



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

TUESDAY, FEBRUARY 22, 2022

2:30 P.M.

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Kate Harrison

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

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of the attendees. Therefore, no physical meeting location will be 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/82263035613>. 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: **822 6303 5613**. 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: February 8, 2022**
- 2. Review and Approve Draft Agenda:**
 - a. 3/8/22 – 6:00 p.m. Regular City Council Meeting
- 3. Selection of Item for the Berkeley Considers Online Engagement Portal**
- 4. Adjournments In Memory**

Scheduling

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

Referred Items for Review

- 8. Discussion Regarding Impact of COVID-19 (novel coronavirus) on Meetings of Legislative Bodies**
- 9. Preliminary Analysis of Return to In-Person Meetings of City Legislative Bodies**

Unscheduled Items

- 10. Discussion Regarding Design and Strengthening of Policy Committee Process and Structure (Including Budget Referrals)**
- 11. 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, March 7, 2022

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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 February 17, 2022.



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**

**TUESDAY, FEBRUARY 8, 2022**

**2:30 P.M.**

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Kate Harrison

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

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**Roll Call:** 2:33 p.m. All present.

**Public Comment** – 4 speakers

## **Review of Agendas**

**1. Approval of Minutes: January 24, 2022**

**Action:** M/S/C (Hahn/Wengraf) to approve the Minutes of 1/24/22.

**Vote:** All Ayes.

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

a. 2/22/22 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Arreguin/Hahn) to approve the agenda for the 2/22/22 regular meeting with the changes noted below.

- Item Added: Designated Support Person (Harrison)
- Item Added: Labor Voting (Arreguin) – Councilmember Harrison added as a co-sponsor
- Item Added: CalPERS Contract (City Manager)
- Item Added: SRIP II Program (City Manager)
- Item 7 Lease Agreement (City Manager) – Removed from the agenda
- Item 20 Street Maintenance (Kesarwani) – Councilmember Droste added as a co-sponsor; Referred to the Budget & Finance Committee
- Item 22 Toxic Remediation (Taplin) – Mayor Arreguin added as a co-sponsor
- Item 23 South Sailing Basin (Robinson) – Co-sponsors changed to Co-authors
- Item 24 AB 1602 (Robinson) – Councilmembers Wengraf, Bartlett, and Harrison added as co-sponsors
- Item 27 Relocation Ordinance (Taplin) – Referred to the Land Use, Housing & Economic Development Committee

Order of Action Items

Item 25 ZAB Appeal

Item 26 Complete Streets

**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 the March 10 special meeting for Reimagining Public Safety

**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:** 2 speakers. Discussion of potential meeting spaces and policies for in-person meetings of city commissions.

**9. Preliminary Analysis of Return to In-Person Meetings of City Legislative Bodies**

**Action:** 2 speakers. Discussion of potential vaccination requirements and policies for in-person meetings of city council as well as technology for hybrid meetings of council committees.

## Unscheduled Items

**10. Discussion Regarding Design and Strengthening of Policy Committee Process and Structure (Including Budget Referrals)**

**11. 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 – None

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 3:48 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on February 8, 2022.

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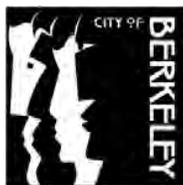
Mark Numainville, City Clerk

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Department at (510) 981-6908 or [policycommittee@cityofberkeley.info](mailto:policycommittee@cityofberkeley.info).

# DRAFT AGENDA



## BERKELEY CITY COUNCIL MEETING

Tuesday, March 8, 2022  
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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*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 Making Required Findings Pursuant to the Government Code and Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference**  
**From: City Manager**  
**Recommendation:** Adopt a resolution making the required findings pursuant to Government Code Section 54953(e)(3) and determining that as a result of the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference, initially ratified by the City Council on September 28, 2021, and subsequently reviewed and ratified on October 26, 2021, November 16, 2021, December 14, 2021, January 10, 2022, and February 8, 2022.  
**Financial Implications:** To be determined.  
Contact: Farimah Brown, City Attorney, (510) 981-6950
- 2. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on March 8, 2022**  
**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:** \$7,470,316  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 3. Housing Consultant Contract Amendment (Contract # 32100126) – Anjanette Scott LLC**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to the City's contract with Anjanette Scott LLC to add up to \$50,000 for consulting services in a total amount not to exceed \$100,000, with a contract end date of June 30, 2023.  
**Financial Implications:** See report.  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 4. Contract No. 32100082 Amendment: Resource Development Associates to Facilitate Grant Writing for the Specialized Care Unit**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to amend a contract with Resource Development Associates (RDA) to add grant writing services for the Specialized Care Unit (SCU) and mental health system for a total contract limit of \$245,000 for the period beginning January 1, 2021 and ending June 30, 2023. This amendment will add \$60,000 in funding and one year to the contract term.  
**Financial Implications:** See report.  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

