



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

**MONDAY, MAY 10, 2021**

**2:30 P.M.**

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Lori Droste

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

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

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL <https://us02web.zoom.us/j/89116593118> If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial **1-669-900-9128** or **1-877-853-5257 (Toll Free)** and Enter Meeting ID: **891 1659 3118**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized by the Chair.

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

# AGENDA

**Roll Call**

**Public Comment**

## **Review of Agendas**

1. **Approval of Minutes: April 26, 2021**
2. **Review and Approve Draft Agenda:**
  - a. 5/25/21 – 6:00 p.m. Regular City Council Meeting
3. **Selection of Item for the Berkeley Considers Online Engagement Portal**
4. **Adjournments In Memory**

## **Scheduling**

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

## **Referred Items for Review**

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

## **Unscheduled Items**

9. **Strengthening and Supporting City Commissions: Guidance on the Development of Legislative Proposals**

## **Items for Future Agendas**

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

**Adjournment – Next Meeting Monday, May 17, 2021**

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**Additional items may be added to the draft agenda per Council Rules of Procedure.**

*Rules of Procedure as adopted by Council resolution, Article III, C3c - Agenda - Submission of Time Critical Items*

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

*If the Agenda Committee finds the matter to meet the definition of Time Critical, the Agenda Committee may place the matter on the Agenda on either the Consent or Action Calendar.*

*The City Clerk shall not accept any item past the adjournment of the Agenda Committee meeting for which the agenda that the item is requested to appear on has been approved.*

*Written communications addressed to the Agenda Committee and submitted to the City Clerk Department by 5:00 p.m. the Friday before the Committee meeting, will be distributed to the Committee prior to the meeting.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.*



**COMMUNICATION ACCESS INFORMATION:**

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

\* \* \*

I hereby certify that the agenda for this special meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on May 6, 2021.



Mark Numainville, City Clerk

## **Communications**

*Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or [policycommittee@cityofberkeley.info](mailto:policycommittee@cityofberkeley.info).*





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

**MONDAY, APRIL 26, 2021**

**2:30 P.M.**

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Lori Droste

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

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

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

**Public Comment** – 9 speakers

## **Review of Agendas**

**1. Approval of Minutes: April 12, 2021**

**Action:** M/S/C (Hahn/Wengraf) to approve the minutes of 4/12/21.

**Vote:** All Ayes.

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

a. 5/11/21 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Hahn/Wengraf) to approve the agenda of 5/11/21 with the changes noted below.

- *Item 14 Audit Report (City Auditor) – moved to Action Calendar*
- *Item 15 Support AB 550 (Arreguin) – Councilmembers Droste, Bartlett and Robinson added as co-sponsors*
- *Item 16 Support AB 43 (Arreguin) – councilmembers Wengraf, Hahn, and Kesarwani added as co-sponsors*
- *Item 17 Support AB 629 (Arreguin) – Councilmember Kesarwani added as a co-sponsor*
- *Item 19 Green New Deal (Taplin) – Councilmember Hahn added as a co-sponsor*
- *Item 21 Roadmap Home (Harrison) - Councilmember Hahn added as a co-sponsor*
- *Item 23 SB 9 (Wengraf) – removed from the agenda by the author*
- *Item 24 Support SB 15 (Wengraf) - Councilmember Harrison added as a co-sponsor*
- *Item 25 Support S.2235 (Robinson) Councilmembers Hahn and Wengraf added as co-sponsors*
- *Item 26 Support for State Legislation (Robinson) – revised item submitted; Mayor Arreguin, Councilmember Bartlett, and Councilmember Droste added as cosponsors*
- *Item 28 Emergency Response (Arreguin) – Item moved to Consent Calendar*
- *Item 29 C40 Race to Zero (Arreguin) – Item moved to Consent Calendar; Councilmember Hahn added as a co-sponsor*
- *Item 30 ADU Permits (Kesarwani) – Item referred to the Land Use, Housing & Economic Development Committee Unscheduled Items List; Councilmembers Wengraf, Droste, and Bartlett added as co-sponsors*
- *Item 31 Climate Equity (Harrison) – Councilmembers Taplin and Robinson added as co-sponsors; referred to the Budget and Finance Committee; revised item submitted*

Order of Action Items

Item 27 Mental Health

Item 14 Audit Report

**Vote:** All Ayes.

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

- None selected

**4. Adjournments In Memory – None**

## Scheduling

5. **Council Worksessions Schedule**
  - Added unscheduled item regarding COVID-19 response
6. **Council Referrals to Agenda Committee for Scheduling** – received and filed
7. **Land Use Calendar** – received and filed

## Referred Items for Review

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

**Action:** 1 speaker. No action taken.

9. **Systems Realignment Proposal**

**From:** City Manager

**Recommendation:** Review and discuss the City Manager's proposal to create improvements to enhance the effectiveness of the City Council legislative and budget processes. Provide feedback for staff to develop a recommendation for full Council consideration.

Contact: Dee Williams-Ridley, City Manager, (510) 981-7000

**Action:** 3 speakers. The Committee discussed the revisions introduced by the Mayor and made further revisions for staff consideration in the version to be prepared for presentation to the full City Council.

## Unscheduled Items

10. **Strengthening and Supporting City Commissions: Guidance on the Development of Legislative Proposals**

## Items for Future Agendas

- None

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 4:27 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on April 26, 2021.

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Mark Numainville  
City Clerk

## **Communications**

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# DRAFT AGENDA



## BERKELEY CITY COUNCIL MEETING

Tuesday, May 25, 2021  
6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – TERRY TAPLIN  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

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

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

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

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

*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free) and enter Meeting ID: <<INSERT MEETING ID HERE>>. 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 teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.*

*To submit a written communication for the City Council's consideration and inclusion in the public record, email [council@cityofberkeley.info](mailto:council@cityofberkeley.info).*

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

## Preliminary Matters

### Roll Call:

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

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

**Public Comment on Non-Agenda Matters:** *Persons will be selected to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

## Consent Calendar

*The Council will first determine whether to move items on the agenda for "Action" or "Information" to the "Consent Calendar", or move "Consent Calendar" items to "Action." Three members of the City Council must agree to pull an item from the Consent Calendar for it to move to Action. Items that remain on the "Consent Calendar" are voted on in one motion as a group. "Information" items are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent".*

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

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

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

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

## Consent Calendar

- 1. Resolution Reviewing and Ratifying the Proclamation of Local Emergency Due to the Spread of a Severe Acute Respiratory Illness Caused by a Novel (New) Coronavirus (COVID-19)**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021 and March 30, 2021.  
**Financial Implications:** See report  
Contact: Farimah Brown, City Attorney, (510) 981-6950
- 2. Minutes for Approval**  
**From: City Manager**  
**Recommendation:** Approve the minutes for the council meetings of April 13, 2021 (special), April 20, 2021 (special and regular), April 27, 2021 (regular) and April 29, 2021 (closed).  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 3. Assessments: Berkeley Tourism Business Improvement District**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the Annual Report of FY21 and preliminary budget for FY22 for the Berkeley Tourism Business Improvement District (BTBID) as recommended by the BTBID Owners' Association.  
**Financial Implications:** See report.  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 4. Assessments: Downtown Berkeley Property Based Business Improvement District**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions:  
1. Approving the Downtown Berkeley Property Based Business Improvement District (DPBID) Annual Report of Fiscal Year (FY) 2021 and proposed budget for FY 2022, and declaring Council's intention to levy an annual assessment for the DPBID for FY 2022.  
2. Authorizing the City Manager to execute a sole source contract and any amendments with the Downtown Berkeley Association (DBA or "the Association") not to exceed \$7,285,257 of DPBID funds to support the Downtown area for the period July 1, 2021 to December 31, 2026, through the expiration of the DPBID.  
**Financial Implications:** See report.  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530

## Consent Calendar

- 5. Assessments: North Shattuck Property Based Business Improvement District**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the North Shattuck Property Based Business Improvement District (NSBID) Annual Report of Fiscal Years (FYs) 2021 & 20 and proposed budget for FY 2022, and declaring Council's intention to levy an annual assessment for the NSBID for FY 2022.  
**Financial Implications:** See report.  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 6. Assessments: Telegraph Property Based Business Improvement District**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the Telegraph Property Based Business Improvement District (TBID) Annual Report of FY 2021 and proposed budget for FY 2022, and declaring Council's intention to levy an annual assessment for the TBID for FY 2022.  
**Financial Implications:** See report.  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 7. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on May 25, 2020**  
**From: City Manager**  
**Recommendation:** Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.  
**Financial Implications:** \$250,000  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 8. Memorandum of Agreement with the City of Oakland for the National Urban Search and Rescue Response System**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a Memorandum of Agreement and any amendments with the City of Oakland, as the "Sponsoring Agency" for the National Urban Search and Rescue Response System, operated by the United States Department of Homeland Security, acting through the Federal Emergency Management Agency (FEMA), along with the State of California and local governments.  
**Financial Implications:** None  
Contact: Abe Roman, Fire, (510) 981-3473



## Consent Calendar

- 9. Contract: Multicultural Institute for COVID -19 Outreach and Health Education Activities**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an expenditure contract and any amendments or extensions thereto with Multicultural Institute in the amount not to exceed \$100,000 for the period June 1, 2021 through June 30, 2022 for COVID-19 outreach services to the Latinx community; particularly the day laborer and domestic worker community.  
**Financial Implications:** See report.  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 10. Revenue Grant Agreement: Funding Support from State of California Board of State and Community Corrections Proposition 64 Public Health and Safety Funding**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to submit a grant application to The State of California Board of State and Community Corrections, to accept the grant, execute any resultant revenue agreement and amendment, and implement the projects and appropriation of funding for related expenses to address public health and safety related to the implementation of the Control, Regulate, and Tax Adult Use of Marijuana Act, to conduct public health promotion, protection, and prevention services for the State of California Board of State and Community Corrections revenue agreement in the projected amount of \$1,000,000 for May 1, 2021 to April 30, 2024.  
**Financial Implications:** See report.  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

## Consent Calendar

- 11. Revenue Grant Agreements: Funding Support from the State of California to Conduct Public Health Services**  
**From: City Manager**  
**Recommendation:** Adopt five Resolutions authorizing the City Manager or her designee to submit grant agreements to the State of California, to accept the grants, and execute any resultant revenue agreements and amendments to conduct public health promotion, protection, and prevention services for the following eleven revenue agreements:
1. Child Health and Disability Prevention (CHDP) Program, which includes Early Periodic Screening, Diagnosis, and Treatment (EPSDT) and Health Care Program for Children in Foster Care (HCPCFC), in the projected amount of \$353,395 for FY 2022.
  2. Maternal, Child and Adolescent Health (MCAH) Program, in the projected amount of \$332,000 for FY 2022.
  3. Tobacco Trust Fund: There is no match required and this contract is expected to be for \$300,000 in FY 2022.
  4. Immunization Program: In the projected amount of \$42,204 for FY 2022.
  5. Public Health Emergency Preparedness/Pandemic Flu/Cities Readiness Initiative (CRI) Program in the projected allocation of \$257,000 for FY 2022.
- Financial Implications:** See report.  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 12. Accept a Donation from the California Office of Emergency Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting a donation of cash and gift cards totaling approximately \$9,000 from CalOES, the Governor's Office of Emergency Services.  
**Financial Implications:** See report.  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 13. Protiviti Government Services: Using General Services Administration (GSA) Vehicle for Professional Services Purchase Orders**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to issue purchase orders with Protiviti Government Services for the purchase of professional services using the General Services Agency's (GSA) purchasing vehicle no. GS-35F-0280X for an amount not to exceed \$137,000 through June 30, 2022.  
**Financial Implications:** See report.  
Contact: Savita Chaudhary, Information Technology, (510) 981-6500

## Consent Calendar

- 14. Grant Application: the Surrendered and Abandoned Vessel Exchange (SAVE) grant program of the California Division of Boating & Waterways**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to 1) submit a grant application to the California Division of Boating and Waterways 2021 SAVE grant program for \$42,000; 2) accept any grants; 3) execute any resulting grant agreements and any amendments; and authorizing the implementation of the projects and appropriation of funding for related expenses, including \$4,200 in local match from the Marina Fund.  
**Financial Implications:** See report.  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 15. Purchase Order: Altec Industries, Inc. for One Aerial Bucket Truck**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcewell contract bid procedures, and authorizing the City Manager to execute a purchase order for one (1) Aerial Bucket Truck with Altec Industries, Inc. in an amount not to exceed \$206,180.  
**Financial Implications:** See report.  
Contact: Liam Garland, Public Works, (510) 981-6300
- 16. Purchase Order: Braun Northwest for One (1) 2021 North Star 155-1 Type 1 Ambulance**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in HGACBuy contract bid procedures, and authorizing the City Manager to execute a purchase order for one (1) 2021 North Star 155-1 Type 1 Ambulance with Braun Northwest, Inc. in an amount not to exceed \$245,000.  
**Financial Implications:** See report.  
Contact: Liam Garland, Public Works, (510) 981-6300
- 17. Purchase Order: Cal-Line Equipment Inc. for Three (3) Bandit 250XP Brush Chippers**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcewell (formerly NJPA) bid procedures, and authorizing the City Manager to execute a purchase order for three (3) Brush Chippers with Cal-Line Equipment Inc. in an amount not to exceed \$206,200.  
**Financial Implications:** See report.  
Contact: Liam Garland, Public Works, (510) 981-6300

## Consent Calendar

- 18. Purchase Order: Golden State Fire Apparatus, Inc. for One Pierce Quantum 1500 GPM Pumper**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in HGACBuy bid procedures, and authorizing the City Manager to execute a purchase order for one (1) Pierce Quantum 1500 GPM Pumper with Golden State Fire Apparatus, Inc. in an amount not to exceed \$866,000.  
**Financial Implications:** See report.  
Contact: Liam Garland, Public Works, (510) 981-6300
- 19. Contract No. 108563-1 Amendment: Stanley Access Technologies for On-Call and Emergency Repair Services for Automatic Doors**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract 108563-1 with Stanley Access Technologies, to increase spending authority by \$50,000.00 for a total not to exceed amount of \$100,000.00 and to extend contract terms for one year, to June 30, 2023, for continued on-call and emergency repair services to maintain the commercial automatic doors in City-owned facilities.  
**Financial Implications:** See report.  
Contact: Liam Garland, Public Works, (510) 981-6300
- 20. Declaration of Intent – Fiscal Year 2022 Street Lighting Assessments**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions granting the City Manager the authority to approve the Engineer’s Reports; set a public hearing to be held before the Council of the City of Berkeley at its June 15, 2021 meeting; and authorize the City Clerk to publish Notice of the Public Hearing for Fiscal Year 2022 Levy of Assessments for Berkeley Street Lighting Assessment District No. 1982-1 and Street Lighting Assessment District 2018.  
**Financial Implications:** See report.  
Contact: Liam Garland, Public Works, (510) 981-6300

## Consent Calendar

### 21. **FY 2021/2022 Transportation Development Act Article 3 Fund Allocation**

**From: City Manager**

**Recommendation:** Adopt Resolutions:

1. Authorizing the City Manager to: submit an allocation request to the Metropolitan Transportation Commission (MTC) prior to the May 28, 2021 deadline for \$450,000 of FY 21/22 Transportation Development Act (TDA) Article 3 funds for the Berkeley Bicycle Plan Update and Vision Zero Quick Build Program; accept the funds; execute any resultant agreements and amendments; and authorize the implementation of the project, subject to securing the funds; and
2. Declaring that: the City of Berkeley is eligible to request an allocation of TDA Article 3 funds pursuant to Section 99234 of the Public Utilities Code; there is no pending or threatened litigation that might adversely affect the project or projects described in Attachment B to this resolution, or that might impair the ability of the City of Berkeley to carry out the project; the project has been reviewed by the Bicycle Advisory Committee (BAC) of the City of Berkeley; the City of Berkeley attests to the accuracy of and approves the statements in Attachment A to this resolution; and a certified copy of this resolution and its attachments, and any accompanying supporting materials shall be forwarded to the congestion management agency, countywide transportation planning agency, or county association of governments, as the case may be, of Alameda County for submission to MTC as part of the countywide coordinated TDA Article 3 claim.

**Financial Implications:** See report.

Contact: Liam Garland, Public Works, (510) 981-6300

### 22. **Agreement with AC Transit for Operation and Maintenance of Transit Signal Priority Equipment**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to negotiate and approve a Cooperative Agreement to enable Alameda-Contra Costa County Transit District and its contractor(s) to perform all operation and maintenance activities to Transit Signal Priority (TSP) equipment deployed by the Rapid Corridors Project within the City.

**Financial Implications:** See report.

Contact: Liam Garland, Public Works, (510) 981-6300

### 23. **Surplus Lands Act**

**From: City Manager**

**Recommendation:** Adopt a Resolution to comply with the terms of the Surplus Lands Act (California Government Code § 54220, Et Seq.), as exists now or may be amended in the future, including, but not limited to, AB 1255 (Rivas, 2019), which requires jurisdictions to compile and report annually an inventory of surplus lands to the California Department of Housing and Community Development.

**Financial Implications:** See report.

Contact: Liam Garland, Public Works, (510) 981-6300

## Consent Calendar

- 24. Lease Agreement: 2010 Addison Street at Center Street Garage with Vito Loconte and Alexie LeCount d.b.a Lexie's Frozen Custard**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement for 2010 Addison Street at the Center Street Garage with Vito Loconte and Alexie LeCount d.b.a Lexie's Frozen Custard, a sole proprietorship, for an initial term of ten (10) years with one optional five-year lease extension AND approve payment of a commission of \$9,331.23 to Colliers International for commercial brokerage fees for locating a tenant for the premises.  
**Financial Implications:** See report.  
Contact: Liam Garland, Public Works, (510) 981-6300
- 25. Appointment of Monica Renee Jones to Mental Health Commission**  
**From: Mental Health Commission**  
**Recommendation:** Adopt a Resolution appointing: Monica Renee Jones as a representative of the General Public Interest Category, to complete her first 3-year term beginning May 26, 2021 and ending May 25, 2024.  
**Financial Implications:** None.  
Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400
- 26. Police Review Commission online poll**  
**From: Police Review Commission**  
**Recommendation:** Authorize the Police Review Commission to conduct an online poll regarding awareness of the Commission and experience with its complaint process.  
**Financial Implications:** None.  
Contact: Katherine Lee, Commission Secretary, (510) 981-4950

## Council Consent Items

- 27. Support of AB 1177 – California Public Banking Options Act**  
**From: Mayor Arreguin (Author)**  
**Recommendation:** Adopt a Resolution in support of Assembly Bill 1177 and send a copy of the Resolution to Governor Newsom, Senator Skinner and Assemblymember Wicks.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, (510) 981-7100

## Council Consent Items

- 28. Budget Referral: Sixth Street Traffic Calming Improvements for the Improvement of Pedestrian and Cyclist Safety**  
**From: Councilmember Taplin (Author)**  
**Recommendation:** That the City Council refers to the budget process the funding of traffic calming improvements as follows: 1. Rapid Rectangular Flashing Beacons (RRFB) and a median refuge island at Sixth and Channing Way; 2. A median refuge island at Sixth and Addison Street.  
**Financial Implications:** See report  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 29. Budget Referral: City of Berkeley Annual Holocaust Remembrance Day**  
**From: Councilmember Wengraf (Author), Mayor Arreguin (Co-Sponsor), Councilmember Hahn (Co-Sponsor), Councilmember Taplin (Co-Sponsor)**  
**Recommendation:** Refer to the Fiscal Year 2022/2023 budget process a request for \$6,000 annually to fund the City of Berkeley's Annual Holocaust Remembrance Day Program.  
**Financial Implications:** \$6,000  
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
- 30. Budget Referral: Increased Funding for Neighborhood Traffic Calming**  
**From: Councilmember Wengraf (Author)**  
**Recommendation:** Refer to the Fiscal Year 2022/2023 Budget Process an annual increase in allocation for neighborhood traffic calming from the current 100 thousand dollars to 200 thousand dollars.  
**Financial Implications:** \$100,000  
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
- 31. Budget Referral: Willard Park Ambassador**  
**From: Councilmember Droste (Author), Mayor Arreguin (Co-Sponsor), Councilmember Robinson (Co-Sponsor), Councilmember Bartlett (Co-Sponsor)**  
**Recommendation:** Refer to the Budget and Finance Committee a request for \$100,000 in funding for a Park Ambassador at Willard Park for 1 year.  
**Financial Implications:** \$100,000  
Contact: Lori Droste, Councilmember, District 8, (510) 981-7180

## Action Calendar

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

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

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

## Action Calendar – Public Hearings

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

*Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.*

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

### **32. FY 2022 Proposed Budget and Proposed Budget Public Hearing #1**

#### **From: City Manager**

**Recommendation:** Accept the FY 2022 Proposed Budget for review and consideration by the City Council and final adoption on June 29, 2021 and conduct Public Hearing #1 on the FY 2022 Proposed Budget.

**Financial Implications:** See FY 2022 Proposed Biennial Budget

Contact: Rama Murty, Budget Office, (510) 981-7000

### **33. Rescinding and Adopting the Environmental Health Division Fee Schedule**

#### **From: City Manager**

**Recommendation:** Conduct a Public Hearing and, upon conclusion, adopt a Resolution to rescind Resolution 67,495-N.S. which established the current Environmental Health fee schedule and adopt a new fee schedule. The new fee schedule keeps all existing fees at the same level and adds a new permit fee category for Microenterprise Home Kitchen Operations (MEHKO) with a proposed fee of \$510 annually to cover permit and inspection fees. The new fees will be effective June 1, 2021 until subsequently modified.

**Financial Implications:** See report

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



## Action Calendar – Public Hearings

### 34. Selected Recreation and Camps Program Fee Increases

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion, adopt a Resolution approving new fees and increasing current fees for select Recreation Division programs and rescinding Resolution No. 68,898-N.S. and all amendatory resolutions.

**Financial Implications:** See report.

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

## Action Calendar – New Business

### 35a. Grant Allocation: Approve Funding Recommendation for Programs to Reduce Consumption of Sugar-Sweetened Beverages (SSBs)

**From: Sugar Sweetened Beverage Product Panel of Experts**

**Recommendation:** Approve the SSBPPE Commission's recommendations and adopt thirteen (13) Resolutions authorizing the City Manager or her designee to enter into contracts with the Berkeley Unified School District and the Community Based Organizations (CBOs) listed below to distribute a total of \$2,662,506 for FY 2022 and FY 2023 according to the schedule below and to also provide \$239,626 to the City of Berkeley Public Health Division (BPHD) during the same period to support administering and enhancing this program as approved by the Berkeley City Council as follows: 1. \$951,452 total grant to Berkeley Unified School District to implement the Gardening and Cooking Program for FY 2022 and FY 2023 to be disbursed as follows: \$475,726 for FY 2022 and \$475,726 for FY 2023. 2. \$242,250 total grant to the Ecology Center to implement For Thirst, Water First! program for FY 2022 and FY 2023 to be disbursed as follows: \$121,125 in FY 2022 and \$121,125 in FY 2023. 3. \$445,330 grant to Healthy Black Families to implement Thirsty for Change! (T4C) program for FY 2022 and FY 2023 to be disbursed as follows: \$222,665 in FY 2022 and \$222,665 in FY 2023. 4. \$30,000 grant to the Multicultural Institute to implement the Life Skills/Day Laborer Program: Health Activity program for FY 2022 and FY 2023 to be disbursed as follows: \$15,000 in FY 2022 and \$15,000 in FY 2023. 5. \$80,000 grant to the YMCA of the East Bay to implement the YMCA Diabetes Prevention (YDPP) program for FY 2022 and FY 2023 to be disbursed as follows: \$40,000 in FY 2022 and \$40,000 in FY 2023. 6. \$90,550 grant to the YMCA of the East Bay to implement the YMCA Healthy Me! program for FY 2022 and FY 2023 to be disbursed as follows: \$45,275 in FY 2022 and \$45,275 in FY 2023. 7. \$237,150 grant to Lifelong Medical Care to implement the Chronic Disease and Oral Health Prevention Project for FY 2022 and FY 2023 to be disbursed as follows: \$118,575 in FY 2022, and \$118,575 in FY 2023. 8. \$37,600 grant to Fresh Approach to implement the Veggie Rx Program for Healthy Foods and Beverages program for FY 2022 and FY 2023 to be disbursed as follows: \$18,800 in FY 2022, and \$18,800 in FY 2023. 9. \$116,000 grant to Bay Area Community Resources to implement the Healthy Options at Point of Sale program for FY 2022 and FY 2023 to be disbursed as follows: \$58,000 in FY 2022, and \$58,000 in FY 2023. 10. \$55,448 grant to Community Health Education Institute to implement the Artists Against Soda program for FY 2022 and FY 2023 to be disbursed as follows: \$27,724 in FY 2022,

## Action Calendar – New Business

and \$27,724 in FY 2023. 11. \$77,600 grant to Berkeley Youth Alternatives to implement the Urban Agriculture and Team Nutrition Program for FY 2022 and FY 2023 to be disbursed as follows: \$38,800 in FY 2022 and \$38,800 in FY2023. 12. \$59,500 grant to 18 Reasons to implement the Cooking Matters program for FY2022 and FY2023 to be disbursed as follows: \$29,750 in FY2022 and \$29,750 in FY2023. 13. \$239,626 to the City of Berkeley Public Health Division (BPHD) to support the SSBPPE Commission and assist with outside evaluations to be disbursed as follows: \$119,813 in FY 2022 and \$119,813 in FY 2023. 14. The Commission recommends that indirect or administrative expenses not exceed 10% of the program budget for any entity and that the funds awarded not be used to supplant any other source of funding. 15. The Commission recommends that City Council authorize the City Manager to authorize advances for BUSD and the selected community agencies receiving funds in FY 2022 and FY2023. The advances are to be equivalent to 25% of the agency's allocation.

**Financial Implications:** See report

Contact: Dechen Tsering, Commission Secretary, (510) 981-5300

**35b. Companion Report: Approve Funding Recommendation for Programs to Reduce Consumption of Sugar-Sweetened Beverages (SSBs)**

**From: City Manager**

**Recommendation:** Approve the SSBPE Commission's recommendation for funding for Community Based Organizations (CBOs) and Berkeley Unified School District (BUSD) and adopt thirteen (13) Resolutions authorizing the City Manager or her designee to enter into contracts with the CBOs and BUSD to distribute a total of \$2,662,506 for FY 2022 and FY 2023 according to the schedule recommended by the SSBPE. Uphold the City of Berkeley Public Health Division allocation previously approved through Resolution No. 69,669-N.S. by allocating \$399,374 during the same time period.

**Financial Implications:** See report.

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

## Council Action Items

### 36a. **Amending the Berkeley Election Reform Act (BERA) Relating to Officeholder Accounts** *(Reviewed by the Agenda & Rules Committee)*

**From: Councilmember Hahn (Author)**

**Recommendation:** Take one of the following actions:

1. Adopt an ordinance amending the Berkeley Election Reform Act (BERA), BMC Chapter 2.12, and Lobbyist Registration Act, BMC Chapter 2.09, to enact “a reasonable set of limitations and rules” to regulate the maintenance of officeholder accounts, as developed and referred for consideration by the Agenda and Rules Committee; or

2. Adopt an ordinance amending BERA, BMC Chapter 2.12, to prohibit Officeholder Accounts, as originally proposed by the Fair Campaign Practices Commission.

**Policy Committee Recommendation:** Send the item to Council with two proposed alternatives: 1) Councilmember Hahn’s proposal to regulate officeholder accounts, and 2) the Fair Campaign Practices Commission proposal to prohibit officeholder accounts; and to include the Commission’s analysis of regulating officeholder accounts in the item that goes to the full Council.

*Policy Committee Recommendation: Send the item to Council with two proposed alternatives: 1) Councilmember Hahn’s proposal to regulate officeholder accounts, and 2) the Fair Campaign Practices Commission proposal to prohibit officeholder accounts; and to include the Commission’s analysis of regulating officeholder accounts in the item that goes to the full Council.*

**Financial Implications:** See report

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

### 36b. **Amendments to the Berkeley Election Reform Act (BERA) to Regulate Officeholder Accounts and Proposed Changes to City Council Office Budget Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)** *(Reviewed by the Agenda & Rules Committee)*

**From: Fair Campaign Practices Commission**

**Recommendation:** Form a joint subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

*Policy Committee Recommendation: Send the item to Council with two proposed alternatives: 1) Councilmember Hahn’s proposal to regulate officeholder accounts, and 2) the Fair Campaign Practices Commission proposal to prohibit officeholder accounts; and to include the Commission’s analysis of regulating officeholder accounts in the item that goes to the full Council.*

**Financial Implications:** None

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

## Council Action Items

- 37. Commission Reorganization for Post-COVID19 Budget Recovery**  
**From: Councilmember Droste (Author), Councilmember Robinson (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor)** *(Reviewed by the Agenda & Rules Committee)*
- Recommendation:**
1. Refer to the City Manager and City Attorney to bring back changes to the enabling legislation to reorganize existing commissions as proposed below in a phased approach. Phase 1: Prioritize merging the Homeless Commission/Homeless Services Panel of Experts and Housing Advisory Commission/Measure O Bond Oversight Committee first, and request that the City Manager bring back changes to the enabling legislation to implement these consolidated commissions. Phase 2: All other Commissions as proposed in the report. As staff is able to make recommendations on consolidation, they can bring those recommendations forward one by one.
  2. Refer to staff to develop recommendations on the transition to new consolidated commissions and the effective date of the changes.
  3. Consider establishing 18 members on the new Climate and Environment Commission and establishing specific subcommittees focused on the policy areas of the merged commissions.
  4. The Peace, Justice and Human Welfare Commission will be composed of only Mayor and Council appointees.
  5. Refer to City Manager and Commissions the following additional considerations:
    - Federal, state or other external mandates that might be impacted, and determine how to handle.
    - Whether charters of to-be-merged Commissions were adopted by City Council, through measures or initiatives passed by voters, or are by Charter, and by what means they might be merged/adjusted.
    - What elements of each Commission to keep, update, or retire, as well as relevant topics/issues not currently covered that might be added to a more comprehensive and/or relevant merged Commission's charter.
    - Whether the merged Commission might include 9, or a greater number of members.
    - The possibility of requiring specific qualifications for appointment to the merged Commission.
    - The possibility of recommended or required Standing Committees of the Merged Commission.
    - Volunteer workload and capacity given scope of Commission's charter
- Policy Committee Recommendation: Make a Qualified Positive Recommendation to City Council to:*
- 1. Refer to the City Manager and City Attorney to bring back changes to the enabling legislation to reorganize existing commissions as proposed below in a phased approach. Phase 1: Prioritize merging the Homeless Commission/Homeless Services Panel of Experts and Housing Advisory Commission/Measure O Bond Oversight Committee first, and request that the City Manager bring back changes to the enabling legislation to implement these consolidated commissions. Phase 2: All other Commissions as proposed in the report. As staff is able to make recommendations on consolidation, they can bring those recommendations forward one by one.*
  - 2. Refer to the Commissions impacted a process to determine the charge/responsibilities of the newly merged commissions, and bring Commission input to the appropriate Policy Committees (as proposed by Vice-Mayor Droste in*

## Council Action Items

*4/5/21 submittal) for further recommendations to the City Manager on revised charge/responsibilities of merged commissions.*

*3. Refer to staff to develop recommendations on the transition to new consolidated commissions and the effective date of the changes.*

*4. Consider establishing 18 members on the new Climate and Environment Commission and establishing specific subcommittees focused on the policy areas of the merged commissions.*

*5. The Peace, Justice and Human Welfare Commission will be comprised of only Mayor and Council appointees.*

*6. Refer Councilmember Hahn questions to City Manager and Commissions:  
“Commissions to Combine/Merge - Suggested Considerations”*

*- Federal, state or other external mandates that might be impacted, and determine how to handle. - Whether charters of to-be-merged Commissions were adopted by City Council, through measures or initiatives passed by voters, or are by Charter, and by what means they might be merged/adjusted. - What elements of each Commission to keep, update, or retire, as well as relevant topics/issues not currently covered that might be added to a more comprehensive and/or relevant merged Commission’s charter. - Whether the merged Commission might include 9, or a greater number of members. - The possibility of requiring specific qualifications for appointment to the merged Commission. - The possibility of recommended or required Standing Committees of the Merged Commission - Volunteer workload and capacity given scope of Commission’s charter.*

**Financial Implications:** See report

Contact: Lori Droste, Councilmember, District 8, (510) 981-7180

## Action Calendar – Policy Committee Track Items

### 38. COVID Economic Recovery - Expanding Local Purchasing Preferences to Rebuild the City's Local Economy and Tax Base

**From: Councilmember Hahn (Author)**

**Recommendation:** 1. To support urgently needed economic recovery in the wake of the COVID-19 crisis and direct more City of Berkeley dollars to Berkeley businesses, adopt a Resolution to expand Berkeley's existing local vendor preference program by increasing the value of eligible contracts for goods, equipment, and non-professional services to \$250,000.

2. Direct the City Manager to develop and implement a local vendor preference program for contracts for professional services of up to \$250,000 in value (or up to a higher amount), to be effective no later than September 1, 2021 to further support economic recovery in the City of Berkeley.

3. Refer to the City Manager to reach-out to Berkeley businesses to publicize, offer training and provide other meaningful access to the City's expanded preferences programs including specific outreach to businesses owned by people of color, people with disabilities, women, immigrants, and other traditionally marginalized business communities to ensure equitable access to contracting opportunities with the City of Berkeley.

4. Refer to the City Manager to quickly incorporate, when available, the results of the Mason Tillman Associates study reviewing and identifying disparities in the awarding of contracts affecting local, small, emerging enterprises and other enterprises with barriers to access in City construction, architecture, engineering, professional services, goods, and other services contracts.

5. Refer to the City Manager to track and issue periodic reports to Council (or include in existing reports such as the annual Economic Dashboard), and/or to track on an online dashboard, the City's success expanding contracting for goods, equipment, and services with local vendors.

**Financial Implications:** See report

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

### 39. Amend BMC 14.72.105

**From: Councilmember Wengraf (Author)**

**Recommendation:** Adopt first reading of an Ordinance amending BMC 14.72.105 Neighborhood-Serving Community Facility Permits, to allow a broader range of community facilities to be eligible for parking permits.

**Financial Implications:** See report

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

## Information Reports

### 40. Mental Health Commission Work Plan 2021-2022

**From: Mental Health Commission**

Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400

## Public Comment – Items Not Listed on the Agenda

## Adjournment

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

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

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

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

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

### COMMUNICATION ACCESS INFORMATION:

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



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

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Mental Health Commission

02a.25

CONSENT CALENDAR  
May 25, 2021

To: Honorable Mayor and Members of the City Council  
From: Mental Health Commission  
Submitted by: Margaret Fine, Chairperson, Mental Health Commission  
Subject: Appointment of Monica Renee Jones to Mental Health Commission

RECOMMENDATION

Adopt a Resolution appointing: Monica Renee Jones as a representative of the General Public Interest Category, to complete her first 3-year term beginning May 26, 2021 and ending May 25, 2024.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The Mental Health Commission is authorized to be composed of thirteen members. There are presently six vacancies on the Commission. These vacancies impair the Commission's ability to adequately review and evaluate the community's mental health needs, resources, and programs. Approval of the recommended action will fill a vacant position and move the Commission closer to having a full and diverse complement of commissioners

BACKGROUND

California State law requires that appointments to the Mental Health Commission meet specific categories, who may serve up to nine years consecutively. The general public interest category may include anyone who has an interest in and some knowledge of mental health services. The special public interest category includes direct consumers of public mental health services and family members of consumers, which together must constitute at least fifty percent or nine of the commission seats. Direct consumers and family members shall each constitute at least 20% of the commission membership.

Monica Renee Jones is a resident of Berkeley and has a past experience in Corrections for 25 year. She has the compassion to help others and a passion to serve the mental health community. She would like to join the Mental Health Commission to be part of the solution and address issues around housing and medication evaluations for mental health consumers. This would be her first term participating on the Mental Health Commission.

The Mental Health Commission passed the following motions at the March 25, 2021 meeting:

Interview and vote on the nomination of Monica Jones on the Mental Health Commission.

M/S/C (cheema, Fine) Motion to move that we forward the application for Monica Renee Jones to the city council

PASSED

Ayes: Blanton, cheema, Fine, Opton, Prichett Noes: None; Abstentions: None; Absent: Moore, Taplin

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

#### RATIONALE FOR RECOMMENDATION

Approval of the recommended action will allow the Mental Health Commission to move closer to having a full and diverse complement of commissioners to review and evaluate the community's mental health needs, resources, and programs.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

#### CONTACT PERSON

Jamie Works-Wright, Commission Secretary, HHCS, 510-981-7721

Attachments:

1: Resolution

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

APPOINTMENT OF MONICA RENEE JONES TO THE MENTAL HEALTH  
COMMISSION

WHEREAS, membership of the Mental Health Commission is composed of thirteen appointments by the City Council as a whole, including one appointment by the Mayor (*or designee*), six special public interest appointments, and four general public interest appointments; and

WHEREAS, with the ongoing implementation of the Mental Health Services Act, the City of Berkeley will need to have a full complement of diverse appointees to the Commission to review and evaluate the community's mental health needs, resources, and programs and to fulfill its mandate; and

WHEREAS, Ms. Jones has an investment in the community, trained in post trauma and conflict management and is prepared to contribute to helping others.

WHEREAS, the Mental Health Commission at its March 25, 2021 meeting recommends appointment of Monica Renee Jones.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council appoints Monica Renee Jones as a representative of the General Public Interest category, to complete her first-term ending May 25, 2024.





Police Review Commission

02a.26

CONSENT CALENDAR  
May 25, 2021

To: Honorable Mayor and Members of the City Council  
From: Police Review Commission  
Submitted by: Ismail Ramsey, Chairperson, Police Review Commission  
Subject: Police Review Commission online poll

RECOMMENDATION

Authorize the Police Review Commission to conduct an online poll regarding awareness of the Commission and experience with its complaint process.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The Police Review Commission (PRC) is interested in learning about what the public knows about the PRC and, in particular, about the ability to file complaints of alleged misconduct by Berkeley police officers or policy complaints questioning a particular departmental policy, practice, or procedure. The idea for a poll stemmed from the PRC's Outreach Subcommittee, which thought that the data gathered would help the coming Police Accountability Board target its outreach efforts. The PRC believes the survey results will be useful for the new oversight body as it plans its community engagement activities.

BACKGROUND

The PRC was created in 1973 to provide for community participation in setting and reviewing police department policies, practices, and procedures, and to provide a means for prompt, impartial, and fair investigation of complaints brought by individuals against the Berkeley Police Department.

The number of individual and policy complaints filed with the PRC has fallen steadily over the past 20 years, averaging 20 per year from 2011 to 2020, compared to 42 from 2001 to 2010. The reason for the decline is unclear, but could be due to factors such as lack of knowledge about the PRC complaint process, or general satisfaction with the police.

Obtaining information about the public's awareness of the PRC, as well as understanding why they have not filed a complaint, even if they know about their ability to have an entity separate from the Police Department investigate it, will help shed

some light on what type of outreach efforts are needed. While the PRC will soon cease to exist, the Police Accountability Board, as a successor agency that will also accept complaints, could benefit from an understanding of what the public knows about civilian oversight in Berkeley and the public's views of its effectiveness.

The poll, a copy of which is attached, will be issued via SurveyMonkey. It is brief and focused, and will be circulated for three weeks. The link to the poll will be shared broadly as possible. It will be sent to individuals and to community, non-profit, political advocacy, and faith-based organizations, among others, who will be asked to respond to and share the poll. Respondents will remain anonymous.

The PRC voted unanimously to approve the idea of the poll and seek Council's approval at its April 14, 2021 meeting.

#### ENVIRONMENTAL SUSTAINABILITY

No identifiable environmental effects or opportunities are associated with the subject of this report.

#### RATIONALE FOR RECOMMENDATION

According to the Commissioners' Manual, Council approval is needed for a commission to communicate in an official manner outside of commission meetings, including polling of the public.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

#### CONTACT PERSON

Katherine J. Lee, Police Review Commission Officer, Police Review Commission, 510-981-4960.

Attachments:

1: Poll

## BERKELEY'S POLICE REVIEW COMMISSION WANTS TO HEAR FROM YOU

The Berkeley Police Review Commission (PRC) is responsible for providing oversight to the Berkeley Police Department (BPD), reviewing personnel complaints filed by people against BPD officers, and reviewing policy complaints filed by people regarding a BPD policy, practice, or procedure.

The value of the PRC depends in large part on community feedback. We want to hear from you regarding any aspect of the complaint process and regardless of whether you personally have filed a complaint. Your feedback will be important as the PRC transitions to the new Police Accountability Board this summer.

We would really appreciate it if you could answer these brief questions (check the response that best fits your experience) and send us your general feedback and experiences. Your feedback will be anonymous.

1. How familiar are you with the Berkeley Police Review Commission?

- I'm very familiar with it.
- I'm somewhat familiar with it.
- I have heard of it, but don't know much about it.
- I do not know about it/never heard of it.

Next

BERKELEY'S POLICE REVIEW COMMISSION WANTS TO HEAR FROM YOU

2. Have you ever filed a complaint with the PRC?

- Yes (skip to Question #4)
- No (proceed to Question #3)

3. If you answered 'No' to Question #2, why not? (check all that apply, then skip to Question #7)

- I didn't know about the PRC.
- I don't have any complaints.
- It was a minor issue and not worth the effort.
- I couldn't take time off work.
- I missed the deadline for filing.
- I thought nothing would come of it.
- I felt intimidated by the PRC complaint process.
- I feared retaliation.

Other (please specify)

[Empty text box for specifying other reasons]

4. If you answered "Yes" to Question #2, were you satisfied with the complaint process?

- Yes
- No

5. If you were satisfied with the complaint process, please tell us why.

[Empty text box for explaining satisfaction]

6. If you were not satisfied with the complaint process, please tell us why. What would you change?

[Empty text box for explaining dissatisfaction]



## BERKELEY'S POLICE REVIEW COMMISSION WANTS TO HEAR FROM YOU

7. The PRC also issues commendations to officers for extraordinary service. Are you aware that you can ask the Commission to commend an officer?

Yes

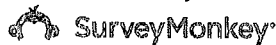
No

8. Any other feedback?  
(Final question - you're done. Thank you!)

Prev

Done.

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Office of the Mayor

02a.27

CONSENT CALENDAR

May 25, 2021

To: Honorable Members of the City Council  
From: Mayor Jesse Arreguín (Author)  
Subject: Support of AB 1177 – California Public Banking Options Act

RECOMMENDATION

Adopt a Resolution in support of Assembly Bill 1177 and send a copy of the Resolution to Governor Newsom, Senator Skinner and Assemblymember Wicks.

BACKGROUND

A 2019 survey by the Federal Deposit Insurance Corp. found that 15% of Black households and 13% of Latino households in California lacked bank accounts, compared with less than 1.5% of white and Asian households. The survey showed similar disparities nationwide.<sup>1</sup> These households pay proportionately more to access the money that they earn, lack safe secure means to save, and have fewer opportunities to build credit. Moreover, unbanked and underbanked Californians lack access to basic financial services many take for granted, such as direct deposit of paychecks to automatic bill pay.

The California Banking Option Act, AB1177, - (Santiago, Carrillo, Chiu, Garcia, Kalra, Lee), or BankCal, provides all Californians access to zero-fee, zero-penalty financial services. BankCal creates a stable, affordable platform for basic banking that would eliminate the need for costly and exploitative alternatives, such as check cashing and pre-paid debit cards, in addition to expanding access to credit building tools for communities that have been historically shut out from basic financial services. All Californians would be eligible to opt-in to BankCal and participation is voluntary.

BankCal account holders could sign up for debit cards that would be accepted at designated banking partner ATMs. Account holders could authorize their employers to directly deposit their pay into their BankCal accounts or use the account to receive public benefits such as federal and state stimulus funds. A Board made up of experts in banking and financial inclusion oversees the administration of the BankCal platform, ensuring that the program and partner financial institutions are upholding BankCal's mission to provide tools for financial stability to California's most vulnerable residents.

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<sup>1</sup>[https://economicinclusion.gov/surveys/2019household/documents/yoy-analysis.html?where=State\\_Unbanked\\_California\\_2019\\_YOY\\_Analysis#](https://economicinclusion.gov/surveys/2019household/documents/yoy-analysis.html?where=State_Unbanked_California_2019_YOY_Analysis#)

Support of AB 1177 – California Public Banking Options Act  
CONSENT CALENDAR – May 25, 2021

FINANCIAL IMPLICATIONS

None

CONTACT PERSON

Mayor Jesse Arreguín            510-981-7100

Attachments:

1. Resolution
2. Text of AB 1177

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

IN SUPPORT OF AB 1177

WHEREAS nearly one (1) in four (4) Californians are unbanked, meaning they lack a bank account altogether, or are underbanked, meaning they have a bank account but still largely rely on alternative financial services such as payday lenders, prepaid debit cards, and pawn shops; and

WHEREAS unbanked or underbanked households pay proportionally more for their financial services, lack savings accounts, have fewer opportunities to build credit, and face increased rates of loan rejection; and

WHEREAS limited access to financial services is a problem that disproportionately impacts low-income communities and communities of color, with nearly half of Black and Latino California households being unbanked; and

WHEREAS workers who make just under \$15 an hour make up 80.7 percent of the unbanked persons in our state; and

WHEREAS BankCal builds on the success of California's other financial programs, CalSavers and CalKids, and would allow all Californians, no matter how much money they make or where they live, to create a BankCal account, use a BankCal debit card, access a vast network of ATMs, deposit funds, automate bill pay, and set up direct deposit with no fees or penalties; and

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley hereby supports AB 1177.

BE IT FURTHER RESOLVED that copies of the Resolution be sent to Assemblymembers David Chiu and Buffy Wicks, State Senator Nancy Skinner, and Governor Gavin Newsom.

AMENDED IN ASSEMBLY APRIL 21, 2021

AMENDED IN ASSEMBLY MARCH 25, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1177**

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**Introduced by Assembly Members Santiago, Carrillo, Chiu,  
Eduardo Garcia, Gipson, Lorena Gonzalez, Kalra, Lee, Ting,  
and Wicks**

**(Coauthors: Assembly Members Bonta, Friedman, Jones-Sawyer,  
and Luz Rivas)**

(Coauthors: Senators Durazo, Gonzalez, Hueso, and Wiener)

February 18, 2021

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An act to amend Section 1947.3 of the Civil Code, to add Title 21.1 (commencing with Section 100100) to the Government Code, to add Section 90.4 to the Labor Code, and to amend Section 12302.2 of the Welfare and Institutions Code, relating to financial institutions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1177, as amended, Santiago. California Public Banking Option Act.

(1) Existing law, the CalSavers Retirement Savings Trust Act, creates in state government the CalSavers Retirement Savings Board and requires the board to, among other things, design and implement the CalSavers Retirement Savings Program.

This bill, the California Public Banking Option Act, would, among other things, establish in state government the Public Banking Option Board consisting of nine members, including the Treasurer or the Treasurer's designee and would require the board to administer the BankCal Program, which the act would create for the purpose of

protecting consumers who lack access to traditional banking services from predatory, discriminatory, and costly alternatives, by offering access to voluntary, zero-fee, zero-penalty, federally insured transaction account and debit card services at no cost to ~~account holders~~: *accountholders*. The act would require the board to design and implement the BankCal Program by, among other things, selecting a program administrator, which may consist of one or more contractors or program staff or a combination thereof, and establishing the duties and functions of the program administrator, as prescribed, including a duty to administer the program as a fiduciary for ~~account holders~~: *accountholders*.

The act would also establish the BankCal Fund in the State Treasury. The act would make moneys in the fund available upon appropriation by the Legislature for the purposes of the act. The act would authorize the board to seek and accept voluntary contributions, in cash or in kind, from private donors solely for the purpose of paying for the costs of implementing the program under this title and would require those voluntary contributions to be deposited into the fund.

The act would require employers and hiring entities to have and maintain a payroll direct deposit arrangement ~~to allow~~ *that enables voluntary* worker participation in the BankCal program. The act would define “employer” to mean a person, including a state or local government or agency, engaged in a business, industry, profession, trade, or other enterprise in the state, whether or not for profit, excluding the federal government, that has at least five employees. By imposing the mandate to maintain a payroll direct deposit arrangement on a local government or agency, this bill would impose a state-mandated local program. The act would require the board to enforce the provisions of the act with respect to employers and hiring entities in coordination with the Labor Commissioner, as specified, and would make an employer or hiring entity that, without good cause, fails to allow its workers to participate in the BankCal Program liable for a civil penalty, as prescribed.

(2) Existing law authorizes a landlord or a landlord’s agent to demand or require cash as the exclusive form of payment of rent or deposit of security if the tenant has previously attempted to pay the landlord or landlord’s agent with a check drawn on insufficient funds or the tenant has instructed the drawee to stop payment on a check, draft, or order for the payment of money, as specified.

The act would, as an exception to that authorization, require a landlord or landlord's agent to allow a tenant to pay rent and deposit of security by an electronic funds transfer from a BankCal account.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known, and may be cited, as the  
2 California Public Banking Option Act.

3 SEC. 2. The Legislature finds and declares all of the following:

4 (a) With unemployment rates soaring, homelessness rising, and  
5 an unprecedented wave of evictions looming as a result of the  
6 COVID-19 pandemic, the financial stability of the state's most  
7 vulnerable residents has become a matter of particularly urgent  
8 concern, not only to those individuals themselves but to the  
9 economic health of the state as a whole.

10 (b) Access to basic financial services, including demand deposit  
11 (checking) and savings accounts, is a critical component of  
12 financial stability. Yet one in four California households, and  
13 nearly one in two Black and Hispanic California households, is  
14 currently unbanked or underbanked. These households either lack  
15 a bank account altogether or have a bank account but still largely  
16 rely on alternative financial services, including nonbank check  
17 cashers, payday lenders, prepaid debit cards, and pawn shops,  
18 which are services that are often predatory, discriminatory, and  
19 costly, leading to compounding fees and debts.

20 (c) Unbanked and underbanked households pay proportionally  
21 more for their financial services, lack secure means of saving, have  
22 fewer opportunities to build credit, and are rejected for loans at  
23 far higher rates. Basic financial transactions, including the payment  
24 of rent, utilities, and other recurring bills or charitable  
25 contributions, are a particularly formidable challenge for



1 households lacking access to important tools, including automated  
 2 bill pay, or whose monthly income fluctuates too much to make  
 3 automated processes viable. Because they have fewer options when  
 4 their money runs short, unbanked households face a far more  
 5 destructive cycle of punitive action when they default on their  
 6 recurring bills, which leads to compounding interest and further  
 7 debt. For all these reasons, exclusion from traditional financial  
 8 services significantly increases the risk of poverty and  
 9 homelessness and places an unnecessary burden on the entire  
 10 economy.

11 (d) Limited access to *affordable* financial services is a problem  
 12 that disproportionately impacts low-income communities and  
 13 communities of color. *In 2017*, Californians earning less than \$15  
 14 per hour ~~make~~ *made* up 80.7 percent of the unbanked in the state,  
 15 and Black and Hispanic Californians ~~make~~ *made* up ~~78.4~~ 78.3  
 16 percent. Nearly half, 45.9 percent, of all Black-identifying  
 17 households in California and 41.1 percent of all  
 18 Hispanic-identifying households ~~are~~ *were* unbanked or  
 19 underbanked *in 2017* compared to 15.5 percent of white-identifying  
 20 households. Forty-four percent of disabled Californians ~~are~~ *in 2017*  
 21 *were* also unbanked or underbanked.

22 (e) Providing Californians with a zero-fee, zero-penalty public  
 23 option for basic financial services would empower Californians  
 24 by providing a stable, affordable financial platform for all  
 25 Californians, especially this underserved population, and would  
 26 eliminate the need for exploitative alternatives to traditional  
 27 banking and reduce their risk of falling into catastrophic debt traps  
 28 and downward spirals.

29 SEC. 3. Section 1947.3 of the Civil Code is amended to read:

30 1947.3. (a) (1) Except as provided in paragraph (2), a landlord  
 31 or a landlord's agent shall allow a tenant to pay rent and deposit  
 32 of security by at least one form of payment that is neither cash nor  
 33 electronic funds transfer.

34 (2) Except as provided in paragraph (5), a landlord or a  
 35 landlord's agent may demand or require cash as the exclusive form  
 36 of payment of rent or deposit of security if the tenant has previously  
 37 attempted to pay the landlord or landlord's agent with a check  
 38 drawn on insufficient funds or the tenant has instructed the drawee  
 39 to stop payment on a check, draft, or order for the payment of  
 40 money. The landlord may demand or require cash as the exclusive

1 form of payment only for a period not exceeding three months  
 2 following an attempt to pay with a check on insufficient funds or  
 3 following a tenant’s instruction to stop payment. If the landlord  
 4 chooses to demand or require cash payment under these  
 5 circumstances, the landlord shall give the tenant a written notice  
 6 stating that the payment instrument was dishonored and informing  
 7 the tenant that the tenant shall pay in cash for a period determined  
 8 by the landlord, not to exceed three months, and attach a copy of  
 9 the dishonored instrument to the notice. The notice shall comply  
 10 with Section 827 if demanding or requiring payment in cash  
 11 constitutes a change in the terms of the lease.

