



Planning Commission

# AGENDA

## REGULAR MEETING OF THE PLANNING COMMISSION

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**Wednesday, May 5, 2021**

**7:00 PM**

**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 Planning Commission (PC) will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID19 virus, there will not be a physical meeting location available.

**To access the meeting remotely:** Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://zoom.us/j/98281560402>. 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 6833** and enter Meeting ID: **982 8156 0402**. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.

Please be mindful that the video conference and teleconference will be recorded. All rules of procedure and decorum that apply for in-person Planning Commission meetings apply for Planning Commission meetings conducted by teleconference or videoconference.

See "**MEETING PROCEDURES**" below.

**All written materials identified on this agenda are available on the Planning Commission webpage:**[https://www.cityofberkeley.info/Clerk/Commissions/Commissions\\_Planning Commission\\_Homepage.aspx](https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Planning_Commission_Homepage.aspx)

### **PRELIMINARY MATTERS**

- 1. Roll Call:** **Wiblin, Brad**, appointed by Councilmember Kesarwani, District 1  
**Vincent, Jeff**, appointed by Councilmember Taplin, District 2  
**Schildt, Christine**, appointed by Councilmember Bartlett, District 3

**Lacey, Mary Kay**, appointed by Councilmember Harrison, District 4  
**Beach, Benjamin**, appointed by Councilmember Hahn, District 5  
**Kapla, Robb, Chair**, appointed by Councilmember Wengraf, District 6  
**Krpata, Shane, Vice Chair**, appointed by Councilmember Robinson, District 7  
**Hauser, Savlan**, appointed by Councilmember Droste, District 8  
**Ghosh, Barnali**, appointed by Mayor Arreguin

2. **Order of Agenda:** The Commission may rearrange the agenda or place items on the Consent Calendar.
3. **Public Comment:** Comments on subjects not included on the agenda. Speakers may comment on agenda items when the Commission hears those items. (See “*Public Testimony Guidelines*” below):
4. **Planning Staff Report:** In addition to the items below, additional matters may be reported at the meeting.
5. **Chairperson’s Report:** Report by Planning Commission Chair.
6. **Committee Reports:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.
7. **Approval of Minutes:** Approval of Draft Minutes from the meeting on **April 7, 2021**.
8. **Future Agenda Items and Other Planning-Related Events:**

**AGENDA ITEMS:** All agenda items are for discussion and possible action. Public Hearing items require hearing prior to Commission action.

9. **Discussion:** **Citywide Affordable Housing Requirements Update**  
**Recommendation:** Review proposals for potential changes to comprehensively update the City’s affordable housing requirements that respond to City Council referrals and provide feedback that will guide staff in preparing draft ordinance revisions for Planning Commission, Housing Advisory Commission, and Council consideration later this year.  
**Written Materials:** Attached  
**Presentation:** N/A
10. **Action:** **Public Hearing Regarding the General Plan Re-Designation and Zoning Map Amendment of Parcels Located at 1709 Alcatraz Avenue (APN 052-1533-001-03), 3404 King Street (APN 052-1435-001-02), 3244 Ellis Street (APN 052-1533-005-00), 1717 Alcatraz Avenue (APN 052-1533-006-00) and 2024 Ashby Avenue (APN 053-1592-022-00)**

**Recommendation:** Conduct a public hearing and make a recommendation to the City Council that five parcels located at the locations described above to be re-designated to the Adeline Corridor Mixed Use General Plan Classification, be rezoned to Commercial – Adeline Corridor District (C-AC), and that the boundaries of the Adeline Corridor Specific Plan Area be expanded to include the five parcels.

**Written Materials:** Attached  
**Presentation** N/A

**ADDITIONAL AGENDA ITEMS:** In compliance with Brown Act regulations, no action may be taken on these items. However, discussion may occur at this meeting upon Commissioner request.

**Information Items:**

- City Clerk – *City Council Rules of Procedure (amended)*

**Communications:**

- None

**Late Communications:** (Received after the packet deadline):

- Supplemental Packet One – received by noon two days before the meeting
- Supplemental Packet Two
- Supplemental Packet Three

**ADJOURNMENT**

\*\*\*\* **MEETING PROCEDURES** \*\*\*\*

**Public Testimony Guidelines:**

All persons are welcome to attend the virtual meeting and will be given an opportunity to address the Commission. Speakers are customarily allotted up to three minutes each. The Commission Chair may limit the number of speakers and the length of time allowed to each speaker to ensure adequate time for all items on the Agenda. Customarily, speakers are asked to address agenda items when the items are before the Commission rather than during the general public comment period. Speakers are encouraged to submit comments in writing. See “Procedures for Correspondence to the Commissioners” below.

**Procedures for Correspondence to the Commissioners:**

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Commission. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Commission may limit the time granted to each speaker.

Written comments must be directed to the Planning Commission Secretary at the Land Use Planning Division (Attn: Planning Commission Secretary), 1947 Center Street, Second Floor,

Berkeley CA 94704, or via e-mail to: [apearson@cityofberkeley.info](mailto:apearson@cityofberkeley.info). All materials will be made available via the Planning Commission agenda page online at this address: <https://www.cityofberkeley.info/PC/>.

Correspondence received by **12 noon, nine days** before this public meeting, will be included as a Communication in the agenda packet. Correspondence received after this deadline will be conveyed to the Commission and the public in the following manner:

- Correspondence received by **12 noon two days** before this public meeting, will be included in a Supplemental Packet, which will be posted to the online agenda as a Late Communication and emailed to Commissioners one day before the public meeting.
- Correspondence received after the above deadline and before the meeting will be included in a second and/or third Supplemental Packet, as needed, which will be posted to the online agenda as a Late Communication and emailed to the Commissioners by 5pm on the day of the public meeting.

**Note: It will not be possible to submit written comments at the meeting.**

**Communications are Public Records:** Communications to Berkeley boards, commissions, or committees are public records 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 a City board, commission, or committee, 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 Secretary of the relevant board, commission, or committee. 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 Secretary to the relevant board, commission, or committee for further information.

**Communication Access:** To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice), or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability.

**Meeting Access:** To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist, at 981-6418 (V) or 981-6347 (TDD), at least three (3) business days before the meeting date.

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I hereby certify that the agenda for this regular meeting of the Planning Commission 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 **April 28, 2021**.

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Alene Pearson  
Planning Commission Secretary



Planning Commission

1                   **DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**  
2   **APRIL 7, 2020**

3 The meeting was called to order at 7:02 p.m.

4 **Location:** Virtual meeting via Zoom

5 **1. ROLL CALL:**

6       **Commissioners Present:** Janis Ching, Barnali Ghosh, Savlan Hauser, Robb Kapla, Shane  
7       Krpata, Christine Schildt, Jeff Vincent, and Brad Wiblin.

8       **Commissioners Absent:** Benjamin Beach and Mary Kay Lacey.

9       **Staff Present:** Secretary Alene Pearson, Katrina Lapira, Steve Buckley, Chris Jensen, Paola  
10       Boylan, and Kieron Slaughter.

11 **2. ORDER OF AGENDA:** No changes.

12 **3. PUBLIC COMMENT PERIOD:** 1

13 **4. PLANNING STAFF REPORT:**

- 14  
15       • Please refer to information items.

16 **Information Items:**

- 17       • City Council – Objective Standards Recommendations for Density, Design and Shadows  
18       • City Council – Initiation of Public Process and Zoning Concepts for 2023-2031 Housing  
19       Element

20  
21 **Communications:**

- 22       • March 30 – CA Department of Food and Agriculture – Cannabis Appellations Program  
23       • March 31 – Business Owner – Berkeley Marina Kosher Market

24 **Late Communications:** *See agenda for links.*

- 25       • Supplemental Packet One  
26       • Supplemental Packet Two  
27       • Supplemental Packet Three

28 **5. CHAIR REPORT:**

- None.

**6. COMMITTEE REPORT:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.

- BART Community Advisory Group (CAG) – Held a meeting on March 22 to further the discussion about the vision and priorities document. A draft zoning document is now available for public review on the CAG website. The next meeting will be about access planning to the respective BART sites.

**7. APPROVAL OF MINUTES:**

Motion/Second/Carried (Wiblin/Krpata) to approve the Planning Commission Meeting Minutes from March 17, 2021, with incorporated amendments to lines 82 and 90.

Ayes: Ghosh, Hauser, Kapla, Krpata, Schildt, and Wiblin. Noes: None. Abstain: Vincent and Ching. Absent: Beach. (6-0-2-1)

**8. FUTURE AGENDA ITEMS AND OTHER PLANNING:**

- May 5
  - Re-zone of Parcels to Commercial Adeline Corridor (C-AC)
  - Presentation on City-Wide Affordable Housing Requirements by Rick Jacobus

**AGENDA ITEMS**

**9. Action: Response to Short Term Referral for Amendments to the ADU Ordinance and Related Definitions to Address Public Safety Concerns**

Staff shared the proposed amendments to the local ADU Ordinance in response to the Council's Short Term referral. The proposed amendments focused on codifying State ADU regulations and modifications to ADU size and front yard setbacks to address public safety concerns. Commission discussion focused primarily on clarification of State ADU law and options for local changes to ADU size, setbacks, height and neighbor noticing. An additional two feet of height was incorporated into the final motion for Council consideration to allow design flexibility. The rationale for a Maximum Height of 18 feet -- without an increase in Maximum Size – is that two-story ADUs reduce the ADU footprint, increasing Open Space, decreasing Lot Coverage and allowing flexible configurations on smaller lots.

Motion/Second/Carried (Barnali/Vincent) to close the public hearing on the Response to Short Term Referral for Amendments to the ADU Ordinance and Related Definitions to Address Public Safety at 8:55pm.

Ayes: Ching, Ghosh, Hauser, Kapla, Krpata, Schildt, Vincent, and Wiblin. Noes: None. Abstain: None. Absent: Beach. (8-0-0-1)

68 Motion/Second/Carried (Kapla/Schildt) to adopt staff's recommendation with the following  
69 edits and a request to add neighbor notification of Building Permit issuance to the  
70 administrative process of application approval:  
71

- 72 • Amend 23C.24.010.B.1 to read: *One ADU and/or one JADU is allowed on a lot with one*  
73 *Single Family Dwelling.*
- 74 • Delete 23C.24.010.B.5: *One JADU is allowed on a lot with one Single Family Dwelling.*
- 75 • Add 23C.24.040.A.6 to read: *A JADU is subject to the Development Standards in*  
76 *paragraph B and G.*
- 77 • Amend 23C.24.040.C to read:  
78 1. *Maximum Height of a ~~free-standing detached, new construction~~ ADU is 16-18 feet.*  
79 2. *Maximum Height of new square footage added to a Single Family Dwelling, Accessory*  
80 *Building or Accessory Structure to create an ADU is 16 18 feet.*

81  
82 Ayes: Ching, Ghosh, Hauser, Kapla, Krpata, Schildt, Vincent, and Wiblin. Noes: None.  
83 Abstain: None. Absent: Beach. (8-0-0-1)

84  
85 **Public Comments: 0**

86 **10. Action: Response to Support Small Businesses Referral: Amendments to the Sign**  
87 **Ordinance to Establish a Master Sign Program**

88 Staff presented proposed modifications to the Sign Ordinance, which included establishing a  
89 Master Sign Program, clarifying ordinance language, and exempting in-kind replacement of  
90 signs. The Commission discussed minor amendments the Zoning Ordinance to maintain  
91 consistency with the Sign Ordinance. Corresponding references to the Zoning Ordinance  
92 were highlighted by staffs and commission discussion centered on clarifying ordinance  
93 language to improve readability.  
94

95 Motion/Second/Carried (Wiblin/Krpata) to adopt staff's recommendations with suggested edits  
96 to 23E.08.020.C [Applicability] as follows:  
97

98 *C. Permits Zoning Certificates, Administrative Use Permits, Use Permits, and Variances for*  
99 *projects that are subject to design review ~~may not be issued without design review approval,~~*  
100 *~~except that they may be issued~~ may be approved conditional upon final design review such*  
101 *approval occurring before the issuance a building permit or for a permit for a sign permit (as*  
102 *set forth in ~~BMG Chapter 20.12-010~~ of the Sign Ordinance).*

103  
104 Ayes: Ching, Ghosh, Hauser, Kapla, Krpata, Schildt, Vincent, and Wiblin. Noes: None.  
105 Abstain: None. Absent: Beach (8-0-0-1)  
106

107 **Public Comments: 0**

108 Motion/Second/Carried (Kapla/Ghosh) to adjourn the Planning Commission meeting at  
109 10:10pm.

110  
111  
112  
113

Ayes: Ching, Ghosh, Hauser, Kapla, Krpata, Schildt, Vincent, and Wiblin. Noes: None.  
Abstain: None. Absent: Beach (8-0-0-1)

114 **Members in the public in attendance: 23**  
115 **Public Speakers: 11 speakers**  
116 **Length of the meeting: 3hr 8 minutes**

DRAFT





**Planning and Development Department**  
Land Use Planning Division

## **STAFF REPORT**

**DATE:** May 5, 2021

**TO:** Members of the Planning Commission

**FROM:** Alisa Shen  
Principal Planner

**SUBJECT:** Citywide Affordable Housing Requirements

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### **RECOMMENDATION**

Review proposals for potential changes to comprehensively update the City's affordable housing requirements that respond to City Council referrals and provide feedback that will guide staff in preparing draft ordinance revisions for Planning Commission, Housing Advisory Commission, and Council consideration later this year.

### **BACKGROUND**

The City of Berkeley has a strong history of programs and initiatives to retain existing affordable / rent controlled tenant housing, protect tenants from displacement, and create new supplies of affordable housing. Requirements related to affordable housing are currently codified in several sections of the Berkeley Municipal Code, including:

- BMC 21.28 Condominiums and Other Common Interest Subdivisions
- BMC 22.20 Mitigations and Fees—Conditions of Approval for Development Projects
- BMC 23C.08 Demolition and Dwelling Unit Controls; and
- BMC 23C.12 Inclusionary Housing Requirements.
- BMC 13.76 Rent Stabilization and Eviction for Good Cause

There are also numerous implementing resolutions which set fee amounts and exemptions. In addition, the City has administrative guidelines and practices to implement the requirements.

In October 2020, Street Level Advisors presented a range of identified policy issues and solicited feedback from the public and the Planning Commission. The City also held two focus group meetings with a range of stakeholders including affordable housing developers and advocates, market-rate developers, and the Planning Commission,

Housing Advisory Commission, Zoning Adjustments Board, and Rent Stabilization Board.

In a separate process led by the 4x4 Joint Task Force Committee on Housing, proposed changes to the City's regulations around demolitions are also under discussion.

Demolition requirements help protect existing rental-controlled housing by regulating and compensating for the elimination of such units which occurs through modifications to existing housing stock (e.g. removing kitchens, combining units). This 4x4 process involves representatives from the Rent Board, City Council, Planning Commission, and other relevant Commissions.

## DISCUSSION

City Council has adopted multiple, interrelated referrals to staff and Commissions to explore revisions to the City's affordable housing requirements for new development. There have also been changes to State laws that govern affordable housing requirements and density bonus incentives. In response, the City engaged the consulting firm Street Level Advisors evaluate existing regulations and potential changes, in order to comprehensively update the City's affordable housing requirements (**See Attachments 1 and 2**).

Five overarching goals guide the work:

- **Centering Racial and Economic Equity in Zoning.** Berkeley has committed to pioneering policies that attempt to undo some of the harm caused by past exclusionary zoning practices. The City's Inclusionary Housing requirements are central to its efforts to build a more racially and economically integrated future. Two key goals are to ensure that affordable housing is included in all parts of the City, and to promote inclusion of affordable units within market-rate housing.
- **Encouraging a Mix of Units and Fees.** Berkeley's current policy makes on-site affordable units the preferred requirement for both rental and ownership projects, but by law must also allow payment of a fee as an alternative. AHMF fees generate significant revenue to support non-profit affordable housing projects throughout the city, and offer flexibility for projects to choose between multiple compliance options depending on different circumstances. The goals of increasing inclusionary units on-site must be balanced with maintaining the collection of fees, which can leverage State and federal funding to maximize the City's production of affordable housing at other sites.
- **Building on Berkeley's Legacy of Value Capture.** The principle of "public value capture" (or land value capture) leads the City to set its housing requirements at a level that captures a share of the market rate developer profits to support housing for lower income residents, which is evident in the City's requirements. Value capture requires close attention to the financing and economic realities of development in order to ensure that the City is capturing the appropriate amount of financial returns without making development infeasible, resulting in no housing at all.

- **Continuing Progress on the City’s Housing Goals.** Rapidly rising housing costs and growing displacement pressures are the result of a systemic shortage of housing throughout the region. The latest Regional Housing Needs Allocation (RHNA) requires Berkeley’s zoning to allow for nearly 9,000 new homes, across all income levels, between 2023 to 2031. While building more housing alone would not be sufficient to address the current inequities, land use regulations that facilitate building more housing can lead to more affordable housing.
- **Work within the City’s Existing Administrative Capacity.** Berkeley’s current affordable housing requirements are among the most complex in the region, but the City has proportionally fewer administrative staff than many other jurisdictions. Changes to the City’s affordable housing requirements that increase administrative requirements would require that additional resources be identified to support implementation.

The potential changes being evaluated include (for more details see **Attachment 1, pg. 3, Summary of Proposed Changes**):

1. Consolidate affordable housing requirements into a single framework
2. Calculate the fee on a per square foot basis (for both rental and ownership housing)
3. Evaluate the potential for higher fees when the market is stronger
4. Incentivize Extremely Low-Income (30% of AMI) units
5. Adjust the residual fee for “mixed compliance” projects
6. Standardize ownership fees
7. Standardize live-work requirements
8. Add a Land Dedication Option
9. Provide a Family Sized Units Option
10. Simplify the requirements for Condominium Conversions
11. Prohibit on-site units in certain situations
12. Reduce fees for small projects/missing middle projects
13. Administrative changes
  - a. Cap annual rate of rent increases
  - b. Authorize administrative citations
  - c. Authorize annual monitoring fee for ownership units
  - d. Deduct required fees/costs from gross rent.

## **NEXT STEPS**

In addition to the Planning Commission, staff is also seeking feedback on the potential proposals from the City Council at a Work Session on May 18, 2021. Staff will bring a

draft ordinance to the Planning Commission, the Housing Advisory Commission and the City Council later this year.

**Attachments:**

- 1: Updating Affordable Housing Requirements for the City of Berkeley: Analysis and Recommendations. Prepared by Street Level Advisors, April 27, 2021.
- 2: Summary of Council Referrals Related to Citywide Affordable Housing Requirements



**Street Level Advisors**

**Updating Affordable Housing Requirements for  
The City of Berkeley, CA  
Analysis and Recommendations**

4/27/21

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Updating Affordable Housing Requirements for the City of Berkeley - Street Level Advisors 4/27/21

## Summary of Proposed Changes

	CURRENT	PROPOSED
Ordinance	<b>Rental:</b> Affordable Housing Mitigation Fee (BMC 22.20.065)	Affordable Housing Requirements Ordinance (one ordinance that addresses requirements for rental, ownership, live/work units and condo conversion)
	<b>Ownership:</b> Inclusionary Housing Requirements (BMC 23C.12)	
On-site Unit Income Targets	<b>Rental:</b> 10% of total units @ 50% of Area Median Income (AMI), 10% of total units at 80% of AMI	No change
	<b>Ownership:</b> 20% of total units @ 80% of AMI	
Base Fee	<b>Rental:</b> \$39,746 per unit	\$45 per gross residential square foot
	<b>Ownership:</b> 62.5% of the difference between market and affordable price.	
ELI Incentive	40% of VLI units marketed to Housing Choice Voucher holders, 40% to Shelter+Care holders.	All VLI Units must be offered to voucher holders first, staff manage choice between two voucher programs.
Mixed Compliance Incentive	Projects that provide less than 20% on-site receive the same reduction in fee whether units are VLI or LI	More expensive/higher need VLI units reduce remainder fee by more than LI units.
Live Work	Live Work Ordinance (BMC 23E.20) exempts projects from IH and AHMF, requires 20% of live work units be affordable at 80% of AMI.	Remove special exemption for Live Work. Affirmative marketing to artists/others who need larger units still required.
Land Dedication	None	Create new Land Dedication Option
Family Size Unit Incentive	None	Projects that provide 2 and 3-bedroom BMR units may choose to provide 20% of total Residential Square Feet instead of 20% of units.
Condo Conversion	Nexus Fee calculation or 8% of market value. 50% reduction in fee for owner occupied units	8% of market value. 4% exemption expanded to include tenants who buy units at conversion.
Minimum # of On-site Units	None	Projects may not select the on-site option unless they include at least 5 BMR units
Maximum Unit Size	None	Projects with average unit size >3BR may not choose on-site unit option
Small Project Exemption	Projects with <5 units are exempt	Exemption removed; Reduced fee for projects with fewer than 25 units, phased in as size increases.
Cap on rent increases	BMR Unit rents increase along with HUD median Income	Limit annual rent increases to the change in the Consumer Price Index

# Overarching Goals for Updating Requirements:

## Center racial and economic equity

Berkeley has committed to pioneering policies that attempt to undo some of the harm caused by past exclusionary zoning practices. The City's Inclusionary Housing requirements are central to its efforts to build a more racially and economically integrated future.

Two key goals of the program are to ensure that affordable housing is included in all parts of the City and to promote the inclusion of affordable units within market-rate housing.

There has been quite a bit of academic research into the benefits of economic integration and the emerging consensus is that the location of affordable housing matters.<sup>1</sup> Much of our affordable housing has been concentrated in neighborhoods with the greatest health and safety challenges and the least economic opportunity. Integrating affordable housing into every neighborhood offers significant health and economic advantages, particularly for low-income children. While the same research has consistently not found additional benefits from locating affordable units in the same buildings as market rate housing (beyond the neighborhood benefits), requiring affordable units in new market rate buildings has been a key way that cities have succeeded in locating affordable housing in certain 'high opportunity' neighborhoods.

Currently both the Affordable Housing Mitigation Fee (AHMF) and Inclusionary Housing Requirements (IHO) ordinances allow developers to choose to either provide on-site units or pay a fee into the City's Affordable Housing Trust Fund. Several recent Council referrals have focused on either reducing or eliminating the fee option in order to encourage more on-site affordable housing units in mixed income buildings. Other council referrals have called on the City to encourage payment of fees, which allow investment in non-profit owned 100% affordable projects. These projects leverage outside affordable housing funding to build more units at deeper levels of affordability and also offer critical social services.

While increasing the share of on-site affordable units continues to be an important community goal, it is important to note that this is not the only way that Berkeley is achieving the goal of overcoming the legacy of segregation. Most of Berkeley falls into what is generally considered a moderate- to high-opportunity area, in part because the City offers high-quality schools to students regardless of which neighborhood they live in. At the same time, Berkeley has been successful in locating nonprofit affordable housing in most parts of the City. These broader realities reduce the pressure on the City's inclusionary housing policy to produce affordable units on-site in every building and allow the City to pursue a balanced strategy of private and

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<sup>1</sup> The Urban Institute compiled a very helpful summary of several dozen research studies on the benefits of mixed income communities. [urban.org/uploadedpdf/412292-effects-from-living.pdf](https://www.urban.org/uploadedpdf/412292-effects-from-living.pdf)



Updating Affordable Housing Requirements for the City of Berkeley - Street Level Advisors 4/27/21

publicly sponsored provision of affordable housing in every neighborhood. An appropriate goal might be for the City to target a mix of on-site units in most market rate buildings while maintaining the collection of critical fees to support nonprofit affordable properties.

Though our analysis confirmed that Berkeley's current rules appear to strongly favor payment of the fee, the actual record of projects over the past few years paints a different picture and shows that Berkeley's current policy is already achieving this kind of mix, with the majority of projects providing on-site units.

Currently, providing an on-site affordable unit is generally far more costly to a developer than paying the associated fee. Just as an example, Street Level Advisors calculated that for a hypothetical Berkeley rental property, providing one on-site Very Low Income unit would reduce the resale value of a building by about \$483,000. One on-site Low Income unit would reduce the building value by \$340,000. Opting out of providing either of those units would require payment of an Affordable Housing Mitigation Fee totaling only \$198,730.<sup>2</sup> While the specifics differ for each building based on the local market rents, in this example on-site costs more than twice as much as paying the current fee.

We estimate that the current AHMF costs roughly \$45 per gross residential foot, and the on-site requirements cost a typical project roughly \$114 per foot.

In spite of this, between 2012 and 2020 nearly two-thirds of Berkeley's projects have included some affordable units on-site and just under one-third have fully complied through the on-site option. Figure 3 shows that the mixed compliance option (some units plus some fee) has been the most popular option. There are likely several reasons for this including political pressures, but one clear factor is the State Density Bonus (SDB). The State requires cities to allow developers who include affordable units to build more units on a site than would otherwise be allowed and to take advantage of certain planning and zoning concessions which make it easier to get projects built. Under the current rules, projects that provide at least 11% of their units affordable to Very Low-Income residents qualify for the maximum benefit under the Density Bonus. These benefits cause many Berkeley projects to include 11% affordable units on-site and pay the fee for the remaining units. A recent change to state law will allow a 50% density bonus to projects that provide 15% VLI units (among other options). This change should result in even more on-site units in Berkeley even under the current City ordinance.

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<sup>2</sup> Because Berkeley requires \$39,746 per unit or 1 on-site unit for every 5 units (20%), every on-site unit that is included reduces the fee by 5 times \$39,746.

**FIGURE 1: Compliance Option Selected 2012 - 2020**



### **Encourage a mix of units and fees**

The changes proposed below clarify Berkeley’s policy to make on-site affordable units the preferred default requirement for both rental and ownership projects but allow payment of a fee as an alternative in order to:

- 1) Continue to generate significant fee revenue to support nonprofit affordable housing projects throughout the City, and
- 2) Offer flexibility for projects to choose between multiple compliance options depending on different circumstances.

Ideally, the proposed changes will encourage a mix of fees and units over time with fees coming primarily from projects where on-site units would be less desirable or more difficult to monitor.

The proposed Affordable Housing Requirements ordinance would be structured so that providing on-site units is the default requirement for nearly all projects, with an exception for small projects and co-living type projects which would be encouraged to pay the fee. It might be possible to remove the fee option entirely, but state law requires cities to offer multiple compliance options such as a fee in their inclusionary housing ordinances. Ideally, the program would be structured such that the cost to a project of providing units on-site is more similar to the cost of paying the fee. This would maintain flexibility but reduce the incentive to pay the fee rather than provide units.

Over time, strong demand for housing in Berkeley should mean that higher fees are practical, but our analysis of current market conditions suggests that 2021 would be a particularly risky time to raise Berkeley’s housing fees. The Covid-19 pandemic has created uncertainty in the real estate market and led to falling rents throughout the region. The multi-family rental prototypes we studied earned returns that were just barely above the minimums required for financial feasibility. The recommendations below call for restructuring the fee to be calculated on a per square foot basis but setting it, for the moment, at a level which is financially comparable to the current fee for most projects. Once the housing market has recovered from

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the effects of the pandemic, we recommend evaluating a fee increase which would bring the cost of the fee option closer to the cost of on-site compliance.

More immediately, the proposed changes recognize the growing popularity of mixed compliance based on the State Density Bonus and aim to increase the number of on-site units primarily by increasing the prevalence of these mixed compliance projects. Together these changes should increase the number of affordable units provided on-site within market rate projects throughout Berkeley without dramatically reducing the affordable housing fee revenue that the City's Affordable Housing Trust Fund receives.

### **Continue Berkeley's legacy of value capture**

A key goal of Berkeley's inclusionary housing ordinance and Affordable Housing Mitigation Fee has been to ensure that new real estate development projects in Berkeley contribute benefits for the whole community. This principle of Public Value Capture (or Land Value Capture) calls on the City to closely evaluate the profitability of real estate projects and set its housing requirements at a level which captures a share of the profits to support housing for our lowest income residents. Careful value capture requires close attention to the financing and economic realities of development in order to ensure that the City is capturing the appropriate amount of financial returns.

**Appendix A** contains a detailed description of Street Level Advisors financial feasibility study. Building on past studies conducted in support of Berkeley's Affordable Housing Mitigation Fee, we analyzed a single hypothetical rental and a single condominium building prototype in order to better understand the financial feasibility of these projects under the current program and under the proposed changes described below.

For rental projects, our model suggests that most projects would not be able to feasibly comply with the current 20% on-site requirement but that projects that choose to pay the fee or access the State Density Bonus by providing some units on-site and paying a partial fee would both earn returns that are just barely above the threshold we identified for feasibility (5% yield on cost). The returns for density bonus projects are comparable to the fee alternative because the additional cost of providing some units on-site is offset by the additional benefit of building more units on the same site.

For our rental prototype (described in **Appendix A**), the proposed fee of \$45 per gross square foot results in a virtually identical return to what the project would see under the current fee. A higher fee (\$55 per foot) would result in a marginal return. The proposed approach of providing more 'credit' for projects that provide on-site VLI units than those that provide LI units results in modest increases in the returns available to mixed compliance projects that take advantage of the State Density Bonus. While this small difference is not critical for this prototype, it is likely that there would be projects where this difference would result in on-site

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affordable units in projects that would otherwise have paid the fee entirely (or not moved forward at all).

**Figure 2: Comparison of Returns - Rental**

Scenario	Base Units	Bonus Units	LI Units	VLI Units	Fee \$	Yield on Cost	% of Base	% of Total
<b>Current Policy</b>								
\$39,746 Per Unit Fee	72	0	0	0	\$2,861,712	5.08%	0%	0%
Onsite Units	72	0	7	7	\$0	4.94%	19%	19%
Mixed Compliance - 11% VLI	72	25	0	8	\$2,265,522	5.07%	11%	8%
Mixed Compliance - 15% VLI	72	36	0	11	\$2,106,538	5.10%	15%	10%
<b>Proposed Alternatives</b>								
\$45 Per Foot Fee	72	0	0	0	\$2,967,750	5.07%	0%	0%
\$55 Per Foot Fee	72	0	0	0	\$3,627,250	4.99%	0%	0%
Mixed Compliance (Weighted) - 11% VLI	72	25	0	8	\$2,350,809	5.10%	11%	8%
Mixed Compliance (Weighted) - 15% VLI	72	36	0	11	\$2,184,925	5.12%	15%	10%

For ownership projects, there is no Yield on Cost metric; feasibility is generally evaluated based on the profit from sales as a percent of the total development cost. Because there have been very few recent condo projects in Berkeley, it is not possible to identify the exact threshold for feasibility. One common benchmark considers projects that earn more than 10% profit to be “feasible.” We found that neither the current fee nor the current on-site requirement resulted in profit as a percent of development cost above this 10% threshold. The proposed switch to a \$45 per foot fee would result in profit just above 10% while a higher \$55 per foot fee would result in profit closer to 9%.

**Figure 3: Comparison of Returns - Ownership**

Scenario	Total Units	LI Units	Fee \$	Profit % of Cost
<b>Current Policy</b>				
Current Fee (based on sale prices)	56	0	\$3,810,847	8.00%
Onsite Units	56	11	\$0	1.13%
<b>Proposed Alternatives</b>				
\$45 Per Foot Fee	56	0	\$2,767,050	10.88%
\$55 Per Foot Fee	56	0	\$3,381,950	9.16%

### Continue progress on housing goals

The Bay Area needs more housing. Rapidly rising housing costs and growing displacement pressures are the result of a systemic shortage of housing. While building more housing alone

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would not be sufficient to address the current inequities, we cannot overcome our housing challenges without building significantly more housing. The Regional Housing Needs Allocation (RHNA) requires Berkeley to permit nearly 9,000 new homes at all income levels during the period from 2023 to 2031.

To meet this historic challenge, Berkeley's affordable housing policies must balance two critical but competing goals.

- 1) We must set affordable housing requirements high enough to produce meaningful levels of affordable housing, and
- 2) We must ensure that they are not too high for developers to accommodate.

If Berkeley sets its requirements too low, it may see construction that only serves to further existing inequity and racial exclusion. But if requirements are set too high, the result could be that little or no new housing is built, which would itself perpetuate the inequities which drive ongoing displacement of existing residents and push prices and rents up to levels which effectively prevent new low- and moderate-income households, including many households of color, from moving to Berkeley.

Berkeley's current affordable housing requirements (both the on-site requirements and the fee options) are somewhat higher than other East Bay jurisdictions (see Figure 6 below). But in spite of the relatively high costs, construction is continuing in Berkeley. Even during the pandemic, builders continue to undertake new residential projects. This suggests that Berkeley's requirements do not dramatically overburden development. However, Street Level Advisors' feasibility analysis (**Appendix A**) finds that the current requirements are only marginally financially feasible in today's environment. This suggests that Berkeley could see more building overall - including more affordable housing development - by slightly reducing the cost of compliance for some projects.

The proposed changes include many small adjustments to current requirements intended to make it easier for developers to understand and comply with program rules and for the City to oversee and administer. This will also facilitate transparency for the community at large. These changes are explicitly intended to make it easier to build the new housing that Berkeley desperately needs. However, the proposed changes attempt to achieve this while simultaneously maintaining or increasing the overall contribution that new market-rate housing makes to the provision of affordable housing in Berkeley.

Under the proposed changes, some types of projects are asked to contribute more and others less, but the goal is to maintain or increase the number of on-site units and the amount of fees available to the Housing Trust Fund. The proposed changes do this by reducing the fee charged to projects with relatively smaller units and increasing the fee on projects with large or extra large units and by slightly reducing the fee due from projects that provide some units on-site. These changes should encourage more projects to build some units on-site while also improving overall feasibility so that more housing projects are able to move forward.

### **Work within the City's existing administrative capacity**

Berkeley's current affordable housing requirements are among the most complex in the region, but the City has fewer administrative staff than many other jurisdictions. HHCS currently has a total of 1.3 FTE to implement the BMR program:

- 0.20 FTE to work on new projects (apply requirements, meet with applicants, draft and execute regulatory agreements);
- 1.0 FTE monitor for completed projects, funded by an annual monitoring fee on BMR units; and
- 0.10 FTE related policy work and program supervision.

Adopting changes to the City's affordable housing requirements that increase administrative requirements would only be possible if new General Funds could be identified to support the implementation. Implementing local affordability requirements is not an eligible use of federal funds, so local funds are required to support this activity.

The proposed changes described below add complexity to the rules in several places but attempt to offset the complexity by streamlining and eliminating administrative challenges in several other places. The goal is to design a program which the City can successfully implement with existing staffing resources.

## Proposed Changes in Detail:

### 1. Consolidate Affordable Housing Requirements into a single framework

#### Proposed Changes:

- 1.1. Combine the requirements of the Affordable Housing Mitigation Fee (AHMF) and Inclusionary Housing (IH) ordinances into a single “Affordable Housing” ordinance which would impose on-site affordable housing requirements for both ownership and rental projects.
- 1.2. The fee would be structured as an “in lieu fee” offered as an alternative to on-site units, rather than as a mitigation fee.
- 1.3. The new ordinance would also replace the affordable housing requirements sections of the Condo Conversion and Live/Work ordinances.
- 1.4. To the extent possible, standardize the requirements that are applied to different projects to simplify implementation of the program.
- 1.5. The new ordinance would apply to all new project applications received after a date specified several months after adoption.