## Consent Calendar

- 5. Contract No. 319001221-1 Amendment: Rolling Orange, Inc. for Additional Website Redesign Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 319001221-1 with Rolling Orange, Inc. for the additional website redesign services, for an amount not-to-exceed \$10,000 and a total contract value not-to-exceed \$569,300 from March 1, 2019 to June 30, 2024.  
**Financial Implications:** See report.  
Contact: Michael Sinor, Information Technology, (510) 981-6500
- 6. Measure T1 Contract: Western Water Features Inc. for the King Pool Plaster and Tile Replacement and West Campus Pool Plaster, Tile, and Filter Replacement**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution: 1. Approving the plans and specifications for the King Pool Plaster and Tile Replacement and West Campus Pool Plaster and Tile Replacement and Filter Replacement Project, Specification No. 22-11489-C; 2. Accepting the bid of the lowest responsive and responsible bidder, Western Water Features, Inc.; and 3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, with Western Water Features, Inc. for the King Pool Plaster and Tile Replacement and West Campus Pool Plaster and Tile Replacement and Filter Replacement Project in an amount not to exceed \$1,010,000, which includes a contract amount of \$989,449 and a 10% contingency in the amount of \$20,551.  
**Financial Implications:** \$1,010,000  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 7. Amendment to Contract No. 32000219 with Lind Marine - Removal of Derelict and Abandoned Vessels at the Berkeley Marina**  
**From: City Manager**  
**Recommendation:** Adopt a resolution authorizing the City Manager to amend Contract No. 32000219 with Lind Marine to remove derelict and abandoned vessels at the Berkeley Marina by increasing the contract amount by \$42,000; and authorizing additional contingency of \$4,200 for a contract total not-to-exceed amount of \$188,400; and contingency of \$47,000; and extend the contract to September 30, 2023.  
**Financial Implications:** \$188,400.  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

## Consent Calendar

- 8. Lease Agreement with NFS Unlimited, LLC for Skates-on-the-Bay**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance authorizing the City Manager to execute the attached ground lease with NFS Unlimited, LLC, the owner/lessee of Skates-on-the-Bay at the Berkeley Waterfront for a 10-year term with 2 additional options to extend for 5 years each, effective from May 1, 2022.  
**Financial Implications:** See report.  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 9. Updates to the Measure T1 Phase 1 Project List**  
**From: City Manager**  
**Recommendation:** Adopt a resolution authorizing the following updates to the T1 Phase 1 list of approved projects:
1. Add the following project - Streets: West Street (adjacent to Strawberry Creek Park) from Addison to End.
  2. Change the phase of the following project - Parks: Aquatic Park Tide Tubes Cleanout, (add "Construction").
  3. Remove the following:
    - A. Projects added in October 2020: i. Streets: a. Arcade Avenue from Fairlawn Drive to Grizzly Peak Boulevard; b. Cedar Street from 6th Street to San Pablo Avenue; c. Center Street from Martin Luther King Jr. Way to Shattuck Ave; d. Dohr Street from Ashby Avenue to Prince Street; e. Rose Street from Le Roy Avenue to La Loma Avenue; f. Santa Fe Avenue from Gilman Street to Cornell Avenue/Page St; g. Shasta Road from Grizzly Peak Boulevard to east City limit; and h. West Street from Bancroft Way to Dwight Way.
    - ii. Parks: James Kenney Park Play and Picnic Area
  - B. Projects added in July 2019: i. Green Infrastructure: a. Heinz Avenue near RR tracks; b. Jones Street between Fourth St and RR tracks; c. Ninth Street at Codornices Creek; d. Evaluation of Sacramento Street center median; and e. Tenth Street at Codornices Creek.
  - C. Projects from the original approved list: i. Streets: Bancroft from Shattuck to Milvia
- Financial Implications:** See report.  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 10. Donation: Memorial Bench at the Berkeley Marina in front of M-Dock in memory of Roger Garfinkle**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at the Berkeley Marina in front of M-Dock in memory of Roger Garfinkle, DragonMax Founder and Coach.  
**Financial Implications:** \$3,400 in revenue.  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