12 (3) Subject to the limitations below, a landlord or a landlord’s  
 13 agent shall allow a tenant to pay rent through a third party.

14 (A) A landlord or landlord’s agent is not required to accept the  
 15 rent payment tendered by a third party unless the third party has  
 16 provided to the landlord or landlord’s agent a signed  
 17 acknowledgment stating that they are not currently a tenant of the  
 18 premises for which the rent payment is being made and that  
 19 acceptance of the rent payment does not create a new tenancy with  
 20 the third party.

21 (B) Failure by a third party to provide the signed  
 22 acknowledgment to the landlord or landlord’s agent shall void the  
 23 obligation of a landlord or landlord’s agent to accept a tenant’s  
 24 rent tendered by a third party.

25 (C) The landlord or landlord’s agent may, but is not required  
 26 to, provide a form acknowledgment to be used by third parties, as  
 27 provided for in subparagraph (A), provided however that a landlord  
 28 shall accept as sufficient for compliance with subparagraph (A)  
 29 an acknowledgment in substantially the following form:  
 30

31 I, [insert name of third party], state as follows:  
 32 I am not currently a tenant of the premises located at [insert  
 33 address of premises].

34 I acknowledge that acceptance of the rent payment I am offering  
 35 for the premises does not create a new tenancy.

36  
 37  
 38 \_\_\_\_\_ (signature of third party) \_\_\_\_\_ (date)  
 39  
 40

1 (D) A landlord or landlord's agent may require a signed  
2 acknowledgment for each rent payment made by the third party.  
3 A landlord or landlord's agent and the third party may agree that  
4 one acknowledgment shall be sufficient for when the third party  
5 makes more than one rent payment during a period of time.

6 (E) Nothing in this paragraph shall be construed to require a  
7 landlord or landlord's agent to enter into a contract in connection  
8 with a federal, state, or local housing assistance program, including,  
9 but not limited to, the federal housing assistance voucher programs  
10 under Section 8 of the United States Housing Act of 1937 (42  
11 U.S.C. Sec. 1437f).

12 (4) Paragraphs (2) and (3) do not enlarge or diminish a  
13 landlord's or landlord's agent's legal right to terminate a tenancy.  
14 Nothing in paragraph (3) is intended to extend the due date for any  
15 rent payment or require a landlord or landlord's agent to accept  
16 tender of rent beyond the expiration of the period stated in  
17 paragraph (2) of Section 1161 of the Code of Civil Procedure.

18 (5) A landlord or landlord's agent shall allow a tenant to pay  
19 rent and deposit of security by an electronic funds transfer from a  
20 BankCal account, as defined in Section 100100 of the Government  
21 Code.

22 (b) For the purposes of this section, the issuance of a money  
23 order or a cashier's check is direct evidence only that the instrument  
24 was issued.

25 (c) For purposes of this section, "electronic funds transfer"  
26 means any transfer of funds, other than a transaction originated  
27 by check, draft, or similar paper instrument, that is initiated through  
28 an electronic terminal, telephonic instrument, computer, or  
29 magnetic tape so as to order, instruct, or authorize a financial  
30 institution to debit or credit an account. "Electronic funds transfer"  
31 includes, but is not limited to, point-of-sale transfers, direct deposits  
32 or withdrawals of funds, transfers initiated by telephone, transfers  
33 via an automated clearinghouse, transfers initiated electronically  
34 that deliver a paper instrument, and transfers authorized in advance  
35 to recur at substantially regular intervals.

36 (d) Nothing in this section shall be construed to prohibit the  
37 tenant and landlord or agent to mutually agree that rent payments  
38 may be made in cash or by electronic funds transfer, so long as  
39 another form of payment is also authorized, subject to the  
40 requirements of subdivision (a).

1 (e) A waiver of the provisions of this section is contrary to public  
2 policy, and is void and unenforceable.

3 SEC. 4. Title 21.1 (commencing with Section 100100) is added  
4 to the Government Code, to read:

5  
6 TITLE 21.1. CALIFORNIA PUBLIC BANKING OPTION  
7 ACT  
8

9 100100. For purposes of this title:

10 (a) ~~“Account holder”~~—“*Accountholder*” means an individual  
11 who has a BankCal account.

12 (b) “BankCal account” means a federally insured transaction  
13 account held ~~within~~ *as part of* the program.

14 (c) “BankCal Program” or “program” means the program  
15 established pursuant to this title through which an individual may  
16 open a no-fee, no-penalty transaction account with an associated  
17 debit card.

18 (d) “Board” means the California Public Banking Option Board  
19 established pursuant to Section 100102.

20 (e) “Electronic fund transfer” has the same meaning as defined  
21 in Section 1693a of Title 15 of the United States Code.

22 (f) (1) “Employee” means an individual who is employed by  
23 an employer.

24 (2) “Employee” does not include an employee covered under  
25 the federal Railway Labor Act (45 U.S.C. Sec. 151) or an employee  
26 engaged in interstate commerce so as not to be subject to the  
27 legislative powers of the state, except insofar as application of this  
28 title is authorized under the United States Constitution or laws of  
29 the United States.

30 (g) (1) “Employer” means a person engaged in a business,  
31 industry, profession, trade, or other enterprise in the state, whether  
32 or not for profit, excluding the federal government, that has at least  
33 five employees.

34 (2) Upon a positive determination pursuant to paragraph (4) of  
35 subdivision (b) of Section 100106, “employer” includes an  
36 employer of a provider of in-home supportive services regulated  
37 by Article 7 (commencing with Section 12300) of Chapter 3 of  
38 Part 3 of Division 9 of the Welfare and Institutions Code.

AB 1177

— 8 —

1 (h) “Federally insured” means insured by the Federal Deposit  
 2 Insurance Corporation (FDIC) or the National Credit Union  
 3 Administration (NCUA).

4 (i) “Hiring entity” means a person engaged in a business,  
 5 industry, profession, trade, or other enterprise in the state, whether  
 6 or not for profit, excluding the federal government, that has  
 7 contracted with at least five independent contractors to perform  
 8 the same or similar labor or service.

9 (j) “Independent contractor” means an individual who renders  
 10 labor or service to a hiring entity for a specified recompense for a  
 11 specified result who is not an employee of that hiring entity.

12 (k) *“In-network partner” means a participating retail or*  
 13 *financial institution offering an ATM, bank, or credit union branch*  
 14 *through which accountholders can load or withdraw funds from*  
 15 *their BankCal account using a BankCal debit card for no fee.*

16 ~~(k)~~

17 (l) “Local financial institution” has the same meaning as defined  
 18 in Section 57600.

19 ~~(l)~~

20 (m) “Participating *depository* financial institution” means a  
 21 qualifying bank, credit union, or other financial institution, as  
 22 determined by the board pursuant to paragraph (4) of subdivision  
 23 (a) of Section 100106, participating in the BankCal program by  
 24 providing BankCal accounts to ~~account holders~~ *accountholders*  
 25 in concert with the financial services network administrator, as  
 26 described in *subparagraph (A) of paragraph (3) of subdivision (a)*  
 27 *of Section 100106.*

28 ~~(m)~~

29 (n) “Payroll direct deposit arrangement” means an arrangement  
 30 by which a worker may authorize payment of wages or other money  
 31 due the worker by an employer or hiring entity, or any portion  
 32 thereof, to be directly deposited by electronic fund transfer into  
 33 the worker’s ~~account at the financial institution of the worker’s~~  
 34 ~~choosing.~~ *BankCal account.*

35 ~~(n)~~

36 (o) “Person” means an individual, sole proprietorship,  
 37 partnership, joint venture, association, trust, estate, business trust,  
 38 corporation, joint stock company, limited liability company,  
 39 unincorporated association, state or local government or agency,

1 instrumentality, or political subdivision thereof, or any similar  
2 entity or organization.

3 ~~(o)~~

4 (p) “Preauthorized electronic fund transfer” means an electronic  
5 fund transfer authorized in advance to recur at substantially regular  
6 intervals.

7 ~~(p)~~

8 (q) “Program fund” means the BankCal Fund established  
9 pursuant to Section 100110.

10 ~~(q)~~

11 (r) “Public bank” has the same meaning as defined in Section  
12 57600.

13 ~~(r)~~

14 (s) “Registered payee” means a person who has registered with  
15 the program to accept receipt of preauthorized electronic fund  
16 transfers from ~~account holders~~ *accontholders* by agreeing to  
17 specific conditions to be established by the board.

18 ~~(s)~~

19 (t) “Transaction account” means a demand deposit account,  
20 share draft account, or similar account.

21 ~~(t)~~

22 (u) “Worker” means an employee or an independent contractor.

23 ~~(u)~~

24 (v) “Worker participant” means a worker who is an account  
25 holder.

26 100102. (a) The Public Banking Option Board is hereby  
27 established in state government.

28 (b) The board shall consist of nine members pursuant to the  
29 following:

30 (1) The Treasurer or the Treasurer’s designee.

31 (2) The Commissioner of the Department of Financial Protection  
32 and Innovation or that person’s designee.

33 (3) An individual with banking expertise, particularly expertise  
34 in transaction accounts and debit cards, appointed by the Senate  
35 Committee on Rules.

36 (4) An individual with expertise in economic and racial justice  
37 and cultural competence appointed by the Speaker of the Assembly.

38 (5) An employee representative appointed by the Governor.

39 (6) A small business representative appointed by the Governor.

1 (7) An advocate for, or representative of, a mission-aligned  
 2 banking institution, a community development financial institution,  
 3 or a community development credit union appointed by the  
 4 Governor.

5 (8) A public banking advocate appointed by the Senate  
 6 Committee on Rules.

7 (9) A consumer representative or advocate with expertise in  
 8 banking access and financial empowerment appointed by the  
 9 Speaker of the Assembly.

10 (c) Members of the board appointed by the Governor, the Senate  
 11 Committee on Rules, and the Speaker of the Assembly shall serve  
 12 at the pleasure of the appointing authority.

13 (d) The board shall elect a chairperson on an annual basis.

14 (e) In making appointments to the board, the appointing  
 15 authorities shall take into consideration the cultural, ethnic, and  
 16 geographical diversity of the state so that the board's composition  
 17 reflects the communities of California.

18 (f) (1) Except as provided in paragraph (2), members of the  
 19 board shall serve without compensation.

20 (2) Members of the board shall be reimbursed for necessary  
 21 travel expenses incurred in connection with their board duties.

22 (g) A board member, staff of the board, or publicly employed  
 23 program staff, while serving in those positions, shall not be  
 24 employed by, a consultant to, a member of the board of directors  
 25 of, affiliated with, or otherwise a representative of a private bank  
 26 or financial services institution unless that position is an unpaid  
 27 volunteer position.

28 (h) The board and program administrator shall have the  
 29 responsibility and duty to meet the requirements of this title and  
 30 all applicable state and federal laws and regulations, to serve the  
 31 interests of ~~program-account holders~~ *acccountholders* and those  
 32 seeking to access financial services and debt management tools  
 33 through the program, to serve the public interest and pursue  
 34 partnerships with credit unions and other local financial institutions  
 35 and public banks, and to ensure the operational well-being and  
 36 fiscal solvency of the program.

37 100104. There is hereby created the BankCal Program, to be  
 38 administered by the board for the purpose of protecting consumers  
 39 who lack access to traditional banking services from predatory,  
 40 discriminatory, and costly alternatives, by offering access to

1 voluntary, zero-fee, zero-penalty, federally insured transaction  
 2 account and debit card services at no cost to ~~account holders.~~  
 3 *acountholders.*

4 100106. (a) The board shall design and implement the BankCal  
 5 Program. In designing and implementing the program, the board  
 6 shall do all of the following:

7 (1) (A) Appoint an executive director, who shall not be a  
 8 member of the board and who shall serve at the pleasure of the  
 9 board. The board shall determine the duties of the executive  
 10 director ~~and other staff, as appropriate, and, as appropriate, the~~  
 11 *duties of other staff, who shall be employees of the Treasurer, and*  
 12 set the executive director's compensation.

13 (B) The board may authorize the executive director to enter into  
 14 contracts on behalf of the board or conduct business necessary for  
 15 the efficient operation of the board.

16 (2) Select a program administrator, which may consist of one  
 17 or more contractors or program staff or a combination thereof, and  
 18 establish the duties and functions of the program administrator,  
 19 which shall be in furtherance of the program and shall include all  
 20 of the following:

21 (A) Administer the program as a fiduciary for ~~account holders~~  
 22 *acountholders* in accordance with all applicable laws and  
 23 regulations, including all regulations issued by the board.

24 (B) Create and manage an internet website that will serve as a  
 25 primary source of information about the program, the financial  
 26 services offered through the program, and the ~~program's financial~~  
 27 ~~services network of participating ATMs, bank or credit union~~  
 28 ~~branches, and other in-network partners~~ *program network* through  
 29 which account holders can load or withdraw funds from their  
 30 BankCal account using a BankCal debit card for no fee.

31 (C) Create and manage a secure web-based portal and mobile  
 32 application through which individuals can enroll in the program  
 33 and entities can become registered payees and through which  
 34 ~~account holders~~ *acountholders* can access and manage their  
 35 BankCal accounts, including their direct deposit, preauthorized  
 36 electronic fund transfers to registered payees, and automatic  
 37 disbursement rule elections.

38 (D) Create and manage an application programming interface  
 39 (API) or web-based portal that enables employers and hiring  
 40 entities to remit each worker participant's elected direct deposit



1 payroll contribution to the worker's BankCal account in accordance  
2 with the worker's election.

3 (E) Facilitate and manage data exchange with the financial  
4 services network administrator, pursuant to paragraph (3), ensuring  
5 that account management elections, including direct deposit,  
6 preauthorized electronic fund transfers to registered payees, and  
7 automatic disbursement rule elections, made by ~~account holders~~  
8 *accountholders* through the program administrator's online web  
9 portal or mobile application are communicated to and executed  
10 by the financial services network administrator.

11 (F) Ensure that ~~account holders'~~ *accountholders'* existing  
12 accounts and account management elections, including direct  
13 deposit, preauthorized electronic fund transfers to registered payees,  
14 and automatic disbursement rule elections, are not disrupted by a  
15 change in financial services network administrator or by a change  
16 in participating *depository* financial institutions or other program  
17 vendors.

18 (G) Facilitate enrollment of ~~account holders~~ *accountholders* in  
19 the program through coordination with government and nonprofit  
20 partners.

21 (H) Facilitate and manage connectivity with other state and  
22 local government programs providing individuals with financial  
23 accounts to enable program ~~account holders~~ *accountholders* to  
24 transfer funds between their BankCal account and their other  
25 state-managed or locally managed accounts, as authorized by the  
26 board and in accordance with all applicable laws and regulations.

27 (I) Facilitate and manage connectivity with other state and local  
28 government agencies and entities to enable and streamline  
29 remittance of local, state, and federal benefit and public assistance  
30 payments and other disbursements to ~~account holders~~  
31 *accountholders* entitled to those payments and who authorize those  
32 payments to be directly deposited by electronic fund transfer into  
33 their BankCal account, as authorized by the board and in  
34 accordance with all applicable laws and regulations.

35 (3) Select a financial services network administrator and  
36 establish the duties and functions of the financial services network  
37 administrator, which shall be in furtherance of the program and  
38 shall include all of the following:

39 (A) Contract with, manage, and coordinate the financial services  
40 vendors for the program, which shall provide ~~account holders~~

1 *accountholders* access to their BankCal account through a major  
2 card network and services provided in concert with at least one  
3 qualifying participating *depository* financial institution that meets  
4 the requirements established by the board pursuant to paragraph  
5 (4).

6 (B) Add additional participating *depository* financial institutions  
7 meeting the requirements established by the board, including  
8 especially qualifying credit unions and other local financial  
9 institutions and public banks, as program scope and scale permits,  
10 in accordance with the board's ~~contractual specifications~~  
11 *specifications as set forth in the contract between the board and*  
12 *the financial services network administrator*.

13 (C) Issue to each ~~account holder~~ *accountholder* a secure debit  
14 card, which shall utilize current security and antifraud technology  
15 consistent with industry standards, associated with the ~~account~~  
16 ~~holder's~~ *accountholder's* BankCal account.

17 (D) Build a robust and geographically expansive financial  
18 services network of participating ATMs, bank or credit union  
19 branches, and other in-network partners through which account  
20 holders can load or withdraw funds from their BankCal account  
21 using a BankCal debit card for no fee, minimize or eliminate  
22 out-of-network fees for ~~account holders~~, *accountholders*, and  
23 ensure that ~~account holders~~ *accountholders* are not charged  
24 out-of-network fees that are not reasonable and actually incurred  
25 by the program vendor.

26 (E) Ensure that all no-fee, no-penalty requirements of the  
27 program are met.

28 (F) Coordinate data exchange with the program administrator  
29 and implement all account management elections, including receipt  
30 of direct deposit payments, preauthorized electronic fund transfers  
31 to registered payees, and automatic disbursement rule elections,  
32 made by ~~account holders~~ *accountholders* through the program  
33 administrator's online web portal or mobile application.

34 (G) Ensure that a change in participating *depository* financial  
35 institution or other program vendor does not disrupt existing  
36 ~~account holders'~~ *accountholders'* BankCal accounts or account  
37 management elections.

38 (4) Establish the criteria and terms and conditions for becoming  
39 a participating *depository* financial institution in the program,  
40 which shall be designed to ensure program stability, reliability,

1 and integrity. The criteria and terms and conditions shall be  
 2 designed to ensure that participating *depository* financial  
 3 institutions satisfy all of the following criteria:

4 (A) Have an established record of ethical and responsible  
 5 banking practices and adherence to all applicable local, state, and  
 6 federal laws and regulations.

7 (B) Meet all technical requirements of the financial services  
 8 network administrator.

9 (C) Agree to comply with all applicable laws and regulations,  
 10 including all regulations issued by the board governing the  
 11 program, and any contractual requirements established by the  
 12 board.

13 (5) Ensure that the program administrator and financial services  
 14 network administrator satisfactorily perform all duties and  
 15 ~~functions.~~ *functions and do not market commercial products to*  
 16 *BankCal accountholders absent the board's prior express, written*  
 17 *authorization.*

18 (6) Ensure that ~~account holders'~~ *accountholders'* existing  
 19 accounts and account management elections, including direct  
 20 deposit, preauthorized electronic fund transfers to registered payees,  
 21 and automatic disbursement rule elections, are not disrupted by a  
 22 change in ~~network program~~ administrator, financial services  
 23 network administrator, or participating *depository* financial  
 24 institutions or other program vendors.

25 (7) Design and establish the process by which an individual  
 26 may open a BankCal account pursuant to all of the following:

27 (A) The process shall be designed to maximize program  
 28 participation and shall facilitate the opening of a BankCal account  
 29 by individuals who may not have *federal or state*  
 30 government-issued photo identification.

31 (B) The board shall facilitate the opening of a BankCal account  
 32 by anyone who seeks to participate in the program by taking all  
 33 appropriate steps to collaborate and cooperate with other state and  
 34 local government agencies and programs, including to the extent  
 35 necessary to verify the individual's identity consistent with the  
 36 law.

37 (C) The board may design and establish rules governing the  
 38 enrollment and participation in the program of individuals who  
 39 are under ~~eighteen~~ *18 years of age*, *including rules governing*  
 40 *the opening of a BankCal account by a person who is at least 14*

1 *years of age without a cosignor or guarantor on the account,*  
 2 *consistent with all applicable laws.*

3 *(D) The board shall design and establish rules governing the*  
 4 *enrollment and participation in the program of individuals who*  
 5 *do not have permanent housing.*

6 (8) Design and establish the process through which an individual  
 7 may access and manage their BankCal account, including, but not  
 8 limited to, through a convenient and easily accessible online web  
 9 portal and through a mobile application.

10 (9) Design and establish the mechanisms by which an account  
 11 holder may deposit funds into a BankCal account pursuant to all  
 12 of the following:

13 (A) The mechanisms shall include, but not be limited to,  
 14 electronic fund transfers arranged through an employer's or hiring  
 15 entity's payroll direct deposit arrangement and cash loading  
 16 through ~~participating ATMs and bank or credit union branches of~~  
 17 ~~designated financial institution~~ *in-network* partners to be  
 18 established by the financial services network administrator. The  
 19 board shall ensure that no fee is imposed on ~~account holders~~  
 20 *acountholders* for these services.

21 (B) ~~The board~~ *executive director, at the board's direction,* may  
 22 negotiate with the ~~network program~~ administrator, the financial  
 23 services network administrator, and other financial services partners  
 24 for additional financial capabilities of a BankCal ~~account,~~ *account*  
 25 *relating to deposit of funds,* including, but not limited to, mobile  
 26 check deposit, cash loading through ~~participating merchants,~~  
 27 *out-of-network partners,* and electronic fund transfers from linked  
 28 or nonlinked accounts. The board shall seek to minimize or  
 29 eliminate the fees imposed on ~~account holders~~ *acountholders* for  
 30 additional services and shall ensure that a fee is not imposed on  
 31 ~~account holders~~ *acountholders* for additional services that is not  
 32 reasonable and actually incurred by the financial services network  
 33 administrator or program vendor.

34 (10) Design and establish the process through which an account  
 35 holder may elect to have a portion, up to the entirety, of their  
 36 paycheck or earnings due for labor or services performed directly  
 37 deposited by electronic fund transfer into their BankCal account  
 38 utilizing an operational model that limits interaction between an  
 39 employer and an employee and between a hiring entity and an  
 40 independent contractor to the extent feasible.

1 (11) Design and establish the process through which employers  
 2 and hiring entities shall be required to remit through a payroll  
 3 direct deposit arrangement each worker's elected payroll  
 4 contribution to the worker's BankCal account in accordance with  
 5 the worker's election.

6 (12) Design and establish mechanisms by which ~~account holders~~  
 7 *accountholders* can withdraw funds from their BankCal account  
 8 using a BankCal debit card pursuant to all of the following:

9 (A) The mechanisms shall include, but not be limited to,  
 10 withdrawals through point-of-sale purchases using a BankCal debit  
 11 card and through cash withdrawals at a robust and geographically  
 12 expansive network, the scope of which the board shall seek to  
 13 maximize, of participating ~~ATMs and ATMs~~, bank or credit union  
 14 ~~branches~~ *branches*, and other *in-network partners* of designated  
 15 financial institution partners to be established by the financial  
 16 services network administrator. The board shall ensure that a fee  
 17 is not imposed on ~~account holders~~ *accountholders* for these  
 18 services.

19 (B) The board shall design and implement the program in such  
 20 a way that swipe fees imposed on merchants associated with  
 21 point-of-sale purchases using a BankCal debit card are not passed  
 22 on to the ~~account holder~~ *accountholder*.

23 (C) The ~~board~~ *executive director, at the board's direction*, may  
 24 negotiate with the ~~network~~ *program* administrator, the financial  
 25 services network administrator, and other financial services partners  
 26 for additional financial capabilities of a BankCal ~~account~~, *account*  
 27 *relating to withdrawal of funds*, including, but not limited to, cash  
 28 withdrawal from out-of-network ATMs and bank or credit union  
 29 branches. The board shall seek to minimize or eliminate the fees  
 30 imposed on ~~account holders~~ *accountholders* for additional services  
 31 and shall ensure that a fee is not imposed on ~~account holders~~  
 32 *accountholders* for additional services that is not reasonable and  
 33 actually incurred by the financial services network administrator  
 34 or program vendor.

35 (13) Design and establish a process, available to all ~~account~~  
 36 ~~holders~~ *accountholders* for no fee, through which an ~~account holder~~  
 37 *accountholder* may arrange for payment to a registered payee using  
 38 a preauthorized electronic fund transfer from a BankCal account.

39 (14) Design and establish the process and terms and conditions  
 40 for becoming a registered payee pursuant to both of the following:

1 (A) Before becoming a registered payee, the payee shall be  
 2 required to agree to specified terms and conditions to be established  
 3 by the board in exchange for the benefits of transparency and  
 4 accountability afforded by participation in an automated payment  
 5 system.

6 (B) The board shall establish the terms and conditions to which  
 7 registered payees shall agree, which may vary depending on the  
 8 type of payee, and which shall be designed to incentivize account  
 9 holders' preauthorized electronic fund transfers to registered payees  
 10 and application of voluntary automatic disbursement rules by  
 11 limiting the late payment fees and penalties that registered payees  
 12 can impose on ~~account holders~~ *accountholders* who pay them using  
 13 preauthorized electronic fund transfers from their BankCal account.

14 (15) Design and establish voluntary automatic disbursement  
 15 rules to assist ~~account holders~~ *accountholders* in managing  
 16 automated payments to registered payees based on the availability  
 17 of funds in the ~~account holder's~~ *accountholder's* account, which  
 18 ~~account holders~~ *accountholders* may voluntarily elect to apply or  
 19 to stop applying to their BankCal account at any time. The  
 20 voluntary automatic disbursement rules shall be designed to  
 21 maximize consumer protection and may include, but not be limited  
 22 to, rules governing the prioritization and timing of payments, rules  
 23 limiting payments to a percentage of funds available in the BankCal  
 24 account, and rules limiting disbursement to designated registered  
 25 payees only upon satisfaction of specified conditions of the  
 26 BankCal account.

27 (16) Study the feasibility of, and design and implement,  
 28 additional services and benefits that the board deems beneficial to  
 29 ~~account holders~~ *accountholders* that maximize the purposes of the  
 30 program, including, but not limited to, all of the following:

31 (A) Financial literacy and debt management education,  
 32 resources, and training.

33 (B) Credit reporting services.

34 (C) A rent payment portal.

35 (D) International remittances.

36 (E) A consumer lending certification program and referral  
 37 service subject to ~~both~~ *all* of the following requirements:

38 (i) The board shall determine the criteria for certification of  
 39 lenders of consumer credit so as to maximize consumer protection  
 40 and to protect ~~account holders~~ *accountholders* from unfair and

1 deceptive practices by lenders, including, but not limited to,  
2 practices that steer consumers into unnecessary, more costly, or  
3 higher risk products that do not match their financial needs.

4 (ii) *The board shall determine the criteria for the certification*  
5 *of lenders of consumer credit so as to provide consumers lending*  
6 *options that include credit unions and other local financial*  
7 *institutions.*

8 (iii) *The board's certification criteria shall also take into*  
9 *account the lender's status as an in-network partner.*

10 (ii)

11 (iv) Referral fees paid by certified lenders shall be deposited in  
12 the program fund as program revenue.

13 (17) Develop and negotiate a fair and equitable program fee  
14 and program revenue sharing structure with the program  
15 administrator and financial services network administrator in  
16 furtherance of attaining a financially self-sustaining program. The  
17 board shall annually reevaluate and, if appropriate, renegotiate a  
18 program fee and program revenue sharing agreement based on  
19 program scope and scale.

20 (18) Take all appropriate steps to collaborate and cooperate with  
21 the CalSavers Retirement Savings Board, the Scholarshare  
22 Investment Board, the California ABLE Act Board, and the board  
23 of any other state program establishing or administering a program  
24 providing for financial accounts for individuals in the state, to the  
25 extent necessary or desirable for the effective and efficient design,  
26 implementation, and administration of these programs and to  
27 maximize the purposes of these programs and the ability of  
28 participants in these programs to benefit therefrom.

29 (19) Take all appropriate steps to collaborate and cooperate with  
30 the State Department of Social Services, Office of Systems  
31 Integration, Employment Development Department, and other  
32 applicable government agencies, including, but not limited to,  
33 agencies responsible for distribution of emergency relief payments,  
34 to improve and streamline operations for the distribution of local,  
35 state, and federal benefit and public assistance payments and other  
36 disbursements by enabling ~~account holders~~ *acountholders* to  
37 authorize payments to be directly deposited by electronic fund  
38 transfer into their BankCal account, as applicable, to the extent  
39 permitted by law.

1 (b) The board shall consider and utilize all of the following  
2 parameters in designing the program:

3 (1) The board shall cause the BankCal program or arrangements  
4 established under the program to be designed, established, and  
5 operated in a manner that maximizes participation and ease of use  
6 for ~~account holders~~ *accountholders*.

7 (2) The board shall structure and design the BankCal program  
8 in a manner that encourages partnership rather than competition  
9 with credit unions and other local financial institutions and public  
10 banks to the extent financially and administratively feasible and  
11 appropriate.

12 (3) (A) The board shall not contract for the performance of  
13 program administrator or network administrator duties with an  
14 entity that, during the preceding three years, has been found to be  
15 in violation two or more times of any applicable law or regulation  
16 governing financial institutions or consumer protection.

17 (B) *In selecting a financial services network administrator, the*  
18 *board shall give due consideration to a bidder's proposal for*  
19 *expanding program enrollment and sustaining the program at a*  
20 *scope and scale sufficient to achieve a financially self-sustaining*  
21 *program that is cost neutral for the state.*

22 (4) The board shall include in the program a provider of in-home  
23 supportive services, as regulated by Article 7 (commencing with  
24 Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare  
25 and Institutions Code, if the board determines, and the Director of  
26 Social Services and the Director of Finance certify, in writing, all  
27 of the following:

28 (A) The inclusion meets all state and federal legal requirements.

29 (B) The appropriate employer of record has been identified for  
30 the purpose of satisfying all the program's employer requirements.

31 (C) The payroll deduction described in Section 12302.2 of the  
32 Welfare and Institutions Code can be implemented at reasonable  
33 costs.

34 (D) The inclusion does not create a financial liability for the  
35 state or employer of record.

36 (5) The board shall determine necessary costs associated with  
37 outreach, customer service, enforcement, staffing and consultant  
38 costs, and all other costs necessary to administer the program.

39 (6) The board shall consult with employer representatives and  
40 employee representatives to create an administrative structure that



1 facilitates employee participation while addressing employer needs,  
2 including, but not limited to, clearly defining employers' duties  
3 pursuant to Section 100112.

4 (7) The board shall include comprehensive worker education  
5 and outreach in the program, and the board may collaborate with  
6 state and local government agencies, community-based and  
7 nonprofit organizations, foundations, vendors, and other entities  
8 deemed appropriate to develop and secure ongoing resources for  
9 education and outreach that reflect the cultures and languages of  
10 the state's diverse workforce population.

11 (8) The board shall include comprehensive employer education  
12 and outreach in the program developed in consultation with  
13 employer representatives and employee representatives.

14 (9) *The board shall structure the program so as to ensure the*  
15 *state is prohibited from incurring liabilities associated with*  
16 *administering the program and that the state has no liability for*  
17 *the program or for the actions of any program contractor or*  
18 *subcontractor.*

19 100108. In addition to the powers and authority granted  
20 pursuant to Section 100106, the board shall have the powers and  
21 authority to do all of the following:

22 (a) Sue and be sued.

23 (b) Make and enter into contracts necessary for the  
24 administration of the BankCal Program and engage personnel,  
25 including consultants, actuaries, managers, counsel, and auditors  
26 as necessary for the purpose of rendering professional, managerial,  
27 and technical assistance and advice.

28 (c) Adopt a corporate seal and change and amend it from time  
29 to time.

30 (d) Accept, for deposit to the program fund, any grant, gift,  
31 legislative appropriation, or other moneys from the state, a unit of  
32 federal, state, or local government, or any other person, firm,  
33 partnership, or corporation.

34 (e) Make provisions for the payment of costs of administration  
35 and operation of the program.

36 (f) Employ staff.

37 (g) Retain and contract with other public agencies, local financial  
38 institutions, public banks, private financial institutions, other  
39 financial and service providers, consultants, actuaries, counsel,

1 auditors, third-party administrators, and other professionals as  
2 necessary.

3 (h) Procure insurance indemnifying each member of the board  
4 from personal loss or liability resulting from a member's action  
5 or inaction as a member of the board.

6 (i) Collaborate and cooperate with local financial institutions,  
7 public banks, private financial institutions, service providers, and  
8 business, financial, trade, membership, and other organizations to  
9 the extent necessary or desirable for the effective and efficient  
10 design, implementation, and administration of the program and to  
11 maximize outreach to potential account holders.

12 (j) Collaborate with, and evaluate the role of, licensed agents  
13 and financial advisors in assisting and providing guidance for  
14 eligible workers.

15 (k) Cause expenses incurred to initiate, implement, maintain,  
16 and administer the program to be paid from the program fund or  
17 arrangements established under the program.

18 (l) Facilitate compliance by the program or arrangements  
19 established under the program with all applicable requirements  
20 for the program under federal and state law.

21 (m) Exercise any and all other powers as appropriate for the  
22 effectuation of the purposes, objectives, and provisions of this title.

23 100110. (a) The BankCal Fund is hereby created in the State  
24 Treasury.

25 (b) The moneys in the BankCal Fund shall be available, upon  
26 appropriation, for purposes of this title.

27 (c) Funding for startup and administrative costs may be  
28 appropriated from the General Fund in the annual Budget Act for  
29 the first six years of the program or until program revenue is  
30 sufficient to sustain program administrative costs, whichever occurs  
31 first. Necessary administrative costs in future years shall be paid  
32 out of the program fund.

33 (d) The board may seek and may accept voluntary contributions,  
34 in cash or in kind, from private donors solely for the purpose of  
35 paying for the costs of implementing the program under this title.  
36 Voluntary contributions shall be deposited into the BankCal Fund.

37 100112. (a) Employers and hiring entities shall have and  
38 maintain a payroll direct deposit arrangement ~~to allow~~ *that enables*  
39 *voluntary* worker participation in the program.

1 (b) All wages and other payments due a worker that the worker  
 2 has authorized to be directly deposited by electronic fund transfer  
 3 into the worker's BankCal account shall be deposited accordingly.

4 (c) Employers and hiring entities shall, consistent with all  
 5 applicable regulations issued by the board, do all of the following:

6 (1) Coordinate their payroll process with the program  
 7 administrator's application program interface to facilitate accurate  
 8 and seamless payment by direct deposit in accordance with the  
 9 authorization of each worker participant.

10 (2) Cooperate with the program administrator in providing all  
 11 requested information available to the employer or hiring entity  
 12 necessary for the opening and administration of a worker's  
 13 BankCal account.

14 (3) Upon request of the administrator, provide additional forms  
 15 or notifications to a worker.

16 ~~(d) Employers and hiring entities shall not require, endorse,  
 17 encourage, prohibit, restrict, or discourage worker participation in  
 18 the program.~~

19 (e)

20 (d) Employers and hiring entities shall not discharge, discipline,  
 21 threaten to discharge or discipline, or in any other manner retaliate  
 22 or take an adverse action against a worker or applicant because of  
 23 the individual's participation or manner of participation in the  
 24 BankCal program.

25 (f)

26 (e) A person that is not subject to the requirements of this title  
 27 may voluntarily maintain a payroll direct deposit arrangement to  
 28 allow worker participation in the program.

29 100114. (a) Employers and hiring entities shall not be held  
 30 liable for a worker's decision to participate in, or opt out of, the  
 31 program or for the financial activities of workers whose assets are  
 32 deposited in the program.

33 (b) Employers and hiring entities shall not have civil liability,  
 34 and a cause of action shall not arise against an employer or hiring  
 35 entity, for acting pursuant to the regulations prescribed by the  
 36 board defining the roles and responsibilities of employers and  
 37 hiring entities in providing a payroll direct deposit arrangement  
 38 to allow worker participation in the program.

39 100116. (a) The board shall enforce the provisions of this title  
 40 with respect to employers and hiring entities in coordination with

1 the Labor Commissioner pursuant to Section 90.4 of the Labor  
2 Code.

3 (b) The board shall refer to the Labor Commissioner a complaint  
4 it makes or receives that an employer or hiring entity has failed to  
5 allow its workers to participate in the BankCal Program pursuant  
6 to this title or otherwise violated its duties under Section 100112.

7 (c) The board shall reimburse the Labor Commissioner for the  
8 costs incurred by the Labor Commissioner in enforcing this title.

9 100118. This title does not preclude or reduce a judgment  
10 debtor’s right to an exemption from enforcement of a money  
11 judgment provided by state or federal law. Moneys exempt from  
12 enforcement of a money judgment remain exempt if they have  
13 been deposited into the individual’s BankCal account.

14 100120. (a) Notwithstanding Section 10231.5, the board shall  
15 submit an annual report by August 1 to the Governor, the  
16 Controller, the California State Auditor, and the Legislature,  
17 pursuant to Section 9795.

18 (b) The report required by this section ~~shall, in a deidentified  
19 and aggregated form,~~ shall include, but not be limited to, all of the  
20 following ~~information:~~ *information in a deidentified and  
21 aggregated form:*

22 (1) The number of accounts opened and closed in the program  
23 during the reporting period, by city and county.

24 (2) The number of employers and hiring entities with workers  
25 who received payment to their BankCal account through the  
26 employer or hiring entity’s payroll direct deposit arrangement  
27 during the reporting period, by industry, city, and county.

28 (3) The number of registered payees who received payment  
29 from a BankCal account during the reporting period, by payee  
30 category, city, and county.

31 (4) ~~Aggregate account holder~~ *acountholder* demographics,  
32 including, but not limited to, gender, age, race, ethnicity, primary  
33 language, annual income, and job industry.

34 (5) Any other information the board determines to be relevant  
35 to an assessment of the program.

36 100122. (a) The board shall ~~aggressively~~ market the program  
37 to the residents of the state to the extent funds are available to do  
38 so.

39 (b) The board shall include in its marketing efforts information  
40 designed to include financial literacy education and resources and

1 to educate citizens about the benefits of financial management and  
2 planning.

3 (c) The board shall also develop a mechanism to keep account  
4 holders motivated about their current and future financial health.

5 100124. (a) The board shall adopt regulations as it deems  
6 necessary to implement and effectuate the purposes of this title.

7 (b) The board may adopt regulations to implement this title as  
8 emergency regulations in accordance with the rulemaking  
9 provisions of the Administrative Procedure Act (Chapter 3.5  
10 (commencing with Section 11340) of Part 1 of Division 3 of Title  
11 2). The adoption of the regulations shall be deemed to be an  
12 emergency and necessary for the immediate preservation of the  
13 public peace, health and safety, or general welfare, notwithstanding  
14 subdivision (e) of Section 11346.1 of the Government Code. Any  
15 regulation adopted pursuant to this section shall not remain in  
16 effect more than 180 days unless the board complies with  
17 rulemaking provisions of the Administrative Procedure Act  
18 (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
19 Division 3 of Title 2 of the Government Code), as required by  
20 subdivision (e) of Section 11346.1 of the Government Code.

21 100126. (a) A public bank may participate in the BankCal  
22 program as a participating *depository* financial institution.

23 (b) Financial services provided by a public bank in its capacity  
24 as a participating *depository* financial institution in the BankCal  
25 program does not constitute retail activities within the meaning of  
26 Section 57604.

27 (c) This section is declaratory of existing law and shall not be  
28 construed or interpreted as creating new law or as modifying or  
29 changing existing law.

30 100128. This title does not authorize the state to loan public  
31 money.

32 100130. This title shall be construed liberally in order to  
33 effectuate its legislative intent. The purposes of this title and all  
34 of its provisions with respect to the powers granted shall be broadly  
35 interpreted to effectuate that intent and purposes and not as to any  
36 limitation of powers.

37 SEC. 5. Section 90.4 is added to the Labor Code, to read:

38 90.4. (a) For purposes of this section:

39 (1) "BankCal Program" has the same meaning as defined in  
40 Section 100100 of the Government Code.

1 (2) “Employer” has the same meaning as defined in Section  
2 100100 of the Government Code.

3 (3) “Hiring entity” has the same meaning as defined in Section  
4 100100 of the Government Code.

5 (4) “Public Banking Option Board” means the California Public  
6 Banking Option Board, as defined in Section 100100 of the  
7 Government Code.

8 (5) “Worker” has the same meaning as defined in Section  
9 100100 of the Government Code.

10 (b) The Labor Commissioner shall have the power and duties  
11 necessary to administer the enforcement of employer and hiring  
12 entity compliance with Title 21.1 (commencing with Section  
13 100100) of the Government Code.

14 (c) (1) Upon receipt of a complaint or referral from the Public  
15 Banking Option Board, the Labor Commissioner shall investigate  
16 and determine whether there is reasonable cause to believe that an  
17 employer or hiring entity has failed to allow its workers to  
18 participate in the BankCal Program or otherwise violated Section  
19 100112 of the Government Code.

20 (2) Upon a finding of reasonable cause pursuant to paragraph  
21 (1), the Labor Commissioner shall serve a notice on the employer  
22 or hiring entity of its noncompliance.

23 (3) (A) An employer or hiring entity that, without good cause,  
24 fails to ~~allow, cure an alleged violation of Section 100112 of the~~  
25 ~~Government Code~~ within 90 days of receiving the notice required  
26 by paragraph (2), its workers to participate in the BankCal Program  
27 pursuant to Section 100112 of the Government Code (2) shall be  
28 liable for a civil penalty of two hundred fifty dollars (\$250) per  
29 worker.

30 (B) An employer or hiring entity found to be in noncompliance  
31 on or after 180 days from receiving the notice required by  
32 paragraph (2) shall be liable for an additional civil penalty of five  
33 hundred dollars (\$500) per worker.

34 SEC. 6. Section 12302.2 of the Welfare and Institutions Code  
35 is amended to read:

36 12302.2. (a) (1) If the state or a county makes or provides for  
37 direct payment to a provider chosen by a recipient or to the  
38 recipient for the purchase of in-home supportive services, the  
39 department shall perform or ensure the performance of all rights,  
40 duties, and obligations of the recipient relating to those services

1 as required for purposes of payroll direct deposit arrangements  
2 offered pursuant to the BankCal Program (Title 21.1 (commencing  
3 with Section 100100) of the Government Code), unemployment  
4 compensation, unemployment compensation disability benefits,  
5 workers' compensation, retirement savings accounts, including  
6 payroll deduction IRA arrangements offered pursuant to the  
7 CalSavers Retirement Savings Program (Title 21 (commencing  
8 with Section 100000) of the Government Code), federal and state  
9 income tax, and federal old-age, survivors, and disability insurance  
10 benefits. Those rights, duties, and obligations include, but are not  
11 limited to, registration and obtaining employer account numbers,  
12 providing information, notices, and reports, making applications  
13 and returns, and withholding in trust from the payments made to  
14 or on behalf of a recipient amounts to be withheld from the wages  
15 of the provider by the recipient as an employer, including the sales  
16 tax extended to support services by Article 4 (commencing with  
17 Section 6150) of Chapter 2 of Part 1 of Division 2 of the Revenue  
18 and Taxation Code, and transmitting those amounts along with  
19 amounts required for all contributions, premiums, and taxes payable  
20 by the recipient as the employer to the appropriate person or state  
21 or federal agency. The department may ensure the performance  
22 of any or all of these rights, duties, and obligations by contract  
23 with any person, or any public or private agency.

24 (2) Contributions, premiums, and taxes shall be paid or  
25 transmitted on the recipient's behalf as the employer for any period  
26 commencing on or after January 1, 1978, except that contributions,  
27 premiums, and taxes for federal and state income taxes and federal  
28 old-age, survivors, and disability insurance contributions shall be  
29 paid or transmitted pursuant to this section commencing with the  
30 first full month that begins 90 days after the effective date of this  
31 section.

32 (3) Contributions, premiums, and taxes paid or transmitted on  
33 the recipient's behalf for unemployment compensation, workers'  
34 compensation, and the employer's share of federal old-age,  
35 survivors, and disability insurance benefits shall be payable in  
36 addition to the maximum monthly amount established pursuant to  
37 Section 12303.5 or subdivision (a) of Section 12304 or other  
38 amount payable to or on behalf of a recipient. Contributions,  
39 premiums, or taxes resulting from liability incurred by the recipient  
40 as employer for unemployment compensation, workers'

1 compensation, and federal old-age, survivors, and disability  
2 insurance benefits with respect to any period commencing on or  
3 after January 1, 1978, and ending on or before the effective date  
4 of this section shall also be payable in addition to the maximum  
5 monthly amount established pursuant to Section 12303.5 or  
6 subdivision (a) of Section 12304 or other amount payable to or on  
7 behalf of the recipient. Nothing in this section shall be construed  
8 to permit any interference with the recipient's right to select the  
9 provider of services or to authorize a charge for administrative  
10 costs against any amount payable to or on behalf of a recipient.

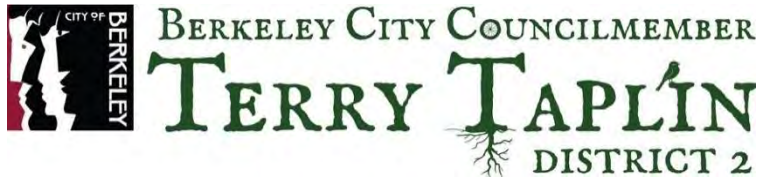
11 (b) If the state makes or provides for direct payment to a  
12 provider chosen by a recipient, the Controller shall make any  
13 deductions from the wages of in-home supportive services  
14 personnel that are authorized by Sections 1152 and 1153 of the  
15 Government Code, as limited by Section 3515.6 of the Government  
16 Code, and for the sales tax extended to support services by Article  
17 4 (commencing with Section 6150) of Chapter 2 of Part 1 of  
18 Division 2 of the Revenue and Taxation Code.

19 (c) Funding for the costs of administering this section and for  
20 contributions, premiums, and taxes paid or transmitted on the  
21 recipient's behalf as an employer pursuant to this section shall  
22 qualify, where possible, for the maximum federal reimbursement.  
23 To the extent that federal funds are inadequate, notwithstanding  
24 Section 12306, the state shall provide funding for the purposes of  
25 this section.

26 SEC. 7. If the Commission on State Mandates determines that  
27 this act contains costs mandated by the state, reimbursement to  
28 local agencies and school districts for those costs shall be made  
29 pursuant to Part 7 (commencing with Section 17500) of Division  
30 4 of Title 2 of the Government Code.

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CONSENT CALENDAR

May 25, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin (Author)

Subject: Budget Referral: Sixth Street Traffic Calming Improvements for the Improvement of Pedestrian and Cyclist Safety

RECOMMENDATION

That the City Council refers to the budget process the funding of traffic calming improvements as follows:

- Rapid Rectangular Flashing Beacons (RRFB) and a median refuge island at Sixth and Channing Way
- A median refuge island at Sixth and Addison Street

CURRENT SITUATION AND ITS EFFECTS

At the March 9th, 2021 Regular Session of the Berkeley City Council, Councilmember Taplin's budget referral for the funding of Rectangular Rapid Flashing Beacons (RRFB) at the intersection of Sixth & Addison Street was approved and forwarded for funding consideration under the FY 21-22 budget process.<sup>1</sup> The funding and eventual construction of RRFB at this intersection would be an important improvement for pedestrian and cyclist safety along Sixth Street, but would fall short of creating a Sixth Street that is welcome to pedestrians and cyclists along this heavily trafficked street in West Berkeley. The traffic calming improvements proposed by this referral should be funded in tandem with Sixth & Addison's RRFB in order to support the City of Berkeley's vision for accessible, safe, and low-carbon transportation options.

Sixth Street should be prioritized in such pursuits in light of its status as a "High-Injury Street" as well as an "Equity Priority Area" under the City's Vision Zero Action Plan.<sup>2</sup> The fact that Sixth Street falls under both of these categories indicates that not only is Sixth among the most dangerous streets in Berkeley where traffic injuries are a regular occurrence, it is also in a historically undervalued and underfunded part of Berkeley, not least of all because of the discrimination against the historically African-American

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<sup>1</sup>[https://www.cityofberkeley.info/Clerk/City\\_Council/2021/03\\_Mar/Documents/2021-03-09\\_Item\\_15\\_Budget\\_Referral\\_Funding\\_Rectangular.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-09_Item_15_Budget_Referral_Funding_Rectangular.aspx)

<sup>2</sup>[https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Transportation/Berkeley\\_Vision\\_Zero\\_Action\\_Plan\\_Approved\\_03102020.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley_Vision_Zero_Action_Plan_Approved_03102020.pdf)

community that calls West Berkeley home. The two intersections highlighted by this referral were not chosen at random, as Sixth & Addison and Sixth & Channing have both seen severe pedestrian injuries in recent years.<sup>3</sup> RRFB and medians at both Sixth & Addison and Sixth & Channing are also specifically called for under the City's Bicycle Plan due to the street having "one lane in each direction and high traffic volumes" which indicate a need for pedestrian warning improvements and physical pedestrian refuge infrastructure.<sup>4</sup>

#### FISCAL IMPACTS

Staff time, an estimated \$50,000 for installation of Rectangular Rapid Flashing Beacons and an estimated \$50,000 for 10 years of maintenance, and an estimated \$7,000-\$80,000 for two median refuge islands.<sup>5</sup>

#### ENVIRONMENTAL IMPACTS

Establishing a network of safe streets for pedestrians and bicycles, promoting bicycle literacy, and distributing bicycles to those in need incentivize nonautomobile travel, reducing greenhouse gas emissions. The City estimates that transportation-related emissions accounts for approximately 60% of our community's total annual greenhouse gas emissions.<sup>6</sup> By encouraging alternatives to car transportation by making pedestrian and cyclist infrastructure safer and more accessible, these improvements stand to lower the emissions from our community's dominant source of carbon emissions.

#### CONTACT

Terry Taplin, Councilmember, District 2, (510) 981-7120

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<sup>3</sup>[https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Transportation/Berkeley\\_Vision\\_Zero\\_Action\\_Plan\\_Approved\\_03102020.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley_Vision_Zero_Action_Plan_Approved_03102020.pdf)

<sup>4</sup>[https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Transportation/Berkeley-Bicycle-Plan-2017\\_Ch5\\_ProposedBikewayNetwork.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley-Bicycle-Plan-2017_Ch5_ProposedBikewayNetwork.pdf)

<sup>5</sup>[https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Transportation/Berkeley-Bicycle-Plan-2017\\_AppendixF\\_Facility%20Design%20Toolbox\(1\).pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley-Bicycle-Plan-2017_AppendixF_Facility%20Design%20Toolbox(1).pdf)

<sup>6</sup>[https://www.cityofberkeley.info/Clerk/City\\_Council/2018/12\\_Dec/Documents/2018-12-06\\_WS\\_Item\\_01\\_Climate\\_Action\\_Plan\\_Update\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/12_Dec/Documents/2018-12-06_WS_Item_01_Climate_Action_Plan_Update_pdf.aspx)



Susan Wengraf  
Councilmember District 6

02a.29

CONSENT CALENDAR  
May 25, 2021

To: Honorable Mayor and Members of the City Council  
From: Councilmember Wengraf (Author) and Mayor Arreguín (Co-Sponsor),  
Councilmember Hahn (Co-Sponsor) and Councilmember Taplin (Co-Sponsor)  
Subject: Budget Referral: City of Berkeley Annual Holocaust Remembrance Day

RECOMMENDATION

Refer to the Fiscal Year 2022/2023 budget process a request for \$6,000 annually to fund the City of Berkeley's Annual Holocaust Remembrance Day Program.

FINANCIAL IMPLICATIONS

\$6,000

BACKGROUND

For the past 18 years, The City of Berkeley has sponsored a Holocaust Remembrance Day Program. Participation in this important annual program has exceeded expectation, with attendance at in-person events in excess of 200 people (room capacity) for the past several years. The event has historically been funded through private donations, volunteer labor and the generosity of council members who have given from their discretionary accounts. The total contributions have varied from year to year with no predictable certainty about the outcome. This year, the program was viewed virtually through YouTube because the pandemic prevented in person assembly. The popularity of the program was clearly demonstrated by the more than 550 viewers.

This budget recommendation is for annual support of the City of Berkeley's Holocaust Remembrance Day Program. Rather than a one-time budget allocation, a recurring budget item of a modest six thousand dollars annually for the Holocaust Remembrance Day, leveraged by volunteer labor and donations, is needed to safeguard the continuance of the City's program. It is critical that this program continue, as the memory of the systematic genocide of Jews, political prisoners, homosexuals, and the disabled fades from our collective memory. [President Biden's statement](#) honoring International Holocaust Remembrance Day this year articulated the importance, "We must pass the history of the Holocaust on to our grandchildren and their grandchildren in order to keep real the promise of "never again." That is how we prevent future genocides. Remembering the victims, heroes, and lessons of the Holocaust is particularly important today as Holocaust deniers and minimizers are growing louder in our public discourse." The history of the Holocaust needs to be remembered in order to inform the present and future.

