures states, "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." This section should be amended to state: "all submitted items by the Mayor or a Councilmember shall be placed on the requested Council Meeting Agenda, and have the whole City Council review the submitted items, take action, and/r or refer to a commission or Council Policy Committee."

Section G-1 of the Council Rules and Procedures states, "All agenda items begin with submission to the Agenda & Rules Committee." Instead, it shall be amended to state: "All agenda items shall go straight to the full City Council for review and action." The Agenda & Rules Committee should not determine the placement of an item in the first place.

Section G-1 furthers that, "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." Items submitted by the Mayor or Councilmembers should be placed directly onto the City Council agenda since many items are urgent and cannot be held up in individuals committees. It shall be amended to state: "Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts shall be placed on the requested Council meeting date, be place on the Council meeting agenda, and have the whole City Council review the item and take necessary action."

Most cities across California do not follow the procedure of deferring council items to commissions or committees, rather all policy items are brought before the Council at meetings and are considered for approval in one single action. If needed, the City Councilmembers have the opportunity to remove an item from the consent calendar for purposes of discussion and further amendment. It is imperative that the City of Berkeley also adopt similar procedures in order to maintain the momentum of policymaking. The full Council should have an opportunity to discuss each item and choose to refer to a commission or Council Policy Committee. Currently, the Agenda & Rules committee sends items which doesn't allow the full Council to be aware or even know about the item prior to being sent to a committee or commission where it may be for 120 days. The current process is not just and should be changed to ensure equity in the decision to refer to a commission or Council Policy Committee.

This process for items can take months to even hear back about their status. Council should refer Council items to commissions and Council Policy Committees.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSONS

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ATTACHMENTS:

1. Resolution

REFERENCES:

1. The Berkeley City Council Rules of Procedure and Order:  
[https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/City%20Council%20Rules%20of%20Procedure%20-%20June%202020%20-%20FINAL.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/City%20Council%20Rules%20of%20Procedure%20-%20June%202020%20-%20FINAL.pdf)

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA, AMENDING THE COUNCIL RULES OF PROCEDURES SUCH THAT ITEMS SUBMITTED BY THE MAYOR OR COUNCILMEMBERS BE PLACED DIRECTLY ON THE CITY COUNCIL AGENDA TO ALLOW THE WHOLE CITY COUNCIL TO REVIEW AND TAKE ACTION ON THE SUBMITTED ITEM TO ENSURE EQUITY IN THE PROCESS.

WHEREAS, Section C-1 of the Council Rules and Procedures states, "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." This section should be amended to state: "all submitted items by the Mayor or a Councilmember shall be placed on the requested Council Meeting Agenda, and have the whole City Council review the submitted items, take action, and/r or refer to a commission or Council Policy Committee."; and

WHEREAS, Section G-1 of the Council Rules and Procedures states, "All agenda items begin with submission to the Agenda & Rules Committee." Instead, it shall be amended to state: "All agenda items shall go straight to the full City Council for review and action." The Agenda & Rules Committee should not determine the placement of an item in the first place; and

WHEREAS, Section G-1 furthers that, "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." Items submitted by the Mayor or Councilmembers should be placed directly onto the City Council agenda since many items are urgent and cannot be held up in individuals committees. It shall be amended to state: "Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts shall be placed on the requested Council meeting date, be place on the Council meeting agenda, and have the whole City Council review the item and take necessary action."; and

WHEREAS, Most cities across California do not follow the procedure of deferring council items to commissions or committees, rather all policy items are brought before the Council at meetings and are considered for approval in one single action. If needed, the City Councilmembers have the opportunity to remove an item from the consent calendar for purposes of discussion and further amendment. It is imperative that the City of Berkeley also adopt similar procedures in order to maintain the momentum of policymaking. The full Council should have an opportunity to discuss each item and choose to refer to a commission or Council Policy Committee. Currently, the Agenda & Rules committee sends items which doesn't allow the full Council to be aware or even know about the item prior to being sent to a committee or commission where it may be for 120 days. The current process is not just and should be changed to ensure equity in the decision to refer to a commission or Council Policy Committee; and

WHEREAS, This process for items can take months to even hear back about their status. Council should refer Council items to commissions and Council Policy Committee; and

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley, California hereby amend Council Rules of Procedures Section C-1 and G-1 such that items submitted by

the Mayor or Councilmembers be placed directly on the City Council agenda rather than beginning with submission to commissions or Council Policy Committees to ensure equity in the process.



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
July 14, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Cheryl Davila (Author)  
Subject: Declare Juneteenth as a City Holiday for the City of Berkeley

RECOMMENDATION

1. Adopt a resolution declaring Juneteenth as a City Holiday for the City of Berkeley
2. Send copies of this resolution to State Assemblywoman Buffy Wicks, State Senator Nancy Skinner, and United States Congresswoman Barbara Lee.

BACKGROUND

Juneteenth, slaves received the news of their liberation more than two years after President Abraham Lincoln's Emancipation Proclamation went into effect on January 1, 1863; African Americans across the state were made aware of their right to freedom on June 19, 1865, when Major General Gordon Granger arrived in Galveston with federal troops to read General Order No. 3 announcing the end of the Civil War and that all enslaved people.

Governor Andrew M. Cuomo recently issued an [Executive Order](#) recognizing Juneteenth as a holiday for state employees, in recognition of the official emancipation of African Americans throughout the United States. The Governor will also advance legislation to make Juneteenth an official state holiday next year. The City of Berkeley should follow Governor Cuomo's lead and ask Governor Newsome to do the same. California has a tradition of acknowledging significant milestones in advancing the cause of freedom, and some of whom descend directly from those brave men and women that gained freedom on that day, join in celebrating the 155th anniversary of Juneteenth, an observance that commemorates the official announcement made in the State of Texas regarding the abolition of slavery and the freeing of some quarter-million African Americans.

The observance of Juneteenth honors the history, perseverance, and achievements of African Americans, and celebrates America's progress and continuing commitment to realizing the principles of liberty and equality upon which our nation was founded.

This observance is a reminder of the hardships and losses suffered by African Americans in their struggle to attain freedom, and we pay tribute to the memory of those who made the ultimate sacrifice in this quest; through their experiences and those of others who were successful in achieving victory, we find among the most poignant and valuable lessons of humankind that continue to resonate with people of all backgrounds.

The official emancipation of African Americans throughout the United States literally and figuratively opened doors of opportunity that enabled following generations to contribute immeasurably to our nation's richness, equality of citizens, and global leadership, and today communities across our state – from Brooklyn to Buffalo – mark the anniversary of Juneteenth with appropriate commemoration.

Juneteenth is not just a Black liberation day, but a day of American liberation in a deep sense possibly further than the Fourth of July. It is fitting that all join to commemorate such an important day in our nation's history, as we take this opportunity to reflect upon and rejoice in the freedom and civil rights that we all share as Americans.

The City of Berkeley for decades has celebrated Juneteenth on the streets on Adeline and Martin Luther King Jr. Way. Berkeley has recognized Malcolm X Birthday Day as a City Holiday, and it is time Juneteenth is added to be recognized as a City Holiday.

FISCAL IMPACTS OF RECOMMENDATION

None.

ENVIRONMENTAL SUSTAINABILITY

Protecting our communities during this climate and health crisis is an act of environmental sustainability.

CONTACT PERSON

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ATTACHMENTS

1. Resolution



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

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF BERKELEY DECLARING JUNETEENTH AS A CITY HOLIDAY.

WHEREAS, Juneteenth, slaves received the news of their liberation more than two years after President Abraham Lincoln's Emancipation Proclamation went into effect on January 1, 1863; African Americans across the state were made aware of their right to freedom on June 19, 1865, when Major General Gordon Granger arrived in Galveston with federal troops to read General Order No. 3 announcing the end of the Civil War and that all enslaved people; and

WHEREAS, Governor Andrew M. Cuomo recently issued an [Executive Order](#) recognizing Juneteenth as a holiday for state employees, in recognition of the official emancipation of African Americans throughout the United States. The Governor will also advance legislation to make Juneteenth an official state holiday next year. The City of Berkeley should follow Governor Cuomo's lead and ask Governor Newsome to do the same. California has a tradition of acknowledging significant milestones in advancing the cause of freedom, and some of whom descend directly from those brave men and women that gained freedom on that day, join in celebrating the 155th anniversary of Juneteenth, an observance that commemorates the official announcement made in the State of Texas regarding the abolition of slavery and the freeing of some quarter-million African Americans; and

WHEREAS, The observance of Juneteenth honors the history, perseverance, and achievements of African Americans, and celebrates America's progress and continuing commitment to realizing the principles of liberty and equality upon which our nation was founded; and

WHEREAS, This observance is a reminder of the hardships and losses suffered by African Americans in their struggle to attain freedom, and we pay tribute to the memory of those who made the ultimate sacrifice in this quest; through their experiences and those of others who were successful in achieving victory, we find among the most poignant and valuable lessons of humankind that continue to resonate with people of all backgrounds; and

WHEREAS, This observance is a reminder of the hardships and losses suffered by African Americans in their struggle to attain freedom, and we pay tribute to the memory of those who made the ultimate sacrifice in this quest; through their experiences and those of others who were successful in achieving victory, we find among the most poignant and valuable lessons of humankind that continue to resonate with people of all backgrounds; and

WHEREAS, The official emancipation of African Americans throughout the United States literally and figuratively opened doors of opportunity that enabled following generations to contribute immeasurably to our nation's richness, equality of citizens, and global leadership, and today communities across our state – from Brooklyn to Buffalo – mark the anniversary of Juneteenth with appropriate commemoration; and

WHEREAS, Juneteenth is not just a Black liberation day, but a day of American liberation in a deep sense possibly further than the Fourth of July. It is fitting that all join to commemorate such an important day in our nation's history, as we take this opportunity to reflect upon and rejoice in the freedom and civil rights that we all share as Americans; and

WHEREAS, The City of Berkeley for decades has celebrated Juneteenth on the streets on Adeline and Martin Luther King Jr. Way. Berkeley has recognized Malcolm X Birthday Day as a City Holiday, and it is time Juneteenth is added to be recognized as a City Holiday; and

NOW, THEREFORE, BE IT RESOLVED that the City Council for the City of Berkeley recognize June 19 of every year as Juneteenth, which shall be a holiday for city employees, who if not required to work, shall be entitled to leave at full pay without charge to existing accruals and for those employees who are required to work, they shall receive one day of compensatory time.

BE IT FURTHER RESOLVED that copies of this resolution are sent to State Assemblywoman Buffy Wicks, State Senator Nancy Skinner, and United States Congresswoman Barbara Lee.



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR

July 14, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Support Redistribution of City Resources and Operations from the Berkeley Police

RECOMMENDATION

Adopt a resolution supporting Redistribution of City Resources and Operations from the Berkeley Police, and taking the following actions:

1. Request that any function that is currently served by Berkeley Police but would be better served by trained city staff or community partners should be transferred out of the police department with all due haste
2. These functions include all non-emergency calls, mental health calls (including wellness checks), calls related to intoxication, calls related to homelessness, calls involving domestic violence, and any other calls that can be served by any other city resource, and
3. The current proposed police budget for 2021 (\$72,774,334) will be reduced by an amount of 50% (\$36,387,167) or greater and funding of community programs and non-police city agencies will be increased by a commensurate amount, and
4. Reducing the Berkeley Police Department budget by at least 50 percent will allow funding for but not limited to youth programs or community groups and programs, housing and homeless services, food security, mental health services, healthcare, creation of new city jobs, and public health services.
5. Calls involving domestic violence, homelessness, and mental health require specialized responding staff who have been trained in de-escalation and are able to provide direct services to Berkeley residents who are in crisis. The City Auditor is hereby directed to prepare a report to Council that reveals the amount of funding that will become available as a result of these reductions in police responsibilities.
6. The City Manager will identify the expertise needed for non-police responses to these calls, taking into account comparable approaches including CAHOOTS as well as existing local programs which could possibly expand with additional funding such as: the Berkeley Free Clinic, Building Opportunities for Self Sustainability (BOSS), and the Women's Daytime Drop-in Center, Consider the Homeless and others, and initiate an RFP process for community organizations to provide those services.
7. The City Manager should create a plan for a non-police hotline that can receive 911 calls and connect those calls with non-police resources as appropriate, either by expanding the 311 mandate or creating a new city agency (perhaps 811 recognizing 8 to Abolish).

8. The City Council requests the Berkeley Unified School District and all Berkeley schools, both public and private to end programs that bring police officers into the schools, and to do everything within their power to protect undocumented students and families and to safeguard their information and prevent it from being shared with from police, including ICE (Immigration and Customs Enforcement).
9. That general fund dollars are not to be expended to pay out settlements resulting from police officer negligence, brutality, or murder. Those settlements will henceforth be deducted from police department budgets.
10. That the Police Review Commission and Peace and Justice Commission are instructed to form a joint committee to annually review police responsibilities and make recommendations to the City Council regarding additional functions that could better be served by non-police staff.