## Consent Calendar

### 11. Ratification of Police Accountability Board's Standing Rules

**From: Police Accountability Board**

**Recommendation:** Ratify Standing Rules of the Police Accountability Board, revised in consideration of Mayor Arreguin's proposed amendments.

**Financial Implications:** None

Contact: Katherine Lee, Interim Director of Police Accountability, (510) 981-4950

## Council Consent Items

### 12. Support of SB 922

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

**Recommendation:** Adopt a Resolution in support of SB 922 (Wiener), which would permanently exempt transportation-related projects from CEQA. Send a copy of the Resolution to Governor Gavin Newsom, State Senators Scott Wiener and Nancy Skinner, and Assemblymember Buffy Wicks.

**Financial Implications:** None

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

### 13. Opposition to the California Two-Thirds Legislative Vote and Voter Approval for Fee and Charge Increases Initiative

**From: Mayor Arreguin (Author)**

**Recommendation:** Adopt a Resolution to oppose Initiative 21-0042A1, the California Two-Thirds Legislative Vote and Voter Approval for Fee and Charge Increases Initiative. Send a copy of the Resolution to the League of California Cities.

**Financial Implications:** See report.

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

### 14. Adopt a Resolution Supporting Relinquishment of Council Office Budget Funds to the General Fund and Grant of Such Funds for the Berkeley Commission on the Status of Women's Annual Dues to the Association of California Commissions for Women

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

**Recommendation:** Adopt a Resolution approving the expenditure of \$100 each from Vice Mayor Harrison, Mayor Arreguin, and Councilmember Taplin's office budgets to the Association of California Commissions for Women to cover the prorated 2021-2022 annual membership dues and full dues for 2022-2023 for the Berkeley Commission on the Status of Women, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of the aforementioned Mayor and Council office budgets, and providing for prospective "pre-approval" of such dues on an ongoing basis.

**Financial Implications:** See report

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

## Council Consent Items

- 15. Adopt Resolutions Referring to the City Manager to Establish a Policy of Reducing or Waiving Park Fees for Free, Permitted Outdoor Theater, Arts Events, and Other Events Based on Objective Public Welfare Criteria and Relinquishing Council Funds to Support the San Francisco Mime Troupe's Payment of Park Fees for Its 2022 Free Outdoor Performance Season**  
**From: Councilmember Harrison (Author)**  
**Recommendation:** Adopt Two Resolutions:  
1. Establishing a policy and referring to the City Manager to create a process to reduce or waive City Park Fees for free and permitted outdoor theater, arts events, and other events as appropriate based on objective consideration of their benefits to the public welfare, including but not limited to educational content, non-profit status, and means.  
2. Approving the expenditure of an amount not to exceed \$500 per Councilmember including \$500 from Vice Mayor Harrison, to the San Francisco Mime Troupe, the non-profit fiscal sponsor of 2022 Berkeley Park performances, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Vice Mayor Harrison and any other Councilmembers who would like to contribute.  
**Financial Implications:** See report.  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 16. Budget Referral: Grant Writing Services**  
**From: Councilmember Hahn (Author), Councilmember Bartlett (Author), Councilmember Harrison (Co-Sponsor)**  
**Recommendation:** Refer \$300,000 to the FY 2022-2023 budget process to expand the City's capacity to seek and obtain grants and launch funded projects by hiring or contracting for writing and RFP/grant/program administration support.  
**Financial Implications:** See report.  
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150
- 17. Support for AB 1713: Idaho Stop**  
**From: Councilmember Robinson (Author)**  
**Recommendation:** Send a letter to Assemblymember Tasha Boerner Horvath, Senator Nancy Skinner, and Assemblymember Buffy Wicks in support of Assembly Bill 1713, which would allow adult bicyclists to proceed through stop signs after yielding the right-of-way to immediate hazards.  
**Financial Implications:** None  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

## Action Calendar

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

*The Presiding Officer will request that persons wishing to speak 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.*

### **18. Parking Enforcement of Existing Parking Code in Fire Zones 2 & 3**

**From: Disaster and Fire Safety Commission**

**Recommendation:** The Disaster and Fire Safety Commission (DFSC) recommends that Council direct the Berkeley Police Department to enforce existing Berkeley Municipal Code in all Fire Zones.