#### Background and Analysis:

Prior to 2009, Berkeley had a single Inclusionary Zoning Ordinance (BMC Chapter 23C.12) which applied to both ownership and rental projects. In 2009, a Court of Appeals decision known as *Palmer/Sixth Street Properties LP v. City of Los Angeles* prevented California jurisdictions from enforcing inclusionary housing requirements on rental properties. Like many other cities, Berkeley responded by adopting an Affordable Housing Mitigation Fee (AHMF) (BMC section 22.20.065). Instead of requiring on-site units and then offering an in lieu fee as an alternative, the AHMF ordinance requires payment of a fee and allows the provision of on-site units as an alternative. This approach allowed Berkeley to achieve its policy goals without violating the restrictions imposed by the *Palmer* decision. But it created a situation in which the City had two different ordinances that attempt to impose similar requirements. The provisions of the Inclusionary Housing Ordinance that applied to rental housing remained in the Berkeley Municipal Code but were unenforceable and superseded by the AHMF ordinance.

In 2018, the California Legislature passed AB1505 which effectively overturned the *Palmer* decision and authorized the implementation of inclusionary housing requirements applied to rental properties. This legislation has allowed a number of cities to update their programs to combine rental and ownership requirements under a single inclusionary housing ordinance.

For example, in June 2019, the Mountain View City Council completed a two-phase process to update its Below Market Rate Program requirements. Mountain View now requires any new residential development, whether rental or ownership, to provide 15% of its units at affordable

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rents.<sup>3</sup> Similarly, after suspending its inclusionary rental housing requirement in 2011 to comply with the Palmer decision, the City of Menlo Park updated its Below Market Rate Housing Program to subject all new residential developments to its affordable housing requirements.<sup>4</sup>

Berkeley's new Affordable Housing Requirements (AHR) ordinance would address both rental and ownership projects (including Live/Work) and would impose an on-site affordable housing requirement for both while allowing payment of an in lieu fee.

## 2. Calculate the fee on a per foot basis

### Proposed Change:

- 2.1. Calculate affordable housing fees on a per foot basis instead of per unit. Initially set the fee at \$45 per gross residential square foot, which is roughly equivalent to the current fee for projects with typically sized units. Collect the fee at the time of Certificate of Occupancy eliminating the current discount for earlier payment. Increase the fee amount automatically based on the change in the California Construction Cost Index.

### Background and Analysis:

Some stakeholders have expressed concerns that projects that propose units with large numbers of bedrooms are not being required to pay an appropriate fee. Because Berkeley charges its AHMF on a per unit basis, a project that chooses to include a number of 5-bedroom units for example, would pay far less proportionally than a similarly sized project with studio, 1- and 2-bedroom units. It is not clear whether this savings is enough to cause developers to choose much larger bedroom configurations since these large unit 'co-living' projects are a trend nationwide. But it is clear that Berkeley's ordinance creates an incentive for projects that select this configuration and there does not seem to be a public policy reason for Berkeley to prefer these extra-large units. While there are benefits to projects that include 'family sized' 2 and 3-Bedroom units (discussed in proposed change #9 below), beyond 3 bedrooms, new units are generally housing multiple unrelated individuals rather than families.

A number of cities have changed to calculating in lieu fees on a per square foot basis. San Francisco and Santa Barbara both made this change in 2019 and San Jose made a similar change in early 2021. Instead of charging a flat fee per unit, the City would charge the fee for each square foot of residential space in the building regardless of how the building is divided up into units. As an example, a 25,000 square foot building would pay the same fee whether it was split up into 50 small studios or 15 multi-bedroom co-living units.

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<sup>3</sup> City of Mountain View, Below Market Rate Program,  
<https://www.mountainview.gov/depts/comdev/preservation/homebuying/bmrhousing/default.asp>

<sup>4</sup> City of Menlo Park, BMR Requirements for Residential Developers,  
<https://www.menlopark.org/DocumentCenter/View/1493/BMR-Requirements-for-Residential-Developers>



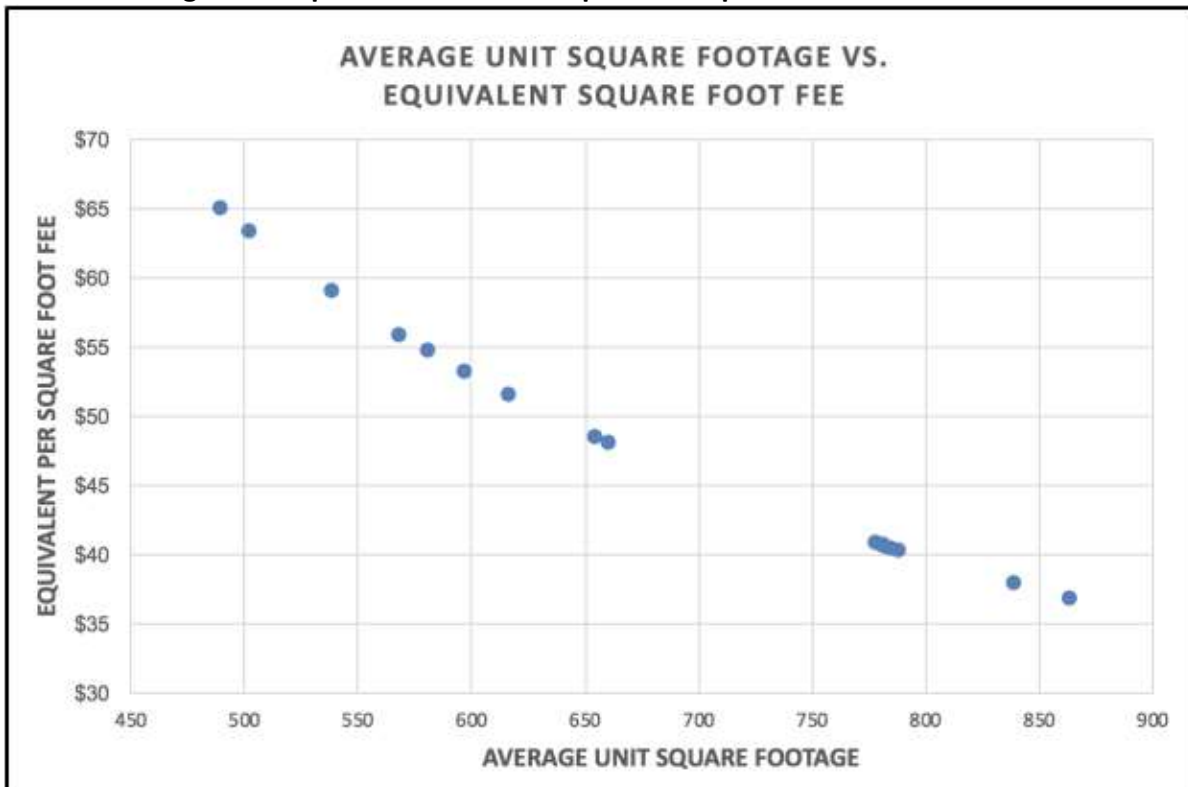
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Currently, in Berkeley, every rental project would pay \$39,746 per unit (assuming that they provided no units on-site). For a typical project this is equivalent to a fee of \$45 per gross residential foot, as illustrated in the table below.

Gross Square Feet - Residential is defined as all of the square footage of a new building (as defined in BMC 23F.04.010) minus any exclusively commercial space or indoor parking area. In a typical project, the gross square footage is roughly 1.25 times the net square footage.

We conducted a market analysis in order to estimate a per square foot fee which would be equivalent to the current AHMF. We collected data on the unit sizes of 18 recent Berkeley projects. We then multiplied the average unit sizes by 1.25 to estimate the gross square footage of each of these projects. For each project, we calculated an 'equivalent per square foot fee' by dividing the fee that the project would have paid under the current rules (assuming no on-site units) by the gross square footage. The equivalent per square foot fees ranged from \$38 to \$65. The typical fee was approximately \$45 which corresponds to an average unit size of 705 square feet.<sup>5</sup> Figure 4 shows the distribution of average unit sizes and equivalent square foot fees.

**Figure 4: Impact of unit size on equivalent square foot fee calculation**



<sup>5</sup> This excludes several outlier projects with very large or very small units.

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Figure 5 shows a sample of recent projects in order to illustrate the impact of switching to a per square foot fee. Under the current per unit fee, projects that have the same number of units like Avalon and Hillside Village would pay the same amount of fee. The equivalent per square foot fees (\$37.91 vs. \$48.14) show that Avalon is getting a much better deal by paying less relative to its size.

The per square foot fee adjusts for the difference in project sizes. If Berkeley switched to a standard fee of \$45 per square foot, projects with small units such as the Delaware Apartments would pay a lower total fee while projects with large units such as Higby would pay higher total fees.

**Figure 5: Equivalent per foot fees for recent projects - Examples**

Project Name	Total Units	Average Unit Square Footage	Current Fee (Assuming \$39,746 per unit)	Equivalent Per Square Foot Fee	Projected Fee (assuming \$45/foot)
Higby	98	864	\$3,895,108	\$36.82	\$4,760,145
Avalon	94	839	\$3,736,124	\$37.91	\$4,434,615
Stonefire	98	782	\$3,895,108	\$40.65	\$4,311,900
Hillside Village	94	661	\$3,736,124	\$48.14	\$3,492,405
The Dwight	99	617	\$3,934,854	\$51.57	\$3,433,680
The Delaware	51	581	\$2,027,046	\$54.72	\$1,667,025

For comparison, Figure 6 provides fee levels for nearby jurisdictions.

**Figure 6: Comparison of Inclusionary Housing Requirements and Fee Levels for Other Jurisdictions**

City	% Affordable Housing Required On-site	Fee	Notes
Alameda	15% for all multifamily projects	\$20,342 Per Unit	No alternative to fee for buildings of 9 or fewer units
Emeryville	20% for all multifamily projects	\$31,032 Per Unit	
Fremont	12.9% for rental	\$27.00 Per Residential Square Foot	
Hayward	6% for rental, 10% for ownership	\$19.37 Per Residential Square Foot	Lower fees for high-density condos

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<b>Figure 6 Cont'd</b>			
<b>City</b>	<b>% Affordable Housing Required On-site</b>	<b>Fee</b>	<b>Notes</b>
Livermore	10% downtown, 15% everywhere else	\$29.23 Per Residential Square Foot	Projects with 10 or more units may not pay fee
Oakland	10% if low- or moderate- income units, 5% if very low-income units	For multi-family: \$22,000 per unit in Zone 1, \$17,750 in Zone 2, \$12,000 in Zone 3	
Pleasanton	15% for all multifamily projects	\$45,083 per unit	
San Francisco	20% for small projects, 25% for large rental, 33% for large ownership	\$199.50 Per Gross square foot times affordable percent	Equivalent to \$60 per square foot for many projects.
San Jose (proposed)	15% for all multifamily projects	Moderate Market Areas: \$18.26 per net residential foot Strong Market Areas: \$43	

The current AHMF ordinance allows developers to choose between paying a higher fee (currently \$39,746) at the Certificate of Occupancy when a project is nearly complete or a reduced fee (currently \$36,746) earlier when a project receives a building permit. Nearly all projects have selected the higher fee because of the high value that developers place on the ability to pay the fee later. Paying later reduces their financing costs and lowers their overall financial risk. Removing the option to pay early would recognize this reality and eliminate an additional element of administrative complexity and communication challenge.

The existing Affordable Housing Mitigation Fee is automatically adjusted by the annual percentage change in the California Construction Cost Index published by the California Department of General Services, every other year. The automatic adjustment is applied to all projects that have not received final approval by the City of Berkeley prior to the date of the automatic adjustment. This automatic adjustment ensures that the fee keeps pace (roughly) with what it costs the City and its nonprofit partners to construct new affordable housing using the fee revenue. This method should remain in place.

### 3. Evaluate the potential for higher fees when the market is stronger

#### Proposed Change:

- 3.1. In order to encourage more on-site units, phase in a slightly higher fee once the housing market has stabilized. Conduct an updated feasibility analysis within 3 years, increase the per square foot fee if the analysis shows that typical projects could support the higher fee.

#### Background and Analysis:

Under current market conditions, Berkeley's on-site compliance option (20%) is significantly more costly for most projects relative to the cost of the Affordable Housing Mitigation Fee or In-lieu Fee. This creates an incentive for projects to choose to pay the fee instead of providing units on-site. In spite of this incentive, the majority of projects have provided some level of on-site units because the State Density Bonus provides an even stronger incentive to include affordable units on-site, and the units count against the fee obligation as well.

Ideally the on-site unit and in-lieu fee requirements would be more closely aligned so that they represented similar costs for most projects. This kind of alignment would likely result in a higher number of on-site units without entirely eliminating the fee revenue which is critical to Berkeley's Affordable Housing Trust Fund. Aligning the economics of these two options would require either raising the fee or lowering the on-site requirement considerably.

In rough terms, the on-site requirement would need to be lowered to about 15% in order to represent a cost to most rental projects that was equivalent to the cost of the current AHMF. However, none of the local stakeholders we spoke with suggested that there would be public support for lowering Berkeley's on-site requirement.

A number of stakeholders, on the other hand, suggested raising the fee. This seems to be the more obvious path to aligning the cost of the two options and increasing the share of units on-site. However, our feasibility analysis (**Appendix A**) suggests that 2021 would be a particularly risky time to raise the affordable housing fee. The Covid-19 pandemic has created uncertainty in the real estate market. Rents in Berkeley have fallen significantly and rents in high-cost newly constructed buildings may have fallen more than the average. At the same time, construction costs have not (yet) fallen leaving most multi-family housing developments in a precarious position. Builders are still moving forward with new rental buildings in Berkeley but the City's volume of new applications has fallen relative to recent years. It seems likely that Berkeley will continue to be a desirable location for new housing over the longer term but it is not yet clear whether there will be a protracted slow down in new building throughout the region following the pandemic.

While the level of local fees, including affordable housing fees, is just one small factor that developers consider when they decide whether or not to move forward with a project, Berkeley already charges more than most other East Bay jurisdictions and increasing the fee at this time could contribute to a greater slow down in new building.

For this reason, we are recommending that Berkeley allow for a period of housing market recovery before considering an increase in the Affordable Housing Fee. The City could plan on an update to the feasibility analysis in one to three years or wait for evidence that either rents have begun increasing or that construction costs have begun to fall before reconsidering the level of the fee.

#### **4. Incentivize Extremely Low-Income (30% of AMI) units**

**Proposed Changes:**

- 4.1. Require all VLI Units to be offered to voucher holders before being marketed to other income eligible households.
- 4.2. In order to simplify administration, allow staff to designate a single voucher program (Housing Choice or Shelter + Care) for use by each project rather than requiring every project to work through both cumbersome systems.

**Alternative:**

- 4.3. Retain the current rules which require 40% of VLI units be offered first to Housing Choice Voucher Holders and another 40% be offered first to Shelter + Care Voucher Holders.

**Background and Analysis:**

A number of local stakeholders have expressed a desire to see Berkeley's program provide relatively more units to serve Extremely Low-income (ELI) households (below 30% of Area Median Income) who face the most acute housing challenges.

Some cities achieve this by creating a formula which allows developers to substitute a smaller number of units targeting Extremely Low Income residents for some portion of otherwise required on-site BMR units. Los Angeles's Transit Oriented Communities (TOC) program requires affordable units in exchange for a significant density bonus. The TOC program allows developers to choose between providing a greater number of low-income units or a smaller number of more deeply affordable Extremely Low Income units. Even though the rents on the ELI units are much lower, many developers have chosen this option because they can provide fewer affordable units (and more market rate units). Between 30% and 50% of the BMR units produced through the program have targeted ELI households and this program has driven a significant increase in the total number of income restricted ELI units produced in LA. In 2020, 34% of new BMR units in LA were restricted to ELI tenants.

While this type of approach might increase the number of ELI units in Berkeley, it is worth noting that Berkeley is already a national leader in serving ELI households through inclusionary housing. *Currently 29% of Berkeley's BMR tenants have incomes below 30% of AMI* and the share of ELI tenants is likely to increase noticeably under current rules. Berkeley's AHMF requires that at least half of BMR units must target 50% of AMI and, *of those, 40% must be*

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offered first to Housing Choice voucher holders from the Housing Authority and another 40% must be offered first to Shelter Plus Care voucher holders managed by the City's Housing and Community Services division. Voucher holders in both programs generally have incomes well below 30% of AMI. And because of the acute shortage of inexpensive market rate housing, most of the households that receive vouchers in Berkeley are unable to use them in the market. This approach has benefits for developers as well. The City allows the property to receive the contract rent offered by the subsidy program as long as the tenant's share of rent is below the BMR limit. The contract rents are generally far below the market rent for brand new buildings but also quite a bit higher than the BMR affordable rent for 50% AMI units. Because of the voucher, the ELI tenants, on the other hand, generally pay much less than the 50% AMI affordable rent.

In addition, because of the way Berkeley's requirements interact with the State Density Bonus (SDB), developers tend to favor the 50% AMI units. As a result, 77% of Berkeley's BMR units approved since 2012 have been regulated as 50% AMI units. If this pattern continues and, going forward, 80% of these units are reserved for voucher holders, then we would expect voucher holders to make up 62% of new BMR tenants.

A 2020 State law (AB 2345) expands the SDB beginning in January 2021. Developers will now be allowed to build 50% more units if they provide at least 15% VLI units (among other options). This new law should result in a greater number of on-site VLI units and, as a result, a greater number of ELI/voucher tenants. At some point, it is likely that the City would exhaust the supply of unused vouchers and some of these units would ultimately be leased to Very low Income tenants (below 50% of AMI) instead.

In addition to its success in serving ELI tenants in BMR units, the City currently requires that at least 20% of units in all projects funded with the Housing Trust Fund be affordable to ELI tenants.

Requiring that all VLI units first be offered to voucher holders would slightly increase the share of ELI tenants housed going forward while also removing an element of complexity from the program and simplifying otherwise complex rounding issues. Allowing the staff to designate one or the other voucher program for each project would simplify compliance for property managers. Rather than requiring each project to navigate complex rules with two different public agencies, this would create the same number of voucher placements while allowing each building to interact with only one of the two voucher programs.

## 5. Adjust the residual fee for mixed compliance projects

### Proposed Change:

- 5.1. Encourage more mixed compliance projects by changing the calculation of the remaining fee due when projects provide less than 20% affordable units on-site.

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Restructure the remainder fee so that providing VLI (50% AMI) units reduces the fee due by more than providing LI (80% AMI) units.

**Alternative:**

- 5.2. Continue the current practice of providing the same reduction in fee for any units, whether they serve VLI tenants or LI tenants.

**Background and Analysis:**

Currently rental projects that provide 20% affordable units on-site are exempt from the Affordable Housing Mitigation Fee (AHMF). Half of these units must be for Very Low Income (VLI) residents earning less than 50% of AMI and half must be for Low Income (LI) residents earning less than 80% of AMI. When a developer provides a portion of the required units on-site, the City has a formula that is used to determine the remaining fee. For example, if a project provides half of the required on-site units, they also owe half of the fee that would have been due. In order to access the benefits of the State Density Bonus, the majority of recent projects have selected this mixed compliance option.

Under the current rules, providing any on-site affordable housing unit reduces the fee that is due by the same amount regardless of whether the unit provided is a LI or a VLI unit. But because the VLI units rent for much less, they are much more costly to provide on-site. When a developer agrees to provide any permanently affordable unit, they will receive less rental income from that unit throughout the life of the project than they would from a market-rate unit. As a result, each affordable unit in a project decreases the value of a building - the amount that a building could be sold for. Street Level Advisors estimated the cost of providing these units on-site for a hypothetical 6 story project and found that a VLI unit reduces the value by \$483,000 while a LI unit reduces value by \$340,000.

One way to encourage more projects to provide some units on-site would be to restructure the remainder fee so that providing VLI (50% AMI) units reduces the fee due by more than providing LI (80% AMI) units. Based on the relative affordable rents, providing 10% VLI units could relieve the developer of \$30 of the \$45 per square foot remainder fee, while providing 10% LI units could relieve them of only \$15 of the \$45 per square foot fee. Projects providing fewer than the 10% of units required in either category would pay a fee adjusted proportionally.<sup>6</sup>

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<sup>6</sup> The formula for calculating the reduction in fee could be  $(\text{Full Fee} * 1.33 / 20) * (\text{actual \% of VLI units}) + (\text{Full Fee} * .67 / 20) * (\text{actual \% of LI units})$ . If the full fee is \$45 per foot, then each 1% of VLI units would reduce the fee due by \$3 per foot and each 1% of LI units would reduce the fee by \$1.50 per foot.

**Figure 7: Examples to illustrate partial compliance - 100 unit project**

<u>Example</u>	<u>VLI units</u>	<u>LI Units</u>	<u>Fee</u>
On-site Only	10	10	\$0
Fee Only	0	0	\$45
Only VLI	10	0	\$15
Only LI	0	10	\$30
Half Each	5	5	\$22.50
11% VLI	11	0	\$12
15% VLI	15	0	\$0

This change would increase the feasibility of the mixed compliance options and should result in on-site units from some projects that would have otherwise selected to pay the fee. However it is important to note that this mixed compliance option is already the most popular option and appears to be financially feasible without this change.

## 6. Standardize ownership fees

### Proposed Change:

- 6.1. Apply the same per square foot fee for both rental and ownership units. Continue to require different income targeting for ownership units.

### Alternative:

- 6.2. Charge any project that chooses to record a Condominium Map a higher fee of \$55 per square foot.

### Background and Analysis:

Many local stakeholders are under the impression that Berkeley’s current Inclusionary In-Lieu Fee for ownership projects is higher than the Affordable Housing Mitigation Fee for rental projects. Berkeley has seen very few ownership projects in recent years, so it is difficult to directly compare, but our analysis suggests that this is true, both on a per unit and per square foot basis.

In lieu of each affordable unit, the current Inclusionary Housing Ordinance allows payment of a fee equal to 62.5% of the difference between the market price and the “affordable” price. To



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estimate the equivalent per square foot fee that this rate yields, we used proprietary data from Property Radar to calculate average square footages and market values for Berkeley condos, shown in Figure 8.

**Figure 8: Condo pricing estimates**

Berkeley Condo Sales 2021			Prototype (New Building)
Unit Size	Avg Sqft	Avg Value	Projected Value
Studio	646	\$620,752	
1-BR	814	\$703,556	\$725,000
2-BR	1117	\$853,125	\$925,000
3-BR	1571	\$995,797	\$1,100,000

It is likely that newly built condos would sell for higher than average prices but there have not been enough Berkeley condo projects in recent years to calculate appropriate projections for new buildings only. We have assumed sale prices for newly built condo units would be roughly 5 to 10% higher than the citywide average condo sales prices.

The IHO defines the affordable price for the purpose of calculating the fee as three times (3x) the Area Median Income (AMI) adjusted for household size. We used those prices to estimate in lieu fees. We then multiplied those numbers by 20% to yield the equivalent per unit fee, which range from \$48,000 to \$85,000. This suggests that the fees required for ownership projects in the IHO are indeed higher than the \$39,746 per unit currently required for rental projects under the AHMF. Our estimates for the equivalent per square foot fees for ownership projects range from \$54 to \$75, which is higher than the typical equivalent per foot fees that we found for rental projects. Projects with very high cost condo units would face even higher fees.

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**Figure 9: Estimated BMR Ownership Fees 2021**

Unit Size	Sq Ft	Market Price	Affordable Price	In Lieu Fee	In Lieu Fee Per Unit	In Lieu Fee per Sq Ft
Studio	646	\$620,752	\$234,960	\$241,120	\$48,224	\$75
1BR	814	\$703,556	\$250,650	\$283,066	\$56,613	\$70
2BR	1117	\$853,125	\$282,000	\$356,953	\$71,391	\$64
3BR	1571	\$995,797	\$313,200	\$426,623	\$85,325	\$54

Note that the median condo value in Berkeley has risen dramatically in recent years, from a low of \$364,000 in 2012 to \$900,000 in January 2021.<sup>7</sup> Because prices have risen much faster than income, the in lieu fee has risen too.

We analyzed the financial feasibility of the current fees for hypothetical affordable ownership projects (**Appendix A**) and found that the current fees resulted in profits that fall below commonly used benchmarks for necessary profit. High cost condos might be able to pay the fee and earn the minimum required profit but projects with sales prices closer to Berkeley’s average condo prices would not. However, under current conditions, more typically priced condos would be able to pay the proposed rental fee of \$45 per foot and remain financially feasible. While there have not been enough condo projects in Berkeley recently to draw strong conclusions, this exercise lends support to the assertion that the relatively high level of Berkeley’s fee for ownership projects is contributing to developer’s choice to build rental rather than ownership housing.

The current policy appears to discourage homeownership development. Some local stakeholders have expressed an interest in adjusting the policy to give developers, and ultimately Berkeley residents, more choice between rental and homeownership housing. Setting the fee at \$45 per square foot for both types of project would level the playing field considerably. The typical ownership unit would still pay more because ownership units tend to be larger. As an alternative, many cities charge homeownership units slightly more. Setting Berkeley’s fee at, for example, \$55 per square foot for ownership projects would slightly disincentivize ownership but by less than the current fee approach.

***Addressing rental projects that record condo maps***

<sup>7</sup> Zillow Home Value Index for Condos/Co-ops, <https://www.zillow.com/berkeley-ca/home-values>

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Another reason to consider standardizing the fee between rental and ownership projects stems from the fact that a growing number of new multi-family buildings are recording condominium maps but opening initially as rental housing projects. This gives project owners the flexibility to later sell the rental units as condos if housing market conditions change. The added flexibility makes it easier for developers to access project financing or to access financing on better terms.

For projects that provide on-site affordable rental units, the City records restrictions which require that the BMR units remain affordable rentals for the life of the project. But the potential for projects that are initially rental and pay the AHMF but later convert to ownership is not addressed in Berkeley's current code. Projects that paid the AHMF as rental projects and later sold condo units would owe an additional fee, but monitoring and collecting this fee is administratively and legally challenging.

Some cities have responded to this trend by requiring projects that record a condo map when they are first built to pay a higher affordable housing fees that would be due for ownership projects even if the building is initially operated as rental housing. This would not be practical under Berkeley's current approach because the ownership in lieu fee is set based on the actual sale price of units but those may not be determined for many years (if ever). Setting a single in lieu fee that would be applied to both rental and ownership projects at the time of development would eliminate this complexity. Alternatively, setting a higher fee per square foot for projects with a Condo Map would also provide a practical alternative, though it might increase costs on rental projects that are not likely to ever actually convert to ownership but need the Condo Map in order to access certain financing sources.

## 7. Standardizing live-work requirements

### **Proposed Change:**

- 7.1. Remove the exemption for Live-work projects from IHO/AHMF ordinances; apply the same requirements to Live-work projects as any other project except for the "affirmative marketing" provision

### **Background and Analysis:**

A 2018 Council Referral (2018-09-12, Item 17) called for the elimination of the affordable housing requirements in the Live Work Ordinance and removal of the live/work exemptions from both the IHR and AHMF ordinances. This action would simply apply the Inclusionary Housing or AHMF ordinances to Live Work exactly as they are applied to other projects.

Live/Work units are currently exempt from both the Inclusionary zoning ordinance and the Affordable Housing Mitigation fee. Instead, Berkeley's Live Work Ordinance (Berkeley Municipal Code 23E.20) requires projects that create 5 or more Live/Work units to include 1 inclusionary unit affordable to 80% of AMI for every 5 Live/Work units created. The inclusionary requirements in the Live/Work ordinance differ from the requirements applied to other

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projects. Affordable units under the Live/Work ordinance are all targeted to 80% of AMI. In addition, the Live Work Ordinance specifically allows inclusionary Live/Work units to be smaller, have lesser finishes and be located anywhere in a project while both the IHR and AMHF ordinances require units to be the same size, have comparable finishes and be distributed throughout a project.

There is one provision of the Live/Work ordinance which is specific to Live/work affordable units which it would make sense to retain or move to the new ordinance. Inclusionary live/work units must be affirmatively marketed to “income-eligible persons performing a work activity permitted in the District where the project is located whose type of work causes them to have a requirement for a space larger in size than typically found in residential units.” The ordinance currently provides no standards for documenting tenants’ need for live/work space or rules for waiving this requirement in the event that a tenant with this need cannot be found within a reasonable period.

## **8. Add a land dedication option**

### **Proposed Change:**

- 8.1. Add a land dedication option which authorizes the City Manager to approve donation of land to the City or an approved nonprofit housing developer. Donated land must be appraised for a value of at least 75% of the in lieu fee which would otherwise be due, be sufficiently sized and zoned to support multifamily housing development and otherwise be suitable for affordable housing development.

### **Alternative:**

- 8.2. Don’t add a land dedication option - continue with two compliance options; on-site units or in lieu fee, though this would leave projects newly excluded from the on-site option with only one compliance option.

### **Background and Analysis:**

Some stakeholders have suggested that the program would be stronger if Berkeley allowed developers to comply by providing off-site affordable projects, preserving existing ‘naturally occurring affordable housing’ or dedicating land for affordable housing development. We evaluated the feasibility of adding off-site and preservation options and concluded that Berkeley currently lacks the staff capacity necessary to effectively implement these complex options. However, it is worth noting that the City can and does use in lieu fee revenue collected to finance both off-site projects and preservation/rehabilitation projects. By collecting fees and then going through the existing procedures for the Affordable Housing Trust Fund, the City avoids the need to develop new detailed rules and closely monitor developer implementation of these alternatives.

The third option, land dedication, however, provides an outcome which the City cannot achieve on its own through the use of fee revenue. While this option also would require detailed rules

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to avoid abuse, it may be less challenging than off-site or preservation options and is likely to be used in far fewer cases.

Access to sites is one of the key barriers facing affordable housing developers. Market rate developers sometimes end up with control over sites which could be better used for affordable housing. Sometimes market rate projects are large enough to set aside a portion for affordable housing. In these, somewhat rare, cases, it is sometimes more affordable for the developer to donate land for affordable housing than to build on-site units or pay an in lieu fee. If the donated site is really appropriate for affordable housing it can save significant time and make new projects possible. Of course, if sites are not appropriate, land donation can result in a significant burden on City resources. If the policy were to include a land dedication option, the City would need to develop detailed guidelines which outlined site requirements and retain the option to only accept sites when there is a high probability that they will be developable for affordable housing including, for example, expressions of interest from local affordable housing developers.

## **9. Provide a family sized units option**

### **Proposed Change:**

- 9.1. In lieu of providing 20% of units at affordable prices, allow projects to provide affordable units comprising 20% of the Gross Residential Floor Area in the project provided that at least 50% of those units are in 2 or 3 bedroom units.

### **Background and Analysis:**

Berkeley's IHR and AHMF ordinances currently require that on-site BMR affordable units be of the same type and size as market rate units in the property. As the cost of construction has risen, there has been a trend for market rate projects to include smaller and smaller apartments and this has meant that the BMR units have been shrinking as well. Some stakeholders have asked the City to consider ways to incentivize more 'family sized' units even in buildings where the market rate units are quite small. This request has been made at the same time that other stakeholders have called for the City to actively discourage units with high bedroom counts (i.e., co-living units).

It seems that in the current context the City should be encouraging 2 and 3-bedroom units but not larger ones. One way to achieve this is to require that projects set aside a given percentage of floor area for affordable housing instead of a percentage of units if the majority of those units are 2 and 3-bedroom units.

When New York City adopted their Mandatory Inclusionary policy for the first time in 2016, rather than requiring a percentage of units be affordable, they required that the affordable

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units make up a percentage of net residential floor area.<sup>8</sup> This allows developers to include larger or smaller affordable units. Projects offering smaller BMR units may need to provide more units and projects offering larger units would provide fewer units. Cambridge, MA, a city with size and demographic similarities to Berkeley, also switched to this method in 2017, but with the additional condition that large developments (30,000 square feet or more) are required to include 3-bedroom affordable units.<sup>9</sup> Both of these approaches would add considerable complexity to already complex rules in Berkeley. The proposed change would continue to require 20% of units for most Berkeley projects, but would add an alternative for projects that chose to offer mostly 2 and 3 bedroom BMR units.

## 10. Simplify the requirements for condominium conversions

### Proposed Changes:

- 10.1. Calculate the Condo conversion fee at 8% (or 4% for owner-occupants) of the market value of converted units. Market value to be established through an appraisal.
- 10.2. Reduce the conversion fee to 4% for any unit that is and has been occupied by an owner as his or her principal place of residence for at least 5 consecutive years immediately prior to the date that the fee is paid, including as a tenant in that unit immediately prior to ownership.
- 10.3. Continue to allow a further 25% discount in the fee if it is paid at the time of conversion rather than at the time of sale of condo units.
- 10.4. Add flexibility in the use of conversion fees. Allow up to 10% of conversion revenue to be used for Condominium Conversion program delivery and/or Housing Trust Fund program and project monitoring and enforcement or related program administrative costs with the remaining 80% placed into the Housing Trust Fund.

### Background and Analysis:

Berkeley's Condominium conversion ordinance (CCO) (Berkeley Municipal Code [BMC] Chapter 21.28 et seq.) requires payment of an Affordable Housing Mitigation Fee at the time that rental properties are converted to condominium ownership. Between 1992 and 2009 this mitigation fee recaptured essentially the entire difference in affordability that resulted from conversion. This had the effect of discouraging conversions. In 2005, the state Court of Appeal held that cities could not prohibit conversion of rental units to Tenants in Common ownership (TIC). Since then, the City has sought to encourage conversion of rental units to condominiums rather than TICs because of difficulties that can arise for people who invest in TIC properties. It has done so by imposing a de facto cap on the affordable housing mitigation fee charged for conversion to condominiums since 2009.

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<sup>8</sup> New York City Mandatory Inclusionary Housing Program, <https://www1.nyc.gov/site/planning/plans/mih/mandatory-inclusionary-housing.page>

<sup>9</sup> City of Cambridge Inclusionary Housing, <https://www.cambridgema.gov/CDD/housing/inclusionaryhousing>

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**Nexus Fee Calculation:** Under the current ordinance the AHMF for condo conversions is calculated through a complex 'nexus formula' that considers costs of ownership, rental and mortgage rates. Alternatively, owners can choose to pay 8% of the sales price (or 4% for 2-unit buildings) instead of the Nexus Fee if they agree to limit rent increases for any existing tenants. This alternative calculation generally results in much lower fees. As a result, the nexus-based fee method has been used very rarely. We recommend that all condominium conversions be subject to the 8%/4% fee, and that all sitting tenants be provided protections and an opportunity to purchase.