### BACKGROUND

The death of George Floyd at the hands of Minneapolis police on May 25<sup>th</sup> was yet another heartbreaking entry in the long list of Black people who have been killed by police officers in the United States<sup>1</sup>.

The murder of Mr. Floyd has sparked widespread demonstrations across the country<sup>2</sup> and the world<sup>3</sup>, including here in Berkeley<sup>4</sup>, drawing attention to systemic racism in American policing<sup>5</sup>

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<sup>1</sup> What follows is an extremely abbreviated list. There are many, many more examples spanning the history of policing in this country. John Crawford Iii, Michael Brown, Ezell Ford, Dante Parker, Michelle Cusseaux, Laquan McDonald, Tanisha Anderson, Akai Gurley, Tamir Rice, Romain Brisbon, Jerame Reid, Matthew Ajibade, James N. Powell Jr., Frank Smart, Natasha Mckenna, Tony Robinson, Anthony Hill, Mya Hall, Phillip White, Eric Harris, Walter Scott, William Chapman Ii, Alexia Christian, Brendon Glenn, Victor Manuel Larosa, Jonathan Sanders, Freddie Carlos Gray Jr., Joseph Mann, Salvado Ellswood, Sandra Bland, Albert Joseph Davis, Darrius Stewart, Billy Ray Davis, Samuel Dubose, Michael Sabbie, Brian Keith Day, Christian Taylor, Troy Robinson, Asshams Pharoah Manley, Felix Kumi, Keith Harrison Mcleod, Junior Prosper, Lamontez Jones, Paterson Brown, Dominic Hutchinson, Anthony Ashford, Alonzo Smith, Tyree Crawford, India Kager, La'vante Biggs, Michael Lee Marshall, Jamar Clark, Richard Perkins, Phillip Pannell, Nathaniel Harris Pickett, Benni Lee Tignor, Miguel Espinal, Michael Noel, Kevin Matthews, Bettie Jones, Quintonio Legrier, Keith Childress Jr., Janet Wilson, Randy Nelson, Antronie Scott, Wendell Celestine, David Joseph, Calin Roquemore, Dyzhawn Perkins, Christopher Davis, Marco Loud, Peter Gaines, Torrey Robinson, Darius Robinson, Kevin Hicks, Mary Truxillo, Demarcus Semer, Amadou Diallo, Willie Tillman, Terrill Thomas, Sylville Smith, Demetrius Dubose, Alton Sterling, Philando Castile, Terence Crutcher, Paul O'neal, Alteria Woods, Bobby Russ, Jordan Edwards, Aaron Bailey, Ronell Foster, Stephon Clark, Corey Carter, Antwon Rose Ii, Tayler Rock, Malice Green, Ramarley Graham, Elijah McClain, Aiyana Stanley Jones, Botham Jean, Pamela Turner, Dominique Clayton, Sean Bell, Atatiana Jefferson, Jemel Roberson, James Lee Alexander, Ryan Matthew Smith, Derrick Ambrose Jr., Addie Mae Collins, Carol Denise Mcnair, Carole Robertson, Cynthia Wesley, Nicholas Heyward Jr., Christopher Whitfield, Victor White Iii, Christopher Mccorvey, Timothy Thomas, Reginald Doucet Jr., Danroy "Dj" Henry Jr., Karvas Gamble Jr., Eric Reason, Korryn Gaines, Rekia Boyd, Kionte Spencer, Darius Tarver, Wayne Arnold Jones, Manuel Ellis, Victor Duffy Jr., Kobe Dimock-heisler, Clinton R. Allen, Timothy Caughman, Corey Jones, Tyre King, Eric Garner, Miles Hall, Kendrick Johnson, Michael Lorenzo Dean, Trayvon Martin, Renisha McBride, Oscar Grant Iii, Breonna Taylor, Kalief Browder, Darrien Hunt, Troy Hodge, William Green, Ahmaud Arbery, Dion Johnson, Tony Mcdade, Jamel Floyd, George Floyd.

<sup>2</sup> List of George Floyd protests in the United States. (2020, June 10). Retrieved from [https://en.wikipedia.org/wiki/List\\_of\\_George\\_Floyd\\_protests\\_in\\_the\\_United\\_States](https://en.wikipedia.org/wiki/List_of_George_Floyd_protests_in_the_United_States)

which finds its roots in Slave Patrols<sup>6</sup> and the quashing of organized labor<sup>7</sup>, and demonstrators are demanding the redistribution of civic resources from militarized police departments to social services where they belong.

Cities across the nation have begun the necessary process of defunding or outright abolishing their police departments<sup>8 9 10 11 12 13</sup>.

Police reforms that do not include redistributing resources away from police have not been sufficiently effective in curbing police abuses, as evidenced by many attempts including in Los Angeles after the beating of Rodney King nearly thirty years ago, where the city made various reforms based on an independent commission's recommendations<sup>14</sup> but Los Angeles police continued to abuse and kill<sup>15</sup>, and the city has been host to California's largest demonstrations in the weeks since Floyd's death<sup>16</sup>.

Here in Berkeley, many police reforms have been instituted but unconscionable inequities persist. Just in the last several weeks, between March 13th and June 12th, 2020, BPD police

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<sup>3</sup> Nossiter, A., & Méheut, C. (2020, June 12). George Floyd Protests Inspire Fresh Scrutiny of Policing in Europe, Too. Retrieved from <https://www.nytimes.com/2020/06/12/world/europe/george-floyd-protests-europe-police.html>

<sup>4</sup> Taylor, T. (2020, June 11). Black Lives Matter march run by BHS students ends with street painting. Retrieved from <https://www.berkeleyside.com/2020/06/09/photos-black-lives-matter-protest-organized-by-berkeley-high-students-ends-with-street-painting>

<sup>5</sup> Worland, J. (2020, June 11). America's Long Overdue Awakening on Systemic Racism. Retrieved June 13, 2020, from <https://time.com/5851855/systemic-racism-america/>

<sup>6</sup> Waxman, O. B. (2019, March 6). The History of Police in America and the First Force. Retrieved from <https://time.com/4779112/police-history-origins/>

<sup>7</sup> Potter, G. (2013). *The History of Policing in the United States*. Eastern Kentucky University. Retrieved from <https://plsonline.eku.edu/sites/plsonline.eku.edu/files/the-history-of-policing-in-us.pdf>

<sup>8</sup> Searcey, D., & Eligon, J. (2020, June 8). Minneapolis Will Dismantle Its Police Force, Council Members Pledge. Retrieved from <https://www.nytimes.com/2020/06/07/us/minneapolis-police-abolish.html>

<sup>9</sup> Boston councilor questioning police funding; Walsh says he's 'committed to making real change'. (2020, June 8). Retrieved from <https://whdh.com/news/boston-councilor-questioning-police-funding-walsh-says-hes-committed-to-making-real-change/>

<sup>10</sup> Bowman, N. (2020, June 9). Seattle councilmembers join calls to defund police department. Retrieved from <https://mynorthwest.com/1928707/seattle-council-calls-for-change-police-department/>

<sup>11</sup> Edmondson, C. (2020, June 1). Lawmakers Begin Bipartisan Push to Cut Off Police Access to Military-Style Gear. Retrieved from <https://www.nytimes.com/2020/06/01/us/politics/police-military-gear.html>

<sup>12</sup> Riotta, C. (2020, June 4). Los Angeles to defund police department by \$150m and instead invest in minority communities. Retrieved from <https://www.independent.co.uk/news/world/americas/los-angeles-police-department-budget-cuts-defund-lapd-eric-garcetti-press-conference-a9549001.html>

<sup>13</sup> Kafton, C. (2020, June 6). San Francisco Mayor, Supervisor announce effort to redirect some police funding to African-American community. Retrieved from <https://www.ktvu.com/news/san-francisco-mayor-supervisor-announce-effort-to-redirect-some-police-funding-to-african-american-community>

<sup>14</sup> Report of the Independent Commission on the Los Angeles Police Department (Christopher Commission Report): The Independent Commission on the Los Angeles Police Department: Free Download, Borrow, and Streaming. (1991, January 1). Retrieved from <https://archive.org/details/ChristopherCommissionLAPD>

<sup>15</sup> Editorial: A very abbreviated history of police officers killing black people. (2020, June 4). Retrieved from <https://www.latimes.com/opinion/story/2020-06-04/police-killings-black-victims>

<sup>16</sup> L.A. youth group demands defunding police, other reforms. (2020, June 12). Retrieved from <https://www.latimes.com/california/story/2020-06-12/l-a-youths-demand-defunding-police-other-reforms>

statistics show African American stops are exactly 50% of total 608 stops at 304, with white stops at 143 for 23.52% of all stops. When adjusted to take into account the low number of African Americans residing in Berkeley, African American stops are about 42.7 per 1,000 of their population, where white stops are about 2.9 per 1,000, a disparity of 14.5 to 1.<sup>17</sup>.

Approximately 37% of the City of Berkeley's general fund is allocated to the police department, totaling \$70,622,557 in 2020 increasing to 72,774,334 in 2021 which is four times the combined budget for Health, Housing, and Community Services.

Police budgets have increased steadily, both in terms of per capita spending and police share of total spending, there is no correlation between an increased investment in policing and reductions in crime<sup>18</sup>.

A reallocation of part or all of the police budgets offer enough funding to comprehensively address many inequities that underlie calls to the police and to create non-police interventions. Models do already exist, and many involve partnerships with community groups and providers, such as the CAHOOTS program in Eugene, OR., which has been successfully in place for some three decades<sup>19</sup> and is now inspiring reforms in San Francisco<sup>20</sup> and elsewhere.

Police misconduct has minimal consequences for police departments because settlements are often paid out of general funds rather than police budgets<sup>21</sup>, putting financial pressure on other city services. Some cities resort to issuing bonds to cover settlements, which the Action Center on Race and the Economy (ACRE) call "Police Brutality Bonds"<sup>22</sup>, and these drastic measures are more common in recessions like the one that we are currently facing as a result of COVID-19.

According to Berkeley officers, more than 35% of police calls related to mental health<sup>23</sup> and the presence of armed police officers can significantly escalate these situations. As recently as 2013, a Black, transgender Berkeley resident with a history of schizophrenia died in police custody after her roommate called 911 to request assistance for her mental health crisis<sup>24</sup>.

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<sup>17</sup> Berkeley's Open Data Portal. (n.d.). Retrieved June 22, 2020, from [https://www.cityofberkeley.info/Police/Home/Berkeley\\_PD\\_s\\_Stop\\_Data\\_Now\\_on\\_City\\_s\\_Open\\_Data\\_Portal.aspx](https://www.cityofberkeley.info/Police/Home/Berkeley_PD_s_Stop_Data_Now_on_City_s_Open_Data_Portal.aspx)

<sup>18</sup> Bump, P. (2020, June 7). Analysis | Over the past 60 years, more spending on police hasn't necessarily meant less crime. Retrieved from <https://www.washingtonpost.com/politics/2020/06/07/over-past-60-years-more-spending-police-hasnt-necessarily-meant-less-crime/>

<sup>19</sup> Smith, A. V. (2020, June 11). There's already an alternative to calling the police. Retrieved from <https://www.hcn.org/issues/52.7/public-health-theres-already-an-alternative-to-calling-the-police>

<sup>20</sup> Willetts, M. (2020, June 12). No more police for non-criminal calls in San Francisco. Who will take their place? Retrieved from <https://www.sacbee.com/article243500626.html>

<sup>21</sup> Mock, B., & CityLab. (2020, June 5). How Cities Offload the Cost of Police Brutality. Retrieved from <https://www.citylab.com/equity/2020/06/police-brutality-lawsuits-cities-settlements-credit-ratings/612301/>

<sup>22</sup> Action Center on Race and the Economy. (2018). *Police Brutality Bonds*. Retrieved from <https://acrecampaigns.org/wp-content/uploads/2020/04/PoliceBrutalityBonds-Jun2018.pdf>

<sup>23</sup> Dinkelspiel, F. (2018, December 20). Mental health calls #1 drain on Berkeley police resources. Retrieved from <https://www.berkeleyside.com/2015/04/16/mental-health-calls-are-1-drain-on-berkeley-police-resources>

<sup>24</sup> Souza, J. (2019, December 20). Kayla Moore's family to appeal wrongful death suit. Retrieved June 22, 2020, from <https://www.dailycal.org/2019/12/19/kayla-moores-family-to-appeal-wrongful-death-suit/>

Armed police pose a significant danger to people experiencing mental health crises: in 2015, at least 1 in 4 victims of fatal killings by police in the United States were adults with mental illness<sup>25</sup>.