ENVIRONMENTAL SUSTAINABILITY

In compliance with City's environmental sustainability goals

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160



02a.30

Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
May 25, 2021

To: Honorable Mayor and Members of the City Council  
From: Councilmember Wengraf (Author)  
Subject: Budget Referral: Increased Funding for Neighborhood Traffic Calming

RECOMMENDATION

Refer to the Fiscal Year 2022/2023 Budget Process an annual increase in allocation for neighborhood traffic calming from the current 100 thousand dollars to 200 thousand dollars.

FINANCIAL IMPLICATIONS

\$100,000 increase in funding

BACKGROUND

The recurring annual allocation from the Capital Improvement Fund for traffic calming, data collection, studies and implementation was increased from \$50,000 to \$100,000 in Fiscal Year 2019/2020 in response to a [request from the City Council](#). The need for increased funds continues, as we return to normal after the pandemic. I am requesting an additional \$100,000 allocation for Traffic Calming in the 2022/2023 budget.

Funding for Traffic Calming was diverted into Healthy Streets during the global pandemic to provide residents opportunity to walk with physical distancing on designated streets. It is likely Healthy Streets will continue through the fall of 2021. The traffic calming program could then start again in January 2022 after having been diminished in capacity for two calendar years (2020 and 2021).

Navigation apps and the use of Uber and Lyft have exacerbated speeding through our neighborhood streets. The requests from neighborhoods throughout the city for traffic calming measures, far exceeds the current allocation.

ENVIRONMENTAL SUSTAINABILITY

Reducing the impact of motor vehicles on roadways, residents, bicyclists and pedestrians is consistent with the goals of our Vision Zero and Climate Action Plan.

CONTACT PERSON

Councilmember Wengraf                      Council District 6                      510-981-7160





02a.31

Lori Droste  
Vice Mayor District 8

Consent Calendar  
May 25, 2021

To: Honorable Mayor and Members of the City Council  
From: Vice Mayor Lori Droste (Author), Mayor Arreguin (Co-Sponsor), Councilmember Robinson (Co-Sponsor), and Councilmember Bartlett (Co-Sponsor)  
Subject: Budget Referral: Willard Park Ambassador

**Recommendation:** Refer to the Budget and Finance Committee a request for \$100,000 in funding for a Park Ambassador at Willard Park for 1 year.

**Background:**

The City of Berkeley strives to be compassionate with all residents, including those in our unhoused community. The City is also committed to ensuring all residents can safely utilize our open spaces and recreation areas. Unfortunately, over the past months Willard Park has experienced an increase in problematic and sometimes dangerous behavior and an increase in unsanitary conditions endangering the health of all those utilizing the park.

With the increasingly unsafe conditions in close proximity to children's recreational areas and outdoor spaces, numerous parents have expressed deep concern for their children's health and wellbeing, or have stopped using the park altogether. Porta potties are currently located in the park, for example, yet campers continue to relieve themselves in public areas. Residents have reported open fires at the park and harassment of park visitors, including children. Neighbors to the park have reported an increase in rat populations drawn to the area because of the ongoing trash accumulation at the park. Because of these ongoing issues, the City of Berkeley will not be hosting summer programming at Willard Park.

**Rationale for Recommendation**

To address these issues, the City has increased HOTT team presence, patrols in the park and enforcement of the existing park rules, but the concerns about safety persist. A Park Ambassador's presence would amplify these services around the clock, ensuring that the park felt safe and open throughout the day. With the planned closure of People's Park in the future, Willard Park will likely see an increase in campers given its proximity to People's Park. The City's Park's Department has utilized similar staffing at the waterfront and has seen great success with this model.

**Fiscal Impacts**

Estimated pricing for 2 park ambassadors would be \$22/hour. We would like to have staff at the park, seven days a week, for 12 hours a day. \$100,000 would cover 2-3 part time positions for one year.

**Contact info**

Councilmember Lori Droste [ldroste@cityofberkeley.info](mailto:ldroste@cityofberkeley.info)





Sugar-Sweetened Beverage  
Product Panel of Experts  
(SSBPPE) Commission

02a.35a

ACTION CALENDAR

May 25, 2021

To: Honorable Mayor Jesse Arreguin and Members of the City Council

From: Advisory Sub-Committee of the Sugar-Sweetened Beverage Product Panel of Experts (SSBPPE) Commission

Submitted by: Bobbie Rose, Chairperson, Advisory Sub-Committee of the Sugar-Sweetened Beverage Product Panel of Experts (SSBPPE) Commission

Subject: Grant Allocation: Approve Funding Recommendation for Programs to Reduce Consumption of Sugar-Sweetened Beverages (SSBs)

RECOMMENDATIONS

Approve the SSBPPE Commission's recommendations and adopt thirteen (13) Resolutions authorizing the City Manager or her designee to enter into contracts with the Berkeley Unified School District and the Community Based Organizations (CBOs) listed below to distribute a total of \$2,662,506 for FY 2022 and FY 2023 according to the schedule below and to also provide \$239,626 to the City of Berkeley Public Health Division (BPHD) during the same period to support administering and enhancing this program as approved by the Berkeley City Council as follows:

1. \$951,452 total grant to **Berkeley Unified School District** to implement the *Gardening and Cooking Program* for FY 2022 and FY 2023 to be disbursed as follows: \$475,726 for FY 2022 and \$475,726 for FY 2023.
2. \$242,250 total grant to the **Ecology Center** to implement *For Thirst, Water First!* program for FY 2022 and FY 2023 to be disbursed as follows: \$121,125 in FY 2022 and \$121,125 in FY 2023.
3. \$445,330 grant to **Healthy Black Families** to implement *Thirsty for Change!* (T4C) program for FY 2022 and FY 2023 to be disbursed as follows: \$222,665 in FY 2022 and \$222,665 in FY 2023.
4. \$30,000 grant to the **Multicultural Institute** to implement the *Life Skills/Day Laborer Program: Health Activity* program for FY 2022 and FY 2023 to be disbursed as follows: \$15,000 in FY 2022 and \$15,000 in FY 2023.
5. \$80,000 grant to the **YMCA of the East Bay** to implement the *YMCA Diabetes Prevention* (YDPP) program for FY 2022 and FY 2023 to be disbursed as follows: \$40,000 in FY 2022 and \$40,000 in FY 2023.

6. \$90,550 grant to the **YMCA of the East Bay** to implement the *YMCA Healthy Me!* program for FY 2022 and FY 2023 to be disbursed as follows: \$45,275 in FY 2022 and \$45,275 in FY 2023.
7. \$237,150 grant to **Lifelong Medical Care** to implement the *Chronic Disease and Oral Health Prevention Project* for FY 2022 and FY 2023 to be disbursed as follows: \$118,575 in FY 2022, and \$118,575 in FY 2023
8. \$37,600 grant to **Fresh Approach** to implement the *Veggie Rx Program for Healthy Foods and Beverages* program for FY 2022 and FY 2023 to be disbursed as follows: \$18,800 in FY 2022, and \$18,800 in FY 2023.
9. \$116,000 grant to **Bay Area Community Resources** to implement the *Healthy Options at Point of Sale* program for FY 2022 and FY 2023 to be disbursed as follows: \$58,000 in FY 2022, and \$58,000 in FY 2023.
10. \$55,448 grant to **Community Health Education Institute** to implement the *Artists Against Soda* program for FY 2022 and FY 2023 to be disbursed as follows: \$27,724 in FY 2022, and \$27,724 in FY 2023.
11. \$77,600 grant to **Berkeley Youth Alternatives** to implement the *Urban Agriculture and Team Nutrition Program* for FY 2022 and FY 2023 to be disbursed as follows: \$38,800 in FY 2022 and \$38,800 in FY2023.
12. \$59,500 grant to **18 Reasons** to implement the *Cooking Matters* program for FY2022 and FY2023 to be disbursed as follows: \$29,750 in FY2022 and \$29,750 in FY2023.
13. \$239,626 to the **City of Berkeley Public Health Division (BPHD)** to support the SSBPPE Commission and assist with outside evaluations to be disbursed as follows: \$119,813 in FY 2022 and \$119,813 in FY 2023.
14. The Commission recommends that indirect or administrative expenses not exceed 10% of the program budget for any entity and that the funds awarded not be used to supplant any other source of funding.
15. The Commission recommends that City Council authorize the City Manager to authorize advances for BUSD and the selected community agencies receiving funds in FY 2022 and FY2023. The advances are to be equivalent to 25% of the agency's allocation.

### SUMMARY

The SSBPPE Commission asks the City Council to approve and authorize distribution of \$2,662,506 for FY 2022 and FY 2023 allocated for community-based agencies under Project Code HHHSSB as follows:

1. \$951,452 total grant to **Berkeley Unified School District** to implement the *Gardening and Cooking Program* for FY 2022 and FY 2023 to be disbursed as follows: \$475,726 for FY 2022 and \$475,726 for FY 2023 that will:

- a. Increase awareness and knowledge about the health impacts of consuming SSBs through the cooking and gardening program;
  - b. Improve access to water and support family engagement;
  - c. Work to support, update and disseminate information on school SSB and water policies. Even small policy efforts can positively influence sustainability of efforts; and
  - d. Work to support schoolwide evaluation of district efforts to reduce SSB consumption. For example, use of BUSD YRBS data could inform programming within BUSD and the larger community, as well.
2. \$242,250 total grant to the **Ecology Center** to implement *For Thirst, Water First!* Program to be disbursed in FY 2022 (\$121,125) and FY 2023 (\$121,125) that will:
- a. Hire and train paid interns to work on *Water First* campaign including water access and marketing, as well as food systems including operating food stands and collaborating with BANPAC;
  - b. Plan and conduct 9<sup>th</sup> grade assembly focusing on marketing and inequity as well as BHS pop-ups and events with produce and water, food drives and farm box with cooking demonstrations, and a student poster contest; and
  - c. Co-create a Health Justice Youth Group who will conduct needs assessment for school water fountains, and who will be trained in program implementation and evaluation and advocacy.
3. \$445,330 total grant to **Healthy Black Families** to continue the *Thirsty for Change!* Program to be disbursed in FY 2022 (\$222,665) and FY 2023 (\$222,665) that will:
- a. Continue to partner with Center for Food, Faith and Justice (CFFJ) who will engage students at B-Tech Academy to do presentations on predatory marketing and other topics and help implement 6-10 new food/beverage policy changes to address health equity and 3-5 faith-based communities who will create food and beverage policies for events;
  - b. Continue to educate through classes, workshops and events, and grocery store and farmers market tours focusing on healthy living, health equity and industry marketing. New this year is an outreach effort to engage more men in these efforts;
  - c. Work with BHS student leaders and athletes to support and advocate for SSB policies at school sponsored events and student led events; and
  - d. Create a campaign to identify targets for media advocacy, encourage healthy retail efforts using 8 quarterly trainings. Work with at least 5 churches and

early childhood care providers who will develop a SSB and water policy. This will be part of Voices for Change which is helping others to engage in policy, systems, and environmental changes that will lead to improved health equity.

4. \$30,000 total grant to the **Multicultural Institute** to implement the *Life Skills/Day Laborer: Health Activity Program* to be disbursed in FY 2022 (\$15,000) and FY 2023 (\$15,000) that will:
  - a. Offer cultural and language appropriate classes and workshops on the serious health risks of consuming SSBs to uninsured or underinsured immigrants, day laborers, and other low-income families in West Berkeley;
  - b. Develop and distribute 4 quarterly newsletters with SSB/water resources and information about health conditions related to SSBs and post this information on social media;
  - c. Offer health screening and referrals and connect families to services for these conditions when needed; and
  - d. Work to provide healthier food and beverages in meal and snack offerings.
  
5. \$237,150 total grant to **Lifelong Medical Care** to implement the *Chronic Disease and Oral Health Prevention Project* to be disbursed in FY 2022 (\$118,575) and FY 2023 (\$118,575) that will:
  - a. Conduct 24 outreach educational events/year on medical and oral health impacts of SSBs;
  - b. Screen 1000 Berkeley residents for hypertension providing primary care for 200 to mitigate the impact of SSBs; and
  - c. Conduct 6 oral health outreach events where 300 dental patients will be provided with SSB education, 200 will have a dental visit.
  
6. \$80,000 total grant to the **YMCA of the East Bay** to implement a *Diabetes Prevention Program* to be disbursed in FY 2022 (\$40,000) and FY 2023 (\$40,000) that will:
  - a. Utilize a Centers for Disease Control (CDC)-recognized curriculum to prevent type 2 diabetes through providing 24 one hour sessions/year to 50 high risk adult patients with coaching in healthy eating, physical activity, and behavior changes; and
  - b. Develop and disseminate a newsletter on diabetes prevention.

7. \$90,550 total grant to the **YMCA of the East Bay** to implement the *Healthy Me! Program* to be disbursed in FY 2022 (\$45,275) and FY 2023 (\$45,275) that will:
  - a. Provide early education classes on healthy foods and water to 1000 children;
  - b. Provide reusable water bottles to over 1100 staff, parents and children to support improved access to water;
  - c. Provide workshops to 100 parents on the importance of healthy foods and water and enlist 5-10 parents as Water Champions who will lead 1-2 activities at the child care center;
  - d. Distribute 600 newsletters to parents on the importance of SSB reduction to health;
  - e. Distribute food to 250 high risk families; and
  - f. Strengthen current water policies by extending the policies at meetings in the virtual setting.
  
8. \$55,448 total grant to the **Community Health Education Institute** to implement the *Artists against Soda* program to be disbursed in FY 2022 (\$27,724) and FY 2023 (\$27,724) that will:
  - a. Visit markets, gas stations, and small eateries to gather information and to educate;
  - b. Work to remove SSB advertising from commercial venues;
  - c. Give classes to students on SSBs and on Healthy Checkout Ordinance;
  - d. Hold a downtown Berkeley art contest to promote and disseminate educational messages in local venues, as well as through social media; and
  - e. Draft, educate and promote a new ordinance based on a student led effort to restrict SSBs in eateries surrounding the high school.
  
9. \$116,000 total grant to **Bay Area Community Resources** to implement the *Healthy Options at Point of Sale* program to be disbursed in FY 2022 (\$58,000) and FY 2023 (\$58,000) that will:
  - a. Continue with recruitment and training of youth advocates to form a Berkeley Advocacy Team to increase knowledge of food justice and the role of retail food environment to reduce disparities. Advocates will be able to disseminate Healthy Checkout data to key stakeholders;
  - b. Provide outreach to and support of stores > 2500 sq ft participating in Healthy Checkout Program. Feedback and compliance tools and training materials

- will be developed and distributed. Feedback to stores and the community at large will be provided by a variety of methods including social media; and
- c. Provision of results from surveys and interviews and other evaluation data will be used to garner support for future program expansion. Letters from businesses will be gathered to support future expansion efforts.
10. \$77,600 total grant to **Berkeley Youth Alternatives** to implement the *Urban Agriculture and Team Nutrition Program* to be disbursed in FY 2022 (\$38,800) and FY 2023 (\$38,800) that will:
- a. Recruit, hire, and train 6 garden and nutrition educators to facilitate sessions for programs where participants will sign water pledges; and
  - b. Host an annual youth forum to share experiences and cover SSB and water policies and advocacy.
11. \$37,600 total grant to **Fresh Approach** to implement *VeggieRx Program for Healthy Food and Beverages* to be disbursed in FY 2022 (\$18,800) and FY 2023 (\$18,800) that will:
- a. Partner with Lifelong to provide high risk patients with standardized nutrition education and access to health food boxes utilizing a video training approach with AmeriCorps volunteers to maximize the resources; and
  - b. Develop and institutionalize an evaluation plan using health metrics such as BMI, dental caries and diabetic A1C levels that will over time provide outcome data on the value of combining education with improved access to healthy foods to improve health.
12. \$59,500 total grant to **18 Reasons** to implement the *Cooking Matters* program to be disbursed in FY 2022 (\$29,750) and FY 2023 (\$29,750) that will:
- a. Partner with BUSD and Berkeley Public Library to educate children and their families. Young children are a critically important, yet often overlooked group which would benefit from the program;
  - b. Expand this year to include an important retail component, i.e. Cooking Matters in-store tours; and
  - c. Identification of sustainable components of these programs is key as are evaluation of all efforts.
13. \$239,626 total grant to the **City of Berkeley Public Health Division (BPHD)** to support the SSBPPE Commission; assist with evaluations beyond the Results Based Accountability effort; coordinate and monitor the grant process; evaluate and

enhance the *Healthy Berkeley Program*; and produce an annual report that informs the public and disseminates outcome data; to be disbursed as follows \$119,813 in FY 2022 and \$119,813 in FY 2023. The BPHD shall use the funds on policy, system, and/or environmental (PSE) strategies to support and enhance the *Healthy Berkeley Program* and collaborate with the community-based organizations. The BPHD will work in partnership with the SSBPPE Commission in a transparent and open manner to plan and strategize for the best use of these new funds.

#### FISCAL IMPACTS OF RECOMMENDATION

There are no additional financial impacts to the City. The Council allocated \$2,662,506 from the General Fund on December 15, 2020 (Resolution No. 69,669-N.S.) for grants to BUSD cooking and gardening program and community agencies in FY 2022 and FY 2023.

#### CURRENT SITUATION AND ITS EFFECTS

On April 1, 2021, the Allocation Advisory Sub-Committee of the SSBPPE Commission selected and unanimously approved 11 programs from community-based organizations and the Berkeley Unified School District (BUSD) for funding recommendations. All proposals were scored using a standard set of questions for each of the five criteria articulated in the Request for Proposals (RFP). All proposals were reviewed and scored by the Advisory Subcommittee consisting of three SSBPPE commissioners as five of eight SSBPPE commissioners were deemed to have potential conflicts of interest by the City Attorney. All proposals were also reviewed and scored by a panel of three city staff from the Public Health Division (PHD). The rankings of the Advisory Subcommittee and the PHD panel were either identical or within +/-2 rankings for 73% of the proposals.

For the FY 2022-FY 2023 funding cycle, the City had a significantly smaller total allocation due to the effect of the pandemic on soda tax revenues. In addition, the last funding allocation (FY 2020-FY 2021) included unallocated revenues from the general fund for the prior three years over and above the historical base \$3,000,000 allocation. Thus, difficult decisions had to be made that had to affect all beneficiaries of this funding fairly. Three strategies guided the Advisory Subcommittee:

1. All proposals were assessed for their alignment with stated strategic objectives, quality of past performance if previously funded, and particularly for their proposed evaluation and policy measures. Only one proposal was eliminated due to significantly lower scores from both panels.
2. All recommended grantees have been previously funded as the SSBPPE recognizes that changing culture, environment, and behavior takes time and we have all made a commitment to sustainable long-term change. No grantee was awarded more than their previous amount of funding, including the Public Health Division and BUSD with the exception of one grantee who was awarded \$8000 over their prior funding

amount in recognition of their improved proposed evaluation. The cuts ranged from 10-20% depending on the quality of the application as demonstrated by the scores and the rank of the application.

3. The administration funding for the Public Health Division was compared with the funding percentages in other bay area jurisdictions with soda taxes and was aligned with these jurisdictions at 10% which was at the high end of the comparisons. The proposed scope of work for the PHD was also decreased in recognition of the decreased funding.

In summary, in order to be fair and equitable during these challenging times, recommendations for allocations from the subcommittee reflect assessment based on the quality of the application, the quality of the work in the past, and the quality of the evaluation of the project. These recommendations were unanimously approved by the Advisory Subcommittee of the SSBPPE and forwarded to the Mayor and members of the City Council under the advice and guidance of the City Attorney given the status of potential conflict of interest of five of the remaining SSBPPE commission members.

#### BACKGROUND

In November of 2014, Berkeley voters passed Measure D, requiring both the collection of a 1 cent per ounce tax on the distribution of sugary drinks in the City of Berkeley and the convening of the Sugar Sweetened Beverage Products Panel of Experts (SSBPPE) to recommend investments to both reduce the consumption of sugary drinks as well as to address the health consequences of the consumption of sugary drinks.

On December 15, 2020, the Berkeley City Council unanimously approved Action Items 26 (Resolution No. 69,669-N.S.) recommending an allocation of \$2,662,506 over two years, FY 2022 and FY 2023, to fund the Healthy Berkeley Program recognizing that Measure D is a General Tax and its revenues cannot be aligned dollar for dollar with the Healthy Berkeley Program.

On January 22, 2021 the BPHD released a Request for Proposals (RFP) soliciting program proposals from CBOs that promote reduction of consumption of SSBs and address the effects of SSB consumption on health. The RFP announcement was widely distributed to CBOs serving Berkeley.

On February 25, 2021, the City of Berkeley received proposals from 11 CBOs and BUSD. The proposals were reviewed and scored by two parallel review panels (SSBPPE Commission Review Panel and BPHD Staff Review Panel). Three Commissioners reviewed the proposals (five Commissioners recused themselves from the entire review process due to potential conflict of interest).



On April 1, 2021, the Advisory Subcommittee of the SSBPPE unanimously approved a council item to forward the following funding recommendations to the Berkeley City Council:

	<b>FY 2022</b>	<b>FY 2023</b>	<b>2 Year Total</b>
<b>BUSD</b>	\$ 475,726.00	\$ 475,726.00	\$ 951,452.00
<b>Ecology Center</b>	\$ 121,125.00	\$ 121,125.00	\$ 242,250.00
<b>Healthy Black Families</b>	\$ 222,665.00	\$ 222,665.00	\$ 445,330.00
<b>Multicultural Institute</b>	\$ 15,000.00	\$ 15,000.00	\$ 30,000.00
<b>Lifelong Medical Care</b>	\$ 118,575.00	\$ 118,575.00	\$ 237,150.00
<b>YMCA of the East Bay-- YDPP</b>	\$ 40,000.00	\$ 40,000.00	\$ 80,000.00
<b>YMCA of the East Bay —Healthy Me!</b>	\$ 45,275.00	\$ 45,275.00	\$ 90,550.00
<b>Berkeley Youth Alternatives</b>	\$ 38,800.00	\$ 38,800.00	\$ 77,600.00
<b>18 Reasons</b>	\$ 29,750.00	\$ 29,750.00	\$ 59,500.00
<b>Fresh Approach</b>	\$ 18,800.00	\$ 18,800.00	\$ 37,600.00
<b>Bay Area Community Resources</b>	\$ 58,000.00	\$ 58,000.00	\$ 116,000.00
<b>Community Health Education Institute</b>	\$ 27,724.00	\$ 27,724.00	\$ 55,448.00
<b>City of Berkeley PHD</b>	\$ 119,813.00	\$ 119,813.00	\$ 239,626.00
<b>Totals</b>	<b>\$ 1,331,253.00</b>	<b>\$ 1,331,253.00</b>	<b>\$ 2,662,506.00</b>

#### ENVIRONMENTAL SUSTAINABILITY

When the recommended allocations are implemented, the SSBPPE expects the following contributions to environmental sustainability:

1. Significant increase in awareness about health impacts of SSB consumption,
2. Increase in the number of trained youth peer educators, nutritionists, and teachers in low-income communities to reduce consumption of SSBs, and to promote healthy choices and increase consumption of Berkeley's high quality tap water, and
3. Significant reduction in access to sugary drinks in Berkeley.

#### RATIONALE FOR RECOMMENDATION

The Commission believes that investing \$2,662,506 in grants to CBOs, BUSD, and the BPHD will increase the City of Berkeley's likelihood of reducing the consumption of SSBs and improving the health of Berkeley children and youth, particularly those with limited resources, and communities-of-color that are most impacted by obesity,

diabetes, tooth decay, and heart diseases and that are targeted by Big Soda marketing. These grants will increase the capacity of CBOs to develop and implement multi-level interventions that include education, system and/or environmental change. Excellent, on-going, peer-reviewed research has confirmed the decline in the consumption of SSBs in the most affected neighborhoods of our city from 21% the first year of the Healthy Berkeley Program to 55% the third year, a phenomenal achievement.

#### CITY MANAGER

See Companion Report.

#### CONTACT PERSON

Dechen Tsering, MPH, Secretary, SSBPPE Commission, (510) 981-5394

#### Attachments:

- 1: Resolution: Funding Allocation to Berkeley Unified School District for the Gardening and Cooking Program
- 2: Resolution: Funding Allocation to the Ecology Center to Implement For Thirst, Water First! Program
- 3: Resolution: Funding Allocation to Healthy Black Families to Implement Thirsty For Change! Program
- 4: Resolution: Funding Allocation to Multicultural Institute to Implement the Life Skills Day Laborer: Healthy Activity Program
- 5: Resolution: Funding Allocation to YMCA of the East Bay to Implement the YMCA Diabetes Prevention and YMCA Healthy Me! Programs
- 6: Resolution: Funding Allocation to Lifelong Medical Care to Implement the Chronic Disease and Oral Health Prevention Project
- 7: Resolution: Funding Allocation to 18 Reasons to Implement the Cooking Matters Project
- 8: Resolution: Funding Allocation to the Bay Area Community Resources to Implement the Healthy Options at the Point of Sale Project
- 9: Resolution: Funding Allocation to Fresh Approach to Implement VeggieRx Program for Healthy Food and Beverages
- 10: Resolution: Funding Allocation to Berkeley Youth Alternatives to Implement the Urban Agriculture and Teen Nutrition Program
- 11: Resolution: Funding Allocation to the Community Health Education Institute to Implement the Artists Against Soda Project
- 12: Resolution: Funding Allocation to the City of Berkeley Public Health Division to Implement the Healthy Berkeley Program  
Exhibit A: Best Use Examples for Policy, Environmental and/or Systems Changes
- 13: Resolution: Allocation: \$2,662,506 Total for Reduction of Sugar-Sweetened Beverage Consumption Grant Program in FY 2022 and FY 2023

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

CONTRACT: TOTAL FUNDING ALLOCATION OF \$951,452 FOR FY 2022 AND  
FY 2023 TO THE BERKELEY UNIFIED SCHOOL DISTRICT FOR  
THE GARDENING AND COOKING PROGRAM

WHEREAS, the consumption of Sugar-Sweetened Beverages (SSBs) in Berkeley is impacting the health of the people in Berkeley; and

WHEREAS, the City Council is committed to decreasing the consumption of SSBs and mitigating the harmful impacts of SSBs on the population of Berkeley; and

WHEREAS, on December 15, 2020, the City Council allocated \$2,662,506 for FY 2022 and FY 2023 toward funding two-year grants for the purpose of reducing consumption of SSBs and addressing the effects of SSB consumption on health; and

WHEREAS, a Resolution No. 69,669-N.S. included a total allocation of up to 40% of the total allocated funds to Berkeley Unified School District to reduce the consumption of sugar-sweetened beverages (SSBs) through the implementation and enhancement of the BUSD gardening and cooking program for the period, July 1, 2021 to June 30, 2023; and

WHEREAS, a Request for Proposal (RFP) was released on January 22, 2021 and BUSD submitted a proposal in response to the RFP, which was evaluated by two separate review panels of SSBPPE Commissioners and the City of Berkeley Public Health Division staff, and determined to be responsive in meeting all aspects of the scope of the work and selection criteria and among the best selection for this contract; and

WHEREAS, funds in the total amount of \$951,452 to **Berkeley Unified School District** will cover the expenses to implement the *Gardening and Cooking Program* for FY 2022 and FY 2023 to be disbursed as follows: \$475,726 for FY 2022 and \$475,726 for FY 2023 to:

- a. Increase awareness and knowledge about the health impacts of consuming SSBs through the cooking and gardening program;
- b. Improve access to water and support family engagement;
- c. Work to support, update and disseminate information on school SSB and water policies. Even small policy efforts can positively influence sustainability of efforts; and
- d. Work to support schoolwide evaluation of district efforts to reduce SSB consumption. For example use of BUSD YRBS data could inform programming within BUSD and the larger community, as well; and

WHEREAS, in addition to the Council's approval of the funding recommendation, the City Council action is required to authorize advances for BUSD in FY 2022 and FY2023. The advances are to be equivalent to 25% of the agency's allocation.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute a contract and any amendments with Berkeley Unified School District in the total amount not to exceed \$951,452 for the two-year period of July 1, 2021 to June 30, 2023.

A records signature copy of the said agreement and any amendments to be on file in the Office of the City Clerk.

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

CONTRACT: TOTAL FUNDING ALLOCATION OF \$242,250 FOR FY 2022 AND FY2023 TO THE ECOLOGY CENTER TO IMPLEMENT *FOR THIRST, WATER FIRST!* PROGRAM

WHEREAS, high intake of Sugar-Sweetened Beverages (SSBs) is associated with risk of Type 2 diabetes, obesity, hypertension, dental decay and coronary heart disease; and

WHEREAS, over half of California adults (55%) have either prediabetes or diabetes; and

WHEREAS, the City Council is committed to decreasing the consumption of SSBs and mitigating the harmful impacts of SSBs on the population of Berkeley; and

WHEREAS, on December 15, 2020, the City Council allocated \$2,662,506 for FY 2022 and FY 2023 toward funding two-year grants for the purpose of reducing consumption of SSBs and addressing the effects of SSB consumption on health; and

WHEREAS, a Request for Proposal (RFP) for CBOs was released on January 22, 2021, and the Ecology Center submitted a proposal in response to the RFP, which was evaluated by two separate review panels of SSBPPE Commissioners and City of Berkeley Public Health Division staff, and determined to be responsive in meeting all aspects of the scope of the work and selection criteria and among the best selection for this contract; and

WHEREAS, funds in the total amount of \$242,250 to the **Ecology Center** will cover the expenses to implement *For Thirst, Water First!* Program to be disbursed in FY 2022 (\$121,125) and FY 2023 (\$121,125) to:

- a. Hire and train paid interns to work on Water First campaign including water access and marketing, as well as food systems including operating food stands and collaborating with BANPAC;
- b. Plan and conduct 9<sup>th</sup> grade assembly focusing on marketing and inequity as well as BHS pop-ups and events with produce and water, food drives and farm box with cooking demonstrations, and a student poster contest; and
- c. Co-create a Health Justice Youth Group who will conduct needs assessment for school water fountains, and who will be trained in program implementation and evaluation and advocacy; and

WHEREAS, in addition to the Council's approval of the funding recommendation, the City Council action is required to authorize advances for select community agency receiving funds in FY 2022 and FY 2023. The advances are to be equivalent to 25% of the agency's allocation.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager, or her designee, is authorized to execute a contract and any amendments

with the Ecology Center in the total amount not to exceed \$242,250 for the two-year period of July 1, 2021 to June 30, 2023.

A records signature copy of the said agreement and any amendments to be on file in the Office of the City Clerk.

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

CONTRACT: TOTAL FUNDING ALLOCATION OF \$445,330 FOR FY 2022 AND  
FY 2023 TO HEALTHY BLACK FAMILIES FOR THE THIRSTY FOR CHANGE!  
PROGRAM

WHEREAS, high intake of Sugar-Sweetened Beverages (SSBs) is associated with risk of Type 2 diabetes, obesity, hypertension, dental decay and coronary heart disease; and

WHEREAS, over half of California adults (55%) have either prediabetes or diabetes; and

WHEREAS, the City Council is committed to decreasing the consumption of SSBs and mitigating the harmful impacts of SSBs on the population of Berkeley; and

WHEREAS, on December 15, 2020, the City Council allocated \$2,662,506 for FY 2022 and FY 2023 toward funding two-year grants for the purpose of reducing consumption of SSBs and addressing the effects of SSB consumption on health; and

WHEREAS, a Request for Proposal (RFP) for CBOs was released on January 22, 2021 and the Healthy Black Families submitted a proposal in response to the RFP, which was evaluated by two separate review panels of SSBPPE Commissioners and City of Berkeley Public Health Division staff members; determined to be responsive in meeting all aspects of the scope of the work and selection criteria; and stood out among the best selection for this contract; and

WHEREAS, funds in the total amount of \$445,330 to Healthy Black Families will cover the expenses to continue the *Thirsty for Change!* Program to be disbursed in FY 2022 (\$222,665) and FY 2023 (\$222,665) to:

- a. Continue to partner with Center for Food, Faith and Justice (CFFJ) who will engage students at B-Tech Academy to do presentations on predatory marketing and other topics and help implement 6-10 new food/beverage policy changes to address health equity and 3-5 faith-based communities who will create food and beverage policies for events;
- b. Continue to educate through classes, workshops and events, and grocery store and farmers market tours focusing on healthy living, health equity and industry marketing. New this year is an outreach effort to engage more men in these efforts;
- c. Work with BHS student leaders and athletes to support and advocate for SSB policies at school sponsored events and student led events; and
- d. Create a campaign to identify targets for media advocacy, encourage healthy retail efforts using 8 quarterly trainings. Work with at least 5 churches and early childhood care providers who will develop a SSB and water policy. This will be part of Voices for Change which is helping others to engage in policy, systems, and environmental changes that will lead to improved health equity; and

WHEREAS, in addition to the Council's approval of the funding recommendation, the City Council action is required to authorize advances for select community agency receiving funds in FY 2022 and FY 2023. The advances are to be equivalent to 25% of the agency's allocation.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager, or her designee, is authorized to execute a contract and any amendments with Healthy Black Families in the amount not to exceed \$445,330 for the two-year period of July 1, 2021 to June 30, 2023.

A records signature copy of the said agreement and any amendments to be on file in the Office of the City Clerk.



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

CONTRACT: TOTAL FUNDING ALLOCATION OF \$30,000 FOR FY 2022 AND  
FY 2023 TO THE MULTICULTURAL INSTITUTE FOR THE LIFE SKILLS DAY  
LABORER: HEALTH ACTIVITY PROGRAM

WHEREAS, the consumption of Sugar-Sweetened Beverages (SSBs) in Berkeley is impacting the health of the people in Berkeley; and

WHEREAS, the City Council is committed to decreasing the consumption of SSBs and mitigating the harmful impacts of SSBs on the population of Berkeley; and

WHEREAS, on December 15, 2020, the City Council allocated \$2,662,506 for FY 2022 and FY 2023 toward funding two-year grants for the purpose of reducing consumption of SSBs and addressing the effects of SSB consumption on health; and

WHEREAS, a Request for Proposal (RFP) for CBOs was released on January 22, 2021, and the Multicultural Institute submitted a proposal in response to the RFP, which was evaluated by two separate review panels of SSBPPE Commissioners and Public Health Division staff members; determined to be responsive in meeting all aspects of the scope of the work and selection criteria; and stood out among the best selection for this contract; and

WHEREAS, funds in the total amount of \$30,000 to **Multicultural Institute** will cover the expenses to implement the *Life Skills/Day Laborer: Health Activity Program* to be disbursed in FY 2022 (\$15,000) and FY 2023 (\$15,000) to:

- a. Offer cultural and language appropriate classes and workshops on the serious health risks of consuming SSBs to uninsured or underinsured immigrants, day laborers, and other low-income families in West Berkeley;
- b. Develop and distribute 4 quarterly newsletters with SSB/water resources and information about health conditions related to SSBs and post this information on social media;
- c. Offer health screening and referrals and connect families to services for these conditions when needed; and
- d. Work to provide healthier food and beverages in meal and snack offerings; and  
and

WHEREAS, in addition to the Council's approval of the funding recommendation, the City Council action is required to authorize advances for select community agency receiving funds in FY 2022 and FY 2023. The advances are to be equivalent to 25% of the agency's allocation.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager, or her designee, is authorized to execute a contract and any amendments

with Multicultural Institute in the amount not to exceed \$30,000 for the two-year period of July 1, 2021 to June 30, 2023.

A records signature copy of the said agreement and any amendments to be on file in the Office of the City Clerk.

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

CONTRACT: TOTAL FUNDING ALLOCATION OF \$170,550 FOR FY 2022 AND  
FY 2023 TO THE YMCA OF THE EAST BAY FOR THE YMCA DIABETES  
PREVENTION AND YMCA HEALTHY ME! PROGRAMS

WHEREAS, the consumption of Sugar-Sweetened Beverages (SSBs) in Berkeley is impacting the health of the people in Berkeley; and

WHEREAS, the City Council is committed to decreasing the consumption of SSBs and mitigating the harmful impacts of SSBs on the population of Berkeley; and

WHEREAS, on December 15, 2020, the City Council allocated \$2,662,506 for FY 2022 and FY 2023 toward funding two-year grants for the purpose of reducing consumption of SSBs and addressing the effects of SSB consumption on health; and

WHEREAS, a Request for Proposal (RFP) for CBOs was released on January 22, 2021, and the YMCA of the Central Bay submitted two proposals in response to the RFP, which were evaluated by two separate review panels of SSBPPE Commissioners and City of Berkeley Public Health Division staff members; determined to be responsive in meeting all aspects of the scope of the work and selection criteria; and stood out among the best selection for this contract; and

WHEREAS, funds in the total amount of \$170,550 to the YMCA of the East Bay will cover the expenses to implement the YMCA Diabetes Prevention (YDPP) and the YMCA Healthy Me! (YHME) programs, with \$80,000 of the total grant to implement a *Diabetes Prevention Program* to be disbursed in FY 2022 (\$40,000) and FY 2023 (\$40,000) to:

- a. Utilize a Centers for Disease Control (CDC)-recognized curriculum to prevent type 2 diabetes through providing 24 one hour sessions/year to 50 high risk adult patients with coaching in healthy eating, physical activity, and behavior changes; and
- b. Develop and disseminate a newsletter on diabetes prevention.

And \$90,550 of the total grant to implement the *Healthy Me! Program* to be disbursed in FY 2022 (\$45,275) and FY 2023 (\$45,275) to:

- c. Provide early education classes on healthy foods and water to 1000 children;
- d. Provide reusable water bottles to over 1100 staff, parents and children to support improved access to water;
- e. Provide workshops to 100 parents on the importance of healthy foods and water and enlist 5-10 parents as water champions who will lead 1-2 activities at the child care center;
- f. Distribute 600 newsletters to parents on the importance of SSB reduction to health;
- g. Distribute food to 250 high risk families; and

- h. Strengthen current water policies by extending the policies at meetings in the virtual setting; and

WHEREAS, in addition to the Council's approval of the funding recommendation, the City Council action is required to authorize advances for select community agency receiving funds in FY 2022 and FY 2023. The advances are to be equivalent to 25% of the agency's allocation.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager, or her designee, is authorized to execute a contract and any amendments with the YMCA of the East Bay in the amount not to exceed \$170,550 for the two-year period of July 1, 2021 to June 30, 2023.

A records signature copy of the said agreement and any amendments to be on file in the Office of the City Clerk.

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

CONTRACT: TOTAL FUNDING ALLOCATION OF \$237,150 FOR FY 2022 AND  
FY 2023 TO LIFELONG MEDICAL CARE FOR THE CHRONIC DISEASE AND ORAL  
HEALTH PREVENTION PROJECT

WHEREAS, the consumption of Sugar-Sweetened Beverages (SSBs) in Berkeley is impacting the health of the people in Berkeley; and

WHEREAS, the City Council is committed to decreasing the consumption of SSBs and mitigating the harmful impacts of SSBs on the population of Berkeley; and

WHEREAS, on December 15, 2020, the City Council allocated \$2,662,506 for FY 2022 and FY 2023 toward funding two-year grants for the purpose of reducing consumption of SSBs and addressing the effects of SSB consumption on health; and

WHEREAS, a Request for Proposal (RFP) for CBOs was released on January 22, 2021, and the Lifelong Medical Care submitted a proposal in response to the RFP, which was evaluated by two separate review panels of SSBPPE Commissioners and City of Berkeley Public Health Division staff members; determined to be responsive in meeting all aspects of the scope of the work and selection criteria; and stood out among the best selection for this contract; and

WHEREAS, funds in the amount of \$237,150 to **Lifelong Medical Care** will cover the expenses to implement the *Chronic Disease and Oral Health Prevention Project* to be disbursed in FY 2022 (\$118,575) and FY 2023 (\$118,575) to:

- a. Conduct 24 outreach educational events/year on medical and oral health impacts of SSBs;
- b. Screen 1000 Berkeley residents for hypertension providing primary care for 200 to mitigate the impact of SSBs; and
- c. Conduct 6 oral health outreach events where 300 dental patients will be provided with SSB education, 200 will have a dental visit; and

WHEREAS, in addition to the Council's approval of the funding recommendation, the City Council action is required to authorize advances for select community agency receiving funds in FY 2022 and FY 2023. The advances are to be equivalent to 25% of the agency's allocation.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager, or her designee, is authorized to execute a contract and any amendments with Lifelong Medical Care in the amount not to exceed \$237,150 for the two-year period of July 1, 2021 to June 30, 2023.

A records signature copy of the said agreement and any amendments to be on file in the Office of the City Clerk.

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

CONTRACT: TOTAL FUNDING ALLOCATION OF \$59,500 FOR FY 2022 AND  
FY 2023 TO 18 REASONS FOR THE COOKING MATTERS PROJECT

WHEREAS, the consumption of Sugar-Sweetened Beverages (SSBs) in Berkeley is impacting the health of the people in Berkeley; and

WHEREAS, the City Council is committed to decreasing the consumption of SSBs and mitigating the harmful impacts of SSBs on the population of Berkeley; and

WHEREAS, on December 15, 2020, the City Council allocated \$2,662,506 for FY 2022 and FY 2023 toward funding two-year grants for the purpose of reducing consumption of SSBs and addressing the effects of SSB consumption on health; and

WHEREAS, a Request for Proposal (RFP) for CBOs was released on January 22, 2021, and 18 Reasons submitted a proposal in response to the RFP, which was evaluated by two separate review panels of SSBPPE Commissioners and City of Berkeley Public Health Division staff members; determined to be responsive in meeting all aspects of the scope of the work and selection criteria; and stood out among the best selection for this contract; and

WHEREAS, funds in the amount of \$59,500 to **18 Reasons** will cover the expenses to implement the *Cooking Matters* program to be disbursed in FY 2022 (\$29,750) and FY 2023 (\$29,750) to:

- a. Partner with BUSD and Berkeley Public Library to educate children and their families. Young children are a critically important, yet often overlooked group which would benefit from the program; and
- b. Expand this year to include an important retail component, i.e. Cooking Matters in-store tours; and
- c. Identification of sustainable components of these programs is key as are evaluation of all efforts; and

WHEREAS, in addition to the Council's approval of the funding recommendation, the City Council action is required to authorize advances for select community agency receiving funds in FY 2022 and FY 2023. The advances are to be equivalent to 25% of the agency's allocation.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager, or her designee, is authorized to execute a contract and any amendments with 18 Reasons in the amount not to exceed \$59,500 for the two-year period of July 1, 2021 to June 30, 2023.

A records signature copy of the said agreement and any amendments to be on file in the Office of the City Clerk.

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

CONTRACT: TOTAL FUNDING ALLOCATION OF \$116,000 FOR FY 2022 AND  
FY 2023 TO BAY AREA COMMUNITY RESOURCES FOR THE HEALTHY OPTIONS  
AT POINT OF SALE PROJECT

WHEREAS, the consumption of Sugar-Sweetened Beverages (SSBs) in Berkeley is impacting the health of the people in Berkeley; and

WHEREAS, the City Council is committed to decreasing the consumption of SSBs and mitigating the harmful impacts of SSBs on the population of Berkeley; and

WHEREAS, on December 15, 2020 (Resolution No. 69,669-N.S), the City Council allocated \$2,662,506 for FY 2022 and FY 2023 toward funding two-year grants for the purpose of reducing consumption of SSBs and addressing the effects of SSB consumption on health; and

WHEREAS, a Request for Proposal (RFP) for CBOs was released on January 22, 2021, and the Bay Area Community Resources submitted a proposal in response to the RFP, which was evaluated by two separate review panels of SSBPPE Commissioners and the City of Berkeley Public Health Division staff members; determined to be responsive in meeting all aspects of the scope of the work and selection criteria; and stood out among the best selection for this contract; and

WHEREAS, funds in the amount of \$116,000 to **Bay Area Community Resources** will cover the expenses to implement the *Healthy Options at Point of Sale* program to be disbursed in FY 2022 (\$58,000) and FY 2023 (\$58,000) to:

- a. Continue with recruitment and training of youth advocates to form a Berkeley Advocacy Team to increase knowledge of food justice and the role of retail food environment to reduce disparities. Advocates will be able to disseminate Healthy Checkout data to key stakeholders;
- b. Provide outreach to and support of stores > 2500 sq ft participating in Healthy Checkout Program. Feedback and compliance tools and training materials will be developed and distributed. Feedback to stores and the community at large will be provided by a variety of methods including social media; and
- c. Provision of results from surveys and interviews and other evaluation data will be used to garner support for future program expansion. Letters from businesses will be gathered to support future expansion efforts; and

WHEREAS, in addition to the Council's approval of the funding recommendation, the City Council action is required to authorize advances for select community agency receiving funds in FY 2022 and FY 2023. The advances are to be equivalent to 25% of the agency's allocation.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager, or her designee, is authorized to execute a contract and any amendments with Bay Area Community Resources in the amount not to exceed \$116,000 for the two-year period of July 1, 2021 to June 30, 2023.

A records signature copy of the said agreement and any amendments to be on file in the Office of the City Clerk.



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

CONTRACT: TOTAL FUNDING ALLOCATION OF \$37,600 FOR FY 2022 AND  
FY 2023 TO FRESH APPROACH TO IMPLEMENT VEGGIERX PROGRAM FOR  
HEALTHY FOOD AND BEVERAGES

WHEREAS, high intake of Sugar-Sweetened Beverages (SSBs) is associated with risk of Type 2 diabetes, obesity, hypertension, dental decay and coronary heart disease; and

WHEREAS, over half of California adults (55%) have either prediabetes or diabetes; and

WHEREAS, the City Council is committed to decreasing the consumption of SSBs and mitigating the harmful impacts of SSBs on the population of Berkeley; and

WHEREAS, on December 15, 2020, the City Council allocated \$2,662,506 for FY 2022 and FY 2023 toward funding two-year grants for the purpose of reducing consumption of SSBs and addressing the effects of SSB consumption on health; and

WHEREAS, a Request for Proposal (RFP) for CBOs was released on January 22, 2021, and Fresh Approach submitted a proposal in response to the RFP, which was evaluated by two separate review panels of SSBPPE Commissioners and the City of Berkeley Public Health Division staff, and determined to be responsive in meeting all aspects of the scope of the work and selection criteria and among the best selection for this contract; and

WHEREAS, funds in the total amount of \$37,600 to **Fresh Approach** will cover the expenses to implement *VeggieRx Program for Healthy Food and Beverages* to be disbursed in FY 2022 (\$18,800) and FY 2023 (\$18,800) to:

- a. Partner with Lifelong to provide high risk patients with standardized nutrition education and access to health food boxes utilizing a video training approach with AmeriCorps volunteers to maximize the resources; and
- b. Develop and institutionalize an evaluation plan using health metrics such as BMI, dental caries and diabetic A1C levels that will over time provide outcome data on the value of combining education with improved access to healthy foods to improve health; and

WHEREAS, in addition to the Council's approval of the funding recommendation, the City Council action is required to authorize advances for select community agency receiving funds in FY 2022 and FY 2023. The advances are to be equivalent to 25% of the agency's allocation.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager, or her designee, is authorized to execute a contract and any amendments

with Fresh Approach in the total amount not to exceed \$37,600 for the two-year period of July 1, 2021 to June 30, 2023.

A records signature copy of the said agreement and any amendments to be on file in the Office of the City Clerk.

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

CONTRACT: TOTAL FUNDING ALLOCATION OF \$77,600 FOR FY 2022 AND  
FY 2023 TO BERKELEY YOUTH ALTERNATIVES FOR THE URBAN AGRICULTURE  
AND TEEN NUTRITION PROGRAM

WHEREAS, the consumption of Sugar-Sweetened Beverages (SSBs) in Berkeley is impacting the health of the people in Berkeley; and

WHEREAS, the City Council is committed to decreasing the consumption of SSBs and mitigating the harmful impacts of SSBs on the population of Berkeley; and

WHEREAS, on December 15, 2020, the City Council allocated \$2,662,506 for FY 2022 and FY 2023 toward funding two-year grants for the purpose of reducing consumption of SSBs and addressing the effects of SSB consumption on health; and

WHEREAS, a Request for Proposal (RFP) for CBOs was released on January 22, 2021, and Berkeley Youth Alternatives submitted a proposal in response to the RFP, which was evaluated by two separate review panels of SSBPPE Commissioners and the City of Berkeley Public Health Division staff members; determined to be responsive in meeting all aspects of the scope of the work and selection criteria; and stood out among the best selection for this contract; and

WHEREAS, funds in the amount of \$77,600 to Berkeley Youth Alternatives will cover the expenses to implement the *Urban Agriculture and Team Nutrition Program* to be disbursed in FY 2022 (\$38,800) and FY 2023 (\$38,800) to:

- a. Recruit, hire, and train 6 garden and nutrition educators to facilitate sessions for programs where participants will sign water pledges; and
- b. Host an annual youth forum to share experiences and cover SSB and water policies and advocacy; and

WHEREAS, in addition to the Council's approval of the funding recommendation, the City Council action is required to authorize advances for select community agency receiving funds in FY 2022 and FY 2023. The advances are to be equivalent to 25% of the agency's allocation.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager, or her designee, is authorized to execute a contract and any amendments Berkeley Youth Alternatives in the amount not to exceed \$77,600 for the two-year period of July 1, 2021 to June 30, 2023.

A records signature copy of the said agreement and any amendments to be on file in the Office of the City Clerk.

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

CONTRACT: TOTAL FUNDING ALLOCATION OF \$55,448 FOR FY 2022 AND  
FY 2023 TO COMMUNITY HEALTH EDUCATION INSTITUTE FOR THE ARTISTS  
AGAINST SODA PROJECT

WHEREAS, the consumption of Sugar-Sweetened Beverages (SSBs) in Berkeley is impacting the health of the people in Berkeley; and

WHEREAS, the City Council is committed to decreasing the consumption of SSBs and mitigating the harmful impacts of SSBs on the population of Berkeley; and

WHEREAS, on December 15, 2020, the City Council allocated \$2,662,506 for FY 2022 and FY 2023 toward funding two-year grants for the purpose of reducing consumption of SSBs and addressing the effects of SSB consumption on health; and

WHEREAS, a Request for Proposal (RFP) for CBOs was released on January 22, 2021 and the Community Health Education Institute submitted a proposal in response to the RFP, which was evaluated by two separate review panels of SSBPPE Commissioners and the City of Berkeley Public Health Division staff members; determined to be responsive in meeting all aspects of the scope of the work and selection criteria; and stood out among the best selection for this contract; and

WHEREAS, funds in the amount of \$55,448 to the **Community Health Education Institute** will cover the expenses to implement the *Artists against Soda* program to be disbursed in FY 2022 (\$27,724) and FY 2023 (\$27,724) to:

- a. Visit markets, gas stations, and small eateries to gather information and to educate;
- b. Work to remove SSB advertising from commercial venues;
- c. Give classes to students on SSBs and on Healthy Checkout Ordinance;
- d. Hold a downtown Berkeley art contest to promote and disseminate educational messages in local venues, as well as through social media; and
- e. Draft, educate and promote a new ordinance based on a student led effort to restrict SSBs in eateries surrounding the high school; and

WHEREAS, in addition to the Council's approval of the funding recommendation, the City Council action is required to authorize advances for select community agency receiving funds in FY 2022 and FY 2023. The advances are to be equivalent to 25% of the agency's allocation.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager, or her designee, is authorized to execute a contract and any amendments with Community Health Education Institute in the amount not to exceed \$55,448 for the two-year period of July 1, 2021 to June 30, 2023.

A records signature copy of the said agreement and any amendments to be on file in the Office of the City Clerk.

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

TOTAL FUNDING ALLOCATION OF \$239,626 FOR FISCAL YEAR 2022 AND FISCAL YEAR 2023 TO THE CITY OF BERKELEY PUBLIC HEALTH DIVISION TO SUPPORT AND ENHANCE THE HEALTHY BERKELEY PROGRAM

WHEREAS, the consumption of Sugar-Sweetened Beverages (SSBs) in Berkeley is impacting the health of the people in Berkeley; and

WHEREAS, the City Council is committed to decreasing the consumption of SSBs and mitigating the harmful impacts of SSBs on the population of Berkeley; and

WHEREAS, on December 15, 2020, the City Council allocated \$2,662,506 for FY 2022 and FY 2023 for the purpose of reducing consumption of SSBs and addressing the effects of SSB consumption on health with the following recommendation: direct the City Manager to utilize a percentage of the allocated funds to support the City of Berkeley Public Health Division (BPHD) to coordinate and monitor the grant process; evaluate and enhance the Healthy Berkeley Program; produce an annual report that informs the public and disseminates outcome data; and

WHEREAS, the BPHD allocation of Healthy Berkeley Program funding shall not supplant any existing funding and shall be used solely in support of or to enhance the Healthy Berkeley Program; and

WHEREAS, the costs attributed to the Healthy Berkeley Program funding shall not exceed amounts allocated by City Council per fiscal year for this program; and

WHEREAS, funds in the amount of \$239,626 to the **City of Berkeley Public Health Division** (BPHD) will cover the expenses to support the SSBPPE Commission; assist with evaluations beyond the Results Based Accountability effort; coordinate and monitor the grant process; evaluate and enhance the *Healthy Berkeley Program*; and produce an annual report that informs the public and disseminates outcome data; to be disbursed as follows: \$119,813 in FY 2022 and \$119,813 in FY 2023. The BPHD shall use the funds on policy, system, and/or environmental (PSE) strategies to support and enhance the *Healthy Berkeley Program* and collaborate with the community-based organizations. The BPHD will work in partnership with the SSBPPE Commission in a transparent and open manner to plan and strategize for the best use of these new funds; and

WHEREAS, funds in the amount of \$239,626 to BPHD for two years (July 1, 2021 – June 30, 2023) are to be disbursed in two equal amounts of \$119,813 each in FY 2022 and FY 2023; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager, or her designee, is authorized to disburse to the BPHD in the amount not to exceed \$239,626 for the two-year period of July 1, 2021 to June 30, 2023.