Examples:

**Nexus Formula:** Rental Costs = \$1,500 per month x 12 months/year = \$18,000 annually  
Ownership Cost (including principal, interest, taxes, insurance, and homeowners' association dues) = \$2,700 per month x 12 = \$32,400 Assume a mortgage rate of 6.5 percent. Increased housing cost due to ownership conversion of the unit = \$32,400 - \$18,000 = \$14,400 Mitigation Fee = \$14,400/0.065 = \$221,538

**Alternative Formula:** Sale price for converted unit = \$400,000. If owner agrees to limit rents to existing or future tenants. Mitigation fee = 8% x \$400,000 = \$32,000.

**Discount for Owner Occupants/Tenant Conversion:** Currently, the condo conversion ordinance provides a 50% reduction in the fee to owners who have lived in their units for the 5 prior years. However, only owners who resided in their units on June 30, 2010 are currently eligible.

*If the property contains three or more units, the affordable housing mitigation fee for a unit that is occupied by an owner as their principal place of residence for at least 5 consecutive years immediately prior to the date of sale, including as a tenant in that unit immediately prior to ownership, shall be reduced by 50 percent, but only if the owner owned and resided in the unit as of June 30, 2010.*

A Council referral had proposed to extend the 50% reduction to tenants in addition to owners who have lived in a unit for at least 5 years prior to conversion so long as the building was 4 or fewer units.

*If the property contains 4 units or fewer, the affordable housing mitigation fee for a unit that is and has been occupied by an owner as his or her principal place of residence for at least 5 consecutive years immediately prior to the date of conversion or sale, including as a tenant in that unit immediately prior to ownership, shall be reduced by 50 percent.*

It is not clear why this tenant conversion benefit should be limited based on building size. The current ordinance is limited to properties with 3 or more units while the referral was limited to 4 or fewer units. The proposed change would apply to owner occupied or tenant purchased units in buildings of any size.

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**Use of Fee Revenue:** The current condo conversion ordinance does not allow any of the Mitigation Fee revenue to be used for program administration, but the program can be staff-intensive to implement. The AMHF and IHR Ordinances allow a portion of fee revenue to be used for program administrative staffing.

## 11. Prohibit on-site units in certain situations

### Proposed Change:

- 11.1. For rental projects, only allow on-site compliance as an option for projects that would include 5 or more BMR units.
- 11.2. Prohibit projects with an average of more than 3 bedrooms per unit from selecting the on-site option in order to reduce administrative burdens.
- 11.3. Adopt a local density bonus that enables these projects to access the benefits of the State Density Bonus in exchange for an increased in lieu fee instead of on-site units.

### Background and Analysis:

Small Projects: Small projects pose a special challenge for program administration and monitoring. Monitoring compliance for a building with one or two regulated units requires a similar investment of staff time as a project with 20 BMR units. Often the owners of smaller buildings have fewer resources and less outside professional property management support and as a result, they often find the burdens of compliance more challenging, and require relatively more intervention and training from City staff.

Many cities address this by encouraging developers of small properties to select the fee or other option rather than providing on-site BMR units which may prove difficult to monitor. Redwood City prohibits the on-site units option for projects with fewer than 20 total units, effectively requiring these projects to pay the in lieu fee.

In Berkeley, however, because so many projects select mixed-compliance, there is a real risk that projects with more than 20 total units could end up including only a very small number of on-site BMR units. For example a 40 unit project selecting on-site compliance (20%) would provide 8 BMR units but if they chose to only provide 10% on-site and pay a fee for the remainder they would only provide 4 BMR units on-site. Removing the on-site option for projects that would result in fewer than 5 BMR units would force these projects to either pay the fee entirely or fully comply through the on-site option. Either option would simplify monitoring enormously.

Co-living Projects: It is challenging to regulate and monitor BMR units in co-living and group living projects where individuals generally lease bedrooms not apartments. It is difficult to find eligible households who can both qualify for and afford 4-bedroom or larger BMR units and the households that would most benefit from large BMR units might be less interested in living in a



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building that was primarily targeting students and young adults. Additionally, it is typical for groups of unrelated adults renting larger units together to change composition frequently, which makes maintaining current documentation of eligibility more complicated for owners and therefore compliance more difficult for the City to monitor.

Local Density Bonus: Berkeley cannot prevent developers from providing on-site affordable units in order to qualify for the benefits of the State Density Bonus (SDB). It would be possible for the City to simply require some projects to pay the full fee even if they provide on-site units for the purpose of accessing the density bonus but this would impact the feasibility of small projects and projects that provide large bedroom count units. An alternative would be for the City to adopt a limited local density bonus program which applied only for these two project types which would not be allowed to provide on-site units under the City's ordinance. This local bonus could provide access to all of the benefits of the State Density Bonus (including additional density and other planning concessions) in exchange for a fee rather than on site units. We calculated that, for a typical rental project, providing 11% (of base units) on-site increases the cost of compliance relative to paying the fee only by \$10 per foot. If a local density bonus offered the benefits of 35% increased density and other concessions to projects that paid \$55 per square foot (instead of \$45) this option would be no more or less attractive to developers than the current State Density Bonus option. In other words, if a small project or co-living project could access the density bonus in exchange for a fee of \$55 per square foot they would generally choose that option rather than provide on-site units.

## 12. Reduce fees for small projects/missing middle projects

### Proposed Changes:

- 12.1. Eliminate exemption for 1-4 unit projects and replace it with a tiered fee that steps up gradually for projects with 1-25 units by reducing the fee by \$1 per foot for each unit count less than 25.

### Alternative:

- 12.2. Eliminate exemption for 1-4 unit projects and expect even very small projects to contribute the full fee.

### Background and Analysis:

Currently both the AHMF and the Inclusionary housing ordinance exempt buildings with 1-4 units. Presumably this exemption was motivated by a sense that very small projects would have a harder time absorbing the cost of including affordable housing into their budgets. While this is often, but not always true, there is no reason to think that suddenly at 5 units a project budget can easily afford to comply. There is a much wider range of "missing middle"-type projects that may be feasible in Berkeley at a small scale which may also struggle to meet the City's requirements. Many of these projects may be larger than 5 units.

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At the same time there has been significant concern in Berkeley about the potential that developers may segment larger projects into several smaller 4-unit projects in order to circumvent the inclusionary housing or AHMF ordinance. By exempting very small projects but then suddenly imposing the full requirement at a certain point, the current ordinance creates an incentive to build projects in 4-unit increments.

One approach to this challenge would be to impose the fee (at some level) on every project (with the exception of Accessory Dwelling Units), but to reduce the fee for small projects. Many cities just impose a lower fee for smaller projects. San Jose just amended their program to set the fee at a level that is 50% lower for projects with fewer than 20 units. However this approach still creates a big step up at 20 units. An alternative is to gradually phase in higher fees as the number of units increases. Figure 10 shows the schedule that would result from a \$1 decrease in the fee for each unit count below 25.

**Figure 10: Proposed schedule for small project phase-in**

<u>Units</u>	<u>Fee Per Uni</u>	<u>Per Foot</u>	<u>Total Fee</u>
25	39,746	45	993,650
24	38,863	44	932,706
23	37,980	43	873,529
22	37,096	42	816,118
21	36,213	41	760,473
20	35,330	40	706,596
19	34,447	39	654,484
18	33,563	38	604,139
17	32,680	37	555,561
16	31,797	36	508,749
15	30,914	35	463,703
14	30,030	34	420,424
13	29,147	33	378,912
12	28,264	32	339,166
11	27,381	31	301,186
10	26,497	30	264,973
9	25,614	29	230,527
8	24,731	28	197,847
7	23,848	27	166,933
6	22,964	26	137,786
5	22,081	25	110,406
4	21,198	24	84,791
3	20,315	23	60,944
2	19,431	22	38,863
1	18,548	21	18,548

Reducing the fee for small projects would have an uncertain impact on Berkeley’s future fee revenue. The City would collect less revenue from 5-24 unit projects but would begin collecting

fees from 1 to 5 unit projects. And by encouraging more small projects to select the fee option, the proposed change might reduce the number of projects with 1-5 BMR units that need to be monitored while also increasing total fee revenue.

### **13. Cap the annual rate of rent increases**

#### **Proposed Change:**

- 13.1. Limit the annual increase in BMR affordable rents for occupied units to no more than the annual change in the Consumer Price Index. Allow rents to be marked up to the maximum 'affordable' rents based on HUD AMI calculations whenever units turn over.

#### **Alternative:**

- 13.2. Limit the annual rent increase to no more than 10% in any single year.

#### **Background and Analysis:**

Sudden increases in the Area Median Income can result in large changes in the allowable affordable rent which can negatively impact BMR tenants. Similarly, some property owners fail to annually adjust rents as allowed by the current ordinance. They are allowed to 'catch up' by raising the rents by a larger amount later but this too can cause sudden shocks in rent for vulnerable tenants.

Limiting the amount that rent can be increased for occupied BMR units would provide stability and predictability for tenants. This change, however, will have a real impact on the operating budgets of projects with on-site BMR units. The current rules tie rents to changes in the Area Median Income (AMI). Over the past several decades the AMI has risen quite a bit faster than the Consumer Price Index. While the AMI is generally a measure of what people in the area earn, the rapid increase in the AMI has been driven, in part, by the growth of high paying jobs and the influx of higher income residents throughout the Bay Area rather than a rise in the wages and other income that lower-income residents earn. As a result, 'affordable' rents have risen faster than what many low-income tenants can comfortably 'afford.'

Limiting the rate of rent increases will have a real impact on the operating budgets of buildings that include on-site units. As long as units remain occupied, the rents may rise more slowly than building operating costs. It is likely that this change in policy will make the on-site option slightly less attractive to developers and increase the likelihood of projects selecting to pay the fee in lieu. However, a growing number of Berkeley projects are including on-site VLI units and then filling those units with residents who hold housing vouchers. The policy should continue to allow these properties to collect the full voucher payment standard which might increase faster than CPI without impacting affordability for the residents. This reliance on vouchers should mean that many density bonus projects would not be impacted by a rule tying rent increases to CPI.

## 14. Administrative changes

### ***a. Require compliance plans***

#### **Proposed Change:**

- 14.1. Require developers of new projects to submit a simple Affordable Housing Compliance Plan at the time of Building Permit application indicating their proposed strategy for complying with the requirements of the AHR ordinance. Allow revisions to this plan at any time prior to the Certificate of Occupancy.

#### **Background and Analysis:**

Currently developers can wait until their projects are built and applying for a Certificate of Occupancy to inform the City of their intended strategy for complying with the AHMF or Inclusionary Housing Ordinance, including whether they intend to pay the fee or provide some or all of the required on-site units. Requiring developers to indicate a proposed strategy earlier in the process a) allows city staff to make plans for monitoring units or project fee revenue so that it can be invested quickly and b) ensures that developers are fully understanding Berkeley's requirements early in the development. Many cities provide a simple fill in the blanks template for this purpose and allow projects to change their plans at a later date by simply submitting a revised plan.

### ***b. Authorize administrative citations***

#### **Proposed Change:**

- 14.2. Explicitly authorize the creation of a proposed schedule of fines for monitoring and compliance violations to be included in the program guidelines.

#### **Background and Analysis:**

Other jurisdictions have found that having the ability to impose monetary fines is an effective tool for encouraging developer and property manager compliance with monitoring requirements. Explicitly authorizing citations in the ordinance might help clarify staff's authority to impose these penalties.

### ***c. Authorize annual monitoring fee for ownership units***

#### **Proposed Change:**

- 14.3. Explicitly authorize the City to charge a fee annually to BMR Homeowners to offset monitoring costs. The fee would be assessed only on new owners going forward. The fee would be included as a housing cost in calculation of the affordable sales prices so that buyers will pay less for their units in order to make the fee affordable.

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**Background and Analysis:**

The City currently charges owners of rental properties an annual monitoring fee but no fee is charged to BMR homeowners.

***d. Deduct required fees/costs from gross rent***

**Proposed Change:**

- 14.4. Clarify this language in the ordinance to make it clear that mandatory fees or costs must be deducted from the maximum allowable rent for BMR rental units.

**Background and Analysis:**

Currently the AHMF ordinance calls for reduction in the maximum rent based on the anticipated cost of tenant paid utilities. Some properties impose other mandatory costs such as renter's insurance or administrative fees. Current practice is to deduct any cost which is mandatory for BMR tenants from the maximum gross rent to calculate the affordable rent but this requirement is not currently outlined in the ordinance.

## Appendix A: Financial Feasibility Analysis

### Overview:

The City of Berkeley retained Street Level Advisors to recommend changes to its existing affordable housing requirements. Our policy recommendations are intended to increase the construction of affordable units while maintaining the financial feasibility of market-rate development. We conducted a financial feasibility study in order to understand the current housing development environment and predict how our recommended policies might affect this environment. Our study relies on a static pro forma analysis to estimate the return on investment that can be generated by typical residential developments in Berkeley.

For the rental prototype, we used a common measure of return known as yield on cost (YOC), or a project's net operating income divided by the total development cost. Based on a review of current market conditions in Berkeley and the East Bay, we concluded that projects earning a yield of at least 5.0% would be "feasible" meaning that they would likely be able to secure investment. Projects earning slightly less (between 4.5% and 5%) would be considered "marginal" meaning that some projects in this category might be able to obtain financing while others might not. Projects earning less than a 4.5% yield we considered "infeasible."

For ownership projects, the Yield on Cost cannot be calculated so we used a different measure of profitability: Profit as a percent of development cost, also called Return on Cost. Because of the lack of recent condo projects in Berkeley, we were unable to objectively determine the minimum necessary profit as a percent of cost for local ownership projects. As a point of reference, a common rule of thumb used in other studies considers projects "feasible" when profit exceeds 10-15% of development cost.

Our rental prototype is a 6-story, 72-unit development with a small amount of commercial space on the ground floor and one parking space for every two housing units. We estimate that under current conditions, rental projects that choose to pay Berkeley's Affordable Housing Mitigation Fee (AHMF) earn a Yield on Cost of 5.08% - just barely above the feasibility threshold. Projects that provide on-site units earn a yield of 4.94% just under the threshold into the marginal category. However, economic conditions are in flux due to the COVID-19 pandemic, and new projects could become more feasible in the near future.

Our prototype, revenue, and cost assumptions are based on prior studies, comparable projects, and other market research. The remainder of this memo describes these assumptions and our methodology in more detail.

### **Prior Studies:**

Over the past decade, the City of Berkeley has evaluated the financial feasibility of its affordable housing requirements several times. Our analysis builds on the feasibility studies conducted by these consultants.

The 2015 Bay Area Economics Nexus Study contains one section that addresses the financial feasibility of new rental housing. BAE estimated the Return on Cost for a four-story, mixed-use development in the C-W zoning district at two different fee levels. In their simplified model, all 81 units are 900 square foot two-bedrooms. BAE's analysis suggested that the fee could be increased to \$34,000 while maintaining the minimum necessary return on cost.

The 2016 Strategic Economics Feasibility Analysis tested a wider range of fee levels. Using a four-story model that is almost identical to the BAE model, they estimated the Yield on Cost at six fee levels between \$0 and \$84,391. Strategic Economics considered Yield on Cost because it is a more accurate measure of feasibility for rental housing than Return on Cost. The minimum Yield on Cost required for feasibility in their analysis was 6.5% reflecting the higher interest rate environment in 2016. They found that new developments would be marginally feasible if the fee was \$45,000 and infeasible if the fee was any higher.

Together, the BAE and Strategic Economics analyses suggested that new rental development would be feasible at fee levels equivalent to and above the current level.

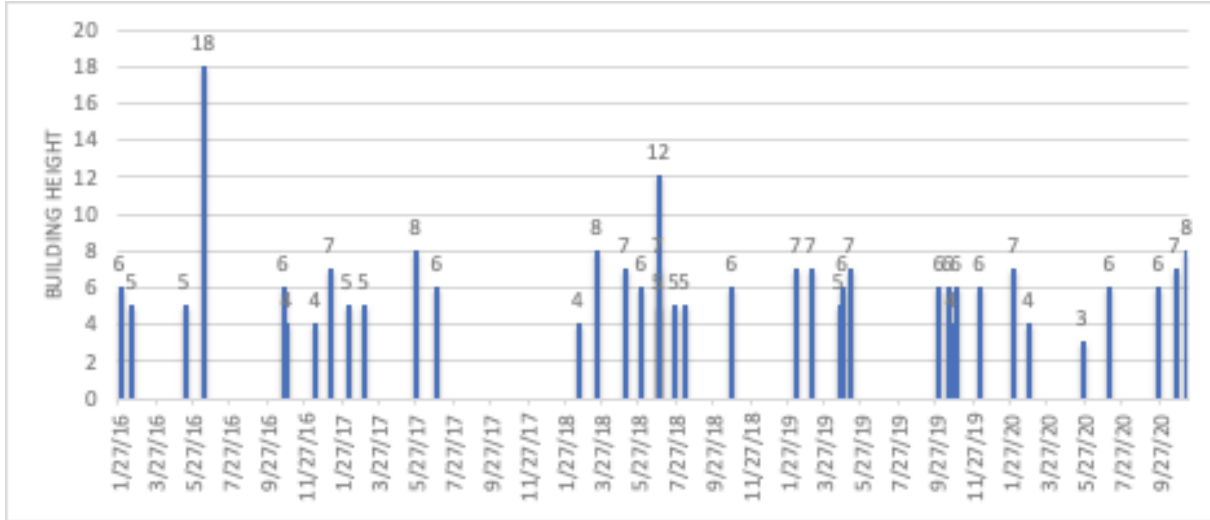
### **Prototypes Studied:**

Rents and construction costs have escalated dramatically since the Strategic Economics analysis was published. Our recent data shows that rents are over 30% higher and the construction costs per square foot in our model below are nearly double those in the Strategic Economics report. Our specific revenue and cost assumptions are described in the next section.

Because of these trends, the type of development project that both BAE and Strategic Economics used as their example would no longer be financially feasible in Berkeley. Driven by these same trends, the types of development projects being undertaken in Berkeley have shifted. Developers have responded to rising construction costs by building smaller units, fewer parking spaces and taller buildings on smaller lots. Figure 1 shows that developers of multi-family buildings in Berkeley have been primarily proposing 5-8 story buildings in recent years.

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**Figure 1: Permit applications for residential project with >20 units 2016 – 2020**



Following these trends, we have used a slightly different prototype to test feasibility in today’s market. Our prototype is a 6-story building with wood frame residential over a concrete podium. Where BAE and Strategic Economics assumed a 1-acre lot, we have assumed a half-acre. Our prototype includes 72 housing units and 3,000 square feet of commercial space (see Figure 2). Our model is taller but contains fewer units and less commercial space than the 4-story, 81-unit Strategic Economics prototype. The units in our model are also smaller than the units in the Strategic Economics analysis. Based on a detailed study of recent projects in Berkeley we have assumed a mix of 450 square-foot studios, 725 square-foot one-bedrooms, and 925 square-foot two bedrooms where Strategic Economics had assumed that all units would be 900 square-foot two-bedrooms.

Recent data also suggests that the capitalization rate for residential development is 4.0-4.25%, significantly lower than the cap rate of 5.0% which Strategic Economics used in 2016. Additionally, the parking ratio of 1 space per unit in the Strategic Economics study reflects the minimum parking requirements in much of the city at the time their study was published. As parking minimums have recently been eliminated, we assume a more modest parking ratio of 0.5 spaces per unit, consistent with observed occupancy rates.



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**Figure 2: Rental Prototype Details**

<b>Prototype Feature</b>	<b>Value</b>
<b><i>Project</i></b>	
Construction Type	Wood Frame over Concrete Podium
Stories	6
Site Area in Acres	0.5
Gross Sq Ft	68,950
Residential Sq Ft	52,750
Common Area Sq Ft	13,200
Commercial Space Sq Ft	3,000
<b><i>Residential Units</i></b>	
Number of Units	72
Number of Studios	14
Number of 1BD Units	36
Number of 2BD Units	22
Studio Sq Ft	450
1BD Sq Ft	725
2BD Sq Ft	925
<b><i>Parking</i></b>	
Parking Ratio (Spaces / Units)	0.5
Number of Spaces	36

For the ownership prototype, we assumed larger average unit sizes. In order to facilitate comparison, we assumed a building of the same overall size (square feet) but with fewer units of larger size. We also assumed the same parking ratio (.5) as our rental prototype in order to facilitate comparison, though it is more likely that a condo project would provide 1 space per unit which would lower overall returns.

**Figure 3: Ownership Prototype Details**

<b>Prototype Feature</b>	<b>Value</b>
<b><i>Project</i></b>	
Construction Type	Wood Frame over Concrete Podium
Stories	6
Site Area in Acres	0.5
Gross Sq Ft	61,490
Residential Sq Ft	52,290
Common Area Sq Ft	9,200
Commercial Space Sq Ft	0
<b><i>Residential Units</i></b>	
Number of Units	56
Number of 1BD Units	35
Number of 2BD Units	18
Number of 3BD Units	3
1BD Sq Ft	850
2BD Sq Ft	1,025
3BD Sq Ft	1,365
<b><i>Parking</i></b>	
Parking Ratio (Spaces / Units)	0.5
Number of Spaces	28

**Revenue and Cost Assumptions:**

The revenue and cost assumptions used in our pro forma analysis are shown in Figure 4. The main inputs that influence project revenue are the residential rents. Our analysis of data from CoStar, RealPage, and Berkeley’s Rent Stabilization Board led us to estimate that typical rents for newly built apartments in Berkeley would be approximately \$3,100 for studios, \$4,000 for one-bedrooms, and \$4,500 for two-bedrooms. Other revenues include commercial rents of \$3 per square foot and parking revenue of \$200 per space per month. These assumptions reflect rents that would have been assumed by projects prior to the pandemic. During the pandemic, rents throughout the region have fallen dramatically with some estimates showing rent in Berkeley down by 5 to 10% along with significant increases in apartment vacancy rates. The best available evidence suggests that these decreases are likely temporary. Developers in

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Berkeley are moving forward on construction of new apartments which would not be financially feasible if the pandemic rents and vacancy rates were permanent.

The key input driving costs is the construction cost estimate of \$400 per gross square foot. This assumption is based on actual construction costs for comparable East Bay projects and studies that estimate the construction cost inflation rate. Other important development cost assumptions include land at \$8,000,000 per acre and parking construction costs at \$50,000 per space. We assume that soft costs - which include architecture, engineering, and inspection fees – equal 22% of hard costs. Our estimates for land, parking, and soft costs rely on data from several comparable Berkeley projects but, of course, these figures vary quite a bit between actual projects. Financing costs include the construction loan interest rate of 4.5% and the initial construction loan fee of 1.0%. Our financing cost assumptions are based on independent estimates of prevailing interest rates and data from comparable Berkeley projects.

The current inclusionary housing rules require that 80% of on-site VLI units be offered first to housing voucher holders. Berkeley allows developers to charge the full Housing Authority Payment Standard rent for these units even when it exceeds the rent that could be charged to a VLI tenant with no voucher. We have assumed these slightly higher rents for 80% of any VLI units on-site.

Note: The COVID-19 pandemic caused an uncommon economic crisis that the US is only beginning to recover from. It is unclear what persistent impacts the pandemic will have on the housing development environment and consequently on our model. We cannot be certain how inputs such as construction costs and rents will change or how investors that finance development will respond to this uncertainty. Over the past year construction costs have continued to rise while rents have fallen across the Bay Area. This combination has made it harder for real estate projects to achieve feasibility, but these trends do not appear to be lasting. Our model reflects conditions as they were at the beginning of 2020.

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**Figure 4: Revenue and Cost Assumptions**

<b>Revenue/Cost</b>	<b>Assumption</b>	<b>Unit of Measure</b>
<b><i>Residential Revenue</i></b>		
Studio Rent	\$3,100	per unit per month
1BD Rent	\$4,000	per unit per month
2BD Rent	\$4,500	per unit per month
<b><i>Ownership Revenues</i></b>		
1BD Price	\$725,000	per unit
2BD Price	\$925,000	per unit
3BD Price	\$1,100,000	per unit
<b><i>Other Revenues</i></b>		
Commercial Rent	\$3.00	per sq ft per month
Parking Revenue	\$200	per space per month
<b><i>Development Costs</i></b>		
Construction Costs	\$400-\$415	per gross sq ft
Land Costs	\$8,000,000	per acre
Parking Costs	\$50,000	per space
Soft Costs	20-22%	of hard costs
<b><i>Financing Costs</i></b>		
Construction Loan Interest Rate	4.5%	annual rate
Loan to Cost Ratio	70%	of total cost
Period of Initial Loan	24	months
Initial Construction Loan Fee	1.0%	of loan
Average Outstanding Balance	60%	of loan
<b><i>Operating Costs</i></b>		
Rental Vacancy Rate	4%	of units unoccupied
Rental Operating Cost	35%	of revenues

**Policy Scenarios:**

We built a financial model using the project prototypes described above in order to test the impact of potential changes to the City's affordable housing requirements on the feasibility of

residential development. We ran the model for the same hypothetical projects under a number of different policy assumptions. First, we established the returns that would be available under the current law depending on which performance option the project selected.

### **Current Program Scenarios**

#### **Rental**

**Current Fee:** Under this alternative, we assume the hypothetical project elects to pay Berkeley's current Affordable Housing Mitigation Fee (AHMF) of \$39,746 for each unit in the building. A project paying the fee would not be eligible for the density bonus.

**Current On-site Units:** Under this alternative, we imagine the project selecting instead to provide on-site units as provided under the current AMHF ordinance. The project would provide 7 Very Low Income (VLI) units (10%) and 7 Low Income (LI) units (10%). For the sake of comparison, we have assumed that the project does not access the density bonus though it would likely qualify.

**Current Mixed Compliance – 11% VLI:** The most common approach in recent years has been for projects to provide enough units on-site in order to maximize the benefits of the State Density Bonus and pay a fee to cover the remainder of their obligation under Berkeley's AHMF. Prior to 2021, projects that provided 11% of base units as restricted Very Low Income units on-site would receive the maximum 35% density bonus. We have assumed that our hypothetical project could increase the total number of housing units by 35% (from 79 to 97) with no increase in land costs<sup>10</sup>.

**Current Mixed Compliance – 15% VLI:** In 2020 the State Legislature approved an expansion of the State Density Bonus which allows greater increases in density in exchange for more affordable housing units on-site. Now a developer can request a 50% increase in residential density if they provide, for example, at least 15% Very Low Income units. We have analyzed the profitability of a hypothetical

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<sup>10</sup> Our analysis does not attempt to capture the full financial value of the density bonus. In addition to the right to build more housing units on a given site, state law allows developers to request a number of planning concessions based on the amount of affordable housing that they provide. These concessions clearly provide real value which can increase the profitability of projects. However, because the dollar value of concessions is abstract and highly dependent on the particular project, we have not attempted to include this in our financial modeling. As a result, our conclusions are likely to slightly understate the difference between the returns from density bonus and other types of projects.

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project assuming a 50% increase in units with 15% of base units (10% of total units) restricted to VLI residents under current rules.

**Ownership**

**Current On-site Compliance:** A for-sale project that elected to provide on-site affordable units would be required to provide 20% of units to be affordable to and occupied by Low Income households earning less than 80% of AMI.

**Current In Lieu Fee (Based on Sales Prices):** Alternatively, a developer may pay an in lieu fee calculated based on 62.5% of the difference between the market price and the affordable price. This approach results in a different level of fee for different projects depending on the market prices of units in the project. For the sake of illustration, we estimated a range of current market prices based on average condo sales prices listed on Zillow.com and calculated the fee which would be due.

**Figure 5: Condo Pricing Assumptions**

Estimated BMR Ownership Fees 2021						
Unit Size	Sq Ft	Estimated Market Price	Affordable Price	In Lieu Fee	In Lieu Fee Per Unit	In Lieu Fee per Sq Ft
1BR	814	\$703,556	\$250,650	\$283,066	\$56,613	\$70
2BR	1117	\$853,125	\$282,000	\$356,953	\$71,391	\$64
3BR	1571	\$995,797	\$313,200	\$426,623	\$85,325	\$54

**Alternative Policy Options**

In addition to evaluating the performance of the prototype under the current policy rules, we considered several alternative scenarios based on the proposed policy changes.

**Rental**

**\$45 Per Square Foot Fee:** Under this alternative, we assumed that the City adopted a fee of \$45 per gross square foot (excluding parking and commercial space) and we evaluated the returns for a prototype project that elected to pay this fee in full with no on-site BMR units.

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**\$55 Per Square Foot Fee:** This alternative assumes full payment of a higher fee per square foot.

**Mixed Compliance (Weighted)– 11% VLI:** In this alternative we have assumed a \$45 per square foot fee is adopted along with an adjusted formula for determining the remainder fee for mixed compliance projects. We assumed that each 1% of VLI units provided would reduce the fee due by \$3 per square foot and each 1% of LI units would reduce the fee by \$1.50 per square foot. In this alternative, we assume a project that provides 11% of the base units (equivalent to 8% of total units) as VLI in order to receive a 35% density bonus.

**Mixed Compliance (Weighted)– 15% VLI:** In this alternative we assume a project that provides 15% of the base units (equivalent to 10% of total units) as VLI in order to receive a 50% density bonus under state law. As with the scenario above, this alternative assumes that the formula for calculating the remaining fee for mixed compliance provides greater reductions for projects that provide VLI units.

### Ownership

**\$45 Per Foot Fee:** In this scenario, we have assumed that the City adopts a single per square foot rate of \$45 which would be applied to all projects whether rental or ownership.

**\$55 Per Foot Fee:** This alternative assumes that the City adopts a higher per square foot fee for ownership projects (or any project that records a condominium map).

### **Findings:**

For rental projects, our model suggests that most projects would not be able to feasibly comply with the current 20% on-site requirement but that projects that choose to pay the fee or access the State Density Bonus by providing some units on-site and paying a partial fee would both earn returns that are just barely above the threshold which we identified for feasibility (5% yield on cost). The returns for density bonus projects are comparable to the fee alternative because the additional cost of providing some units on-site is offset by the additional benefit of building more units on the same site.

For this prototype, the proposed fee of \$45 per gross square foot results in a virtually identical return. A higher fee (\$55 per square foot) would result in a marginal but very close to feasible

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return. The proposed approach of providing more ‘credit’ for projects that provide on-site VLI units than those that provide LI units results in modest increases in the returns available to mixed compliance projects that take advantage of the State Density Bonus. While this small difference is not critical for this prototype, it is likely that there would be projects where this difference would result in on-site affordable units in projects that would otherwise have paid the fee entirely (or not moved forward at all).

**Figure 6: Comparison of Returns - Rental**

Scenario	Base Units	Bonus Units	LI Units	VLI Units	Fee \$	Yield on Cost	% of Base	% of Total
<b>Current Policy</b>								
\$39,746 Per Unit Fee	72	0	0	0	\$2,861,712	5.08%	0%	0%
Onsite Units	72	0	7	7	\$0	4.94%	19%	19%
Mixed Compliance - 11% VLI	72	25	0	8	\$2,265,522	5.07%	11%	8%
Mixed Compliance - 15% VLI	72	36	0	11	\$2,106,538	5.10%	15%	10%
<b>Proposed Alternatives</b>								
\$45 Per Foot Fee	72	0	0	0	\$2,967,750	5.07%	0%	0%
\$55 Per Foot Fee	72	0	0	0	\$3,627,250	4.99%	0%	0%
Mixed Compliance (Weighted) - 11% VLI	72	25	0	8	\$2,350,809	5.10%	11%	8%
Mixed Compliance (Weighted) - 15% VLI	72	36	0	11	\$2,184,925	5.12%	15%	10%

For ownership projects, we found that neither the current fee nor the current on-site requirement resulted in profit as a percent of development cost above the benchmark of 10%. The proposed switch to a \$45 per square foot fee would result in profit just above 10% while a higher \$55 per square foot fee would result in profit closer to 9%.

**Figure 7: Comparison of Returns - Ownership**

Scenario	Total Units	LI Units	Fee \$	Profit % of Cost
<b>Current Policy</b>				
Current Fee (based on sale prices)	56	0	\$3,810,847	8.00%
Onsite Units	56	11	\$0	1.13%
<b>Proposed Alternatives</b>				
\$45 Per Foot Fee	56	0	\$2,767,050	10.88%
\$55 Per Foot Fee	56	0	\$3,381,950	9.16%

**Sensitivity Analysis:**

*Revenues and Costs:* The feasibility projections above are highly sensitive to assumptions about rents and construction costs. These assumptions are different from one project to the next and change in somewhat unpredictable ways over time. The heat table in Figure 8 below shows the



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yields on cost that our model predicts for a range of different scenarios in regard to construction costs and rents for our prototype. This table shows returns for a 6 story rental project that selects the proposed \$45 per square foot fee option. The axes indicate how these scenarios compare with current construction cost and rent levels. The (0%, 0%) cell in the center of the table represents the estimated yield on cost for projects given today's rents and construction costs. The (-10%, 10%) cell in the top right represents the yield for projects if rents decrease 10% and construction costs increase 10% relative to current levels. Green cells represent situations in which projects will be feasible, with expected yields on cost at or above 5%. The redder a cell is, the less feasible projects will be. A rise in construction costs will increase the total development cost of a project, making it less feasible. A drop in market rents will decrease the rental income a project can expect, also making it less feasible.

**Figure 8: Yield on Cost Sensitivity to Rents and Construction Costs**

		Construction Costs										
		-10%	-8%	-6%	-4%	-2%	0%	2%	4%	6%	8%	10%
Rents	-10%	5.07%	4.96%	4.85%	4.75%	4.65%	4.56%	4.47%	4.38%	4.30%	4.22%	4.14%
	-8%	5.18%	5.07%	4.96%	4.85%	4.76%	4.66%	4.57%	4.48%	4.40%	4.32%	4.24%
	-6%	5.29%	5.18%	5.07%	4.96%	4.86%	4.76%	4.67%	4.58%	4.49%	4.41%	4.33%
	-4%	5.40%	5.29%	5.17%	5.07%	4.96%	4.86%	4.77%	4.68%	4.59%	4.50%	4.42%
	-2%	5.52%	5.40%	5.28%	5.17%	5.07%	4.96%	4.87%	4.77%	4.68%	4.60%	4.51%
	0%	5.63%	5.51%	5.39%	5.28%	5.17%	5.07%	4.97%	4.87%	4.78%	4.69%	4.61%
	2%	5.74%	5.62%	5.50%	5.38%	5.27%	5.17%	5.07%	4.97%	4.87%	4.78%	4.70%
	4%	5.85%	5.73%	5.60%	5.49%	5.38%	5.27%	5.17%	5.07%	4.97%	4.88%	4.79%
	6%	5.97%	5.84%	5.71%	5.59%	5.48%	5.37%	5.26%	5.16%	5.07%	4.97%	4.88%
	8%	6.08%	5.95%	5.82%	5.70%	5.58%	5.47%	5.36%	5.26%	5.16%	5.07%	4.97%
	10%	6.19%	6.06%	5.93%	5.80%	5.69%	5.57%	5.46%	5.36%	5.26%	5.16%	5.07%

With current rents and construction costs, projects are just barely feasible with estimated yields of 5.07%. However, if rents rise by just 2% and construction costs remain flat, projects will become more feasible with expected yields of 5.17%. As expected, yields increase as rents rise and decrease as construction costs rise. Yield on cost is just slightly more sensitive to construction costs than rents. Construction costs falling by 10% will increase yields a bit more than rents rising by 10%.