**Financial Implications:** See report.

Contact: Keith May, Commission Secretary, (510) 981-3473

## Action Calendar – Policy Committee Track Items

### **19. Referral to Implement State Law AB 43 for Reduced Speed Limits on High-Injury Commercial Corridors**

**From: Councilmember Kesarwani (Author)**

**Recommendation:** Refer to the City Manager to implement state law AB 43 on high-injury commercial corridors as identified in our Vision Zero Annual Report, 2020-2021 in order to allow a reduction in speed limits by 5 miles per hour. Upon completion of this referral, we note that a budget allocation would be needed in the amount of \$25,000 to \$50,000 for new speed limit signage. Funding will be requested later (likely for the FY 2023-24 budget) in order to allow time for staff to determine the applicable streets for additional signage.

**Financial Implications:** See report.

Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

## Action Calendar – Policy Committee Track Items

### 20. AB43 Speed Limit Reductions

**From: Councilmember Taplin (Author), Councilmember Robinson (Co-Sponsor)**

**Recommendation:** Refer to the City Manager, the reduction of speed limits, in accordance with AB43, on streets that fall within the following categories: High Injury Streets - Addison Street, Adeline Street, Alcatraz Avenue, Arlington Avenue, Ashby Avenue, Bancroft Way, California Street, Cedar Street, Channing Way, Claremont Avenue, College Avenue, Durant Avenue, Dwight Way, Euclid Avenue, Gilman Street, Grizzly Peak Boulevard, Haste Street, Hearst Avenue, Hopkins Street, Martin Luther King Junior Way, Milvia Street, Oxford Street, Piedmont Avenue, Rose Street, Sacramento Street, San Pablo Avenue, Santa Fe Avenue, Sixth Street, Spruce Street, Telegraph Avenue University Avenue; Business Activity Districts, as defined by the California Vehicle Code; Senior Zones, as defined by AB43 as “that area approaching or passing a senior center building or other facility primarily used by senior citizens” - Acton Street, Carleton Street, Delaware Street, Ellis Street, Oregon Street, and any other streets meeting the definitions described by AB43 that staff identifies; Any residential streets that may now qualify for AB43 speed limit reductions that were not previously defined as High-Injury Streets during the crafting of the Vision Zero Action Plan.

**Financial Implications:** See report

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

### 21. Equitable Safe Streets and Climate Justice Resolution

**From: Councilmember Taplin (Author)**

**Recommendation:** Adopt a resolution committing the expenditure of City and state/federal matching/recurring funds on city-maintained roads, sidewalks, and bike lanes to accelerate safety improvements in a manner consistent with City, State, and Federal policy on street safety, equity, accessibility, and climate change; refer to the City Manager adoption of the NACTO Urban Street Design Guide as the default engineering standard for city streets, restricting city use of the Manual on Uniform Traffic Control Devices subject to engineering judgment, and transferring legal liability for safe streets designs from individual city engineering/Public Works staff to the City of Berkeley.

**Financial Implications:** See report

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

## Public Comment – Items Not Listed on the Agenda

## Adjournment

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

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

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

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

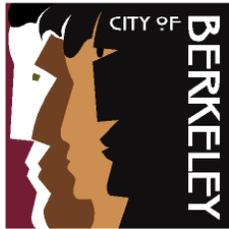
**COMMUNICATION ACCESS INFORMATION:**

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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Office of the Director
of Police Accountability

02a.11

CONSENT CALENDAR
March 8, 2022

To: Honorable Mayor and Members of the City Council
From: Katherine J. Lee, Interim Director of Police Accountability
Subject: Ratification of Police Accountability Board's Standing Rules

RECOMMENDATION

Ratify Standing Rules of the Police Accountability Board, revised in consideration of Mayor Arreguin's proposed amendments.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The Police Accountability Board ("Board") first presented its Standing Rules for ratification at the December 14, 2021 Council meeting. On that date, the Council referred the item back to the Board with the revisions submitted at the meeting by Mayor Arreguin. (Attachment 1.)