#### FINANCIAL IMPLICATIONS

The current proposed police budget for 2021 (\$72,774,334) will be reduced by an amount of 50% (\$36,387,167) or greater and funding of community programs and non-police city agencies will be increased by a commensurate amount. Reducing the BPD budget by at least 50 percent will allow funding for but not limited to youth programs or community groups and programs, housing and homeless services, food security, mental health services, healthcare, creation of new city jobs, and public health services.

#### ENVIRONMENTAL SUSTAINABILITY

Protecting our communities during this climate and health crisis is an act of environmental sustainability.

#### CONTACT PERSONS

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[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

#### ATTACHMENTS:

1. Resolution

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<sup>25</sup> Fuller, D. A., Lamb, H. R., Biasotti, M., & Snook, J. (2015). *Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters*. Treatment Advocacy Center. Retrieved from <https://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf>

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA,  
SUPPORTING REDISTRIBUTION OF CITY RESOURCES AND OPERATIONS FROM THE  
BERKELEY POLICE

WHEREAS the death of George Floyd at the hands of Minneapolis police on May 25<sup>th</sup> was yet another heartbreaking entry in the long list of Black people who have been killed by police officers in the United States<sup>26</sup>; and

WHEREAS The murder of Mr. Floyd has sparked widespread demonstrations across the country<sup>27</sup> and the world<sup>28</sup>, including here in Berkeley<sup>29</sup>, drawing attention to systemic racism in American policing<sup>30</sup> which finds its roots in Slave Patrols<sup>31</sup> and the quashing of organized

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<sup>26</sup> What follows is an extremely abbreviated list. There are many, many more examples spanning the history of policing in this country. John Crawford Iii, Michael Brown, Ezell Ford, Dante Parker, Michelle Cusseaux, Laquan McDonald, Tanisha Anderson, Akai Gurley, Tamir Rice, Romain Brisbon, Jerame Reid, Matthew Ajibade, James N. Powell Jr., Frank Smart, Natasha Mckenna, Tony Robinson, Anthony Hill, Mya Hall, Phillip White, Eric Harris, Walter Scott, William Chapman Ii, Alexia Christian, Brendon Glenn, Victor Manuel Larosa, Jonathan Sanders, Freddie Carlos Gray Jr., Joseph Mann, Salvado Ellswood, Sandra Bland, Albert Joseph Davis, Darrius Stewart, Billy Ray Davis, Samuel Dubose, Michael Sabbie, Brian Keith Day, Christian Taylor, Troy Robinson, Asshams Pharoah Manley, Felix Kumi, Keith Harrison Mcleod, Junior Prosper, Lamontez Jones, Paterson Brown, Dominic Hutchinson, Anthony Ashford, Alonzo Smith, Tyree Crawford, India Kager, La'vante Biggs, Michael Lee Marshall, Jamar Clark, Richard Perkins, Phillip Pannell, Nathaniel Harris Pickett, Benni Lee Tignor, Miguel Espinal, Michael Noel, Kevin Matthews, Bettie Jones, Quintonio Legrier, Keith Childress Jr., Janet Wilson, Randy Nelson, Antronie Scott, Wendell Celestine, David Joseph, Calin Roquemore, Dyzhawn Perkins, Christopher Davis, Marco Loud, Peter Gaines, Torrey Robinson, Darius Robinson, Kevin Hicks, Mary Truxillo, Demarcus Semer, Amadou Diallo, Willie Tillman, Terrill Thomas, Sylville Smith, Demetrius Dubose, Alton Sterling, Philando Castile, Terence Crutcher, Paul O'neal, Alteria Woods, Bobby Russ, Jordan Edwards, Aaron Bailey, Ronell Foster, Stephon Clark, Corey Carter, Antwon Rose Ii, Tayler Rock, Malice Green, Ramarley Graham, Elijah McClain, Aiyana Stanley Jones, Botham Jean, Pamela Turner, Dominique Clayton, Sean Bell, Atatiana Jefferson, Jemel Roberson, James Lee Alexander, Ryan Matthew Smith, Derrick Ambrose Jr., Addie Mae Collins, Carol Denise Mcnair, Carole Robertson, Cynthia Wesley, Nicholas Heyward Jr., Christopher Whitfield, Victor White Iii, Christopher Mccorvey, Timothy Thomas, Reginald Doucet Jr., Danroy "Dj" Henry Jr., Karvas Gamble Jr., Eric Reason, Korryn Gaines, Rekia Boyd, Kionte Spencer, Darius Tarver, Wayne Arnold Jones, Manuel Ellis, Victor Duffy Jr., Kobe Dimock-heisler, Clinton R. Allen, Timothy Caughman, Corey Jones, Tyre King, Eric Garner, Miles Hall, Kendrick Johnson, Michael Lorenzo Dean, Trayvon Martin, Renisha McBride, Oscar Grant Iii, Breonna Taylor, Kalief Browder, Darrien Hunt, Troy Hodge, William Green, Ahmaud Arbery, Dion Johnson, Tony Mcdade, Jamel Floyd, George Floyd.

<sup>27</sup> List of George Floyd protests in the United States. (2020, June 10). Retrieved from [https://en.wikipedia.org/wiki/List\\_of\\_George\\_Floyd\\_protests\\_in\\_the\\_United\\_States](https://en.wikipedia.org/wiki/List_of_George_Floyd_protests_in_the_United_States)

<sup>28</sup> Nossiter, A., & Méheut, C. (2020, June 12). George Floyd Protests Inspire Fresh Scrutiny of Policing in Europe, Too. Retrieved from <https://www.nytimes.com/2020/06/12/world/europe/george-floyd-protests-europe-police.html>

<sup>29</sup> Taylor, T. (2020, June 11). Black Lives Matter march run by BHS students ends with street painting. Retrieved from <https://www.berkeleyside.com/2020/06/09/photos-black-lives-matter-protest-organized-by-berkeley-high-students-ends-with-street-painting>

<sup>30</sup> Worland, J. (2020, June 11). America's Long Overdue Awakening on Systemic Racism. Retrieved June 13, 2020, from <https://time.com/5851855/systemic-racism-america/>

<sup>31</sup> Waxman, O. B. (2019, March 6). The History of Police in America and the First Force. Retrieved from <https://time.com/4779112/police-history-origins/>



labor<sup>32</sup>, and demonstrators are demanding the redistribution of civic resources from militarized police departments to social services where they belong; and

WHEREAS cities across the nation have begun the necessary process of defunding or outright abolishing their police departments<sup>33 34 35 36 37 38</sup>; and

WHEREAS police reforms that do not include redistributing resources away from police have not been sufficiently effective in curbing police abuses, as evidenced by many attempts including in Los Angeles after the beating of Rodney King nearly thirty years ago, where the city made various reforms based on an independent commission's recommendations<sup>39</sup> but Los Angeles police continued to abuse and kill<sup>40</sup>, and the city has been host to California's largest demonstrations in the weeks since Floyd's death<sup>41</sup>; and

WHEREAS here in Berkeley, many police reforms have been instituted but unconscionable inequities persist. Just in the last several weeks, between March 13th and June 12th, 2020, BPD police statistics show African American stops are exactly 50% of total 608 stops at 304, with white stops at 143 for 23.52% of all stops. When adjusted to take into account the low number of African Americans residing in Berkeley, African American stops are about 42.7 per 1,000 of their population, where white stops are about 2.9 per 1,000, a disparity of 14.5 to 1.<sup>42</sup>, and

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<sup>32</sup> Potter, G. (2013). *The History of Policing in the United States*. Eastern Kentucky University. Retrieved from <https://plsonline.eku.edu/sites/plsonline.eku.edu/files/the-history-of-policing-in-us.pdf>

<sup>33</sup> Searcey, D., & Eligon, J. (2020, June 8). Minneapolis Will Dismantle Its Police Force, Council Members Pledge. Retrieved from <https://www.nytimes.com/2020/06/07/us/minneapolis-police-abolish.html>

<sup>34</sup> Boston councilor questioning police funding; Walsh says he's 'committed to making real change'. (2020, June 8). Retrieved from <https://whdh.com/news/boston-councilor-questioning-police-funding-walsh-says-hes-committed-to-making-real-change/>

<sup>35</sup> Bowman, N. (2020, June 9). Seattle councilmembers join calls to defund police department. Retrieved from <https://mynorthwest.com/1928707/seattle-council-calls-for-change-police-department/>

<sup>36</sup> Edmondson, C. (2020, June 1). Lawmakers Begin Bipartisan Push to Cut Off Police Access to Military-Style Gear. Retrieved from <https://www.nytimes.com/2020/06/01/us/politics/police-military-gear.html>

<sup>37</sup> Riotta, C. (2020, June 4). Los Angeles to defund police department by \$150m and instead invest in minority communities. Retrieved from <https://www.independent.co.uk/news/world/americas/los-angeles-police-department-budget-cuts-defund-lapd-eric-garcetti-press-conference-a9549001.html>

<sup>38</sup> Kafton, C. (2020, June 6). San Francisco Mayor, Supervisor announce an effort to redirect some police funding to the African-American community. Retrieved from <https://www.ktvu.com/news/san-francisco-mayor-supervisor-announce-effort-to-redirect-some-police-funding-to-african-american-community>

<sup>39</sup> Report of the Independent Commission on the Los Angeles Police Department (Christopher Commission Report): The Independent Commission on the Los Angeles Police Department: Free Download, Borrow, and Streaming. (1991, January 1). Retrieved from <https://archive.org/details/ChristopherCommissionLAPD>

<sup>40</sup> Editorial: A very abbreviated history of police officers killing black people. (2020, June 4). Retrieved from <https://www.latimes.com/opinion/story/2020-06-04/police-killings-black-victims>

<sup>41</sup> L.A. youth group demands defunding police, other reforms. (2020, June 12). Retrieved from <https://www.latimes.com/california/story/2020-06-12/l-a-youths-demand-defunding-police-other-reforms>

<sup>42</sup> Berkeley's Open Data Portal. (n.d.). Retrieved June 22, 2020, from [https://www.cityofberkeley.info/Police/Home/Berkeley\\_PD\\_s\\_Stop\\_Data\\_Now\\_on\\_City\\_s\\_Open\\_Data\\_Portal.asp](https://www.cityofberkeley.info/Police/Home/Berkeley_PD_s_Stop_Data_Now_on_City_s_Open_Data_Portal.asp)

WHEREAS approximately 37% of the City of Berkeley's general fund is allocated to the police department, totaling \$70,622,557 in 2020 increasing to 72,774,334 in 2021 which is four times the combined budget for Health, Housing, and Community Services<sup>43</sup>; and

WHEREAS police budgets have increased steadily, both in terms of per capita spending and police share of total spending, there is no correlation between an increased investment in policing and reductions in crime<sup>44</sup>; and

WHEREAS a reallocation of part or all of police budgets offer enough funding to comprehensively address many inequities that underlie calls to the police, and to create non-police interventions. Models do already exist, and many involve partnerships with community groups and providers, such as the CAHOOTS program in Eugene, OR., which has been successfully in place for some three decades<sup>45</sup> and is now inspiring reforms in San Francisco<sup>46</sup> and elsewhere; and

WHEREAS police misconduct has minimal consequences for police departments because settlements are often paid out of general funds rather than police budgets<sup>47</sup>, putting financial pressure on other city services. Some cities resort to issuing bonds to cover settlements, which the Action Center on Race and the Economy (ACRE) call "Police Brutality Bonds"<sup>48</sup>, and these drastic measures are more common in recessions like the one that we are currently facing as a result of COVID-19; and

WHEREAS according to Berkeley officers, more than 35% of police calls related to mental health<sup>49</sup> and the presence of armed police officers can significantly escalate these situations. As recently as 2013, a Black, transgender Berkeley resident with a history of schizophrenia died in police custody after her roommate called 911 to request assistance for her mental health crisis<sup>50</sup>; and

WHEREAS armed police pose a significant danger to people experiencing mental health crises: in 2015, at least 1 in 4 victims of fatal killings by police in the United States were adults with mental illness<sup>51</sup>; and

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<sup>43</sup> City of Berkeley Budget. (n.d.). Retrieved from <https://www.cityofberkeley.info/citybudget/>

<sup>44</sup> Bump, P. (2020, June 7). Analysis | Over the past 60 years, more spending on police hasn't necessarily meant less crime. Retrieved from <https://www.washingtonpost.com/politics/2020/06/07/over-past-60-years-more-spending-police-hasnt-necessarily-meant-less-crime/>

<sup>45</sup> Smith, A. V. (2020, June 11). There's already an alternative to calling the police. Retrieved from <https://www.hcn.org/issues/52.7/public-health-theres-already-an-alternative-to-calling-the-police>