*Parking:* The feasibility of new rental development in Berkeley is also highly sensitive to assumptions about the amount of parking provided. The parking ratio is the number of parking spaces divided by the number of residential units. Before 2021, Berkeley's zoning regulations mandated projects in some districts to have parking ratios of at least 1. Berkeley recently eliminated minimum parking requirements, making parking ratios of 0 possible.

Figure 9 shows the yields on cost that our model predicts for a range of parking scenarios. In our model, parking ratios are used to describe the amount of parking provided by a project. Creating parking spaces is expensive and limits the area available for the project's residential or amenity space. As a result, higher parking ratios reduce a project's yield on cost and projected feasibility. Our model predicts that projects that provide no parking will be solidly financially feasible while projects that provide 1 space per unit are not currently feasible.

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**Figure 9: Yield on Cost Sensitivity to the Parking Ratio**

Parking Ratio				
0.00	0.25	0.50	0.75	1.00
5.34%	5.20%	5.07%	4.94%	4.82%

Even with strong financial incentives and no City parking requirements, most projects are likely to include significant amounts of parking. Depending on the location of the project, tenants may see parking as a necessary building amenity. In other cases, project investors insist on some level of parking. When Seattle eliminated parking requirements in many parts of the city, [one study](#) found that most projects still included parking. In areas with no parking requirement, nearly 30% of new buildings provided no parking after the mandate was removed. But the remaining 70% provided parking even though it was not required by the city. Figure 10 shows that the average project provided .49 parking spaces per unit.

**Figure 10: Seattle parking reform results**

Minimum Number of Required Parking Spaces/Unit	Number of Development Projects	Average Parking Ratio	Buildings That Exactly Met Requirement	Buildings That Provide Parking Above Requirement		
				<0.5 Spaces/Unit	0.5-1.0 Spaces/Unit	>1.0 Spaces/Unit
0	570 (65.6%)	0.49	29.5%	24.2%	39.0%	7.4%

**Attachment 2: Summary of Council Referrals Related to City Affordable Housing Requirements**

Referral	Short Description
Conducting an Analysis of Increasing Inclusionary Housing over Affordable Housing Mitigation Fee (9/10/19) <sup>1</sup>	A companion to 4/23/19 referral to analyze feasibility of ideas from Homeless Commission including: -Requiring on-site units instead of a fee -Requiring an increased number of inclusionary units -Providing an incentive to build on-site instead or pay the fee (similar to the Adeline Corridor Specific Plan) -Prohibit payment of fee in certain geographic areas -Ensure access for extremely low-income persons and persons experiencing homelessness.
Refer to the City Manager and the Housing Advisory Commission to Consider Reforming the Affordable Housing Mitigation Fee (4/23/19) <sup>2</sup>	Evaluate the possibility of changing the City's affordable housing fee structure, including converting the current per-unit calculation to a per-square foot fee, per-bedroom fees and/or whether to apply a different fee methodology in different parts of the city.
Affordable Housing Mitigation Fee Resolution to Close a Loophole for Avoiding the Mitigation Fee through Property Line Manipulation (2/19/19) <sup>3</sup>	Close a loophole allowing avoidance of the affordable housing fees through lot line manipulation by requiring the fee from projects on contiguous lots under common ownership with the potential for 5 or more units across all lots. Modify the structure of the in lieu fee for ownership projects to a flat per unit fee similar to the rental fee. Evaluate the appropriateness of the fee level.
Encourage Long Term Tenant Stability (11/27/18) <sup>4</sup>	Modify the Berkeley Municipal Code (BMC Section 21.28.080) to allow tenants buying their units (through Tenancy-In-Common) to pay only 50% of the Affordable Housing Mitigation Fee at the time of conversion. This is the same benefit offered to owners who convert rental buildings that they also live in to ownership.
Rectify Discrepancy Regarding Inclusionary Units in Live/Work Housing (9/13/2018) <sup>5</sup>	Eliminate the affordable housing requirements in the Berkeley Municipal Code (BMC Sections 23C.12 and 23E.20.080) and instead apply the Inclusionary Housing or AHMF ordinances to Live Work exactly as they are applied to other projects.
Pilot Density Bonus Program for the Telegraph Avenue Commercial District to Generate Revenue to House the Homeless and Extremely Low-Income Individuals (5/30/17) <sup>6</sup>	Create a new City Density Bonus policy for the Telegraph Avenue Commercial District to generate in-lieu fees instead of on-site affordable housing units.

<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/09\\_Sep/Documents/2019-09-10\\_Item\\_62b\\_Companion\\_Report\\_Conducting\\_an\\_Analysis.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/09_Sep/Documents/2019-09-10_Item_62b_Companion_Report_Conducting_an_Analysis.aspx)

<sup>2</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/04\\_Apr/Documents/2019-04-23\\_Item\\_29\\_Refer\\_to\\_the\\_City\\_Manager\\_and\\_the.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/04_Apr/Documents/2019-04-23_Item_29_Refer_to_the_City_Manager_and_the.aspx)

<sup>3</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/02\\_Feb/Documents/2019-02-19\\_Item\\_21\\_Refer\\_to\\_the\\_Planning\\_Commission.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-19_Item_21_Refer_to_the_Planning_Commission.aspx)

<sup>4</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/11\\_Nov/Documents/Item\\_20\\_Rev\\_Maio.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/11_Nov/Documents/Item_20_Rev_Maio.aspx)

<sup>5</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/09\\_Sep/Documents/2018-09-13\\_Item\\_17\\_Rectify\\_Discrepancy\\_Regarding\\_Inclusionary.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/09_Sep/Documents/2018-09-13_Item_17_Rectify_Discrepancy_Regarding_Inclusionary.aspx)

<sup>6</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/05\\_May/Documents/2017-05-30\\_Item\\_41\\_Planning\\_Commission\\_Referral.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/05_May/Documents/2017-05-30_Item_41_Planning_Commission_Referral.aspx)





Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: May 5, 2021

TO: Members of the Planning Commission

FROM: Justin Horner, Associate Planner

SUBJECT: Public Hearing Regarding the General Plan Re-Designation and Zoning Map Amendment of Parcels Located at 1709 Alcatraz Avenue (APN 052-1533-001-03), 3404 King Street (APN 052-1435-001-02), 3244 Ellis Street (APN 052-1533-005-00), 1717 Alcatraz Avenue (APN 052-1533-006-00) and 2024 Ashby Avenue (APN 053-1592-022-00)

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### RECOMMENDATION

Conduct a public hearing and make a recommendation to the City Council that five parcels located at 1709 Alcatraz Avenue (APN 052-1533-001-03), 3404 King Street (APN 052-1435-001-02), 3244 Ellis Street (APN 052-1533-005-00), 1717 Alcatraz Avenue (APN 052-1533-006-00) and 2024 Ashby Avenue (APN 053-1592-022-00) be re-designated to the Adeline Corridor Mixed Use General Plan Classification and be rezoned to Commercial – Adeline Corridor District (C-AC), and that the boundaries of the Adeline Corridor Specific Plan Area be expanded to include the five parcels.

### BACKGROUND

At their meeting of November 17, 2020, the City Council referred to the Planning Commission consideration of the re-designation and rezoning of the five parcels at 1709 Alcatraz Avenue, 3404 King Street, 3244 Ellis Street, 1717 Alcatraz Avenue and 2024 Ashby Street (“Parcels”) to include them within the new land use controls shared by adjacent parcels within the Adeline Corridor Specific Plan area.

At their meeting of December 8, 2020, the City Council adopted the Adeline Corridor Specific Plan (Plan) and associated General Plan and zoning amendments. The Plan created the new Adeline Corridor Mixed Use General Plan land use classification and the new Commercial – Adeline Corridor District (C-AC) zoning to all the parcels within the Specific Plan boundary. The new Adeline Corridor Mixed Use General Plan Land Use Classification and C-AC zoning district are designed to incentivize more affordable housing through providing streamlined approval and incrementally more density, height

and floor-area ratio, in return for specified amounts of on-site affordable housing units; and the zoning permits uses that align with the vision and goals expressed for the Plan Area.

**DISCUSSION**

The current land use classification and zoning for each of the parcels and a brief rationale for staff’s recommendation to re-classify and rezone the properties are included below in Table 1.

*Table 1. Parcels Proposed for General Plan and Zoning Map Amendments*

	<b>Existing General Plan Designation(s)</b>	<b>Existing Zoning District(s)</b>	<b>Rationale for Change to Adeline Corridor Mixed Use Designation and C-AC Zoning</b>
1709 Alcatraz Avenue (APN 052-1533-001-03)	Avenue Commercial  Medium Density Residential	C-SA  R-2A	Would facilitate the development of affordable housing on the parcel and would support the Ephesian Church, both of which are goals of the Adeline Corridor Specific Plan
3404 King Street (APN 052-1435-001-02)	Medium Density Residential	R-2A	Would permit the current GLA use (“Tipping Point”), and any potential future expansion or modification of the current use, with a Use Permit. Current GLA use has only been permitted in the R-2A with a Variance.
3244 Ellis Street (APN 052-1533-005-00)	Neighborhood Commercial	C-SA	Would ensure physical continuity of the Adeline Corridor Mixed-Use Designation and C-AC Zoning by eliminating an enclave parcel.
1717 Alcatraz Avenue (APN 052-1533-006-00)	Neighborhood Commercial	C-SA	Would ensure physical continuity of the Adeline Corridor Mixed-Use Designation and C-AC Zoning by eliminating an enclave parcel.
2024 Ashby Avenue (APN 053-1592-022-00)	Avenue Commercial	C-SA	Would facilitate the development of affordable housing on land owned by St Paul’s A.M.E Church by granting the 0.07 acre parking lot in the same Adeline Corridor Mixed-Use Designation and C-AC Zoning district as the adjacent Church building.

The parcel located at **1709 Alcatraz Avenue** is approximately one acre and is owned by the Ephesian Church of God in Christ. It is located at the northern corner of King Street and Alcatraz Avenue, near the Adeline Corridor Specific Plan Area boundary. Current uses on the parcel include the Ephesian Church building, surface parking, and

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a vacant building. The parcel is currently split with two different General Plan and zoning designations: a Medium Density Residential General Plan Designation/Multiple-Family Residential Zoning District (R-2A) on the northern portion of the parcel, and Avenue Commercial General Plan Designation/South Area Commercial District (C-SA) on the southern part. The Ephesian Church has indicated that it is interested in redeveloping 0.52-acres of the site with a 100% affordable senior housing project along King, Harmon, and Ellis Streets.

The parcel located at **3404 King Street** is a 0.1 acre parcel owned by Fred Finch Youth and Family Services. It is adjacent to the Adeline Corridor Specific Plan Area. It currently has a Medium Density Residential General Plan Designation and is in the R-2A Restricted Multiple-Family Residential District. The current use on the parcel is "Turning Point," a temporary, transitional housing program designed to assist homeless youth age 18-25 to obtain and maintain independent permanent housing. The Berkeley Municipal Code (BMC) defines "transitional housing" as a type of Group Living Accommodation (GLA), which is not allowed to operate in the R-2A District. However, this property was granted a Use Permit (UP) with a Variance in 1978 to allow for a transitional home serving 12 youth. Amending the General Plan classification and rezoning the parcel from R-2A to the proposed C-AC zoning which would ensure consistency between the parcel's longstanding use and its zoning and General Plan designations, and would permit the current GLA use, and any potential future expansion/modification of the current use, with a Use Permit, instead of with a Variance, as is currently required.

If 1709 Alcatraz Avenue were to be re-designated and re-zoned, the two parcels at **3244 Ellis Street** and **1717 Alcatraz Avenue** would be entirely surrounded by parcels designated and zoned per the Adeline Corridor Specific Plan. Similarly re-designating and re-zoning these two parcels would preserve the physical continuity of the Adeline Corridor Specific Plan General Plan designation and zoning district boundaries and avoid creating an unnecessarily complicated mix of land use regulations in a relatively small area. Existing uses on these two parcels, including a mixed-use building and a six-unit apartment complex, respectively, would not be affected by the change in General Plan or zoning designation

The parcel located at **2024 Ashby Avenue** is approximately 0.07 acres and currently serves as a parking lot for St. Paul's A.M.E. church, which is located on the adjacent parcel to the west (APN 053-1592-022-00). St. Paul's A.M.E. church owns both parcels. The parcel on which the church is located is within the Adeline Specific Plan Area boundary; therefore, it is recommended that the small parking lot parcel be re-designated, re-zoned, and added to the Plan Area.

The Planning Commission's role is to conduct a public hearing (*see Attachment 1*), consider testimony, and make a recommendation to the City Council regarding the requested General Plan and Zoning Map amendments according to BMC Section 22.04.020 (Amendment -- Procedures Required -- Planning Commission and City Council Authority), BMC Chapter 23A.20 (Zoning Ordinance Amendments), and California Government Code Sections 65353 and 65853. The Planning Commission is also asked to recommend an expansion of the boundaries of the Adeline Corridor

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Specific Plan Area to include the five parcels. The Planning Commission must consider the following two sets of findings. Staff has drafted statements in response to the findings to support the re-designation and rezoning of the parcels.

*General Plan Re-designation Findings:*

**1. The proposed amendment is in the public interest.**

The proposed General Plan amendment serves the public interest by encouraging the development of affordable housing, supporting important cultural institutions, and ensuring consistent and sensible land use regulation by incorporating isolated properties into the Adeline Corridor Mixed Use General Plan land use classification.

**2. The proposed amendment is consistent and compatible with the General Plan.**

The proposed General Plan amendment will apply to five parcels that are adjacent to the area designated as Adeline Corridor Mixed Use, and will not result in any inconsistency or incompatibilities with the General Plan. The General Plan amendment will further a number of General Plan policies including Policy H-12 (Transit-Oriented New Construction), Policy LU-23 (Transit-Oriented Development), and LU-25 (Affordable Housing Development).

**3. The potential effects of the proposed amendment have been evaluated and have been determined not to be detrimental to the public health, safety, or welfare.**

The amendment would not directly result in changes to the physical characteristics of any property or existing structure, but, as described in Finding 2 above, could facilitate development that would be completed in compliance with current codes and regulations. New development also would be reviewed for compliance with BMC and CEQA and would be constructed in compliance with California Building and Safety Code as adopted by the City of Berkeley.

**4. The proposed amendment has been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA).**

In accordance with Section 15164 of the California Environmental Quality Act (CEQA) Guidelines, codified in Sections 15000 et seq. of Title 14 of the California Code of Regulations, a lead agency must prepare an Addendum to a previously certified EIR if some changes or additions are necessary. Under Section 15162(a), where an EIR has been certified for a project, no Subsequent EIR shall be prepared for the project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, that there are substantial changes in the project or circumstances or substantially important new information that will cause the project to have significant new impacts or substantially increase previously identified significant impacts.

Accordingly, staff prepared an Addendum to the *Adeline Corridor Specific Plan Environmental Impact Report* (2020 EIR) to evaluate the environmental effects of the proposed amendment (*Attachment 4*). The Addendum found that potential impacts associated with the amendments are consistent with potential impacts characterized in and mitigation measures developed for the 2020 EIR. Substantive revisions to the 2020 EIR are not necessary because no new significant impacts or impacts of



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substantially greater severity than previously described would occur. Therefore, the following determinations are applicable:

- No further evaluation of environmental impacts is required
- No Subsequent EIR is necessary per *CEQA Guidelines* Section 15162
- The Addendum is the appropriate level of environmental analysis and documentation in accordance with *CEQA Guidelines* Section 15164.

*Rezoning Findings:*

**1. The proposed zoning map amendment is in the public interest.**

The proposed rezoning serves the public interest by encouraging the development of affordable housing, supporting important cultural institutions, and ensuring consistent land use regulation by incorporating isolated properties into the C-Adeline Corridor (C-AC) zoning district.

**2. The proposed zoning map amendments are compatible with adjacent zoning districts.**

With the adoption of the C-AC zoning district, the City Council determined that the C-AC zoning district is compatible with adjacent zoning districts. The proposed zoning map amendments would only apply to parcels that are immediately adjacent, or completely surrounded by, parcels located in the C-AC zoning district. Therefore, adoption of the proposed map amendment would not result in any incompatibilities with adjacent zoning districts.

**3. The proposed zoning map amendment allows uses which would be compatible with adjacent districts uses.**

With the adoption of the C-AC zoning district, the City Council determined that the C-AC zoning district allowed uses that are compatible with adjacent zoning districts. The proposed zoning map amendment would only apply to parcels that are immediately adjacent, or completely surrounded by, parcels located in the C-AC zoning district. Therefore, adoption of the proposed amendments would not result in allowable uses that are incompatible with adjacent zoning districts.

**4. The potential effects of the proposed rezone will not be detrimental to the public health, safety and welfare.**

The proposed rezoning would not result in changes to the physical characteristics of the property or existing structure, but, as described in Finding 1 above, will facilitate compliance with current codes and regulations. New development would be reviewed for compliance with CEQA and be constructed to comply with the State Building and Safety Code as adopted by the City of Berkeley.

There are no specific findings required to expand the boundaries of the Adeline Corridor Specific Plan Area to include the five parcels.

*California Government Code Section 66300(b)(1)(A)*

California Government Code section 66300(b)(1)(A) prohibits a locality from changing the General Plan designation or zoning of residential parcels to a less intensive use or in a manner which reduces the allowable intensity of a permitted residential use.

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The Adeline Corridor General Plan designation does not encourage less intensive development than that encouraged in the existing Avenue Commercial, Neighborhood Commercial or Medium Density Residential designations. The Adeline Corridor General Plan encourages mixed-use, transit-oriented development with a wide-range of commercial and community uses with active street-fronts, including “maximizing” affordable housing at the Ashby BART station.

The Adeline Corridor Commercial (C-AC) zoning district constitutes an “up-zoning” for all five parcels. Compared to the existing zoning districts, the C-AC zoning district increases development potential by allowing greater heights and requiring lesser setbacks. For the parcels currently zoned R-2A, the C-AC zoning district increases the allowable density and allowable heights. For the parcels currently zoned C-SA, C-AC includes a higher FAR maximum, encouraging larger projects.

As explained above, for two of the five parcels, the property owners are supporting the re-designation and rezoning specifically because the intensity of development they would like to propose is not permitted under current zoning, and would be feasible with the proposed changes.

### **NEXT STEPS**

Staff recommends that the Planning Commission: conduct a public hearing; consider public testimony; and make a recommendation to the City Council regarding the re-designation, zoning map amendments, and expansion of the boundaries of the Adeline Corridor Specific Plan Area listed above. The findings may be amended based on the public testimony and Planning Commission deliberations. A draft resolution and Ordinance for Council consideration are attached and may be modified based on Planning Commission feedback and recommendations (*Attachments 2 and 3*).

To recommend in favor of a re-designation and rezoning, the Commission must consider and find in the positive (vote yes) on the two sets of findings. If the Commission recommends against the proposal, it would require a statement of the reasons that the Commission could not make one or more of the noted findings.

### **Recommended Action:**

The Planning Commission recommends to the City Council that the parcels located at 1709 Alcatraz Avenue (APN 052-1533-001-03), 3404 King Street (APN 052-1435-001-02), 3244 Ellis Street (APN 052-1533-005-00), 1717 Alcatraz Avenue (APN 052-1533-005-00) and 2024 Ashby Avenue (APN 053-1592-022-00) receive a General Plan designation of Adeline Corridor Mixed Use and a zoning map designation of Commercial—Adeline Corridor (C-AC) as shown in the attached maps, and that the boundaries of the Adeline Corridor Specific Plan be expanded to include the five parcels.

### **ATTACHMENTS**

1. Public Hearing Notice
2. Resolution
  - Exhibit A: Existing General Plan and Proposed General Plan Map Amendments

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- Exhibit B: Existing Adeline Corridor Specific Plan (ACSP) Area and Proposed Revised ACSP Area
3. Ordinance
    - Exhibit A: Existing Zoning and Proposed Zoning Map Amendments
  4. Adeline Corridor Specific Plan Area Revision, Addendum to the Adeline Corridor Specific Plan Environmental Impact Report





# PLANNING COMMISSION

## NOTICE OF PUBLIC HEARING

### MAY 5, 2021

**Amendments to the City of Berkeley Zoning Map and General Plan Map: 1709 Alcatraz Avenue (APN 052-1533-001-03), 3404 King Street (APN 052-1435-001-02), 3244 Ellis Street (APN 052-1533-005-00), 1717 Alcatraz Avenue (APN 052-1533-006-00) and 2024 Ashby Avenue (APN 053-1592-022-00)**

The Planning Commission of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23A.20.030, on **Wednesday, May 5, 2021, beginning at 7:00 PM. The hearing will be conducted via Zoom** - see the Agenda for details, which can be found online at:

[https://www.cityofberkeley.info/Clerk/Commissions/Commissions\\_Planning\\_Commission\\_Homepage.aspx](https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Planning_Commission_Homepage.aspx).

**PUBLIC ADVISORY:** These meetings 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, and the Shelter-in-Place 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.

**PROJECT DESCRIPTION:** The Planning Commission is conducting a public hearing about General Plan amendments and rezoning and for Assessor Parcel Numbers (APNs) 052-1533-001-03, 052-1435-001-02, 052-1533-005-00, 052-1533-006-00 and 053-1592-022-00, as shown on the attached map. These parcels are all located adjacent to the recently-adopted Adeline Corridor Specific Plan Area, and the proposed rezoning and General Plan amendments would subject them to the new land use controls shared by adjacent parcels within the Adeline Corridor Specific Plan area. The parcels' current General Plan Designations and Zoning Districts are:

	<b>Current General Plan Designation(s)</b>	<b>Current Zoning</b>
1709 Alcatraz Avenue (APN 052-1533-001-03)	Avenue Commercial Medium Density Residential	C-SA R-2A
3404 King Street (APN 052-1435-001-02)	Medium Density Residential	R-2A
3244 Ellis Street (APN 052-1533-005-00)	Neighborhood Commercial	C-SA
1717 Alcatraz Avenue (APN 052-1533-006-00)		
2024 Ashby Avenue (APN 053-1592-022-00)		

ZONING MAP & GENERAL PLAN AND AMENDMENTS

NOTICE OF PUBLIC HEARING  
Posted April 19, 2021

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The requested General Plan amendment would change the General Plan designation of all five parcels to Adeline Corridor Mixed Use. The rezoning would change all five parcels to Commercial—Adeline Corridor [BMC Chapter 23E.70].

**LOCATION:** The parcels proposed for rezoning and General Plan re-designation are Assessor Parcel Numbers (APNs) 052-1533-001-03, 052-1435-001-02, 052-1533-005-00, 052-1533-006-00 and 053-1592-022-00 (1709 Alcatraz Avenue, 3404 King Street, 3244 Ellis Street, 171 Alcatraz Avenue, and 2024 Ashby Avenue).

**ENVIRONMENTAL REVIEW STATUS:** Staff prepared an addendum to the *Adeline Corridor Specific Plan Environmental Impact Report* (EIR, certified in December 2020) to evaluate the environmental effects of the proposed amendment. The addendum found that potential impacts associated with the proposed project are consistent with potential impacts characterized in and mitigation measures developed for the EIR. Substantive revisions to the EIR are not necessary because no new significant impacts or impacts of substantially greater severity than previously described would occur as a result of the proposed project. Therefore, no further evaluation of environmental impacts is required for the proposed project, no Subsequent EIR is necessary per CEQA Guidelines Section 15162, and the addendum is the appropriate level of environmental analysis and documentation for the proposed project in accordance with CEQA Guidelines Section 15164

**PUBLIC COMMENT**

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All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Commission. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Commission may limit the time granted to each speaker.

Comments may be made verbally at the public hearing and in writing before the hearing. Written comments concerning this project should be directed to:

Planning Commission  
**Alene Pearson, Secretary**  
Land Use Planning Division  
1947 Center Street  
Berkeley, CA 94704

Fax: (510) 981-7489  
E-mail: [apearson@cityofberkeley.info](mailto:apearson@cityofberkeley.info)

Correspondence received by **12 noon, nine days** before this public hearing, will be included as a Communication in the agenda packet. Correspondence received after this deadline will be conveyed to the Commission and the public in the following manner:

- Correspondence received by **12 noon two days** before this public hearing, will be included in a Supplemental Packet, which will be posted to the online agenda as a Late Communication and emailed to Commissioners one day before the public hearing.
- Correspondence received by **5 pm one day** before this public hearing, will be included in a second Supplemental Packet, which will be posted to the online agenda as a Late Communication and emailed to the Commissioners by 5pm on the day of the public hearing.
- Correspondence received **after 5 pm one day** before this public hearing will be saved as part of the public record.

Note: It will not be possible to submit written comments at the meeting.

**COMMUNICATION ACCESS**

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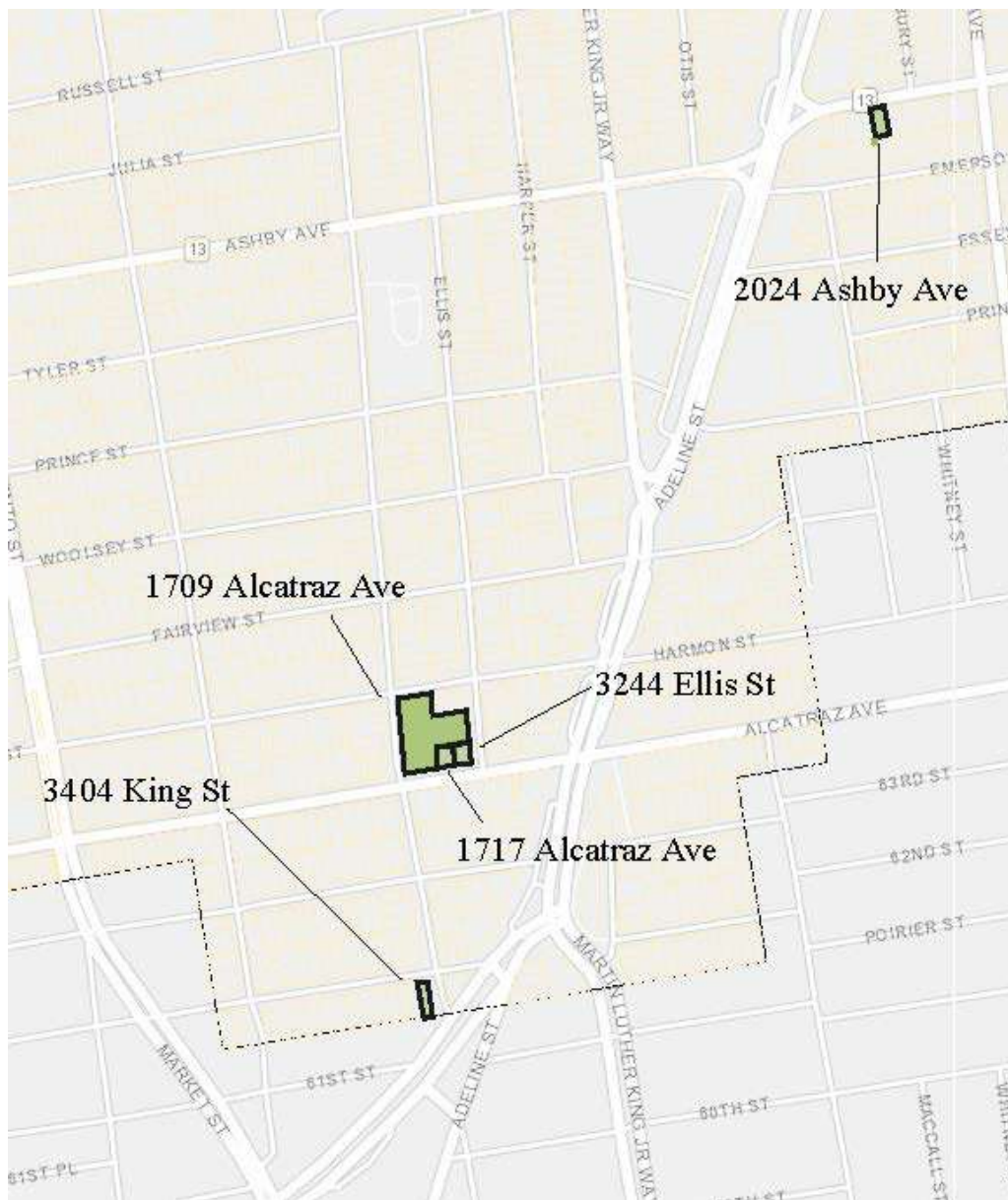
To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language

interpreter for the meeting, call (510) 981-7410 (voice), or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability.

**FURTHER INFORMATION**

Questions should be directed to **Alene Pearson**, at (510) 981-7489, or **[apearson@cityofberkeley.info](mailto:apearson@cityofberkeley.info)**. Past and future agendas are also available on the Internet at: [https://www.cityofberkeley.info/Clerk/Commissions/Commissions\\_Planning\\_Commission\\_Homepage.aspx](https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Planning_Commission_Homepage.aspx)

**Project Location**







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

AMEND THE BERKELEY GENERAL PLAN LAND USE DIAGRAM TO RE-DESIGNATE PARCELS WITH ASSESSOR PARCEL NUMBERS (APN) 052-1533-001-03, 052-1435-001-02, 052-1533-005-00, 052-1533-006-00 and 053-1592-022-00 FROM AVENUE COMMERCIAL, MEDIUM DENSITY RESIDENTIAL AND NEIGHBORHOOD COMMERCIAL GENERAL PLAN DESIGNATIONS TO THE ADELINE CORRIDOR MIXED USE GENERAL PLAN DESIGNATION AND TO EXPAND THE BOUNDARIES OF THE ADELINE CORRIDOR SPECIFIC PLAN AREA TO INCLUDE THESE PARCELS

WHEREAS, the City Council of the City of Berkeley has the authority to approve land use amendments to the General Plan in order to address unforeseen circumstances and changing priorities; and

WHEREAS, a General Plan amendment for re-designation was prepared based on a request from the City Council to modify the General Plan designation of five parcels adjacent to the Adeline Corridor Specific Plan Area, and to expand the boundaries of the Adeline Corridor Specific Plan Area to include the five parcels, to encourage the development of affordable housing, support long-standing community organizations, and to avoid unnecessarily complicated land use regulation in a small area; and

WHEREAS, the Planning Commission held a duly noticed public hearing and took public testimony on May 5, 2021, which was preceded by the distribution of notices in accordance with State and local noticing requirements; and

WHEREAS, on May 5, 2021, the Planning Commission voted to recommend that the City Council adopt a General Plan re-designation of Assessor Parcel Numbers (APN) 052-1533-001-03, 052-1435-001-02, 052-1533-005-00, 052-1533-006-00 and 053-1592-022-00 and to expand the boundaries of the Adeline Corridor Specific Plan Area to includes these parcels; and

WHEREAS, on ###/###/##, the City Council held a duly noticed public hearing to consider the General Plan re-designation of Assessor Parcel Numbers (APN) 052-1533-001-03, 052-1435-001-02, 052-1533-005-00, 052-1533-006-00 and 053-1592-022-00 and to expand the boundaries of the Adeline Corridor Specific Plan Area to includes these parcels; and

WHEREAS, the proposed amendments are consistent with the General Plan and the Adeline Corridor Specific Plan by promoting transit-oriented development and facilitating the development of affordable housing; and

WHEREAS, the amendments serve the public interest by encouraging the development of affordable housing, supporting important cultural institutions, and ensuring consistent land use regulation by incorporating isolated properties into the Adeline Corridor Mixed Use General Plan land use classification; and

WHEREAS, the amendments would not be detrimental to the public health, safety and welfare of the City because they would not directly result in changes to the physical

characteristics of any property or existing structure, but, as described above, could facilitate development that would be completed in compliance with current codes and regulations. New development also would be reviewed for compliance with BMC and CEQA and would be constructed in compliance with California Building and Safety Code as adopted by the City of Berkeley; and

WHEREAS the amendments do not change the designation to reduce the intensity of use allowed under the existing General Plan or zoning pursuant to Gov. Code section 66300(b)(1); and

WHEREAS staff prepared an Addendum to the Adeline Corridor Specific Plan Environmental Impact Report (2020 EIR) to evaluate the environmental effects of the proposed amendments. The Addendum found that potential impacts associated with the proposed project are consistent with potential impacts characterized in and mitigation measures developed for the 2020 EIR. Substantive revisions to the 2020 EIR are not necessary because no new significant impacts or impacts of substantially greater severity than previously described would occur as a result of the proposed project. Therefore, no further evaluation of environmental impacts is required for the proposed project, no Subsequent EIR is necessary per CEQA Guidelines Section 15162, and the Addendum is the appropriate level of environmental analysis and documentation for the proposed project in accordance with CEQA Guidelines Section 15164; and

WHEREAS, all documents constituting the record of this proceeding are and shall be retained by the City of Berkeley Planning and Development Department, Land Use Planning Division, at 1947 Center Street, Berkeley, California.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the General Plan Land Use Diagram is hereby amended, as shown in Exhibit A, and the boundaries of the Adeline Corridor Specific Plan are expanded as shown in Exhibit B.