Subsequently, the Police Accountability Board considered the Mayor's proposed amendments and, with some relatively minor changes, approved revised Standing Rules, which are now submitted for Council's review and ratification. (See Attachment 2 [redlined] and Attachment 3 [clean].)

BACKGROUND

The Police Accountability Board is independent of the City Manager and answerable directly to the City Council. Article XVIII, Section 125 of the City Charter sets forth duties and obligations of the Board with respect to how the Board operates and its subject matter jurisdiction.

City Charter Article XVIII, Section 125 (13)(e) states that, unless otherwise specified, rules of procedure governing the conduct of the Board must comply with the Commissioners' Manual. The Board's Standing Rules elaborate upon some of the procedural rules of the Commissioners' Manual, such as those governing the election of a Chair and Vice-Chair, submission of agenda items, and meeting procedures. Additionally, the Board's Standing Rules establish procedures for powers granted under the City Charter, such as review of Departmental policies, appointment of members of the public to subcommittees, and commendations of Berkeley Police Department personnel.

The amendments suggested by Mayor Arreguin address concerns about Police Accountability Board subcommittees, found in Section J of the Standing Rules.

Most of the Mayor's amendments in Section J.1. expand the mechanism by which public members of subcommittees are recruited and appointed, requiring widely publicizing the opportunity to serve on subcommittees and establishing a pool of interested and qualified applicants. The Chair must endeavor to appoint public subcommittee members in a way that reflects the diversity of our community. The Board is wholly supportive of these revisions.

Other amendments proposed by the Mayor concern the timing of appointments and term of public subcommittee members. Those proposals are more appropriate for standing subcommittees, however, and the Board's subcommittees are ad hoc in nature. Among their characteristics, Board subcommittees are established by the Board for a finite purpose as the need arises, and terminate in one year unless the Board extends the subcommittee's term. Therefore, the Board suggests deleting the annual appointment requirement in Section J.1. and the one-year term for public subcommittee members in Section J.4. This will allow public members to be appointed at or around the time that Board subcommittees are established, and serve terms corresponding to the life of the subcommittee. Furthermore, as Board subcommittees have a life of only one year unless reauthorized, and Section J.4. requires reappointment of public members at the time of reauthorization, public subcommittee members may serve no longer than one year without being subject to reappointment.

Another amendment proposed by the Mayor deletes some language in Section J.3. about subcommittees convening if they are not a majority of subcommittee members present. As this may have been confusing, the Board is agreeable to deleting the language. Also, the Board supports the addition of Section J.8., repeating Charter language prohibiting public member access to confidential information.

Finally, a few additional, minor edits that do not affect the substance of the Standing Rules have been made.

The Board voted unanimously at its January 26, 2022 meeting to approve the Mayor's proposed amendments to its Standing Rules, as further revised and appearing as Attachments 2 and 3. Moved/Second: Calavita/Harris; Ayes – Calavita, Chang, Harris, Leftwich, Levine, Mizell, Moore, Owens, Ramsey; Noes – none; Abstentions – none; Absent – none.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

RATIONALE FOR RECOMMENDATION

The City Charter directs the Police Accountability Board to adopt rules of procedure that are subject to ratification by the City Council.

ALTERNATIVE ACTIONS CONSIDERED

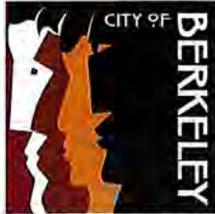
None.

CONTACT PERSON

Katherine J. Lee, Interim Director of Police Accountability, Office of the Director of Police Accountability, 510-981-4950.

Attachments:

- 1: Supplemental Agenda Material for the December 14, 2021 Council meeting, Item #48, submitted by Mayor Arreguin
- 2: Police Accountability Board Standing Rules, approved January 26, 2022 (redlined)
- 3: Police Accountability Board Standing Rules, approved January 26, 2022 (clean)



Office of the Mayor

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: December 14, 2021

Item Number: # 48

Item Description: Ratification of the Police Accountability Board's Standing Rules

Supplemental/Revision Submitted By: Mayor Arreguin

“Good of the City” Analysis:

The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.