<sup>46</sup> Willetts, M. (2020, June 12). No more police for non-criminal calls in San Francisco. Who will take their place? Retrieved from <https://www.sacbee.com/article243500626.html>

<sup>47</sup> Mock, B., & CityLab. (2020, June 5). How Cities Offload the Cost of Police Brutality. Retrieved from <https://www.citylab.com/equity/2020/06/police-brutality-lawsuits-cities-settlements-credit-ratings/612301/>

<sup>48</sup> Action Center on Race and the Economy. (2018). *Police Brutality Bonds*. Retrieved from <https://acrecampaigns.org/wp-content/uploads/2020/04/PoliceBrutalityBonds-Jun2018.pdf>

<sup>49</sup> Dinkelspiel, F. (2018, December 20). Mental health calls #1 drain on Berkeley police resources. Retrieved from <https://www.berkeleyside.com/2015/04/16/mental-health-calls-are-1-drain-on-berkeley-police-resources>

<sup>50</sup> Souza, J. (2019, December 20). Kayla Moore's family to appeal wrongful death suit. Retrieved June 22, 2020, from <https://www.dailycal.org/2019/12/19/kayla-moores-family-to-appeal-wrongful-death-suit/>

<sup>51</sup> Fuller, D. A., Lamb, H. R., Biasotti, M., & Snook, J. (2015). *Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters*. Treatment Advocacy Center. Retrieved from <https://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf>

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Berkeley, California, support Redistribution of City Resources and Operations from the Berkeley Police, and taking the following actions:

1. Request that any function that is currently served by Berkeley Police but would be better served by trained city staff or community partners should be transferred out of the police department with all due haste.
2. These functions include all non-emergency calls, mental health calls (including wellness checks), calls related to intoxication, calls related to homelessness, calls involving domestic violence, and any other calls that can be served by any other city resource.
3. The current proposed police budget for 2021 (\$72,774,334) will be reduced by an amount of 50% (\$36,387,167) or greater and funding of community programs and non-police city agencies will be increased by a commensurate amount.
4. Reducing the Berkeley Police Department budget by at least 50 percent will allow funding for but not limited to youth programs or community groups and programs, housing and homeless services, food security, mental health services, healthcare, creation of new city jobs, and public health services.
5. Calls involving domestic violence, homelessness, and mental health require specialized responding staff who have been trained in de-escalation and are able to provide direct services to Berkeley residents who are in crisis. The City Auditor is hereby directed to prepare a report to Council that reveals the amount of funding that will become available as a result of these reductions in police responsibilities.
6. The City Manager will identify the expertise needed for non-police responses to these calls, taking into account comparable approaches including CAHOOTS as well as existing local programs which could possibly expand with additional funding such as: the Berkeley Free Clinic, Building Opportunities for Self Sustainability (BOSS), and the Women's Daytime Drop-in Center, Consider the Homeless and others, and initiate an RFP process for community organizations to provide those services.
7. The City Manager should create a plan for a non-police hotline that can receive 911 calls and connect those calls with non-police resources as appropriate, either by expanding the 311 mandate or creating a new city agency (perhaps 811 recognizing 8 to Abolish).
8. The City Council requests the Berkeley Unified School District and all Berkeley schools, both public and private to end programs that bring police officers into the schools, and to do everything within their power to protect undocumented students and families and to safeguard their information and prevent it from being shared with from police, including ICE (Immigration and Customs Enforcement).
9. That general fund dollars are not to be expended to pay out settlements resulting from police officer negligence, brutality, or murder. Those settlements will henceforth be deducted from police department budgets.
10. That the Police Review Commission and Peace and Justice Commission are instructed to form a joint committee to annually review police responsibilities and make recommendations to the City Council regarding additional functions that could better be served by non-police staff.





Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
July 14, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Wengraf (author), Councilmember Davila (Co-Sponsor)  
Subject: Referral to City Manager to Re-imagine Policing Approaches to Public Safety Using a Process of Robust Community Engagement, to Develop a Path Forward to Transforming Public Safety and Policing in Berkeley.

RECOMMENDATION

We must have our communities of color, particularly our African American community, at the forefront of conversations to re-imagine approaches to policing and public safety in Berkeley. The people most disparately impacted must have a vital role in the creation of new ways to enhance accountability, compassion and transparency as we move forward to address racial inequities and disparate outcomes of policing in Berkeley.

This item is an urgent referral to the City Manager to act quickly and thoughtfully in creating substantial community engagement to develop a new model for policing in Berkeley, to address racial inequities, ensure community health and safety needs are met, and to build trust within our communities of color.

This work should begin with public, transparent community forums to listen, learn and receive people's ideas about how policing should be re-imagined and transformed so that communities of color can be safer within their neighborhoods, the City of Berkeley, and trust in the Berkeley Police Department can begin to be rebuilt. The City Manager will send a list of recommendations to the full Council for review and public input.

FINANCIAL IMPLICATIONS

Staff time

BACKGROUND

The recent heinous murders of George Floyd and Breonna Taylor and Ahmaud Arbery in the context of centuries of sanctioned murders of and violence towards Black people in our country, have catapulted the nation and our community to call for change in rooting out systemic racism from our policing models.

At the June 9, 2020 Council Meeting Berkeley residents demanded an end to racial disparities in Berkeley's policing. Some demanded defunding the Berkeley Police Department. This item seeks to vigorously initiate the development of a strategic framework to end disparate racial outcomes resulting from practices, policies and

deployment of the Berkeley Police Department, by engaging the communities most impacted in the discussion about how to re-imagine our Police Department. This is one step towards moving forward with a Police department that is responsive to the health and safety needs of our communities of color.

ENVIRONMENTAL SUSTAINABILITY

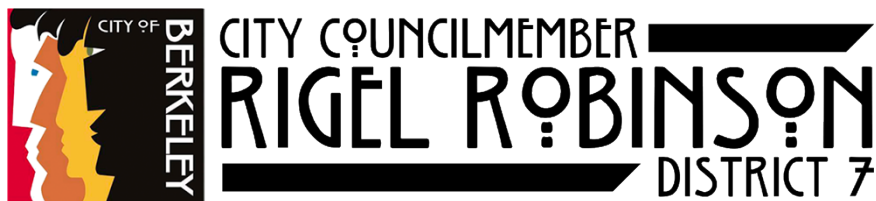
None

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160



CONSENT CALENDAR  
July 14, 2020

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Rigel Robinson, Lori Droste, Ben Bartlett, and Mayor Jesse Arreguín  
 Subject: BerkDOT: Reimagining Transportation for a Racially Just Future

### RECOMMENDATION

Refer to the City Manager, the FY 2021-22 budget process, and the proposed community engagement process to reimagine public safety to pursue the creation of a Berkeley Department of Transportation (*BerkDOT*) to ensure a racial justice lens in traffic enforcement and the development of transportation policy, programs, & infrastructure.

### BACKGROUND

Philando Castile was pulled over for a broken brake light.<sup>1</sup>  
 Sandra Bland was pulled over for failing to signal a lane change.<sup>2</sup>  
 Maurice Gordon was pulled over for speeding.<sup>3</sup>  
 All three died at the hands of police.

It can never be truly known just how many others in similar circumstances suffered such an unjust fate. The headline “routine traffic stop turns deadly” has become all too common in this country. Traffic stops have a history of racial bias that has been continually backed up by the courts — *Whren vs. United States* enabled police officers to conduct pretextual stops, in which minor traffic violations are used as pretext to stop and search drivers suspected of more serious criminal activity.<sup>4</sup> Coupled with the racial biases that permeate this country to this day, these stops have too often escalated into use of force or unnecessary arrests that disproportionately harm Black Americans. While Berkeley police officers have not been involved in an officer-involved shooting since 2012, these issues challenge every city, and Berkeley can play a leading role in addressing them.

The murders of George Floyd, Breonna Taylor, and Ahmaud Arbery have re-ignited a national debate around policing and public safety. Many are taking a second look at the fundamental roles of police, such as traffic stops, and whether these responsibilities could be shifted to unarmed civil servants instead. A serious discussion of the role of

<sup>1</sup> <https://www.nytimes.com/2017/06/21/us/video-police-shooting-philando-castile-trial.html>

<sup>2</sup> <https://www.nytimes.com/2019/05/07/us/sandra-bland-video-brian-encinia.html>

<sup>3</sup> <https://www.vox.com/identities/2020/6/9/21285536/maurice-gordon-police-shooting-explained>

<sup>4</sup> <https://www.oyez.org/cases/1995/95-5841>

modern policing is incomplete without a focus on traffic enforcement. According to the Stanford Policing Project, police pull over more than 20 million motorists per year, making traffic stops the most common interaction Americans have with police.<sup>5</sup>

While recent events have brought the nation's attention to particular policing practices and the role of law enforcement in traffic stops, proposals to separate traffic enforcement from the police are by no means a recent development. In her book *Policing the Open Road*, author Sarah Seo chronicles how the rise of the car, a symbol of American freedom, opened the doors to more intrusive policing with disastrous consequences for racial equity.<sup>6</sup> As Seo argues, though the Fourth Amendment provides constitutional protection from unreasonable searches and seizures, jurists have continually interpreted the clause narrowly in the context of cars, enabling a massive surge in deeply discretionary policing practices all over the country. New criminal procedures were developed that accommodated, rather than limited, police intervention and effectively sanctioned police discrimination. Constitutional challenges to unjust traffic stops failed in court, leaving Black Americans with few tools to defend themselves against searches and stops.

In July 2019, almost a year before the tragic death of George Floyd, Minneapolis' largest transportation advocacy group, Our Streets Minneapolis, announced that they did not support traffic enforcement as a tool for enhancing street safety. The release opens: "At Our Streets Minneapolis we firmly believe traffic enforcement is not a good strategy to make streets better places to bike, walk, and roll."<sup>7</sup> The organization's statement was premised on two key theses: (1) increased traffic enforcement would amplify racial disparities and (2) street safety could be better achieved through smarter street design. Studies conducted in Minneapolis found stark disparities in traffic law enforcement for Black bicyclists<sup>8</sup> and motorists.<sup>9</sup> Though they make up only 18 percent of Minneapolis residents, Black & African Americans make up 70 percent of vehicle searches and 68 percent of body searches at traffic stops.

Unfortunately, the same story can be told in virtually every major city in America. Berkeley is not an exception.

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<sup>5</sup> <https://openpolicing.stanford.edu/findings/>

<sup>6</sup> <https://www.hup.harvard.edu/catalog.php?isbn=9780674980860>

<sup>7</sup> [https://www.ourstreetsmpls.org/why\\_we\\_don\\_t\\_support\\_traffic\\_enforcement](https://www.ourstreetsmpls.org/why_we_don_t_support_traffic_enforcement)

<sup>8</sup> <https://www.ourstreetsmpls.org/citationreport>

<sup>9</sup>

[https://tableau.minneapolismn.gov/views/MPDStopDataOpenData/MPDStopInformation?%3Aembed=y&mp;%3AshowAppBanner=false&amp;%3AshowShareOptions=true&amp;%3Adisplay\\_count=no&amp;%3AshowVizHome=no](https://tableau.minneapolismn.gov/views/MPDStopDataOpenData/MPDStopInformation?%3Aembed=y&mp;%3AshowAppBanner=false&amp;%3AshowShareOptions=true&amp;%3Adisplay_count=no&amp;%3AshowVizHome=no)



As UC Berkeley Professor Jack Glaser with the Center for Policing Equity (CPE) put it, “Berkeley appears to be doing better than most agencies, but it has work to do.”<sup>10</sup> The 2018 CPE report *The Science of Justice* found that Black and Hispanic drivers and pedestrians are stopped at much higher rates by Berkeley police. Interestingly, in the last quarter, although police stops are generally down for all racial groups under shelter-in-place, the racial disparity in stops has increased significantly.<sup>11</sup>

Local transportation advocates such as Walk Bike Berkeley have joined the nationwide call for a reimagining of the role of policing in traffic enforcement.<sup>12</sup> Here in the Bay Area, BART officials have pledged to shift \$2 million in funding away from BART police and fare inspectors, and instead allocate it towards unarmed ambassadors.<sup>13</sup> Fare inspection has been a contentious issue for years, with a 2019 report showing that 52 percent of BART fare evasion citations go to Black riders despite them making up only 12 percent of ridership.<sup>14</sup> Much like with traffic enforcement, officials are grappling with ways to conduct fare enforcement without giving authorities the discretion that so often leads to racial profiling.