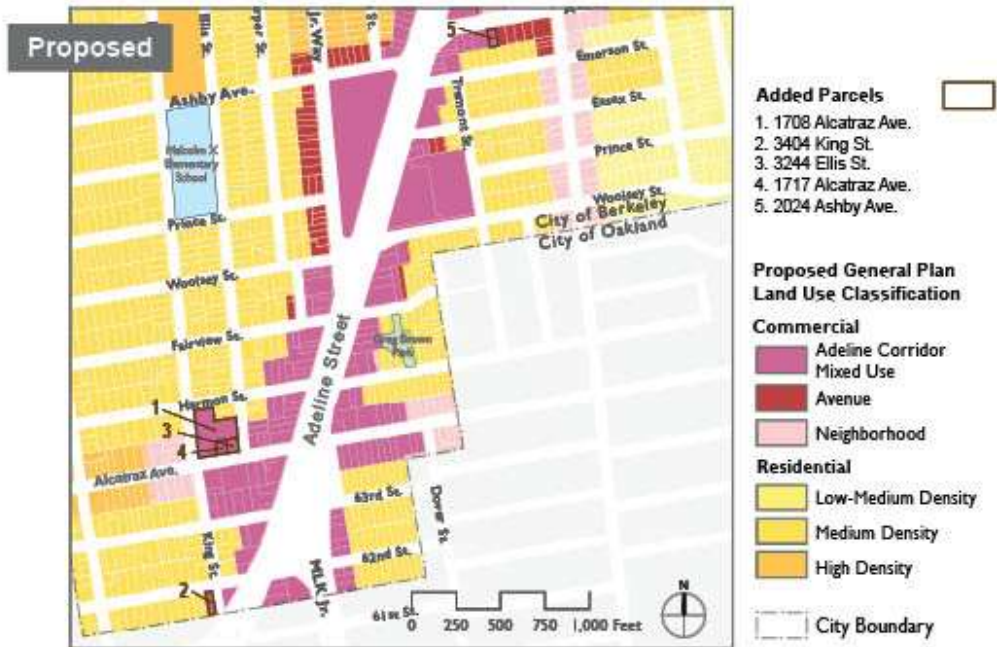
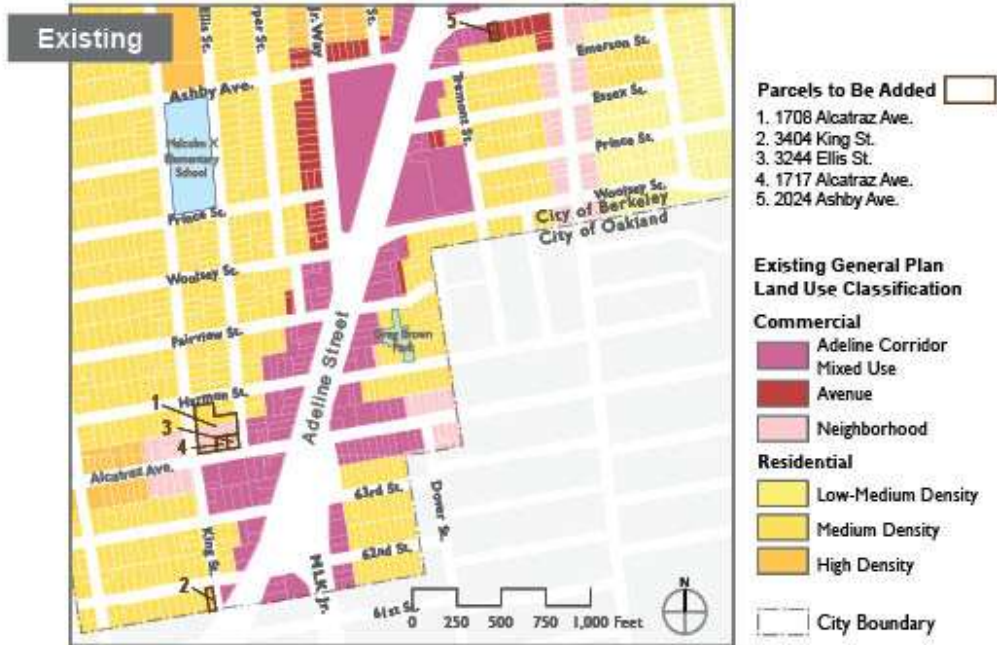
Exhibits

A: Map of General Plan amendment of five parcels from Avenue Commercial, Medium Density Residential and Neighborhood Commercial to Adeline Corridor Mixed Use, at Assessor Parcel Numbers (APN) 052-1533-001-03, 052-1435-001-02, 052-1533-005-00, 052-1533-006-00 and 053-1592-022-00.

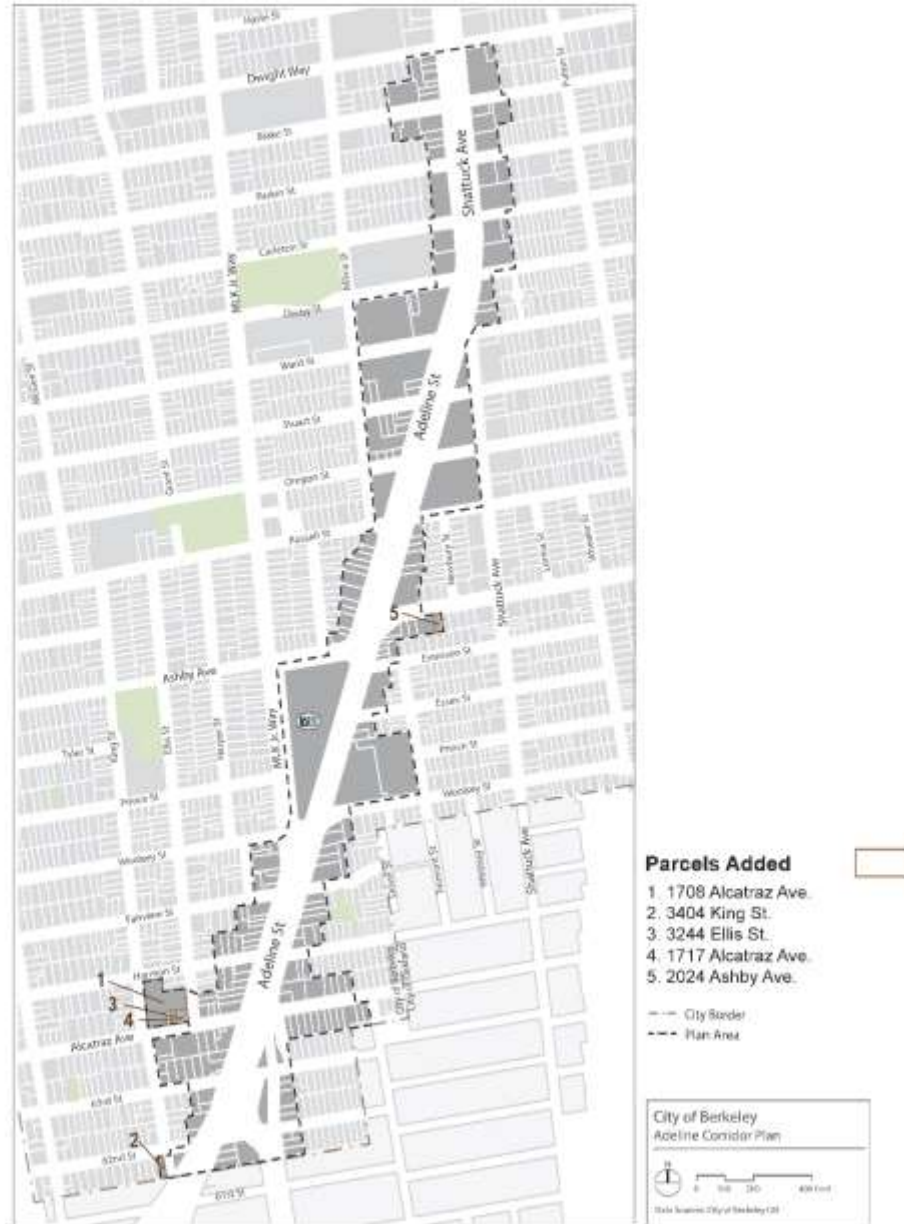
B: Map of boundary change for the Adeline Corridor Specific Plan area to include Assessor Parcel Numbers (APN) 052-1533-001-03, 052-1435-001-02, 052-1533-005-00, 052-1533-006-00 and 053-1592-022-00.

**Exhibit A**

**Parcels Proposed for General Plan Map Amendments**



**Exhibit B**



ORDINANCE NO. -N.S.

AMENDING THE BERKELEY MUNICIPAL CODE (BMC), TITLE 23 (ZONING), OFFICIAL ZONING MAP, TO REZONE ASSESSOR PARCEL NUMBERS (APN) 052-1533-001-03, 052-1435-001-02, 052-1533-005-00, 052-1533-006-00 and 053-1592-022-00 FROM RESTRICTED MULTIPLE-FAMILY RESIDENTIAL DISTRICT (R-2A) AND SOUTH AREA COMMERCIAL (C-SA) TO THE COMMERCIAL-ADELINE CORRIDOR (C-AC) ZONING DISTRICT

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

Section 1. The City Council has certified that the Addendum to the *Adeline Corridor Specific Plan Environmental Impact Report* (2020 EIR) was prepared in conformance with the California Environmental Quality Act, and that the potential impacts of the proposed zoning map amendments are consistent with potential impacts characterized in, and mitigation measures adopted with, the 2020 EIR, and therefore, no further evaluation of environmental impacts is required, no Subsequent EIR is necessary per CEQA Guidelines Section 15162, and that the Addendum is the appropriate level of environmental analysis and documentation for the proposed project in accordance with CEQA Guidelines Section 15164.

Section 2. The City Council finds that the proposed zoning map amendment serves the public interest by encouraging the development of affordable housing, supporting important cultural institutions, and ensuring consistent land use regulation by incorporating isolated properties into the Commercial-Adeline Corridor (C-AC) zoning district.

Section 3. The City Council finds that the proposed zoning map amendments are compatible with adjacent zoning districts. The proposed zoning map amendments would only apply to parcels that are immediately adjacent to, or completely surrounded by, parcels located in the C-AC zoning district. Therefore, adoption of the proposed amendment would not result in any incompatibilities with adjacent zoning districts.

Section 4. The City Council finds that the proposed zoning map amendment allows uses that are compatible with adjacent uses. With the adoption of the C-AC zoning district, the City Council determined that the C-AC zoning district allowed uses that are compatible with adjacent zoning districts. The proposed zoning map amendments would only apply to parcels that are immediately adjacent to, or completely surrounded by, parcels located in the C-AC zoning district. Therefore, adoption of the proposed amendments would not result in allowable uses that are incompatible with adjacent zoning districts.

Section 5. The City Council finds that the potential effects of the proposed zoning map amendment will not be detrimental to the public health, safety and welfare. The amendment would not result in direct changes to the physical characteristics of the property or existing structures. New development would be reviewed for compliance with CEQA and be constructed to comply with the State Building and Safety Code as adopted by the City of Berkeley.

Section 6. The City Council finds that the proposed zoning map amendment does not result in a change to a less intensive use allowed under the existing General Plan or zoning pursuant to Gov. Code section 66300(b)(1).

Section 7. 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.

Exhibit

A: Map: Zoning Map Amendment

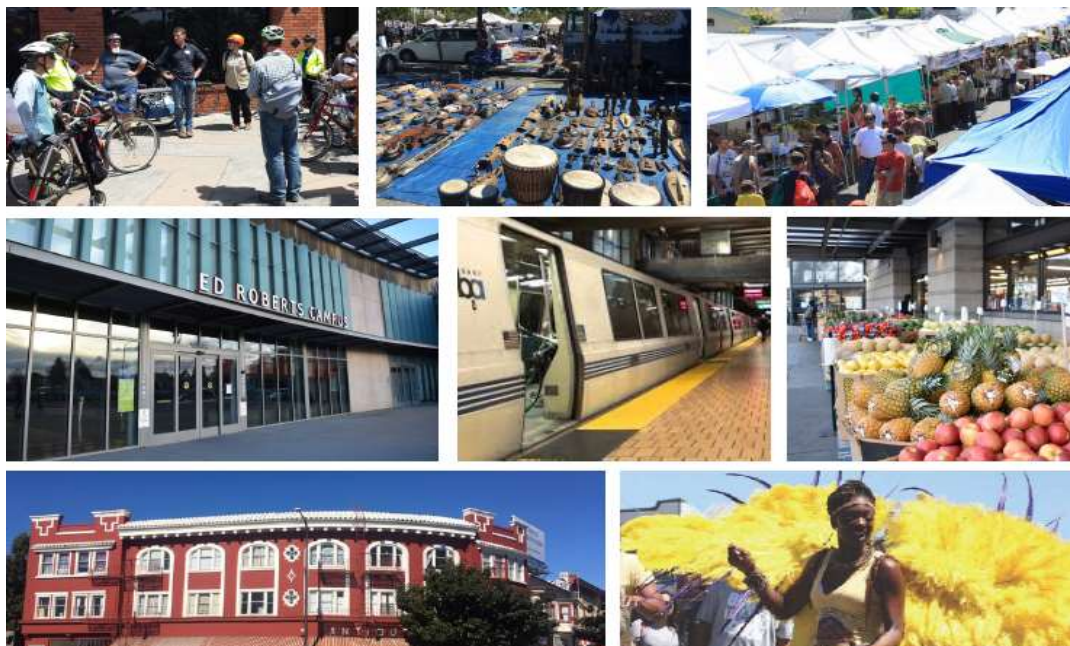
## EXHIBIT A

### Parcels Proposed for Zoning Map Amendments









## Adeline Corridor Specific Plan Area Revision

Addendum to the Adeline Corridor Specific Plan  
Environmental Impact Report  
SCH #2018072009

*prepared by*

**City of Berkeley**

Planning and Development Department  
1947 Center Street, 2nd Floor  
Berkeley, California 94704  
Alisa Shen, Principal Planner, (510) 981-7409

*prepared with the assistance of*

**Rincon Consultants, Inc.**  
449 15th Street, Suite 303  
Oakland, California 94612

**April 2021**



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City of Berkeley  
**Adeline Corridor Specific Plan Area Revision**

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# 1 Introduction

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This document is an addendum to the *Adeline Corridor Specific Plan Environmental Impact Report* (EIR) (State Clearinghouse #2018072009) certified in December 2020 ("2020 EIR"). This addendum addresses the proposed expansion of the Adeline Corridor Specific Plan's (Specific Plan) adopted Plan Area boundaries. The proposed project would expand the Specific Plan boundaries to include five additional parcels (Assessor Parcel Numbers: 052-1533-001-03, 052-1435-001-02, 052-1533-005-00, 052-1533-006-00, and 053-1592-022-00), thus allowing the potential buildout of an additional 167 residential units compared to the original buildout of 1,450 residential units as analyzed in the 2020 EIR. Therefore, some changes and additions to the certified 2020 EIR for the Adeline Corridor Specific Plan are necessary.

In accordance with Section 15164 of the California Environmental Quality Act (CEQA) Guidelines, codified in Sections 15000 et seq. of Title 14 of the California Code of Regulations, a lead agency must prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred. Under Section 15162(a), where an EIR has been certified for a project, no subsequent EIR shall be prepared for the project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, that there are substantial changes in the project or circumstances or substantially important new information that will cause the project to have significant new impacts or substantially increase previously identified significant impacts.

The addendum does not need to be circulated for public review but can be included in or attached to the final EIR (Section 15164(c)). The decision-making body must consider the addendum with the final EIR prior to making a decision on the project (Section 15164(d)). A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162, supported by substantial evidence, should be included in the addendum, the lead agency's findings on the project, or elsewhere in the record (Section 15164(e)). A discussion on this topic can be found in Section 4, *Decision Not to Prepare a Subsequent Environmental Impact Report*, of this addendum.

This addendum has been prepared in accordance with relevant provisions of CEQA (California Public Resources Code Section 21000, et seq.) and the *CEQA Guidelines*. It describes the proposed Adeline Corridor Specific Plan Area Expansion project and compares its impacts to those identified in the *Adeline Corridor Specific Plan Project EIR*. The analysis demonstrates that the proposed project does not require the preparation of a subsequent or supplemental EIR.

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## 2 Background

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This section provides an overview of the Adeline Corridor Specific Plan and its EIR to provide context for this addendum.

### Adeline Corridor Specific Plan

In December 2020, the City Council of the City of Berkeley (City) approved the Adeline Corridor Specific Plan (Specific Plan). The Specific Plan provides a vision and planning framework for future growth and development in the Adeline Corridor Specific Plan Area (“Plan Area”). The Plan Area is located in the southern portion of Berkeley and extends approximately 1.3 miles north from the Berkeley/Oakland border along Adeline Street and a portion of Shattuck Avenue. The Plan Area encompasses approximately 86 acres of land. It contains a wide range of commercial, civic, cultural, and residential land uses as well as the Ashby BART Station, a regional transit facility, located in the central/southern portion of the Plan Area.

The Specific Plan has goals, policies, and actions to guide the Plan Area’s future growth in an equitable manner that benefits the existing community. The Specific Plan includes a buildout projection which represents the *foreseeable maximum* development that the City has projected can reasonably be expected to occur in the Plan Area through the plan horizon year (2040). Reasonably foreseeable development for the Specific Plan included the development of 1,450 housing units and 65,000 square feet of commercial space.

### Adeline Corridor Specific Plan EIR

The City Council certified the EIR for the Specific Plan in December 2020 (“2020 EIR”). The 2020 EIR evaluated potential environmental consequences associated with the Specific Plan, focusing in depth on the following environmental issue areas: Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Noise, Population and Housing, Public Services and Recreation, Transportation, Tribal Cultural Resources (included in the Cultural Resources section of the 2020 EIR), and Utilities and Service Systems. Pursuant to Public Resources Code section 21099(d)(1) regarding infill sites within a transit priority area, the Specific Plan was found to have no impact with regard to Aesthetics. Furthermore, due to the urbanized nature of the existing area, the Specific Plan was found to have no impact to Agriculture and Forestry Resources as well as Mineral Resources. Therefore, these impacts were not analyzed in the 2020 EIR.

The 2020 EIR determined that significant unavoidable impacts would occur in the issue areas of noise and transportation. Mitigation measure N-2 (Construction-Related Noise Reduction Measures) was required to reduce construction-related noise throughout the Specific Plan area. Even with implementation of required mitigation, however, impacts related to noise and transportation would remain significant and unavoidable. No feasible mitigation measures were found for impacts T-1, T-3, and T-6, which relate to deteriorated levels of service or volume to capacity ratios found with the Specific Plan area. Accordingly, the City adopted a Statement of Overriding Considerations for these significant and unavoidable impacts per *CEQA Guidelines* Section 15093.

### 3 Proposed Adeline Corridor Specific Plan Area Revision Project

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The proposed Adeline Corridor Specific Plan Area Revision Project (“proposed project”) involves expanding the current boundary of the Plan Area by incorporating five additional parcels into the Plan Area. Table 1 provides information on the five additional parcels and the parcels are shown on Figure 1.

Under the proposed project, the five parcels would be reclassified to the Adeline Corridor Mixed Use General Plan land use classification, and would be rezoned to the Commercial – Adeline Corridor (C-AC) District. **Error! Reference source not found.** shows the proposed General Plan amendments and **Error! Reference source not found.** shows the proposed zoning amendments.

The Adeline Corridor Mixed Use General Plan Land Use Classification and C-AC zoning is designed to incentivize more affordable housing through providing streamlined approval and incrementally more density, height and floor-area ratio, in return for specified amounts of on-site affordable housing units. The proposed project would accomplish the following:

- Amending the General Plan and zoning for the parcel located at 1709 Alcatraz Street would facilitate the development of affordable housing and support the Ephesian Church, a longstanding institution of South Berkeley’s African American community, which is consistent with the goals of the Adeline Corridor Specific Plan.
- Amending the General Plan and zoning for the parcel located at 3404 King Street would allow for the potential change or expansion of the current use through the granting of a Use Permit (with a public hearing), which would be consistent with the goals of the Adeline Corridor Specific Plan.
- Amending the General Plan and zoning of the two parcels located at 3244 Ellis Street and 1717 Alcatraz Avenue to the new Adeline Corridor Mixed Use General Plan Land Use Classification and C-AC zoning would ensure that there would not be two parcels classified as Avenue Commercial (General Plan) and zoned Commercial – South Area (C-SA) sandwiched between parcels that have the Adeline Corridor Mixed Use General Plan land use classification and C-AC District zoning. Existing uses on these two parcels, including a mixed-use building and a six-unit apartment complex, respectively, would not be affected by the change from C-SA to C-AC zoning.

Redesignating and rezoning the five parcels under the proposed project would increase their development potential when compared to existing General Plan designations and zoning. For example, when compared to the existing zoning districts, the C-AC zoning district increases development potential by allowing greater heights and having fewer required setbacks. For the parcels currently zoned R-2A, the C-AC zoning district increases the allowable density and allowable heights. For the parcels currently zoned C-SA, C-AC includes a higher FAR maximum, encouraging larger projects.

Because the proposed project involves expanding the boundary of the Plan Area, this expansion would increase the foreseeable maximum buildout under the Specific Plan that was analyzed in the 2020 EIR. To conservatively estimate likely buildout from the proposed project, it was assumed that the all five parcels would be redeveloped to the maximum allowable density within the C-AC (250 dwelling units/acre) at 75% lot coverage.

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Accordingly, the proposed project could add up to an additional 167 residential units in the expanded Plan Area compared to the estimated 1,450 units analyzed in the 2020 EIR, resulting in a total of an estimated buildout of 1,617 units under the Specific Plan.

No other changes to the Specific Plan, such as changes to the Plan's goals and policies, would occur under the proposed project.

**Table 1 Parcels Proposed for Incorporation into the Adeline Corridor Specific Plan Area**

Address and Parcel Number	Parcel Size	Existing Use	Existing General Plan Land Use Designation	Existing Zoning
1709 Alcatraz Street (APN 052-1533-001-03)	1 acre	Church	Avenue Commercial and Medium Residential	R-2A and Commercial – South Area (C-SA)
3404 King Street (APN 052-1435-001-02)	0.1 acre	Transitional housing program center	Medium Density Residential	R-2A Restricted Multiple-Family Residential District
3244 Ellis Street (APN 052-1533-005-00)	0.1 acre	6-unit apartment complex	Neighborhood Commercial	Commercial – South Area (C-SA)
1717 Alcatraz Avenue (APN 052-1533-006-00)	0.1 acre	Mixed-use building	Neighborhood Commercial	Commercial – South Area (C-SA)
2024 Ashby Avenue (APN 053-1592-022-00)	0.07 acre	Parking lot for church	Avenue Commercial	Commercial – South Area (C-SA)



Figure 1 Location of Additional Five Parcels



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**Figure 2**  
**Parcels Proposed for General Plan Map Amendments**



**Figure 3**  
**Parcels Proposed for Zoning Map Amendments**



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## 4 Decision Not to Prepare a Subsequent Environmental Impact Report

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As outlined in Section 15164 of the *CEQA Guidelines*, a lead agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in *CEQA Guidelines* Section 15162 calling for preparation of a subsequent EIR have occurred. The conditions described in Section 15162 include the following:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:
  - a. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
  - b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
  - c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
  - d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

The impact analysis that follows demonstrates that the proposed changes to the Specific Plan boundary and associated General Plan and zoning amendments would not result in new, significant environmental impacts beyond those that have already been identified and characterized in the 2020 EIR, and that there are no substantial changes in the project or circumstances or substantially important new information that would cause the project to have significant new impacts or substantially increase previously identified significant impacts. None of the conditions described above in *CEQA Guidelines* Section 15162 that would call for preparation of a subsequent EIR have occurred or would occur as a result of the proposed project. Therefore, this addendum is the appropriate level of environmental documentation under CEQA. This addendum will be considered by the City decision-making body in its consideration of the proposed project.

## 5 Environmental Impacts

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This addendum evaluates potential environmental impacts that could result from the proposed project. The existing environmental conditions in and around the Plan Area are substantially the same under present conditions as described in the 2020 EIR. The analysis below provides updates where necessary to characterize potential impacts.

Appendix G of the *CEQA Guidelines* provides a checklist of environmental issues areas suggested for assessment in CEQA analyses. Since preparation of the 2020 EIR, revisions to the *CEQA Guidelines* have occurred to include environmental issue areas pertaining to energy and wildfire. To provide a thorough and conservative analysis of potential impacts associated with the proposed project, this addendum addresses the 20 environmental issue areas suggested by Appendix G of the 2021 *CEQA Guidelines*, listed below.

- Aesthetics
- Agriculture and Forest Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Energy
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Mineral Resources
- Noise
- Population and Housing
- Public Services
- Recreation
- Transportation
- Tribal Cultural Resources
- Utilities and Service Systems
- Wildfire

Potential environmental impacts of the proposed project are analyzed to determine whether they are consistent with the impact analysis provided in the 2020 EIR, and whether additional mitigation measures are required to minimize or avoid further potential impacts. Where the following analysis identifies impacts, discussion of previously identified mitigation measures from the 2020 EIR and existing applicable policies and regulations are discussed, as relevant, with respect to mitigating potential impacts from the proposed project.

### 5.1 Aesthetics

#### Impacts Identified in the 2020 EIR

As discussed in Section 4.14, *Effects Found not to be Significant*, of the 2020 EIR, no impacts related to aesthetics were found to occur in the Plan Area. Aesthetic impacts were found to be less than significant in accordance with Public Resources Code section 21099(d)(1), which states that impacts to aesthetics may not be considered significant for projects located within infill sites that are within a transit priority area. Because the Plan Area met the criteria for being located in a transit priority area, aesthetic impacts were found to be less than significant.

#### Impacts of the Proposed Project

As described in the Transportation Findings Memorandum prepared by Fehr & Peers, included in Appendix A, the five additional parcels which would be added to the Plan Area

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under the proposed project would be meet the criteria for a transit priority area (Fehr & Peers 2021). Therefore, like development under the Specific Plan, impacts related to aesthetics may not be considered significant.

**Conclusion**

No substantial changes have occurred that require major revisions to the 2020 EIR. There is no new information indicating that the proposed project would have new significant impacts or substantially more severe significant impacts with respect to aesthetics than were identified in the 2020 EIR. None of the conditions listed in *CEQA Guidelines* Section 15162 requiring preparation of a subsequent EIR would occur. No new mitigation measures are necessary.

## 5.2 Agriculture and Forest Resources

**Impacts Identified in the 2020 EIR**

As discussed in Section 4.14, *Effects Found not to be Significant*, of the 2020 EIR, no impacts related to agricultural or forest lands were found to occur because there are no agricultural lands in the Plan Area or adjacent to the Plan Area. The Plan Area is a highly urbanized area of Berkeley, and as such is classified as urban land.

**Impacts of the Proposed Project**

Similar to development under the Specific Plan, the proposed project would not be located on or near agricultural or forest lands, and would be located within an urbanized area of Berkeley. Therefore no significant impacts to agriculture and forest resources would occur.

**Conclusion**

No substantial changes have occurred that require major revisions to the 2020 EIR. There is no new information indicating that the proposed project would have new significant impacts or substantially more severe significant impacts with respect to agriculture and forest resources than were identified in the 2020 EIR. None of the conditions listed in *CEQA Guidelines* Section 15162 requiring preparation of a subsequent EIR would occur. No new mitigation measures are necessary.

## 5.3 Air Quality

**Impacts Identified in the 2020 EIR**

As discussed under Impact AQ-1 in Section 4.1, *Air Quality*, of the 2020 EIR, the 2020 EIR found that the Specific Plan would not result in an increase in VMT greater than the Specific Plan's projected population increase under the *2017 Bay Area Clean Air Plan* (Bay Area Air Quality Management District [BAAQMD] 2017), and would be consistent with current air quality plan control measures. Implementation of the Specific Plan would not conflict with or obstruct the implementation of the Clean Air Plan.

As discussed under Impact AQ-2 in Section 4.1, *Air Quality*, the 2020 EIR determined that air quality and pollution impacts from implementation of the Specific Plan would be significant but mitigable to less than significant. The Specific Plan would produce air pollutant emissions during construction of individual projects and right-of-way improvement.

Generally, the extent of daily emissions generated by construction equipment would depend on the quantity of equipment used and the hours of operation for each project.

In addition to complying with the City's air quality policies and the City's standard conditions of approval, the 2020 EIR required the following mitigation measures to reduce air pollutant emissions to the extent feasible:

#### **Mitigation Measure AQ-1 – Construction Emissions Measures**

As part of the City's development approval process, the City shall require applicants for future development projects in the Plan Area to comply with the current Bay Area Air Quality Management District's basic control measures for reducing construction emissions of PM<sub>10</sub> (Table 8-2, Basic Construction Mitigation Measures Recommended for All Proposed Projects, of the May 2017 BAAQMD *CEQA Guidelines*).

As discussed under Impact AQ-3 in Section 4.1, *Air Quality*, the 2020 EIR determined that impacts to sensitive receptors regarding pollutant concentrations by the Specific Plan would be significant but mitigable to less than significant. Although unlikely, new gas stations may be constructed in the Plan Area upon approval of a Use Permit/Public Hearing. Therefore, the Specific Plan could increase the number of stationary or permitted sources that emit Toxic Air Contaminants (TACs) in the Plan Area. Additionally, due to the several high volume roadways and freeways in and around the Plan Area, the Specific Plan may place sensitive receptors in proximity to these roadways, exposing individuals to TACs.

Therefore, the 2020 EIR required the following mitigation measures to reduce air pollutant emissions to the extent feasible:

#### **Mitigation Measure AQ-2 – Health Risk Assessments**

As part of the City's development approval process, the City shall require applicants for future development projects in the Plan Area to implement the Bay Area Air Quality Management District Guidelines and State Office of Environmental Health Hazard Assessment policies and procedures requiring health risk assessments (HRA) for residential development and other sensitive receptors near sources of toxic air contaminants, including freeways and roadways with over 10,000 vehicles per day. Based on the results of the HRA, identify and implement measures (such as air filtration systems, waterproofed caulking on windows and doors, and/or requirements for closed windows) to reduce potential exposure to particulate matter, carbon monoxide, diesel fumes, and other potential health hazards. Measures identified in HRAs shall be included into the site development plan as a component of a proposed project.

Finally, as discussed under Impact AQ-4 in Section 4.1, *Air Quality*, the 2020 EIR determined impacts related to objectionable odors affecting a substantial number of people in the Plan Area would be less than significant. Temporary odors would be present during construction activities and would cease upon completion. Additionally, the Specific Plan does not include uses associated with objectionable odors and does not support industrial uses.

#### **Impacts of the Proposed Project**

Like the Specific Plan, the proposed project would not introduce new uses to the Plan Area that would be inconsistent with the 2017 Clean Air Plan. Development under the proposed project would result in temporary generation of air pollutants during construction, which

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would affect local air quality. However, in accordance with Mitigation Measure AQ-1, development under the proposed project would be required to implement the BAAQMD Basic Construction Mitigation Measures and reduce construction emissions. The proposed project may also expose sensitive receptors (new residential uses allowed under the proposed zoning change) to substantial pollutant concentrations as it could place new residences in proximity to high volume roadways and permitted sources. However, with adherence to Mitigation Measure AQ-2 to prepare a HRA and implement measures to reduce exposure, impacts would be less than significant. The addition of new residential units would not result in long-term objectionable odors. Temporary odors would occur during construction activities and cease upon completion, as was found in the 2020 EIR.

**Conclusion**

No substantial changes have occurred that require major revisions to the 2020 EIR. There is no new information indicating that the proposed project would have new significant impacts or substantially more severe significant impacts with respect to air quality than were identified in the 2020 EIR. None of the conditions listed in *CEQA Guidelines* Section 15162 requiring preparation of a subsequent EIR would occur. No new mitigation measures are necessary. Mitigation Measures AQ-1 and AQ-2 from the 2020 EIR would continue to apply to the proposed project.

## 5.4 Biological Resources

**Impacts Identified in the 2020 EIR**

As discussed in Section 4.2, *Biological Resources*, of the 2020 EIR, the Specific Plan was found to result in impacts that are less than significant with mitigation incorporated for potential effects to federal or state-listed or other designated species. Mitigation Measure BIO-1, discussed below, was required to reduce impacts associated with project buildout on the presence of special-status bat species. In addition, the Specific Plan was found to result in less than significant impacts related to federal or state-determined habitats that are deemed sensitive. The Specific Plan was determined to have less than significant impacts to the movement of native resident and migratory fish and wildlife species, as well as with local policies or ordinances meant to protect biological resources. With respect to impacts to federally protected wetlands or to habitat conservation plans or natural community conservation plans, the Specific Plan was found to have no impacts.

The 2020 EIR required the following mitigation measure:

**Mitigation Measure BIO-1 – Special-status Bat Species Avoidance and Minimization**

For projects in the Plan Area, focused surveys to determine the presence/absence of roosting bats shall be conducted prior to the initiation of demolition of buildings and removal of mature trees large enough to contain crevices and hollows that could support bat roosting. If active maternity roosts are identified, a qualified biologist shall establish avoidance buffers applicable to the species, the roost location and exposure, and the proposed construction activity in the area. If active non-maternity day or night roosts are found on the project site, measures shall be implemented to passively relocate bats from the roosts prior to the onset of construction activities. Such measures may include removal of roosting site during the time of day the roost is unoccupied or the installation of one-way doors, allowing the bats to leave the roost but



not to re-enter. These measures shall be presented in a Bat Passive Relocation Plan that shall be submitted to, and approved by, CDFW.

### **Impacts of the Proposed Project**

Although the proposed project would expand the original boundary of the Plan Area, the additional parcels are not located within riparian habitat, wetlands, migratory corridors or nursery sites, or habitat conservation plan or natural community plans (U.S. Fish and Wildlife Service 2021a, U.S. Fish and Wildlife Service 2021b, California Department of Fish and Wildlife 2019). Additionally, the proposed project does not include new policies that would conflict with local ordinances or cause new or increased impacts to candidate, sensitive, or special status species. The proposed project would be required to implement the mitigation measure included in the 2020 EIR. With mitigation, the proposed project would result in no new significant impacts to biological resources.

### **Conclusion**

No substantial changes have occurred that require major revisions to the 2020 EIR. There is no new information indicating that the proposed project would have new significant impacts or substantially more severe significant impacts with respect to biological resources than were identified in the 2020 EIR. None of the conditions listed in *CEQA Guidelines* Section 15162 requiring preparation of a subsequent EIR would occur. No new mitigation measures are necessary. Mitigation Measure BIO-1 from the 2020 EIR would continue to apply to the proposed project.

## **5.5 Cultural Resources**

### **Impacts Identified in the 2020 EIR**

As discussed in Section 4.3, *Cultural Resources*, of the 2020 EIR, the Specific Plan would not result in significant impacts to historic buildings, archaeological or paleontological resources, human remains, or tribal cultural resources and therefore would not require mitigation measures additional to meeting regulatory requirements for the City of Berkeley.

As discussed under Impact CR-1 in the 2020 EIR, development under the Specific Plan is required to comply with urban design policies within the City's General Plan as well as policies associated with the City's Landmarks Preservation Commission with regards to proposed demolition or rehabilitation of potential historical resources.

As discussed under Impact CR-2, Impact CR-3, Impact CR-4, and Impact CR-5 in the 2020 EIR, development under the Specific Plan is required to comply with the following standard conditions of approval for projects within the City of Berkeley:

#### **Archaeological Resources (Ongoing throughout demolition, grading, and/or construction)**

Pursuant to CEQA Guidelines section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:

- In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult

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with a qualified archaeologist, historian or paleontologist to assess the significance of the find.

- If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
- In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
- If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
- If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.

**Paleontological Resources (*Ongoing throughout demolition, grading, and/or construction*)**

In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

**Human Remains (*Ongoing throughout demolition, grading, and/or construction*)**

In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

### **Half Work/Unanticipated Discovery of Tribal Cultural Resources**

In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.

With adherence to these standard conditions of approval, development under the Specific Plan was found to have a less than significant impact related to cultural resources.

### **Impacts of the Proposed Project**

The proposed project would include expanding the Plan Area and redesignating five parcels to be consistent with the Specific Plan. Structures on the five parcels are not designated as historic City of Berkeley landmarks or structures of merit (City of Berkeley 2015; Berkeley Architectural Heritage Association 2021). As with development under the Specific Plan, future development of the five additional parcels would be subject to the same regulations and City standard conditions of approval. With adherence to these policies and regulations, impacts related to historical, archeological, and paleontological resources would be less than significant.