According to Article XVIII, Section 125 (13)(c) of the City Charter, “The [Police Accountability] Board shall establish rules of procedure governing the conduct of business, which shall be subject to ratification by the City Council.”

On October 27, 2021 the PAB adopted permanent rules which are now before the City Council for ratification.

Mayor Arreguin is proposing amendments to Section J, “Appointment of Members of the Public to Subcommittees” to require an application process for members of the public to serve on Board subcommittees and other changes regarding the conduct of Board subcommittees.

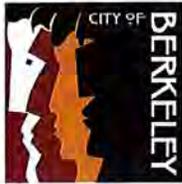
Since the Board is currently without permanent standing rules, the “good of the City” requires acceptance of this Supplemental material so that the Council can consider these amendments and ratify permanent rules tonight. Standing rules are necessary for the orderly conduct of the Police Accountability Board, which was created by the voters in November 2020 and has been meeting since July 2021.

Consideration of supplemental or revised agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.



Police Accountability Board Standing Rules

Approved Oct. 27, 2021

Including Mayor's Proposed Amendments

A. PURPOSE

These Standing Rules are established by the Police Accountability Board to ensure transparency and efficiency of our operations.

B. AMENDMENTS AND REVISIONS

Amendments and revisions to these Standing Rules shall be adopted by a majority vote of the Board, except that the Board may not adopt rules that conflict with the enabling Charter amendment (Measure II) or the Commissioners' Manual.

C. AGENDA ITEMS – REGULAR MEETINGS

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3. A pending motion may be modified by a “friendly amendment”; that is, by a proposed amendment that is accepted by the maker and seconder of the motion.
4. Action on a motion may be by either voice or general consent. In either case, the Chair shall repeat, or ask the Board secretary to repeat, the motion before the action.
5. Guest speakers who are not on the agenda may address the Board only by general consent, or upon a formal motion.
6. None of these procedural rules shall supersede the procedures set forth in Robert’s Rules of Order.

F. PUBLIC COMMENT

1. Public comment shall be agendized near the beginning and at the end of each Board meeting. The Chair, subject to the consent of the Board, may determine the time limit for each speaker and the total number of speakers.
2. Before an agenda item is heard, the Chair or Vice-Chair may poll members of the public present to determine if a significant number of them wish to speak on a particular agenda item. If so, the Chair or Vice-Chair may move that public comment on that item can be heard just before the item.

G. POLICY COMPLAINTS AND REVIEWS

1. A request for the Board to review a BPD policy, practice, or procedure may be initiated by a member of the public by filing a policy complaint on a form provided by the Office of the Director of Police Accountability, and is considered a “policy complaint.”
 - a) Policy complaints should be reviewed by staff and brought to the Board for discussion and action within 30 days of filing or the next regular meeting of the Board if the 30 days has expired.
 - b) Additionally, a public comment period shall be agendized immediately preceding consideration of the policy complaint, limited to comments on that complaint. Policy complainants will be allowed to speak for five minutes. Other members of the public will be allowed up to three minutes; the time allotted is subject to the discretion of the Chair, who will consider the number of persons wishing to speak. Board members may ask policy complainants brief questions. The BPD will be given an opportunity to respond to the Board. The Board may accept the policy complaint upon a majority vote.
2. The Board may initiate a review of a BPD policy, practice, or procedure upon a majority vote.
3. a) For policy complaints or policy reviews, Board members shall then determine how to proceed. Possible actions include, but are not limited to: considering the issue as a whole Board, assigning a Board member to research the issue, asking staff to investigate or research the issue, or establishing a

subcommittee. If a subcommittee is created it will seek BPD involvement in its policy review and, upon completing its review, will present its conclusions and recommendations to the full Board.

- b) The full Board may recommend to the BPD, City Manager, or City Council that the BPD adopt a new policy, revise an existing policy, or take no action. Upon conclusion, a policy complaint shall be formally closed by a majority vote of the Board.

H. REGULAR MEETINGS

Regular meetings shall be held on the second and fourth Wednesday of the month, except in the months of August, November, and December. The Board shall not meet in August, and shall meet only on one Wednesday of the month in November and December. Exceptions shall be made when a meeting day falls on a religious holiday.

Regular meetings shall commence at 7:00 p.m., and shall be held at a location or locations as may be determined by the Board, or virtually via teleconference when allowed by an emergency order.