A records signature copy of the said agreement and any amendments to be on file in the Office of the City Clerk.

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

ALLOCATION: \$2,662,506 TOTAL FOR REDUCTION OF SUGAR-SWEETENED BEVERAGE CONSUMPTION GRANT PROGRAM IN FY 2022 AND FY 2023

WHEREAS, the consumption of sugar-sweetened beverages ("SSB") in Berkeley is impacting the health of the people in Berkeley; and

WHEREAS, in FY 2018 and FY 2019, the City Council awarded a total of \$3 million upon the recommendation of the SSBPPE Commission to demonstrate the City's long-term commitment to decreasing the consumption of SSB and mitigate the harmful impacts of SSB on the population of Berkeley; and

WHEREAS, on December 15, 2020, the Berkeley City Council unanimously approved Action Item 26 (Resolution No. 69,669-N.S.), recommending an allocation of \$2,662,506 over two years, FY 2022 and FY 2023, to fund the Healthy Berkeley Program with General Fund dollars that cannot be aligned dollar-for-dollar with Measure D revenues; and

WHEREAS, many studies demonstrate that high intake of SSB is associated with risk of Type 2 Diabetes, obesity, tooth decay, and coronary heart disease; and

WHEREAS, hundreds of millions of dollars have been spent in an ongoing massive marketing campaign, which particularly targets children and people of color; and

WHEREAS, an African American resident of Berkeley is 14 times more likely than a White resident to be hospitalized for diabetes; and

WHEREAS, 40% of 9th graders in Berkeley High School are either overweight or obese; and

WHEREAS, tooth decay is the most common childhood disease, experienced by over 70% of California's 3rd graders; and

WHEREAS, in 2012, a U.S. national research team estimated levying a penny-per-ounce tax on sweetened beverages would prevent nearly 100,000 cases of heart disease, 8,000 strokes, and 26,000 deaths over the next decade and 240,000 cases of diabetes per year nationwide.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager, or her designee, is hereby authorized to allocate \$2,662,506 from the General Fund to be disbursed in two (2) installments of \$1,331,253 in FY 2022 and \$1,331,253 in FY 2023 and invested as follows:

1. Allocate up to 40% of the allocated funds to Berkeley Unified School District (BUSD) through a grant proposal to reduce the consumption of sugar-sweetened beverages (SSBs) through the implementation and enhancement of the BUSD



cooking and gardening programs for the period, July 1, 2021 to June 30, 2023;  
and

2. Allocate at least 40% of the allocated funds through a RFP process managed by the City of Berkeley Public Health Division (BPHD) for grants to community-based organizations consistent with the SSPPE's goals to reduce the consumption of SSB and to address the effects of SSB consumption for the period July 1, 2021 to June 30, 2023; and
3. Allocate up to 10% of the allocated funds to support the BPHD to coordinate and monitor the grant process, coordinate the overall program evaluation, and produce an annual report that disseminates process and outcome data resulting from the SSPPE funding program.

A records signature copy of the said agreement and any amendments to be on file in the Office of the City Clerk.





**SOPHIE HAHN**  
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Berkeley, CA 94704  
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**ACTION CALENDAR**

May 25, 2021

To: Honorable Members of the City Council  
From: Councilmember Sophie Hahn (on behalf of the Agenda & Rules Policy Committee)  
Subject: Amending the Berkeley Election Reform Act (BERA) Relating to Officeholder Accounts

**RECOMMENDATION**

Take one of the following actions:

1. Adopt an ordinance amending the Berkeley Election Reform Act (BERA), BMC Chapter 2.12, and Lobbyist Registration Act, BMC Chapter 2.09, to enact “a reasonable set of limitations and rules” to regulate the maintenance of officeholder accounts, as developed and referred for consideration by the Agenda and Rules Committee; or
2. Adopt an ordinance amending BERA, BMC Chapter 2.12, to prohibit Officeholder Accounts, as originally proposed by the Fair Campaign Practices Commission.

**AGENDA & RULES POLICY COMMITTEE RECOMMENDATION**

On March 29, 2021, the Agenda & Rules Policy Committee adopted the following action:<sup>1</sup> M/S/C (Wengraf/Arreguin) to send the item to Council with two proposed alternatives: 1) Councilmember Hahn’s proposal to regulate officeholder accounts [with modifications brought forward by Committee members], and 2) the Fair Campaign Practices Commission proposal to prohibit officeholder accounts; and to include the Commission’s analysis of regulating officeholder accounts in the item that goes to the full Council. Vote: All Ayes.

**BACKGROUND**

On February 4, 2020, the Fair Campaign Practices Commission (FCPC) submitted a recommendation to Council to adopt an ordinance amending the Berkeley Election Reform Act (BERA), BMC Chapter 2.12, to prohibit Officeholder Accounts.<sup>2</sup> Council took action to refer a discussion on Officeholder Accounts and Council District (D-13)

<sup>1</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/City\\_Council/2021/03\\_Mar/Documents/03-29%20Minutes%20-%20Agenda%20Committee.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/City_Council/2021/03_Mar/Documents/03-29%20Minutes%20-%20Agenda%20Committee.pdf)

<sup>2</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/02\\_Feb/Documents/2020-02-04\\_Special\\_Item\\_02\\_Amendments\\_to\\_the\\_Berkeley\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/02_Feb/Documents/2020-02-04_Special_Item_02_Amendments_to_the_Berkeley_pdf.aspx)

Accounts to the Agenda & Rules Committee, to “consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the FCPC.”<sup>3</sup>

The Agenda & Rules Committee considered this referral with input from FCPC commissioners. The FCPC and Open Government Commission (OGC)<sup>4</sup> also submitted subsequent recommendations to Council related to this process, which were included as part of the discussion regarding officeholder and D-13 accounts. The OGC submitted a recommendation that a special temporary joint advisory committee be created consisting of members of the OGC and Council to review the practice of councilmembers making donations to community organizations from their D-13 accounts. This proposal was referred directly to the Agenda & Rules Committee on August 31, 2020. On January 11, 2021, the FCPC and OGC jointly submitted a proposal to the Council clarifying the desire to create a joint subcommittee of FCPC-OGC members and members of the Council to consider both regulation of officeholder accounts as well as D-13 account grant practices and expressing willingness to consider either prohibition or regulation of officeholder accounts. D-13 account grant practices have since been addressed separately by Council.<sup>5</sup>

The Agenda & Rules Committee discussed the question of officeholder accounts at multiple meetings in early 2021 with input from three FCPC-OGC commissioners (Chair Brad Smith, Vice Chair Jedidiah Tsang and Commissioner Patrick O’Donnell). On March 29, 2021, the Agenda & Rules Committee took action to send this item to Council with two proposed alternatives: 1) a proposal to regulate officeholder accounts in a manner based on existing regulation of campaign committees, and 2) the Fair Campaign Practices Commission proposal to prohibit officeholder accounts. The Committee’s action also required the Commission’s analysis of regulating officeholder accounts to be included in the item that goes to the full Council.<sup>6</sup>

Officeholder accounts are currently allowed in the City of Berkeley, subject only to limitations provided in State Law. The Agenda & Rules Committee’s proposal to regulate officeholder accounts would establish local rules that mirror and adapt

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<sup>3</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/02\\_Feb/Documents/02-04\\_Special\\_Annotated\\_Agenda\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/02_Feb/Documents/02-04_Special_Annotated_Agenda_pdf.aspx)

<sup>4</sup> The OGC is composed of the same membership as the FCPC and the two bodies meet concurrently. The FCPC has jurisdiction over BERA while the OGC has broad authority to make recommendations to Council regarding “open and effective government.” (BMC § 2.06.190.A.2.) Therefore, proposals regarding the prohibition or regulation of officeholder accounts in BERA have been presented by the FCPC, while recommendations regarding D-13 accounts have been offered by the OGC.

<sup>5</sup> On February 8, 2021, the Agenda & Rules Committee took action to make a positive recommendation to the City Council on part two of the Commission recommendation to prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members. The Council approved this recommendation on March 9, 2021.

<sup>6</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/City\\_Council/2021/03\\_Mar/Documents/03-29%20Minutes%20-%20Agenda%20Committee.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/City_Council/2021/03_Mar/Documents/03-29%20Minutes%20-%20Agenda%20Committee.pdf)

Berkeley's existing, voter-approved regulations for campaign committees, including regulation of donations and reporting requirements, and narrow the uses for which officeholder account funds can be used.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.<sup>7</sup> They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses officeholder accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, and similar expenses. Cities can place limits on officeholder accounts, as Oakland has done.<sup>8</sup> Under State law, officeholder accounts must be registered as official committees, and adhere to strict public reporting requirements, like campaign accounts. These reporting requirements provide full transparency to the public about sources and uses of funds in officeholder accounts.

The FCPC's recommendation to outlaw officeholder accounts in Berkeley was set aside by the City Council on when it referred on February 4, 2020 to the Agenda & Rules Committee to "consider a reasonable set of limitations and rules for such [officeholder] accounts and bring back recommendations to the full Council."<sup>9</sup> Some members of the FCPC who participated in the Agenda & Rules Committee discussion continued to advocate for the original proposal to outlaw Officeholder Accounts, so the Committee acted to send both the Council-requested "reasonable set of limitations" and the FCPC's original recommendation back to the Council for consideration.

#### FISCAL IMPACTS

Regulating the maintenance of officeholder accounts by councilmembers and the Mayor would have a moderate impact on staff time.

#### CONTACT INFORMATION

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

#### ATTACHMENTS

1. Councilmember Hahn's proposal to regulate officeholder accounts
2. Fair Campaign Practices Commission proposal to prohibit officeholder accounts

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<sup>7</sup> <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

<sup>8</sup> <http://www2.oaklandnet.com/w/OAK052051>

<sup>9</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/02\\_Feb/Documents/02-04\\_Special\\_Annotated\\_Agenda\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/02_Feb/Documents/02-04_Special_Annotated_Agenda_pdf.aspx)

ORDINANCE NO. -N.S.

AMENDING THE BERKELEY ELECTION REFORM ACT AND  
LOBBYIST REGISTRATION ACT TO REGULATE OFFICEHOLDER  
COMMITTEES

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

Section 1. That Berkeley Municipal Code section 2.09.220 is amended to read as follows:

**2.09.220 Restrictions on payments and expenses benefiting local public officials.**

A. No local government lobbyist or a registered client shall make any payment or incur any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals, in which the cumulative value of such payments or expenses exceeds \$240 during any calendar year. This \$240 limit may be adjusted every four years by the OGC to account for inflation. The payments and expenses specified in subsections 2.09.220(A)-(D) include gifts, honoraria and any other form of compensation but do not include:

1. gifts of food or refreshment worth \$25 or less per occasion, if the local governmental lobbyist is a 501 (c)(3) nonprofit organization, the gift of food or refreshment is offered in connection with a public event held by the 501 (c)(3) nonprofit organization, and the same gift of food or refreshment is made available to all attendees of the public event;
2. payments or expenses that, within thirty (30) days after receipt, are returned unused or are reimbursed;
3. gifts of food or beverage worth \$25 or less per occasion, if said gift is provided in the home of an individual local governmental lobbyist or individual local governmental lobbyist's registered client when the individual or member of the individual's family is present;
4. a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code;
5. informational material;
6. campaign or officeholder contributions not to exceed the limits imposed by the Berkeley Election Reform Act or state law, as applicable; and
7. salaries, consulting fees or other payments for services rendered or bargained

for. No other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this section.

For purposes of the gift limits imposed by subsections (A)-(C), gifts shall be aggregated set forth in California Code of Regulations, Title 2, Section 18945.1, as it may hereafter be amended.

B. No lobbyist or a lobbyist's registered client shall make any payment to a third-party for the purpose of making any payment or incurring any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals.

C. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from any lobbyist for the individual's personal benefit or for the personal benefit of a member of the immediate family of one of these individuals.

D. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from a third-party if the officer knows or has reason to know that the third-party is providing the payment or expense on behalf of a lobbyist.

Section 2. That Berkeley Municipal Code section 2.12.100 is amended to read as follows:

**Section 2.12.100 Contribution.**

A. "Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or voter approval of one or more measures. The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events; a candidate's own money or property used on behalf of his or her candidacy; the granting to a candidate or committee of discounts or rebates not available to the general public; and payments for the services of any person serving on behalf of a candidate or committee, when such payments are not made from contributions the candidate or committee must otherwise report under the terms of this chapter. The term "contribution" further includes any transfer, gift, loan, advance, deposit, forgiveness of indebtedness, payment of a debt by a third party, pledge, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, received directly or indirectly by a

committee from another committee. The term "contribution" shall not include a gift of service or labor, but shall include service or labor for which a payment is made, nor shall the term "contribution" include a gift of the use of personal or real property where the value of such use is not in excess of fifty dollars, nor shall it include food and beverages the value of which for any one event is no more than fifty dollars.

B. In the case of an officeholder committee, "contribution" means a monetary payment to an officeholder committee to be used for expenses associated with holding City office as provided in Article 9 of this Chapter.

Section 3. That Berkeley Municipal Code section 2.12.130 is amended to read as follows:

**Section 2.12.130 Expenditure.**

A. "Expenditure" means a payment, pledge or promise of payment of money or anything of value or other obligation, whether or not legally enforceable, for goods, materials, services or facilities in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or adoption of one or more measures. The term "expenditure" includes any transfer, payment, gift, loan, advance, deposit, pledge, contract, agreement or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly by one committee to another committee. "Expenditure" also includes the forgiving of a loan or the repayment of a loan by a third party.

B. In the case of an officeholder committee, "expenditure" means payment of money by an officeholder committee for expenses associated with holding elective office in the City of Berkeley as provided in Article 9 of this Chapter.

Section 4. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

**Section 2.12.157 Officeholder committee.**

"Officeholder committee" means a committee established by an Elective Officer of the City of Berkeley, as defined in Article V Section 8 of the Charter of the City of Berkeley, to receive contributions and make expenditures associated with holding elective office in the City of Berkeley as provided in Article 9 of this chapter.

Section 5. That Berkeley Municipal Code Section 2.12.545 is amended to read as follows:

**Section 2.12.545 Cost of living adjustments.**



The Commission shall adjust the dollar amounts specified in Sections 2.12.167, 2.12.500.A.3, 2.12.505.B and 2.12.530.B.3.b and 2.12.602 for cost of living changes pursuant to Section 2.12.075 in January of every odd-numbered year following Council implementation. Such adjustments shall be rounded to the nearest ten dollars (\$10) with respect to Sections 2.12.167, 2.12.500.A.3 and 2.12.530.B.3.b and one thousand dollars (\$1,000) with respect to Sections 2.12.505.B and 2.12.602.

Section 6. That Article 9 of Chapter 2.12 of the Berkeley Municipal Code is added to read as follows

### **Article 9. Officeholder Committees**

#### **Section. 2.12.600 Regulation of officeholder committees.**

- A. Elective Officers (the “officeholder” or “officeholders”) shall each be permitted to establish one officeholder committee, as defined in Section 2.12.157.
- B. Nothing in this section shall require an officeholder to open an officeholder committee or, if they have established an officeholder committee, to contribute to their officeholder committee to spend personal funds on their own officeholder expenses.
- C. Expenditures of an officeholder’s personal funds for their own officeholder expenses which are not contributed to an officeholder committee are not reportable under this chapter.

#### **Section 2.12.602 Cumulative contribution limits**

- A. For each Elected Officer representing a district within the City of Berkeley, total contributions to an officeholder committee from all contributors other than the officeholder shall not exceed five thousand dollars (\$5,000) in the aggregate per calendar year.
- B. For citywide Elected Officers, total contributions to an officeholder committee from all contributors other than the officeholder shall not exceed in the aggregate per calendar year an amount equal to four times the maximum allowed for elected officers representing districts, as provided in Section 2.12.602.A

#### **Section 2.12.604 Prohibited officeholder expenditures**

An officeholder committee shall not make expenditures for the following purposes:

- A. Expenditures in connection with an election for any city, county, regional, state or federal elective office or in connection with a ballot measure.
- B. Expenditures for campaign consulting, research, polling, photographic or similar services for election to city, county, regional, state or federal elective office.
- C. Membership in any athletic, social, fraternal, veterans or religious organization.
- D. Supplemental compensation for officeholder staff for performance of duties required or expected of the person in the regular course or hours of their employment as a City official or employee.
- E. Any expenditure that would violate any provision of the Berkeley Election Reform Act (BMC Chapter 2.12.) or the California Political Reform Act (Cal. Gov. Code § 81000 et seq.), including but not limited to the gift laws pertaining to travel payments, advancements and reimbursements under Government Code section 89506 and provisions related to permissible expenditures which serve legislative or governmental purposes under Government Code sections 89512 through 89519.

**Section 2.12.606 Permissible officeholder expenditures**

An officeholder committee may make expenditures only for the following purposes:

- A. Expenditures for fundraising for the officeholder committee.
- B. Expenditures for office equipment, furnishings and office supplies used for governmental or legislative purposes.
- C. Expenditures for compensation of staff, consultants, or other persons employed by the officeholder for time spent on officeholder activities, provided that such expenditures are not prohibited by Section 2.12.604.D.
- D. Expenditures for research, surveys, photographic, or similar services, provided such services are only for officeholder purposes.
- E. Expenditures for attendance, travel, lodging, meals and other related expenses which serve a legislative or governmental purpose by the officeholder and members of the officeholder's City staff or others employed by the officeholder to perform duties related to officeholder activities. Such permissible expenditures shall include but not be limited to:
  - 1. Expenditures for attendance at conferences, meetings, receptions, and other events occurring within or outside of the United States, including but not limited to registration or other attendance fees, travel, lodging, food, and

incidentals;

2. Expenditures for membership and participation in programs for civic, service, or professional organizations, if such membership bears a reasonable relationship to a governmental or legislative purpose; and
  3. Expenditures for educational courses or events reasonably related to a governmental or legislative purpose.
- F. Expenditures for constituent and community communications, including but not limited to:
1. Mailings, newsletters and other paper, electronic, or other communications which provide information related to community events, an officeholder's governmental duties, an officeholder's position on a particular matter, or any other matter of public concern or interest;
  2. An officeholder's website and social media;
  3. Email and address list management.
- G. Expenditures for expressions of congratulations, appreciation or condolences sent to constituents, employees, governmental officials, or other persons with whom the officeholder communicates in their official capacity.
- H. Expenditures for payment of tax liabilities incurred as a result of permissible officeholder committee transactions.
- I. Expenditures for accounting, legal, professional, administrative, and similar services provided to the officeholder committee.
- J. Expenditures for attorneys' fees and other costs related to litigation, administrative procedures, or other processes arising directly from the officeholder committee's activities or the officeholder's activities, duties, or status as an elected officer.

### **Section 2.12.608 Prohibitions on transfer or reallocation of funds**

The following restrictions apply to the transfer or reallocation of officeholder funds:

- A. No funds may be contributed, redesignated, or transferred to an officeholder committee from any campaign committee for any city, county, regional, state, or federal elective office or ballot measure, or any other political committee.
- B. No funds may be contributed, redesignated, or transferred from an officeholder

committee to any candidate or campaign committee for any city, county, regional, state, or federal elective office or ballot measure, or any other political committee.

- C. No officeholder committee may be redesignated as a campaign committee for any city, county, regional, state, or federal elective office or ballot measure.
- D. No campaign committee for any city, county, regional, state, or federal elective office or ballot measure may be redesignated as an officeholder committee.

**Section 2.12.610 Prohibition on simultaneously maintaining officeholder and campaign committees**

- A. An officeholder may not simultaneously maintain an officeholder committee and a campaign committee for any city, county, regional, state or federal elective office.
- B. A candidate who is elected to any elective office in Berkeley must terminate their campaign committee before opening an officeholder committee.
- C. An officeholder must terminate any open officeholder committee prior to filing a Statement of Organization or equivalent initial filing for a campaign committee for any city, county, regional, state, or federal elective office.

For officeholders filing a Statement of Organization with the City Clerk to form a campaign committee for a City of Berkeley office, the Clerk shall provide notice of the need to close any open officeholder committee prior to accepting the campaign committee Statement of Organization.

**Section 2.12.612 Termination of officeholder committees upon leaving office**

- A. An officeholder who does not file a Statement of Organization or equivalent initial filing to seek a subsequent city, county, regional, state, or federal elective office shall terminate their officeholder committee within 90 days of leaving office.
- B. Following the date of leaving office, an officeholder shall not make any new expenditures from their officeholder committee except for the following purposes:
  - 1. Paying for legitimate, outstanding officeholder expenses accrued on or prior to the date of leaving office.
  - 2. Repaying contributions to contributors to the officeholder committee on a pro rata basis.
  - 3. Donating funds to the City's general fund.

**2.12.615 Limits and requirements for contributions and expenditures**

- A. The limit on cumulative contributions to an officeholder committee by a person other than the officeholder in a calendar year shall be the same as the limit on contributions to a candidate with respect to a single election under Section 2.12.415. Contributions to a candidate shall not be counted against the limit on contributions to an officeholder committee in the same calendar year.
- B. Officeholder committees shall be subject to the limits on contributions from organizations and entities to candidates and committees under Section 2.12.440.
- C. Nothing in this Article shall limit the amount an officeholder may contribute to their own officeholder committee or spend on officeholder expenses either through or not through an officeholder committee.
- D. All requirements and prohibitions for campaign contributions and expenditures under Sections 2.12.300, 2.12.305, 2.12.310, 2.12.315, and 2.12.320 shall apply to officeholder committees.

**2.12.645 Officeholder Committee Treasurer**

Each officeholder committee shall appoint a committee treasurer and shall comply with all requirements for campaign committee treasurers under section 2.12.245.

**2.12.650 Officeholder expenditure and contribution account – Establishment required – Procedure for use**

An officeholder committee treasurer shall establish and manage a checking account. All provisions of Section 2.12.250 regarding the establishment and use of campaign accounts shall also apply to the establishment and use of officeholder committee checking accounts, unless otherwise provided in this Article.

**2.12.655 Statement of organization – Committee required to file.**

- A. Every officeholder committee shall file with the City Clerk a statement of organization before accepting contributions.
- B. The date on which an officeholder committee is formed by filing a statement of organization shall determine the officeholder committee's obligation to file statements and reports required by this chapter.

**2.12.660 Statement of organization – information required**

The statement of organization required by Section 2.12.655 shall include:

- A. The name, street address and telephone number of the officeholder committee;
- B. The name of the officeholder;
- C. The full name, street address and telephone number of the treasurer and other principal officers;
- D. The elected office held by the officeholder;
- E. The account number and name of the bank at which the checking account, required by Section 2.12.650, is maintained; if the information required by this section is unavailable at the time of filing the statement of organization, the filer shall promptly submit an amended statement after such information becomes available;
- F. The cash on hand at the time of filing the statement of organization;
- G. Such other information as shall be required by the rules or regulations of the commission consistent with the purposes and provisions of this chapter.

**Section 2.12.665 Statement of organization--Change of information--Amendment required.**

Whenever there is a change in any of the information contained in the statement of organization, an amendment shall be filed within ten days to reflect the change.

**Section 2.12.670 Officeholder statements – filing requirements**

- A. Each officeholder committee statement shall be filed in accordance with the filing dates prescribed by state law for campaign committee statements. If state law does not establish the filing dates for campaign statements, the commission shall set the necessary filing dates.

**Section 2.12.675 Officeholder statements - Verification**

- A. Reports and statements required by this Article shall be subject to the filing requirement of Sections 2.12.025, 2.12.030, 2.12.032, 2.12.033, 2.12.035, 2.12.040, 2.12.045 and 2.12.050.
- B. An officeholder shall verify his or her officeholder statement. The verification shall be in accordance with the provisions of Section 2.12.025 except that it shall state that they have made reasonable inquiry into the truthfulness and completeness of such officeholder statement and that to the best of their knowledge, the treasurer of the officeholder committee used all reasonable diligence in the preparation of the committee's statement. This section does not relieve the treasurer of any officeholder committee from the obligation to verify each officeholder statement filed pursuant to Section 2.12.025.

**Section 2.12.680 Officeholder Statement – Information required**

Officeholder committee statements required by this article shall include all applicable information required for campaign committee statements by Section 2.12.280.

**Section 2.12.685 Enforcement**

Violations of this article involving the unlawful use of officeholder committees are subject to the enforcement procedures and penalties in Article 7 of this chapter.

## Officeholder Accounts As Forwarded to the City Council by the Agenda Committee on March 29, 2021

This set of terms is presented as a basis to discuss a potential amendments to the Berkeley Election Reform Act (“BERA”) (BMC Ch. 2.12) to regulate the maintenance of officeholder accounts by elected officials in Berkeley. The proposal following elements are proposed for discussion by the Agenda Committee:

### General Requirements and Donation Limits

1. **Amend BERA to expressly permit the creation of officeholder accounts** by elected officials in Berkeley
2. Officeholder accounts would **be subject to the same donor requirements as campaign accounts under BERA:**
  - a. May only receive donations from natural persons.
  - b. Per-person donation limit set the same as the contribution limit under BERA (currently \$250; if BERA changes, so would these limits – idea is for them to always be parallel)
  - c. Etc. – All requirements and limitations on who can give, how much, and how donations can be made would be “by reference” to BERA and thus identical over time.
3. Officeholder accounts would be **subject to the same registration and reporting regime as campaign accounts under BERA**. State law currently requires Officeholder Accounts to report using the same forms as campaign accounts; this proposal would also incorporate the reporting requirements of BERA – for example lower thresholds for initial reporting, lower amounts reported, etc.
4. **Cumulative annual donations, not including an officeholder’s own donations to their officeholder account would be capped at fixed amounts**. Suggest the amount be set at the approximate cost of producing and mailing one newsletter to constituents, although use of funds would not be limited to that use (see below). Amount should be indexed.
5. As with campaign accounts, **an officeholder’s own donations to their officeholder account would not be subject to any limits** but would be reported. An officeholder would also still be allowed to spend their own money on officeholder expenses without using an officeholder account. This is a First Amendment issue that can’t be infringed upon.

### Complete Separation from Campaign Accounts and Expenditures

1. An officeholder would **not be allowed to simultaneously maintain an officeholder account and a campaign account of any kind:**
  - a. A winning candidate taking office would be required to close their campaign account before opening an officeholder account.



- b. An incumbent officeholder running for re-election or running for any other elected position – local, state, or federal – would be required to close their officeholder account before opening a campaign account.
- 2. An officeholder could not redesignate their officeholder account as a campaign account or use any officeholder funds to pay campaign expenses, ever.
- 3. Officeholder account funds could not be transferred to or from a candidate committee account for any elective office, local, state or federal.
- 4. “Extra” funds in an officeholder account could be used only for a legitimate officeholder expense, refunded to donors on a pro rata basis, or donated to the City’s General Fund.

### **Impermissible and Permissible Uses of Officeholder Funds**

- 5. **Officeholder accounts would not be used for the following** expenditures:
  - a. Expenditures in connection with an election for any city, county, regional, state, or federal elective office or ballot measure
  - b. Campaign consulting, research, polling, and similar expenditures related to any campaign
  - c. Membership in athletic, social, fraternal, veteran, or religious organizations
  - d. Supplemental compensation for employees for performance of their ordinary duties
  - e. Any expenditure that would violate BERA or state law
- 6. **Officeholder accounts would only be used for the following** expenditures (list likely needs to be honed/expanded – this list reflects narrowing and adaptation of the Oakland ordinance, which is overly broad):
  - f. Office equipment, furnishings, and office supplies
  - g. Officeholder communications not related to a campaign, including but not limited to:
    - i. Mailings, newsletters, and other communications, whether by electronic or traditional media
    - ii. Websites and communications by all media including email, publication, and social media
    - iii. Email and address management
    - iv. Professional/consulting services and/or staff time related to communications.
  - h. Registration, travel, lodging, meals, and related expenses for attending an activity which supports a legislative or governmental purpose, including activities which involve international travel, including but not limited to:
    - i. Conferences, meetings, receptions, sister-city visits, and other events
    - ii. Membership and participation in programs for civic, service, or professional organizations
    - iii. Educational, training, and professional development courses and events

when incurred by the officeholder, their staff, or a community representative of the officeholder (but not a family member or an individual whose organization or who themselves is subject to registration under the City's Lobbyist Ordinance)

- i. Fundraising for the officeholder account.
- j. Consulting, research, surveys, photographic or similar services not related to a campaign.
- k. Expressions of congratulations, appreciation or condolences to constituents or other persons the officeholder communicates/works with in their official capacity.
- l. Salaries or other compensation for consultants/staff working on officeholder activities, including for time spent by regular staff on officeholder activities separate/different from their ordinary duties.
- m. Tax liabilities and other official fees/costs incurred by the officeholder account.
- n. Accounting, legal, and other professional services provided to the officeholder account.
- o. Attorneys' fees and other costs related to administrative procedures, litigation, or other processes arising from the officeholder's activities, duties, or status as an elected officer.

### **Termination of Account on Leaving Office (+ Not running for any office)**

- 1. An officeholder would be **required to terminate their account within 90 days after leaving office.**
- 2. An officeholder **could not make expenditures after their last day in office** except to pay outstanding officeholder debts, repay donations on a pro rata basis, or donate remaining funds to the City's general fund.
- 3. Officeholders running for another office, local, state, or federal, would be required to close their officeholder account before opening a campaign account (see above).

### **Enforcement**

- 1. Violations of the officeholder account rules **would be subject to all enforcement provisions under BERA**, including enforcement by the Fair Campaign Practices Commission ("FCPC").

MEMORANDUM

DATE: March 29, 2021

TO: Mayor Jesse Arreguin and Councilmembers Sophie Hahn and Susan Weingraf, Members of the Council Agenda and Rules Committee

FROM: Brad Smith, Patrick O'Donnell and Jedidiah Tsang, Delegation from the Fair Campaign Practices and Open Government Commissions

SUBJECT: Officeholder Accounts

Two main approaches have been considered regarding local Officeholder Accounts in California. The first, adopted by the City of San Jose, would prohibit these accounts. The second, adopted by the city of Oakland, would permit these accounts but regulate them.

For the reasons discussed below, the FCPC previously recommended that Officeholder Accounts be prohibited (Exhibit 3). However, the Council decided in February 2020 not to approve the FCPC's recommendation and referred the issue of Officeholder Accounts, along with concomitant issues related to D-13 accounts, to the Council's Agenda and Rules Committee.

The Fair Campaign Practices and Open Government Commissions have been studying Officeholder and D-13 Accounts since 2019. At its regular meeting on November 21, 2019, the FCPC voted without opposition to recommend amendments to the Berkeley Election Reform Act (BERA) that would prohibit Officeholder Accounts. The FCPC's recommendation was presented to the City Council at a February 4, 2020 special meeting. (A copy of the Report to Council is attached as Exhibit 3.)

Although the Council did not approve the FCPC's recommendations at that time and is considering alternatives that would allow for regulated Officeholder Accounts, a discussion in which the FCPC is glad to participate, the FCPC continues to believe that the prohibition of such accounts may ultimately be the preferable solution.

Briefly, our reasons for recommending prohibiting Officeholder Accounts are as follows:

1. Donations to an elected official's Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.
2. The City of San Jose has prohibited Officeholder Accounts (Section 12.06.810) since January 2008, providing as a rationale "to prevent the perception by the public that such contributions may give rise to undue or improper influence over elected officials" (Section 12.06.1100).

3. There are a number of permissible expenditures that could be made from Officeholder Accounts, now made from the Councilmember's discretionary council office budget (D-13 account), that put the elected official in a favorable light. Such expenditures include contributions to nonprofit organizations and newsletters mailed to constituents related to events, information or an officeholder's position on matters before the Council. We are not arguing these expenditures should be prohibited, only not paid for by funds collected in Officeholder Accounts.

4. As evidenced by contributions to nonprofit organizations from the Councilmember's D-13 accounts, which in total increased from \$50,938 in FY 2017 to \$113,526 in FY2018, enough funds are now available to Councilmembers to cover office expenses. It stretches the imagination to see donations to nonprofit organizations as an "office expense." If not enough funds are available for office expenses, the allocation to the D-13 accounts should be increased by the Council rather than relying on funds solicited from donors for an Officeholder Account.

5. Members of the FCPC are concerned about the amount of staff time required to track paperwork required for the administration of Officeholder Accounts and to assist in the enforcement process.

6. Members of the FCPC have discussed concerns that Councilmembers from wealthier areas of the City will have an easier time of raising funds for Officeholder Accounts.

7. Finally, we note the Officeholder Account has been rarely used in Berkeley, only once in the last several years that we are aware of.

While we look forward to a good, frank discussions and careful consideration of the alternative of permitting and regulating Officeholder Accounts, we respectfully request that Council members continue to consider that a prohibition of these accounts may, in the end, be the preferable approach.

Exhibit 1. Although the FCPC continues to support prohibition, it has prepared a draft version of an ordinance that would allow for regulated Officeholder Accounts. This draft identifies the issues that a regulated approach, if pursued, would need to address.

Exhibit 2. RESOLUTION NO. 67,992-N.S. (City Council Expenditures and Reimbursement Policies), referred to in the proposed language for changes to BERA to regulate Officeholder Accounts.

Exhibit 3. Language for amending the Berkeley Election Reform Act to prohibit Officeholder Accounts included in the FCPC submission to the City Council of February 4, 2020.

[DRAFT]

[Annotations are in RED. These include ISSUES for discussion and RECOMMENDATIONS of the three FCPC members participating in the joint meetings.]

ORDINANCE NO. -N.S.

AMENDING THE BERKELEY ELECTION REFORM ACT TO REGULATE OFFICEHOLDER ACCOUNTS

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

Section 1. That the Berkeley Municipal Code section 2.12.157 is added to read as follows:

**Section 2.12.157 Officeholder Account.**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Article 9 of Chapter 2.12 of the Berkeley Municipal Code is added to read as follows

Article 9. Officeholder Accounts

**Section. 2.12.600 Regulation of Officeholder Accounts.**

A. The Mayor and Council members (the “officeholder” or “office holders”) shall each be permitted to establish one Officeholder Account, as defined in section 2.12.157.

ISSUE: What limitations should be placed on which public officials may be authorized to open Officeholder Accounts? Currently, Berkeley law is silent on this issue, as it is generally with respect to matters relating to Officeholder Accounts. Should the authorization to have Officeholder Accounts be limited to the Mayor and Council members?

State law applies to “elected state officeholder[s],” which includes the Governor, members of the state senate and assembly, and “other statewide elected official[s] other than the Governor.” (Gov. Code sec.85316(b)(1).)

RECOMMENDATION: Amendments to BERA authorizing Officeholder Accounts should be limited to the offices of Mayor and members of the City Council. Extending the authorization more broadly appears to other city officeholders at this time appears to be fiscally unnecessary and would impose significant burdens on the clerk’s office and the FCPC, which would be responsible for compliance with reporting requirements and the enforcement of the laws relating to Officeholder Accounts. If Berkeley’s experience with Officeholder Accounts proves to be positive, BERA could be amended in the future to expand the categories of elected officials authorized to establish Officeholder Accounts.

B. All donations deposited into an Officeholder Account shall be deemed to be held in trust solely for expenses associated with holding the office currently held by the elected city

officer. For the purpose of this section, “donation” means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, in support of the office currently held by an elected official.

ISSUE: This draft uses the term “donation” throughout new section 2.12.600 instead of “contribution.” The use of the term “donation” in the proposed new section of the BERA reflects that funds made for Officeholder Accounts are different from campaign contributions; prevents making all the legal provisions applicable to campaign fund arguably applicable to officeholder donations; and avoids confusion in how the funds for this specific purpose are treated.

RECOMMENDATION: Include the new definition of “donation” in this section and use it – and related terms such as “donor” – consistently throughout, instead of using the term “contribution” in the new section on Officeholder Accounts.

C. Only a natural person who is a resident of the City may make a donation to an Officeholder Account.

ISSUE: To prevent undue influence in election campaigns, BERA currently contains limitations on who may make contributions to such campaigns. Proposed new paragraph C. would provide a similar limitation for donations to Officeholder Accounts. Specifically, like the limitation similar in the Berkeley Elections Reform Act (BERA sec. 2.12.167.), it would limit donations to Officeholder Accounts to natural persons residing in Berkeley.

There is a need for an express provision on this subject to be included in the proposed amendments. As currently written, neither of the BERA limitations relating to campaign contributions would apply by their own terms to donations to Officeholder Accounts nor would a cross-reference work.

The limitation in the Berkeley Election Reform Act to natural person residing in Berkeley is part of the definition of “qualifying contribution” to be eligible for public financing (BERA sec. 2.12.167); and so would not apply to Officeholder Accounts. The limitation in BERA section 2.12.440 prohibits “contributions” by any “proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, including non-profit corporations, or labor union”; but such contributions are prohibited only to “any candidate or committee (supporting or opposing any candidate)” and so would not apply to Officeholder Accounts. Cross-references to these sections would be confusing since by their own terms the referenced sections apply only to campaign contributions, and not to donations to Officeholder Accounts.

RECOMMENDATION: The proposed language that would expressly limit the persons eligible to make donations to “natural persons who are residents of the City of Berkeley” should be adopted. This will avoid undue influence by entities and persons outside Berkeley whose donations might improperly influence officeholders.

D. Donations to an Officeholder Account must be made by a separate check or other separate written instrument. Single donations may not be divided between the Officeholder Account and any candidate committee or other entity.

E. No donor shall make, and no elected officer shall receive from a donor, a donation or donations under this section totaling more than fifty [or two-hundred and fifty] dollars (\$50.00 [or \$250.00]) per person for the calendar year. "Donor" means a natural person who is a resident of the City who makes a donation as defined in paragraph B.

ISSUE: Any regulated scheme for Officeholder Accounts should include a limit on the amount of that each individual is permitted to donate each year. The amount of the individual donations permitted each year is an issue that the Council and the FCPC need to decide, as well as the manner in which this limit is prescribed.

The California state statute on Officeholder Accounts provides explicit limits on the amount that a person is permitted to make for each officeholder per calendar year (e.g., \$3,000 for Senate and Assembly members and \$20,000 for Governor). (Gov. Code sec. 85316(b)(1)(A)-(B).)

The proposed draft amendments to the BERA, above, currently provide for a limit on donations in the range of \$50-\$250; the exact amount is an issue to be determined. Assuming the amount chosen is \$250, this amount could be explicitly placed in the ordinance, as the draft does. Alternatively, the amount might be specified by cross-reference to the maximum campaign amount permitted under BERA (e.g., by a cross-reference stating the amounts of any individual annual donation shall not exceed the amount of a campaign contribution permitted for a single election under BERA section 2.12.415).]

RECOMMENDATION: An explicit amount should be included in the new section of BERA on Officeholder Accounts. This will make the officeholder section—including the exact amount of the donation limit—clear and easy to understand. If in the future the campaign limits under BERA are increased and it makes sense also to increase the amount of the permitted annual individual donations to Officeholder Accounts to a similar (or other) amount, the permissible amount of the donations can be revised at that time.

F. For the office of Mayor, total donations to an Officeholder Account from all donors shall not exceed ten thousand dollars (\$10,000.00) in the aggregate per calendar year. For each member of the City Council, total donations to an Officeholder Account from all donors shall not exceed five thousand dollars (\$5,000.00) in the aggregate per calendar year.

ISSUE: Any regulated scheme for Officeholder Accounts should also include a limit on the total amount of donations from all donors that can be contributed to an officeholder each year. The amount of the total "cap" is an issue that the Council and the FCPC need to decide.

RECOMMENDATION: The total aggregate donations permitted to be made to specific officeholders in Berkeley should be proportional to their offices' size, scope, and needs.

G. All donations received for, and expenditures made from, an Officeholder Account during a calendar year shall be reported at least annually on the date or dates prescribed by the FCPC and the report shall be made available to the public promptly thereafter. The FCPC shall adopt or designate a form or forms for the purpose of reporting the information about each elected officer's Officeholder Account. The forms shall be filed electronically. The information on the form or forms shall be verified by the officeholder. The information that shall be included in the Officeholder Account report shall include the following:

1. The name of the officeholder and the office held;
2. The reporting period covered by the report;
3. A description of all receipts and expenditures.
4. The full name of each donor from whom a donation or donations has been received together with their street address, occupation, and the name of their employer, if any, or the principal place of business if they are self-employed; the amount which they donated; the date on which the each donation was received during the period covered by the report; and the cumulative amount that the donor donated. Loans received shall be set forth in a separate schedule and the foregoing information shall be stated with regard to each lender, together with the date and amount of the loan, and if the loan has been repaid, the date of the payment and by whom paid;
5. The full name and street address of each person to whom an expenditure or expenditures have been made, together with the amount of each separate expenditure to each person during the period covered by the report; a description of the purpose for which the expenditure was made; and the full name and street address of the person receiving the expenditure.
6. Under the heading "receipts," the total amount of donations received, and under the heading "expenditures," the total amount of expenditures made during the reporting period and cumulative amount of such totals;
7. The balance of cash and cash equivalents, including the amounts in the officeholder bank account, at the beginning and end of each period covered by the report.

ISSUE: The amended BERA provisions on Officeholder Accounts (Section 2.12.600.G.1-7, above), like those for campaign statements (see BERA sec. 2.12.200 A.-K.), would specify the information that must be disclosed. In new section 2.12.600, the provisions have been tailored to address donations, donors, donors' names and addresses, and so forth. Having these requirements specified in the ordinance will provide the legal foundation for the information requested about Officeholder Accounts on statements or forms. Also, having these requirements in the ordinance will make it possible for the City more easily to add or modify the information required on statements.

Subsection G. also provides that the FCPC shall adopt or designate a form or forms for the purpose of reporting the information about each elected officer's Officeholder Account. This would permit, but not require, the City to require officeholders to use California Form 460 or 470 to comply with the reporting requirements. This flexibility is important so that the City will be able to exercise its discretion as to what information needs to be reported about donations to, and expenditures from, Officeholder Accounts.

Finally, this section provides that the commission shall prescribe the time for filing the forms and that the forms shall be verified and filed electronically. These provisions will improve the effectiveness of the reporting on Officeholder Accounts.

RECOMMENDATION: Section G. should be adopted as proposed for the reasons stated above.

H. Expenditures from an Officeholder Account may be made only for lawful officeholder



purposes, and may not be used for any of the purposes prohibited in subsections J. and K. of this section.

ISSUE: This provision clarifies the intent of these amendments—that they authorize “true” Officeholder Accounts whose purpose is strictly limited to lawful officeholder purposes—and are not intended for any other broader purposes. This approach should help officeholders avoid the pitfalls of running afoul of campaign finance laws (as warned against in past opinions by the Berkeley City Attorney).

RECOMMENDATION: Section H. should be adopted as proposed for the reasons stated above.

I. Allowable expenses from an Officeholder Account are limited to expenses for travel, meals, and lodging incurred in connection with the following types of activities:

1. Communicating with representatives of local, regional, state and national governments on City policy positions;
2. Attending educational seminars designed to improve officials’ skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City’s interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of normal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City’s interests where the primary purpose of the event is to discuss subjects which relate to City business;
6. Implementing City approved policies; and
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum set forth in city, state, and federal standards for when meal reimbursement may be allowed.

J. Expenditures from an Officeholder Account shall not be used for any of the following types of activities:

- 1 The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner’s expenses when accompanying the official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage, and or golf related expenses); or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic, citations, insurance or gasoline; and
7. Personal losses incurred while on City Business.

RECOMMENDATION: Sections I. and J. should be based on the list of Authorized Activities and Unauthorized Expenses in Sections IIA. and B. of the City Council Expenditure and Reimbursement Policies, Resolution No. 67,992—N.S. (“Policies”). The lists identified in the Policies are thoughtful, carefully prepared lists of which expenses are permissible or impermissible for officeholders under current law. The policies were unanimously adopted

by the Berkeley City Council on May 30, 2017. For the purposes of the proposed ordinance on Officeholder Accounts, the lists in the Policies are more appropriate for adoption than the lists developed by the Oakland City Council that appear to be based largely on state laws relating to on campaign expenditures.

I. Prohibitions:

1. No funds may be contributed or transferred from an Officeholder Account to any candidate or committee, as defined in sections 2.12.085 and 2.12.095 of this chapter, including to any committee in which the officeholder is a candidate. An officeholder may not redesignate his or her Officeholder Account as a committee for a future term of the same office or redesignate his or her Officeholder Account funds to be used as campaign funds by his or her committee for a future term of the same office.

2. No funds may be used from an Officeholder Account to pay any campaign expenses.

3. An officeholder may not transfer or contribute funds from any other committee he or she controls to the Officeholder Account.

ISSUE: These prohibitions make it clear that funds from an Officeholder Account may never be used for any type of campaign purposes. This is consistent with the ordinance's intent that Officeholder Accounts be strictly limited to officeholder purposes. The provision also makes it explicit that these strictly officeholder funds cannot be redesignated as funds for a future campaign.

L. Once an officeholder's term of office ends or she or he leaves that office, whichever is earlier, the former officeholder may use his or her Officeholder Account funds only for the following purposes:

1. Paying for legitimate, outstanding officeholder expenses.

2. Repaying contributions to donors to the Officeholder Accounts.

3. Making a donation to a bona fide charitable, educational, civic, religious or similar tax-exempt, non-profit organization if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

M. The officeholder shall terminate the Officeholder Account within 90 days of the date that the officeholder's term of office ends or he or she leaves that office, whichever is earlier. The FCPC may for good cause extend the termination date. The disposition of all funds from the closed Officeholder Account, including the identification of all persons and entities that have received funds from the account and the amounts distributed, shall be described on a form prescribed by the FCPC. The officeholder must verify and file the form electronically no later the date prescribed for the termination of the Officeholder Account or an approved extension thereof.

N. All funds from a closed Officeholder Account not properly disposed of within the 90 day period prescribed above, or an approved extension thereof, shall be deposited in the City's General Fund.

ISSUES: Several issues exist with respect to the termination of Officeholder Accounts.

Draft sections 2.12.600 L.-N., above, propose procedures for terminating Officeholder Accounts in Berkeley based, in large part, on the state regulations on terminating Officeholder Accounts and committees (see Regulations of the Fair Political Practices Commission, Cal. Code of Reg., sec. 18531.63(g)).

The proposed provisions include the main options for disposing of Officeholder Account funds listed in the regulations (i.e., paying legitimate expenses, returning funds to donors, and making donations to bona fide organizations). However, the provision in the state regulations (sec. 18531.63(g)(2)) allowing for redesignation of Officeholder Accounts as accounts for a future campaign has been omitted because the Berkeley ordinance would authorize only strict Officeholder Accounts, prohibit the use of those accounts for any campaign purposes, and prohibit the redesignation of those accounts for use by campaign committees.

The proposed provisions, though, are incomplete: they do not address what should happen to an Officeholder Account if an incumbent wins re-election? Maybe it would be appropriate, under certain circumstances, for an incumbent who is elected to a new term of office, to redesignate a previous Officeholder Account for use in the officeholder's new term of office (as envisaged in the state regulations (see sec. 18531.63(g)(3)). Alternatively, as suggested at a previous joint meeting, perhaps it might be better for incumbents to terminate their Officeholder Accounts completely by a certain time before an election; and, if successful, they could open up a new Officeholder Account after their re-election.

The issues around the termination of Officeholder Accounts should be discussed by the joint committee and decisions made about what additions or modifications to the proposed ordinance are warranted.

**M. Violations of this article involving the unlawful use of Officeholder Accounts are subject to the procedures of, and the penalties in, Article 7 of this chapter.**

ISSUE: Are there any other issues on enforcement besides this general provision that need to be addressed?

\* \* \*

**OTHER ISSUES TO BE CONSIDERED:**

Some of the other issues not yet incorporated into the draft, but which merit consideration, include:

**1. Establishment of an Officeholder Committee.** State law requires an officeholder to create an Officeholder Controlled Committee if the officeholder receives more than \$2,000; and it provides guidance on the procedures for establishing such a committee, the committee's name, and other requirements. (Cal. Code of Reg., sec. 18531.63(c).) The Berkeley ordinance should probably include similar provisions.

**2. Return of Excess Contributions/Donations.** State law requires that an excess contribution to an officeholder be returned. (Gov. Code sec.85316(b)(3).) The regulations prescribe that the officeholder return the contribution within 14 days. (Cal. Code of Reg., sec. 18531.63(f).) The Berkeley ordinance should probably include similar provisions.

**3. Conforming Amendments to BERA.** A BERA section on the disposition of excess

campaign funds will probably need to be amended to be consistent with the new section 2.12.600 on Officeholder Accounts (see BERA sec. 2.12.245.C.). There may be other sections to BERA that require similar conforming changes.

## RESOLUTION NO. 67,992-N.S.

## CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

WHEREAS, each fiscal year, the City Council appropriates funds in the Mayor and Councilmember's departmental budgets to cover the costs of Mayor and Council staff and non-personnel expenditures which are reasonable and necessary for the performance of the duties of Mayor and Councilmember; and

WHEREAS, the Council needs to ensure that the expenditures are incurred and paid in conformity with the requirements of the City Charter; and

WHEREAS, AB 1234, adopted in 2005 and codified as Government Code Sections 53232, et. seq., requires that all cities adopt an expense reimbursement policy for Mayor and Council expenses; and

WHEREAS, on July 25, 2006, the City Council adopted Resolution No. 63,412-N.S. to establish the expenditure and reimbursement policy required by state law; and

WHEREAS, on September 10, 2103, the City Council rescinded Resolution No. 63,412-N.S. and replaced it with Resolution No. 66,295-N.S., which revised the expenditure and reimbursement policy required by state law.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Councilmember Office Budget Relinquishment and Grant Policy enumerated in Exhibit A is incorporated by reference into the policy for City Expenditures and Expense Reimbursement for Mayor and Council.

BE IT FURTHER RESOLVED that Resolution No. 66,295-N.S. and any amendments thereto are hereby rescinded.

BE IT FURTHER RESOLVED that the policy concerning City Expenditures and Expense Reimbursement for Mayor and Council departments is hereby adopted to read as follows:

**CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS**

**I. City Expenditures for Mayor and Council**

The Mayor and Council members shall purchase all office supplies, office equipment, furniture, computers, or any other product, good, or service for the actual and necessary expense of their office in the manner normally applicable to all other purchases of goods and services by the City. Such expenses may include membership in organizations of elected officials and the purchase of newspapers and periodicals that provide information needed for the performance of official duties.

**II. Reimbursement of Actual and Necessary Expense of Office**

The Mayor and Council members and their staff may be reimbursed for the actual and necessary expenses for the categories of activities set forth below under "Authorized Activities."

**A. Authorized Activities.**

Travel, meals and lodging incurred in connection with the following types of activities set forth below constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled:

1. Communicating with representatives of local, regional, state and national government on City policy positions;
2. Attending educational seminars designed to improve officials' skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City's interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City's interests where the primary purpose of the event is to discuss subjects which relate to City business;
6. Implementing City approved policies;
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum as set forth in this Resolution and meets applicable federal and state standards as to when meal reimbursement may be allowed; and
8. Expenditures for these purposes approved in advance by a Mayor or Council member and undertaken by that person's staff.

Expenditures for all other activities require prior approval by the City Council and must meet an articulated municipal purpose that must be recited in the report proposing the expenditure and the resolution authorizing the expenditure. Most frequently, prior approval by the City Council is given in items to authorize relinquishment of Council office budget fund to general fund and grant of such funds for charitable events, which would be unauthorized expenses if not pre-approved by Council. The policy for relinquishments and grants from Councilmember office budgets is enumerated in Exhibit A.

**B. Unauthorized Expenses**

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;

4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related expenses), or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
7. Personal losses incurred while on City business.

Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

**C. Particular Types of Authorized Expenditures Defined**

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
3. **Airfare.** Airfares that are equal to or less than those available through the California Department of General Services (DGS) Statewide Travel Program offered through the League of California Cities, [www.dgs.ca.gov/travel](http://www.dgs.ca.gov/travel)<sup>1</sup>, are presumed to be the most economical and reasonable for purposes of reimbursement under this policy. If DGS rates are not available, reimbursement for airfare must not exceed 110% of either the state DGS rates or the Federal rates published by the U.S. General Services Administration (GSA) rates, [www.gsa.gov](http://www.gsa.gov)<sup>2</sup>, whichever is greater. Any exceptions to these rates must be approved at a public Council meeting before the expense is incurred.