### **Conclusion**

No substantial changes have occurred that require major revisions to the 2020 EIR. There is no new information indicating that the proposed project would have new significant impacts or substantially more severe significant impacts with respect to cultural resources than were identified in the 2020 EIR. None of the conditions listed in *CEQA Guidelines* Section 15162 requiring preparation of a subsequent EIR would occur. No new mitigation measures are necessary.

## **5.6 Energy**

### **Impacts Identified in the 2020 EIR**

As discussed in Section 5, *Energy Impacts and Other CEQA Required Discussions*, of the 2020 EIR, the Specific Plan would not result in significant impacts related to wasteful and inefficient use of non-renewable resources during construction and operation due to the plan's objective of increasing transit-oriented development, which aims to reduce vehicle trips and associated fuel and energy use. Additionally, the Specific Plan is required to comply with applicable Title 24 building standards, City policies, and required mitigation measures that would reduce construction-related and operational energy use by decreasing vehicle trips, increasing fuel efficiency, increasing building energy efficiency, and facilitating use of renewable energy. Furthermore, through implementation of mitigation measures found in Section 4.5, *Greenhouse Gas Emissions*, the Specific Plan would require the usage of solar photovoltaic cells, reducing overall energy usage.

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### **Impacts of the Proposed Project**

Like development under the Specific Plan, development associated with the proposed project would be required to adhere to applicable Title 24 building standards and green building measures in the City's municipal code. Additionally, the proposed project would be subject to the same mitigation measures found in the 2020 EIR, such as GHG-3 which would require solar photovoltaic cells on new buildings. Therefore, the proposed project would also not result in significant impacts related to energy.

### **Conclusion**

No substantial changes have occurred that require major revisions to the 2020 EIR. There is no new information indicating that the proposed project would have new significant impacts or substantially more severe significant impacts with respect to energy than were identified in the 2020 EIR. None of the conditions listed in *CEQA Guidelines* Section 15162 requiring preparation of a subsequent EIR would occur. No new mitigation measures are necessary. Mitigation Measure GHG-3 from the 2020 EIR would continue to apply to the proposed project.

## 5.7 Geology and Soils

### **Impacts Identified in the 2020 EIR**

As discussed in Section 4.4, *Geology and Soils*, of the 2020 EIR the Specific Plan would result in impacts that are less than significant regarding the potential risk of loss, injury, or death involving seismic activities, soil erosion, landslides, liquefaction, or expansive soils. Development under the Specific Plan would not utilize septic tanks and there would be no impact in that regard.

### **Impacts of the Proposed Project**

The proposed project includes expanding the Specific Plan area to include five parcels adjacent to the existent boundary. These parcels are not located on existing fault lines, are located on similarly expansive soils and liquefaction zone, are not located within an earthquake-induced landslide hazard zone, and would not utilize septic tanks. As such, the proposed project would not result in significant impacts related to geology and soils for the same reasons as described in the 2020 EIR.

### **Conclusion**

No substantial changes have occurred that require major revisions to the 2020 EIR. There is no new information indicating that the proposed project would have new significant impacts or substantially more severe significant impacts with respect to geology and soils than were identified in the 2020 EIR. None of the conditions listed in *CEQA Guidelines* Section 15162 requiring preparation of a subsequent EIR would occur. No new mitigation measures are necessary.

## 5.8 Greenhouse Gas Emissions

### **Impacts Identified in the 2020 EIR**

As discussed on the 2020 EIR, GHG emissions associated with development of future projects under the proposed Specific Plan would be cumulatively considerable and would

therefore result in a significant impact if the Specific Plan was found to be inconsistent with *California's 2017 Climate Change Scoping Plan* (the "2017 Scoping Plan") or if it would not demonstrate progress towards achieving the goals set forth in EO B-55-18. As discussed in Impact GHG-1 in Section 4.5, *Greenhouse Gas Emissions*, of the 2020 EIR, with implementation of mitigation, the Specific Plan would be consistent with the goals of the 2017 Scoping Plan and impacts related to GHG emissions would be less than significant. The 2020 EIR required the following mitigation measures:

#### **Mitigation Measure GHG-1 – All-Electric New Construction**

All new buildings constructed in the Plan Area shall be built as all-electric with no natural gas connection to the building, except where new natural gas connections are permitted under the City's Natural Gas Infrastructure Ordinance (BMC Chapter 12.80). This includes all appliances such as electric cooking, clothes drying, water heating, space heating, and air conditioning.

Projects shall not be required to employ methods of construction that exceed the requirements of the California Building Standards Code (inclusive of any local amendments approved for enforcement in the City of Berkeley) or install appliances that exceed standards for energy efficiency established under the federal Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 *et seq.*

#### **Mitigation Measure GHG-2 – Electric Vehicle (EV) Readiness and EV Charges**

All new development projects in the Plan Area shall conform to the following EV infrastructure requirements or an equivalent City of Berkeley adopted ordinance which meets or exceeds those standards:

- ┆ Single Family Homes and Duplexes
  - At least one parking space per dwelling unit with on-site parking to be equipped with raceway, wiring, and power to support a future Level 2<sup>1</sup> EV charging station
- ┆ Multi-Family Buildings
  - 20% of parking spaces to be equipped with raceways, wiring, and power to support future Level 2 EV charging stations
  - 80% of parking spaces to be equipped with connecting raceways (no additional electric service capacity required)
- ┆ Non-Residential Buildings
  - 10 % of parking spaces must have Level 2 charging stations installed (a DC Fast Charge station may be installed in place of 10 required Level 2 stations)
  - 40 % of parking spaces to be equipped with connecting raceways (no additional electric service capacity required)

#### **Mitigation Measure GHG-3 – Solar Photovoltaic Power**

All new buildings, with the exception of accessory buildings and structures, proposed in the Plan Area shall install solar photovoltaic energy systems or purchase 100% carbon neutral or renewable energy through an electric utility serving Berkeley. Solar

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<sup>1</sup> Level 2 circuit: 40+ Amp, 208/240v AC (standard household washer/dryer outlet), charges approximately 25-30 mile driving distance per hour

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photovoltaic equipment shall be shown on all plans submitted for individual projects in the Plan Area.

**Impacts of the Proposed Project**

The proposed project would involve expanding the Plan Area, resulting in an increase of potential buildout of an additional 167 units. However, for the same reasons as described in the 2020 EIR, with implementation of required mitigation measures, the proposed project would not conflict with applicable GHG reduction plans, including the 2020 Scoping Plan. No changes are proposed to the goals and policies found within the Specific Plan, and as such the proposed project would not introduce new impacts compared to what was analyzed in the 2020 EIR.

**Conclusion**

No substantial changes have occurred that require major revisions to the 2020 EIR. There is no new information indicating that the proposed project would have new significant impacts or substantially more severe significant impacts with respect to GHG emissions than were identified in the 2020 EIR. None of the conditions listed in *CEQA Guidelines* Section 15162 requiring preparation of a subsequent EIR would occur. No new or revised mitigation measures are necessary. Mitigation Measures GHG-1, GHG-2, and GHG-3 from the 2020 EIR would continue to apply to the proposed project.

## 5.9 Hazards and Hazardous Materials

**Impacts Identified in the 2020 EIR**

As discussed in Section 4.6, *Hazards and Hazardous Materials*, of the 2020 EIR, the 2020 EIR found that the Specific Plan would not result in significant impacts in the form of hazards to the public or the environment or be located on a hazardous material site, within 0.25 miles of a school, or in an airport influence area due to its highly urbanized location within south Berkeley. In addition, the Specific Plan would not impair implementation of an adopted emergency response plan or expose people or structures to a significant risk of loss, injury, or death involving wildland fires for the same reason.

**Impacts of the Proposed Project**

The proposed project would add five parcels to the Plan Area. Potential future residential uses allowed under the proposed project would not transport, store, or emit hazardous wastes, other than in small quantities typical for maintenance and cleaning associated with residential and commercial uses. Adhering to applicable regulations related to the use, transport, and storage of hazardous materials would ensure impacts continue to be less than significant. Additionally, the proposed project is not located on a list of hazardous materials sites, an airport land use plan, or within the vicinity of a public or private airstrip (State Water Resources Control Board 2021; County of Alameda 2012). Furthermore, the proposed project would not involve new uses or street closures that would interfere with an adopted emergency response or evacuation plan. Although buildout of the proposed project may increase traffic, as described in Section 4.6, *Hazards and Hazardous Materials*, of the 2020 EIR, Adeline Street, Ashby Avenue, and Shattuck Avenue would still serve as evacuation routes in case of emergency. Additionally, the proposed expansion area is in an urban area and not subject to wildland fire hazards (see also Section 5.20, *Wildfire*, in this Addendum).

## Conclusion

No substantial changes have occurred that require major revisions to the 2020 EIR. There is no new information indicating that the proposed project would have new significant impacts or substantially more severe significant impacts with respect to hazards and hazardous materials than were identified in the 2020 EIR. None of the conditions listed in *CEQA Guidelines* Section 15162 requiring preparation of a subsequent EIR would occur. No new mitigation measures are necessary.

## 5.10 Hydrology and Water Quality

### Impacts Identified in the 2020 EIR

As discussed in Section 4.7, *Hydrology and Water Quality*, of the 2020 EIR, the Specific Plan would not result in significant impacts related to potable water, wastewater, groundwater supplies, runoff water and drainage, or flooding as the Specific Plan would be required to comply with the City's policies, practices, and regulations. Additionally, the Plan Area is not located within a FEMA designated flood hazard zone, a dam or tsunami inundation zone, nor in proximity to a large body of water such that a seiche could affect the Plan Area (City of Berkeley 2001).

### Impacts of the Proposed Project

The proposed project would involve expanding the Plan Area to include five parcels listed in Table 1. Future development of these parcels consistent with the allowed uses and development standards could involve construction or operational activities that would release water pollutants that could affect water quality. However, like development within the existing Specific Plan boundary, development under the proposed project would be required to adhere to applicable regulations to prevent water quality impacts. In addition, the proposed expansion area includes parcels that are largely developed and covered with impervious surfaces. With adherence to applicable regulatory requirements, new development would not substantially alter the drainage pattern of the area such that increases in stormwater runoff would occur. Figure 4.7-1 and Figure 4.7-2 in Section 4.7, *Hydrology and Water Quality*, of the 2020 EIR show the drainage and historic creek traces and the flood hazard zones in proximity to the Plan Area. As shown in those figures, the proposed expansion would not be located on or near a historic creek trace or in a flood hazard area. Overall, project impacts related to water quality and hydrology would be less than significant.

## Conclusion

No substantial changes have occurred that require major revisions to the 2020 EIR. There is no new information indicating that the proposed project would have new significant impacts or substantially more severe significant impacts with respect to hydrology and water quality than were identified in the 2020 EIR. None of the conditions listed in *CEQA Guidelines* Section 15162 requiring preparation of a subsequent EIR would occur. No new mitigation measures are necessary.

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## 5.11 Land Use and Planning

### **Impacts Identified in the 2020 EIR**

As discussed in Section 4.8, *Land Use and Planning*, of the 2020 EIR, the Specific Plan would not physically divide a community or conflict with an applicable land use plan, policy, or regulation, as the Specific Plan would create an overriding land use designation (Adeline Corridor Mixed Use) and zoning designation (C-Adeline Corridor Mixed Use) for the Plan Area. Additionally, the Specific Plan would result in no impact to a Habitat Conservation Plan or Natural Community Conservation Plan.

### **Impacts of the Proposed Project**

The proposed project would expand the Plan Area to include five adjacent parcels and thus would not divide an established community. In addition to adding parcels to the existing Plan Area, the proposed project would rezone and redesignate parcels consistent with the designations of the Specific Plan. For the same reasons as described in Table 4.8-1 of Section 4.8, *Land Use and Planning*, of the 2020 EIR, the proposed project would not conflict with applicable land use policies or programs. The additional parcels are not within a Habitat Conservation Plan or Natural Community Conservation Plan. Overall, impacts would be less than significant.

### **Conclusion**

No substantial changes have occurred that require major revisions to the 2020 EIR. There is no new information indicating that the proposed project would have new significant impacts or substantially more severe significant impacts with respect to land use and planning than were identified in the 2020 EIR. None of the conditions listed in *CEQA Guidelines* Section 15162 requiring preparation of a subsequent EIR would occur. No new mitigation measures are necessary.

## 5.12 Mineral Resources

### **Impacts Identified in the 2020 EIR**

As discussed in Section 4.14, *Effects Found not to be Significant*, of the 2020 EIR, no impacts related to mineral resources would occur. There are no known mineral deposits or resources of local importance or value to the region or to residents of the State identified in the Plan Area (City of Berkeley 2001a). Additionally, there are no mining operations within the Plan Area.

### **Impacts of the Proposed Project**

The proposed project would have no impacts to mineral resources as the proposed additional parcels are not located on mineral deposits or near mining operations.

### **Conclusion**

No substantial changes have occurred that require major revisions to the 2020 EIR. There is no new information indicating that the proposed project would have new significant impacts or substantially more severe significant impacts with respect to mineral resources than were identified in the 2020 EIR. None of the conditions listed in *CEQA Guidelines* Section 15162



requiring preparation of a subsequent EIR would occur. No new mitigation measures are necessary.

## 5.13 Noise

### Impacts Identified in the 2020 EIR

As discussed under Impact N-1 in Section 4.9, *Noise*, of the 2020 EIR, the 2020 EIR found that the Specific Plan would not generate noise in excess of standards set forth in the City's general plan or noise ordinance, and would therefore result in impacts that are less than significant.

As discussed under Impact N-2 in Section 4.9, *Noise*, of the 2020 EIR, buildout under the Specific Plan would result in significant and unavoidable impacts related to construction noise, as it would intermittently generate high noise levels within and adjacent to sensitive receptors in the Plan Area. Although mitigation measures would reduce construction noise to the extent feasible, construction noise could still exceed the City's standards at sensitive receptors. Therefore, the 2020 EIR required the following mitigation measure to reduce construction noise to the extent feasible:

#### Mitigation Measure N-2 – Construction-Related Noise Reduction Measures

Development projects in the Plan Area that involve construction activities shall apply the following measures during construction for the purpose of reducing construction-related noise:

- **Construction Timing.** Construction activities shall be restricted to the daytime hours of between 7:00 AM and 7:00 PM on weekdays, or between 9:00 AM and 8:00 PM on weekends and legal holidays.
- **Mufflers.** Construction equipment shall be properly maintained and all internal combustion engine driven machinery with intake and exhaust mufflers and engine shrouds, as applicable, shall be in good condition and appropriate for the equipment. During construction, all equipment, fixed or mobile, shall be operated with closed engine doors and shall be equipped with properly operating and maintained mufflers, consistent with manufacturers' standards.
- **Electrical Power.** Electrical power, rather than diesel equipment, shall be used to run compressors and similar power tools and to power any temporary structures, such as construction trailers or caretaker facilities.
- **Equipment Staging.** All stationary equipment shall be staged as far away as feasible from adjacent noise-sensitive receptors.
- **Equipment Idling.** Construction vehicles and equipment shall not be left idling for longer than five minutes when not in use.
- **Workers' Radios.** All noise from workers' radios shall be controlled to a point that they are not audible at sensitive receptors near construction activity.
- **Smart Back-up Alarms.** Mobile construction equipment shall have smart back-up alarms that automatically adjust the sound level of the alarm in response to ambient noise levels. Alternatively, back-up alarms shall be disabled and replaced with human spotters to ensure safety when mobile construction equipment is moving in the reverse direction.

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- **Disturbance Coordinator.** The applicant shall designate a disturbance coordinator who shall be responsible for responding to any local complaints about construction noise. The noise disturbance coordinator shall determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and shall require that reasonable measures warranted to correct the problem be implemented. A telephone number for the disturbance coordinator shall be conspicuously posted at the construction site.
- **Additional Noise Attenuation Techniques.** During construction activity that is immediately adjacent to noise-sensitive receptors, temporary sound barriers may be installed and maintained, at the discretion of the City's Department of Planning and Development. Temporary sound barriers, if installed, shall block line of sight between noise-generating construction equipment and adjacent residential windows, shall be solid (e.g., plywood), and shall be placed as close to the source equipment as feasible. Mobile sound barriers may be used as appropriate to attenuate construction noise near the source equipment. During the building construction phase, temporary sound barriers may be applied to generators and cranes used on-site.

As discussed under Impact N-3 in Section 4.9, *Noise*, of the 2020 EIR, impacts within and adjacent to the Plan Area from groundborne vibration would be significant but mitigable to less than significant. Institutional land uses with sensitive daytime activities could be exposed to vibration levels exceeding Federal Transit Administration (FTA) guidelines. Therefore, the 2020 EIR required the following mitigation measure to reduce groundborne vibration to the extent feasible:

**Mitigation Measure N-3 – Vibration Reduction Measures**

Applicants for new development that would involve construction activity in the Plan Area shall implement the following measures to reduce exposure to vibration from construction activities:

- **Best Available Technology.** The applicant shall use the best available technology to reduce construction-related vibration on construction sites within 100 feet of institutional land uses that are sensitive to vibration, and within 50 feet of historic buildings, so that vibration levels do not exceed guidelines in the FTA's *Transit Noise and Vibration Impact Assessment Manual* for annoyance and damage to fragile structures. Appropriate technology may include, but is not limited to:
  - ┆ Drilling of piles instead of pile driving for foundation work
  - ┆ Static rollers instead of vibratory rollers for paving activity
  - ┆ Smaller and well-maintained equipment
- **Construction Scheduling.** The applicant shall coordinate with adjacent institutional land uses that are sensitive to vibration and schedule vibration-generating construction activities during less sensitive times of day.

As discussed under Impact N-4 in Section 4.9, *Noise*, of the 2020 EIR, the Specific Plan would have a less than significant impact related to traffic noise. Although buildout of the Specific Plan would generate new vehicle trips in the Plan Area and would increase traffic volumes and associated noise, the traffic noise would not exceed applicable FTA criteria.

As discussed under Impact N-5 in Section 4.9, *Noise*, of the 2020 EIR, the Specific Plan would have a less than significant impact regarding operational noise impacts within the Plan Area. Noise sources include stationary equipment, such as rooftop ventilation and

heating systems, and delivery and trash hauling trucks. Although noise may periodically be audible to noise-sensitive receptors, operational noise would not exceed ambient noise levels at these receptors.

As discussed under Impact N-6 in Section 4.9, *Noise*, of the 2020 EIR, the Specific Plan would have no impact to individuals residing or working within the project area to public or private airport usage. The nearest airport to the Specific Plan is the Oakland International Airport, located approximately 8.5 miles to the south. Although nearby aircraft are occasionally audible, the Plan Area is not within noise contours associated with nearby airports and therefore would not expose individuals to adverse noise from aircraft overflights.

### **Impacts of the Proposed Project**

The proposed project would generate noise similar to development under the Specific Plan, including noise and groundborne vibration during construction as well as traffic and operational noise. The proposed project would be further away from the high traffic streets (Adeline Street, Shattuck Avenue, and Martin Luther King Jr. Way) than most of the Plan Area; therefore, ambient noise levels are anticipated to be lower than those measured for the Plan Area. Nonetheless, development of the additional expansion area would be required to comply with the same applicable noise standards regarding exposure of habitable rooms to noise. Therefore, impacts would remain less than significant.

The additional parcels are located adjacent to residences, which are considered sensitive receptors. Therefore, like development under the Specific Plan, impacts related to construction noise would also be significant and unavoidable. Like development under the Specific Plan, the proposed project would be required to restrict the hours of construction activity and minimize noise from equipment to the extent feasible, as well as implement Mitigation Measure N-2 from the 2020 EIR.

Development under the proposed project would also generate groundborne vibration during construction and would be required to implement Mitigation Measure N-3 from the 2020 EIR. With mitigation, impacts would be less than significant.

As discussed under Impact N-4 in Section 4.9, *Noise*, of the 2020 EIR, an increase of at least 1 dBA Leq would result in a significant impact according to FTA criteria. Based on the trip generation and distribution assumptions in the 2020 EIR, development under the Specific Plan would increase trips on area roadway segments by between 52 and 117 during the AM peak hour, a percentage increase in new trips of 2.4 to 5.4 percent. As shown in Table 2, below, (in Section 5.17, *Transportation*), the proposed project would generate an estimated 33 additional trips during the weekday PM peak hour. A 10 percent increase would raise traffic noise by about 0.4 dBA Leq. With the addition of up to 33 PM peak hour trips on area roadway segments, the proposed project would still result in less than a 10 percent increase, which means that traffic noise levels would raise by less than 0.4 dBA Leq. This increase in trips would still be under a 10 percent increase in trips compared to existing traffic, meaning that the additional traffic-related noise would not exceed thresholds.

Similar to the adopted Specific Plan, buildout under the proposed project would generate noise that may periodically be audible to nearby sensitive receptors. Noise sources are expected to include stationary equipment for residential uses, such as rooftop ventilation and heating systems, as well as delivery and trash hauling trucks. However, for the same reasons described in the 2020 EIR, operational noise would not exceed ambient noise

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levels at nearby sensitive receptors. Therefore, operational noise impacts would remain less than significant.

As discussed in the 2020 EIR, although nearby aircraft are occasionally audible, the Plan Area and the additional five parcels which would be added to the Plan Area are not within noise contours associated with nearby airports and therefore would not be exposed to adverse noise from aircraft overflights. No impact would occur.

**Conclusion**

No substantial changes have occurred that require major revisions to the 2020 EIR. There is no new information indicating that the proposed project would have new significant impacts or substantially more severe significant impacts with respect to noise than were identified in the 2020 EIR. None of the conditions listed in *CEQA Guidelines* Section 15162 requiring preparation of a subsequent EIR would occur. No new or revised mitigation measures are necessary. Mitigation Measures N-2 and N-3 from the 2020 EIR would continue to apply to the proposed project.

## 5.14 Population and Housing

**Impacts Identified in the 2020 EIR**

As discussed in Section 4.10, *Population and Housing*, of the 2020 EIR, the 2020 EIR found the Specific Plan would not result in significant impacts to population and housing as the estimated increase in population and employment was well within the City's growth expectations for the Plan Area, as well as the City overall. Furthermore, the 2020 EIR found that the Specific Plan would not displace substantial numbers of existing housing units or people.

**Impacts of the Proposed Project**

The proposed project would result in an additional estimated 400 residents, based on a total buildout of 167 units, each with the Berkeley average of 2.39 residents per unit, beyond the original estimated population growth of 3,466 persons as analyzed in the 2020 EIR. By 2040, the City is projected to have grown by 22,315 people. The combined 3,866 residents (3,466 + 400) would not exceed the forecasted growth for the City. In addition, the proposed five parcels would likely be developed with church, parking, residential, and commercial uses. While the proposed project involves regulatory changes and no specific development project is proposed at this time, subsequent development under the project could require the demolition of existing housing units in the expansion area. The potential loss of housing units would be more than offset by up to 167 new additional housing units within the Plan Area beyond those that could be built under the adopted Plan, and would not require the construction of additional housing elsewhere. Furthermore, key goals, policies and actions of the Specific Plan are designed to promote the creation of new housing, including housing affordable to the lowest income levels, preserving existing affordable housing and measures to fight displacement, and would apply to the proposed additional parcels. Impacts would be less than significant.

**Conclusion**

No substantial changes have occurred that require major revisions to the 2020 EIR. There is no new information indicating that the proposed project would have new significant impacts or substantially more severe significant impacts with respect to population and housing than

were identified in the 2020 EIR. None of the conditions listed in *CEQA Guidelines* Section 15162 requiring preparation of a subsequent EIR would occur. No new mitigation measures are necessary.

## 5.15 Public Services

### Impacts Identified in the 2020 EIR

As discussed under Impact PS-1 in Section 4.11, *Public Services and Recreation*, of the 2020 EIR, buildout under the Specific Plan would not result in significant impacts to local fire and police agencies or other public facilities as the Plan Area is already served by these agencies. To ensure that response times are appropriately met, the Berkeley Fire Department has identified the need for a new South Berkeley fire station. While no location has been identified for a new fire station in the Adeline Corridor as part of the proposed Specific Plan, the Plan Area is entirely developed and urbanized. A potential future facility would likely be developed as infill development, is unlikely to cause additional significant environmental impacts beyond those identified in the 2020 EIR, and would be subject to additional CEQA review. Therefore, impacts were found to be less than significant.

Similarly, under Impact PS-2, although the Berkeley Police Department does not factor in population increases when determining its staffing needs, population growth in the Plan Area could result in an increase in reported incidents, leading to longer response times unless the Police Department increases staffing. It is possible that a new police station would be necessary to serve the Plan Area in the future. Nonetheless, a potential future facility would likely be developed as infill, is unlikely to cause additional environmental impacts, and would be subject to additional CEQA review. Therefore, impacts were found to be less than significant.

Lastly, the 2020 EIR found that impacts related to schools would be less than significant with payment of State-mandated school impact fees.

### Impacts of the Proposed Project

The proposed project would expand the boundaries of the Plan Area, resulting in the addition of an estimated up to 167 units and adding residents to South Berkeley. However, for the same reasons as described in the 2020 EIR, the proposed project would result in less than significant impacts related to fire services, police services, and schools.

### Conclusion

No substantial changes have occurred that require major revisions to the 2020 EIR. There is no new information indicating that the proposed project would have new significant impacts or substantially more severe significant impacts with respect to public services than were identified in the 2020 EIR. None of the conditions listed in *CEQA Guidelines* Section 15162 requiring preparation of a subsequent EIR would occur. No new mitigation measures are necessary.

## 5.16 Recreation

### Impacts Identified in the 2020 EIR

As discussed in Section 4.11, *Public Services and Recreation*, of the 2020 EIR, the Berkeley General Plan states that the city had approximately 12 acres per 1,000 residents,

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including local, regional, and State parks, which would substantially exceed the City's goal of two acres per 1,000 residents. However, fewer parks are located in South Berkeley than in other parts of the city. While several local parks are near the Plan Area, such as Greg Brown Mini-Park (adjacent to the Plan Area's eastern boundary) and Tim Moellering Field (adjacent to the Plan Area's western boundary), no parks are located inside the Plan Area. Nonetheless, while the 2020 EIR found that development under the Specific Plan would increase demand for parks in an area of Berkeley that is currently underserved, it would overall increase recreational opportunities in the Plan Area by encouraging development of community space, pocket parks, and plazas. Furthermore, the Plan would not cause Berkeley to fall below the City's goal of two acres of parkland per 1,000 residents. Therefore, impacts were found to be less than significant.

**Impacts of the Proposed Project**

As discussed in Section 5.14, *Population and Housing*, the proposed project would add an additional 400 residents to the area, or approximately 3,866 total residents when combined with growth anticipated under the Specific Plan as analyzed in the 2020 EIR. Currently, there are approximately 252 acres of parkland in the City limits and a population of approximately 122,580 residents (California Department of Finance [DOF] 2020). Therefore, the City provides a ratio of 2.05 acres per 1,000 residents, not taking into account regional parks and recreational opportunities nearby Berkeley but outside the City limits. Buildout of the proposed project, when combined with the growth anticipated under the Specific Plan, would lead to a total of 126,446 residents within the City, and would decrease the ratio of 2.05 acres per 1,000 residents to 1.98 acres per 1,000 residents. Chapter 7, *Public Space*, of the Specific Plan includes an overarching goal to provide public spaces with opportunities for recreation. Within this chapter are policies that specifically aim to increase local park open space. Policy 7.1 encourages passive and active public open space and recreation and identifies the creation of a diverse range of public recreational spaces as a priority, and Policy 7.8 calls for taking advantage of opportunities to install temporary open spaces, plazas, and park uses (e.g., parklets, pop-up parks, temporary parks and plazas on paved surfaces). Temporary park uses and recreation spaces would provide greater flexibility in meeting demand for parkland in the Plan Area, including for potential residents on the five parcels that would be added to the Plan Area under the proposed project. Therefore, although the proposed project would incrementally increase demand for parks and recreation, with implementation of policies in the Specific Plan, substantial overuse of existing parks would not occur such that the construction or expansion of facilities which may have an adverse physical effect on the environment would be needed. Overall impacts would be less than significant.

**Conclusion**

No substantial changes have occurred that require major revisions to the 2020 EIR. There is no new information indicating that the proposed project would have new significant impacts or substantially more severe significant impacts with respect to recreation than were identified in the 2020 EIR. None of the conditions listed in *CEQA Guidelines* Section 15162 requiring preparation of a subsequent EIR would occur. No new mitigation measures are necessary.

## 5.17 Transportation

### Impacts Identified in the 2020 EIR

Impacts T-1 through T-4 and T-6 of the 2020 EIR analyzed impacts of the Specific Plan on traffic operations at the identified study intersections under Existing and Year 2040 conditions based on the City of Berkeley's significance criteria for intersection operations. The analysis found that addition of traffic generated by the development projects facilitated by the Specific Plan and the roadway modifications proposed by the Specific Plan would cause the signalized Adeline Street/Alcatraz Avenue intersection levels of service (LOS) to deteriorate such that impacts would be significant and unavoidable. The 2020 EIR also found that the proposed Specific Plan would result in Congestion Management Plan (CMP) roadway segment LOS levels to deteriorate such that impacts would be significant and unavoidable. The 2020 EIR also found that the addition of traffic generated by the Specific Plan may result in the need to signalize some intersections. Mitigation Measure T-2 was required.

#### Mitigation Measure T-2 – Signal Warrant Study and Signalization

Development projects tiering from the Adeline Street Specific Plan EIR with primary automobile access on one of the following local streets that is currently controlled by a stop-sign at the intersection with a major street shall evaluate traffic operations and the MUTCD signal warrants at the intersection:

- Shattuck Avenue at Blake, Parker, and Derby Streets
- Adeline Street at Stuart, Russell, Essex, Woolsey, Fairview, and Harmon Streets

The signal warrant study shall be completed as part of the environmental review process for the development project. If the intersection meets the signal warrants and the development project would add ten or more trips to the critical movement that operates at LOS F during the AM and/or PM peak hour, the study shall identify improvements to mitigate the impact. The improvements may consist of signalizing the intersection, and/or restricting one or more movements at the intersection. The study shall also evaluate the secondary effects of the identified improvement, such as traffic diverted to other streets due to turn restrictions. The development project shall install the identified improvement as approved by the City of Berkeley staff prior to full occupancy of the project.

As discussed under Impact T-5 and T-10 of the 2020 EIR, the roadway modifications proposed under the Specific Plan would improve pedestrian and bicycle experiences and facilities. Further, the Specific Plan would not conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities. Impacts were found to be less than significant.

As discussed under Impact T-7 and T-8, the 2020 EIR found that the Specific Plan would not affect air traffic patterns or substantially increase hazards due to a design feature or incompatible uses, and as such would result in less than significant impacts.

As discussed under Impact T-9, the 2020 EIR found that the Specific Plan would not result in inadequate emergency access as the Adeline corridor would continue to accommodate fire apparatus and other emergency response vehicles. The Specific Plan's design guidelines and proposed street modifications provide for adequate accommodation of fire access to the building frontages and fire hydrants throughout the Plan Area. Therefore, impacts were found to be less than significant.

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**Impacts of the Proposed Project**

Recent changes to the *CEQA Guidelines* have removed LOS as a consideration in determining the significance of transportation-related impacts under CEQA and replaced LOS with other metrics, such as VMT. The 2020 EIR did include an informational analysis of VMT impacts. However, it did not include a VMT analysis consistent with the City of Berkeley’s adopted methodology and thresholds of significance which were adopted after the circulation of the Draft EIR. Therefore, Fehr & Peers prepared an analysis of VMT and transportation impacts associated with the proposed project (Fehr & Peers 2021; Appendix A). The analysis included a trip generation estimate, shown in Table 2, and a VMT estimate consistent with the City of Berkeley’s adopted methodology and thresholds of significance for VMT.

**Table 2 Automobile Trip Generation Summary**

Uses	Units <sup>1</sup>	Daily	Weekday AM Peak Hour			Weekday PM Peak Hour		
			In	Out	Total	In	Out	Total
Residential <sup>2</sup>	1,617 DU	8,810	136	387	524	391	250	641
Retail <sup>3</sup>	65 KSF	4,490	114	70	184	190	205	395
	<i>Subtotal</i>	<i>13,300</i>	<i>250</i>	<i>457</i>	<i>708</i>	<i>581</i>	<i>455</i>	<i>1,036</i>
	MXD Adjustment <sup>4</sup>	(4,260)	(108)	(197)	(304)	(261)	(205)	(466)
	Pass-by Adjustment <sup>5</sup>	(520)	(11)	(7)	(18)	(35)	(38)	(74)
Net New Total Trips		8,520	132	254	386	284	212	496
Approved EIR Project <sup>6</sup>		7,910	116	237	353	270	193	463
<b>Proposed Project Net New Trips</b>	<b>167 DU</b>	<b>610</b>	<b>16</b>	<b>17</b>	<b>33</b>	<b>14</b>	<b>19</b>	<b>33</b>

1. DU = dwelling unit, KSF = 1,000 square feet., ( ) denotes subtraction
2. ITE Trip Generation (10th Edition) land use category 221 (Mid-Rise Apartments, General Urban/Suburban):  
 Daily:  $T = 5.45(X) - 1.75$   
 AM Peak Hour:  $\ln(T) = 0.98 \cdot \ln(X) - 0.98$  (26% in, 74% out)  
 PM Peak Hour:  $\ln(T) = 0.96 \cdot \ln(X) - 0.63$  (61% in, 39% out)
3. ITE Trip Generation (10th Edition) land use category 820 (Shopping Center, General Urban/Suburban):  
 Daily:  $\ln(T) = 0.68 \cdot \ln(X) + 5.57$   
 AM Peak Hour:  $T = 0.5(X) + 151.78$  (62% in, 38% out)  
 PM Peak Hour:  $\ln(T) = 0.74 \cdot \ln(X) + 2.89$  (48% in, 52% out)
4. For weekdays, reductions based on application of MXD model: Daily = 32%, AM Peak Hour = 43%, PM Peak Hour = 45%
5. Based on ITE Trip Generation Handbook (2nd Edition), the average PM peak hour pass-by rates for land use category 820 is 34%. A 17% daily and AM peak hour pass-by rate is applied to retail uses. This adjustment was applied to the trip generation after the MXD adjustment.
6. Adeline Corridor Specific Plan Draft EIR, Table 4.12-6 (May 2019)  
 Source: Fehr & Peers 2021

As summarized in Table 2, the proposed project (167 dwelling units) is estimated to generate approximately 610 daily, 33 AM peak hour, and 33 PM peak hour net new automobile trips.

*CEQA Guidelines* Section 15064.3(b) indicates that land use projects would have a significant impact if the project resulted in vehicle miles traveled (VMT) exceeding an applicable threshold of significance. In June 2020, the City of Berkeley developed VMT Criteria and Thresholds for VMT analysis according the guidance from OPR:



- A residential project's VMT impact is considered less-than-significant if its household VMT per capita is at least 15 percent below the regional average Household VMT per capita.
- An employment-generating project's VMT impact is considered less-than-significant if its home-work VMT per worker is at least 15 percent below the regional average home-work VMT per worker.