One way of addressing these issues in Berkeley is by creating a Department of Transportation (BerkDOT), shifting traffic and parking enforcement responsibilities away from the Berkeley Police Department and coupling it with the work currently housed in the Transportation Division of the Public Works Department. Currently, traffic stops and parking citations fall under the Investigations Division of the Berkeley Police Department. Within the division is the Traffic Bureau, which consists of the Traffic Unit and the Parking Enforcement Unit.<sup>15</sup>

Calls to relocate transportation planning work to a new city department have existed for some time, with the hope that such an organizational realignment could amplify and accelerate the critical work occurring already. Berkeley once housed its transportation work in the office of the City Manager, which was managed by an Assistant to the City Manager for Transportation. However, for years now, the Transportation Division has existed within Public Works. Berkeley would join the City of Oakland in having a Department of Transportation separate from the Department of Public Works. Oakland created OakDOT in 2015, following the lead of other major cities like Washington D.C., New York City, and Los Angeles. Their department has since become a national model

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<sup>10</sup> <https://www.berkeleyinsider.com/2018/05/11/berkeley-police-stops-show-racial-disparities-but-what-does-that-mean>

<sup>11</sup> <https://data.cityofberkeley.info/Public-Safety/Berkeley-PD-Stop-Data-NEW-/4tbf-3yt8>

<sup>12</sup> <https://www.walkbikeberkeley.org/wbb-updates-actions-media/2020/6/4/black-lives-matter>

<sup>13</sup> <https://www.sfchronicle.com/bayarea/article/Defunding-police-BART-to-shift-2-million-from-15353626.php>

<sup>14</sup> <https://sanfrancisco.cbslocal.com/2020/02/24/bart-police-data-disparity-citations-black-passengers-quality-of-life/>

<sup>15</sup> [https://www.cityofberkeley.info/Police/Home\\_-\\_translated/Traffic\\_Bureau.aspx](https://www.cityofberkeley.info/Police/Home_-_translated/Traffic_Bureau.aspx)

for equity in the transportation sector with the help of the OakDOT Racial Equity Team and the City of Oakland Department of Race and Equity.<sup>16</sup> The creation of a separate transportation department has enabled a more targeted equity approach, resulting in a more accessible and equitable public engagement strategy, the prioritization of historically underserved areas for funding and investment, and the creation of low-income rideshare pricing programs in response to community need.<sup>17</sup>

Berkeley can lead the nation in refocusing its traffic enforcement efforts on equitable enforcement, focusing on a cooperative compliance model rather than a punitive model. A Department of Transportation in the City of Berkeley could shift traffic enforcement, parking enforcement, crossing guards, and collision response & reporting away from police officers—reducing the need for police interaction with civilians—and ensure a racial justice lens in the way we approach transportation policies, programs, and infrastructure. It would also ensure a focus on transportation that is separate and apart from public works issues, fitting for the importance of transportation as an issue of concern to Berkeley and as a key component of our greenhouse reduction goals.

#### FINANCIAL IMPLICATIONS

If the city ultimately undertakes such a reorganization, there would be significant upfront costs involved in establishing a new city department. Changes in staffing and the creation of new positions would require funding. In the long term, however, these changes could result in significant cost savings.

#### ENVIRONMENTAL SUSTAINABILITY

Transportation represents 60 percent of the City of Berkeley’s greenhouse gas emissions. Empowering our sustainable transportation work in a new city department would continue and amplify the work of our city to reduce greenhouse gas emissions, in alignment with our Climate Action Plan.<sup>18</sup>

#### CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

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<sup>16</sup> <https://www.oaklandca.gov/topics/oakdot-racial-equity-team>

<sup>17</sup> <https://rpa.org/latest/lab/oakdot-offers-example-of-transit-equity-in-action>

<sup>18</sup> <https://www.cityofberkeley.info/climate/>

|                                                                               |                                                                                                                                                                                 |
|-------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i> |                                                                                                                                                                                 |
| Scheduled Dates                                                               |                                                                                                                                                                                 |
| July 21                                                                       | <ol style="list-style-type: none"> <li>1. Climate Action Plan/Resiliency Update</li> <li>2. Crime Report</li> </ol>                                                             |
| Sept. 29                                                                      | <ol style="list-style-type: none"> <li>1. Digital Strategic Plan/FUND\$ Replacement/Website Update</li> <li>2. Update: Zero Waste Priorities</li> <li>3. Vision 2050</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>                                                  |

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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Unscheduled Workshops</p> <ol style="list-style-type: none"> <li>1. Cannabis Health Considerations</li> <li>2. Presentation from StopWaste on SB 1383</li> </ol> |
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|--------------------------------------------------------------------------------------------------------------------------|
| <p>Unscheduled Presentations (City Manager)</p> <ol style="list-style-type: none"> <li>1. Systems Realignment</li> </ol> |
|--------------------------------------------------------------------------------------------------------------------------|

|    | <b>City Council Referrals to the Agenda &amp; Rules 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> Item to be agendized at future Agenda and Rules Committee Meeting pending scheduling confirmation from City Manager.</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>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>                                                                                                                                                                                                                                                                                                                                                                                        |
| 3. | <p><b>33. Proposed Navigable Cities Framework for Ensuring Access and Freedom-of-Movement for People with Disabilities in Berkeley</b> (<i>Referred from the March 10, 2020 agenda</i>)</p> <p><b>From: Commission on Disability</b></p> <p>Contact: Dominika Bednarska, Commission Secretary, (510) 981-6300</p> <p><i>Note: Referred for scheduling of a presentation by the Commission. On June 15, 2020, the Committee suggested the dates of 9/15 or 9/22 for the Commission to present. The Commission prefers to present on 9/22/20.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 4. | <p><b>7. Adopt a Resolution to Upgrade Residential and Commercial Customers to 100% Greenhouse Gas Emissions-Free Electricity Plan and Municipal Accounts to 100% Renewable Plan</b> (<i>Reviewed by the Facilities, Infrastructure, Transportation, Environment &amp; Sustainability Committee</i>) (<i>Referred from the April 21, 2020 agenda</i>)</p> <p><b>From: Councilmember Harrison (Author), Mayor Arreguin (Author), Councilmember Robinson (Co-Sponsor), Councilmember Hahn (Co-Sponsor)</b></p> <p><b>Recommendation:</b> Adopt a Resolution to: a. Opt up Berkeley's municipal accounts to Renewable 100 (100% renewable and 100% greenhouse gas-free) electricity service, and refer the estimated increased cost of \$100,040 to the June 2020 budget process. b. Upgrade current and new Berkeley residential and commercial customer accounts from Bright Choice (&gt;85% GHG-free) to Brilliant 100 (100% GHG-free), except for residential customers in low income assistance programs. The transition would be effective October 1, 2020 for residential customers and January 1, 2021 for commercial customers. c. Provide for yearly Council review of the City's default municipal, residential, and commercial plans.</p> <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> |

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5. | <p><b>25. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers</b> <i>(Continued from February 25, 2020. Item contains revised and supplemental materials)</i> <i>(Referred from the May 12, 2020 agenda.)</i></p> <p><b>From: City Manager</b></p> <p><b>Recommendation:</b> Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.</p> <p><b>Financial Implications:</b> None</p> <p>Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000</p> <p><i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 6. | <p><b>1. Adoption of an Ordinance Amending Berkeley Municipal Code Chapter 16.10 (Installation of Video and Telecommunications Systems) and Revised Guidelines for Issuance of Public Right-of-Way Permits</b> <i>(Item contains supplemental material.)</i> <i>(Referred from the May 19, 2020 agenda.)</i></p> <p><b>From: City Manager</b></p> <p><b>Recommendation:</b> Adopt first reading of an ordinance amending Berkeley Municipal Code Chapter 16.10 (Installation of Video and Telecommunications Systems), and adopt revised administrative guidelines for the issuance of Public Right-of-Way Permits.</p> <p><b>Financial Implications:</b> See report</p> <p>Contact: Phillip Harrington, Public Works, (510) 981-6300</p> <p><b>2. Updating Berkeley Telecom Ordinances and BMC Codes</b> <i>(Reviewed by the Agenda &amp; Rules Committee. Item contains revised material.)</i> <i>(Referred from the May 19, 2020 agenda.)</i></p> <p><b>From: Councilmember Davila (Author)</b></p> <p><b>Recommendation:</b> 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.</p> <p><b>Financial Implications:</b> See report</p> <p>Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120</p> <p><i>Note: Referred to Agenda &amp; Rules for future scheduling with Item 2 as an informational supplement to Item 1. Item has been scheduled for July 7, 2020 special meeting.</i></p> |
| 7. | <p><b>Referral to Schedule a Special City Council Meeting on Ohlone History and Culture</b></p> <p><b>From: Councilmembers Hahn and Davila</b> <i>(referred from February 25, 2020)</i></p> <p><b>Recommendation:</b> Refer to the Agenda &amp; Rules Policy Committee to schedule a Special City Council Meeting of at least one hour in duration immediately prior to a Regular City Council Meeting for representatives of the Ohlone community to present on Ohlone history and culture to provide additional context for the placement of signs stating "Welcome to the City of Berkeley Ohlone Territory" at entrances to our City.</p> <p><b>Financial Implications:</b> None</p> <p>Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150</p> <p><i>Note: moved from the Upcoming Worksessions list to this list for scheduling purposes on June 15, 2020.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

| CITY CLERK DEPARTMENT                                                       |                      |                       |                                         |                   |
|-----------------------------------------------------------------------------|----------------------|-----------------------|-----------------------------------------|-------------------|
| WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS<br>BEFORE THE CITY COUNCIL |                      |                       |                                         |                   |
| Address                                                                     | Board/<br>Commission | Appeal Period<br>Ends | Determination<br>on Appeal<br>Submitted | Public<br>Hearing |
| <b>NOD – Notices of Decision</b>                                            |                      |                       |                                         |                   |
| 1635 Tacoma Ave (single-family dwelling)                                    | ZAB                  | 6/30/2020             |                                         |                   |
| 2023-23 Shattuck Ave (construct mixed-use building)                         | ZAB                  | 6/30/2020             |                                         |                   |
| 2338 Telegraph Ave (eliminate Residential Hotel Room)                       | ZAB                  | 6/30/2020             |                                         |                   |
| 1346 Ordway St (legalize additions)                                         | ZAB                  | 6/30/2020             |                                         |                   |
| <b>Public Hearings Scheduled</b>                                            |                      |                       |                                         |                   |
| 0 Euclid Ave - Berryman Reservoir (denial of 4G telecom facility)           | ZAB                  |                       |                                         | 7/7/2020          |
| 1449 Grizzly Peak Blvd (single family dwelling)                             | ZAB                  |                       |                                         | 7/7/2020          |
| 1533 Beverly Place (single-family dwelling)                                 | ZAB                  |                       |                                         | 7/14/2020         |
| <b>Remanded to ZAB or LPC</b>                                               |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
| <b>Notes</b>                                                                |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |

6/23/2020



Office of the City Manager

May 6, 2020

To: Honorable Mayor and Members of the City Council

From: *DWR* Dee Williams-Ridley, City Manager

Subject: **Resumption of certain Board and Commission meetings**

As you are aware, on March 12, 2020, I directed that most board and commission meetings be suspended for at least 60 days in order to help minimize the spread of COVID-19. Exceptions can be made if a board or commission has time-sensitive, legally mandated business to complete, subject to approval by the City Manager and Health Officer. On April 13, 2020, the City Council Agenda & Rules Committee recommended that this action remain in effect until it is determined by the City Manager, as the Director of Emergency Services, and the Health Officer that conditions are appropriate to resume meetings, while maintaining the health and safety of the community.

The purpose of this memo is to notify you that as of today, the Health Officer and I are authorizing certain board and commission meetings to resume with a virtual meeting format. In-person board/commission meetings are not authorized until further notice. Board/commission meetings will be held via Zoom, similar to the format being used by the City Council and City Council policy committees that have resumed meetings during the Shelter-in-Place Order.

Resuming certain board/commission meetings is necessary at this time to enable action on a range of time-sensitive issues. Examples include pending land use permit applications (some of which carry legal mandates for action within set time frames), land use policy efforts which are time-sensitive to address the acute housing crisis, and input required for pending tax decisions, such as to the Disaster and Fire Safety Commission regarding tax rates under Measure GG.

Board and commission meetings will be scheduled with enough lead time to allow agendas to be finalized, applicants and interested parties to be contacted, and public hearing notices to be posted. Staff are contacting board members/commissioners to let them know that certain boards/commissions are resuming. Members of the public may also reach out to commission secretaries (contact information is included on each commission webpage) to inquire about dates of future board/commission meetings.

Depending on the board/commission, initial virtual meetings will be scheduled in late May and June. Some commission meetings will take longer than others to schedule, as some of the same staff who are responsible for preparing commission meeting packets and notices are also serving as Disaster Service Workers. We appreciate everyone's patience as we move forward with next steps.