<sup>1</sup> California Department of General Services Statewide Travel Program (DGS): [www.dgs.ca.gov/travel](http://www.dgs.ca.gov/travel)

<sup>2</sup> U.S. General Services Administration (GSA): [www.gsa.gov](http://www.gsa.gov)



ITEM 14  
ATTACHMENT 2

4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those published by the California Department of General Services (DGS) Statewide Travel Program available through the League of California Cities shall be considered the most economical and reasonable for purposes of reimbursement under this policy. If DGS rates are not available, reimbursement for car rental must not exceed 110% of either the state DGS rates or the Federal GSA rates, whichever is greater. Any exceptions to these rates must be approved at a public Council meeting before the expense is incurred.
6. **Taxis/Ride Shares/Shuttles.** Taxis, ride shares, or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.
7. ~~7.~~ **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference or activity sponsor, provided that lodging at the group rate is available to the Council member at the time of booking. If lodging at the group rate is not available, or if travel is not in connection with a conference, rates that are equal to or less than those available through the California Department of General Services (DGS) Statewide Travel Program offered through the League of California Cities, are presumed to be the most economical and reasonable for purposes of reimbursement under this policy. If DGS rates are not available, reimbursement for lodging must not exceed 120% of the state DGS rates or 100% of the Federal rates published by the GSA, whichever is greater. Any exceptions to these rates must be approved at a public Council meeting before the expense is incurred. **Meals.** Meal expenses and associated gratuities will be reimbursed at the rate set forth in Administrative Regulation 3.9. "Meals which are served at regular meetings of associations to which the city belongs (i.e. Alameda County Mayors' Conference, league of California Cities, or ABAG) shall be exempt from this policy.
8. **Telephone/Fax/Cellular.** Council members will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus



- long-distances charges for those calls.
9. **Airport Parking.** Short-term airport parking may not be used for travel exceeding 24-hours.
  10. **Other Travel Related Expenses.** Reasonable baggage fees given the duration of the travel will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.
  11. **Miscellaneous Office Products.** Notwithstanding the requirement in Section I, occasionally an elected officer or officer's staff may need to make an immediate small out of pocket purchase of office supplies that are normally ordered by the City for which payment is paid directly to the vendor. In accordance with the applicable City Manager Administrative Regulation concerning petty cash refunds, the City may reimburse such purchases.

**D. Cash Advance Policy for Airfare and Hotel Only (per A.R. 3.9)**

From time to time, it may be necessary for an official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the City Auditor, and copied to the City Manager, ten (10) working days prior to the need for the advance with the following information:

1. The purpose of the expenditure(s);
2. Whether the expenditure is for an authorized activity;
3. The benefit to the residents of the City;
4. The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
5. The dates of the expenditure(s).

Any unused advance must be returned to the City within five (5) working days of the official's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

**E. Expense Report Content and Submission Deadline**

1. A statement of expense must be completed, signed and submitted to the City Auditor for review and forwarded to the Finance Department for payment. The statement of expense must document that the expense in question met the requirements of this Resolution. For example, if the meeting is with a legislator, the local agency official should explain whose meals were purchased, what issues were discussed and how those relate to the City's adopted legislative positions and priorities.
2. Officials must submit their statement of expense reports to the Auditor's Office within 60 days of an expense being incurred, accompanied by receipts documenting each expense. Itemized restaurant receipts, including number of individuals served, in addition to any credit card receipts, are also part of the necessary documentation. Receipts for gratuities and tolls under \$5 are not required.
3. Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

**F. Audits of Expense Reports**

All expenses are subject to verification by the City Auditor of compliance with this policy.

**G. Reports**

At the following City Council meeting, each official shall briefly report on meetings attended at City expense. If multiple officials attended, a joint report may be made.

**H. Compliance with Laws**

City officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act.

**I. Violation of This Policy**

Use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following:

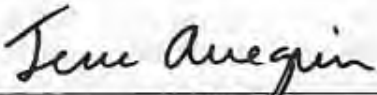
1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to \$1,000 per day and three times the value of the resources used; and
5. prosecution for misuse of public resources.

The foregoing Resolution was adopted by the Berkeley City Council on May 30, 2017 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.

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

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

Exhibit A

**Councilmember Office Budget Relinquishment and Grant Policy**Introduction – Limitations on the Expenditure of Public Funds

The basic purpose of the City as an entity is to exist and function as a *municipality*. This is also reflected in the Charter, which limits the Council's powers only to those "municipal affairs adequate to a complete system of local government". (Section 38.)

Exercises of this power may not be used solely to further the interests of particular individuals, although they may incidentally benefit private interests:

The exercise of the police power is available only for the purpose of promoting the general welfare, the interests of the public as distinguished from those of individuals or persons. It cannot be used to promote private gain or advantage, except so far as the same may also promote the public interest and welfare, and it is the latter, and not the former, effect which forms the basis of the power and warrants its exercise.  
(*Binford v. Boyd* (1918) 178 Cal. 458, 461.)

The Council's basic powers circumscribe its ability to spend public funds. In other words, the Council cannot spend public funds for purposes that are beyond its authority in the first place. Thus the City may only use its funds for municipal purposes. In any given case the crucial inquiry is whether an expenditure serves such a purpose.

The determination of what constitutes a public purpose is primarily a matter for the legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis.  
(*County of Alameda v. Carlson* (1971) 5 Cal.3d 730, 745-746.)

If the courts find that there is a valid public purpose, they next examine whether the government's actions are reasonably related to effectuating this purpose. (*Tip Top Foods, Inc. v. Lyng* (1972) 28 Cal.App.3d 533, 541.) Public appropriations granted to private interests will not be considered unlawful diversions of public funds when the transaction serves the public interest, merely granting an incidental benefit to the private individual. (*Cane v. City and County of San Francisco* (1978) 78 Cal.App.3d 654, 660.)

Criteria for Grants of City Funds from Councilmember Office Budgets

Relinquishments and grants for purposes and recipients that fall within the categories listed in Table 1 may be "pre-approved" each fiscal year by Council resolution.

Table 1.

Recipient	Purpose
The City ( <i>e.g.</i> , the Berkeley Public Library, the Berkeley Animal Shelter)	Any purpose already being undertaken, because it already serves a public purpose. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
BUSD and other public agencies operating in Berkeley	Any purpose already being undertaken, because it already serves a public purpose, assuming the activity is in Berkeley. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
Entities with which the City is co-sponsoring a public event in Berkeley ( <i>e.g.</i> , Earth Day, Solano Stroll).	City co-sponsorship suggests but is not conclusive of public purpose; public purpose would need to be stated, and all such events should be open to the public at no cost. Alternatively, a list of ongoing events that have been determined to serve a public purpose could be developed.
Entities in Berkeley to which the City already contributes funds for municipal purposes ( <i>e.g.</i> , affordable housing or social service nonprofits)	To advance the same public purposes for which the entities are funded. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.

Proposed relinquishments and grants that do not meet the criteria for pre-approval, but that meet an appropriate municipal purpose, may be approved by resolution with a majority vote of the City Council.



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Å%'#!&Å (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

- (A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.
- (B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.
- (C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

- (A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.
- (B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.
- (C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

*(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)*

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18531.62. Elected State Officeholder Bank Accounts.**

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

- (1) "Officeholder" means an elected state officer.
- (2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.
- (3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).
- (4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder

account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office.”

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:



(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees.

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of

organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision (e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

(A) Paying outstanding officeholder expenses.

(B) Repaying contributions to contributors to the officeholder account.

(C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.





**HISTORY**

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.
2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).



Office of the  
City Attorney

**DATE:** December 28, 1999

**TO:** BARBARA GILBERT,  
Aide to Mayor Shirley Dean

**FROM:** MANUELA ALBUQUERQUE, City Attorney *MA*  
By: CAMILLE COUREY, Deputy City Attorney

**SUBJECT:** APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts *per se*. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.<sup>1</sup> For similar reasons, the BERA does not

<sup>1</sup> However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert

Re: Application of Berkeley Election Reform Act To Officeholder Accounts

December 28, 1999

Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.<sup>2</sup> Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

#### Attachment

cc: Fair Campaign Practices Commission  
Sherry Kelly, City Clerk

City Attorney Opinion Index: ILE 1 and IILG

CCM

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<sup>2</sup> Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)





Fair Campaign Practices Commission

Date: September 17, 2020

To: Fair Campaign Practices Commission and Open Government Commission

From: Commissioner Patrick O'Donnell

Subject: Amendments to the Berkeley Election Reform Act (BERA) to Regulate Officeholder Accounts and Proposed Changes to City Council Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)

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This memorandum to the Fair Campaign Practices Commission (FCPC) and the Open Government Commission (OGC) substitutes for the one previously posted, mailed to members of the FCPC, and appearing as Item 7 on the agenda of the FCPC. The key difference is that this memorandum addresses not only officeholder accounts, but also proposed changes to City Council Expenditure and Reimbursement Policies (so-called D-13 Accounts). These two proposals are closely linked and should be considered together. Because the proposal relating to officeholder accounts falls under the jurisdiction of the FCPC and that relating to D-13 accounts falls under the jurisdiction of the OGC, the FCPC and OGC should act jointly in considering the proposed changes to BERA and the Reimbursement Policies.

The memorandum also makes the following recommendation:

Form a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

The preceding recommendations are consistent with previous discussions and the annual workplans of the FCPC and the OGC.

To implement the recommendations in this memorandum, a revised report to the Council is attached.

At this stage, the Council has referred both the issues relating to officeholder accounts and those relating to D-13 accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee had an initial discussion of these topics. It agreed that the Council Committee would work collaboratively with the FCPC and OGC on matters relating to officeholder accounts and D-13 accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Consistent with the prior actions of the Council and the FCPC/OGC, I propose that the Commissions recommend the establishment of a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts, and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

PUBLIC HEARING  
XXXXX XX, XXXX

To: Honorable Mayor and Members of the City Council

From: Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions

Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices and Open Government Commissions

Subject: Amendments to the Berkeley Election Reform Act (BERA) and Change to City Council Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)

RECOMMENDATION

Form a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Officeholder accounts are not expressly regulated by BERA. However, under existing law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements.

Donations to nonprofit organizations from Councilmember’s discretionary council budgets (D-13 accounts) are allowed by the authority of City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.).

Action:

Vote:

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the “double green light” process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Changes to the City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) can be made by a majority vote of the Council.

## BACKGROUND

### ***Officeholder Accounts***

During 2019, the Fair Campaign Practices Commission (FCPC) discussed whether there is a need to amend the law relating to these accounts. These accounts are not expressly regulated by BERA, but under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: “[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws.”

In the course of its review of the issue of officeholder accounts, the FPPC considered three options: (1) leaving the law on officeholder accounts unchanged; (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or (3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met several times in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission’s proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: “Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016.” (Report, page 1.)



At the February 4, 2020 meeting, the Council had a lengthy discussion about their D-13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder accounts. The City Council referred the issues relating to officeholder and D-13 accounts to its Agenda and Rules Committee for further consideration.

***Proposed Changes to City Council Expenditure and Reimbursement Policies***

At the April 23, 2020 meeting of the Open Government Committee (OGC), a motion to direct staff to develop a proposal recommending Council change City policy to remove councilmember names from donations to nonprofit organizations from D-13 accounts was approved unanimously.

Donations to nonprofit organizations from the Councilmember's discretionary council budget (D-13 accounts) puts that elected official in a favorable light with Berkeley citizens at no cost to the Councilmember, an option not available to a challenger for that office. A look at the Consent Calendar of City Council Meeting Agendas will often contain one or more items from one or more Councilmembers making a donation to a nonprofit organization "from the discretionary council budget" of the Councilmember. This line item ("Services and Materials") from the General Fund was increased from \$50,938 in FY 2017 to \$113,526 in FY 2018 (approximately \$40,000 for the Mayor, the balance evenly divided among the Councilmembers; see Attachment 1 – Council Office Budget Summaries). While not technically a "campaign contribution," those individuals in the organization as well as individuals favorably disposed to the nonprofit organization receiving the funds would certainly see it favorably. A person running against this incumbent would have to draw on their own resources to match a Councilmember's contribution from public funds and without the public notice of the contribution the Councilmember receives.

In addition to favoring incumbents, the use of public moneys for contributions to nonprofit organizations from the discretionary council budgets of individual Council members is arguably improper and certainly bad optics. The commissioners of the OGC have no argument with contributions being made to nonprofit organizations from the City of Berkeley, but believe they should be made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley, not from individual Council members. Perhaps a nonprofit fund could be set up from which the donations could be made from recommendations made to one of the Council's Policy Commissions. This would free funds for other purposes now being directed to nonprofit organizations from individual Councilmember's D-13 accounts.

**Proposed Action:**

At this stage, the Council has referred both the issues relating to officeholder accounts and those relating to D-13 accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee agreed to work collaboratively with the FCPC and OGC on matters relating to officeholder

accounts and D-13 accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Consistent with the prior actions of the Council and the FCPC/OGC, the Commissions recommend the establishment of a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to:

(1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts, and

(2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects related to the recommendation in this report.

#### RATIONALE FOR RECOMMENDATION

The “double green light” process requires that the FCPC adopt an amendment by a two-thirds vote, and that the City Council hold a public hearing and also adopt an amendment by a two-thirds vote. Evidence to date suggests there are differences of perspective regarding this matter between the City Council and the FCPC regarding the D-13 accounts. It would seem to be a rational step to discuss and come to agreement and possibly compromise prior to the “double green light” process.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CITY MANAGER

#### CONTACT PERSON

Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions,  
(510) 981-6998

Samuel Harvey, Commission Secretary, Fair Campaign Practices and Open  
Government Commissions, (510) 981-6998



Fair Campaign Practices Commission

Date: September 17, 2020

To: Fair Campaign Practices Commission

From: Commissioner Patrick O'Donnell

Subject: Amendments to the Berkeley Election Reform Act to regulate officeholder accounts

---

In 2019, the FCPC approved an amendment to the Berkeley Election Reform Act (“BERA”) prohibiting officeholder accounts. That proposal was submitted to Council. However, some councilmembers have expressed opposition to an outright ban on officeholder accounts and a preference for developing regulations for those accounts. This report contains a new alternative proposal to regulate – rather than prohibit – officeholder accounts. At its July 16, 2020 meeting, the Commission voted to direct Commissioner O'Donnell to return at the Commission's September 17, 2020 meeting with a version of the proposal drafted as an amendment to BERA that can be voted on and presented to Council.

## Background

During 2019, the Commission discussed whether there is a need to amend the law relating to the use of officeholder accounts. These accounts are not expressly regulated by BERA. But under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: “[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws.” (Report, page 14.)

In the course of its review of the issue of officeholder accounts, the Commission considered three options: (1) leaving the law on officeholder accounts unchanged; (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or

(3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission's proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: "Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016." (Report, page 1.) At the February 4 meeting, the Council had a lengthy discussion about their D13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder Accounts. (See Memorandum to FCPC dated February 12, 2020, a copy of which is attached.)

The City Council, however, referred both the issues relating to D13 accounts and those relating to officeholder accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee had an initial discussion of these topics. At that meeting, it was agreed that the Council Committee would work collaboratively with the FCPC on matters relating to D13 accounts and officeholder accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

### **Alternative Proposal for Legislation on Officeholder Accounts**

Given the Council's opposition to accepting an outright prohibition of officeholder accounts, the FCPC should at least explore some alternatives, including the option of amending the BERA to allow for officeholder accounts that would be subject to limitations, as the City of Oakland has done. The subcommittee which examined officeholder accounts briefly discussed this option but, given that there was unanimous support for prohibiting officeholder accounts entirely, it never developed a detailed proposal for this kind of alternative. However, now that the FCPC/OGC will be in conversation with the council about the options going forward, it seems to make good sense to examine in more detail what the alternative might look like.

For discussion purposes, a draft proposal to amend the BERA is attached (Attachment 1). It is based generally on the Oakland ordinance but differs in important ways from that statute. The basic concept behind this alternative is to allow officeholders to have *true* officeholder accounts, but to insure that the funds in these accounts are

used *strictly* for officeholder purposes and may not be used for political campaigns or other non-officeholder purposes. The proposal would also include limitations on the amount each donor may contribute and the total amount of donations to each officeholder account permitted annually. The amendments would require disclosures of the sources and amounts of all donations and expenditures. And they would specify how officeholder accounts are to be terminated.

Although not as fully effective as the complete prohibition of officeholder accounts previously recommended by the FCPC, this approach would allow officeholders to create regulated accounts for proper officeholder purposes. At the same time, these true officeholder accounts would be subject to public scrutiny and express limitations that would prevent serious abuses. Finally, the strict prohibitions in the proposed legislation against using any funds from officeholder accounts for campaign purposes would greatly simplify the management and oversight of these accounts. Current state law, which permits certain officeholder funds to be redesignated for campaign purposes under certain circumstances and subject to various disclosure and notice requirements, creates a nightmare of administrative and reporting requirements. It has made it difficult for officeholders to comply with the law and has established traps for the unwary. Thus, it is hardly surprising that most candidates elected to public office do not even attempt to set up officeholder accounts.

In the end, it may well be that the alternative presented here—or any other—may be unable to carry the day. Because of the double-green light requirements of BERA, no proposal may be able to garner the 2/3 votes of both the Council and Commission required to change the law. But for the purposes of collaborating with the Council on ways of improving the officeholder account process, the Commission should review the attached proposal which offers at least one possible scenario for addressing the problems and pitfalls involved with officeholder accounts.

Prior to approving this item, the Commission will need to make a determination regarding the dollar amounts for limits on donations to officeholder accounts. These amounts are highlighted in the attached Proposal in Section 2.12.600.E & F.

**Attachments:**

1. New draft proposed amendments to BERA to allow for officeholder accounts, to limit such accounts to being used strictly for officeholder purposes, and to subject these accounts to various other limitations and disclosure requirements (“Proposal”)
2. Report to the City Council from the Fair Campaign Practices Commission entitled “Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts: Amending BMC Chapter 2.12” (for Public Hearing on February 4, 2020) (with Attachments) (“Report”)
3. Memorandum from Dean Metzger, Chair, to FCPC dated February 12, 2020 (with Attachments) (“Memorandum”)



Fair Campaign Practices Commission

PUBLIC HEARING  
XXXXX XX, XXXX

To: Honorable Mayor and Members of the City Council  
From: Brad Smith, Chair, Open Government Commission  
Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices Commission  
Subject: Amendments to the Berkeley Election Reform Act

RECOMMENDATION

Adopt an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to regulate officeholder accounts.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

These recommended amendments to the Berkeley Lobbyist Registration Act were approved by the Open Government Commission at its regular meeting of XXXXX XX, XXXX.

**Action:**

**Vote:**

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the “double green light” process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

BACKGROUND

In 2019, the FCPC approved an amendment to the Berkeley Election Reform Act (“BERA”) prohibiting officeholder accounts. That proposal was submitted to Council. However, some councilmembers have expressed opposition to an outright ban on officeholder accounts and a preference for developing regulations for those accounts. This report contains a new alternative proposal to regulate – rather than prohibit – officeholder accounts.

During 2019, the Commission discussed whether there is a need to amend the law relating to the use of officeholder accounts. These accounts are not expressly regulated

by BERA. But under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: “[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws.” (Report, page 14.)

In the course of its review of the issue of officeholder accounts, the Commission considered three options: (1) leaving the law on officeholder accounts unchanged; (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or (3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission’s proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: “Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016.” (Report, page 1.) At the February 4 meeting, the Council had a lengthy discussion about their D13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder Accounts. (See Memorandum to FCPC dated February 12, 2020, a copy of which is attached.)

The City Council, however, referred both the issues relating to D13 accounts and those relating to officeholder accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee had an initial discussion of these topics. At that meeting, it was agreed that the Council Committee would work collaboratively with the FCPC on matters relating to D13 accounts and officeholder accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

### **Alternative Proposal for Legislation on Officeholder Accounts**

At its September 17, 2020 meeting, the FCPC passed the attached proposal to amend the BERA (Attachment 1). It is based generally on the Oakland ordinance but differs in important ways from that statute. The basic concept behind this alternative is to allow officeholders to have *true* officeholder accounts, but to insure that the funds in these accounts are used *strictly* for officeholder purposes and may not be used for political

campaigns or other non-officeholder purposes. The proposal also includes limitations on the amount each donor may contribute and the total amount of donations to each officeholder account permitted annually. The amendments would require disclosures of the sources and amounts of all donations and expenditures, and specify how officeholder accounts are to be terminated.

This approach would allow officeholders to create regulated accounts for proper officeholder purposes. At the same time, these true officeholder accounts would be subject to public scrutiny and express limitations that would prevent serious abuses. Finally, the strict prohibitions in the proposed legislation against using any funds from officeholder accounts for campaign purposes would greatly simplify the management and oversight of these accounts. Current state law, which permits certain officeholder funds to be redesignated for campaign purposes under certain circumstances and subject to various disclosure and notice requirements, creates a nightmare of administrative and reporting requirements. It has made it difficult for officeholders to comply with the law and has established traps for the unwary. Thus, it is hardly surprising that most candidates elected to public office do not even attempt to set up officeholder accounts.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects related to the recommendation in this report.

#### RATIONALE FOR RECOMMENDATION

This proposal is offered as an alternative to the proposed ban on officeholder accounts previously submitted to Council by the FCPC. This proposal would regulate – rather than prohibit – officeholder accounts.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CITY MANAGER

#### CONTACT PERSON

Brad Smith, Chair, Open Government Commission, (510) 981-6998

Samuel Harvey, Commission Secretary, Open Government Commission (510) 981-6998

#### Attachments:

1. Proposed ordinance amending BERA to allow and regulate officeholder accounts
2. Report to the City Council from the Fair Campaign Practices Commission entitled “Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts: Amending BMC Chapter 2.12” (for Public Hearing on February 4, 2020) (with Attachments) (“Report”)
3. Memorandum from Dean Metzger, Chair, to FCPC dated February 12, 2020 (with Attachments) (“Memorandum”)



ORDINANCE NO. -N.S.

AMENDING THE BERKELEY ELECTION REFORM ACT TO REGULATE  
OFFICEHOLDER ACCOUNTS

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

Section 1. That the Berkeley Municipal Code section 2.12.157 is added to read as follows:**Section 2.12.157 Officeholder account.**“Officeholder account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.Section 2. That Article 9 of Chapter 2.12 of the Berkeley Municipal Code is added to read as followsArticle 9. Officeholder Accounts**Section. 2.12.600 Regulation of officeholder accounts.**A. The mayor and council members (the “officeholder” or “office holders”) shall each be permitted to establish one officeholder account, as defined in section 2.12.157.B. All donations deposited into an officeholder account shall be deemed to be held in trust solely for expenses associated with holding the office currently held by the elected city officer. For the purpose of this section, “donation” means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, in support of the office currently held by an elected official.C. Only a natural person who is a resident of the City may make a donation to an officeholder account.D. Donations to an officeholder account must be made by a separate check or other separate written instrument. Single donations may not be divided between the officeholder account and any candidate committee or other entity.E. No donor shall make, and no elected officer shall receive from a donor, a donation or donations under this section totaling more than fifty [or two-hundred and fifty] dollars (\$50.00 [or \$250.00]) per person for the calendar year. “Donor” means a natural person who is a resident of the City who makes a donation as defined in paragraph B.F. For the office of mayor, total donations to an officeholder account from all donors shall not exceed ten thousand dollars (\$10,000.00) in the aggregate per calendar year. For each member of the city council, total donations to an officeholder account from all donors shall not exceed five thousand dollars (\$5,000.00) in the aggregate per calendar year.

G. All donations received for, and expenditures made from, an officeholder account during a calendar year shall be reported at least annually on the date or dates prescribed by the commission and the report shall be made available to the public promptly thereafter. The commission shall adopt or designate a form or forms for the purpose of reporting the information about each elected officer's officeholder account. The forms shall be filed electronically. The information on the form or forms shall be verified by the officeholder. The information that shall be included in the officeholder account report shall include the following:

1. The name of the officeholder and the office held;
2. The reporting period covered by the report;
3. A description of all receipts and expenditures.
4. The full name of each donor from whom a donation or donations has been received together with his or her street address, occupation, and the name of his or her employer, if any, or the principal place of business if he or she is self-employed; the amount which he or she donated; the date on which the each donation was received during the period covered by the report; and the cumulative amount that the donor donated. Loans received shall be set forth in a separate schedule and the foregoing information shall be stated with regard to each lender, together with the date and amount of the loan, and if the loan has been repaid, the date of the payment and by whom paid;
5. The full name and street address of each person to whom an expenditure or expenditures have been made, together with the amount of each separate expenditure to each person during the period covered by the report; a description of the purpose for which the expenditure was made; and the full name and street address of the person receiving the expenditure.
6. Under the heading "receipts," the total amount of donations received, and under the heading "expenditures," the total amount of expenditures made during the reporting period and cumulative amount of such totals;
7. The balance of cash and cash equivalents, including the amounts in the officeholder bank account, at the beginning and end of each period covered by the report.

H. Expenditures from an officeholder account may be made only for-lawful officeholder purposes, and may not be used for any of the purposes prohibited in subsections J. and K. of this section.

I. Allowable expenditures from an officeholder account include the following:

1. Expenditures for fundraising (including solicitations by mail) for the officeholder account;
2. Expenditures for office equipment, furnishings and office supplies;

3. Expenditures for office rent;

4. Expenditures for salaries of part-time or full-time staff employed by the officeholder for officeholder activities;

5. Expenditures for consulting, research, polling, photographic or similar services except for campaign expenditures for any city, county, regional, state or federal elective office;

6. Expenditures for conferences, meetings, receptions, and events attended in the performance of government duties by (1) the officeholder (2) a member of the officeholder's staff; or (3) such other person designated by the officeholder who is authorized to perform such government duties;

7. Expenditures for travel, including lodging, meals and other related disbursements, incurred in the performance of governmental duties by (1) the officeholder, (2) a member of the officeholder's staff, (3) or such other person designated by the officeholder who is authorized to perform such government duties;

8. Expenditures for memberships to civic, service or professional organizations, if such membership bears a reasonable relationship to a governmental, legislative or political purpose;

9. Expenditures for an educational course or educational seminar if the course or seminar maintains or improves skills which are employed by the officeholder or a member of the officeholder's staff in the performance of his or her governmental responsibilities;

10. Expenditures for mailing to persons within the city which provide information related to city-sponsored events, an official's governmental duties or an official's position on a particular matter pending before the Council or Mayor;

11. Expenditures for expressions of congratulations, appreciation or condolences sent to constituents, employees, governmental officials, or other persons with whom the officeholder communicates in his or her official capacity;

12. Expenditures for payment of tax liabilities incurred as a result of authorized officeholder expense fund transactions; and

13. Expenditures for accounting, professional and administrative services provided to the officeholder account.

J. Officeholder expense funds shall not be used for the following:

1. Expenditures in connection with a future election for any city, county, regional, state or federal elective office or in connection with a ballot measure;

2. Expenditures for campaign consulting, research, polling, photographic or similar services for election to city, county, regional, state or federal elective office;

3. Membership in any athletic, social, fraternal, veteran or religious organization;

4. Supplemental compensation for employees for performance of an act which would be required or expected of the person in the regular course or hours of his or her duties as a city official or employee;

5. Any expenditure that would violate the provisions the California State Political Reform Act, including Government Code Sections 89506 and 89512 through 89519, and any provisions of the BERA.

K. Prohibitions:

1. No funds may be contributed or transferred from an officeholder account to any candidate or committee, as defined in sections 2.12.085 and 2.12.095 of this chapter, including to any committee in which the officeholder is a candidate. An officeholder may not redesignate his or her officeholder account as a committee for a future term of the same office or redesignate his or her officeholder funds to be used as campaign funds by his or her committee for a future term of the same office.

2. No funds may be used from an officeholder account to pay any campaign expenses.

3. An officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account.

L. Once an officeholder's term of office ends or she or he leaves that office, whichever is earlier, the former officeholder may use his or her officeholder funds only for the following purposes:

1. Paying for legitimate, outstanding officeholder expenses.

2. Repaying contributions to contributors to the officeholder accounts.

3. Making a donation to a bona fide charitable, educational, civic, religious or similar tax-exempt, non-profit organization if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

M. The officeholder shall terminate the officeholder account within 90 days of the date that the officeholder's term of office ends or he or she leaves that office, whichever is earlier. The Commission may for good cause extend the termination date. The disposition of all funds from the closed officeholder account, including the identification of all persons and entities that have received funds from the account and the amounts distributed, shall be described on a form prescribed by the Commission. The officeholder must verify and file the form electronically no later the date prescribed for the termination of the officeholder account or an approved extension thereof.

N. All funds from a closed officeholder account not properly disposed of within the 90 day period prescribed above, or an approved extension thereof, shall be deposited in the City's general fund.

O. Violations of this article involving the unlawful use of officeholder accounts are subject to the procedures of, and the penalties in, Article 7 of this chapter.

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT**

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the regulation of officeholder accounts.

The hearing will be held on, [date of hearing] at [6:00 p.m.] in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **[date of agenda posting]**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

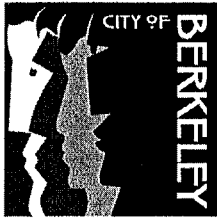
Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