I. ELECTIONS

1. Elections shall be held during the second January meeting of each year. During the Board meeting preceding the election meeting, the nomination of the Chair will precede the nomination of the Vice-Chair, and the following nomination process will be followed for each office:
 - a) The presiding Chair declares the nomination process open.
 - b) A Board member nominates another Board member or themselves. A Board member must be present in order to be nominated and may decline the nomination.
 - c) The nomination is seconded (the nomination fails if there is no second).
2. At the second January meeting of the year, the following election process will be followed for each office:
 - a) Additional nominations shall occur in accordance with section I.1.
 - b) Each nominee is allowed two (2) minutes to express their reason for seeking the position. A nominee may decline this opportunity.
 - c) Board members pose questions to each candidate.
 - d) The presiding Chair calls for a roll vote and then announces the winner, except in the following circumstances:
 - i. If there is only one nominee for a position, the presiding Chair may seek or move a vote by acclamation.
 - ii. If a tie occurs among nominees, the presiding Chair will conduct a second round of voting, including any additional nominations.

- iii. If a clear winner is still not identified after a second round of voting, the presiding Chair will conduct a coin toss to break the tie and determine a winner. The Board secretary will assign "heads" and "tails."
3. The Board secretary will record the maker and the second of the nomination motion as well as the total votes and results per office.
4. The outgoing Chair and Vice-Chair will be given the opportunity to make 2-minute departing statements after the election process takes place. The newly-elected Chair and Vice-Chair will assume their positions at the end of the meeting.

J. APPOINTMENT OF MEMBERS OF THE PUBLIC TO SUBCOMMITTEES

1. In accordance with the City Charter, the Chair may appoint members of the public to subcommittees to which they have applied to through an open application process in which they have expressed an interest. Candidates for the Board subcommittees must complete and file an application form with the Office of the Director of Police Accountability. Subcommittee vacancies shall be widely advertised and publicly posted. The Board will launch an initial application process to solicit interest from Berkeley residents who wish to serve on Board subcommittees. After the initial application period, the Board will accept applications on a rolling basis and make such appointments annually. Such appointments are subject to approval of the Board. Members of the public seeking to serve on a subcommittee must: a) be residents of the City of Berkeley; **b) must submit an application detailing their interest and qualifications** -and ~~bc)~~ present themselves at a Board meeting before or at the time of the appointment and speak on the public record on their intent to serve and what they will bring to the subcommittee work and deliberations. The Chair shall endeavor to appoint members to subcommittees in a manner that is broadly inclusive and reflective of race, ethnicity, age, gender identity, sexual orientation, economic status, neighborhoods, and various communities of interest in the City. Toward that end, in soliciting applications for Board subcommittees, the Director of Police Accountability shall reach out to civic, community, and civil rights organizations, among others.
2. Members of the public appointed to subcommittees are non-voting members and may not be selected to be the subcommittee Chair
3. Board members must constitute a majority of membership of any subcommittee, ~~but a subcommittee may convene and conduct business even if Board members are not a majority of subcommittee members present. However, a~~ quorum of voting members must be present to convene a meeting.
4. The term of appointment for members of the public appointed to subcommittees ~~shall be one year and members can serve consecutive terms shall not exceed the life of the subcommittee.~~ If a subcommittee must be reauthorized, any members of the public serving on the subcommittee must be reappointed by the Chair, subject to the approval of the Board.

5. A public member of a subcommittee who is absent from two consecutive subcommittee meetings is automatically removed from the subcommittee, but may be reinstated by the Chair if good cause for the absences is shown.
6. The Chair, subject to the approval of the Board, may remove a member of the public from a subcommittee for good cause. Examples of good cause are: failure to work cooperatively with subcommittee members; unruly or disruptive behavior at meetings; or failure to participate in the work of the subcommittee.
7. All actions by the Chair to appoint, reappoint, or remove a member of a public to or from a subcommittee shall occur at a Board meeting.
- ~~7.8.~~ In accordance with the City Charter, policy subcommittee members shall not have access to confidential personnel file information or any other confidential information.

K. MUTUAL AID AGREEMENTS

The Board shall constitute a mutual aid subcommittee no later than the first meeting in February of each year to review the compendium of agreements made between the BPD and other law enforcement entities. The Board or the subcommittee may determine which agreements to review.