Boards/commissions that are authorized to resume meeting remotely are:

- Ashby and North Berkeley BART Station Zoning Standards Community Advisory Group
- Design Review Committee
- Disaster & Fire Safety Commission
- Fair Campaign Practices Commission
- Homeless Services Panel of Experts
- Housing Advisory Commission (limited to quasi-judicial activities)
- Joint Subcommittee on the Implementation of State Housing Laws
- Landmarks Preservation Commission
- Open Government Commission
- Personnel Board
- Planning Commission
- Police Review Commission
- Zoning Adjustments Board

I will consider authorizing additional boards/commissions to resume meeting on a case-by-case basis.

Web-based platforms allow board members/commissioners, staff, applicants, and members of the public to participate from their respective shelter-in-place locations. Commissioners who do not have access to a computer or internet will be provided with hard copies of all materials and can participate via phone.

Departments are organizing training on online meeting facilitation for staff and commission chairs, and we will hold practice runs to test out the technology.

Please contact me directly with any questions or concerns.

cc: Senior Leadership Team



RESOLUTION NO. 69,331-N.S.

RATIFYING THE RECOMMENDATIONS ISSUED BY THE DIRECTOR OF EMERGENCY SERVICES AND THE PUBLIC HEALTH OFFICER REGARDING MEETINGS OF BERKELEY LEGISLATIVE BODIES IN RESPONSE TO THE COVID-19 (NOVEL CORONAVIRUS) PANDEMIC

WHEREAS, on March 3, 2020, pursuant to Berkeley Municipal Code section 2.88.040, the City Manager, serving as the Director of Emergency Services, proclaimed the existence of a local emergency; and

WHEREAS, the proclamation was warranted by virtue of the extreme peril to the safety of persons and property in the City caused by pandemic in the form of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus ("COVID-19"), including confirmed cases in California and the San Francisco Bay Area, and presumed cases in Alameda County prompting the County to declare a local health emergency; and

WHEREAS, the proclamation of the Director of Emergency Services was ratified by the City Council on March 10, 2020; and

WHEREAS, the continued spread of COVID-19 and increase in community transmission cases in surrounding counties warrant further measures be taken by the City to protect the community; and

WHEREAS, the Public Health Officer has issued guidelines for limiting mass gatherings; and

WHEREAS, certain limitations on the meetings of legislative bodies in the City of Berkeley is warranted; and

WHEREAS, the continued essential functions of the City and certain legislative bodies must continue for time-sensitive, legally mandated actions; and

WHEREAS, the Director of Emergency Services presented recommendations to the Agenda & Rules Committee on March 12, 2020 regarding the meetings of legislative bodies; and

WHEREAS, the Agenda & Rules Committee recommended that said recommendations be forwarded to the City Council for acknowledgement and ratification.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following recommendations issued by the Director of Emergency Services and the Public Health Officer regarding limitations and practices for legislative bodies of the City of Berkeley are hereby acknowledged and ratified:

## Section 1. Boards and Commissions

Commissions listed below may continue to meet only if they have time-sensitive, legally mandated business to complete, as determined by the Director of Emergency Services. The City may consider teleconferencing for these commissions, if feasible.

Design Review Committee  
Fair Campaign Practices Commission  
Housing Advisory Commission (limited to quasi-judicial activities)  
Joint Subcommittee on the Implementation of State Housing Laws  
Landmarks Preservation Commission  
Open Government Commission  
Personnel Board  
Planning Commission  
Police Review Commission  
Zoning Adjustments Board

Commissions in Category B shall not meet for a period of 60 days. This will be re-evaluated at the Agenda & Rules Committee meeting on April 13, 2020. A Commission in Category B may convene a meeting if it has time-sensitive, legally-mandated business to complete, as determined by the Director of Emergency Services.

### Category B

Animal Care Commission  
Cannabis Commission  
Civic Arts Commission  
Children, Youth, and Recreation Commission  
Commission on Aging  
Commission on Disability  
Commission on Labor  
Commission on the Status of Women  
Community Environmental Advisory Commission  
Community Health Commission  
Disaster and Fire Safety Commission  
Elmwood Business Improvement District Advisory Board  
Energy Commission  
Homeless Commission  
Homeless Services Panel of Experts  
Housing Advisory Commission  
Human Welfare and Community Action Commission  
Measure O Bond Oversight Committee  
Mental Health Commission  
Parks and Waterfront Commission  
Peace and Justice Commission  
Public Works Commission  
Solano Avenue Business Improvement District Advisory Board  
Sugar-Sweetened Beverage Product Panel of Experts

Transportation Commission  
Youth Commission  
Zero Waste Commission  
Loan Administration Board

Section 2. City Council Policy Committees

The Agenda & Rules Committee and the Budget & Finance Committee may continue to meet to fulfill their legislative and advisory responsibilities. All other Policy Committees (Facilities, Infrastructure, Transportation, Environment & Sustainability, Public Safety, Land Use, Housing & Economic Development, and Health, Life Enrichment Equity & Community) are suspended indefinitely. The 120-day deadline to consider an item will be tolled during the suspension of business.

Section 3. City Council


For City Council meetings, the City will continue to advise and implement social distancing by limiting the capacity of the Council Chambers, providing an overflow room, attempting to limit the duration of the meeting, only conducting essential business, and limiting or suspending ceremonial items. The City will adhere to and implement the provisions of the Governor's Executive Order #N-25-20 related to the Brown Act and the utilization of technology to facilitate participation.

The foregoing Resolution was adopted by the Berkeley City Council on March 17, 2020 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

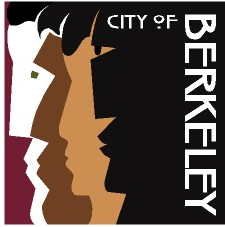
Noes: None.

Absent: None.

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

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





[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.

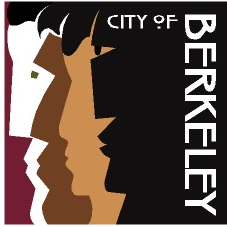
By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of 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.

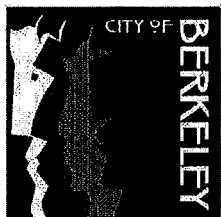
However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.<sup>1/</sup> (Government Code section 82015.) Additionally, since 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](mailto: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.

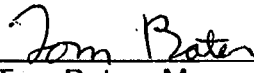
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The foregoing Resolution was adopted by the Berkeley City Council on September 10, 2013 by the following vote:

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

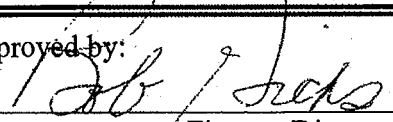
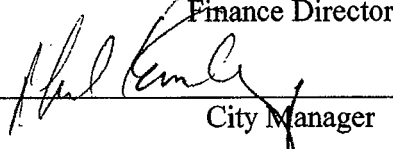
## DEFINITIONS

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: [Signature] Deanna Despain, Deputy City Clerk

[Signature] Tom Bates, Mayor

Date signed: [Signature]

# 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).

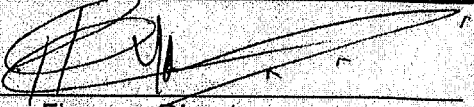
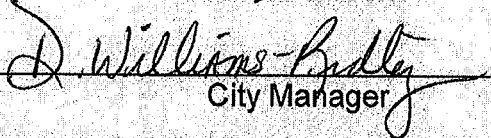
**Payment Documentation**: Documentation is required to provide tangible proof of payment for approved goods or services, and usually specifies: issuer and receiver of receipt; date; purpose or commodity; and dollar amount of the expense. Acceptable back-up for reimbursable expenses includes: original 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:              |
| <b>TO BE REVIEWED/REVISED:</b><br>Every year         | _____<br><br>City Manager |



## Attachment A

| JOB CODE | REP UNIT | CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE | JOB CODE | REP UNIT | CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL 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.

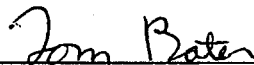
\*\*\*\*\*

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.

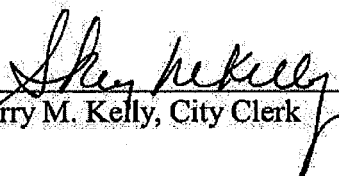
The foregoing Resolution was adopted by the Berkeley City Council on July 25, 2006 by the following vote:

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.



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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

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.)

**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.

**Published:** January 24, 2020 – The Berkeley Voice  
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.

\_\_\_\_\_  
Mark Numainville, City Clerk



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
June 30, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila (Author)

Subject: Resolution to Incorporate the Practice of 1 Minute and 46 seconds of Mindfulness into City Council Meetings

#### RECOMMENDATION

Adopt a resolution to amend the City Council Meeting Agendas and Council Rules of Procedures to include one minute and forty-six seconds of silence to adopt mindfulness into Council meetings to remember the loss of lives due to police violence.

#### BACKGROUND

According to the University of California at Berkeley's Greater Good Magazine, mindfulness means "maintaining a moment-by-moment awareness of your thoughts, feelings, bodily sensations, and surrounding environment, through a gentle, nurturing lens." Mindfulness involves acceptance without judgment of our thoughts and feelings and tuning into what we are sensing in the present moment rather than rehashing the past or imaging the future.<sup>1</sup>

While mindfulness and meditation has its roots in the religion of Buddhism, mindfulness as a secular practice was popularized by Jon Kabat-Zinn, who launched the Mindfulness-Based Stress Reduction program at the University of Massachusetts Medical School in 1979. Mindfulness is noted to improve well-being, physical health, and mental health.<sup>2</sup> The adoption of mindfulness practices are specifically beneficial for strengthening the immune system, reducing stress, and enhancing attentiveness.

Particularly relevant to the role of city governance, mindfulness has been found to increase altruism and compassion,<sup>3</sup> reduce implicit bias,<sup>4</sup> increase emotional resilience when confronted with negative feedback,<sup>5</sup> and to help leaders be more confident and act in line with their values.<sup>6</sup> Due to its benefits, mindfulness has been deployed in a multitude of institutions such as

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<sup>1</sup> <https://greatergood.berkeley.edu/topic/mindfulness/definition>

<sup>2</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3679190/>

<sup>3</sup> [https://greatergood.berkeley.edu/article/item/meditation\\_causes\\_compassionate\\_action](https://greatergood.berkeley.edu/article/item/meditation_causes_compassionate_action)

<sup>4</sup> [https://greatergood.berkeley.edu/article/item/can\\_mindfulness\\_help\\_reduce\\_racism](https://greatergood.berkeley.edu/article/item/can_mindfulness_help_reduce_racism)

<sup>5</sup> [https://greatergood.berkeley.edu/article/item/can\\_mindfulness\\_help\\_students\\_cope\\_with\\_failure](https://greatergood.berkeley.edu/article/item/can_mindfulness_help_students_cope_with_failure)

<sup>6</sup> [https://greatergood.berkeley.edu/article/item/can\\_mindfulness\\_help\\_you\\_be\\_more\\_authentic](https://greatergood.berkeley.edu/article/item/can_mindfulness_help_you_be_more_authentic)

schools,<sup>7</sup> prisons,<sup>8</sup> sports,<sup>9</sup> hospitals,<sup>10</sup> and even municipal governments, like San Jose, where Mindful Mondays has been promoted by the city.<sup>11</sup>

Currently, the Berkeley City Council meetings run continuously for five hours or more on Tuesday evenings, with only a brief 10-minute pause for captioning. Incorporating mindfulness practices into the City Council meeting may increase Councilmember's ability to focus on the topics brought before them, alleviate stress or anxiety over decision-making, facilitate Councilmembers being more fully present and emotionally available to the public, and allow for greater creativity when generating solutions for how best to serve the constituency.

The adoption of mindfulness practices has the potential to improve the overall experience and efficacy of governing by reducing the physiological impacts of stress on members of City staff, elected officials, and the community. By reducing the physiological impairments of stress and cognitive fatigue better decision-making might occur. Given these potential benefits, a change to the structure and order of City Council meetings are proposed to include two-minutes of mindfulness at the beginning of the meeting and following ceremonial items, two minutes of mindfulness after reconvening from the captioner's break, and the ability of any Councilmember to request taking a mindfulness pause during the Consent or Action Calendar.

Section II. Meetings, Part D of the Berkeley City Council Rules of Procedure and Order<sup>12</sup> would be amended to read as follow:

"D. Council Meeting Conduct of Business: The agenda for the regular business meetings shall include the following: **One minute and forty-six seconds of silence and mindfulness**; 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."