**Published:** [Publication Date in Newspaper]

Pursuant to Berkeley Municipal Code section 2.12.051

~~~~~  
I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on [Enter Date].

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



Fair Campaign Practices Commission

PUBLIC HEARING  
February 4, 2020

To: Honorable Mayor and Members of the City Council  
From: Fair Campaign Practices Commission  
Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission  
Subject: Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

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

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

**Action:** M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.

**Vote:** Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused).

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder AccountsPUBLIC HEARING  
February 4, 2020BACKGROUND

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

**Definition of an Officeholder Account**

Under state law, an "officeholder account" refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for "paying expenses associated with holding public office." Officeholder Account funds cannot be used to pay "campaign expenses." This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, Section 18531.62 (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA's reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley's Public Access Portal.) If, however, a complaint is filed that an Officeholder Account is used for



Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder AccountsPUBLIC HEARING  
February 4, 2020

campaign contributions or to pay "campaign expenses," BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda's conclusions remain valid and are still controlling guidance.

**Contributions to Officeholder Accounts**

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official's Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

**Expenditures from Officeholder Accounts**

Except for the restriction that Officeholder Account funds cannot be used for "campaign expenses," BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a "campaign expense," would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder's position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent's name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not "campaign expenses," also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder AccountsPUBLIC HEARING  
February 4, 2020

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.<sup>1</sup> Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

**Recommendation**

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. (Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10)

**Part 8 - OFFICEHOLDER ACCOUNTS****12.06.810 - Officeholder account prohibited.**

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

**2.12.157 Officeholder Account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

**2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

<sup>1</sup>Under state law applicable to state elected officials, officeholders may use campaign contributions for “expenses that are associated with holding office.” (Govt. Code, § 89510.) To qualify, expenditures must be “reasonably related to a legislative or governmental purpose.” (*Id.*, § 89512.) “Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.” (*Ibid.*)

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING  
January 21, 2020

- C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPPC guidelines.

ENVIRONMENTAL SUSTAINABILITY

There are no identified environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

ORDINANCE NO. ##,###-N.S.

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE  
CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

**BMC 2.12.157 Officeholder account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

**BMC 2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate’s ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation

10/8/2019

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California  
LEGISLATIVE INFORMATION[Home](#)[Bill Information](#)[California Law](#)[Publications](#)[Other Resources](#)[My Subscriptions](#)[My Favorites](#)Code: Section: [Up^](#)[<< Previous](#)[Next >>](#)[cross-reference chaptered bills](#)[PDF](#)[Add To My Favorites](#)Search Phrase: **GOVERNMENT CODE - GOV****TITLE 9. POLITICAL REFORM [81000 - 91014]** ( Title 9 added June 4, 1974, by initiative Proposition 9. )**CHAPTER 5. Limitations on Contributions [85100 - 85802]** ( Chapter 5 added June 7, 1988, by initiative Proposition 73. )**ARTICLE 3. Contribution Limitations [85300 - 85321]** ( Article 3 added June 7, 1988, by initiative Proposition 73. )

**85316.** (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

(A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.

(B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.

(C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.

(B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.

(C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18531.62. Elected State Officeholder Bank Accounts.**

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

(1) "Officeholder" means an elected state officer.

(2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.

(3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).

(4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder

account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office.”

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:



(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees:

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of

organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision

(e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

(A) Paying outstanding officeholder expenses.

(B) Repaying contributions to contributors to the officeholder account.

(C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

**HISTORY**

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.
2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).



Office of the  
City Attorney

**DATE:** December 28, 1999

**TO:** BARBARA GILBERT,  
Aide to Mayor Shirley Dean

**FROM:** MANUELA ALBUQUERQUE, City Attorney *MA*  
By: CAMILLE COUREY, Deputy City Attorney

**SUBJECT:** APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

**ISSUE:**

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

**CONCLUSION:**

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

**ANALYSIS:**

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.<sup>1</sup> For similar reasons, the BERA does not

<sup>1</sup> However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert  
 Re: Application of Berkeley Election Reform Act To Officeholder Accounts  
 December 28, 1999  
 Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.<sup>2</sup> Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

#### Attachment

cc: Fair Campaign Practices Commission  
 Sherry Kelly, City Clerk

City Attorney Opinions Index: H.E.I. and H.L.G.

CCM

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<sup>2</sup> Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

## CITY OF BERKELEY

DATE: December 9, 1991

Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso,  Secretary & Staff CounselSUBJECT: APPLICABILITY OF BERA'S CONTRIBUTION LIMIT TO FUNDS RAISED FOR OFFICEHOLDER EXPENSESBACKGROUND AND ISSUE

I received the attached letter from Richard N. Lerner, treasurer of Friends of Ioni Hancock Committee ("Committee"), regarding the applicability of BERA's (Berkeley Election Reform Act) \$250 contribution limit to funds raised to cover officeholder expenses. The Committee would like to raise money to cover activities by the Mayor for which the City has not allocated funds, for example, distribution of a newsletter and international travel to visit Berkeley Sister Cities.

Thus, the issue presented to the Commission is as follows: Is BERA's \$250 contribution limit applicable to funds raised for officeholder expenses?

CONCLUSION

No. The BERA's contribution limitation is only applicable to money raised "in aid of or in opposition to the nomination or election" of a candidate. Since the Committee intends to raise these funds for activities unrelated to the nomination or election of the Mayor, they are not subject to the BERA's \$250 contribution limitation. However, such funds must be reported as contributions under the State Political Reform Act and their expenditure itemized on the disclosure forms.

ANALYSIS

The BERA prohibits candidates for elective office from soliciting or accepting a contribution of more than \$250 from any one contributor. (BERA section 2.12.415.) Thus, funds which fall within BERA's definition of a contribution, are subject to the \$250 limit. In order to determine whether funds raised for officeholder expenses are subject to the contribution limitation, BERA's definition of contribution must be reviewed.

The BERA defines contribution, in part, as follows:

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or

FCPC COMMISSIONERS  
December 9, 1991  
Page 2

in opposition to the nomination or election of one or more candidates . . . . (Emphasis added.)

Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election for elective office, such funds do not fall within the BERA's definition and are therefore not subject to its \$250 limitation.

However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.<sup>1/</sup> (Government Code section 82015.) Additionally, since the court's ruling in SEIU v. FPPC invalidated the state's \$1,000 contribution limit, funds raised for officeholder expenses are not subject to any limitation.

As a final precaution, the Committee should be advised that the FPPC has issued regulations concerning officeholder expenses and it should review them with respect to their interaction with the BERA.

Attachment

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<sup>1/</sup>I spoke with the FPPC's legal staff and confirmed that funds raised for officeholder expenses must be reported as contributions on the campaign disclosure forms.

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT**

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **January 30, 2020**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

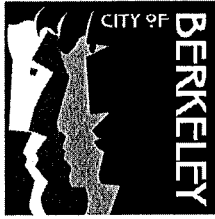
Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

**Published:** January 24, 2020 – The Berkeley Voice  
Pursuant to Berkeley Municipal Code Section 2.12.051

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 30, 2020.

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





[First Last name]  
Councilmember District [District No.]

## SUPPLEMENTAL REVISED AGENDA MATERIAL for Supplemental Packet 2

**Meeting Date:** February 4, 2020

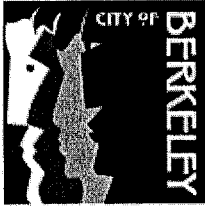
**Item Number:** 2

**Item Description:** Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

**Submitted by:** Councilmember Hahn

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

**SOPHIE HAHN**

Berkeley City Council, District 5  
 2180 Milvia Street, 5th Floor  
 Berkeley, CA 94704  
 (510) 981-7150  
 shahn@cityofberkeley.info

ACTION CALENDAR

February 4, 2020

To: Honorable Mayor and Members of the City Council  
 From: Vice Mayor Sophie Hahn  
 Subject: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.<sup>1</sup> They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses Officeholder Accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, etc. Cities can place limits on Officeholder Accounts, as Oakland has done.<sup>2</sup> Officeholder Accounts must be registered as official "Committees" and adhere to strict public reporting requirements, like campaign accounts. They provide full transparency to the public about sources and uses of funds.

The FCPC bases its recommendation to prohibit Officeholder Accounts on arguments about "equity" and potential "corruption" in elections. The report refers repeatedly to "challengers" and "incumbents," suggesting that Officeholder Accounts are vehicles for unfairness in the election context.

I believe that the FCPC's recommendations reflect a misunderstanding of the purpose and uses of Officeholder Accounts, equating them with campaign accounts and suggesting that they create an imbalance between community members who apparently have already decided to run against an incumbent (so-called "challengers") and elected officials who are presumed to be

<sup>1</sup> <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

<sup>2</sup> <http://www2.oaklandnet.com/w/OAK052051>

always running for office. The recommendations do not take into account some important framing: the question of what funds are otherwise available to pay for Officeholder-type expenses for Officeholders or members of the public. Contrary to the conclusions of the FCPC, I believe Officeholder accounts are an important vehicle to redress a significant disadvantage for elected officials, whose ability to exercise free speech in the community and participate in conferences and events related to their profession is constrained by virtue of holding public office, as compared to community members, whose speech rights are unrestricted in any manner whatsoever, and who can raise money to use for whatever purposes they desire.

Outlawing Officeholder Accounts is also posited as a means to create equity between more and less wealthy Officeholders, on the theory that less affluent Officeholders will have less access to fundraising for Officeholder Accounts than more affluent Officeholders. Because there are no prohibition on using personal funds for many of the purposes for which Officeholder Account funds can be used, prohibiting Officeholder Accounts I believe has the opposite effect; it leaves more affluent Officeholders with the ability to pay for Officeholder expenses from personal funds, without providing an avenue for less affluent Officeholders, who may not have available personal funds, to raise money from their supporters to pay for such Officeholder expenses.

The question of whether Officeholder Accounts should be allowed in Berkeley plays out in the context of a number of rules and realities that are important to framing any analysis.

First, by State Law, elected officials are prohibited from using public funds for a variety of communications that many constituents nevertheless expect. For example, an elected official may not use public funds to send a mailing announcing municipal information to constituents, "such as a newsletter or brochure, [ ] delivered, by any means [ ] to a person's residence, place of employment or business, or post office box."<sup>3</sup> Nor may an elected official mail an item using public funds that features a reference to the elected official affiliated with their public position.<sup>4</sup> Note that Electronic newsletters are not covered by these rules, and can and do include all of these features, even if the newsletter service is paid for by the public entity. That said, while technically not required, many elected officials prefer to use email newsletter distribution services (Constant Contact, MailChimp, Nationbuilder, etc.) paid for with personal (or "Officeholder") funds, to operate in the spirit of the original rules against using public funds for communications that include a photo of, or references to, the elected official.

Without the ability to raise funds for an Officeholder Account, for an elected official to send a paper newsletter to constituents or to use an email newsletter service that is not paid for with public funds, they must use personal funds. A printed newsletter mailed to 5-6,000 households (a typical number of households in a Berkeley City Council District) can easily cost \$5,000+, and an electronic mail service subscription typically costs \$10 (for the most basic service) to \$45 per month, a cost of \$120.00 to over \$500 per year - in personal funds.

<sup>3</sup> <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

<sup>4</sup> <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

Second, Berkeley City Councilmembers and the Mayor of Berkeley are not paid enough for there to be any reasonable expectation that personal funds should be used for these types of expenses.<sup>5</sup> For many Councilmembers and/or the Mayor, work hours are full time - or more - and there is no other source of income.

Finally, and most importantly, local elected officials are restricted from accepting money or gifts. An elected official cannot under any circumstances raise money to pay for Officeholder expenses such as printed communications, email newsletter services, travel and admission to industry conferences for which the elected official is not an official delegate (e.g., conferences on City Planning, Green Cities, Municipal Finance, etc.), and other expenses related to holding office that are not covered by public funds. Again, without the possibility of an Officeholder Account, an elected official generally must use personal funds for these expenses, allowing more affluent elected officials to participate while placing a hardship or in some cases a prohibition on the ability of less affluent elected officials to undertake these Officeholder-type activities - which support expected communications with constituents and participation in industry activities that improve the elected official's effectiveness.

The elected official's inability to raise funds from others must be contrasted with the ability of a community member - a potential "challenger" who has not yet declared themselves to be an actual candidate - or perhaps a neighborhood association, business or corporation (Chevron, for example) - to engage in similar activities. Nothing restricts any community member or organization from using their own funds - or funds obtained from anyone - a wealthy friend, a corporation, a local business, a community organization or their neighbors - for any purpose whatsoever.

Someone who doesn't like the job an elected official is doing could raise money from family or connections anywhere in the community - or the world - and mail a letter to every person in the District or City criticizing the elected official, or buy up every billboard or banner ad on Facebook or Berkeleyside to broadcast their point of view. By contrast, the elected official, without access to an Officeholder Account, could only use personal funds to "speak" with their own printed letter, billboard or advertisement. Community members (including future "challengers") can also attend any and all conferences they want, engage in travel to visit interesting cities and projects that might inform their thoughts on how a city should be run, and pay for those things with money raised from friends, colleagues, businesses, corporations, foreign governments - *anyone*. They are private citizens with full first amendment rights and have no limitations, no reporting requirements, no requirements of transparency or accountability whatsoever.

The imbalance is significant. Outside of the campaign setting, where all declared candidates can raise funds and must abide by the same rules of spending and communications, *elected officials cannot raise money for any expenses whatsoever, from any source, while community*

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<sup>5</sup> Councilmembers receive annual compensation of approximately \$36,000, while the Mayor receives annual compensation of approximately \$55,000.<sup>5</sup>

*members, including organizations and private companies, can raise as much money as they want from any sources, and use that money for anything they choose.*

Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system, which can limit their ability to “speak” and engage in other activities members of the public are able to undertake without restriction. Officeholder Accounts restore some flexibility by allowing elected officials to raise money for expenses related to holding office, so long as the sources and uses of those funds is made transparent.

By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of funds beyond the State’s restrictions, to ensure funds are not used for things like family members’ travel, as is currently allowed by the State. Oakland has taken this approach, and has a set of Officeholder Account regulations that provide a good starting point for Berkeley to consider.<sup>6</sup>

I respectfully ask for a vote to send the question of potential allowance for, and regulation of, Officeholder Accounts to the Agenda and Rules Committee for further consideration.

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

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<sup>6</sup> <http://www2.oaklandnet.com/w/OAK052051>



Fair Campaign Practices Commission

**Date:** February 12, 2020  
**To:** FAIR CAMPAIGN PRACTICES COMMISSION  
**From:** Dean Metzger, Commission Chair  
**Subject:** Council discussion and action with regards to the Officeholder Accounts FCPC proposal.

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At the Special City Council meeting of Tuesday February 4, 2020, the City Council had a lengthy discussion about their D13 accounts, and the lack of discretionary funds Council Members have to spend. They then decided not to approve the FCPC recommendation to prohibit Officeholder Accounts.

To remedy this concern the FCPC should request from the City Manager the amount each Council Member receives in their D13 accounts and after some discussion make a recommendation to Council. If the D13 account is large enough to allow Council members to make the expenditures they feel will keep their constituents informed of their activities, travel to local meetings, provide transportation expenses and meals - there would be no need for Officeholders Accounts.

A search of the City's Budget documents did not reveal the amounts allocated to the Council D13 accounts. Once the information is available the FCPC can make its recommendations to City Council.

**Attachments:**

1. Mayor and City Council Financial Summary
2. Draft request to City Manager for budget details of the Mayor and each individual Council Member

**MAYOR AND CITY COUNCIL FINA**

|                        | FY 2015<br>Actual | FY 2016<br>Actual | FY 2017<br>Adopted | FY 2018<br>Proposed | FY 2019<br>Proposed |
|------------------------|-------------------|-------------------|--------------------|---------------------|---------------------|
| <b>EXPENDITURES</b>    |                   |                   |                    |                     |                     |
| <b>By Type:</b>        |                   |                   |                    |                     |                     |
| Salaries and Benefits  | 1,660,661         | 1,760,619         | 1,723,617          | 1,833,734           | 1,880,031           |
| Services and Materials | 36,942            | 43,407            | 113,526            | 113,526             | 113,526             |
| Capital Outlay         | 1,953             | 7,674             |                    |                     |                     |
| Internal Services      | 89,100            | 81,181            | 81,181             | 81,181              | 81,181              |
| Indirect Cost Transfer |                   |                   |                    |                     |                     |
|                        | <u>1,788,656</u>  | <u>1,892,881</u>  | <u>1,918,324</u>   | <u>2,028,441</u>    | <u>2,074,738</u>    |
| <b>By Division:</b>    |                   |                   |                    |                     |                     |
| Mayor's Office         | 515,095           | 558,137           | 584,877            | 554,389             | 566,917             |
| Council Offices        | 1,273,561         | 1,334,744         | 1,333,447          | 1,474,052           | 1,507,821           |
| Exiting Officials      |                   |                   |                    |                     |                     |
|                        | <u>1,788,656</u>  | <u>1,892,881</u>  | <u>1,918,324</u>   | <u>2,028,441</u>    | <u>2,074,738</u>    |
| <b>By Fund:</b>        |                   |                   |                    |                     |                     |
| General Fund           | 1,788,656         | 1,892,881         | 1,918,324          | 2,028,441           | 2,074,738           |
|                        | <u>1,788,656</u>  | <u>1,892,881</u>  | <u>1,918,324</u>   | <u>2,028,441</u>    | <u>2,074,738</u>    |

|                         |       |       |       |       |       |
|-------------------------|-------|-------|-------|-------|-------|
| <b>General Fund FTE</b> | 12.00 | 12.00 | 12.00 | 12.00 | 12.00 |
| <b>Total FTE</b>        | 12.00 | 12.00 | 12.00 | 12.00 | 12.00 |

**DRAFT****DRAFT****DRAFT**

**Date:** February 20, 2020  
**To:** Dee Williams-Riley  
City Manager  
**From:** Fair Campaign Practices Commission  
**Subject:** Request for budget details of the Mayor and each individual Council Member.

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At the Special Council meeting of Tuesday, February 4, 2020 the Council heard and took action on the FCPC recommendation to amend the Berkeley Municipal Code to prohibit Officeholder Accounts. The Council discussion went to great lengths about why they needed the Officeholder Account before declining to approve the FCPC recommendation.

The FCPC needs to understand why the Council took the action it did.

To help the Commission determine if any further action on its part would be helpful, the Commission requests that your office provide the FCPC with the detailed budgets of the Mayor and each Council Member. The Commission has the budget summaries of the Mayor and City Council but it is of little use for the discussion.

Please provide the requested information in time for the FCPC meeting on March 19, 2020.

Thank you,

**Fair Campaign Practices Commission**





Fair Campaign Practices Commission  
Open Government Commission

ACTION CALENDAR  
January 26, 2021

To: Honorable Mayor and Members of the City Council

From: Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions

Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices and Open Government Commissions

Subject: Amendments to the Berkeley Election Reform Act (BERA) and Change to City Council Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)

RECOMMENDATION

Form a joint subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Officeholder accounts are not expressly regulated by BERA. However, under existing law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements.

Donations to nonprofit organizations from Councilmember's discretionary council budgets (D-13 accounts) are allowed by the authority of City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.).

*Action: Motion to submit report to City Council recommending creation of a subcommittee of members of the Council, FCPC and OGC to (1) prepare an ordinance prohibiting or regulating officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies*

Vote: M/S/C: Blome/Metzger; Ayes: O'Donnell, Ching, Blome, Tsang, Smith; Noes: Metzger, Sheahan; Abstain: none; Absent: McLean.

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Changes to the City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) can be made by a majority vote of the Council.

## BACKGROUND

### ***Officeholder Accounts***

During 2019, the Fair Campaign Practices Commission (FCPC) discussed whether there is a need to amend the law relating to these accounts. These accounts are not expressly regulated by BERA, but under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: "[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws."

In the course of its review of the issue of officeholder accounts, the FCPC considered three options:

- (1) leaving the law on officeholder accounts unchanged;
- (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or
- (3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met several times in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission's proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: "Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016." (Report, page 1.)

At the February 4, 2020 meeting, the Council had a lengthy discussion about their D- 13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder accounts. The City Council referred the issues relating to officeholder and D-13 accounts to its Agenda and Rules Committee for further consideration.

***Proposed Changes to City Council Expenditure and Reimbursement Policies***

At the April 23, 2020 meeting of the Open Government Committee (OGC), a motion to direct staff to develop a proposal recommending Council change City policy to remove councilmember names from donations to nonprofit organizations from D- 13 accounts was approved unanimously.

Donations to nonprofit organizations from the Councilmember’s discretionary council budget (D-13 accounts) puts that elected official in a favorable light with Berkeley citizens at no cost to the Councilmember, an option not available to a challenger for that office. A look at the Consent Calendar of City Council Meeting Agendas will often contain one or more items from one or more Councilmembers making a donation to a nonprofit organization “from the discretionary council budget” of the Councilmember. This line item (“Services and Materials”) from the General Fund was increased from \$50,938 in FY 2017 to \$113,526 in FY 2018 (approximately \$40,000 for the Mayor, the balance evenly divided among the Councilmembers; see Attachment – Council Office Budget Summaries). While not technically a “campaign contribution,” those individuals in the organization as well as individuals favorably disposed to the nonprofit organization receiving the funds would certainly see it favorably. A person running against this incumbent would have to draw on their own resources to match a Councilmember’s contribution from public funds and without the public notice of the contribution the Councilmember receives.

In addition to favoring incumbents, the use of public moneys for contributions to nonprofit organizations from the discretionary council budgets of individual Council members is arguably improper and certainly bad optics. The commissioners of the OGC have no argument with contributions being made to nonprofit organizations from the City of Berkeley, but believe they should be made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley, not from individual Council members. Perhaps a nonprofit fund could be set up from which the donations could be made from recommendations made to one of the Council’s Policy Commissions. This would free funds for other purposes now being directed to nonprofit organizations from individual Councilmember’s D-13 accounts.

**Proposed Action:**

At this stage, the Council has referred both the issues relating to officeholder accounts and those relating to D-13 accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee agreed to work collaboratively with the FCPC and OGC on matters relating to officeholder accounts and D-13 accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Consistent with the prior actions of the Council and the FCPC/OGC, the Commissions recommend the establishment of a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to:

(1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts, and

(2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

The “double green light” process requires that the FCPC adopt an amendment by a two-thirds vote, and that the City Council hold a public hearing and also adopt an amendment by a two-thirds vote. Evidence to date suggests there are differences of perspective regarding this matter between the City Council and the FCPC regarding the D-13 accounts. It would seem to be a rational step to discuss and come to agreement and possibly compromise prior to the “double green light” process.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

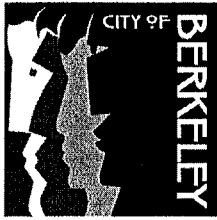
CONTACT PERSON

Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions, (510) 981-6998

Samuel Harvey, Commission Secretary, Fair Campaign Practices and Open Government Commissions, (510) 981-6998

Attachments:

1. FCPC February 4, 2020 report to Council and attachments
2. Mayor and City Council Financial Summary



Fair Campaign Practices Commission

PUBLIC HEARING  
February 4, 2020

To: Honorable Mayor and Members of the City Council  
From: Fair Campaign Practices Commission  
Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission  
Subject: Amendments to the Berkeley Election Reform Act to prohibit  
Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

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

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

**Action:** M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.

**Vote:** Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused).

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING  
February 4, 2020

BACKGROUND

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

**Definition of an Officeholder Account**

Under state law, an "officeholder account" refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for "paying expenses associated with holding public office." Officeholder Account funds cannot be used to pay "campaign expenses." This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, Section 18531.62 (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA's reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley's Public Access Portal.) If, however, a complaint is filed that an Officeholder Account is used for

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campaign contributions or to pay "campaign expenses," BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda's conclusions remain valid and are still controlling guidance.

**Contributions to Officeholder Accounts**

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official's Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

**Expenditures from Officeholder Accounts**

Except for the restriction that Officeholder Account funds cannot be used for "campaign expenses," BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a "campaign expense," would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder's position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent's name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not "campaign expenses," also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.

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Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.<sup>1</sup> Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

**Recommendation**

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. (Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10)

**Part 8 - OFFICEHOLDER ACCOUNTS**

**12.06.810 - Officeholder account prohibited.**

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

**2.12.157 Officeholder Account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

**2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

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<sup>1</sup> Under state law applicable to state elected officials, officeholders may use campaign contributions for “expenses that are associated with holding office.” (Govt. Code, § 89510.) To qualify, expenditures must be “reasonably related to a legislative or governmental purpose.” (*Id.*, § 89512.) “Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.” (*Ibid.*)



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- C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPPC guidelines.

ENVIRONMENTAL SUSTAINABILITY

There are no identified environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

ORDINANCE NO. ##,###-N.S.

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE  
CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

**BMC 2.12.157 Officeholder account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

**BMC 2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate’s ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation


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**GOVERNMENT CODE - GOV**
**TITLE 9. POLITICAL REFORM [81000 - 91014]** (*Title 9 added June 4, 1974, by initiative Proposition 9.*)

**CHAPTER 5. Limitations on Contributions [85100 - 85802]** (*Chapter 5 added June 7, 1988, by initiative Proposition 73.*)

**ARTICLE 3. Contribution Limitations [85300 - 85321]** (*Article 3 added June 7, 1988, by initiative Proposition 73.*)

**85316.** (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

(A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.

(B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.

(C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.

(B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.

(C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(*Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.*)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18531.62. Elected State Officeholder Bank Accounts.**

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

- (1) "Officeholder" means an elected state officer.
- (2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.
- (3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).
- (4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder

account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office."

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees:

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of

organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision

(e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

(A) Paying outstanding officeholder expenses.

(B) Repaying contributions to contributors to the officeholder account.

(C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.



**HISTORY**

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.

2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).



Office of the  
City Attorney

**DATE:** December 28, 1999

**TO:** BARBARA GILBERT,  
Aide to Mayor Shirley Dean

**FROM:** MANUELA ALBUQUERQUE, City Attorney *MA*  
By: CAMILLE COUREY, Deputy City Attorney

**SUBJECT:** APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Rayoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.<sup>1</sup> For similar reasons, the BERA does not

<sup>1</sup> However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert  
Re: Application of Berkeley Election Reform Act To Officeholder Accounts  
December 28, 1999  
Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.<sup>2</sup> Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission  
Sherry Kelly, City Clerk

City Attorney Opinions Index: H.E.I. and H.L.G.

CCM

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<sup>2</sup> Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

## CITY OF BERKELEY

DATE: December 9, 1991

Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso,  Secretary & Staff CounselSUBJECT: APPLICABILITY OF BERA'S CONTRIBUTION LIMIT TO FUNDS RAISED FOR OFFICEHOLDER EXPENSESBACKGROUND AND ISSUE

I received the attached letter from Richard N. Lerner, treasurer of Friends of Ioni Hancock Committee ("Committee"), regarding the applicability of BERA's (Berkeley Election Reform Act) \$250 contribution limit to funds raised to cover officeholder expenses. The Committee would like to raise money to cover activities by the Mayor for which the City has not allocated funds, for example, distribution of a newsletter and international travel to visit Berkeley Sister Cities.

Thus, the issue presented to the Commission is as follows: Is BERA's \$250 contribution limit applicable to funds raised for officeholder expenses?

CONCLUSION

No. The BERA's contribution limitation is only applicable to money raised "in aid of or in opposition to the nomination or election" of a candidate. Since the Committee intends to raise these funds for activities unrelated to the nomination or election of the Mayor, they are not subject to the BERA's \$250 contribution limitation. However, such funds must be reported as contributions under the State Political Reform Act and their expenditure itemized on the disclosure forms.

ANALYSIS

The BERA prohibits candidates for elective office from soliciting or accepting a contribution of more than \$250 from any one contributor. (BERA section 2.12.415.) Thus, funds which fall within BERA's definition of a contribution, are subject to the \$250 limit. In order to determine whether funds raised for officeholder expenses are subject to the contribution limitation, BERA's definition of contribution must be reviewed.

The BERA defines contribution, in part, as follows:

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or

FCPC COMMISSIONERS

December 9, 1991

Page 2

in opposition to the nomination or election of one or more candidates . . . . (Emphasis added.)

Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election for elective office, such funds do not fall within the BERA's definition and are therefore not subject to its \$250 limitation.

However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.<sup>1/</sup> (Government Code section 82015.) Additionally, since the court's ruling in SEIU v. FPPC invalidated the state's \$1,000 contribution limit, funds raised for officeholder expenses are not subject to any limitation.

As a final precaution, the Committee should be advised that the FPPC has issued regulations concerning officeholder expenses and it should review them with respect to their interaction with the BERA.

Attachment

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<sup>1/</sup>I spoke with the FPPC's legal staff and confirmed that funds raised for officeholder expenses must be reported as contributions on the campaign disclosure forms.

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT**

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **January 30, 2020**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

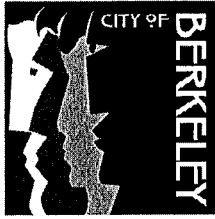
Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

**Published:** January 24, 2020 – The Berkeley Voice  
Pursuant to Berkeley Municipal Code Section 2.12.051

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 30, 2020.

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



[First Last name]  
Councilmember District [District No.]

## **SUPPLEMENTAL REVISED AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** February 4, 2020

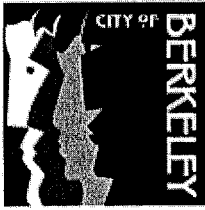
**Item Number:** 2

**Item Description:** Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

**Submitted by:** Councilmember Hahn

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.



**SOPHIE HAHN**

Berkeley City Council, District 5  
2180 Milvia Street, 5th Floor  
Berkeley, CA 94704  
(510) 981-7150  
shahn@cityofberkeley.info

**ACTION CALENDAR**

February 4, 2020

To: Honorable Mayor and Members of the City Council  
From: Vice Mayor Sophie Hahn  
Subject: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

**RECOMMENDATION**

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.<sup>1</sup> They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses Officeholder Accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, etc. Cities can place limits on Officeholder Accounts, as Oakland has done.<sup>2</sup> Officeholder Accounts must be registered as official "Committees" and adhere to strict public reporting requirements, like campaign accounts. They provide full transparency to the public about sources and uses of funds.

The FCPC bases its recommendation to prohibit Officeholder Accounts on arguments about "equity" and potential "corruption" in elections. The report refers repeatedly to "challengers" and "incumbents," suggesting that Officeholder Accounts are vehicles for unfairness in the election context.

I believe that the FCPC's recommendations reflect a misunderstanding of the purpose and uses of Officeholder Accounts, equating them with campaign accounts and suggesting that they create an imbalance between community members who apparently have already decided to run against an incumbent (so-called "challengers") and elected officials who are presumed to be

<sup>1</sup> <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

<sup>2</sup> <http://www2.oaklandnet.com/w/OAK052051>



always running for office. The recommendations do not take into account some important framing: the question of what funds are otherwise available to pay for Officeholder-type expenses for Officeholders or members of the public. Contrary to the conclusions of the FCPC, I believe Officeholder accounts are an important vehicle to redress a significant disadvantage for elected officials, whose ability to exercise free speech in the community and participate in conferences and events related to their profession is constrained by virtue of holding public office, as compared to community members, whose speech rights are unrestricted in any manner whatsoever, and who can raise money to use for whatever purposes they desire.

Outlawing Officeholder Accounts is also posited as a means to create equity between more and less wealthy Officeholders, on the theory that less affluent Officeholders will have less access to fundraising for Officeholder Accounts than more affluent Officeholders. Because there are no prohibition on using personal funds for many of the purposes for which Officeholder Account funds can be used, prohibiting Officeholder Accounts I believe has the opposite effect; it leaves more affluent Officeholders with the ability to pay for Officeholder expenses from personal funds, without providing an avenue for less affluent Officeholders, who may not have available personal funds, to raise money from their supporters to pay for such Officeholder expenses.

The question of whether Officeholder Accounts should be allowed in Berkeley plays out in the context of a number of rules and realities that are important to framing any analysis.

First, by State Law, elected officials are prohibited from using public funds for a variety of communications that many constituents nevertheless expect. For example, an elected official may not use public funds to send a mailing announcing municipal information to constituents, "such as a newsletter or brochure, [ ] delivered, by any means [ ] to a person's residence, place of employment or business, or post office box."<sup>3</sup> Nor may an elected official mail an item using public funds that features a reference to the elected official affiliated with their public position.<sup>4</sup> Note that Electronic newsletters are not covered by these rules, and can and do include all of these features, even if the newsletter service is paid for by the public entity. That said, while technically not required, many elected officials prefer to use email newsletter distribution services (Constant Contact, MailChimp, Nationbuilder, etc.) paid for with personal (or "Officeholder") funds, to operate in the spirit of the original rules against using public funds for communications that include a photo of, or references to, the elected official.

Without the ability to raise funds for an Officeholder Account, for an elected official to send a paper newsletter to constituents or to use an email newsletter service that is not paid for with public funds, they must use personal funds. A printed newsletter mailed to 5-6,000 households (a typical number of households in a Berkeley City Council District) can easily cost \$5,000+, and an electronic mail service subscription typically costs \$10 (for the most basic service) to \$45 per month, a cost of \$120.00 to over \$500 per year - in personal funds.

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<sup>3</sup> <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

<sup>4</sup> <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

Second, Berkeley City Councilmembers and the Mayor of Berkeley are not paid enough for there to be any reasonable expectation that personal funds should be used for these types of expenses.<sup>5</sup> For many Councilmembers and/or the Mayor, work hours are full time - or more - and there is no other source of income.

Finally, and most importantly, local elected officials are restricted from accepting money or gifts. An elected official cannot under any circumstances raise money to pay for Officeholder expenses such as printed communications, email newsletter services, travel and admission to industry conferences for which the elected official is not an official delegate (e.g., conferences on City Planning, Green Cities, Municipal Finance, etc.), and other expenses related to holding office that are not covered by public funds. Again, without the possibility of an Officeholder Account, an elected official generally must use personal funds for these expenses, allowing more affluent elected officials to participate while placing a hardship or in some cases a prohibition on the ability of less affluent elected officials to undertake these Officeholder-type activities - which support expected communications with constituents and participation in industry activities that improve the elected official's effectiveness.

The elected official's inability to raise funds from others must be contrasted with the ability of a community member - a potential "challenger" who has not yet declared themselves to be an actual candidate - or perhaps a neighborhood association, business or corporation (Chevron, for example) - to engage in similar activities. Nothing restricts any community member or organization from using their own funds - or funds obtained from anyone - a wealthy friend, a corporation, a local business, a community organization or their neighbors - for any purpose whatsoever.

Someone who doesn't like the job an elected official is doing could raise money from family or connections anywhere in the community - or the world - and mail a letter to every person in the District or City criticizing the elected official, or buy up every billboard or banner ad on Facebook or Berkeleyside to broadcast their point of view. By contrast, the elected official, without access to an Officeholder Account, could only use personal funds to "speak" with their own printed letter, billboard or advertisement. Community members (including future "challengers") can also attend any and all conferences they want, engage in travel to visit interesting cities and projects that might inform their thoughts on how a city should be run, and pay for those things with money raised from friends, colleagues, businesses, corporations, foreign governments - *anyone*. They are private citizens with full first amendment rights and have no limitations, no reporting requirements, no requirements of transparency or accountability whatsoever.

The imbalance is significant. Outside of the campaign setting, where all declared candidates can raise funds and must abide by the same rules of spending and communications, *elected officials cannot raise money for any expenses whatsoever, from any source, while community*

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<sup>5</sup> Councilmembers receive annual compensation of approximately \$36,000, while the Mayor receives annual compensation of approximately \$55,000.<sup>5</sup>

*members, including organizations and private companies, can raise as much money as they want from any sources, and use that money for anything they choose.*

Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system, which can limit their ability to “speak” and engage in other activities members of the public are able to undertake without restriction. Officeholder Accounts restore some flexibility by allowing elected officials to raise money for expenses related to holding office, so long as the sources and uses of those funds is made transparent.

By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of funds beyond the State’s restrictions, to ensure funds are not used for things like family members’ travel, as is currently allowed by the State. Oakland has taken this approach, and has a set of Officeholder Account regulations that provide a good starting point for Berkeley to consider.<sup>6</sup>

I respectfully ask for a vote to send the question of potential allowance for, and regulation of, Officeholder Accounts to the Agenda and Rules Committee for further consideration.

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

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<sup>6</sup> <http://www2.oaklandnet.com/w/OAK052051>

**MAYOR AND CITY COUNCIL FINANCIAL SUMMARY**

|                         | <b>FY 2015<br/>Actual</b> | <b>FY 2016<br/>Actual</b> | <b>FY 2017<br/>Adopted</b> | <b>FY 2018<br/>Proposed</b> | <b>FY 2019<br/>Proposed</b> |
|-------------------------|---------------------------|---------------------------|----------------------------|-----------------------------|-----------------------------|
| <b>EXPENDITURES</b>     |                           |                           |                            |                             |                             |
| <b>By Type:</b>         |                           |                           |                            |                             |                             |
| Salaries and Benefits   | 1,660,661                 | 1,760,619                 | 1,723,617                  | 1,833,734                   | 1,880,031                   |
| Services and Materials  | 36,942                    | 43,407                    | 113,526                    | 113,526                     | 113,526                     |
| Capital Outlay          | 1,953                     | 7,674                     |                            |                             |                             |
| Internal Services       | 89,100                    | 81,181                    | 81,181                     | 81,181                      | 81,181                      |
| Indirect Cost Transfer  |                           |                           |                            |                             |                             |
|                         | <u>1,788,656</u>          | <u>1,892,881</u>          | <u>1,918,324</u>           | <u>2,028,441</u>            | <u>2,074,738</u>            |
| <b>By Division:</b>     |                           |                           |                            |                             |                             |
| Mayor's Office          | 515,095                   | 558,137                   | 584,877                    | 554,389                     | 566,917                     |
| Council Offices         | 1,273,561                 | 1,334,744                 | 1,333,447                  | 1,474,052                   | 1,507,821                   |
| Exiting Officials       |                           |                           |                            |                             |                             |
|                         | <u>1,788,656</u>          | <u>1,892,881</u>          | <u>1,918,324</u>           | <u>2,028,441</u>            | <u>2,074,738</u>            |
| <b>By Fund:</b>         |                           |                           |                            |                             |                             |
| General Fund            | 1,788,656                 | 1,892,881                 | 1,918,324                  | 2,028,441                   | 2,074,738                   |
|                         | <u>1,788,656</u>          | <u>1,892,881</u>          | <u>1,918,324</u>           | <u>2,028,441</u>            | <u>2,074,738</u>            |
| <b>General Fund FTE</b> | 12.00                     | 12.00                     | 12.00                      | 12.00                       | 12.00                       |
| <b>Total FTE</b>        | 12.00                     | 12.00                     | 12.00                      | 12.00                       | 12.00                       |



02a.37

Lori Droste  
Berkeley Vice Mayor

**ACTION CALENDAR**  
May 25, 2021

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

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

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

**RECOMMENDATION**

1. Refer to the City Manager and City Attorney to bring back changes to the enabling legislation to reorganize existing commissions as proposed below in a phased approach.

*Phase 1:* Prioritize merging the Homeless Commission/Homeless Services Panel of Experts and Housing Advisory Commission/Measure O Bond Oversight Committee first, and request that the City Manager bring back changes to the enabling legislation to implement these consolidated commissions.

*Phase 2:* All other Commissions as proposed below.  
As staff is able to make recommendations on consolidation, they can bring those recommendations forward one by one.

| New Commission Name                                         | Former Commissions to be Reorganized                                  |
|-------------------------------------------------------------|-----------------------------------------------------------------------|
| Commission on Climate and the Environment                   | Zero Waste, Energy, Community Environmental Advisory, and Animal Care |
| Parks, Recreation, Waterfront (special Marina subcommittee) | Children, Youth, and Recreation and Parks and Waterfront              |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                           |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| Peace, Justice, and Human Welfare <sup>1</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                       | Peace and Justice and Human Welfare, Community Action Commissions         |
| Public Health Commission & Sugar Sweetened Beverage Panel of Experts                                                                                                                                                                                                                                                                                                                                                                                                                 | Community Health Commission and Sugar Sweetened Beverage Panel of Experts |
| Housing Advisory Commission                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Measure O and Housing Advisory Commission                                 |
| Homeless Services Panel of Experts                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Homeless Commission and Measure P Homeless Services Panel of Experts      |
| Public Works and Transportation                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Public Works and Transportation                                           |
| Planning                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Planning and Cannabis                                                     |
| <p><b>All other commissions will maintain their current structure:</b> Aging, Library Board of Trustees, Civic Arts, Disability, Commission on the Status of Women, Design Review Committee, Disaster and Fire Safety, BIDs, Fair Campaign Practices and Open Government, Redistricting, Landmarks Preservation, Labor, Loan Adjustments Board, Personnel, Planning, Police Review/Accountability, Reimagining Public Safety, Mental Health, Zoning Adjustments Board, and Youth</p> |                                                                           |

2. Refer to staff to develop recommendations on the transition to new consolidated commissions and the effective date of the changes.

3. Consider establishing 18 members on the new Climate and Environment Commission and establishing specific subcommittees focused on the policy areas of the merged commissions.

4. The Peace, Justice and Human Welfare Commission will be composed of only Mayor and Council appointees.

5. Refer to City Manager and Commissions the following additional considerations:

- Federal, state or other external mandates that might be impacted, and determine how to handle.
- Whether charters of to-be-merged Commissions were adopted by City Council, through measures or initiatives passed by voters, or are by Charter, and by what means they might be merged/adjusted
- What elements of each Commission to keep, update, or retire, as well as relevant topics/issues not currently covered that might be added to a more comprehensive and/or relevant merged Commission’s charter.

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<sup>1</sup> Members will be appointed by Council and membership should adhere to Government Code Section 12736(e); 12750(a)(2) and 12751.

- Whether the merged Commission might include 9, or a greater number of members.
- The possibility of requiring specific qualifications for appointment to the merged Commission.
- The possibility of recommended or required Standing Committees of the Merged Commission
- Volunteer workload and capacity given scope of Commission’s charter

| Policy Committee Oversight <sup>2</sup>                                                                                                                                            | Commissions                                                                                                                                                                                                                                                                                                                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Agenda and Rules                                                                                                                                                                   | <ol style="list-style-type: none"> <li>1. Fair Campaign Practices/Open Government Commission</li> <li>2. Personnel Board</li> </ol>                                                                                                                                                                                                                |
| Budget and Finance                                                                                                                                                                 | (Any legislation that requires funding)                                                                                                                                                                                                                                                                                                            |
| Public Safety                                                                                                                                                                      | <ol style="list-style-type: none"> <li>1. Disaster and Fire Safety Commission</li> <li>2. Police Accountability Board/Police Review Commission</li> <li>3. Reimagining Public Safety Task Force</li> </ol>                                                                                                                                         |
| Facilities, Infrastructure, Transportation and the Environment                                                                                                                     | <ol style="list-style-type: none"> <li>1. Commission on the Environment</li> <li>2. Parks, Recreation and Waterfront with Marina subcommittee</li> <li>3. Public Works and Transportation</li> </ol>                                                                                                                                               |
| Land Use and Economic Development                                                                                                                                                  | <ol style="list-style-type: none"> <li>1. Measure O Housing Commission</li> <li>2. Planning Commission</li> <li>3. Labor</li> <li>4. Civic Arts Commission</li> </ol>                                                                                                                                                                              |
| Health, Equity, Life Enrichment, and Community                                                                                                                                     | <ol style="list-style-type: none"> <li>1. Peace, Justice, and Civil Rights</li> <li>2. Health and Sugar Sweetened Beverage Panel of Experts</li> <li>3. Homeless Services Panel of Experts</li> <li>4. Mental Health Commission (state/federal mandate)</li> <li>5. Commission on the Status of Women</li> <li>6. Disability Commission</li> </ol> |
| <b>Other Commissions:</b> Zoning Adjustments Board (DRC), Landmarks Preservation, Board of Library Trustees, BIDs, Independent Redistricting Commission, Loan Administration Board |                                                                                                                                                                                                                                                                                                                                                    |

<sup>2</sup> Primary policy committee oversight but legislation may be referred to multiple policy committees.

**POLICY COMMITTEE RECOMMENDATION**

On April 5, 2021, the Agenda and Rules Committee made a qualified positive recommendation to City Council to:

1. Refer to the City Manager and City Attorney to bring back changes to the enabling legislation to reorganize existing commissions as proposed below in a phased approach.

Phase 1: Prioritize merging the Homeless Commission/Homeless Services Panel of Experts and Housing Advisory Commission/Measure O Bond Oversight Committee first, and request that the City Manager bring back changes to the enabling legislation to implement these consolidated commissions.

Phase 2: All other Commissions as proposed below.

As staff is able to make recommendations on consolidation, they can bring those recommendations forward one by one.

| <b>New Commission Name (suggested)</b>                               | <b>Former Commissions to be Reorganized</b>                                    |
|----------------------------------------------------------------------|--------------------------------------------------------------------------------|
| Commission on Climate and the Environment                            | Zero Waste, Energy, Community Environmental Advisory, and Animal Care          |
| Parks, Recreation, Waterfront (special Marina subcommittee)          | Children, Youth, and Recreation and Parks and Waterfront                       |
| Peace, Justice, and Human Welfare                                    | Peace and Justice Commission and Human Welfare and Community Action Commission |
| Public Health Commission & Sugar Sweetened Beverage Panel of Experts | Community Health Commission and Sugar Sweetened Beverage Panel of Experts      |
| Housing Advisory Commission                                          | Measure O and Housing Advisory Commission                                      |
| Homeless Services Panel of Experts                                   | Homeless Commission and Measure P Homeless Services Panel of Experts           |
| Public Works and Transportation                                      | Public Works and Transportation                                                |
| Planning                                                             | Planning and Cannabis                                                          |



**All other commissions will maintain their current structure:** Aging, Library Board of Trustees, Civic Arts, Disability, Commission on the Status of Women, Design Review Committee, Disaster and Fire Safety, BIDs, Fair Campaign Practices and Open Government, Redistricting, Landmarks Preservation, Labor, Loan Adjustments Board, Personnel, Planning, Police Review/Accountability, Reimagining Public Safety, Mental Health, Zoning Adjustments Board, and Youth

2. Refer to the Commissions impacted a process to determine the charge/responsibilities of the newly merged commissions, and bring Commission input to the appropriate Policy Committees (as proposed by Vice-Mayor Droste in 4/5/21 submittal) for further recommendations to the City Manager on revised charge/responsibilities of merged commissions.

3. Refer to staff to develop recommendations on the transition to new consolidated commissions and the effective date of the changes.

4. Consider establishing 18 members on the new Climate and Environment Commission and establishing specific subcommittees focused on the policy areas of the merged commissions.

5. The Peace, Justice and Human Welfare Commission will be comprised of only Mayor and Council appointees.

6. Refer Councilmember Hahn questions to City Manager and Commissions: “Commissions to Combine/Merge - Suggested Considerations”

- Federal, state or other external mandates that might be impacted, and determine how to handle
- Whether charters of to-be-merged Commissions were adopted by City Council, through measures or initiatives passed by voters, or are by Charter, and by what means they might be merged/adjusted
- What elements of each Commission to keep, update, or retire, as well as relevant topics/issues not currently covered that might be added to a more comprehensive and/or relevant merged Commission’s charter.
- Whether the merged Commission might include 9, or a greater number of members.
- The possibility of requiring specific qualifications for appointment to the merged Commission.
- The possibility of recommended or required Standing Committees of the Merged Commission
- Volunteer workload and capacity given scope of Commission’s charter

## **PROBLEM/SUMMARY STATEMENT**

Commissions provide an important mechanism for residents to shape public policy and provide input on City business. However, the City of Berkeley maintains far more

commissions than other cities of similar size, with a significant investment of City resources to staff all 37 commissions. Some commission secretaries report spending upwards of 20+ hours per week on commission business, which takes valuable time away from addressing other pressing City priorities. The local public health emergency created by the global COVID-19 pandemic has required City staff to shift to new roles and maintain an Emergency Operations Center since January 2020; recovery from the pandemic will continue to demand the full attention of our City staff for the foreseeable future. Given the uncertainties that our City faces in recovering from the COVID-19 pandemic and the demands that this recovery places on our City staff, it is an appropriate time to consider how best to consolidate our commissions in a manner that helps the City to achieve its core mission.

### **REITERATION OF PRINCIPLES**

Commissions are a fundamental part of the City's policymaking process. Members of boards and commissions provide an invaluable service to our City. They advise the City Council on a wide variety of subjects by making recommendations on important policy matters. Without the assistance of the various boards and commissions, the City Council could give many complex and significant matters only a perfunctory review. The detailed studies and considered advice of boards and commissions are often catalysts for innovative programs and improved services. Serving on a board or commission can be a rewarding experience for community service-minded residents. It is an excellent way to participate in the functioning of local government and to make a personal contribution to the improvement of our community. Making local government effective and responsive is everybody's responsibility.

- The Public Works Commission, for example, develops the City's five year paving plan which they then present to City Council for approval. Through extensive community outreach and research, the Commission identifies the streets most in need of repaving.
- With the passage of Measure D in 2014, a Panel of Experts on Sugar-Sweetened Beverages has guided the City's spending of over \$5 million in revenue generated from the Measure. Those dollars have bolstered local public campaigns and education initiatives.

These are merely two examples of the powerful role that Commissions play in City policymaking.

### **CURRENT SITUATION AND ITS EFFECTS**

#### *Current Commission Structure*

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

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

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

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

### *The Importance of Commissions*

Commissions serve a vital role in the City of Berkeley's rich process of resident engagement. An analysis of agendas over the past several years shows that the commissions have created policy that have benefited the community in meaningful and important ways. In 2020, 14 of the 16 commission items submitted to Council passed.

From 2016-2020, an average of 34 items were submitted by commissions to Council for consideration.

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

*Commission Structures in Neighboring Jurisdictions*

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

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

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

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

*Staffing and Resources Supporting Berkeley's Current Commission Structure*

| Commission Name                             | Overseeing Department (Total Commissions in Department) |
|---------------------------------------------|---------------------------------------------------------|
| Animal Care Commission                      | City Manager (8)                                        |
| Civic Arts Commission                       | City Manager (8)                                        |
| Commission on the Status of Women           | City Manager (8)                                        |
| Elmwood BID Advisory Board                  | City Manager (8)                                        |
| Loan Administration Board                   | City Manager (8)                                        |
| Peace and Justice Commission                | City Manager (8)                                        |
| Solano Ave BID Advisory Board               | City Manager (8)                                        |
| Cannabis Commission                         | Planning (7)                                            |
| Community Environmental Advisory Commission | Planning (7)                                            |
| Design Review Committee                     | Planning (7)                                            |
| Energy Commission                           | Planning (7)                                            |
| Landmarks Preservation Commission           | Planning (7)                                            |
| Planning Commission                         | Planning (7)                                            |
| Zoning Adjustments Board                    | Planning (7)                                            |
| Children, Youth, and Recreation Commission  | Parks (3)                                               |
| Parks and Waterfront Commission             | Parks (3)                                               |

|                                                               |                                                            |
|---------------------------------------------------------------|------------------------------------------------------------|
| Youth Commission                                              | Parks (3)                                                  |
| Commission on Aging                                           | Health, Housing, and Community Services (HHCS)<br>(10)     |
| Commission on Labor                                           | HHCS (10)                                                  |
| Community Health Commission                                   | HHCS (10)                                                  |
| Homeless Commission                                           | HHCS (10)                                                  |
| Homeless Services Panel of Experts                            | HHCS(10)                                                   |
| Housing Advisory Commission                                   | HHCS (10)                                                  |
| Human Welfare & Community Action Commission                   | HHCS (10)                                                  |
| Measure O Bond Oversight Committee                            | HHCS (10)                                                  |
| Mental Health Commission                                      | HHCS (10)                                                  |
| Sugar-Sweetened Beverage Product Panel of Experts             | HHCS (10)                                                  |
| Disaster and Fire Safety Commission                           | Fire (1)                                                   |
| Commission on Disability                                      | Public Works (4)                                           |
| Public Works Commission                                       | Public Works (4)                                           |
| Transportation Commission                                     | Public Works (4)                                           |
| Zero Waste Commission                                         | Public Works (4)                                           |
| Fair Campaign Practices Commission/Open Government Commission | City Attorney (1)                                          |
| Personnel Board                                               | Human Resources (1)                                        |
| Police Review Commission/Police Accountability Board          | Police Review Commission/Police Accountability Board Staff |
| Reimagining Public Safety Task Force                          | City Manager *(8) and BPD (2)                              |

|                           |             |
|---------------------------|-------------|
| Board of Library Trustees | Library (1) |
|---------------------------|-------------|

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

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

*Policy Committee Structure Expands Opportunities for Public Input*

With the recent addition of policy committees, proposed legislation is now vetted by councilmembers in these forums. Each policy committee is focused on a particular content area aligned with the City of Berkeley’s strategic plan and is staffed and an advisory policy body to certain city departments. Members of the public are able to provide input at these committees as well. The policy committees currently have the following department alignment:

**Department and Policy Committee alignment**

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

*Staffing Costs*

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

| Commission                        | Step 5 Rate of Pay | Reported Hours a Month | Total <b>Direct</b> Cost of Commission <b>per Month</b> |
|-----------------------------------|--------------------|------------------------|---------------------------------------------------------|
| Animal Care                       | \$70.90            | 8                      | \$567.20                                                |
| Landmarks Preservation Commission | \$57.96            | 80                     | \$4,636.80                                              |
| Design Review Commission          | \$52.76            | 60                     | \$3,165.60                                              |
| Peace and Justice                 | \$60.82            | 32                     | \$1,946.24                                              |

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

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

#### *Productivity Losses and Administrative Burden*

Current productivity losses are stark because of the sheer amount of hours of staffing time dedicated to commissions. As an example, in 2019 one of the City of Berkeley's main homeless outreach workers staffed a commission within the City Manager's department. She spent approximately 32 hours a month working directly on commission work. While this is not a commentary on a particular commission, this work directly impacted her ability to conduct homeless outreach.

#### **RATIONALE FOR RECOMMENDATION**

At a time when the City needs to demonstrate efficiency and fiscal restraint, the current commission structure is costly and duplicative. At the same time, civic engagement and commission work absolutely deserve an important role in Berkeley. Consequently, this legislation retains commissions but centers on overall community benefit, staff



productivity, and associated costs. This is imperative to address, especially in light of COVID-19 and community demands for reinvestment in important social services.

**FISCAL IMPACTS**

Significant savings associated with reduced staffing.

**CONTACT**

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**CONSENT CALENDAR**

May 25, 2021

To: Honorable Members of the City Council  
From: Vice Mayor Sophie Hahn (Author)  
Subject: COVID Economic Recovery - Expanding Local Purchasing Preferences to Rebuild the City's Local Economy and Tax Base

**RECOMMENDATION**

1. To support urgently needed economic recovery in the wake of the COVID-19 crisis and direct more City of Berkeley dollars to Berkeley businesses, adopt a Resolution to expand Berkeley's existing local vendor preference program by increasing the value of eligible *contracts for goods, equipment, and non-professional services* to \$250,000.
2. Direct the City Manager to develop and implement a local vendor preference program for *contracts for professional services* of up to \$250,000 in value (or up to a higher amount), to be effective no later than September 1, 2021 to further support economic recovery in the City of Berkeley.
3. Refer to the City Manager to reach-out to Berkeley businesses to publicize, offer training and provide other meaningful access to the City's expanded preferences programs including specific outreach to businesses owned by people of color, people with disabilities, women, immigrants, and other traditionally marginalized business communities to ensure equitable access to contracting opportunities with the City of Berkeley.
4. Refer to the City Manager to quickly incorporate, when available, the results of the Mason Tillman Associates study reviewing and identifying disparities in the awarding of contracts affecting local, small, emerging enterprises and other enterprises with barriers to access in City construction, architecture, engineering, professional services, goods, and other services contracts.<sup>1</sup>
5. Refer to the City Manager to track and issue periodic reports to Council (or include in existing reports such as the annual Economic Dashboard), and/or to track on an online dashboard, the City's success expanding contracting for goods, equipment, and services with local vendors.

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<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/05\\_May/Documents/2019-05-28\\_Item\\_28\\_Budget\\_Referral\\_Berkeley\\_Inclusion.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/05_May/Documents/2019-05-28_Item_28_Budget_Referral_Berkeley_Inclusion.aspx)

## **SUMMARY**

To support recovery from the COVID-related economic downturn and address the disadvantages Berkeley businesses face in the Bay Area's public contracting marketplace, Berkeley must take immediate action to expand its local preferences program for goods, equipment and non-professional services and implement a program of preferences for professional services.

Small local businesses are the heart and soul of Berkeley. They offer high quality goods and services that reflect our eclectic tastes and are infused with the care and expression of their owners. Berkeley's unique and distinctive small enterprises link neighbors in economic and social relationships and bind us together as a community.

Local enterprises are also key to Berkeley's economic health. Compared to national chains, local businesses invest a larger share of their revenues back into the local economy.<sup>2</sup> Locally owned businesses hire local workers and often provide better wages and benefits than national chains. Statewide, small businesses employ nearly half of the private workforce and account for nearly two-thirds of new jobs.<sup>3</sup> Local businesses also give life to our community, impacting not only the reality but also our perception of economic well-being.