As described in Appendix A, the City of Berkeley has developed screening criteria to provide project applicants with a conservative indication of whether a project could result in potentially significant VMT impacts. If the screening criteria are met by a project, the applicant would not need to perform a detailed VMT assessment for their project. One of the City's screening criteria includes whether or not a project is within a Transit Priority Area (TPA). Projects located within a TPA would not result in a significant impact, and a detailed traffic assessment is not required. Both the project as analyzed in the 2020 EIR and the proposed project satisfy the TPA and Projects in Low-VMT Areas screening thresholds. However, considering the size of the project and the number of new residential units that would be facilitated by the project, a more detailed VMT analysis for the combined EIR and Addendum projects is described below.

Table 3 summarizes the household VMT per capita and home-work VMT per worker for the Specific Plan, Addendum Project, and the Bay Area region as estimated by the Alameda CTC Model in 2020 and 2040. The table also includes the threshold used to determine the significance of the VMT impact, defined as 15 percent below the Bay Area regional average.

**Table 3 Vehicle Miles Traveled Summary**

Scenario	Residential (Household VMT per Capita)		Employment (Home-Work VMT per Worker)	
	2020	2040	2020	2040
Specific Plan Project	9.8	10.2	12.6	14.8
Addendum Project	9.7	10.1	12.5	14.8
Regional Average	19.8	19.1	18.1	18.2
<b>Regional Average minus 15% (threshold of significance)</b>	<b>16.8</b>	<b>16.2</b>	<b>15.4</b>	<b>15.5</b>
<i>Significant Impact?</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>

Source: Alameda County Transportation Commission 2019; Fehr & Peers 2021

Under both 2020 and 2040 conditions, the household VMT per capita and home-work VMT per worker for both the project as analyzed in the 2020 EIR and proposed project are estimated to be below the threshold of significance (i.e., more than 15 percent below the regional average). Therefore, both the Specific Plan and Addendum projects (and the two combined) would have a less-than-significant impact on VMT and no mitigation measures would be required (Fehr & Peers 2021).

The proposed project involves infill redevelopment along the perimeter of the Plan Area, thereby expanding it, and would not include modifications to transit, bicycle, or pedestrian facilities or related Plan policies. Therefore, it would not conflict with applicable transit, bicycle, or pedestrian plans and policies.

Additionally, the proposed project would not be located near incompatible uses, create hazards as a result of a geometric design feature, or affect air traffic patterns. The proposed project itself would not result in inadequate emergency access to the parcels expected to be

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added within the Plan Area. The proposed project would not change roadway configuration or access and emergency services would continue to be able to access the parcels. Impacts would be less than significant.

**Conclusion**

No substantial changes have occurred that require major revisions to the 2020 EIR. There is no new information indicating that the proposed project would have new significant impacts or substantially more significant impacts with respect to transportation and traffic than were identified in the 2020 EIR. None of the conditions listed in *CEQA Guidelines* Section 15162 requiring preparation of a subsequent EIR would occur. No new or revised mitigation measures are necessary.

## 5.18 Tribal Cultural Resources

**Impacts Identified in the 2020 EIR**

As discussed in Impact CR-5 in Section 4.3, *Cultural Resources*, of the 2020 EIR, effects on tribal cultural resources (TCRs) are only known once a specific project has been proposed because the effects depend highly on both the individual project site conditions and the characteristics of the proposed ground-disturbing activity. Future projects completed under the Specific Plan would be required to comply with the requirements of AB 52, including consultation with California Native American tribes when each project is proposed consistent with applicable regulations, where it may result in the identification of TRCs. The Bay Area has a long history of Native American occupation, so discovery of TCRs during development of the Plan Area is possible; however, the City of Berkeley implements a standard condition of approval for TCRs for all Berkeley projects.

**Impacts of the Proposed Project**

The proposed project would expand the boundaries of the Plan Area but would not involve specific development projects on the additional parcels. Development of the five parcels could occur without the proposed project; the proposed project would redesignate the parcels to allow for additional housing development. Nonetheless, future development would also be subject to AB 52 requirements and standard conditions of approval for addressing impacts to tribal cultural resources. With adherence to existing regulations and standards, impacts would be less than significant.

**Conclusion**

No substantial changes have occurred that require major revisions to the 2020 EIR. There is no new information indicating that the proposed project would have new significant impacts or substantially more severe significant impacts with respect to tribal cultural resources than were identified in the 2020 EIR. None of the conditions listed in *CEQA Guidelines* Section 15162 requiring preparation of a subsequent EIR would occur. No new mitigation measures are necessary.

## 5.19 Utilities and Service Systems

### Impacts Identified in the 2020 EIR

As discussed in Section 4.13, *Utilities and Service Systems*, of the 2020 EIR, the East Bay Municipal Utility District (EBMUD) provides water and wastewater services to the project site and the City of Berkeley provides stormwater and solid waste removal services. Development under the Specific Plan (1,450 residential units and 65,000 square feet of commercial space) was estimated to use approximately 252,387 gallons of water per day and generate 201,485 gallons of wastewater per day. Additionally, development under the Specific Plan was estimated to generate 4.4 tons of solid waste per day, or 1.1 tons per day assuming a 76 percent diversion rate. The 2020 EIR found the Specific Plan would not result in significant impacts to wastewater, or solid waste treatment and/or disposal as facilities had adequate capacity to meet the needs of the project. Furthermore, as discussed in Section 4.7, *Hydrology and Water Quality*, of the 2020 EIR, the Specific Plan would not result in any impacts related to stormwater infrastructure as future development would ensure higher rates of infiltration of stormwater, thereby reducing the amount of runoff affecting stormwater infrastructure, through compliance with existing programs and permits.

### Impacts of the Proposed Project

Assuming water use is consistent with the approximately 164 gallons per day per residential unit (gpd/unit) for Low-Rise Apartments, as discussed in Section 4.13, *Utilities and Service Systems*, of the 2020 EIR, full buildout under the proposed project would use approximately 27,388 gallons of water per day, an increase of 11 percent compared to what was calculated in the 2020 EIR. Assuming wastewater generation is approximately 80 percent of water use, the proposed project would generate approximately 21,910 gallons of wastewater per day, an increase of 12 percent compared to the calculations in the 2020 EIR. Like the Specific Plan, the proposed project would involve a revision to the Plan Area boundary and potential redevelopment of existing buildings. The proposed project would be required to comply with California Green Building Code water efficiency standards and would not generate population growth beyond what was identified in EBMUD's *2015 Urban Water Management Plan* (EBMUD 2016). EMBUD's wastewater treatment plant has over 100 million gallons per day of excess capacity and would be able to accommodate wastewater from the proposed project. Overall, EMBUD would have adequate water supply and wastewater treatment capacity to serve the proposed project.

Assuming solid waste generation of 4 pounds of solid waste per unit per day, the proposed project would produce approximately 668 pounds or 0.33 tons of solid waste per day, an increase of 12 percent over what was analyzed in the 2020 EIR. The increase in solid waste of less than 0.5 tons of solid waste per day, however, would not exceed the capacity of area landfills. Lastly, like the Specific Plan, the proposed project involves redevelopment of existing buildings and would not result in additional stormwater runoff that would affect stormwater infrastructure.

Overall, all treatment and/or disposal facilities and water and wastewater infrastructure would have adequate capacity for the proposed project. Therefore, the proposed project would not result in significant impacts to utilities and service systems.

### Conclusion

No substantial changes have occurred that require major revisions to the 2020 EIR. There is no new information indicating that the proposed project would have new significant impacts

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or substantially more severe significant impacts with respect to utilities and service systems than were identified in the 2020 EIR. None of the conditions listed in *CEQA Guidelines* Section 15162 requiring preparation of a subsequent EIR would occur. No new mitigation measures are necessary.

## 5.20 Wildfire

### **Impacts Identified in the 2020 EIR**

Impacts associated with wildland fire were discussed in Section 4.6, *Hazards and Hazardous Material*, of the 2020 EIR. As discussed, the Plan Area is surrounded by urban land uses that are not mixed with or adjacent to wildlands and the Plan Area is not located in a Very High Fire Hazard Severity Zone and would not be exposed to an increased risk of wildfires. Therefore, no impact would occur.

### **Impacts of the Proposed Project**

Additional recent changes to the *CEQA Guidelines* have added additional checklist questions related to wildfire hazards to Appendix G of the *CEQA Guidelines*. Therefore, additional discussion related to wildfire hazards is provided herein to supplement the 2020 EIR. Wildfires are of particular concern in areas designated as a Very High Fire Hazard Severity Zone (VHFHSZ). The Plan Area and the proposed additional parcels are not located within land classified as a VHFHSZ (CAL FIRE 2020).

In addition, the project may have a significant impact if, due to slope, prevailing winds, and other factors, the project would exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations from a wildfire or uncontrolled spread of a wildfire. The additional five parcels are not near wildlands. Although the site is in an urbanized area and surrounded by development, heavy duty equipment used during project construction may produce sparks that could ignite local site-specific vegetation. The project would comply with requirements related to construction equipment and fire suppressant (such as California Public Resources Code Section 4442). Therefore, with compliance with applicable State requirements, the project would not exacerbate wildfire risk and impacts would be less than significant.

The project may have a significant impact if it would require the installation of associated infrastructure that may exacerbate fire risk or may result in temporary or ongoing impacts to the environment. The proposed project is infill development, and current buildings in the area are currently served by existing roads, emergency water sources, power lines, and utilities. Although utility trenching may occur to assure adequate service to new buildings, no extensions beyond the project site into areas of wildfire concern would occur. Therefore, the project would not result in the installation of associated infrastructure that could otherwise exacerbate fire risk or result in temporary or ongoing impacts to the environment, and the project would have no impact.

Finally, the proposed project may have a significant impact if it would expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes. The additional five parcels are not immediately downslope from naturally vegetated hillsides and are not located in a designated flood zone. The proposed project's urban location and compliance with applicable regulatory requirements would not expose people or structures to significant downslope or downstream flooding or landslide risks resulting from runoff, post-fire slope instability, or drainage changes. Therefore, impacts would be less than significant.

### **Conclusion**

No substantial changes have occurred that require major revisions to the 2020 EIR. There is no new information indicating that the proposed project would have new significant impacts or substantially more severe significant impacts with respect wildfire than were identified in the 2020 EIR. None of the conditions listed in *CEQA Guidelines* Section 15162 requiring preparation of a subsequent EIR would occur. No new mitigation measures are necessary.

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## 6 Conclusion

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This addendum demonstrates that potential impacts associated with the proposed project are consistent with potential impacts characterized in and mitigation measures developed for the 2020 EIR. Substantive revisions to the 2020 EIR are not necessary because no new significant impacts or impacts of substantially greater severity than previously described would occur as a result of the proposed project. Therefore, the following determinations are applicable:

- No further evaluation of environmental impacts is required for the proposed project
- No Subsequent EIR is necessary per *CEQA Guidelines* Section 15162
- This addendum is the appropriate level of environmental analysis and documentation for the proposed project in accordance with *CEQA Guidelines* Section 15164

Pursuant to *CEQA Guidelines* Section 15164(c), this addendum will be included in the public record for the 2020 EIR and will be considered as part of the deliberations on the proposed amendment to the Plan Area boundary and related redesignation and rezoning. Documents related to this addendum will be available at the City of Berkeley's Permit Service Center, 1947 Center Street, 3rd Floor, during regular business hours.

## 7 References and Preparers

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## List of Preparers

Rincon Consultants, Inc. prepared this addendum under contract to the City of Berkeley. Persons and firms involved in data gathering, analysis, project management, and quality control include the following:

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# Appendix A

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Transportation Impacts Memorandum

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# Memorandum

Date: April 8, 2021  
To: Karly Kaufman, Rincon Consultants  
From: Corwin Bell and Sam Tabibnia, Fehr & Peers  
Subject: **Adeline Corridor Specific Plan EIR Addendum—Transportation Findings**

*OK21-0404*

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This memorandum presents our findings for the Adeline Corridor Specific Plan EIR Addendum (Addendum Project). The City of Berkeley certified the Adeline Corridor Specific Plan EIR (EIR Project) in December 2020. The Addendum Project consists of expanding the Specific Plan area to include 167 additional residential units.

This memorandum presents the trip generation estimate and the vehicle miles traveled (VMT) analysis for the Addendum Project. Furthermore, since the EIR certified in 2020 did not include a VMT analysis consistent with the City of Berkeley's adopted methodology and thresholds of significance, this memorandum also presents the VMT analysis for the EIR Project consistent with the City's adopted methodology and thresholds of significance.

Based on our evaluation:

- The Addendum Project (consisting of 167 dwelling units) is estimated to generate 610 daily trips, 33 AM peak hour trips, and 33 PM peak hour trips.
- Both the EIR Project and the Addendum Project would have a less-than-significant impact on VMT.

## Project Description

The Adeline Corridor Specific Plan EIR, which was certified by the City of Berkeley in December 2020, evaluated the impacts of 1,450 dwelling units and 65,000 square feet of retail uses. The Addendum Project would expand the Specific Plan area and add 167 dwelling units in addition to the EIR project for a total of 1,617 dwelling units and 65,000 square feet of retail.

## Trip Generation

Trip generation is the process of estimating the number of vehicles that would likely access the Project on a typical day. **Table 1** summarizes the trip generation for the Addendum Project. This analysis uses the same methodology used in the certified EIR to estimate the trip generation for the Addendum Project. The methodology starts with the trip generation data published by the Institute of Transportation Engineers (ITE) in the *Trip Generation Manual (10th Edition)* as a starting point to estimate the vehicle trip generation. Since ITE's *Trip Generation Manual* is primarily based on data collected at single-use suburban sites where the automobile is often the only travel mode, the methodology adjusts the trip generation to account for the mix of uses in the project area and the access to regional and local transit service.

As summarized in **Table 1**, the Addendum project (167 dwelling units) is estimated to generate about 610 daily, 33 AM peak hour, and 33 PM peak hour net new automobile trips.

**Table 1: Automobile Trip Generation Summary**

Uses	Units <sup>1</sup>	Daily	Weekday AM Peak Hour			Weekday PM Peak Hour		
			In	Out	Total	In	Out	Total
Residential <sup>2</sup>	1,617 DU	8,810	136	387	524	391	250	641
Retail <sup>3</sup>	65 KSF	4,490	114	70	184	190	205	395
Subtotal		13,300	250	457	708	581	455	1,036
MXD Adjustment <sup>4</sup>		(4,260)	(108)	(197)	(304)	(261)	(205)	(466)
Pass-by Adjustment <sup>5</sup>		(520)	(11)	(7)	(18)	(35)	(38)	(74)
Net New Total Trips		8,520	132	254	386	284	212	496
Approved EIR Project <sup>6</sup>		7,910	116	237	353	270	193	463
<b>Addendum</b>								
Project Net	167 DU	610	16	17	33	14	19	33
<b>New Trips</b>								

1. DU = dwelling unit, KSF = 1,000 square feet., ( ) denotes subtraction
2. ITE Trip Generation (10th Edition) land use category 221 (Mid-Rise Apartments, General Urban/Suburban):  
 Daily:  $T = 5.45(X) - 1.75$   
 AM Peak Hour:  $\ln(T) = 0.98 \cdot \ln(X) - 0.98$  (26% in, 74% out)  
 PM Peak Hour:  $\ln(T) = 0.96 \cdot \ln(X) - 0.63$  (61% in, 39% out)
3. ITE Trip Generation (10th Edition) land use category 820 (Shopping Center, General Urban/Suburban):  
 Daily:  $\ln(T) = 0.68 \cdot \ln(X) + 5.57$   
 AM Peak Hour:  $T = 0.5(X) + 151.78$  (62% in, 38% out)  
 PM Peak Hour:  $\ln(T) = 0.74 \cdot \ln(X) + 2.89$  (48% in, 52% out)
4. For weekdays, reductions based on application of MXD model: Daily = 32%, AM Peak Hour = 43%, PM Peak Hour = 45%
5. Based on ITE Trip Generation Handbook (2nd Edition), the average PM peak hour pass-by rates for land use category 820 is 34%. A 17% daily and AM peak hour pass-by rate is applied to retail uses. This adjustment was applied to the trip generation after the MXD adjustment.
6. Adeline Corridor Specific Plan Draft EIR, Table 4.12-6 (May 2019)  
 Source: Fehr & Peers 2021.

## Vehicle Miles Traveled (VMT)

The certified Adeline Corridor Specific Plan EIR included a preliminary non-CEQA VMT assessment for the EIR project. The VMT evaluation was preliminary because the City of Berkeley did not have significance thresholds or approved methodology at the time that the EIR analysis was completed. City of Berkeley adopted significance thresholds, analysis methodology, and screening criteria for VMT assessment in November 2020. A discussion of the City of Berkeley's significance criteria, applicability of screening thresholds to both the EIR and Addendum projects, followed by an estimation of the VMT generated by the both the EIR and Addendum projects, consistent with the *City of Berkeley VMT Criteria and Thresholds Report* (June 29, 2020) is provided below.

## Significance Criteria

The City of Berkeley uses the following thresholds to determine if a project would have a significant impact on VMT:

- A residential project's VMT impact is considered less-than-significant if its household VMT per capita is at least 15 percent below the regional average household VMT per capita.

- An employment-generating project's VMT impact is considered less-than-significant if its home-work VMT per worker is at least 15 percent below the regional average home-work VMT per worker.

The household VMT per capita measures all the trips by motor vehicle on a typical weekday associated with a residential use, such as trips to work, school, or shop, and divides that distance by the number of residents in the project area. The home-work VMT per worker measures all the weekday commute trips between homes and workplaces and divides that total distance by the number of workers at the project site.

## Screening Thresholds

The City of Berkeley's VMT screening thresholds applicable to both the EIR and Addendum projects are described below.

- **Transit Priority Area (TPA)** –Projects located within 0.5-mile walkshed of an existing major transit stop<sup>2</sup> or within 0.25-mile of an existing stop along a high-quality transit corridor<sup>3</sup> that meet certain characteristics are expected to generate low VMT and cause a less than significant VMT impact, unless they have any of the following characteristics:
  - Has a Floor Area Ratio (FAR) of less than 0.75 for office uses
  - Includes more than 200,000 square feet of office or commercial space
  - Includes more parking supply than the project's estimated demand
  - Is inconsistent with the City's General Plan, an applicable Specific Plan, or an applicable Sustainable Communities Strategy (as determined by the City, with input from MTC)
  - Replaces affordable residential units with market-rate residential units
  - Has project-specific or location-specific information that indicates that the project will generate significant levels of VMT

The Ashby BART Station is a major transit station within the project area. In addition, one bus route with 15-minute or shorter service intervals during peak commute hours, AC Transit Line 18, operates in the project area. All of the project area, consisting of the Specific Plan area evaluated in the certified EIR and the expanded area under the Addendum project, is either within 0.5-mile walkshed of a major transit station (Ashby BART Station) or within 0.25-mile walkshed of a bus stop along a high-quality transit corridor (Line 18 along Shattuck Avenue).

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<sup>2</sup> According to the California Public Resources Code, § 21064.3, 'Major transit stop' is defined as a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

<sup>3</sup> According to the California Public Resources Code, § 21155, a 'high-quality transit corridor' is defined as a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.

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Both the EIR and Addendum projects would meet the TPA screening threshold because the developments in the project area would meet the following conditions:

- The developments facilitated by the proposed Adeline Corridor Specific Plan EIR and Addendum are expected to have a FAR greater than 0.75.
- The developments facilitated by the proposed Adeline Corridor Specific Plan EIR and Addendum, would include about 65,000 square feet of commercial space, and the project would not include more than 200,000 square feet of office or commercial space.
- The Adeline Corridor Specific Plan and associated C-Adeline Corridor District zoning have no parking minimum for new commercial development under 10,000 gross square feet (gsf) and a parking minimum of one space per 1,000 sf for commercial development that is 10,000 gsf or greater and no parking minimum for new residential development<sup>4</sup>. The Specific Plan also includes parking maximums which would limit the amount of parking that would be provided for specific developments (e.g., one space/unit for new residential, 1.5 spaces per 1,000 sf of non-residential space). Thus, individual developments would provide minimal parking and would not provide more parking supply than the estimated demand.
- The project area is located within the Adeline and South Shattuck Priority Development Areas (PDAs) as defined by Plan Bay Area and is therefore consistent with the region's Sustainable Communities Strategy.
- The developments facilitated by the proposed Adeline Corridor Specific Plan EIR and Addendum would not result in any net loss in the number of deed-restricted affordable housing units within the project area.
- The project area does not have any other project-specific or location-specific information that indicates that the project would generate significant levels of VMT.
- **Projects in Low-VMT Areas** – Projects that are in low-VMT areas and that have characteristics similar to other uses already located in those areas can be presumed to generate VMT at similar rates. The low-VMT areas in Berkeley are defined based on the results of the Alameda CTC model, and mapped.

Based on the maps provided in the *City of Berkeley VMT Criteria and Thresholds Report*, all of the EIR and Addendum project area is located in a low-VMT area. The project area currently consists primarily of mixed residential and retail uses, and since the proposed project would increase residential and retail density along a transit corridor, it can be presumed that the proposed project would have similar or lower VMT as the existing residential and retail uses

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<sup>4</sup> *Adeline Corridor Specific Plan, Chapter 3. Land Use*, adopted December 8, 2020; Berkeley Municipal Code Chapter 23E.70 C-Adeline Corridor Commercial District, adopted December 15, 2020, effective January 14, 2021

in the project area. Therefore, the proposed project would meet the Projects in Low-VMT Areas screening threshold.

Both the EIR and Addendum projects satisfy the TPA and Projects in Low-VMT Areas screening thresholds. However, considering the size of the project and the number of new residential units that would be facilitated by the project, a more detailed VMT analysis for both the EIR and Addendum projects is described below.

## Detailed VMT Estimation

This analysis uses the Alameda CTC Model to estimate the household VMT per capita and home-work VMT per worker generated by both the EIR and Addendum projects under existing (i.e., 2020) and cumulative (i.e., 2040) conditions. Travel demand models represent neighborhoods in transportation analysis zones (TAZs). The Alameda CTC Model includes approximately 117 TAZs in the City of Berkeley, which vary in size from a few blocks in and around Downtown and the Adeline Corridor to larger geographic areas farther away. TAZs are used in transportation planning models for transportation analysis and other planning purposes.

The Alameda CTC Model uses various socio-economic variables, such as number of households and residents by household type and number of jobs by employment category at a TAZ level, and transportation system assumptions such as type of roadway, number of lanes, major bicycle and pedestrian facilities, and transit service capacity and frequency to forecast various travel characteristics, such as daily and peak-hour travel volumes and VMT.

The Alameda CTC Model uses a four-step modeling process that consists of trip generation, trip distribution, mode split, and trip assignment. This process accounts for changes in travel patterns due to future growth and expected changes in the transportation network. The Alameda CTC Model assigns all predicted trips within, across, to, or from the nine-county San Francisco Bay Area region to the roadway network and transit system by mode (i.e., single-occupant or carpool vehicle, biking, walking, or transit) and transit carrier (i.e., bus or rail) for a given scenario. The VMT generated by each TAZ can be estimated by tracking the number of trips and the length of each trip generated by the TAZ.

The Alameda CTC Model version released in May 2019, which incorporates land use data and transportation network improvements consistent with Plan Bay Area 2040 (i.e., the Sustainable Communities Strategy), is used for this analysis. The 2020 and 2040 land use databases were modified to reflect the buildout of the Addendum project, which would consist of about 1,617 residential units and 65,000 square feet of retail/commercial space.

As a regional planning tool, the Alameda CTC Model was developed through an extensive model validation process. The model is intended to replicate existing vehicular travel behavior and can provide a reasonable estimate of VMT generated in various geographic areas on a typical weekday. It can also estimate future VMT that reflects planned local and regional land use and transportation system changes. Thus, the Alameda CTC Model was used to estimate the household VMT per capita and the home-work VMT per worker generated by the EIR and Addendum projects under 2020 and 2040 conditions.

**Table 2** summarizes the household VMT per capita and home-work VMT per worker for the certified EIR project, Addendum Project, and the Bay Area region as estimated by the Alameda CTC Model in 2020 and 2040. The table also includes the threshold used to determine the significance of the VMT impact, defined as 15 percent below the Bay Area regional average.

**Table 2: Vehicle Miles Traveled Summary**

Scenario	Residential		Employment	
	(Household VMT per Capita)		(Home-Work VMT per Worker)	
	2020	2040	2020	2040
Certified EIR Project	9.8	10.2	12.6	14.8
Addendum Project	9.7	10.1	12.5	14.8
Regional Average	19.8	19.1	18.1	18.2
Regional Average minus 15% (threshold of significance)	16.8	16.2	15.4	15.5
Significant Impact?	No	No	No	No

Source: Alameda County Transportation Commission, 2019. Fehr & Peers, 2021.

Under both 2020 and 2040 conditions, the household VMT per capita and home-work VMT per worker for both the EIR and Addendum projects are estimated to be below the threshold of significance (i.e., 15 percent below the regional average). Therefore, both the EIR and Addendum projects would have a less-than-significant impact on VMT and no mitigation measures would be required.



## Info Item

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**From:** Numainville, Mark L.

**Sent:** Tuesday, April 27, 2021 12:52 PM

### Commission Secretaries,

The newly amended Rules of Procedure is now posted on the web. The new version includes the addition of Appendix D - TEMPORARY RULES REGARDING POLICY COMMITTEES AND LEGISLATIVE WORKFLOW DURING THE COVID-19 LOCAL EMERGENCY (p. 44-45). Please share this information with your commission.

[https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3 -  
\\_City Council/City%20Council%20Rules%20of%20Procedure.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/City%20Council%20Rules%20of%20Procedure.pdf)

Mark Numainville  
City Clerk  
City of Berkeley  
(510) 981-6909



# **The Berkeley City Council Rules of Procedure and Order**

Adopted by Resolution No. 69,807–N.S.

Effective April 20, 2021

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## I. DUTIES

### A. Duties of Mayor

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

### B. Duties of Councilmembers

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

### C. Motions to be Stated by Chair

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

### D. Decorum by Councilmembers

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

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

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

### E. Voting Disqualification

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

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

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

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

## II. MEETINGS

### A. **Call to Order - Presiding Officer**

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

### B. **Roll Call**

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

### C. **Quorum Call**

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

### D. **Council Meeting Conduct of Business**

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

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

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

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



**E. Adjournment**

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

**F. Unfinished Business**

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

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

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

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

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

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

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

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

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

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

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

**I. Ad Hoc Subcommittees**

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

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

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

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

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

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

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

### III. AGENDA

#### A. Declaration of Policy

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

#### B. Definitions

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

1. "Agenda Item" means an item placed on the agenda (on either the Consent Calendar or as a Report For Action) for a vote of the Council by the Mayor or any Councilmember, the City Manager, the Auditor, or any board/commission/committee created by the City Council, or any Report For Information which may be acted upon if the Mayor or a Councilmember so requests. For purposes of this section, appeals shall be considered action items. All information from the City Manager concerning any item to be acted upon by the Council shall be submitted as a report on the agenda and not as an off-agenda memorandum and shall be available for public review, except to the extent such report is privileged and thus confidential such as an attorney client communication concerning a litigation matter. Council agenda items are limited to a maximum of four Authors and Co-Sponsors, in any combination that includes at least one Author.

Authors must be listed in the original item as submitted by the Primary Author. Co-Sponsors may only be added in the following manner:

- In the original item as submitted by the Primary Author
  - In a revised item submitted by the Primary Author at the Agenda & Rules Committee
  - By verbal request of the Primary Author at the Agenda & Rules Committee
  - In a revised item submitted by the Primary Author in Supplemental Reports and Communications Packet #1 or #2
  - By verbal or written request of the Mayor or any Councilmember at the Policy Committee meeting or meeting of the full Council at which the item is considered
2. Agenda items shall contain all relevant documentation, including the information listed below:
    - a) A descriptive title that adequately informs the public of the subject matter and general nature of the item or report;
    - b) Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;

- c) Recommendation of the report's Primary Author that describes the action to be taken on the item, if applicable;
  - d) Fiscal impacts of the recommendation;
  - e) A description of the current situation and its effects;
  - f) Background information as needed;
  - g) Rationale for recommendation;
  - h) Alternative actions considered;
  - i) For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items);
  - j) Person or persons to contact for further information, with telephone number;
  - k) Additional information and analysis as required. It is recommended that reports include the points of analysis in Appendix B - Guidelines for Developing and Writing Council Agenda Items.
3. "Author" means the Mayor or other Councilmembers who actually authored an item by contributing to the ideas, research, writing or other material elements.
4. "Primary Author" means the Mayor or Councilmember listed first on the item. The Primary Author is the sole contact for the City Manager with respect to the item. Communication with other Authors and Co-Sponsors, if any, is the responsibility of the Primary Author.
5. "Co-Sponsor" means the Mayor or other Councilmembers who wish to indicate their strong support for the item, but are not Authors, and are designated by the Primary Author to be co-sponsors of the council agenda item.
6. "Agenda" means the compilation of the descriptive titles of agenda items submitted to the City Clerk, arranged in the sequence established in Section III.E hereof.
7. "Packet" means the agenda plus all its corresponding agenda items.
8. "Emergency Matter" arises when prompt action is necessary due to the disruption or threatened disruption of public facilities and a majority of the Council determines that:
- a) A work stoppage or other activity which severely impairs public health, safety, or both;
  - b) A crippling disaster, which severely impairs public health, safety or both. Notice of the Council's proposed consideration of any such emergency

matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.

9. "Continued Business" Items carried over from a prior agenda of a meeting occurring less than 11 days earlier.
10. "Old Business" Items carried over from a prior agenda of a meeting occurring more than 11 days earlier.

**C. Procedure for Bringing Matters Before City Council**

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

Matters may be placed on the agenda by the Mayor or any Councilmember, the City Manager, the Auditor, or any board/commission/committee created by the City Council. All items are subject to review, referral, and scheduling by the Agenda & Rules Committee pursuant to the rules and limitations contained herein. The Agenda & Rules Committee shall be a standing committee of the City Council.

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

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

**a) Items Authored by the Mayor, a Councilmember, or the Auditor.**

As to items authored by the Mayor, a Councilmember, or the Auditor, the Agenda & Rules Committee shall review the item and may take the following actions:

- i. Refer the item to a commission for further analysis (Primary Author may decline and request Policy Committee assignment).
- ii. Refer the item to the City Manager for further analysis (Primary Author may decline and request Policy Committee assignment).
- iii. Refer the item back to the Primary Author for adherence to required form or for additional analysis as required in Section III.B.2 (Primary Author may decline and request Policy Committee assignment).
- iv. Refer the item to a Policy Committee.
- v. Schedule the item for the agenda under consideration or one of the next three full Council agendas.

For referrals under Chapter III.C.1.a.i, ii, or iii, the Primary Author must inform the City Clerk within 24 hours of the adjournment of the Agenda & Rules Committee meeting whether they prefer to:

- 1) re-submit the item for a future meeting with modifications as suggested by the Agenda & Rules Committee; or
- 2) pull the item completely; or
- 3) re-submit the item with revisions as requested by the Agenda & Rules Committee within 24 hours of the adjournment of the Agenda & Rules Committee meeting for the Council agenda under consideration; or
- 4) accept the referral of the Agenda & Rules Committee in sub paragraphs III.C.1.a. i, ii, or iii, or request Policy Committee assignment.

If the Primary Author requests a Policy Committee assignment, the item will appear on the next draft agenda presented to the Agenda & Rules Committee for assignment.

In the event that the City Clerk does not receive guidance from the Primary Author of the referred item within 24 hours of the Agenda & Rules Committee's adjournment, the item will appear on the next draft agenda for consideration by the Agenda & Rules Committee.

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

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

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

- c) **Items Authored by Boards and Commissions.** Council items submitted by boards and commissions are subject to City Manager review and must follow procedures and timelines for submittal of reports as described in the Commissioners' Manual. The content of commission items is not subject to review by the Agenda & Rules Committee unless referred for policy review to the Agenda & Rules Committee.
  - i) For a commission item that does not require a companion report from the City Manager, the Agenda & Rules Committee may act on an agendaized commission report in the following manner:
    1. Move a commission report from the Consent Calendar to the Action Calendar or from the Action Calendar to the Consent Calendar.
    2. Re-schedule the commission report to appear on one of the next three regular Council meeting agendas that occur after the regular meeting under consideration. Commission reports submitted in response to a Council referral shall receive higher priority for scheduling.
    3. Refer the item to a Policy Committee for review.
    4. Allow the item to proceed as submitted.
  - ii) For any commission report that requires a companion report, the Agenda & Rules Committee may schedule the item on a Council agenda. The Committee must schedule the commission item for a meeting occurring not sooner than 60 days and not later than 120 days from the date of the meeting under consideration by the Agenda & Rules Committee. A commission report submitted with a complete companion report may be scheduled pursuant to subparagraph c.i. above.
- d) The Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in Chapter III, Section E.

## **2. Scheduling Public Hearings Mandated by State, Federal, or Local Statute.**

The City Clerk may schedule a public hearing at an available time and date in those cases where State, Federal or local statute mandates the City Council hold a public hearing.

## **3. Submission of Agenda Items.**

- a) **City Manager Items.** Except for Continued Business and Old Business, as a condition to placing an item on the agenda, agenda items from departments, including agenda items from commissions, shall be furnished to the City Clerk at a time established by the City Manager.

- b) **Council and Auditor Items.** The deadline for reports submitted by the Auditor, Mayor and City Council is 5:00 p.m. on Monday, 22 days before each Council meeting.
- c) **Time Critical Items.** A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or Councilmember is received by the City Clerk after established deadlines and is not included on the Agenda & Rules Committee's published agenda.

The Primary Author of the report shall bring any reports submitted as Time Critical to the meeting of the Agenda & Rules Committee. Time Critical items must be accompanied by complete reports and statements of financial implications. If the Agenda & Rules Committee finds the matter to meet the definition of Time Critical, the Agenda & Rules Committee may place the matter on the Agenda on either the Consent or Action Calendar.

- d) The City Clerk may not accept any agenda item after the adjournment of the Agenda & Rules Committee meeting, except for items carried over by the City Council from a prior City Council meeting occurring less than 11 days earlier, which may include supplemental or revised reports, and reports concerning actions taken by boards and commissions that are required by law or ordinance to be presented to the Council within a deadline that does not permit compliance with the agenda timelines in BMC Chapter 2.06 or these rules.