Section III. Agenda, Part E Agenda Sequence and Order of Business of the Berkeley City Council Rules of Procedure and Order would be amended to read as follow:

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

1. Preliminary Matters: (Ceremonial, **One minute and forty-six seconds of silence and mindfulness**, Comments from the City Manager, Comments from the City Auditor, Non-Agenda Public Comment)
2. Consent Calendar
3. Action Calendar
  - a) Appeals

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<sup>7</sup> <https://www.mindfulschools.org/>

<sup>8</sup> <https://www.prisonmindfulness.org/about-us/>

<sup>9</sup> <https://www.apa.org/news/press/releases/2017/08/mindfulness-method>

<sup>10</sup> <https://hospitalnews.com/mindfulness-quiet-revolution/>

<sup>11</sup> <https://www.sanjoseca.gov/Home/Components/Calendar/Event/1760/4738>

<sup>12</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/City%20Council%20Rules%20of%20Procedure%20-%20Feb%2011%202020%20-%20FINAL.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/City%20Council%20Rules%20of%20Procedure%20-%20Feb%2011%202020%20-%20FINAL.pdf)

- b) Public Hearings
- c) Continued Business
- d) Old Business
- e) New Business
- 4. Information Reports
- 5. Non-Agenda Public Comment
- 6. Adjournment

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Cheryl Davila  
Councilmember District 2  
510.981.7120  
cdavila@cityofberkeley.info

ATTACHMENTS:

- 1. Resolution

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

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF BERKELEY TO INCORPORATE THE PRACTICE OF 1 MINUTE AND 46 SECONDS OF MINDFULNESS INTO CITY COUNCIL MEETINGS

WHEREAS, Mindfulness is a secular practice of focusing attention onto your thoughts, emotions, and bodily sensations in a moment-to-moment methodology that allows for greater awareness of yourself and your surroundings; and

WHEREAS, The practice of mindfulness has many noted benefits, including boosting the immune system, reducing stress, and enhancing attentiveness; and

WHEREAS, Due to the efficacy of mindfulness, its practices have been adopted in a wide array of institutions that serve impacted populations, such as schools, hospitals, and prisons; and

WHEREAS, Physiological impacts of stress have the ability to diminish the City Staff and Council's ability to effectively carry out the tasks associated with complex decision making; and

WHEREAS, Mindfulness practices have been shown to be an effective method to reduce stress levels in other workplaces; and

WHEREAS, Mindfulness might improve the working conditions during Berkeley City Council meetings by allowing Councilmembers and City Staff to become fully present and attentive at the beginnings of meetings, and more compassionate and self-aware when engaging with the public; and

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley will incorporate two minutes of mindfulness practice into the agenda of City Council meetings, wherein Councilmembers and members of the public are invited to hold a moment of silence to check in with their bodies and mind before embarking on the often arduous work of city governance; and

BE IT FURTHER RESOLVED, Section II. Meetings, Part D of the Berkeley City Council Rules of Procedure and Order is amended to read:

“D. Council Meeting Conduct of Business: The agenda for the regular business meetings shall include the following: **One minute and forty-six seconds of silence and mindfulness**; 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.”

BE IT FURTHER RESOLVED, Section III. Agenda, Part E Agenda Sequence and Order of Business of the Berkeley City Council Rules of Procedure and Order IS amended to read:

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

1. Preliminary Matters: (Ceremonial, **One minute and forty-six seconds of silence and mindfulness**, 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

BE IT FINALLY RESOLVED, These changes to the Agenda will begin at the next scheduled Council meeting and the City Council will include one minute and forty-six seconds of silence and mindfulness as part of the City Council Agenda.





Lori Droste  
Councilmember, District 8

## **ACTION CALENDAR**

June 30, 2020

**To:** Honorable Mayor and Members of the City Council

**From:** Councilmember Lori Droste (Author) and Councilmembers Rigel Robinson (Co-Sponsor) and Rashi Kesarwani (Co-Sponsor)

**Subject:** Commission Reorganization for Post-COVID19 Budget Recovery

### **RECOMMENDATION**

- 1) Reorganize existing commissions with the goal of achieving 20 total commissions.
- 2) Reorganize existing commissions within various departments to ensure that no single department is responsible for more than five commissions.
- 3) Reorganize commissions within the Public Works Department to ensure Public Works oversees no more than three commissions.
- 4) Refer to the City Manager and every policy committee to agendaize at the next meeting available to discuss commissions that are in their purview and make recommendations to the full Council on how to reorganize and address the various policy areas. Commission members should be notified and chairs should be invited to participate. Policy committee members are encouraged to consider the renaming of some commissions in order to ensure that all policy areas are addressed.

## **PROBLEM/SUMMARY STATEMENT**

Demand for city workers staffing commissions is larger than the City's ability to supply it at an acceptable financial and public health cost. Thirty-seven commissions require valuable city staff time and funding that could be better spent providing essential services. The COVID-19 pandemic has impacted the City of Berkeley in a myriad of ways, resulting in enormous once-in-a-lifetime socioeconomic and public health impacts. While the City Manager and department heads are addressing how to best prepare and protect our residents, particularly our most vulnerable, they are also required to oversee an inordinate amount of commissions for a medium-sized city at a significant cost.

The City of Berkeley faces many challenges, including the COVID-19 pandemic and its resultant budget and staffing impacts. Prior to the onset of COVID-19, the City Council and staff spent significant Council time on items originating with the City's advisory commissions. As the Shelter in Place is gradually lifted, critical city staff will resume staffing these 37 commissions. As a result, too much valuable staff time will continue to be spent on supporting an excessive amount of commissions in Berkeley rather than addressing the basic needs of the City.

## **BACKGROUND**

### **Review of Existing Plans, Programs, Policies, and Laws**

The City of Berkeley has approximately thirty-seven commissions overseen by city administration, most of which have at least nine members and who are appointed by individual councilmembers. These commissions were intended to be a forum for public participation beyond what is feasible at the City Council, so that issues that come before the City Council can be adequately vetted.

Some commissions are required by charter or mandated by voter approval or state/federal mandate. Those commissions are the following:

1. Board of Library Trustees (charter)
2. Business Improvement Districts (state mandate)
3. Civic Arts Commission (charter)
4. Community Environmental Advisory Commission (state/federal mandate--CUPA)
5. Fair Campaign Practices Commission/Open Government (ballot measure)
6. Homeless Services Panel of Experts (ballot measure)
7. Housing Advisory Commission (state/federal mandate)
8. Human Welfare and Community Action (state/federal mandate)
9. Measure O Bond Oversight Committee (ballot measure)
10. Mental Health Commission (state/federal mandate)
11. Personnel (charter)

- 12. Police Review Commission (ballot measure)
- 13. Sugar-Sweetened Beverages (ballot measure)

Berkeley must have its own mental health commission because of its independent Mental Health Division. In order to receive services, the City needs to have to have an advisory board. Additionally, Berkeley’s Community Environmental Advisory Commission is a required commission in order to oversee Certified Unified Program Agency (CUPA) under California’s Environmental Protection Agency. Additionally, some commissions serve other purposes beyond policy advisories. The Children, Youth and Recreation Commission, Housing Advisory Commission, and the Human Welfare and Community Action Commission advise Council on community agency funding. However, some of the aforementioned quasi-judicial and state/federal mandated commissions do not need to stand independently and can be combined to meet mandated goals.

In comparison to neighboring jurisdictions of similar size, Berkeley has significantly more commissions. The median number of commissions for these cities is 12 and the average is 15.

Comparable Bay Area City	Population (est.)	Number of Commissions	Links
Berkeley	121,000	37	<a href="https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_Commissions/External%20Roster.pdf">https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3 - Commissions/External%20Roster.pdf</a>
Antioch	112,000	6	<a href="https://www.antiochca.gov/government/boards-commissions/">https://www.antiochca.gov/government/boards-commissions/</a>
Concord	130,000	14	<a href="https://www.cityofconcord.org/264/Applications-for-Boards-Committees-Comm">https://www.cityofconcord.org/264/Applications-for-Boards-Committees-Comm</a>
Daly City	107,000	7	<a href="http://www.dalycity.org/City_Hall/Departments/city_clerk/Commissions_Information/boards.htm">http://www.dalycity.org/City_Hall/Departments/city_clerk/Commissions_Information/boards.htm</a>
Fairfield	117,000	7	<a href="https://www.fairfield.ca.gov/gov/comms/default.asp">https://www.fairfield.ca.gov/gov/comms/default.asp</a>
Fremont	238,000	15	<a href="https://www.fremont.gov/76/Boards-Commissions-Committees">https://www.fremont.gov/76/Boards-Commissions-Committees</a>
Hayward	160,000	12	<a href="https://www.hayward-ca.gov/your-government/boards-commissions">https://www.hayward-ca.gov/your-government/boards-commissions</a>
Richmond	110,000	29	<a href="https://www.ci.richmond.ca.us/256/Boards-and-Commissions">https://www.ci.richmond.ca.us/256/Boards-and-Commissions</a>
San Mateo	105,000	7	<a href="https://www.cityofsanmateo.org/60/Commissions-Boards">https://www.cityofsanmateo.org/60/Commissions-Boards</a>

Sunnyvale	153,000	10	<a href="https://sunnyvale.ca.gov/civicax/filebank/blobdload.aspx?blobid=22804">https://sunnyvale.ca.gov/civicax/filebank/blobdload.aspx?blobid=22804</a>
Vallejo	122,000	17	<a href="http://www.ci.vallejo.ca.us/cms/one.aspx?pageId=22192">http://www.ci.vallejo.ca.us/cms/one.aspx?pageId=22192</a>

### Consultation and Outreach

To understand the impact on various departments and staffing capacity, the following table shows which departments are responsible for overseeing various commissions.

Commission Name	Overseeing Department (Total Commissions in Department)
Animal Care Commission	City Manager (7)
Civic Arts Commission	City Manager (7)
Commission on the Status of Women	City Manager (7)
Elmwood BID Advisory Board	City Manager (7)
Loan Administration Board	City Manager (7)
Peace and Justice Commission	City Manager (7)
Solano Ave BID Advisory Board	City Manager (7)
Cannabis Commission	Planning (8)
Community Environmental Advisory Commission	Planning (8)
Design Review Committee	Planning (8)
Energy Commission	Planning (8)
Joint Subcommittee on the Implementation of State Housing Laws	Planning (8)
Landmarks Preservation Commission	Planning (8)
Planning Commission	Planning (8)
Zoning Adjustments Board	Planning (8)
Children, Youth, and Recreation Commission	Parks (3)
Parks and Waterfront Commission	Parks (3)
Youth Commission	Parks (3)
Commission on Aging	Health, Housing, and Community Services (HHCS) (10)
Commission on Labor	HHCS (10)
Community Health Commission	HHCS (10)

Homeless Commission	HHCS (10)
Homeless Services Panel of Experts	HHCS(10)
Housing Advisory Commission	HHCS (10)
Human Welfare & Community Action Commission	HHCS (10)
Measure O Bond Oversight Committee	HHCS (10)
Mental Health Commission	HHCS (10)
Sugar-Sweetened Beverage Product Panel of Experts	HHCS (10)
Disaster and Fire Safety Commission	Fire (1)
Commission on Disability	Public Works (5)
Public Works Commission	Public Works (5)
Traffic Circle Task Force	Public Works (5)
Transportation Commission	Public Works (5)
Zero Waste Commission	Public Works (5)
Fair Campaign Practices Commission/Open Government Commission	City Attorney (1)
Personnel Board	Human Resources (1)
Police Review Commission	Police (1)
Board of Library Trustees	Library (1)

Gray=charter  
 Red=state/federal mandate  
 Yellow=quasi-judicial  
 Blue=ballot initiative  
 Orange=state/federal mandate and quasi-judicial  
 Green=quasi-judicial and ballot initiative

The departments that staff more than five commissions are Health, Housing, and Community Services (10 commissions), Planning (8 commissions), and the City Manager’s department (7 commissions). At the same time, some smaller departments (e.g. the City Attorney’s office) may be impacted just as meaningfully if they have fewer staff and larger individual commission workloads.

With the recent addition of policy committees, proposed legislation is now vetted by councilmembers in these forums. Each policy committee is focused on a particular

content area aligned with the City of Berkeley's strategic plan and is staffed and an advisory policy body to certain city departments. Members of the public are able to provide input at these committees as well. The policy committees currently have the following department alignment:

### **Department and Policy Committee alignment**

1. **Agenda and Rules**—all departments
2. **Budget and Finance**—City Manager, Clerk, Budget, and Finance
3. **Land Use and Economic Development**—Clerk, Planning, HHCS, City Attorney, and City Manager (OED)
4. **Public Safety**—Clerk, City Manager, Police, and Fire
5. **Facilities, Infrastructure, Transportation, Environment and Sustainability** (Clerk, City Manager, Planning, Public Works, and Parks)
6. **Health, Equity, Life Enrichment, and Community** (Clerk, City Manager, HHCS)

### **CRITERIA CONSIDERED**

#### **Effectiveness**

*How does this proposal maximize public interest?* For this analysis, the effectiveness criterion includes analysis of the *benefits* to the entire community equitably with specific emphasis on public health, racial justice and safety.