The economic downturn caused by the COVID-19 health emergency has profoundly impacted Berkeley's local business community.<sup>4</sup> In the weeks and months following the initial outbreak, many small businesses experienced a severe drop in revenue, putting them at risk of shutting down. A year later, small businesses in some sectors have yet to recover, as necessary health and safety restrictions remain in place.<sup>5</sup> In many cases, women-owned, minority-owned, and other small businesses owned and controlled by economically and socially disadvantaged individuals have been disproportionately impacted.<sup>6</sup>

Expanding local vendor preferences will increase local business participation in meeting the City's needs for goods, equipment, and services and serve as an important local stimulus as our economy recovers from the current economic downturn. Supporting Berkeley's small businesses has always been an important means to strengthen our local economy, employ local workers, and broaden Berkeley's tax base. Particularly

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<sup>2</sup> <https://ilsr.org/why-support-locally-owned-businesses/>

<sup>3</sup> <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/06/04142955/2020-Small-Business-Economic-Profile-CA.pdf>; <https://www.dir.ca.gov/smallbusiness/index.htm>

<sup>4</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/03\\_Mar/Documents/2021-03-09\\_Item\\_26\\_Berkeley\\_Economic\\_Dashboards\\_Update.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-09_Item_26_Berkeley_Economic_Dashboards_Update.aspx)

<sup>5</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/03\\_Mar/Documents/2021-03-09\\_Item\\_26\\_Berkeley\\_Economic\\_Dashboards\\_Update.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-09_Item_26_Berkeley_Economic_Dashboards_Update.aspx)

<sup>6</sup>

[https://www.newyorkfed.org/medialibrary/media/smallbusiness/DoubleJeopardy\\_COVID19andBlackOwnedBusinesses](https://www.newyorkfed.org/medialibrary/media/smallbusiness/DoubleJeopardy_COVID19andBlackOwnedBusinesses); <https://www.uschamber.com/co/start/strategy/covid-19-impact-on-women-owned-businesses>;

now, as we seek to rebuild our local economy in the wake of the COVID-19 downturn, we must use every tool at our disposal, especially when we are spending public dollars.

A report by the consulting firm Civic Economics found that local businesses reinvest a higher percentage of their profits into the local economy, recirculating 45% of their revenue, compared to 17% recirculated locally by chain stores.<sup>7</sup> This is because local businesses hire local graphic designers to design their signs and materials, local contractors to build-out their work or retail spaces, employ local accountants, attorneys and tax preparers, and more. Local vendors thus have a significant economic multiplier effect, re-circulating dollars that boost local economic activity, employ more local workers and professional services firms, and generate multiple layers of economic activity -- and tax revenue -- for the City.

Since 1983, the City of Berkeley has extended a local vendor preference program for certain goods and services. Today, the City provides a 5% preference on bids to local business enterprises for supplies, equipment, and nonprofessional services from \$100 to \$25,000.<sup>8</sup>

Neighboring jurisdictions including Oakland, San Francisco, San Jose, and Marin County also extend preferences to local businesses, including for professional services and higher value contracts. They recognize that when public dollars are spent, local businesses -- and their local economies -- will benefit. Berkeley's small businesses, particularly professional services such as engineering, architecture, environmental, legal, surveying, auditing, and other specialized and technical services, are thus at a competitive disadvantage seeking contracts in the region, while enjoying no equivalent preferences in their own City -- potentially resulting in a double-disadvantage.

Some Bay Area cities have enacted complex programs to advance opportunities for contracting with local businesses. Other jurisdictions, such as Marin County, have adopted simpler policies to promote similar goals. With respect to contracts for goods, equipment, and non-professional services, which are already subject to a preference program in Berkeley, this item raises the dollar amount of contracts eligible for the preference from \$25,000 to \$250,000.

With respect to contracts for professional services, this item refers to the City Manager to develop and implement a similar local vendor preference based on models other cities and counties have implemented, adapting whatever approach they feel is most appropriate for Berkeley. In addition, the City Manager is encouraged to incorporate forthcoming results of the Mason Tillman Associates study reviewing and identifying disparities in the awarding of contracts affecting local, small, emerging enterprises and

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<http://nebula.wsimg.com/31f003d5633c543438ef0a5ca8e8289f?AccessKeyId=8E410A17553441C49302&disposition=0&alloworigin=1>

<sup>8</sup> A local business is defined as "a business firm with fixed offices or distribution points located within the City of Berkeley boundaries and listed in the Permits and License Tax paid file, with a Berkeley business street address."

other enterprises with barriers to access in City construction, architecture, engineering, professional services, goods, and other services contracts.<sup>9</sup> Indeed, a further expansion of Berkeley's preferences policies beyond the actions required by this item will likely be warranted to account for disparities that may be found.

In the meantime, to support Berkeley's urgent need to stimulate economic recovery, this item immediately raises the value of contracts for goods eligible for the City's existing local preferences and requires the City to extend local preferences to contracts for professional services no later than September 2021.

## **BACKGROUND**

### **Economic Emergency for Berkeley's Local Businesses**

The COVID-19 health emergency has created unprecedented challenges for Berkeley's small, local enterprises.<sup>10</sup> In the months following the initial outbreak, and subsequent Shelter in Place orders and other restrictions, many local businesses saw a dramatic drop in gross receipts as compared to the previous year.<sup>11</sup> A survey found that more than two fifths of Berkeley businesses expected greater than 80% revenue loss over the three months from when the pandemic began impacting the community.<sup>12</sup> A number of small businesses, lacking the financial cushion to absorb such a steep loss of revenue, were forced to close, reduce services, or lay off workers. Among Berkeley's largest employers, more than 3,000 people have been laid off, and countless more from smaller companies have lost their jobs.<sup>13</sup> Some owners and organizations face the possibility that the enterprises into which they have poured their lives may never return.

In March 2020, the Berkeley City Council acted quickly to meet the crisis, creating a tax-exempt relief fund to provide gap resources to small businesses, arts organizations, and others significantly impacted by the COVID-19 emergency.<sup>14</sup> Recently, resources have also been made available to support Berkeley's struggling childcare and early childhood education sectors.<sup>15</sup> Thanks to the generosity of the community and \$3 million approved

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<sup>9</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/05\\_May/Documents/2019-05-28\\_Item\\_28\\_Budget\\_Referral\\_Berkeley\\_Inclusion.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/05_May/Documents/2019-05-28_Item_28_Budget_Referral_Berkeley_Inclusion.aspx)

<sup>10</sup> <https://www.cityofberkeley.info/covid19-business/>

<sup>11</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/03\\_Mar/Documents/2020-03-17\\_Special\\_Item\\_03\\_Berkeley\\_COVID-19\\_Relief\\_Fund\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/03_Mar/Documents/2020-03-17_Special_Item_03_Berkeley_COVID-19_Relief_Fund_pdf.aspx)

<sup>12</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/03\\_Mar/Documents/2021-03-09\\_Item\\_26\\_Berkeley\\_Economic\\_Dashboards\\_Update.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-09_Item_26_Berkeley_Economic_Dashboards_Update.aspx)

<sup>13</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/03\\_Mar/Documents/2021-03-09\\_Item\\_26\\_Berkeley\\_Economic\\_Dashboards\\_Update.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-09_Item_26_Berkeley_Economic_Dashboards_Update.aspx)

<sup>14</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/03\\_Mar/Documents/2020-03-17\\_Special\\_Item\\_03\\_Berkeley\\_COVID-19\\_Relief\\_Fund\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/03_Mar/Documents/2020-03-17_Special_Item_03_Berkeley_COVID-19_Relief_Fund_pdf.aspx)

<sup>15</sup>

[https://www.cityofberkeley.info/Clerk/City\\_Council/2021/01\\_Jan/Documents/2021-01-19\\_Item\\_20\\_Relief\\_for\\_Child\\_Care\\_Providers.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/01_Jan/Documents/2021-01-19_Item_20_Relief_for_Child_Care_Providers.aspx)

by the Berkeley City Council, over \$4.5 million has been distributed to qualified organizations by the Office of Economic Development (OED).<sup>16</sup>

In April 2020, the City Council approved the creation of a special structured financial recovery loan fund -- the Save Our Small (SOS) Business Loan Fund -- to provide a supplemental source of capital for small businesses impacted by the COVID-19 emergency.<sup>17</sup> The State of California later announced a statewide loan fund based on the SOS model Berkeley passed, making these kinds of loans available to small businesses in Berkeley and across the state.<sup>18</sup>

Despite these and other bold actions by the City of Berkeley, our small businesses, nonprofits, arts organizations, childcare providers, and other locally-based organizations continue to face extraordinary hardship. Small, local enterprises are key to Berkeley's economic health. Nothing signals economic distress to a community like empty storefronts and "for rent" signs on commercial buildings. It is therefore imperative that the City adopt additional policies to support recovery of a robust, locally-based economy and, by extension, the City of Berkeley's tax base.

### **Benefits of Local Preferences**

At least 45 states and numerous counties and cities across the U.S. have procurement policies designed to give preferences to businesses meeting certain criteria.<sup>19</sup> These jurisdictions, which include Berkeley, extend preferences to local businesses in contracting for a variety of materials, services, and supplies and have established criteria to certify companies that qualify for preferences. More than thirty states, and countless other jurisdictions, have adopted policies to steer purchasing to minority- and women-owned businesses.<sup>20</sup>

Preferences for local vendors have an economic multiplier effect on the local economy and tax base as local enterprises rely on the local supply chain, re-circulate dollars that boost local economic activity, employ local contractors, professional services, and employees, and thus generate multiple layers of tax revenue for the community. A 2009 study found that the State of California generated approximately \$4.2 billion in additional economic activity and 26,000 new jobs over a two-year period by contracting with disabled veteran-owned businesses and local small businesses instead of larger companies.<sup>21</sup>

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<sup>16</sup> <https://berkeleyrelieffund.org/about/>

<sup>17</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/04\\_Apr/City\\_Council\\_04-14-2020\\_-\\_Regular\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/04_Apr/City_Council_04-14-2020_-_Regular_Meeting_Agenda.aspx)

<sup>18</sup> <https://www.connect2capital.com/p/californiarebuildingfund/>; [https://haas.berkeley.edu/wp-content/uploads/CA-Rebuilding-Fund\\_Local-Government-Forum.pdf](https://haas.berkeley.edu/wp-content/uploads/CA-Rebuilding-Fund_Local-Government-Forum.pdf)

<sup>19</sup> <https://ilsr.org/rule/local-purchasing-preferences/>

<sup>20</sup> <https://ilsr.org/rule/local-purchasing-preferences/>

<sup>21</sup> <https://ilsr.org/rule/local-purchasing-preferences/>

According to the Institute for Local Self-Reliance, the most effective preference policies include active recruitment of local businesses for contracting, systems for setting and tracking goals, and strong definitions of what constitutes a “local” small business.<sup>22</sup> Across the United States, preferences programs have been successful in New York City; Cleveland; Montgomery County, Maryland; San Diego; and Phoenix.<sup>23</sup>

In the Bay Area, San Francisco and Oakland, the two largest nearby jurisdictions, as well as San Jose, Marin County, and others, have adopted preferences policies to promote purchasing local goods and services. These neighboring communities recognize the benefits of local preferences, and have updated their policies in recent years to reflect a large and renewed interest in supporting local businesses, and all of the economic and equity goals that are served by directing a City’s public dollars to local vendors.

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

### **Preferences in the City of Berkeley**

The City of Berkeley purchases and contracts for a wide variety of supplies, services, equipment, and expert assistance to provide the City a full range of municipal services and programs. General Services – Procurement actively seeks socially responsible businesses, vendors, suppliers, and contractors to provide quality products and services to the City at competitive prices.<sup>24</sup>

The City of Berkeley first adopted a local business preference program for contracting in 1983.<sup>25</sup> The objective was to increase local business participation in meeting the City’s needs for goods and services and to stimulate the local economy.

At the time, the concept of a bid preference program for local businesses was relatively new. The Berkeley City Manager identified just two existing programs: the State of California Preference Program for Small Businesses, and the City of Oakland Preference Program for Local Businesses and Local Minority Businesses.

Berkeley’s local business preference program was designed to stimulate the local economy, thus benefiting the City by facilitating the stabilization of existing businesses and encouraging the development of new businesses in the City, increasing employment opportunities for Berkeley residents, and generating more revenues from the business license fees and sales taxes.<sup>26</sup> Further, by extending the local preference program to local minority- and female-owned businesses, the City would make progress

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<sup>22</sup> <https://ilsr.org/rule/local-purchasing-preferences/>

<sup>23</sup> <https://ilsr.org/procurement-more-than-a-policy-change/>

<sup>24</sup> [https://www.cityofberkeley.info/Finance/Home/Doing\\_Business\\_with\\_the\\_City.aspx](https://www.cityofberkeley.info/Finance/Home/Doing_Business_with_the_City.aspx)

<sup>25</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/Local%20Business%20Preference.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Local%20Business%20Preference.pdf)

<sup>26</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/Local%20Business%20Preference.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Local%20Business%20Preference.pdf)



toward its goal of placing a fair proportion of purchasing dollars within reach of minority- and female-owned businesses.<sup>27</sup>

The City Council thus adopted a local businesses preference program for purchases of supplies and nonprofessional services and established the following general guidelines for the program's implementation:

- a. That the City Manager, in the awarding of purchases from \$100 to \$10,000, extend a monetary preference to a local business, and an additional 5% monetary preference to local minority/female/[disabled] businesses;
- b. That the proposed "local bid preference program" shall refer to a monetary preference to a local business or local minority/female/[disabled] business in an amount equal to 5% or an additional 5% respectively, of the lowest monetary bid, if that low bid has been submitted by a bidder who does not qualify as a local business or local minority/female business;<sup>28</sup>
- c. That the local bid preference program be applied to supply and nonprofessional services, within the dollar ranges specified in (a) above;
- d. That for the purpose of implementing the local business preference program, location shall be a factor in determining the lowest responsible bidder; and
- e. That the City Manager shall prepare administrative directives and controls sufficient to carry out the intent of the preference program, to go into effect on or before July 1, 1983.

In the City Council's original request to the City Manager to examine the feasibility of establishing a preference policy, the Council did not specify the type of contract (construction, services, or supplies) to which a monetary bid preference should be extended. However, in analyzing the various types of City supplies, the City Manager recommended that a bid preference would be best suited for supplies and nonprofessional service purchases, and purchases that would not exceed \$10,000.

The City of Berkeley currently extends a local vendor preference program for certain supplies, equipment and nonprofessional services with a 5% preference on bids to local business enterprises for supplies, equipment, and nonprofessional services from \$100 to \$25,000.<sup>29</sup>

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<sup>27</sup> Unfortunately, preferences for minority-owned and female-owned businesses are no longer valid in California under Proposition 209, [https://ballotpedia.org/California\\_Proposition\\_209\\_Affirmative\\_Action\\_Initiative\\_\(1996\)](https://ballotpedia.org/California_Proposition_209_Affirmative_Action_Initiative_(1996))

<sup>28</sup> For example, if the bid of a local business or a local minority/female/[disabled] business, after deduction of the 5% for a local business and an additional 5% for a local minority/female/[disabled] business is equal to or lower than the low bid, from a firm that is not local, the award shall be made to the local business or the local minority/female/[disabled] business. Unfortunately, such preferences for minority-owned and female-owned businesses are no longer valid under Proposition 209.

<sup>29</sup> A local business is defined as "a business firm with fixed offices or distribution points located within the City of Berkeley boundaries and listed in the Permits and License Tax paid file, with a Berkeley business street address."

In practice, bids received from local vendors for contracts on goods are reduced by the applicable percentage before an evaluation is made to determine the lowest responsible bidder. After this determination is made, an award is recommended in the amount shown in the vendor's bid. For example, a local business bidding \$1,000 for a pencil contract to the City would be evaluated as if it had bid \$950. If the bid is awarded to the local business, it is paid the bid price of \$1,000.

A Berkeley business can become a certified local vendor by completing a Vendor Information Application,<sup>30</sup> including Products & Services List and a federal Taxpayer ID & Certification Form W-9. In addition to submitting these required documents to General Services - Procurement, vendors who subscribe to the City's Current Bid & Proposal Opportunities page can receive notifications of upcoming bidding opportunities on a regular basis.<sup>31</sup>

Though Berkeley's local vendor preferences program was once a groundbreaking policy initiative to boost small businesses, it has not been updated to track inflation or other changes to the economy. Meanwhile, Oakland, San Francisco, and other nearby markets where Berkeley businesses may seek contracts, have taken steps to adopt policies that provide more robust preferences on their own businesses. This means Berkeley businesses have fewer opportunities in their own City, where they compete with often larger firms from adjacent cities, and suffer disadvantages when seeking contracts in neighboring markets. This double-disadvantage has negative consequences all for Berkeley businesses and for the City's tax base.

To address the disadvantages Berkeley businesses face in the Bay Area's public contracting marketplace and support recovery from the COVID-related economic downturn, we must take immediate action to expand our local preferences program for goods and implement a program of preferences for professional services.

The following are examples of local vendor preference programs in the area that include preferences for professional services. Oakland is presented first, as it's the closest large jurisdiction where Berkeley professional services firms may compete - at a disadvantage - for public contracts. Oakland's program is more complex and nuanced than some other jurisdictions', but less involved than San Francisco's.

San Jose and Marin County, also presented below, offer much simpler professional services preference programs and likely provide the best models for quick implementation in Berkeley. The "perfect" should not be "the enemy of the possible" when we are facing an unprecedented economic downturn that is decimating our local business community. Should further refinements of Berkeley's program be warranted, they can be brought forward at a later date.

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<sup>30</sup> [https://www.cityofberkeley.info/uploadedFiles/Online\\_Service\\_Center/Level\\_3\\_-\\_General/VendorInformationApplication\[1\].pdf](https://www.cityofberkeley.info/uploadedFiles/Online_Service_Center/Level_3_-_General/VendorInformationApplication[1].pdf)

<sup>31</sup> <https://www.cityofberkeley.info/RFP/>

### **City of Oakland Local and Small Local Business Enterprise Program**

In March 1979, the City of Oakland adopted a preference program for local businesses.<sup>32</sup> Among other things, the program granted the Oakland City Manager authority to extend a 3% preference for a local business in the award of all purchase orders.<sup>33</sup> In 1981, Oakland increased the preference point for local businesses to 5% preference for a local business. The basis for the increase was the fact that initially established point preferences only minimally benefited local businesses in the bidding process.

Oakland's Local and Small Local Business Enterprise (L/SLBE) Program was created to use the power of the public purse to stimulate economic development through the support and empowerment of the local community, especially those aspects of it that have been placed at a disadvantage in the past.<sup>34</sup>

The intended impacts of Oakland's L/SLBE Program included:

- Increasing the number of Oakland certified businesses participating in City contracting and in development projects;
- Increasing the circulation of city dollars within the Oakland community and thus stimulating a stronger economic base; and
- Promoting the development of Oakland certified businesses through joint ventures, and mentor/protégé relationships.

The policy was aimed at providing economic opportunity to local residents and businesses by supporting local economic development while paying competitive prices for goods and services. At the same time, the program did not intend to obstruct efforts to attract outside investments that are critical to the City's economic growth.

In 2011, the City of Oakland adopted legislation to more narrowly tailor the mandates that govern participation of local and small local business enterprises in contracting.<sup>35</sup> Oakland currently requires a 50% minimum participation for all construction contracts at or over \$100,000, all professional services contracts over \$50,000, and all purchases of commodities, goods and associated services over \$50,000.<sup>36</sup> All construction contracts below \$100,000, all professional services contracts below \$50,000, and all procurements of commodities and associated services below \$50,000 must include

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<sup>32</sup> [https://www.cityofberkeley.info/uploadedFiles/Online\\_Service\\_Center/Level\\_3\\_-\\_General/VendorInformationApplication\[1\].pdf](https://www.cityofberkeley.info/uploadedFiles/Online_Service_Center/Level_3_-_General/VendorInformationApplication[1].pdf)

<sup>33</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/Local%20Business%20Preference.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Local%20Business%20Preference.pdf)

<sup>34</sup> <https://cao-94612.s3.amazonaws.com/documents/oak029719.pdf>

<sup>35</sup> <https://cao-94612.s3.amazonaws.com/documents/oak029719.pdf>

<sup>36</sup> The 50% local business participation requirement must be met with a minimum participation of 25% for Local Business Enterprises (LBE)/Local Not for Profit Business Enterprise (L/NFPBE) and 25% for Small Local Business Enterprises (SLBE)/Small Local Not for Profit Business Enterprise (S/LNFPBE). SLBE and SLNFPBE may meet the full 50% requirement.

outreach to certified local firms such that a minimum of three local firms are included in the solicitation.

Incentives are earned based on the level of participation proposed prior to the award of a contract. Bid discounts are applied at a rate of one percent (1%) or one (1) preference point for every 10% of contract dollars attributable to certified firms. No more than five percent (5%) in bid discounts or five (5) preference points may be earned.

| <b>Level of L/SLBE Participation Achieved</b> |                      | <b>Bid Discounts To Be Awarded to Contractors (Construction)</b> | <b>Preference Points to be Awarded to Consultants (Professional Services)</b> |
|-----------------------------------------------|----------------------|------------------------------------------------------------------|-------------------------------------------------------------------------------|
| 50%                                           | 25% LBE and 25% SLBE | 2%                                                               | 2 pts                                                                         |
| 60%                                           | 30% LBE and 30% SLBE | 3%                                                               | 3 pts                                                                         |
| 70%                                           | 35% LBE and 35% SLBE | 4%                                                               | 4 pts                                                                         |
| 80%                                           | 40% LBE and 40% SLBE | 5%                                                               | 5 pts                                                                         |

In those instances where VSLBE participation is evident, the value of preference points and bid discounts associated with VSLBE participation will be double-counted towards meeting the requirement.

Earning extra preference points for having an existing work force that includes Oakland residents is considered added value. The Request for Proposal “evaluation” process allows for additional preference points over and above the number of points earned for technical expertise. Typically 100 points may be earned for the technical elements of the RFP. Preference points are awarded over and above the potential 100 points. Staff recommends awarding preference points for an Oakland workforce according to the percentage of Oakland residents as follows:

| <b>Years in Oakland</b> |                          | <b>Oakland Resident Workforce</b> |                          |
|-------------------------|--------------------------|-----------------------------------|--------------------------|
| <b>Years in Oakland</b> | <b>Additional Points</b> | <b>Workforce</b>                  | <b>Additional Points</b> |
| 5 yrs                   | .50 pt                   | Up to 24%                         | 1.00 pt                  |
| 10 yrs                  | 1.00 pt                  | 25%- 49%                          | 2.00 pts                 |
| 15 yrs                  | 1.50 pts                 | 50% -74%                          | 3.00 pts                 |
| 20 yrs                  | 2.00 pts                 | 75%-99%                           | 4.00 pts                 |
| 25 yrs                  | 2.50 pts                 | 100%                              | 5.00 pts                 |

Local and non-local businesses may earn up to a maximum of 2.5 additional 5 preference points for having a workforce that is made up of Oakland residents and committing to Oakland new hires.

To incentive contracting with local business, the City Administrator awards a certificate of achievement each year to the city agency that reaches the highest level of support to small local businesses.

### **City of San Jose Local and Small Business Preferences**

The City of San Jose extends preferences in contracting with local and small businesses through a relatively simple preferences regime.<sup>37</sup>

For Local Business Enterprises (LBEs), suppliers must have a current San Jose Business Tax Certificate Number and have an office in Santa Clara County with at least one employee. If the basis of award is price determinative (awarded to the low bidder) then the amount of the preference shall be 2.5% of cost. If the basis of award is points determinative (“best value”) then the amount of the preference shall be 5% of total points.

For Small Business Enterprises (SBEs), in order to claim the additional SBE Preference suppliers must first qualify as an LBE and have a total number of employees of 35 or less (regardless of where they are located). If the basis of award is price determinative (awarded to the low bidder) then the amount of the preference shall be an additional 2.5% of cost. If the basis of award is points determinative (“best value”) then the amount of the preference shall be an additional 5% of total points.

Application of the preferences for LBEs and SBEs shall not be made in the procurements where legal constraints on the expenditure of funds prohibit the application of the preference or in grant programs.

### **Marin County Preference in Contracts and Purchases**

Like others in the Bay Area, the Marin County Board of Supervisors has found that it promotes the public interest to encourage the development and maintenance of local businesses in Marin County to insure a viable and balanced economy, provide local jobs for residents of the county, reduce commuter traffic, promote the development of the county's tax base, stimulate sales tax receipts, and enhance the number of and type of services available in Marin County for the benefit of its residents.<sup>38</sup>

Marin County thus concluded that these goals and objectives are promoted by the provision of appropriate preferences to local businesses which contract with, and sell services and supplies to the county. The county's program is another relatively simple model Berkeley may wish to adapt.

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<sup>37</sup> [https://www.sanjoseca.gov/your-government/departments/finance/purchasing/local-and-small-business;](https://www.sanjoseca.gov/your-government/departments/finance/purchasing/local-and-small-business)  
[https://library.municode.com/ca/san\\_jose/codes/code\\_of\\_ordinances?nodeId=TIT4REFIBUTA\\_CH4.12PRGOSE\\_PT4AWCO\\_4.12.320APPAWCO](https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT4REFIBUTA_CH4.12PRGOSE_PT4AWCO_4.12.320APPAWCO)

<sup>38</sup> [https://library.municode.com/ca/marin\\_county/codes/municipal\\_code?nodeId=TIT3REFI\\_CH3.10PRCOPU](https://library.municode.com/ca/marin_county/codes/municipal_code?nodeId=TIT3REFI_CH3.10PRCOPU)

In Marin County, preferences apply to contracting with local businesses for goods and services, with “local business” defined as any business that has its principal place of business in Marin; has a business license issued in Marin County for a period of six months prior to any claim of preference; or maintains an office or other facility in Marin in which not less than five persons are employed substantially full time.

When Marin County acquires services and/or supplies by purchase or contract, the director of purchasing, in evaluating the price or bid, must award a 5% preference on the price submitted by a local business.<sup>39</sup>

### **San Francisco Local Business Enterprise Ordinance**

San Francisco extends preferences to local businesses in contracting through its Local Business Enterprise (LBE) and Non-Discrimination in Contracting Ordinance.<sup>40</sup> The program is designed to assist qualified local small businesses in competing for the award of City contracts by adding points to proposals for contracts that are awarded based on the highest score, or applying discounts to proposals for contracts that are awarded based on the lowest costs. In addition, the ordinance provided contracting set asides, subcontracting goals, City payment provisions, and training programs to assist small local businesses to compete for City contracts.

In adopting its preferences ordinance, the San Francisco Board of Supervisors found that small businesses were a significant sector of the local economy, contributing hundreds of millions of dollars to the City’s economy each year, and formed the backbone of the City’s neighborhoods. The Board further found that the expansion of local small businesses would advance the public interest, contribute to the economic well-being of all San Franciscans, and tend to minimize the burden on the City’s General Fund to provide for general welfare.

The Board of Supervisors found that the disadvantages suffered by very small and micro local businesses in competing as prime contractors on public contracts could be reduced by discounting their bids and ratings by 10%. Granting a 10% discount would not unduly burden businesses not eligible for such discounts, and is similar to the corrective adjustments given to small and very small micro businesses in other jurisdictions. The Board found that the additional disadvantages suffered by micro local businesses could be reduced by setting aside appropriate small contracts for competition only among micro businesses.

San Francisco has a long history of working to end discrimination in all aspects of public contracting. For example, the Board of Supervisors initially passed Ordinance No. 139-84 on April 2, 1984 to combat the San Francisco’s own active and passive participation

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<sup>39</sup> In addition, whenever the county acquires supplies by purchase or contract, the director of purchasing, in evaluating the price or bid of recycled products shall award a fifteen percent preference on the price submitted on recycled products. In no case shall the total of all preferences for which a bid is eligible exceed fifteen percent.

<sup>40</sup> <https://sfgov.org/cmd/sites/default/files/Administrative%20Code%20Chapter%2014B.pdf>;  
[https://sfgov.org/cmd/sites/default/files/Images/13050-CH14B\\_Rules\\_07012015\\_Final.pdf](https://sfgov.org/cmd/sites/default/files/Images/13050-CH14B_Rules_07012015_Final.pdf)

in discrimination against minority- and women-owned businesses, both in its own contracting for goods and services, and in the private market for such goods and services. At the time of passage, women- and minority-owned businesses were virtually excluded as contractors on prime City contracts.

Since that time, San Francisco has actively and extensively documented and studied discrimination against and disadvantages faced by groups to gauge the effectiveness of the prior Minority, Women and Local Business Enterprise Ordinances (the "M/W/LBE Ordinances") and to assess the need for further and continuing action.

In 2014, the San Francisco Board of Supervisors amended the Administrative Code to comprehensively revise the Local Business Enterprise (LBE) and Non-Discrimination in Contracting Ordinance (Chapter 14B).<sup>41</sup> Under the revised ordinance, Contract Awarding Authorities must apply discounts to each evaluation stage of the selection process, including qualifications, proposals, and interviews.

For contracts estimated to cost in excess of \$10,000 but less than \$10,000,000, the Contract Awarding Authority must apply a 10% discount to any bid from a Small or Micro-LBE. If after the application of this discount the apparent low bidder or highest ranking proposer is not a Small or Micro-LBE, Contract Awarding Authorities shall apply a 5% discount to any bid from an SBA-LBE. Contract Awarding Authorities shall apply this five percent (5%) discount to contracts, except that the five percent (5%) discount for SBA-LBEs shall not be applied at any stage if it would adversely affect a Small or Micro-LBE.

For Contracts estimated to cost in excess of \$10,000,000 but less than \$20,000,000, the Contract Awarding Authority must apply a 2% discount to any bid from a Small, Micro, or SBA-LBE for Public Works/Construction, Architect/Engineering, Professional Services, or General Services Contracts. Bids from Small, Micro, or SBA-LBEs for Commodities Contracts in excess of \$10,000,000 are not eligible for the Discount.

For contracts with Joint Ventures For Professional Services and Architect/Engineering estimated to cost in excess of \$10,000 but less than \$10,000,000, Contract Awarding Authorities are required to apply the following discount to bids from Joint Ventures with a Small and/or Micro-LBE Joint Venture partner participation on professional services and Architect/Engineering prime contracts:

1. Five percent (5%) to a Joint Venture with Small and/or Micro-LBE Prime Contractor participation that equals or exceeds thirty-five percent (35%) but is under forty percent (40%);
2. Seven and one-half percent (7.5%) to a Joint Venture with Small and/or Micro-LBE Prime Contractor participation that equals or exceeds forty percent (40%);

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<sup>41</sup> <https://sfgov.legistar.com/LegislationDetail.aspx?ID=1912573&GUID=E3DA17DA-4E88-4C43-BEBD-0FDAC03794B5>



3. Ten percent (10%) to a Joint Venture exclusively among Small and/or Micro-LBE Prime Contractors.

San Francisco's Contract Monitoring Division (CMD) is required to issue quarterly written reports to the Mayor and the Board of Supervisors to document each Contract Awarding Authority's progress toward achieving the goals of this City's local preferences program. In addition, each fiscal year, the City Administrator must submit an annual report on the progress of the City toward achieving the goals of the preferences program, together with an identification of problems and specific recommendations for improving participation by all categories of LBEs in City contracting.

### **Conclusion**

Berkeley's local vendor preferences program has long played an important role in supporting local businesses in contracting, but the program needs to be updated for the 21st Century. Currently, the program omits preferences for professional services, such as lawyers, engineers, surveyors, and architects, which are central to Berkeley's culture and economy. Moreover, the relatively low maximum contracts for goods eligible for local preferences are insufficient to substantially increase local business participation in meeting the City's needs and to stimulate the local economy.

Meanwhile, neighboring Bay Area cities have extended and enhanced their preferences programs, including for professional services extended in Oakland and San Francisco, as well as higher value contracting opportunities. These programs to preference local businesses potentially place Berkeley firms at a disadvantage compared to their Bay Area peers.

For these reasons, this item increases the maximum value of contracts for goods eligible for preferences to \$250,000 and directs the City Manager to expand the City's Local Vendor Preferences programs to include Berkeley businesses engaged in professional services by September of 2021. It requires the City Manager to provide outreach and training to Berkeley businesses about expanded Local Vendor Preferences, including to businesses owned by women, people of color, people with disabilities, immigrants, and other traditionally marginalized communities, to ensure all businesses have equitable and meaningful access to local contracting opportunities, and takes into account the need to incorporate the results of the Mason Tillman Associates study currently underway, when those results become available. Finally, this item refers to the City Manager to track and issue periodic reports to Council (or include in existing reports such as the annual Economic Dashboard), and/or to track on an online dashboard the City's success in contracting with local vendors.

### **ACTIONS/ALTERNATIVES CONSIDERED**

Considered a further increase in the value of contracts for goods and equipment that would be eligible for local preferences in the City of Berkeley. A review of local preferences programs in nearby jurisdictions revealed that the City of Oakland, one of Berkeley's closest neighbors, implemented its Preferred Small Local Business Program



for all projects valued at an amount not to exceed \$250,000. This limit, established by Oakland before the COVID-19 crisis, was recommended for Berkeley as a means to achieve consistency with contracting policies in neighboring jurisdictions.

Council may wish to raise the contract dollar amount ceiling higher in light of the current economic crisis and the power of local contracting to support rebuilding of the local economy. The City Manager is also encouraged to return to Council any proposed adjustments to this limit in accordance with the needs of Berkeley businesses and any future changes in policy or economic circumstances in the Bay Area.

### **CONSULTATION/OUTREACH OVERVIEW AND RESULTS**

The author consulted with city staff regarding an earlier version of this proposal. Staff raised potential nuances that may require additional consideration as the City Manager works to develop and implement a local vendor preference program for contracts for professional services. Given the urgency of supporting needed economic recovery in the wake of the COVID-19 crisis and directing more City dollars to Berkeley businesses, this item immediately adopts an increase in the value of eligible contracts for goods, equipment and non-professional services (the program we already have in place), while providing until September 2021 for staff to establish a policy relating to local preferences for professional services.

Because of the urgent need to stimulate the local economy as we emerge from the COVID-19 crisis, additional outreach will be conducted simultaneous with submission of the item, including outreach to Berkeley Chamber and to locally-owned businesses and professional services providers, to offer opportunities for further input. It is expected that local businesses will appreciate the opportunity to improve access to contracting opportunities with the City of Berkeley, especially when they are disadvantaged in larger neighboring jurisdictions.

### **IMPLEMENTATION, ADMINISTRATION, AND ENFORCEMENT**

The City of Berkeley currently operates a local vendor preference program. Simply raising the limit on the value of contracts for goods, equipment, and nonprofessional services will not require any new programs to be implemented, while resulting in the award of more contracts to Berkeley vendors. Creating a program for preferences for professional services contracts will require adopting new regulations or procedures, but turnkey models exist in the Bay Area that can be easily adapted and implemented. Implementing the enhanced preferences is a small add to an already-existing process of issuing RFPs and awarding contracts, and does not entail any significant additional time, staffing or processes.

This item refers to the City Manager to conduct outreach to Berkeley businesses to publicize, offer training, and provide other meaningful access to the City's expanded

preferences programs including tailored and specific outreach to businesses owned by people of color, people with disabilities, women, immigrants, and other traditionally marginalized business communities to ensure equitable access to contracting opportunities. While this is an important component of any meaningful and equitable preference program, it is not a precondition to putting the program in place. It is hoped that staff will do initial outreach through the expanded network of businesses and more active BIDs and business organizations that have been successful in communicating with the business community during COVID, and follow up with more targeted ongoing outreach and technical assistance over time.

In addition, the item refers to the City Manager to quickly incorporate, when available, the results of the Mason Tillman Associates study reviewing and identifying disparities in the awarding of contracts affecting local, small, emerging enterprises and other enterprises with barriers to access in City construction, architecture, engineering, professional services, goods, and other services contracts. This is work already envisioned in the item which requested the Mason Tillman report.

Economic recovery is an urgent and important task for the City to undertake in addressing the impacts of the COVID-19 crisis, and the measures required by this item require a limited amount of staff time while potentially yielding significant benefits for businesses and for the City of Berkeley over the long run.

### **ENVIRONMENTAL SUSTAINABILITY**

Contracting with local businesses will reduce emissions of greenhouse gases and pollution associated with transporting goods and equipment, and related travel. Local businesses tend to purchase locally, requiring less transportation. Businesses based in and doing business in Berkeley contribute to less sprawl and traffic congestion, and more sustainable land use.

### **OUTCOME AND EVALUATION**

This item refers to the City Manager to track and issue reports to Council on the City's success expanding contracting for goods, equipment, and services with local vendors. These reports will serve as the basis for evaluating and making any changes to the local preferences program that may be warranted.

### **FISCAL IMPACTS**

Preferences for local vendors have an economic multiplier effect on the local economy and tax base as local enterprises rely on the local supply chain, re-circulate dollars that boost local economic activity, employ local contractors, professional services, and employees, and thus generate multiple layers of tax revenue for the community. Stimulating the expansion of small firms or development of new enterprises fosters

economic growth and independence for the City of Berkeley and its taxpayers. The expansion of local small businesses advances the public interest, contributes to the economic well-being of all Berkelyans, and tends to minimize the burden on the City's general fund to provide for general welfare. As the economic crisis recedes, public dollars need to be leveraged to the greatest extent possible to support Berkeley small businesses and boost the local economy through the multiplier effect preferences have on the circulation of each City dollar spent on locally-based vendors.

Regarding potential out-of-pocket costs for contracting with Berkeley vendors, it's important to note that the impact of the preferences is not to add a 5% cost to each contract awarded under the preference, but rather to pay "up to" 5% more for a contract with a qualified Berkeley vendor. For example, if the lowest bidder (pre-preference) for a contract for goods was \$20,000, but the contract was awarded to a Berkeley business that bid a pre-preference amount of \$20,050, the City will only pay an extra \$50 for the contract, *not*  $\$20,000 + 5\% = \$21,000$ . In addition, not all contracts will be bid on by Berkeley vendors, and not all Berkeley vendors bidding, even with the preferences in place, will be awarded all contracts. In the contract for goods example provided above, if the Berkeley vendor had bid \$23,000 and an out-of-town vendor bid \$20,000, the preference of 5% would have converted the Berkeley vendor's bid into a bid at \$21,800 - and they would not have been awarded the contract.

For contracts that *are* awarded to Berkeley vendors through operation of the preference program, the extra dollars spent are a small and worthy investment in the long term viability of the City's businesses, and in rebuilding our own tax base.

### **CONTACT INFORMATION**

Councilmember Sophie Hahn, 510-682-5905 (cell)

### **ATTACHMENTS**

1. Resolution
2. City of Oakland Local and Small Local Business Enterprise Program

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

TO EXPAND EXISTING LOCAL VENDOR PREFERENCE PROGRAM BY  
INCREASING THE VALUE OF ELIGIBLE CONTRACTS FOR GOODS TO \$250,000

WHEREAS, small local businesses the heart and soul of Berkeley, offering high quality goods that reflect our eclectic tastes and are infused with the care and expression of their owners; and

WHEREAS, small local businesses are key to Berkeley's economic health, investing a larger share of their revenues back into the local economy, hiring local workers, and often providing better wages and benefits than national chains; and

WHEREAS, the economic downturn caused by the COVID-19 health emergency has profoundly impacted Berkeley's local businesses, contributing to drops in revenue, layoffs of workers, and in some cases business closures; and

WHEREAS, in some cases, women-owned, minority-owned, and other small businesses owned and controlled by economically and socially disadvantaged individuals have been disproportionately impacted; and

WHEREAS, expanding local vendor preferences by raising the value of eligible contracts for goods will increase local business participation in meeting the City's needs and serve as an important local stimulus as our economy recovers from the current economic downturn; and

WHEREAS, neighboring jurisdictions including Oakland, San Francisco, San Jose, and Marin County extend preferences to local businesses, including for professional services and higher value contracts; and

WHEREAS, there exists an urgent need to support economic recovery in the wake of the COVID-19 crisis and to direct more City of Berkeley dollars to Berkeley businesses;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby expands Berkeley's existing local vendor preference program by increasing the value of eligible contracts for goods to \$250,000.

*Office of the City Administrator, Contracts and Compliance*  
*250 Frank Ogawa Plaza, Suite 3341*  
*Oakland, California 94612*  
*(510) 238-3970*

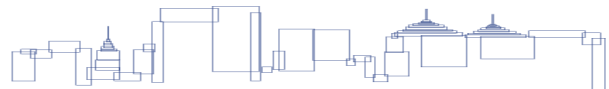
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City of  
**OAKLAND**  
California



**Local and Small Local  
Business Enterprise  
Program (L/SLBE)**



**CITY OF OAKLAND  
LOCAL AND SMALL LOCAL  
BUSINESS ENTERPRISE PROGRAM**

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## OVERVIEW/EXECUTIVE SUMMARY

In order to provide economic opportunity for its residents and businesses, and stimulate economic development, the City of Oakland has developed and implemented various policies that directly impact how public funds are spent. These policies are aimed at using the power of the public purse to stimulate economic development through the support and empowerment of the local community, especially those aspects of it that have been placed at a disadvantage in the past. The City has demonstrated leadership through various cutting edge policies and is in the vanguard nationally in terms of harnessing local resources to achieve local benefits. The major programs that were created to serve these respective groups are the Local and Small Local Business Enterprise (L/SLBE) Program and the Local Employment Program (LEP). Supporting and/or complementing these programs are policies regarding living wage, local construction employment referral program, prevailing wage, disadvantaged business enterprises, certifications, apprenticeship, and equal benefits for domestic partners.

The intended impacts include:

- Increasing the number of Oakland certified businesses participating in City contracting and in development projects;
- Increasing the circulation of city dollars within the Oakland community and thus stimulating a stronger economic base; and
- Promoting the development of Oakland certified businesses through joint ventures, and mentor/protégé relationships.
- The new policies provide economic opportunity to local residents and businesses by supporting local economic development while paying competitive prices for goods and services. At the same time, the program does not obstruct efforts to attract outside investments that are critical to the City's economic growth.

To that end, In November of 2011, the City Council modified Ordinance No. 12389 C.M.S in order to more narrowly tailor the mandates that govern participation of local and small local business enterprises in city contracting. Changes to the Local and Small Local Business Enterprise Program are summarized as:

1. Increase the current level of local and small local business participation by 15% Small Local Business Enterprise (SLBE) and 15% Local Business Enterprise (LBE) participation, thereby increasing the current 20% L/SLBE Program (10% LBE and 10% SLBE) to the new 50% L/SLBE Program with 25% participation for LBE's and 25% participation for SLBEs; and
2. Add two new certification categories in order to afford emerging and start-up businesses the opportunity to fully participate in the City's contracting process; to include (1) a Very Small Business Enterprise (VSLBE) category and (2) a Local Business Enterprise of Locally Produced Goods (LBE-LPG) category;
3. Increase the value of preference points and bid discounts for the VSLBE and LBE-LPG certification categories by double-counting the value towards meeting the 25% SLBE participation; and

4. Define a Small Local Business Enterprise (SLBE) according to 30% of the most recently published Small Business Administration (SBA) size standards and to adjust those standards as SBA standards are updated; and
5. Allow firms the ability to earn up to a total of 5% bid discounts for L/SLBE participation on construction and commodities and associated services bids, or 5 preference points for L/SLBE participation on professional services in the following manner:
  - a. With 50% L/SLBE participation (25% local and 25% small local) a firm earns– a minimum 2% bid discounts or 2 preference points;
  - b. With 60% L/SLBE participation (30% local and 30% small local) a firm earns– 3% bid discounts or 3 preference points;
  - c. With 70% L/SLBE participation (35% local and 35% small local) a firm earns– 4% bid discounts or 4 preference points;
  - d. With 80% L/SLBE participation (40% local and 40% small local) a firm earns– a maximum 5% bid discounts or 5 preference points; and
6. To further support local Oakland businesses, Oakland firms may earn additional preference points during the evaluation phase of the Request for Proposal and Request for Qualifications (RFP/RFQ) process as follows: Up to 2.5 preference points for operating a business with a substantial business presence in Oakland and up to 5 points for employing Oakland residents and new hires; and
7. Implement a Mandatory “Preferred Small Local Business Program” for all projects valued at an amount not to exceed \$250,000 such that all change orders, extensions and amendments do not exceed the \$250,000 threshold. If responses from pre qualified firms are not accepted by the using agency and the decision is made to solicit (through bids or proposals) from the open market, those solicitations will be subject to the L/SLBE Program.
8. The City has waived small local business enterprise (SLBE) subcontracting requirements for Oakland certified local businesses that apply for professional services contracts as the prime contractor with the City.

## **PART I: PROGRAM GUIDELINES**

### **Participation Requirements**

There is a 50% minimum participation requirement for all construction contracts at or over \$100,000, all professional services contracts over \$50,000, and all purchases of commodities, goods and associated services over \$50,000. All construction contracts below \$100,000, all professional services contracts below \$50,000, and all procurements of commodities and associated services below \$50,000 must include outreach to certified local firms such that a minimum of three local firms are included in the solicitation.

The 50% local business participation requirement must be met with a minimum participation of 25% for Local Business Enterprises (LBE)/Local Not for Profit Business Enterprise (L/NFPBE) and 25% for Small Local Business Enterprises (SLBE)/Small Local Not for Profit Business Enterprise (S/LNFPBE). SLBE and SLNFPBE may meet the full 50% requirement.

The City of Oakland also has a 50% L/SLBE trucking participation requirement to demonstrate the importance of including locally based trucking firms in city funded public works projects. In the case of construction projects where trucking is warranted, 50% of the total trucking dollars must be allotted to certified (Oakland) Local Truckers. The City will identify in bid specifications when the 50% local trucking requirement is applicable. It is important to note that failure to comply with the 50% trucking requirement will result in a non-responsive bid.

As a new element of the 2012 L/SLBE Program, the City has waived small local business enterprise (SLBE) subcontracting requirements for Oakland certified local businesses that apply for professional services contracts as the prime contractor with the City.

Based on the “Rule of Three”, there must be at least three certified businesses listed in the industry, trade or profession that constitutes a major category of work. If at least three L/SLBEs are not certified, then the requirement is either waived, or the 50% requirement may be set from 50 % to 0%.

The awarding authority shall request an availability analysis if there is reason to believe that the availability of certified firms will not satisfy the 50% requirement. The request must be made in time for completion prior to issuing an invitation for bids (NIB), request for proposals (RFP) or any other solicitation.

Contractors are required to submit a completed Subcontractor Listing (Schedule R) for construction and Schedule E Project Consultant Listing for professional services projects contracts as found in the Appendix. The subcontractor listing provides the buyer with a formal list of subcontractors, the trade or service area to be provided, bid amounts and certification status for all profit and not-for profit businesses that will be used on the project.

Schedule R and/or Schedule E will be used to calculate the level of certified local business participation. Unless a requirement is waived due to limited availability, the determination of responsive and responsible will include meeting the 50% minimum requirement. Each prime or lead contractor is urged to obtain, from each certified subcontractor, a copy of either the

certification letter or certificate issued by the City of Oakland, Office of the City Administrator, Contracts and Compliance Division. The certification letter and certificate include the certification number and date of expiration.

Certifications must be current and valid prior to the submittal due date in order for the local participation to count toward meeting the 50% businesses participation requirement. Certification status is confirmed during the compliance evaluation process.

### **Maintaining Participation**

Once a project begins, it is important to achieve and maintain the participation for which incentives were earned. Prime contractors and consultants must maintain the L/SLBE percentages indicated in the Schedule R or Schedule E at the time of a contract award and throughout the term of the contract.

If the City modifies the original scope of work, the contractor must make reasonable efforts to maintain the L/SLBE participation for which incentives were earned. If change orders affect only one discipline, staff may use their discretion to allow adjustments to L/SLBE percentages for the change order portion of the work. Upon request, City staff will help firms to determine methods of maintaining percentages.

Should the prime contractor fail to maintain the L/SLBE participation listed at the time the contract is awarded, the City may impose a penalty one and one half times the amount that should have been awarded to L/SLBE, and/or may stop the work upon approval by the full City Council or a designee approved by at least three Council Members of which one must include the Council Member representing the district in which the work is being performed.

### **Substitution of Listed Subcontractors**

Prime consultants or contractors who have entered into a contract agreement with the City cannot substitute a listed subcontractor or sub-consultant without prior approval of the City.

The City will substitute a person as subcontractor in place of the subcontractor listed in the original bid, except that the awarding authority, or its duly authorized officer, may, except as otherwise provided in Section 4107.5, consent to the substitution of another person as a subcontractor in any of the following situations:

1. When the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid, when that written contract, based upon the general terms, conditions, plans, and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.
2. When the listed subcontractor becomes insolvent or the subject of an order for relief in bankruptcy.
3. When the listed subcontractor fails or refuses to perform his or her subcontract.

4. When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor as set forth in Section 4108.
5. When the prime contractor demonstrates to the awarding authority, or duly authorized officer, subject to the further provisions set forth in Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.
6. When the listed subcontractor is not licensed pursuant to the Contractor's License Law.
7. When the awarding authority, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.
8. When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
9. When the awarding authority determines that a listed subcontractor is not a responsible contractor.

Prior to the approval of the prime contractor's request for substitution, the City shall give notice, in writing, to the listed subcontractor, of the prime contractor's request for substitution and/or the reason for such request. Such notice shall be served by certified or registered mail to the last known address of the subcontractor. The subcontractor who has been so notified shall have five (5) working days in which to submit to the City written objections to the substitution. Failure to file such written objection shall constitute the subcontractors consent to the substitution.

If written objections are filed, the City shall give written notice of a hearing date to the prime and sub-contractor within five (5) working days. At the hearing, the prime and subcontractor will present their cases and the Hearing Officer will make a determination. For construction contracts pursuant to Public Contracts Code Section 4107, et seq., no substitution of the listed L/SLBE subcontractors can be made without the approval of the City. Contractors are required to contact the Contract Compliance Office to request a substitution hearing.

### **Emergency Contracts**

Local businesses will be given first priority in the performance of emergency work as defined in Ordinance No. 7937 C.M.S, which formulates and establishes procedures for bidding, contracting, and purchasing goods and services.

The City has established a goal wherein 75% of emergency contract dollars must be spent with local firms. Of that amount, at least two thirds must be spent with small local businesses. User agencies are required to solicit from certified local firms for all informally bid emergency work whenever feasible.

### **Compliance Monitoring and Penalties**

To ensure compliance with the program, the contractor or consultant shall provide records upon request (within ten calendar days) and permit the City to review all pertinent records and documents of the contractor and subcontractors. The contractor or consultant shall provide a copy of all subcontractor agreements, purchase orders and/or other verification of the total amount to be paid to each subcontractor, supplier, etc., upon request prior to commencement of work. For public works projects valued over \$1,000.00, the State's Labor Code requires contractors to pay their employees in accordance with general prevailing wages. The prime contractor and all subcontractors including truckers and owner/operators are required to submit weekly certified payroll records five (5) days after each pay period in accordance with Labor Code section 1776. Failure to submit weekly certified payroll records could result in withholding of progress payment(s).

The subcontractor's progress payment report must be submitted with each progress payment in order for the progress payment to be processed. Also, prime contractors and/or prime consultants will provide the City with executed copies of its subcontractor/sub-consultant agreements to verify dollar amounts stated for all L/ SLBEs upon request. Contractors must also provide information with each progress payment indicating payments made to L/SLBEs in order to receive subsequent progress payments. An Exit Report and Affidavit form must be attached to the final progress payment application.

A penalty of one percent (1%) of the contract amount or one thousand dollars (\$1,000) per day (whichever is less) may be applied if records or documents are not provided within the specified time. The City shall deem such refusal a material breach of contract, in which case the City may terminate the contract and/or stop the work until compliance is met. In addition, the contractor or subcontractors may be debarred from participating in future City contracts for a period of six months to five years, and may lose certification.

### **Prevailing Wages**

The payment of prevailing wages is taken very seriously by the City of Oakland. State prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, and 1771. Workers employed on construction, alteration or demolition projects in California that use public funds are paid the prevailing wage, which is the basic hourly rate the majority of workers in a particular craft or classification earn. The California Department of Industrial Relations, (Divisions of Labor Statistics and Research) annually determines prevailing wages and may be reached at [www.dir.ca.gov/DLSR/PWD](http://www.dir.ca.gov/DLSR/PWD).

The Contractor shall ensure that all workers performing construction work for the project are employed by the Contractor and shall include in its contracts with its contractors, requirements that its contractors' employees and their subcontractors' employees shall be compensated in an amount no less than the general prevailing wage rate of per diem wages pursuant to the California Labor Code Sections 1770, et seq.

All contractors, regardless of tier, shall pay prevailing wages. The contractor shall include, in its subcontractor agreements all reporting and record keeping requirements of the applicable prevailing wage statutes and regulations. The contractor is aware of and shall comply with the

provisions of the City of Oakland prevailing wage requirements contained in Resolution 57103 CMS, passed March 28, 1978.

The prevailing wage requirement will be monitored and enforced by the City of Oakland. In addition to any other rights provided by California law to recover compensation, a worker that has been paid less than the prevailing wage rates shall have a right to commence an action or proceeding against the employer of the worker for the difference between the prevailing wage rates and the amount paid to such worker for each calendar day or portion thereof for which the worker was paid less than the compensation required to be paid under the provisions of this agreement.

Prime contractors shall not impose any unreasonable additional criteria on subcontractors that are not required by the City. Any demand on the subcontractors that would change the way the subcontractor may do business will be deemed unreasonable. The prime contractor shall not selectively impose criteria upon local certified businesses that are not applied to other business in similar contractual relationships with the prime.

All bids submitted shall be made available to the public upon bid opening as required by the Sunshine Ordinance, including all bids prepared by subcontractors. A list of the individual forms and schedules is shown below and are provided in the Appendix under Forms and Schedules. It is important to note that certain forms and schedule must be submitted with the bid package in order for the bid to be considered responsive.

- [Bid Bond Form](#)
- [Schedule A](#) - Scope of Work/Outline of Services to be Performed
- [Combined Schedules](#)
  - Schedule B-1 - Arizona Resolution
  - Schedule C-1 - Compliance With The Americans With Disabilities Act
  - Schedule D - Ownership, Ethnicity and Gender Questionnaire
  - Schedule K – Pending Dispute Disclosure Form
  - Schedule M – Part A, Independent Contractor Questionnaire
  - Schedule N - Declaration Of Compliance With Living Wage Ordinance (Professional Services and Design Build Projects only)
  - Schedule N-1 - Equal Benefits Declaration Of Nondiscrimination
  - Schedule P - Nuclear Weapons Proliferation Ordinance
  - Schedule U - Compliance Commitment Agreement
  - Schedule V - Affidavit Of Non-Disciplinary Or Investigatory Action
- [Schedule E](#) - Project Consultant Team Form
- [Schedule O](#) - Disclosure of Campaign Contributions Form
- [Schedule R](#) - Subcontractor, Supplier, Trucking Listing
- [Schedule Q](#) – Construction Services Insurance Requirements
- [Schedule Q – Professional & Specialized Services Insurance Requirements](#)
- [Jobsite Waste Reduction & Recycling Plan Form](#) (Recycling & Waste Reduction)

**PART II: PROGRAM INCENTIVES**

**Bid Discounts and Preference Points**

Incentives are earned based on the level of participation proposed prior to the award of a contract. Bid discounts are applied at a rate of one percent (1%) or one (1) preference point for every 10% of contract dollars attributable to certified firms. No more than five percent (5%) in bid discounts or five (5) preference points may be earned.

| <b>Level of L/SLBE Participation Achieved</b> |                      | <b>Bid Discounts To Be Awarded to Contractors (Construction)</b> | <b>Preference Points to be Awarded to Consultants (Professional Services)</b> |
|-----------------------------------------------|----------------------|------------------------------------------------------------------|-------------------------------------------------------------------------------|
| 50%                                           | 25% LBE and 25% SLBE | 2%                                                               | 2 pts                                                                         |
| 60%                                           | 30% LBE and 30% SLBE | 3%                                                               | 3 pts                                                                         |
| 70%                                           | 35% LBE and 35% SLBE | 4%                                                               | 4 pts                                                                         |
| 80%                                           | 40% LBE and 40% SLBE | 5%                                                               | 5 pts                                                                         |

In those instances where VSLBE participation is evident, the value of preference points and bid discounts associated with VSLBE participation will be double-counted towards meeting the requirement.

**Request for Proposal (RFP) and Request for Qualifications (RFQ) Preference Points for Local Hire or Non-Construction Contracts**

Earning extra preference points for having an existing work force that includes Oakland residents is considered added value. The Request for Proposal “evaluation” process allows for additional preference points over and above the number of points earned for technical expertise. Typically 100 points may be earned for the technical elements of the RFP. Preference points are awarded over and above the potential 100 points. Staff recommends awarding preference points for an Oakland workforce according to the percentage of Oakland residents as follows:

| <b>Years in Oakland</b> |                          | <b>Oakland Resident Workforce</b> |                          |
|-------------------------|--------------------------|-----------------------------------|--------------------------|
| <b>Years in Oakland</b> | <b>Additional Points</b> | <b>Workforce</b>                  | <b>Additional Points</b> |
| 5 yrs                   | .50 pt                   | Up to 24%                         | 1.00 pt                  |
| 10 yrs                  | 1.00 pt                  | 25%- 49%                          | 2.00 pts                 |
| 15 yrs                  | 1.50 pts                 | 50% -74%                          | 3.00 pts                 |
| 20 yrs                  | 2.00 pts                 | 75%-99%                           | 4.00 pts                 |
| 25 yrs                  | 2.50 pts                 | 100%                              | 5.00 pts                 |

Given the above, local and non-local businesses may earn up to a maximum of 2.5 additional 5 preference points for having a workforce that is made up of Oakland residents and committing to Oakland new hires.



### **Preference Points for Local Certified Firms Regardless of Size and Participation**

On Request for Proposals, Request for Qualifications or any negotiated agreement, local certified firms may earn a maximum of 2.5 additional preference points regardless of business size or level of L/SLBE participation for having a substantial presence in Oakland for 25 or more years. Given the above, businesses may earn additional preference points during the evaluation phase of the competitive process.

### **Mentor Protégé Agreements**

The City of Oakland strongly supports “Mentor-Protégé” relationships because they help to build capacity in underutilized service areas. On a case-by-case basis, the City will allow a 5% preference for Mentor-Protégé teams on construction and professional services contracts.

If a prime contractor or prime consultant is able to develop a “Mentor-Protégé” relationship with a certified LBE or SLBE, the mentor will enjoy the benefit of credits against City goals particularly under circumstances where availability is zero. In order to earn credit for Mentor-Protégé relationships, the Mentor-Protégé Agreement must be submitted for approval to Contracts and Compliance prior to the project bid date for construction, and by proposal due date for professional services contracts.

A written mentor-protégé agreement must be completed by both parties and executed before a notary public. The agreement must delineate the rights and responsibilities of each mentor and protégé. The parties must agree to enter into the relationship for the life of the project.

During the duration of the contract both the mentor and protégé must each provide the Division of Contracts and Compliance with a monthly report of the kinds of mentor skills provided to the protégé, which shall include but not limited to:

- Number of hours expended in the fulfillment of the project by each partner;
- Managerial assistance provided (*e.g. bookkeeping services, personnel, payroll, etc*);
- Technological assistance provided (*e.g. computer hardware/software, training, etc.*);
- Bonding assistance provided;
- Number of private sector projects bid on by the mentor-protégé team;
- Number of private sector contracts awarded to the mentor-protégé team; and
- Financial assistance provided.

No officer, director, employee or member of the mentor-protégé team shall be allowed to bid or otherwise participate independently on a city contract where the mentor-protégé team is bidding or otherwise participating. Each party is prohibited from submitting multiple bids on city contracts.

The protégé must be able to demonstrate that it is an independent business operation prior to submittal of a mentor-protégé agreement and throughout the term of the agreement. Unless specifically defined as one of the benefits to the protégé and spelled out in the agreement, the mentor and protégé must maintain separate office spaces while the mentor-protégé agreement is in effect.

### **Joint Venture Agreements**

A business that is bidding or competing for City contracts may associate with a certified LBE or SLBE business to compete for contracts as a joint venture. A joint venture should be between two entities with the same discipline or license as required by the awarding department. Joint ventures receive bid discounts depending upon the LBE or SLBE percentage of participation as set forth in the Ordinance. The parties must agree to enter into the relationship for at least the life of the project.

#### Basic Elements of the Joint Venture Agreement

A Joint Venture must submit a Joint Venture Management Plan and/or a Joint Venture Agreement two weeks prior to the bid due date. Copies of the JV applications are available upon request to the Contract compliance & Employment Services Division (510) 238-3970. Each agreement or management plan must include, but not limited to the following:

- Detailed explanation of the financial contribution of each partner;
- List of the personnel and equipment used by each partner;
- Detailed breakdown of the responsibilities of each partner;
- Explanation of how the profits and losses will be distributed;
- Description of the bonding capacity of each partner; and
- Management or incentive fees available for any one of the partners (if any).

#### Commercially Useful Functions Performed by Joint Venture Partners

Each JV partner must perform a “commercially use function” as that term is defined herein. A LBE or SLBE that relies on the resources and personnel of a non-LBE or SLBE firm will not be deemed to perform a "commercially useful function

#### Joint Venture License Requirements

Each joint venture partner must possess licenses appropriate for the discipline for which a proposal is being submitted. If a joint venture is bidding on a single trade project, at the time of bid submittal, each of the joint venture partners must hold a Joint Venture License and possess the requisite specialty license for that trade bid.

#### Delineation of Joint Venture Work

The LBE or SLBE partner must clearly define the portion of the work to be performed during the project. This work must be of the similar type of work the LBE or SLBE partner performs in the normal course of its business. The Joint Venture Participation Form must specify the project bid items to be performed by each individual joint venture partner. Lump sum joint venture participation is not acceptable.

#### Responsibilities of the LBE or SLBE Joint Venture Partners

The LBE or SLBE partner must share in the ownership, control, management responsibilities, risks, and profits of the joint venture in proportion with level of participation in the project; The LBE/SLBE partner must perform work that is commensurate with its experience. The LBE/SLBE partner must use its own employees and equipment to perform its portion of the project. For construction contracts only, the joint venture as a whole must perform bid item work

that equals or exceeds twenty-five percent (25%) of the total value of the contract, excluding the cost of manufactured items, in order to be eligible for a joint venture discount.

#### Application of Bid Discounts for Joint Venture Agreements

To be eligible for a bid discount, at the time of bid submittal, each joint venture partner must hold a Joint Venture License and each must have the license that is appropriate for the project as required in the contract document of the contract award authority. Unless permission is granted by the City Manager or his designee for good cause shown, based on sudden and unexpected necessity, the following actions are not permitted: i) the non-LBE/SLBE partner performing work for the LBE/SLBE partner; ii) leasing of equipment or property by the LBE/SLBE partner from the non-LBE/SLBE partner; and iii) the hiring of the non-LBE/SLBE partner's employees by the LBE/SLBE partner.

#### Other Joint Venture Conditions

The City Administrator or a designee must first approve the LBE/SLBE Joint Venture Agreement/Management Plan before the joint venture is eligible for bid discounts. Any changes must also receive the prior approval of the City Administrator or designee. In addition to any other information required by conditions specified herein, each LBE/SLBE joint venture must provide upon request, cancelled checks and any other financial records to the City.

#### **City –Assisted Private Developments**

For City-assisted private developments (e.g. Disposition and Development Agreements, affordable housing projects, and loans for construction projects) prime contractors are required to seek competitive bids from subcontractors and comply with the program goals and objectives as set forth in this document. Prime contractors must give SLBE contractors a 5% bid discount and LBE contractors a 2% bid discount. Prime contractors are required to award to the lowest responsible bidder.

#### **Incentives for Supporting Local Business Participation on City Contracts**

Each year, the City Administrator will award a certificate of achievement to the city agency that reaches the highest level of support to small local businesses.

#### **Mandatory Preferred Small Local Business ("MPSLB") Programs for Professional Pre-Construction and Construction Services**

For all projects valued at an amount not to exceed \$250,000 such that all change orders, extensions and amendments do not exceed the \$250,000 threshold. If responses from pre-qualified firms are not accepted by the using agency and the decision is made to solicit (through bids or proposals) from the open market, those solicitations will be subject to the L/SLBE Program

The City will be required to establish pre-qualified lists for Oakland certified small businesses for professional pre-construction services, such as architectural and engineering services, and construction services for contracts costing less than \$250,000.00, as follows:

- a. Mandatory Preferred Small Local Business (MPSLB) - The City will issue a request for qualifications for pre-construction and construction services for the design and/or

construction of projects costing less than \$250,000 solely from Oakland certified Small Local Business Enterprises.

- i. Qualified professional and construction firms will be included on the MPSLB pre-qualified list.
  - ii. The City will solicit proposals or bids for these contracts from at least three businesses on the MPSLB pre-qualified lists.
- b. MPSLB contracts under \$250,000 will be exempt from Oakland's Local and Small Local Business Enterprise participation requirements because the contractors will meet the requirements by virtue of their Oakland certified small local business status
- c. For pre-construction and other professional services, the selection and award of contracts shall be based on demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the city, in addition to preference points awarded under Oakland's social equity policies and compliance with Oakland's purchasing programs such as Living Wage and Equal Benefits.
- d. For construction services, contracts shall be awarded to the lowest, responsible, responsive bidder, taking into account current bid discounts and/or preference points awarded under Oakland's social equity programs.
- e. For professional services, the City Administrator may solicit proposals on the open market without advertising if at least three proposals are not submitted by firms on the pre-qualified list.
- f. For Construction services, the City Administrator may solicit bids on the open market, without advertising if all responsive bids exceed the engineer's estimate.