#### **4. Submission of Supplemental and Revised Agenda Material.**

Berkeley Municipal Code Section 2.06.070 allows for the submission of supplemental and revised agenda material. Supplemental and revised material cannot be substantially new or only tangentially related to an agenda item. Supplemental material must be specifically related to the item in the Agenda Packet. Revised material should be presented as revised versions of the report or item printed in the Agenda Packet. Supplemental and revised material may be submitted for consideration as follows:

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



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

**5. Submission of Late Urgency Items Pursuant to Government Code Section 54954.2(b)**

Late Urgency Items are items proposed for submission to the Council Agenda pursuant to Government Code Section 54954.2(b)

All items to be submitted for consideration for addition to an agenda as Late Urgency Items shall be accompanied by a cover sheet that includes 1) boxes to check for the Author to affirm whether the item is submitted under the Emergency or Immediate Action Rule (and a short explanation of what is required to meet each rule, as well as the vote threshold required for the item to be placed onto the agenda by the City Council); 2) a disclaimer in BOLD 14pt. CAPS stating that the item is not yet agendized and may or may not be accepted for the agenda as a Late Urgency Item, at the City Council's discretion according to Brown Act rules; 3) a prompt requiring the author to list the facts which support consideration of the item for addition to the agenda as either an Emergency or Immediate Action item; and 4) a copy of the City Attorney memo on Late Urgency Items.

Late Items must be submitted to the City Clerk no later than 12:00 p.m. (noon) the day prior to the meeting.

All complete Late Items submitted by the deadline will be distributed with Supplemental Communication Packet #2 by 5:00 p.m. the day before the Council meeting. A Late Item is not considered "complete" and will not be distributed unless submitted with the required cover sheet, filled out in a complete manner.

Very Late Urgency Items of an extremely urgent nature (e.g., earthquake, severe wildfire, pandemic) may be submitted for addition to the agenda after the deadline of 12:00 p.m. the day before the meeting to accommodate unforeseeable, extreme and unusual circumstances. A Very Late Urgency Item will be distributed at the Council meeting prior to any vote to add it to the agenda and the Presiding Officer may provide an appropriate break to allow Councilmembers and the public to review the item before voting on whether to add it to the agenda and possibly again, at the Presiding Officer's discretion, before the item is voted on.

The required cover sheet should be included with the Very Late Urgency Item unless extremely exigent circumstances underlie the Very Late Urgency Item submission and a written cover sheet could not be prepared (for example, power is out and printing or emailing is not possible), in which case the individual "walking in" the item should be ready to provide all required information verbally at the meeting before a vote is taken to add or not add the item to the Agenda.

#### **6. Scheduling a Presentation.**

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

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

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

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

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

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

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

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

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

**4. Failure to Meet Deadlines.**

- a) The City Clerk shall not accept any agenda item or revised agenda item after the deadlines established.
- b) Matters not included on the published agenda may be discussed and acted upon as otherwise authorized by State law or providing the Council finds one of the following conditions is met:
  - A majority of the Council determines that the subject meets the criteria of "Emergency" as defined in Section III.B.8.
  - Two thirds of the Council determines that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the posting of the agenda as required by law.
- c) Matters listed on the printed agenda but for which supporting materials are not received by the City Council on the eleventh day prior to said meeting as part of the agenda packet, shall not be discussed or acted upon.

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

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

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

4. Information Reports
5. Non-Agenda Public Comment
6. Adjournment
7. Communications

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

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

**F. Closed Session Documents**

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

1. Confidential closed session materials shall be kept in binders numbered from one to nine and assigned to the Mayor (#9) and each Councilmember (#1 to #8 by district). The binders will contain confidential closed session materials related to Labor Negotiations, Litigation, and Real Estate matters.
2. The binders will be maintained by City staff and retained in the Office of the City Attorney in a secure manner. City staff will bring the binders to each closed session for their use by the Mayor and Councilmembers. At other times, the binders will be available to the Mayor and Councilmembers during regular business hours for review in the City Attorney's Office. The binders may not be removed from the City Attorney's Office or the location of any closed session meeting by the Mayor or Councilmembers. City staff will collect the binders at the end of each closed session meeting and return them to the City Attorney's Office.
3. Removal of confidential materials from a binder is prohibited.
4. Duplication of the contents of a binder by any means is prohibited.
5. Confidential materials shall be retained in the binders for at least two years.
6. This policy does not prohibit the distribution of materials by staff to the Mayor and Councilmembers in advance of a closed session or otherwise as needed, but such materials shall also be included in the binders unless it is impracticable to do so.

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

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

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

#### Full Council Track

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

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

The Agenda & Rules Committee has discretion to determine if an item submitted by the Mayor or a Councilmember falls under a Full Council Track exception or if it will be processed as a Policy Committee Track item.

#### Policy Committee Track

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

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

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

### Time Critical Track

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

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

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

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

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

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

- a. The quorum of a three-member Policy Committee is always two members. A majority vote of the committee (two 'yes' votes) is required to pass a motion.
- b. Two Policy Committee members may not discuss any item that has been referred to the Policy Committee outside of an open and noticed meeting.
- c. Notwithstanding paragraph (b) above, two members of a Policy Committee may be listed as Authors or Co-Sponsors on an item provided that one of the Authors or Co-Sponsors will not serve as a committee member for consideration of the item, and shall not participate in the committee's discussion of, or action on the item. For purposes of the item, the appointed alternate, who also can not be an Author or Co-Sponsor, will serve as a committee member in place of the non-participating Author or Co-Sponsor.
- d. All three members of a Policy Committee may not be Authors or Co-Sponsors of an item that will be heard by the committee.
- e. Only one Author or Co-Sponsor who is not a member of the Policy Committee may attend the committee meeting to participate in discussion of the item.

- f. If two or more non-committee members are present for any item or meeting, then all non-committee members may act only as observers and may not participate in discussion. If an Author who is not a member of the committee is present to participate in the discussion of their item, no other non-committee member Councilmembers, nor the Mayor, may attend as observers.
- g. An item may be considered by only one Policy Committee before it goes to the full Council.

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

Committees shall have the following qualities/components:

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

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

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

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

The Policy Committee's recommendation will be included in a separate section of the report template for that purpose.

A Policy Committee may not refer an item under its consideration to a city board or commission.

The Primary Author of an item referred to a Policy Committee is responsible for revisions and resubmission of the item back to the full Council. Items originating from the City Manager are revised and submitted by the appropriate city staff. Items from Commissions are revised and resubmitted by the members of the Policy Committee. Items and recommendations originating from the Policy Committee are submitted to the City Clerk by the members of the committee.

If a Policy Committee does not take final action by the 120-day deadline, the item is returned to the Agenda & Rules Committee and appears on the next available Council agenda. The Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the next Council agenda. Items appearing on a City Council agenda due to lack of action by a Policy Committee may not be referred to a Policy Committee and must remain on the full Council agenda for consideration.

Policy Committees may add discussion topics that are within their purview to their agenda with the concurrence of a majority of the Committee. These items are not subject to the 120-day deadline for action.

Once the item is voted out of a Policy Committee, the final item will be resubmitted to the agenda process by the Primary Author, and it will return to the Agenda & Rules Committee on the next available agenda. The Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the following Council agenda. Only items that receive a Positive Recommendation can be placed on the Consent Calendar.



The Primary Author may request expedited committee review for items referred to a committee. Criteria for expedited review is generally to meet a deadline for action (e.g. grant deadline, specific event date, etc.). If the committee agrees to the request, the deadline for final committee action is 45 days from the date the committee approves expedited review.

### **5. Number and Make-up of Committees**

Six committees are authorized, each comprised of three Councilmembers, with a fourth Councilmember appointed as an alternate. Each Councilmember and the Mayor will serve on two committees. The Mayor shall be a member of the Agenda and Rules Committee. The committees are as follows:

1. Agenda and Rules Committee
2. Budget and Finance Committee
3. Facilities, Infrastructure, Transportation, Environment, and Sustainability
4. Health, Life Enrichment, Equity, and Community
5. Land Use, Housing, and Economic Development
6. Public Safety

The Agenda & Rules Committee shall establish the Policy Committee topic groupings, and may adjust said groupings periodically thereafter in order to evenly distribute expected workloads of various committees.

All standing Policy Committees of the City Council are considered “legislative bodies” under the Brown Act and must conduct all business in accordance with the Brown Act.

### **6. Role of City Staff at Committee Meetings**

Committees will be staffed by appropriate City Departments and personnel. As part of the committee process, staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item. Staff analysis at the Policy Committee level is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

## IV. CONDUCT OF MEETING

### A. Comments from the Public

Public comment will be taken in the following order:

- An initial ten-minute period of public comment on non-agenda items, after the commencement of the meeting and immediately after Ceremonial Matters and City Manager Comments.
- Public comment on the Consent and Information Calendars.
- Public comment on action items, appeals and/or public hearings as they are taken up under procedures set forth in the sections governing each below.
- Public comment on non-agenda items from any speakers who did not speak during the first round of non-agenda public comment at the beginning of the meeting.

Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. A speaker wishing to yield their time shall identify themselves, shall be recognized by the chair, and announce publicly their intention to yield their time. Disabled persons shall have priority seating in the front row of the public seating area.

A member of the public may only speak once at public comment on any single item, unless called upon by the Mayor or a Councilmember to answer a specific inquiry.

#### 1. Public Comment on Consent Calendar and Information Items.

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

The Council will then take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. A speaker may only speak once during the period for public comment on Consent Calendar and Information items. No additional items can be moved onto the Consent Calendar once public comment has commenced.

At any time during, or immediately after, public comment on Information and Consent items, the Mayor or any Councilmember may move any Information or Consent item to “Action.” Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

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

**2. Public Comment on Action Items.**

After the initial ten minutes of public comment on non-agenda items, public comment on consent and information items, and adoption of the Consent Calendar, the public may comment on each remaining item listed on the agenda for action as the item is taken up.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

This procedure also applies to public hearings except those types of public hearings specifically provided for in this section, below.

**3. Appeals Appearing on Action Calendar.**

With the exception of appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission, appeals from decisions of City commissions appear on the "Action" section of the Council Agenda. Council determines whether to affirm the action of the commission, set a public hearing, or remand the matter to the commission. Appeals of proposed special assessment liens shall also appear on the "Action" section of the Council Agenda. Appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission are automatically set for public hearing and appear on the "Public Hearings" section of the Council Agenda.

Time shall be provided for public comment for persons representing both sides of the action/appeal and each side will be allocated seven minutes to present their comments on the appeal. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have seven minutes to comment and the applicant shall have seven minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have seven minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have seven minutes to comment and the persons supporting the action of the board or commission on appeal shall have seven minutes to comment. In the case of an appeal of proposed special assessment lien, the appellant shall have seven minutes to comment.

After the conclusion of the seven-minute comment periods, members of the public may comment on the appeal. Comments from members of the public regarding appeals shall be limited to one minute per speaker. Any person that addressed the Council during one of the seven-minute periods may not speak again during the public comment period on the appeal. Speakers may yield their time to one other speaker, however, no speaker shall have more than two minutes. Each side

shall be informed of this public comment procedure at the time the Clerk notifies the parties of the date the appeal will appear on the Council agenda.

**4. Public Comment on Non Agenda Matters.**

Immediately following Ceremonial Matters and the City Manager Comments and prior to the Consent Calendar, persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting.

The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.

Persons submitting speaker cards are not required to list their actual name, however they must list some identifying information or alternate name in order to be called to speak.

For the second round of public comment on non-agenda matters, the Presiding Officer retains the authority to limit the number of speakers by subject. The Presiding Officer will generally request that persons wishing to speak, line up at the podium to be recognized to determine the number of persons interested in speaking at that time. Each speaker will be entitled to speak for two minutes each unless the Presiding Officer determines that one-minute is appropriate given the number of speakers.

Pursuant to this document, no Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items. If any agenda item remains unfinished at 11:00 p.m. or the expiration of any extension after 11:00 p.m., it will be referred to the Agenda & Rules Committee for scheduling pursuant to Chapter II, Section F. In that event, the meeting shall be automatically extended for up to fifteen (15) minutes for public comment on non-agenda items.

**5. Ralph M. Brown Act Pertaining to Public Comments.**

The Brown Act prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the agenda. However, the Council may refer a matter to the City Manager.

**B. Consent Calendar**

There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, Councilmembers, boards, commissions, City Auditor and City Manager deem to be of such nature that no debate or inquiry

will be necessary at the Council meetings. Ordinances for second reading may be included in the Consent Calendar.

It is the policy of the Council that the Mayor or Councilmembers wishing to ask questions concerning Consent Calendar items should ask questions of the contact person identified prior to the Council meeting so that the need for discussion of consent calendar items can be minimized.

Consent Calendar items may be moved to the Action Calendar by the Council. Action items may be reordered at the discretion of the Chair with the consent of Council.

**C. Information Reports Called Up for Discussion**

Reports for Information designated for discussion at the request of the Mayor or any Councilmember shall be added to the appropriate section of the Action Calendar and may be acted upon at that meeting or carried over as pending business until discussed or withdrawn. The agenda will indicate that at the request of Mayor or any Councilmember a Report for Information may be acted upon by the Council.

**D. Written Communications**

Written communications from the public will not appear on the Council agenda as individual matters for discussion but will be distributed as part of the Council agenda packet with a cover sheet identifying the author and subject matter and will be listed under "Communications." All such communications must have been received by the City Clerk no later than 5:00 p.m. fifteen days prior to the meeting in order to be included on the agenda.

In instances where an individual forwards more than three pages of email messages not related to actionable items on the Council agenda to the Council to be reproduced in the "Communications" section of the Council packet, the City Clerk will not reproduce the entire email(s) but instead refer the public to the City's website or a hard copy of the email(s) on file in the City Clerk Department.

All communications shall be simply deemed received without any formal action by the Council. The Mayor or a Councilmember may refer a communication to the City Manager for action, if appropriate, or prepare a consent or action item for placement on a future agenda.

Communications related to an item on the agenda that are received after 5:00 p.m. fifteen days before the meeting are published as provided for in Chapter III.C.4.

**E. Public Hearings for Land Use, Zoning, Landmarks, and Public Nuisance Matters**

The City Council, in setting the time and place for a public hearing, may limit the amount of time to be devoted to public presentations. Staff shall introduce the public hearing item and present their comments.

Following any staff presentation, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Such reports shall include a brief statement describing the name, date,

place, and content of the contact. Written reports shall be available for public review in the office of the City Clerk prior to the meeting and placed in a file available for public viewing at the meeting.

This is followed by five-minute presentations each by the appellant and applicant. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have five minutes to comment and the applicant shall have five minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have five minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have five minutes to comment and the persons supporting the action of the board or commission on appeal shall have five minutes to comment. In the case of a public nuisance determination, the representative(s) of the subject property shall have five minutes to present.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Any person that addressed the Council during one of the five-minute periods may not speak again during the public comment period on the appeal. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

#### **F. Work Sessions**

The City Council may schedule a matter for general Council discussion and direction to staff. Official/formal action on a work session item will be scheduled on a subsequent agenda under the Action portion of the Council agenda.

In general, public comment at Council work sessions will be heard after the staff presentation, for a limited amount of time to be determined by the Presiding Officer.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

After Council discussion, if time permits, the Presiding Officer may allow additional public comment. During this time, each speaker will receive one minute. Persons who spoke during the prior public comment time may be permitted to speak again.

**G. Protocol**

People addressing the Council may first give their name in an audible tone of voice for the record. All remarks shall be addressed to the Council as a body and not to any member thereof. No one other than the Council and the person having the floor shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer. No question shall be asked of a Councilmember except through the Presiding Officer.

## V. PROCEDURAL MATTERS

### A. **Persons Authorized to Sit at Tables**

No person, except City officials, their representatives and representatives of boards and commissions shall be permitted to sit at the tables in the front of the Council Chambers without the express consent of the Council.

### B. **Decorum**

No person shall disrupt the orderly conduct of the Council meeting. Prohibited disruptive behavior includes but is not limited to shouting, making disruptive noises, such as boos or hisses, creating or participating in a physical disturbance, speaking out of turn or in violation of applicable rules, preventing or attempting to prevent others who have the floor from speaking, preventing others from observing the meeting, entering into or remaining in an area of the meeting room that is not open to the public, or approaching the Council Dais without consent. Any written communications addressed to the Council shall be delivered to the City Clerk for distribution to the Council.

### C. **Enforcement of Decorum**

When the public demonstrates a lack of order and decorum, the presiding officer shall call for order and inform the person(s) that the conduct is violating the Rules of Order and Procedure and provide a warning to the person(s) to cease the disruptive behavior. Should the person(s) fail to cease and desist the disruptive conduct, the presiding officer may call a five (5) minute recess to allow the disruptions to cease.

If the meeting cannot be continued due to continued disruptive conduct, the presiding officer may have any law enforcement officer on duty remove or place any person who violates the order and decorum of the meeting under arrest and cause that person to be prosecuted under the provisions of applicable law.

### D. **Precedence of Motions**

When a question or motion is before the Council, no motion shall be entertained except:

1. To adjourn;
2. To fix the hour of adjournment;
3. To lay on the table;
4. For the previous question;
5. To postpone to a certain day;
6. To refer;
7. To amend;
8. To substitute; and
9. To postpone indefinitely.

These motions shall have precedence in order indicated. Any such motion, except a motion to amend or substitute, shall be put to a vote without debate.



**E. Robert's Rules of Order**

Robert's Rules of Order have been adopted by the City Council and apply in all cases except the precedence of motions in Section V.D shall supersede.

**F. Rules of Debate**

**1. Presiding Officer May Debate.**

The presiding officer may debate from the chair; subject only to such limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges as a member of the Council by reason of that person acting as the presiding officer.

**2. Getting the Floor - Improper References to be avoided.**

Members desiring to speak shall address the Chair, and upon recognition by the presiding officer, shall confine themselves to the question under debate.

**3. Interruptions.**

A member, once recognized, shall not be interrupted when speaking unless it is to call a member to order, or as herein otherwise provided. If a member, while speaking, were called to order, that member shall cease speaking until the question of order is determined, and, if in order, the member shall be permitted to proceed.

**4. Privilege of Closing Debate.**

The Mayor or Councilmember moving the adoption of an ordinance or resolution shall have the privilege of closing the debate. When a motion to call a question is passed, the Mayor or Councilmember moving adoption of an ordinance, resolution or other action shall have three minutes to conclude the debate.

**5. Motion to Reconsider.**

A motion to reconsider any action taken by the Council may be made only during the same session such action is taken. It may be made either immediately during the same session, or at a recessed or adjourned session thereof. Such motion must be made by a member on the prevailing side, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable. Nothing herein shall be construed to prevent any member of the Council from making or remaking the same or other motion at a subsequent meeting of the Council.

**6. Repeal or Amendment of Action Requiring a Vote of Two-Thirds of Council, or Greater.**

Any ordinance or resolution which is passed and which, as part of its terms, requires a vote of two-thirds of the Council or more in order to pass a motion pursuant to such an ordinance or resolution, shall require the vote of the same percent of the Council to repeal or amend the ordinance or resolution.

**G. Debate Limited**

1. Consideration of each matter coming before the Council shall be limited to 20 minutes from the time the matter is first taken up, at the end of which period consideration of such matter shall terminate and the matter shall be dropped to the foot of the agenda, immediately ahead of Information Reports; provided that either of the following two not debatable motions shall be in order:
  - a) A motion to extend consideration which, if passed, shall commence a new twenty-minute period for consideration; or
  - b) If there are one or more motions on the floor, a motion for the previous question, which, if passed by a 2/3 vote, shall require an immediate vote on pending motions.
2. The time limit set forth in subparagraph 1 hereof shall not be applicable to any public hearing, public discussion, Council discussion or other especially set matter for which a period of time has been specified (in which case such specially set time shall be the limit for consideration) or which by applicable law (e.g. hearings of appeals, etc.), the matter must proceed to its conclusion.
3. In the interest of expediting the business of the City, failure by the Chair or any Councilmember to call attention to the expiration of the time allowed for consideration of a matter, by point of order or otherwise, shall constitute unanimous consent to the continuation of consideration of the matter beyond the allowed time; provided, however, that the Chair or any Councilmember may at any time thereafter call attention to the expiration of the time allowed, in which case the Council shall proceed to the next item of business, unless one of the motions referred to in Section D hereof is made and is passed.

**H. Motion to Lay on Table**

A motion to lay on the table shall preclude all amendments or debate of the subject under consideration. If the motion shall prevail, the consideration of the subject may be resumed only upon a motion of a member voting with the majority and with consent of two-thirds of the members present.

**I. Division of Question**

If the question contains two or more propositions, which can be divided, the presiding officer may, and upon request of a member shall, divide the same.

**J. Addressing the Council**

Under the following headings of business, unless the presiding officer rules otherwise, any interested person shall have the right to address the Council in accordance with the following conditions and upon obtaining recognition by the presiding officer:

**1. Written Communications.**

Interested parties or their authorized representatives may address the Council in the form of written communications in regard to matters of concern to them by

submitting their written communications at the meeting, or prior to the meeting pursuant to the deadlines in Chapter III.C.4.

**2. Public Hearings.**

Interested persons or their authorized representatives may address the Council by reading protests, petitions, or communications relating to matters then under consideration.

**3. Public Comment.**

Interested persons may address the Council on any issue concerning City business during the period assigned to Public Comment.

**K. Addressing the Council After Motion Made**

When a motion is pending before the Council, no person other than the Mayor or a Councilmember shall address the Council without first securing the permission of the presiding officer or Council to do so.

**L. Use of Cellular Phones and Electronic Devices**

The use of cell phones during City Council meetings is discouraged for the Mayor and Councilmembers. While communications regarding Council items should be minimized, personal communications between family members and/or caregivers can be taken outside in the case of emergencies. In order to acknowledge differences in learning styles and our of support tactile learners, note-taking can continue to be facilitated both with a pen and paper and/or on electronic devices such as laptop computers and tablets.

The use cell phones during Closed Session Meetings is explicitly prohibited for the Mayor and Councilmembers.

## **VI. FACILITIES**

### **A. Meeting Location Capacity**

Attendance at council meetings shall be limited to the posted seating capacity of the meeting location. Entrance to the meeting location will be appropriately regulated by the City Manager on occasions when capacity is likely to be exceeded. While the Council is in session, members of the public shall not remain standing in the meeting room except to address the Council, and sitting on the floor shall not be permitted.

### **B. Alternate Facilities for Council Meetings**

The City Council shall approve in advance a proposal that a Council meeting be held at a facility other than the School District Board Room.

If the City Manager has reason to anticipate that the attendance for a meeting will be substantially greater than the capacity of the Board Room and insufficient time exists to secure the approval of the City Council to hold the meeting at an alternate facility, the City Manager shall make arrangements for the use of a suitable alternate facility to which such meeting may be recessed and moved, if the City Council authorizes the action.

If a suitable alternate facility is not available, the City Council may reschedule the matter to a date when a suitable alternate facility will be available.

Alternate facilities are to be selected from those facilities previously approved by the City Council as suitable for meetings away from the Board Room.

### **C. Signs, Objects, and Symbolic Materials**

Objects and symbolic materials such as signs which do not have sticks or poles attached or otherwise create any fire or safety hazards will be allowed within the meeting location during Council meetings.

### **D. Fire Safety**

Exits shall not be obstructed in any manner. Obstructions, including storage, shall not be placed in aisles or other exit ways. Hand carried items must be stored so that such items do not inhibit passage in aisles or other exit ways. Attendees are strictly prohibited from sitting in aisles and/or exit ways. Exit ways shall not be used in any way that will present a hazardous condition.

### **E. Overcrowding**

Admittance of persons beyond the approved capacity of a place of assembly is prohibited. When the meeting location has reached the posted maximum capacity, additional attendees shall be directed to the designated overflow area.

## **APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES**

### **Purpose**

To establish a uniform policy regarding the naming and renaming of existing and future parks, streets, pathways and other public facilities.

### **Objective**

- A. To ensure that naming public facilities (such as parks, streets, recreation facilities, pathways, open spaces, public building, bridges or other structures) will enhance the values and heritage of the City of Berkeley and will be compatible with community interest.

### **Section 1 – Lead Commission**

The City Council designates the following commissions as the ‘Lead Commissions’ in overseeing, evaluating, and ultimately advising the Council in any naming or renaming of a public facility. The lead commission shall receive and coordinate comment and input from other Commissions and the public as appropriate.

#### **Board of Library Trustees**

Parks and Recreation Commission –Parks, recreation centers, camps, plazas and public open spaces

Public Works Commission –Public buildings (other than recreation centers), streets and bridges or other structures in the public thoroughfare.

Waterfront Commission –Public facilities within the area of the City known as the Waterfront, as described in BMC 3.36.060.B.

### **Section 2 – General Policy**

- A. Newly acquired or developed public facilities shall be named immediately after acquisition or development to ensure appropriate public identity.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. Public facilities that are renamed must follow the same criteria for naming new facilities. In addition, the historical significance and geographical reference of the established name should be considered when weighing and evaluating any name change.
- D. The City encourages the recognition of individuals for their service to the community in ways that include the naming of activities such as athletic events, cultural presentations, or annual festivals, which do not involve the naming or renaming of public facilities.
- E. Unless restricted by covenant, facilities named after an individual should not necessarily be considered a perpetual name.

### **Section 3 – Criteria for Naming of Public Facilities**

When considering the naming of a new public facility or an unnamed portion or feature within an already named public facility (such as a room within the facility or a feature within an established park), or, the renaming of an existing public facility the following criteria shall be applied:

- A. Public Facilities are generally easier to identify by reference to adjacent street names, distinct geographic or environmental features, or primary use activity. Therefore, the preferred practice is to give City-owned property a name of historical or geographical significance and to retain these names.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. The naming of a public facility or any parts thereof in recognition of an individual posthumously may only be considered if the individual had a positive effect on the community and has been deceased for more than 1 year.
- D. When a public facility provides a specific programmatic activity, it is preferred that the activity (e.g. skateboard park, baseball diamond) be included in the name of the park or facility.
- E. When public parks are located adjacent to elementary schools, a name that is the same as the adjacent school shall be considered.
- F. When considering the renaming of an existing public facility, in addition to applying criteria A-E above, proper weight should be given to the fact that: a name lends a site or property authenticity and heritage; existing names are presumed to have historic significance; and historic names give a community a sense of place and identity, continuing through time, and increases the sense of neighborhood and belonging.

#### Section 4 –Naming Standards Involving a Major Contribution

When a person, group or organization requests the naming or renaming of a public facility, all of the following conditions shall be met:

- A. An honoree will have made a major contribution towards the acquisition and/or development costs of a public facility or a major contribution to the City.
- B. The honoree has a record of outstanding service to their community
- C. Conditions of any donation that specifies that name of a public facility, as part of an agreement or deed, must be approved by the City Council, after review by and upon recommendation of the City Manager.

#### Section 5 –Procedures for Naming or Renaming of Public Facilities

- A. Any person or organization may make a written application to the City Manager requesting that a public facility or portion thereof, be named or renamed.
  - 1. Recommendations may also come directly of the City Boards or Commissions, the City Council, or City Staff.
- B. The City Manager shall refer the application to the appropriate lead commission as defined in Section 1 of the City's policy on naming of public facilities, for that commission's review, facilitation, and recommendation of disposition.
  - 1. The application shall contain the name or names of the persons or organization making the application and the reason for the requested naming or renaming.
- C. The lead commission shall review and consider the application, using the policies and criteria articulated to the City Policy on Naming and Renaming to make a recommendation to Council.
  - 1. All recommendations or suggestion will be given the same consideration without regard to the source of the nomination
- D. The lead commission shall hold a public hearing and notify the general public of any discussions regarding naming or renaming of a public facility.

1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.
- E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

## **APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS**

These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the Agenda & Rules Committee to request that the Primary Author of an item provide “additional analysis” if the item as submitted evidences a “significant lack of background or supporting information” or “significant grammatical or readability issues.”

These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they are intended to prompt Authors to consider presenting items with as much relevant information and analysis as possible.

Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:

2. Agenda items shall contain all relevant documentation, including the following as Applicable:
  - a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
  - b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
  - c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
  - d. Fiscal impacts of the recommendation;
  - e. A description of the current situation and its effects;
  - f. Background information as needed;
  - g. Rationale for recommendation;
  - h. Alternative actions considered;
  - i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
  - j. Person or persons to contact for further information, with telephone number. If the Primary Author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.



Guidelines for City Council Items:

1. Title
  2. Consent/Action/Information Calendar
  3. Recommendation
  4. Summary Statement/Current situation and its effects
  5. Background
  6. Review of Existing Plans, Programs, Policies and Laws
  7. Actions/Alternatives Considered
  8. Consultation/Outreach Overview and Results
  9. Rationale for Recommendation
  10. Implementation, Administration and Enforcement
  11. Environmental Sustainability
  12. Fiscal Impacts
  13. Outcomes and Evaluation
  14. Contact Information
  15. Attachments/Supporting Materials
- 

**1. Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

**2. Consent/Action/Information Calendar**

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

**3. Recommendation**

Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

Common action options include:

- Adopt first reading of ordinance
- Adopt a resolution
- Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
- Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
- Referral to a Commission or to a Standing or Ad Hoc Council Committee
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

**4. Summary Statement/ “Current situation and its effects”**

A short resume of the circumstances that give rise to the need for the recommended action(s).

- Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
- Example (fictional):  
*Winter rains are lasting longer than expected. Berkeley’s winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley’s winter shelters open until the end of April, and refers to the Budget Process \$40,000 to cover costs of an additional two months of shelter operations.*

**5. Background**

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

**6. Review of Existing Plans, Programs, Policies and Laws**

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan

- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan

Review of similar legislation previously introduced/passed by Council

Review of County, State and Federal laws/policies/programs/plans, if applicable

### **7. Actions/Alternatives Considered**

- What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
- What solutions/measures are recommended by **advocates, experts, organizations**?
- What is the range of actions considered, and what are some of their major pros and cons?
- Why were other solutions not as feasible/advisable?

### **8. Consultation/Outreach Overview and Results**

- Review/list external and internal stakeholders that were consulted
  - **External:** constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
  - **Internal:** staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, Clerk, etc.
- What reports, articles, books, websites and other materials were consulted?
- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?

### **9. Rationale for Recommendation**

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented,

but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

**10. Implementation, Administration and Enforcement**

Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation?

**11. Environmental Sustainability**

Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

**12. Fiscal Impacts**

Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs.

**13. Outcomes and Evaluation**

State the specific outcomes expected, if any (i.e., "*it is expected that 100 homeless people will be referred to housing every year*") and what reporting or evaluation is recommended.

**14. Contact Information**

**15. Attachments/Supporting Materials**

## **APPENDIX C. TEMPORARY RULES FOR THE CONDUCT OF CITY COUNCIL MEETINGS THROUGH VIDEO CONFERENCE DURING THE COVID-19 EMERGENCY**

### **Mayor and Councilmember Speaking Time on Agenda Items**

At the outset of the meeting, each Councilmember will have one minute to offer words of support, encouragement or appreciation to the public and City staff.

For the Consent Calendar, the Mayor and Councilmembers will initially have up to five minutes each to make comments. After all members of the Council have spoken (or passed) and after public comment, members will each have two additional minutes to discuss the Consent Calendar.

For non-Consent items, the Mayor and Councilmembers will have two minutes each to make initial comments on an agenda item, except for the author of an agenda item who will have five minutes to initially present the item. After every Councilmember has spoken or declined and after public comment, Councilmembers will each have another five minutes per person to address an item. Debate may be extended beyond a second round of Council comments by a majority vote (5 votes).

Time will toll during staff answers to questions; Councilmembers are urged to ask their questions before the meeting.

### **Procedure for Pulling Items from Consent or Information Calendar**

Three (3) members of the City Council must agree to pull an item from the Consent or Information Calendar for it to move to Action. Absent three members concurring, the item will stay on Consent or Information Calendar and, with respect to Consent items, the Mayor or Councilmembers will be allowed to record their aye, nay or abstain votes on individual items or the entire Consent Calendar.

### **Public Comment Speaking Time**

With the exception of prescribed times in the Rules of Procedure for public hearings, the amount of time for each speaker during public comment is limited to two minutes maximum and that speakers can only address an agenda item once. Yielding of time to other speakers is not permitted for regular meetings of the City Council.

Public Comment on Non-Agenda Matters will be conducted in the order of hands raised on the Zoom platform, and will be limited to either the first 10 speakers during the initial round of Non-Agenda public comment, as well as all hands raised during the closing round of Non-Agenda public comment at the conclusion to the meeting, until such time that the meeting adjourns. Each speaker shall have two minutes. The procedure for selection of Non-Agenda speakers prescribed in the Rules of Procedure by random draw is suspended for videoconference meetings where there is no physical meeting location.

## **APPENDIX D. TEMPORARY RULES REGARDING POLICY COMMITTEES AND LEGISLATIVE WORKFLOW DURING THE COVID-19 LOCAL EMERGENCY**

To support staff, councilmembers, and members of the public in their focused work to address the COVID-19 pandemic; manage health, mental health, and economic impacts; and navigate the complexities of reopening after more than a year of shelter-in-place, these temporary rules limiting Policy Committee and City Council consideration of new significant legislation are hereby adopted.

- 1) Except as provided below, “new significant legislation” is defined as any law, program, or policy that represents a significant change or addition to existing law, program, or policy, or is likely to call for or elicit significant study, analysis, or input from staff, Councilmembers or members of the public.
- 2) New significant legislation originating from the Council, Commissions, or Staff related to the City’s COVID-19 response, including but not limited to health and economic impacts of the pandemic or recovery, or addressing other health and safety concerns, the City Budget process, or other essential or ongoing City processes or business will be allowed to move forward, as well as legislative items that are urgent, time sensitive, smaller, or less impactful.
- 3) New significant legislation not related to the City’s COVID-19 response may be submitted to the Agenda process to be referred to the appropriate Policy Committee but will be placed on the committee’s unscheduled items list, and timelines will be tolled for the duration of these temporary rules.
- 4) Councilmembers, Commission Chairs/representatives, and Staff may request reconsideration of Agenda Committee determinations regarding significance/impacts, time sensitivity and/or relevance to factors listed in (2), above.
- 5) Policy Committees may take up items referred previous to adoption of these temporary rules or may place them on the unscheduled list where timelines will be tolled. Reconsideration of a determination to place an item on the unscheduled calendar may be requested by the author on the same basis as a reconsideration by the Agenda Committee. Policy Committees are asked to prioritize pending items related to categories listed in (2), above. When a Policy Committee has no active items the Committee will not meet.
- 6) The Agenda & Rules and Budget & Finance Policy Committees will continue to meet to carry out their essential agenda setting and budget policy making roles; other legislation before these committees may be placed on the unscheduled calendar where timelines will be automatically tolled for the duration that this policy is in place.
- 7) Any outstanding items voted out of Policy Committee should include staffing and budgetary needs and a budget referral. Implementation of new ordinances, programs or policies may be deferred for the duration of these temporary rules and/or if resources are not identified and allocated.

- 8) These temporary measures will automatically expire on July 28, 2021 unless the term is shortened or extended by a vote of the City Council.
  
- 9) When Policy Committees are reopened by the full City Council, items pending before the Committee will be prioritized by vote of the members of each Committee, based on a proposal by the Chair, in an order that takes into account and balances, among other things, (i) the amount of time items have been pending before the Committee, (ii) the time sensitivity of the issues/topics raised by the legislation, (iii) a fair distribution of items from all Councilmembers within the queue, and (iv) a fair distribution of topic areas.