#### **Fiscal Impacts/Staffing Costs**

*What are the costs?* The fiscal impact of the proposed recommendation and various alternatives considered includes direct costs of commissions.

#### **Administrative Burden/Productivity Loss**

*What are the operational requirements or productivity gains or losses from this proposal?*

The administrative burden criterion guides the analysis in considering operational considerations and productivity gains and losses. While operational considerations and tradeoffs are difficult to quantify in dollar amounts, productivity losses were considered in its absence.

#### **Environmental Sustainability**

The environmental sustainability criterion guides legislation in order to avoid depletion or degradation of the natural resources and allow for long-term environmental quality.



## **ALTERNATIVES**

### **Alternative #1–The Current Situation**

The current situation is the status quo. The City of Berkeley would retain all commissions and no changes would be made.

### **Alternative #2–Collaborative Approach with Quantity Parameters**

This approach would specify a specific number (20) of commissions the City of Berkeley should manage and set parameters around individual department responsibilities. Furthermore, it requires a collaborative approach and outreach to address specific policy areas by referring it to the Council policy committees for further analysis and specific recommendations.

### **Alternative #3–Committee Alignment, Mandated and Quasi-Judicial Commissions**

This alternative would consist of five commissions aligned directly with the policy committees in addition to quasi-judicial bodies and ones required by charter, ballot measure or law.

- *Budget and Finance Commission*
- *Facilities, Infrastructure, Transportation, Environment and Sustainability Commission (state/federal mandate--CUPA)*
- *Health, Equity, and Life Enrichment*
- *Land Use and Economic Development*
- *Public Safety*
- Board of Library Trustees (charter)
- Civic Arts Commission (charter)
- Community Environmental Advisory Commission (state/federal mandate--CUPA)
- Fair Campaign Practices Commission/Open Government (ballot measure)
- Homeless Services Panel of Experts (ballot measure)
- Housing Advisory Commission (state/federal mandate)
- Human Welfare and Community Action (state/federal mandate)
- Landmarks Commission (quasi-judicial)
- Measure O Bond Oversight Committee (ballot measure)
- Mental Health Commission (state/federal mandate)
- Planning (quasi-judicial)
- Personnel (charter)
- Police Review Commission (ballot measure)
- Sugar-Sweetened Beverages (ballot measure)
- Zoning Adjustments Board (quasi-judicial)

**Alternative #4: Extreme Consolidation**

This alternative represents a prescriptive approach with maximum consolidation in content area and mandated commissions, absent charter amendments.

- Board of Library Trustees (charter)
- Business Improvement District (state/federal mandate)
- Civic Arts Commission (charter)
- Community Environmental Advisory Commission/Energy/Zero Waste (state/federal--CUPA)
- Fair Campaign Practices Commission/Open Government (ballot measure)
- Homeless Services Panel of Experts (ballot measure)
- Human Welfare and Community Action (state/federal mandate)
- Measure O Bond Oversight Committee (ballot measure)/Housing Advisory Commission (state/federal mandate)
- Mental Health Commission (state/federal mandate)
- Personnel (charter)
- Planning Commission (quasi-judicial and appeals)
- Board of Appeals (land use appeals)
- Police Review Commission (ballot measure)
- Health and Sugar-Sweetened Beverages (ballot measure)

**PROJECTED OUTCOMES (CRITERIA X ALTERNATIVES)**

	<b>Current Situation</b>	<b>Collaborative Approach</b>	<b>Policy Committee Alignment</b>	<b>Extreme Consolidation</b>
<b>Benefit/ Effectiveness</b>	medium	high	medium	low
<b>Cost</b>	high	medium	low	low
<b>Administrative Burden</b>	high	low	low	medium
<b>Relative Environmental Benefit</b>	low	medium	medium	high

**Current Situation and Its Effects (Alternative #1)**

*Effectiveness of the Current Situation*

Commissions serve a vital role in the City of Berkeley’s rich process of resident engagement. An analysis of agendas over the past several years shows that the

commissions have created policy that have benefited the community in meaningful and important ways. In 2019, approximately two-thirds of commission items submitted to Council passed. From 2016-2019, an average of 39 items were submitted by commissions to Council for consideration. Every year roughly 15-18 (~40-45%) commissions do not submit any items for Council policy consideration in any given year. The reason for this varies. Some commissions don't submit policy recommendations (BIDs) and some commissions recommendations may not rise to Council level at all or come to Council as a staff recommendation (e.g. ZAB and DRC). Additionally, a few commissions struggle to reach monthly quorum as there are currently 64 vacancies on the various commissions, excluding alternative commissioners.

It is also important to consider equitable outcomes and the beneficiaries as well. For example, the City's Health, Housing and Community Development department serves an important role in addressing COVID-19, racial disparities, inequitable health outcomes, affordable housing, and other important community programs. Additionally, Health, Housing, and Community Development also staffs ten commissions, more than many cities of Berkeley's size. Council needs to wrestle with these tradeoffs to ensure that we seek the maximum benefit for *all* of the Berkeley community, particularly our most vulnerable.

**Staffing Costs**

Based upon preliminary calculations of staff titles and salary classifications, the average staff secretary makes roughly \$60-\$65/hour. Based upon recent interviews with secretaries and department heads, individual commission secretaries work anywhere from 8-80 hours a month staffing and preparing for commission meetings. To illustrate this example, a few examples are listed below.

Commission	Step 5 Rate of Pay	Reported Hours a Month	Total <b>Direct</b> Cost of Commission <b>per Month</b>
Animal Care	\$70.90	8	\$567.20
Landmarks Preservation Commission	\$57.96	80	\$4,636.80
Design Review Commission	\$52.76	60	\$3,165.60
Peace and Justice	\$60.82	32	\$1946.24

It is extremely challenging to estimate a specific cost of commissions in the aggregate because of the varying workload but a safe estimate of salary costs dedicated to commissions would be in the six-figure range.

Many commissions--particularly quasi-judicial and land use commissions-- require more than one staff member to be present and prepare reports for commissions. For example, Zoning Adjustment Board meetings often last five hours or more and multiple staff members spend hours preparing for hearings. The Planning Department indicates that *in addition* to direct hours, additional commission-related staff time adds an extra 33% staff time. Using the previous examples, this means that the Landmarks Preservation Commission would cost the city over \$6,000 in productivity while the Design Review Commission would cost the City over \$4,000 a month.

#### *Productivity Losses and Administrative Burden*

Current productivity losses are stark because of the sheer amount of hours of staffing time dedicated to commissions. As an example, in 2019 one of the City of Berkeley's main homeless outreach workers staffed a commission within the City Manager's department. She spent approximately 32 hours a month working directly on commission work. While this is not a commentary on a particular commission, this work directly impacted her ability to conduct homeless outreach. The Joint Subcommittee on the Interpretation of State Housing Laws is another example. Planners dedicate 50 hours a month to that commission. Meanwhile, this commission has limited ability in affecting state law and the City Attorney's office is responsible for interpreting state law. While this commission does important work on other issues, there is little nexus in interpreting state housing laws and could be disbanded and consolidated with an existing commission. If this commission were disbanded, the current planner could dedicate significant hours to Council's top priorities in Planning. This year's top Council priority is the displacement of Berkeley's residents of color and African Americans (Davila).

#### *Environmental Sustainability*

The current commission structure doesn't have a large impact on the environment but, in relative terms, is the most burdensome because of the potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs associated with a large number of commissions.

## **ALTERNATIVES CONSIDERED**

### **Effectiveness**

#### *Alternative #2--Collaborative approach*

While the outcome is unknown, a collaborative approach with a specified target quantity of commissions and departmental responsibility would likely yield significant benefit to the community. Due to the projected budget cuts, city staff will need to have more bandwidth to deliver baseline services and priority projects. Civic engagement will still be retained due to a myriad of ways to provide public input but more importantly, current commissioners and civic partners are invited to provide feedback to the policy committees for consideration. Additionally, this approach is a less prescriptive approach which allows Council to acknowledge that the current number of commissions is unsustainable and impacts baseline services. Instead of recommending specific commission cuts at this moment, this approach simply allows Council to state an appropriate number of commissions (20) and acknowledge the severe staffing impacts of the current configuration. Furthermore, twenty commissions is a reasonable starting point, especially when considering that most area cities that are approximately Berkeley's size have seven commissions.

#### *Alternative 3--Policy Committee Alignment*

This approach would yield some benefit in that commissions would reflect current policy committees and would directly advise those bodies. This is beneficial because commissions directly aligned with policy committees would be an independent civic replica of the appointed policy committee bodies. It further retains mandated commissions. However, this prescriptive approach doesn't allow for flexibility in retaining historically important commissions and it does not address the benefit of potentially consolidating two commissions that address the same policy content area. For instance, it may be possible to combine the sugar-sweetened beverage oversight panel with the Health, Life, and Equity commission or the CEAC with the Facilities, Infrastructure, Transportation, Environment and Sustainability.

#### *Alternative 4--Extreme Consolidation--*

This approach is the most drastic alternative and the overall effectiveness is likely low, mainly due to potential community backlash due to Berkeley's long history of civic engagement. Furthermore, the Planning Commission would likely become overburdened and less effective because land use appeals would have to be routed through the Planning Commission.

## **Costs/Fiscal Impact**

### *Alternative 2--Collaborative Approach*

The fiscal impact of the Collaborative Approach is unknown at this time because this recommendation does not prescribe specific commission consolidations or cuts. However, if commissions are reorganized such that Berkeley will have 20 instead of 38, there will be significant direct cost savings. One can reasonably assume that the direct financial cost could reduce to almost half the current amount.

### *Alternative 3--Policy Committee Alignment*

The fiscal impact of Policy Committee Alignment would yield significant savings due to commission consolidation. One can reasonably assume that the direct financial cost could reduce to more than half the current amount.

### *Alternative 4--Extreme Consolidation*

Extreme Consolidation would yield the most savings due to commission consolidation. One can reasonably assume that the direct financial cost would reduce to 25%-30% of the current amount spent on commission work.

## **Productivity**

### *Alternative 2--Collaborative Approach*

The most glaring impact on the current commission structure is administrative impacts and productivity. Whether City Council consolidates commissions or not, attributable salary costs will still exist. The primary benefit of pursuing the Collaborative Approach would center on productivity. The City of Berkeley is likely to garner significant productivity gains by specifying a target number of commissions overall and within departments. Using the Peace and Justice and Joint Subcommittee on the Interpretation of State Housing Laws examples above, more staff will be able to focus on core services and priority programs. Thousands of hours may be regained by dedicated staff to tackle the tough issues our community faces, especially in light of COVID-19 and concerns around racial equity.

### *Alternative 3--Policy Committee Alignment*

This alternative likely will yield the same productivity benefits as the collaborative approach, if not more. The City of Berkeley would likely garner significant productivity gains by specifying less than twenty commissions. Thousands of hours may be regained by dedicated staff to tackle the tough issues our community faces, especially in light of COVID-19 and concerns around racial equity.

*Alternative 4–Extreme Consolidation*

This alternative would likely provide the most productivity gains and lessen administrative burdens overall. However, there could be unintended consequences of productivity within the planning department absent additional policy changes. For example, the quasi-judicial Zoning Adjustments Board and Planning Commission agendas are packed year round. It is unclear whether eliminating one of these commissions would lessen the administrative burden and increase productivity in the Planning Department or whether those responsibilities would merely shift commissions. At the same time, the Planning Department could benefit from reducing commissions to increase productivity within the planning department.

**Environmental Sustainability**

*Alternative 2–Collaborative approach*

This alternative doesn't have a large impact on the environment other than potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs. However, these environmental impacts could be cut in half with commission reorganization.

*Alternative 3--Policy Committee Alignment*

This alternative doesn't have a large impact on the environment other than potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs. However, these environmental impacts could be cut in half with commission reorganization.

*Alternative 4–Extreme Consolidation*

This alternative would have negligible impacts on the environment other than potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs.

**RATIONALE FOR RECOMMENDATION**

The Collaborative Approach is the best path forward in order to pursue Berkeley's commitment to

- Create affordable housing and housing support services for our most vulnerable community members
- Be a global leader in addressing climate change, advancing environmental justice, and protecting the environment
- Champion and demonstrate social and racial equity
- Provide an efficient and financially-healthy City government
- Provide state-of-the-art, well-maintained infrastructure, amenities, and facilities
- Foster a dynamic, sustainable, and locally-based economy
- Create a resilient, safe, connected, and prepared City

- Be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community
- Attract and retain a talented and diverse City government workforce

The status quo—37 commissions— is too costly and unproductive. At the same time, civic engagement and commission work absolutely deserve an important role in Berkeley. Consequently, this legislation retains commissions but centers on overall community benefit, staff productivity, and associated costs. This is imperative to address, especially in light of COVID-19 and community demands for reinvestment in important social services.