## PART III: CERTIFICATION

| CERTIFICATION CATEGORIES                                           | CERTIFICATION CRITERIA                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|--------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Local Business Enterprise (LBE)</b>                             | <ul style="list-style-type: none"> <li>• substantial presence in Oakland</li> <li>• operational for at least twelve (12) consecutive months</li> <li>• valid business tax license</li> <li>• fixed office space</li> <li>• employees in fixed office</li> <li>• permits and fines and fees are current</li> <li>• documents certifying the existence of the business (contracts, leases bills, etc)</li> <li>• registration in the City's iSupplier system</li> </ul> |
| <b>Small Local Business Enterprise (SLBE)</b>                      | All of the above plus: <ul style="list-style-type: none"> <li>• Documentation of 3 years average annual gross receipts that are less than 30% of the SBA's size standard for the firm's industry sector.</li> </ul>                                                                                                                                                                                                                                                   |
| <b>Very Small Local Business Enterprise (VSLBE)</b>                | All of the above except: <ul style="list-style-type: none"> <li>• Fully operational for six consecutive months</li> <li>• Average annual gross receipts at or below \$375,000</li> </ul>                                                                                                                                                                                                                                                                              |
| <b>Local Business Enterprise –Locally Produced Goods (LBE-LPG)</b> | Same as LBE except: <ul style="list-style-type: none"> <li>• Business must manufacture goods within the Oakland geographic boundaries</li> </ul>                                                                                                                                                                                                                                                                                                                      |
| <b>Not for Profit Local Business Enterprise (NPLBE)</b>            | Same as LBE plus: <ul style="list-style-type: none"> <li>• Business must produce documentation of nonprofit status</li> </ul>                                                                                                                                                                                                                                                                                                                                         |
| <b>Not for Profit Small Local Business Enterprise (NPSLBE)</b>     | Same as SLBE plus: <ul style="list-style-type: none"> <li>• Business must produce documentation of nonprofit status</li> </ul>                                                                                                                                                                                                                                                                                                                                        |

**Certification Categories**

The City of Oakland has added two new certification categories. In addition to Local Business Enterprise (LBE) Small Local Business Enterprises (SLBE), Very Small Local Business Enterprise (VSLBE) and Local Produced Goods Local Business Enterprise (LPG-LBE) were added in order to enhance opportunities for small emerging firms and firms that produce goods locally.

**Certification Criteria**

Certification criteria apply to both for profit and not-for-profit organizations as follows:

1. An established operation with a substantial presence located and doing business or operating within the geographical boundaries of the City of Oakland.
2. Fully operational for at least twelve (12) consecutive months prior to applying for certification. (or six (6) consecutive months for VSLBE)
3. A valid City of Oakland Business Tax certificate issued no less than twelve (12) consecutive months prior to applying for certification. All payments must be current and the certificate must reflect the address of the local business.
4. A fixed office that reflects a substantial presence in the geographical boundaries of the City of Oakland. Post Office boxes, temporary locations, and moveable work sites will not establish status as a local business. In the case of trucking firms, the truck inventory must be located within the city limits. A fixed office is a dedicated office space, owned or leased by the local business, in an established, non-portable building where regular work pertinent to the contract is conducted. For all levels of SLBE certification, the fixed office shall be the primary business location of the business. A residence may qualify as a fixed office provided the following conditions are met: (a) the business conducted in the residence complies with Oakland Zoning Regulations relating to Home Occupations; and (b) the residence is the primary business location of the business and contributes not less than 51% of the gross receipts of business. A fixed distribution point is a non-portable warehouse or an outside shipping yard owned or leased by the local business, where shipping, receiving and the owner and employees regularly and exclusively conduct distribution of goods and commodities on behalf of the business.
5. The owner or employees (person hired and paid directly by the local business to conduct work solely on behalf of the business at its fixed office or distribution point) shall be available during normal operating hours.
6. The business must comply with all applicable Federal, State and local regulations, including, but not limited to the City of Oakland Zoning Regulations.
7. All taxes, fees, permit fees, and fines shall be current.
8. Upon request by the City's certifying officer, the business must possess and make available for inspection the following documentation citing the Oakland business street address:
  - Executed (i.e. signed by all parties) copies of past/current contracts;
  - Oakland Business Tax Certificate and federal tax identification number;
  - Executed lease or other written agreement for occupancy of the Oakland office;
  - Business cards and Utility bills (including but not limited to telephone, gas, electric, or water bills)
9. A business requesting certification shall supply the City with all such additional information, as the City may deem relevant to make a determination on its eligibility for

certification. The City may wish to review additional documents that may include, but may not be limited to:

- Commercial advertising
- On-site signage
- Letterhead
- Previous Lease Agreements
- Marketing materials
- Listing in the telephone book.

Small local businesses must present or make available copies of federal tax returns showing gross revenues for the three most recent fiscal years in order for the City to determine compliance with established business size standards.

### **Certification Eligibility Standards**

#### Ownership and Control for Small Local Business Enterprise

The following standards shall be used by the City to determine if a firm is owned and controlled by one or more owners or businesses and eligible for certification as a Small Local Business Enterprise:

An eligible small local business shall be an independent business. The ownership and control of the SLBE shall be real, substantial and continuing and shall go beyond the pro forma ownership of the firm as reflected in its ownership documents. The small local business owner shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance rather than form of arrangements. Recognition of the business as a separate entity for tax, corporate or local status purposes is not necessarily sufficient for recognition as an SLBE. In determining whether a potential SLBE is an independent business, the City shall consider all relevant factors, including the date the business started, the adequacy of its resources for the work of the contract, and the degree to which financial, equipment leasing and other relationships with non-local firms.

The owner(s) of the small local business must also possess the power to direct or cause the direction of the management and policies of the firm. Also, the owner shall make the day-to-day, as well as major decisions on matters of management, policy and operations. The firm shall not be subject to any formal or informal restrictions, which limit the customary discretion of the owners. There shall be no restrictions that would prevent the local business owners, without the cooperation or vote of any non-local owners, from making a business decision of the firm. (i.e. bylaws provisions, partnership agreements or charter requirements for cumulative voting rights)

Where the actual management of the firm is contracted out to individuals other than the owners, those persons who have the ultimate power to hire and fire the managers are, for the purposes of this part, considered controlling the business. The contribution of capital or expertise by the local owner(s) to acquire their interests in the firm shall be real and substantial. Newly formed firms and firms whose ownership and/or control have changed since the date of the advertisement of the contract are closely scrutinized to determine the reasons for the timing of the formation of or change in the firm.

A previous and/or continuing employer-employee relationship between or among present owners are carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities. Any relationship between a SLBE and non- SLBE, which has an interest in the SLBE, is carefully reviewed to determine if the interest of the non-SLBE conflicts with the ownership and control requirements.

SLBEs will be considered bona fide if the ownership interests are real and continuing, and not created solely to meet the City goals for SLBEs participation. The SLBEs included in the contract must perform commercially useful services and/or supplies and not merely act as a passive conduit. In the event the City has reason to question the ownership of SLBEs, the burden of proof is on the claimant and/or contractor to provide documentation to substantiate the SLBE business enterprise status.

### **Size Standards for Small Businesses**

The City defines a small business as thirty percent (30%) of the most recently published United States Small Business Administration's Small Business Size standards (U.S. SBA). Size is based on the average gross revenues for the three most recent years in doing business. The City of Oakland will adjust its small business size standards according to the most recently published U. S. SBA size standards.

### **LBE/SLBE Certification Process**

#### **Step 1 – The Application:**

Down load Applications from the website maintained by Contracts and Compliance through the City's website. Go to <http://www.oaklandnet.com>, and select Contracting Opportunities under the "Jobs and Contracts" link. Then click on Certification and select the form and the appropriate supporting documents. Requests for certification applications can be made by phone, facsimile, electronic mail, in writing or in person. When submitting the application, remember to attach a copy of the most recent Business Tax Certificate and have the application notarized. If you are applying as a small business, attach the last three most recent business tax returns.

#### **Step 2 – The Review Process:**

All new certification applicants must undergo a desk audit and site visit. The desk audit and site visit will be conducted within 15 working days or upon submission of complete documentation. All parties are asked to cooperate fully with the investigation. Failure or refusal to furnish requested information or failure to cooperate voids the application. If the audit and review results in a satisfactory determination, analysis, recommendation and notification as to the status of the application to certify or deny certification will be conducted within 10 working days after the site visit.



During the process of certification, the City may review any documentation or information it deems necessary to determine whether the applicant meets the definition of a local business as found in the glossary in the Appendix of this document..

To ensure complete and accurate determination in a timely fashion, it is requested that all potential applicants submit an application for certification a minimum of three (3) weeks prior to a bid opening or submittal of a proposal. In order to receive credit for listed subcontractors and suppliers certifications must be complete and existing at the date and time of bid opening or submittal due dates.

Certification with another agency does not constitute certification with the City of Oakland. The City reserves the right to approve LBE/SLBE status from other government or City agencies. Firms or individuals who knowingly submit false information concerning their certification status are subject to action or actions for fraud under the State and Federal False Claims Act and will be debarred from bidding on future City work for a period of three (3) years.

### **Other Considerations**

In addition to the above the City shall give special consideration to the following circumstances in determining eligibility:

Newly formed firms and firms whose ownership and/or control have changed since the date of the advertisement of the contract are closely scrutinized to determine the reasons for the timing of the formation of or change in the firm.

Previous and/or continuing employer-employee relationships between or among present owners are carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities.

Any relationship between an LBE/SLBE and a business that is not an LBE/SLBE, which has an interest in the LBE, is carefully reviewed to determine if the interest of the non-LBE conflicts with the ownership and control requirements.

A joint venture is eligible for certification if the LBE/SLBE partner of the joint venture meets the standards for an eligible LBE. The LBE partner is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management responsibilities, risks and profits of the joint venture. The City Attorney's office must approve joint venture agreements.

The mentor and protégé must be certified prior to the submittal of a mentor-protégé agreement for approval.

### **Re-Certification**

A City of Oakland certification is valid for a period of two years, unless otherwise specified. At the end of the certification period the business must apply for re-certification. Notwithstanding

the above, the City may require re-submittal of current documentation and information in the event a LBE/SLBE certification is challenged.

**Appeal**

Any firm that believes that it has been wrongfully denied certification as an LBE/SLBE or joint venture may file an appeal in writing. The written appeal must be signed and dated.

The appeal shall be filed no later than 30 days after the date of denial. The City may extend the time for filing, or waive the time limit in the interest of justice. The City may specify in writing the reason for so doing.

Third parties, who have reason to believe that another firm has been wrongfully denied or granted certification as an LBE/SLBE or joint venture, may advise the City in writing. This information is not considered an appeal.

The City ensures a prompt investigation, and may at its discretion; decertify the LBE/SLBE or joint venture pending the outcome of the investigation.

## **PART IV: LOCAL EMPLOYMENT PROGRAM**

### **Program Objective**

The objective of the Local Employment Program for public works and subsidized construction projects is to cause the hiring of Oakland residents on as many Prevailing Wage jobs as possible, and to encourage businesses to hire local residents for non-City-funded work.

### **Program Goals**

For any construction contract or development agreement with the City this policy establishes a goal for Oakland-resident employment on public works projects (as such projects are defined in this policy). Specifically, for work performed at the construction site, this policy establishes a goal of 50% of the work hours, which must be performed by Oakland residents on a craft-by-craft basis. In addition, a minimum of 50% of all new hires on the project (on a craft-by-craft basis) must be Oakland residents, and the first new hire must be an Oakland resident. A contractor or developer must achieve the goals or secure an exemption from the City.

Apprenticeship is an essential pathway to a productive career in the construction trades. Therefore this policy recognizes that implementation of the 15% Oakland Apprenticeship Utilization policy on public works projects is important to achieve the goals of this policy. This policy will include additional incentives to both highlight and further encourage the use of Oakland apprentices. Utilization of Oakland Apprentices will count toward the 50% new hire goals and the 50% workforce hour goals.

### **General Provisions**

The City shall require its developers and contractors to abide by the Local Employment Program. The City shall also require that the developers and contractors enforce the provisions of the Program on any and all parties with whom the developers and contractors intend to enter into a contract to perform any portion of said work.

The Local Employment Program required by the City will be incorporated in all contract specifications as well as Dispositions and Development Agreements (DDA) for subsidized projects and contract specifications. The developer or contractor shall cause this Program to be a part of all subcontracts, regardless of Tier or phase under the contract. The goals set forth must be maintained for the duration of the project.

The LEP applies when the project includes the purchase of construction services either by the City as buyer or by a City Financial Assistance Recipient (CFAR); and either the City is the buyer and the dollar amount of the project exceeds \$50,000.00 dollars; or the project exceeds 30 days; or new hires are needed to perform the work on the project.

The LEP does not apply when the contract or subcontract is performed by an owner/operator; or the project requires less than 140 hours of work; or the project is performed as emergency work; or a job requires no more than two craft-persons to perform the duties of the entire project; or a contractor's core workforce includes 50% Oakland residents, and no additional employees will be hired.

Prior to receipt of the Notice to Proceed (NTP), the developer or contractor and Contract Compliance & Employment Services staff together will create a project-specific plan to comply with the LEP goals on a craft-by-craft basis for all work forces and for planned new hires. The project-specific plan will recognize the lawful hiring hall rules of the union hiring halls where applicable. The Anticipated Project Workforce Form may be used in the development of a project specific compliance plan.

### **Winning Compliance**

The Developer or Contractor must meet or exceed the 50% work force and new hire requirements in order for the following program criteria to apply:

#### Exemptions

Hours of work performed by employees of a subcontractor on a LEP-covered project may not be assessed against the Contractor's LEP goals, if the subcontract will be:

1. Performed by an Owner Operator;
2. Performed in less than 40 hours;
3. The Subcontractor's core work force includes 50% Oakland employees, and no additional employees will be hired; or
4. No more than two craft persons are required to perform the work of the subcontract, the Subcontractor hires no new employee to perform the work and the Subcontractor is a Small Business within the meaning of City policies.

When the Contractor has taken the steps and an Oakland resident is not available the City shall issue an exemption.

#### Conditional Exemptions

The Developer or Contractor's project manager must submit a request for conditional exemption to the Contract Compliance & Employment Service staff. They must determine whether to grant the exemption prior to issuance of the contract. The request is reviewed based on conditions (cited by Developer or project manager) that make compliance unfeasible. Examples of such conditions include but are not limited to:

1. Permanent core workforce performs short-term (five days) work.
2. Intermittent service by one trade throughout the life of the project
3. Overall project time is under three months.
4. Owner Operator performs the work.

**If circumstances arise subsequent to the issuance of a contract, the results of which the Contractor believes will prevent attaining the local-hire goals, the contractor will immediately notify the Local Employment Services staff by requesting a conditional exemption. Staff shall meet with the applicant as necessary and issue a decision within five days, including a determination as to any retroactive liability for failure to achieve the goals for work undertaken prior to the application for such a conditional exemption.**

## **PART IV –A: LOCAL CONSTRUCTION EMPLOYMENT REFERRAL PROGRAM (LCERP)**

The Local Construction Employment Referral Program is a one-stop employment service for Oakland residents. The onsite Job Developer evaluates the skill levels of Oakland residents seeking work as skilled or un-skilled workers on construction projects. Names, contact information and skill levels are maintained in a LCERP Data Bank. In order to satisfy the fifty percent (50%) new hire goal when employment vacancies occur on a job site, each contractor must follow the steps outlined below.

### **Referrals and Dispatching Oakland Residents**

For Open Shop – in the absence of a collective bargaining agreement the Contractor shall:

- a. Contact the City to request a referral from the Local Construction Employment Referral database; and
- b. Submit a completed “Job Request & Referral Form” by fax or e-mail.
- c. City staff will refer an Oakland resident (matching the qualifications identified by the contractor on the Job Request & Referral form) to the Contractor within three business days.

For Union Shop – contractors working under a collective bargaining agreement shall:

- a. Contact local union hall to request an Oakland resident; and
- b. If an Oakland resident is not available for dispatch, contact CC&ES to request a referral from the Local Construction Employment Referral data bank; and
- c. Submit a completed “Job Request & Referral Form” by fax or e-mail to CC&ES.
- d. The CC&ES will refer an Oakland resident (matching the qualifications defined by the contractor) to the local union hall and that resident will be dispatched within three business days in accordance with the lawful hiring hall rules of the Union.

Unavailability Exemption (applicable to both union shop and open shop requests)

When the Contractor has taken the steps above and an Oakland resident is not available, the City shall issue a limited exemption. Unavailability exemptions will be issued in maximum increments of 160 hours per worker request.

### **Incentives and Penalties**

#### Incentives (credit or banking of hours)

To encourage long-term retention and early hiring of Oakland residents as employees of contractors doing business in Oakland, the City will give a contractor credit towards the LEP goals when the contractor employs craft persons, superintendents, and foremen that are Oakland residents. Banked or credited hours may only be applied toward meeting 50% of the LEP requirement. Contractors may receive credit for hours performed by these Oakland-resident employees in the following circumstances:

1. When a contractor exceeds the LEP workforce hour goal on an existing project, those surplus hours will be banked for application on a subsequent City project.

2. When a contractor employs Oakland residents on non-City projects during the year prior to issuance of a notice to proceed on the City contract, those hours will apply toward the 50% workforce hour requirement.
3. When a Contractor employs Oakland residents on non-City projects during the six months following completion of a City Contract or Subcontract, those hours will be banked for application on a subsequent City project.
4. The general contractor may utilize the hours performed by its Oakland-resident employees that exceed LEP goals to meet the LEP goals of a Subcontractor that fails to achieve its own LEP goals. However, the City may designate a contractor as ineligible to receive excess-hours credit under this section for demonstrated prior non-compliance.

Contractors may fully avail themselves of other credits for local hire that may be available in other City programs and policies (such as tax credits) without regard to the credits that they may receive under the LEP policy for their use of Oakland-resident employees. The LEP is in no way designed to reduce or otherwise compromise those available incentives.

#### Penalties

Any penalty imposed under this policy for a Contractor's failure to achieve the LEP goals will be implemented under a system of progressive implementation. The City will assess factors such as the degree of failure; the efforts undertaken to achieve the goals and the presence or absence of repeated failure to achieve the goals in determining what level of penalty would be appropriate within the penalty range available in Article VI.

When a Contractor finishes its contract without meeting the LEP requirements, and a penalty is warranted, the City will withhold from final payment up to 150% of the wages for the deficient hours of the non-complying Contractor's contract. The Contractor will have one year to work off the hours owed by working Oakland residents on non-City projects. If at the end of this period all the deficient hours have not been eliminated, the Contractor will forfeit 150% of the wages for any remaining deficient hours to the City as a fine.

Repeated failure to comply with the LEP could lead to debarment under City contracting policies.

#### **Outreach**

The City may hold a post-award meeting to familiarize the contractors with the LEP requirements as well as with the requirements of the 15% Apprenticeship Program. If requested by the contractor the City shall hold such a meeting within 10 business days. Post award meetings are most advantageous to contractors that wish to become more familiar with these programs and may also be held upon request of the contractor throughout the life of the project. Attendance at a post-award meeting will contribute to the contractor's ability to comply with the LEP and apprentice utilization policies. To the extent allowable by law, the meeting will be open to stakeholders.

A post-award meeting will include instructions on when and how to prepare and submit the following forms:

- Certified payroll reports
- Anticipated Project Workforce
- Job Request and Referral
- Apprentice Utilization Plan
- Certified Trucking Roster
- Quarterly Wage & Withholding Reports (DE-6)
- Progress Payment

A post-award meeting should also provide, when possible, information to support the contractors' success, and may include:

- California Labor Code relating to Apprentices on public works projects
- Certification Application
- Work Opportunity and Welfare-to-Work Tax Credit
- Construction & Demolition (C&D) Debris Recycling
- Prevailing Wages
- Apprenticeship Program

The City Manager's Office, Contract Compliance & Employment Services Division will conduct at least three "Winning Compliance" Workshops per year. Contractors are encouraged to attend at least one such workshop. Forms and information listed above under post award meeting will be the major topics of discussion. Attendance at these workshops will assist the contractor in complying with the LEP and apprentice utilization policies.

### **Reporting**

The developer or contractor must submit reports for compliance with the LEP as required by the City. These reports may include weekly certified payroll records for all crafts covered under these Program provisions within fifteen working days of the end of each payroll period. In addition to the weekly-certified payroll records, the City may require a weekly or monthly summary of the information that would be obtainable from the certified payroll regarding local-hire by craft. These reports must show the person-hours on a craft-by-craft basis and, in the case of certified payroll records, identify the address, Social Security number, new hire, ethnicity, gender and trade and status (journeyman or apprentice) of all employees on the project. All reports must have an original signature and be signed by an authorized officer of the company under penalty of perjury. The City will make a copy of required forms available to Contractors. These forms will be available in hard copy or digitally.

Nothing in this Policy is intended to eliminate the requirement of a contractor to maintain certified payrolls or of the subcontractors to provide certified payrolls to the prime Contractor, or for any contractor to provide certified payrolls to any party that requests them, as required in State law.

### **Monitoring**

The City will monitor LEP and Apprentice-Utilization compliance, via means such as desk reviews or on-site monitoring. City employees conducting on-site monitoring are authorized to

visit City-subsidized projects and are covered under the City of Oakland's insurance policy. Full-scale investigations of non-compliances or violations will be on an as-needed basis.

The City shall provide a general contractor with an audit of a subcontractor's LEP compliance within 45 days of the request, so long as the General Contractor provides the City with the information required by the City to make such an audit.

Audits of compliance may require the review of documents such as certified payrolls, Apprenticeship Utilization Form, Request & Referral Form, Certification of Compliance Hours Form, cancelled checks, progress payments, or Quarterly Wage and Withholding Reports (DE-6), among others.

A Developer or Contractor that fails to provide requested documents or misrepresents material facts in such documents shall be deemed to be non-compliant with the LEP.

**Other Conditions**

Developers or contractor will comply with the appropriate provisions of the California State Labor Code regarding the required ratio of apprentices to journeypersons to be employed on the job site.

**Program Amendments**

The City Manager may make changes as necessary to implement and achieve the goals of the Local Employment Program.

**Conflicts**

The provisions of this program may not be enforced to the extent that such enforcement results in a Developer or Contractor violating a consent decree or other judicial or administrative order or a statutory or regulatory provision.

**Severability**

In the event any provision of this Program is deemed illegal or invalid for any reason, said illegality or invalidity will not affect the remaining parts of the Program but the same shall be construed and enforced as if said illegal or invalid provision had never been inserted herein, and the Ordinance will be interpreted in a manner that best gives effect to its initial understanding.



PART V: APPENDIX

GLOSSARY

**Apprentice** – An individual who is registered with an apprenticeship program approved by the Division of Apprenticeship Standards (DAS).

**Apprenticeship Coordinator** – An individual who supervises apprenticeship-training activities

**Apprentice Work Hours** – The work hour's apprentices are required to work on public works projects

**Availability** - The number of certified L/SLBE firms, by trade, ready and willing to compete for work with the City of Oakland.

**Bay Area Construction Sector Intervention Collaborative (BACSIC)** – A coalition of community based organizations, union representatives and apprenticeship coordinators partnering to provide necessary support services to assist job seekers in obtaining employment in the construction industry

**Bid Discounts** - the application of a percentage discount to the total amount of a bid submitted by a Bidder for a Contract solely for the purpose of bid comparisons when determining the lowest and best bid, or lowest responsible bid. The use of a bid discount for bid comparison does not alter the total amount of the bid submitted by a bidder or the contract executed based on a bid.

**Business Suppliers/Prefabricators** - An individual or business entity that makes available a certain commodity for meeting demand or for purchase at a given price.

**City**- Reference to the City or City Council, and reference to the City Administrator includes the Agency Administrator.

**City Financial Assistance Recipient (CFAR)** - A business or individual that receives a city subsidy for a public works project.

**Commercially useful function** - The business is directly responsible for providing the materials, equipment, supplies or services to the City as required by the solicitation or request for quotes, bids or proposals. LBEs and SLBEs that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought by the City.

**Community Based Organization (CBO)** – A non-government agency created to provide training or employment assistance to job seekers.

**Contractor/Consultant/Vendor** - The individual, partnership, corporation, joint venture or other legal entity entering into a contractual agreement with the City.

**Core Employee** – An apprentice or journey level employee who: possesses any license required by state or federal law for the project work to be performed; has worked a total of at least 1000 hours in the construction craft during the prior three years; was on the Contractor’s active payroll for at least 60 out of the 180 calendar days prior to the contract award; and has the ability to perform safely the basic functions of the applicable trade.

**Craft-by-Craft** – Measuring the hours worked by an apprentice or journey person with regard to each craft, as defined in the Federal and State Wage Determination.

**Dealer** - A firm that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers.

**Developer** - A person, entity, or business that prepares or develops real property for new development or redevelopment and receives a city subsidy.

**Division of Apprenticeship Standards (DAS)** – The agency responsible for apprenticeship in the state of California

**Emergency Work** - A public works contract awarded because of imminent danger (e.g. fires, floods, earthquakes) or immediate threat to health safety and welfare of Oakland residents and meeting the City’s requirements for waiving normal bidding procedures

**Fixed office** – A fixed office is dedicated office space, owned or leased by the local business, in an established, non-portable building where regular work pertinent to the contract is conducted. For small local business certifications, the fixed office shall be the primary business location of the business. A residence may qualify as a fixed office provided that all the following conditions are met: (a) the business conducted in the residence complies with Oakland Zoning Regulations relating to Home Occupations; and (b) the residence is the primary business location of the business and contributes not less than 51% of the gross receipts of business. A fixed distribution point is a non-portable warehouse or an outside shipping yard owned or leased by the local business, where shipping, receiving and the owner and employees regularly and exclusively conduct distribution of goods and commodities on behalf of the business.

**Informal construction contracts** – With the exception of the \$250,000 dollar limit established by the “Preferred Small Local Business Program”, for purposes of establishing a threshold for determining the application of the L/SLBE Program only, informal construction contracts are valued under \$100,000. For informally bid construction contracts, 75% of the work must be awarded to local firms.

**Informal professional services contracts** – With the exception of the \$250,000 dollar limit established by the “Preferred Small Local Business Program”, for purposes of establishing a threshold for determining the application of the L/SLBE Program only, informal professional service contracts are valued under \$50,000. For informal professional services contracts, 75% of the work must be awarded to local firms.

**Local Business Enterprise (LBE)** – An Oakland business (a) with a substantial presence in the city of Oakland’s geographic boundaries (b) fully operational for 12 consecutive months and(c) a valid business tax certificate.

**Local Business Enterprise – Locally Produced Goods (LBE-LPG)** - A manufacturing business located within the geographic boundaries of Oakland. The LBE-LPG will have the same rights and privileges as a small local business enterprise.

**Local Certified Trucker** – A locally owned and operated business engaged in transporting goods on trucks to or from a specified location and holds a valid certification as a trucking contractor.

**Local Construction Employment Referral Program (LCERP)** – The Employment Services Unit of the Office of the City Manager created to identify Oakland residents for employment on City of Oakland and Oakland Redevelopment Agency construction projects.

**Manufacturer** - A firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies purchased.

**Monitoring** – The system established to measure compliance with the Local Employment Program Policy and the 15% Apprenticeship Utilization Policy. This system includes tracking the employment status (as reported by certified payrolls) on all public works projects. Monitoring occurs for:

- Payment of prevailing wages
- Apprenticeship Hours
- Resident workforce hours
- New Hires

**New Hire** – Any employee of a contractor who is not listed on the contractor’s quarterly tax statements for the tax period been hired prior to the commencement of work, unless the employee qualifies as a Core Employee.

**Non-profit/Not for Profit Corporation** - A nonprofit corporation is a corporation formed for purposes other than generating a profit and in which no part of the organization's income is distributed to its directors or officers. Nonprofit corporations are formed pursuant to state law, often under the Revised Model Non-Profit Corporation Act (1986). A nonprofit corporation can be a church or church association, school, charity, medical provider, legal aid society, volunteer services organization, professional association, research institute, museum, or in some cases a sports association. Nonprofit corporations must apply for tax-exempt status at both the federal and state level.

**Owner Operator** – a contractor, who operates their own, leased or rented equipment and uses that equipment on the public works project, and hires no other employees

**Post Award** – The meeting held between the City and contractors after the award of a public works project and before the issuance of a notice to proceed. Post award meetings occur at the request of either the using agency or contractor/consultant.

**Preferred Small Local Business Program** – a program designed to enhance small local business participation by soliciting proposals and/or bids from a pre-qualified group of Oakland certified firms. The Preferred Small Local Business Program will be limited to contracts of up to \$250,000 of which total amount includes the cost of include change orders, amendments and extensions.

**Preference Points:** a predetermined number of points awarded during the Request for Proposal and Request for Qualification evaluation phase of a competitive process.

**Public works contract** - Any construction, alteration, demolition, or repair work done under contract and paid for in whole or in part with public funds, or by a developer who receives any type of governmental subsidy.

**Resident** - Any person whose primary residence is in Oakland. An individual designated as a journey-level worker must have established residency at least two (2) weeks prior to commencement of work; and an individual designated as an apprentice must have established residency at least six (6) months prior to commencement of work.

**Size Standard** - One factor used to determine a small business. For the City of Oakland, a small business is one with three-year average gross receipts at or below thirty percent (30%) of the United States Small Business Administration's size standard.

**Small Local Business Enterprise (SLBE)** –A business with (a) a substantial presence in the city of Oakland's geographic boundaries (b) a full operation conducting business for 12 consecutive months and (c) a valid business tax certificate, and (d) is an independent business headquartered in Oakland.

**Subcontractor/Sub-consultant** - The individual, partnership, corporation or other legal entity that contracts to perform part of or all of the obligations of another's contract

**Subsidiary/Affiliate** - Part of a larger company with national offices located in other cities outside Oakland, and controlled by a home office or headquarters outside Oakland.

**Subsidy** - A grant, loan, credit, tax rebate, or any other way that provides a measure of value to the developer from the City.

**Substantial Presence** – A fixed and established place where work is carried on of a clerical, administrative, and professional or production nature directly pertinent to the business being certified a temporary location or movable property or one that was established to oversee a project such as a construction project office does not qualify. Businesses with offices both within and outside of the City that seek certification as a local business must demonstrate the existence of a bona fide local office in accordance with the following criteria:

Independent Office Site - The local office can and does function as an independent office site. Criteria for consideration include:

- The local office is not merely a sham operation set up by a non-local business for the purpose of gaining L/SLBE certification;
- The local office contains all fixtures and/or equipment, including but not limited to, as appropriate, computer(s) software, copy machine(s), furniture, vehicle(s), tools, appliances and/or machinery necessary to operate the business for which the certification is sought;
- The local office contains all space necessary to operate the business for which certification is sought, including but not limited to, as appropriate, office space, warehouse space, parking, yard area and/or shop area;
- The local office must be the main office for assigned personnel who conduct a full range of the business' activities out of the local office including but not limited to, as appropriate, professional, clerical and/or administrative staff assigned and dedicated to the local office as necessary to operate the business for which certification is sought;
- The local office functions on a daily basis, or a regular basis as otherwise appropriate, providing all services to operate the business for which certification is sought.

**Tier** - The level of the relationship between the prime contractor and subcontractors, or between subcontractors.

**Trucking** – The transport of any bulk material such as steel, lumber, rebar, sheetrock, equipment, spoils, gravel, base course, excess, excavated materials, asphalt, imported fill and any other type of manufactured or fabricated bulk material that is imported and/or exported to and from the job site.

**Very Small Local Business Enterprise** - A business with (a) a substantial presence in the city of Oakland's geographic boundaries (b) a full operation conducting business for six (6) consecutive months and (c) a valid business tax certificate, and (d) is an independent business headquartered in Oakland. (e) gross receipts that do not exceed \$375,000

**Waiver** - An intentional action by City Council, excusing a contractor or a department from (1) adhering to and/or complying with a City policy.

## FORMS AND SCHEDULES

Forms and Schedules can be found on the City Of Oakland's Contracts and Compliance Division website. There you will find all the forms and schedules needed to contract with the City of Oakland. To go to our website click or copy and paste the web address to your web browser <http://www2.oaklandnet.com/government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm>



02a.39

Susan Wengraf  
Councilmember District 6

ACTION CALENDAR  
May 25, 2021

To: Honorable Mayor and Members of the City Council  
From: Councilmember Wengraf (Author)  
Subject: Amend BMC 14.72.105

RECOMMENDATION

Adopt first reading of an Ordinance amending BMC 14.72.105 Neighborhood-Serving Community Facility Permits, to allow a broader range of community facilities to be eligible for parking permits.

FISCAL IMPACTS OF RECOMMENDATION

No significant fiscal impact

CURRENT SITUATION AND ITS EFFECTS

BMC 14.72.105 currently allows the City to issue a limited number of neighborhood-serving community facility parking permits to the following community facilities situated in residential parking permit (RPP) areas: churches, schools, and senior centers. This item proposes to add Alcohol and Drug Rehabilitation Facilities to the list of neighborhood-serving community facilities eligible to purchase parking permits for their staff.

Currently, a neighborhood-serving community facility is only eligible for parking permits under BMC 14.72.105 if there is inadequate off-street parking and no financially feasible way of creating adequate off-street parking on location, and no off-street parking is available nearby for lease. The number of eligible permits cannot exceed 60% of the enterprise's employees. The only change proposed to this ordinance would be to add the additional category of Alcohol and Drug Rehabilitation Facilities to neighborhood-serving community facilities for parking permit eligibility.

ENVIRONMENTAL SUSTAINABILITY

No direct impact on environmental sustainability

CONTACT PERSON

Councilmember Wengraf                      Council District 6                      (510) 981-7160

Attachments:

- 1: Ordinance to Amend BMC 14.72.105

ORDINANCE NO. -N.S.

AMEND BMC 14.72.105  
NEIGHBORHOOD-SERVING COMMUNITY FACILITY PERMITS

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

Section 1. That Berkeley Municipal Code BMC 14.72.105 is amended to read as follows:

**14.72.105 Neighborhood-serving community facility permits**

A. The Department of Finance may issue neighborhood-serving community facility enterprise permits with a term not to exceed one year subject to the requirements set forth in this section and in administrative rules and regulations issued pursuant to this chapter.

B. A neighborhood-serving community facility parking permit may be issued to representatives of the following neighborhood- serving community facilities: churches, schools, ~~and~~ senior centers and alcohol and drug rehabilitation facilities. The issuance of permit can occur no sooner than 30 days after implementation of a residential permit parking area and the following criteria shall be used in establishing eligibility of an enterprise and the number of permits to be issued any enterprise:

1. An enterprise for which there is inadequate off-street parking and no financially feasible way of creating adequate off-street parking on the site of the enterprise;
2. An enterprise for which there is no off-street parking available nearby for lease or rental;
3. The total number of permits issued does not exceed the number representing 60% of the enterprise's employees;
4. The total number of permits issued to a Berkeley Unified School District (BUSD) school that is not within 1/2 mile of a Bay Area Rapid Transit (BART) Station, and not within 1/4 mile from a rapid transit bus stop, and not within 1/4 mile from two bus routes that run at a frequency of 20 minutes or less does not exceed 70% of the enterprise's employees;



5. Distribution of permits shall be through a designated representative of the enterprise who will be responsible for allocation of the permits to employees, or in the case of the senior centers, to users of the enterprise; and

Compile Chapter

1. Degree of impact on parking conditions for residents and merchants in the area. (Ord. 7580-NS § 1, 2017: Ord. 6762-NS § 4 (part), 2003: Ord. 5972-NS § 1, 1990: Ord. 5803-NS § 2 (part), 1987)





Mental Health Commission

02a.40

INFORMATION CALENDAR  
May 25, 2021

To: Honorable Mayor and Members of the City Council  
From: Mental Health Commission  
Submitted by: Dr. Margaret Fine, Chair, Mental Health Commission  
Subject: Mental Health Commission Work Plan 2021-2022

INTRODUCTION

At its March 25, 2021 meeting, the Mental Health Commission adopted its 2021-2022 Work Plan.

CURRENT SITUATION AND ITS EFFECTS

On March 25, 2021, the Mental Health Commission adopted the attached work plan through the action detailed below.

The 2021-2022 Work Plan is a Strategic Plan Priority Project, advancing our goal to address public mental health and substance use services for community members living with serious mental illness (SMI) and substance use difficulties (SUD) --many of whom are unhoused, people of color, LGBTQIA+ people. people living with disabilities of all ages.

We advance this goal by focusing on: 1) client-centered, well-integrated coordination of services to support whole person care for individuals with SMI and SUD and 2) reducing and eliminating overrepresentation and disproportionate impacts from involvement with law enforcement, criminal legal and incarceration systems. In this light, the Work Plan is designed to specifically address the need for a 24/7 non-police crisis response program for the City of Berkeley as an alternative to policing for non-criminal matters.

In addition, our Work Plan is designed to champion and demonstrate the importance of equitable public mental health and substance use service delivery in the form of tailored culturally safe and responsive public mental health and substance use services to diverse people and communities. The Work Plan thus advances this effort by achieving these goals to: 1) build partnerships with people using these services, families, community members and CBOs in order to evaluate service delivery and 2) participating in mental health and substance use program evaluation at the system level for the Division of Mental Health.

The Work Plan is designed to promote mental health and substance use education in an effort to reduce and eliminate the stigmatization and stereotyping of people living

with mental health and substance use conditions, particularly diverse people living with SMI and SUD--many of whom are unhoused--in the community. This goal is designed to improve the way society views mental health and substance use so people are without fear of judgement in seeking services needed to foster and sustain mental wellness in the community.

BACKGROUND

In 2016, the City Council adopted direction to commissioners to submit a work plan annually.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental sustainability impact associated with the adoption of this work plan.

POSSIBLE FUTURE ACTION

None

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None

CONTACT PERSON

Jamie Works-Wright, MH Commission Secretary, HHCS/MH, 510-981-7721

Attachments: Attachment 1: FY 2021-2022 Work Plan



Mental Health Commission

## **Mental Health Commission Work Plan 2021 – 2022**

1. People living with Serious Mental Illness/Substance Use Problems, especially Unhoused People
  - Advise and make recommendations to Berkeley Mental Health and the Berkeley City Council about the capacity of the public mental health system to address the needs of unhoused people living with mental illness and substance use problems.
2. Specialized Care Unit (SCU) Non-Police Crisis Response
  - Review and evaluate the RDA Report, including about the Berkeley Mental Health's Mobile Crisis Unit and the SCU, and Advise the Division of Mental Health and Berkeley City Council about the MHC Recommendations.
3. Reduce Mental Health Impacts from Policing
4. Mental Health Equity and Inclusion
  - Identify and apply a rubric for evaluating compliance with best practices for mental health equity, disparities and inclusion for diverse and marginalized peoples.
5. Mental Health Education
  - Increase Public Education on Mental Health and Wellness
6. MHC Partnerships and Presentations
  - Build a Strong Partnership with Consumers, Families, Community, Berkeley Mental Health, Community-Based Organizations, including inviting representatives to Mental Health Commission meetings to present and answer questions about the public mental health and substance use systems for the City of Berkeley

7. Accountability

- Assess the financial accountability of Berkeley Mental Health and related Community Based Organizations (CBOs) (particularly focused on drastic tax revenue reductions from impacts of COVID).
- Review and evaluate program need, services, and facilities— including challenges and any problems and make recommendations, including about Division of Mental Health, to incorporate harm reduction principles and increases substance use services into all programs and make reports.
- Make site visits to Berkeley Mental Health programs, as well as to CBO programs which have contracts with BMH and ACBHCSA, to become more informed and familiar with the continuum of interventions and services. Meet with staff and consumers of these services.

8. Membership and Governance

9. Recruitment

- Prepare membership materials and recruit members to MHC.

10. Annual Report

- Submit Annual Report for 2020 to the Berkeley City Council.

| Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i> |                                                                                                                             |
|-------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| Scheduled Dates                                                               |                                                                                                                             |
| May 18                                                                        | <ol style="list-style-type: none"> <li>1. Systems Realignment</li> <li>2. Affordable Housing Policy Reform</li> </ol>       |
| July 20                                                                       | <ol style="list-style-type: none"> <li>1. Bayer Development Agreement</li> <li>2. Measure FF and Fire Prevention</li> </ol> |
| Sept. 21                                                                      | <ol style="list-style-type: none"> <li>1. Housing Element</li> </ol>                                                        |
|                                                                               |                                                                                                                             |

| Unscheduled Workshops                                                                                                                                                                 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Cannabis Health Considerations</li> <li>2. Berkeley Police Department Hiring Practices (referred by the Public Safety Committee)</li> </ol> |

| Unscheduled Presentations (City Manager)                                                                                                                                                                            |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Update: Zero Waste Priorities</li> <li>2. Civic Arts Grantmaking Process &amp; Capital Grant Program</li> <li>3. Review and Update on City's COVID-19 Response</li> </ol> |

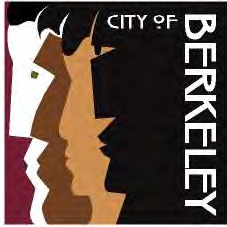
|    | <b>City Council Referrals to the Agenda &amp; Rules Committee and Unfinished Business for Scheduling</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <p><b>47. Amending Chapter 19.32 of the Berkeley Municipal Code to Require Kitchen Exhaust Hood Ventilation in Residential and Condominium Units Prior to Execution of a Contract for Sale or Close of Escrow</b> <i>(Reviewed by Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee) (Referred from the January 21, 2020 agenda)</i></p> <p><b>From: Councilmember Harrison</b></p> <p><b>Recommendation:</b></p> <ol style="list-style-type: none"> <li>1. Adopt an ordinance amending Berkeley Municipal Code (BMC) 19.32 to require kitchen exhaust ventilation in residential and condominium units prior to execution of a contract for sale or close of escrow.</li> <li>2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods.</li> </ol> <p><b>Financial Implications:</b> See report<br/> Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140<br/> <i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p> |
| 2. | <p><b>25. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers</b> <i>(Continued from February 25, 2020. Item contains revised and supplemental materials) (Referred from the May 12, 2020 agenda.)</i></p> <p><b>From: City Manager</b></p> <p><b>Recommendation:</b> Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.</p> <p><b>Financial Implications:</b> None<br/> Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000<br/> <i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p>                                                                                                                                                                                                                             |
| 3. | <p><b>17. Objective Standards Recommendations for Density, Design and Shadows</b> <i>(Item contains supplemental material.) (Referred from the March 23, 2021 agenda.)</i></p> <p><b>From: Joint Subcommittee for the Implementation of State Housing Laws</b></p> <p><b>Recommendation:</b> Refer to the Planning Commission and Design Review Committee to review the recommendations from the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) for objective standards for density, design and shadows and draft Zoning Ordinance amendments for City Council consideration.</p> <p><b>Financial Implications:</b> See report<br/> Contact: Alene Pearson, Commission Secretary, (510) 981-7400<br/> <i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p>                                                                                                                                                                                                                                               |



| CITY CLERK DEPARTMENT                                                       |                      |                       |                                         |                   |
|-----------------------------------------------------------------------------|----------------------|-----------------------|-----------------------------------------|-------------------|
| WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS<br>BEFORE THE CITY COUNCIL |                      |                       |                                         |                   |
| Address                                                                     | Board/<br>Commission | Appeal Period<br>Ends | Determination<br>on Appeal<br>Submitted | Public<br>Hearing |
| <b>NOD – Notices of Decision</b>                                            |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
| <b>Public Hearings Scheduled</b>                                            |                      |                       |                                         |                   |
| 2421 Fifth St (construct two residential buildings)                         | ZAB                  |                       |                                         | 6/1/2021          |
| 1205 Peralta Avenue (conversion of an existing garage)                      | ZAB                  |                       |                                         | TBD               |
| 2943 Pine Street (construct second story on existing one story)             | ZAB                  |                       |                                         | TBD               |
|                                                                             |                      |                       |                                         |                   |
| <b>Remanded to ZAB or LPC</b>                                               |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
| <b>Notes</b>                                                                |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |

5/6/2021





Office of the City Manager

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** November 10, 2020

**Item Number:** 20

**Item Description:** Annual Commission Attendance and Meeting Frequency Report

**Submitted by:** Mark Numainville, City Clerk

The attached memo responds to issues and questions raised at the October 26 Agenda & Rules Committee Meeting and the October 27 City Council Meeting regarding the ability of city boards and commissions to resume regular meeting schedules.



Office of the City Manager

November 9, 2020

To: Mayor and Council  
From: Dee Williams-Ridley, City Manager  
Subject: Commission Meetings Under COVID-19 Emergency (Item 20)

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This memo provides supplemental information for the discussion on Item 20 on the November 10, 2020 Council agenda. Below is a summary and update of the status of meetings of Berkeley Boards and Commissions during the COVID-19 emergency declaration and the data collected by the City Manager on the ability of commissions to resume meetings in 2021.

On March 10, 2020 the City Council ratified the proclamation of the Director of Emergency Services for a state of local emergency related to the COVID-19 pandemic. The emergency proclamation has been renewed twice by the Council and remains in effect.

On March 17, 2020 the City Council adopted Resolution No. 69,331-N.S. which placed limitations of the meetings of City legislative bodies, including all boards and commissions. The resolution allows for commissions to meet to conduct time-sensitive, legally mandated business with the authorization of the City Manager. Since that time, several commissions have obtained this approval and held meetings; many other commissions have not met at all since March.

The City Manager has periodically reviewed the status of commission meetings with the City Council Agenda & Rules Committee. Recently, at the October 12, 2020 Agenda & Rules Committee meeting, the City Manager presented a proposal to allow all commissions to meet under limited circumstances. The Committee voted to endorse the City Manager's recommendation.

Effective October 12, 2020, all City boards and commissions may meet once to develop and finalize their work plan for 2021 and to complete any Council referrals directly related to the COVID-19 pandemic response. A second meeting may be held to

complete this work with specific authorization by the City Manager. It is recommended that the meeting(s) occur by the end of February 2021.

Commissions that have been granted permission to meet under Resolution No. 69,331-N.S. may continue to meet pursuant to their existing authorization, and may also meet to develop their 2021 work plan.

Commissions that have not requested meetings pursuant to the Resolution No. 69,331-N.S. may meet pursuant to the limitations listed above.

In response to questions from the Agenda & Rules Committee and the Council, the City Manager polled all departments that support commissions to obtain information on their capacity to support the resumption of regular commission meetings. The information in Attachment 1 shows the information received from the departments and notes each commission's ability to resume a regular, or semi-regular, meeting schedule in 2021.

In summary, there are 24 commissions that have staff resources available to support a regular meeting schedule in 2021. Seven of these 24 commissions have been meeting regularly during the pandemic. There are five commissions that have staff resources available to support a limited meeting schedule in 2021. There are seven commissions that currently do not have staff resources available to start meeting regularly at the beginning of 2021. Some of these seven commissions will have staff resources available later in 2021 to support regular meetings. Please see Attachment 1 for the full list of commissions and their status.

With regards to commission subcommittees, there has been significant discussion regarding the ability of staff to support these meetings in a virtual environment. Under normal circumstances, the secretary's responsibilities regarding subcommittees is limited to posting the agenda and reserving the meeting space (if in a city building). With the necessity to hold the meetings in a virtual environment and be open to the public, it is likely that subcommittee meetings will require significantly more staff resources to schedule, train, manage, and support the work of subcommittees on Zoom or a similar platform. This additional demand on staff resources to support commission subcommittees is not feasible for any commission at this time.

One possible option for subcommittees is to temporarily suspend the requirement for ad hoc subcommittees of city commissions to notice their meetings and require public participation. Ad hoc subcommittees are not legislative bodies under the Brown Act and are not required to post agendas or allow for public participation. These requirements are specific to Berkeley and are adopted by resolution in the Commissioners' Manual. If it is the will of the Council, staff could introduce an item to temporarily suspend these

requirements which will allow subcommittees of all commissions to meet as needed to develop recommendations that will be presented to the full commission.

The limitations on the meetings of certain commissions are due to the need to direct staff resources and the resources of city legislative bodies to the pandemic response. Some of the staff assigned as commission secretaries are engaged in work with the City Emergency Operations Center or have been assigned new duties specifically related to the impacts of the pandemic.

Meeting frequency for boards and commissions will continue to be evaluated on a regular basis by the City Manager and the Health Officer in consultation with Department Heads and the City Council.

Attachments:

1. List of Commissions with Meeting Status
2. Resolution 69,331-N.S.

**November 10, 2020 - Item 20  
Supplemental Information**

| <b><u>Boards and Commissions</u></b>              | <b><u>Meetings Held Under COVID March - Oct</u></b> | <b><u>Regular Mtg. Date</u></b> | <b><u>Secretary</u></b> | <b><u>Dept.</u></b> | <b><u>Resume Regular Schedule in January 2021?</u></b> | <b><u>Note</u></b>                                |
|---------------------------------------------------|-----------------------------------------------------|---------------------------------|-------------------------|---------------------|--------------------------------------------------------|---------------------------------------------------|
| Fair Campaign Practices Commission                | 9                                                   | 3rd Thur.                       | Sam Harvey              | CA                  | YES                                                    | Have been meeting regularly under COVID Emergency |
| Open Government Commission                        | 6                                                   | 3rd Thur.                       | Sam Harvey              | CA                  | YES                                                    | Have been meeting regularly under COVID Emergency |
| Animal Care Commission                            | 0                                                   | 3rd Wed.                        | Amelia Funghi           | CM                  | YES                                                    |                                                   |
| Police Review Commission                          | 10                                                  | 2nd & 4th Wed.                  | Katherine Lee           | CM                  | YES                                                    | Have been meeting regularly under COVID Emergency |
| Disaster and Fire Safety Commission               | 4                                                   | 4th Wed.                        | Keith May               | FES                 | YES                                                    |                                                   |
| Community Health Commission                       | 0                                                   | 4th Thur.                       | Roberto Terrones        | HHCS                | YES                                                    |                                                   |
| Homeless Commission                               | 0                                                   | 2nd Wed.                        | Josh Jacobs             | HHCS                | YES                                                    |                                                   |
| Homeless Services Panel of Experts                | 5                                                   | 1st Wed                         | Josh Jacobs             | HHCS                | YES                                                    |                                                   |
| Human Welfare & Community Action Commission       | 0                                                   | 3rd Wed.                        | Mary-Claire Katz        | HHCS                | YES                                                    |                                                   |
| Mental Health Commission                          | 1                                                   | 4th Thur.                       | Jamie Works-Wright      | HHCS                | YES                                                    |                                                   |
| Sugar-Sweetened Beverage Product Panel of Experts | 0                                                   | 3rd Thur.                       | Dechen Tsering          | HHCS                | YES                                                    |                                                   |
| Civic Arts Commission                             | 2                                                   | 4th Wed.                        | Jennifer Lovvorn        | OED                 | YES                                                    |                                                   |
| Elmwood BID Advisory Board                        | 1                                                   | Contact Secretary               | Kieron Slaughter        | OED                 | YES                                                    |                                                   |
| Loan Administration Board                         | 0                                                   | Contact Secretary               | Kieron Slaughter        | OED                 | YES                                                    |                                                   |
| Solano Avenue BID Advisory Board                  | 2                                                   | Contact Secretary               | Eleanor Hollander       | OED                 | YES                                                    |                                                   |
| Design Review Committee                           | 6                                                   | 3rd Thur.                       | Anne Burns              | PLD                 | YES                                                    | Have been meeting regularly under COVID Emergency |
| Energy Commission                                 | 0                                                   | 4th Wed.                        | Billi Romain            | PLD                 | YES                                                    |                                                   |
| Landmarks Preservation Commission                 | 6                                                   | 1st Thur.                       | Fatema Crane            | PLD                 | YES                                                    | Have been meeting regularly under COVID Emergency |
| Planning Commission                               | 3                                                   | 1st Wed.                        | Alene Pearson           | PLD                 | YES                                                    | Have been meeting regularly under COVID Emergency |
| Zoning Adjustments Board                          | 11                                                  | 2nd & 4th Thur.                 | Shannon Allen           | PLD                 | YES                                                    | Have been meeting regularly under COVID Emergency |
| Parks and Waterfront Commission                   | 4                                                   | 2nd Wed.                        | Roger Miller            | PRW                 | YES                                                    |                                                   |
| Commission on Disability                          | 0                                                   | 1st Wed.                        | Dominika Bednarska      | PW                  | YES                                                    |                                                   |
| Public Works Commission                           | 4                                                   | 1st Thur.                       | Joe Enke                | PW                  | YES                                                    |                                                   |
| Zero Waste Commission                             | 0                                                   | 4th Mon.                        | Heidi Obermeit          | PW                  | YES                                                    |                                                   |
| Commission on the Status of Women                 | 0                                                   | 4th Wed.                        | Shallon Allen           | CM                  | YES - LIMITED                                          | Secretary has intermittent COVID assignments      |

November 10, 2020 - Item 20  
Supplemental Information

| <u>Boards and Commissions</u>               | <u>Meetings Held Under COVID March - Oct</u> | <u>Regular Mtg. Date</u> | <u>Secretary</u>   | <u>Dept.</u> | <u>Resume Regular Schedule in January 2021?</u> | <u>Note</u>                                            |
|---------------------------------------------|----------------------------------------------|--------------------------|--------------------|--------------|-------------------------------------------------|--------------------------------------------------------|
| Commission on Aging                         | 0                                            | 3rd Wed.                 | Richard Castrillon | HHCS         | REDUCED FREQUENCY                               | Significant Dept. resources assigned to COVID response |
| Housing Advisory Commission                 | 0                                            | 1st Thur.                | Mike Uberti        | HHCS         | REDUCED FREQUENCY                               | Significant Dept. resources assigned to COVID response |
| Measure O Bond Oversight Committee          | 0                                            | 3rd Monday               | Amy Davidson       | HHCS         | REDUCED FREQUENCY                               | Significant Dept. resources assigned to COVID response |
| Transportation Commission                   | 2                                            | 3rd Thur.                | Farid Javandel     | PW           | REDUCED FREQUENCY                               | Staff assigned to COVID response                       |
| Children, Youth, and Recreation Commission  | 0                                            | 4th Monday               | Stephanie Chu      | PRW          | NO - SEPT 2021                                  | Staff assigned to COVID response                       |
| Youth Commission                            | 0                                            | 2nd Mon.                 | Ginsi Bryant       | PRW          | NO - SEPT 2021                                  | Staff assigned to COVID response                       |
| Community Environmental Advisory Commission | 0                                            | 2nd Thur.                | Viviana Garcia     | PLD          | NO - JUNE 2021                                  | Staff assigned to COVID response                       |
| Cannabis Commission                         | 0                                            | 1st Thur.                | VACANT             | PLD          | NO - JAN. 2022                                  | Staff vacancy                                          |
| Peace and Justice Commission                | 0                                            | 1st Mon.                 | VACANT             | CM           | NO                                              | Staff vacancy                                          |
| Commission on Labor                         | 0                                            | 3rd Wed., alternate mon  | Kristen Lee        | HHCS         | NO                                              | Staff assigned to COVID response                       |
| Personnel Board                             | 1                                            | 1st Mon.                 | La Tanya Bellow    | HR           | NO                                              | Staff assigned to COVID response                       |



## RESOLUTION NO. 69,331-N.S.

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

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

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

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

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

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

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

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

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

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

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

## Section 1. Boards and Commissions

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

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

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

### Category B

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

Transportation Commission  
Youth Commission  
Zero Waste Commission  
Loan Administration Board

Section 2. City Council Policy Committees

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

Section 3. City Council


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

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

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

Noes: None.

Absent: None.

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

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





Office of the City Manager

October 22, 2020

To: Berkeley Boards and Commissions

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

Subject: Commission Meetings During COVID-19 Emergency

This memo serves to provide a summary and update of the status of meetings of Berkeley Boards and Commissions during the COVID-19 emergency declaration.

On March 10, 2020, the City Council ratified the proclamation of the Director of Emergency Services for a state of local emergency related to the COVID-19 pandemic. The emergency proclamation has been renewed twice by the Council and remains in effect.

On March 17, 2020, the City Council adopted Resolution No. 69,331-N.S. which placed limitations of the meetings of City legislative bodies, including all boards and commissions. The resolution allows for commissions to meet to conduct time-sensitive, legally mandated business with the authorization of the City Manager. Since that time, several commissions have obtained this approval and held meetings; many other commissions have not met at all since March.

The City Manager has periodically reviewed the status of commission meetings with the City Council Agenda & Rules Committee. Recently, at the October 12, 2020, Agenda & Rules Committee meeting, the City Manager presented a proposal to allow all commissions to meet under limited circumstances. The Committee voted to endorse the City Manager's recommendation.

Effective October 12, 2020, all City boards and commissions may meet once to develop and finalize their work plan for 2021 and to complete any Council referrals directly related to the COVID-19 pandemic response. A second meeting may be held to complete this work with specific authorization by the City Manager. It is recommended that the meeting(s) occur by the end of February 2021.

Commissions that have been granted permission to meet under Resolution No. 69,331-N.S. may continue to meet pursuant to their existing authorization, and may also meet to develop their 2021 work plan.

Commissions that have not requested meetings pursuant to the Resolution No. 69,331-N.S. may meet pursuant to the limitations listed above.

To assist commissions with the development of their work plan and to provide the City Council with a consistent framework to review the work plans, the City Manager has developed the following items to consider in developing the work plan that is submitted to the City Council agenda.

Prompts for Commissions to use in work plan:

- What commission items for 2021 have a direct nexus with the COVID-19 response or are the result of a City Council referral pertaining to COVID-19?
- What commission items for 2021 are required for statutory reasons?
- What commission items for 2021 are required for budgetary or fund allocation reasons?
- What commission items for 2021 support council-adopted or voter-adopted mission critical projects or programs?
- What are the anticipated staff demands (above and beyond baseline) for analysis, data, etc., to support commission work in 2021 (baseline duties = posting agendas, creating packets, attend meetings, minutes, etc.)?

The limitations on commission meetings are due to the need to direct staff resources and the resources of city legislative bodies to the pandemic response. Many of the staff assigned as commission secretaries are engaged in work with the City Emergency Operations Center or have been assigned new specific duties related to the impacts of the pandemic.

Meeting frequency for boards and commissions will continue to be evaluated on a regular basis by the City Manager in consultation with Department Heads and the City Council. More frequent meetings by commissions will be permitted as the conditions under COVID-19 dictate.

Thank you for your service on our boards and commissions. The City values the work of our commissions and we appreciate your partnership and understanding as we address this pandemic as a resilient and vibrant community.

Attachments:

1. Resolution 69,331-N.S.
2. List of Commissions with Meeting Data

cc: Mayor and City Councilmembers  
Senior Leadership Team

RESOLUTION NO. 69,331-N.S.

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

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

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

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

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

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

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

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

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

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

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



## Section 1. Boards and Commissions

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

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

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

### Category B

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



Transportation Commission  
Youth Commission  
Zero Waste Commission  
Loan Administration Board

Section 2. City Council Policy Committees

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

Section 3. City Council


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

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

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

Noes: None.

Absent: None.

  
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Jesse Arreguin, Mayor

Attest:   
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Mark Numalville, City Clerk