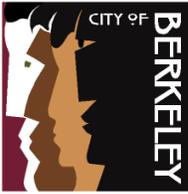
L. COMMENDATIONS OF BERKELEY POLICE DEPARTMENT PERSONNEL

1. The Board regularly receives copies of communications praising Berkeley Police Department (BPD) personnel for noteworthy service; these commendations are both external (from members of the public) and internal (from fellow BPD or City of Berkeley employees). This process shall be used when the Board desires to bestow additional recognition upon those BPD personnel, or when a Board member on his or her own initiative wants the Board to recognize BPD personnel.
2. The Board may commend or otherwise honor with a special award or recognition an individual sworn officer or civilian employee of the BPD, or a group of officers and/or employees of the BPD, such as a team or division.
3. The Board secretary shall agendaize commendations the Board receives from the BPD periodically, as received. A Board member wishing to initiate a commendation or other honor from the Board shall submit the proposal to the Board secretary for placement on the Board agenda in accordance with Section C of these rules. The proposal shall include the name of the person or group to be honored, and a description of the noteworthy action.
4. For the Board to issue a commendation or other honor, the BPD officer, employee, or group must be found to have performed an extraordinary service or performed in an extraordinary manner that meets one or more of the following criteria:
 - a) Exceptional valor, bravery, or heroism;
 - b) Superior handling of a difficult situation;
 - c) An action or performance that is above and beyond typical duties;
 - d) Extraordinary compassion, empathy, or kindness.

Police Accountability Board
Standing Rules
10.27.2021

5. A motion to commend or otherwise honor BPD personnel shall include the act or incident giving rise to the honor and describe how it meets the above criteria. The motion must receive a majority of affirmative votes of Board members present at the meeting to pass.
6. Following the meeting, the Board secretary shall communicate the Board's action in writing to the City Council, and shall also forward the commendation to the Chief of Police, with a request that the commendation or other honor be placed in the personnel file of each sworn officer or civilian employee commended.

###



Police Accountability Board Standing Rules

Approved Oct. 27, 2021

Including Mayor's Proposed Amendments 12-14-21

And DPA's further revisions 1-26-22

A. PURPOSE

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1. The Board regularly receives copies of communications praising Berkeley Police Department (BPD) personnel for noteworthy service; these commendations are both external (from members of the public) and internal (from fellow BPD or City of Berkeley employees). This process shall be used when the Board desires to bestow additional recognition upon those BPD personnel, or when a Board member on his or her own initiative wants the Board to recognize BPD personnel.
2. The Board may commend or otherwise honor with a special award or recognition an individual sworn officer or civilian employee of the BPD, or a group of officers and/or employees of the BPD, such as a team or division.
3. The Board secretary shall agendize commendations the Board receives from the BPD periodically, as received. A Board member wishing to initiate a commendation or other honor from the Board shall submit the proposal to the Board secretary for placement on the Board agenda in accordance with Section C of these rules. The proposal shall include the name of the person or group to be honored, and a description of the noteworthy action.
4. For the Board to issue a commendation or other honor, the BPD officer, employee, or group must be found to have performed an extraordinary service or performed in an extraordinary manner that meets one or more of the following criteria:
 - a) Exceptional valor, bravery, or heroism;
 - b) Superior handling of a difficult situation;

- c) An action or performance that is above and beyond typical duties;
 - d) Extraordinary compassion, empathy, or kindness.
5. A motion to commend or otherwise honor BPD personnel shall include the act or incident giving rise to the honor and describe how it meets the above criteria. The motion must receive a majority of affirmative votes of Board members present at the meeting to pass.
 6. Following the meeting, the Board secretary shall communicate the Board's action in writing to the City Council, and shall also forward the commendation to the Chief of Police, with a request that the commendation or other honor be placed in the personnel file of each sworn officer or civilian employee commended.

###



Police Accountability Board Standing Rules

Approved Oct. 27, 2021

Including Mayor's Proposed Amendments 12-14-21
And DPA's further revisions 1-26-22

A. PURPOSE

These Standing Rules are established by the Police Accountability Board to ensure transparency and efficiency of our operations.

B. AMENDMENTS AND REVISIONS

Amendments and revisions to these Standing Rules shall be adopted by a majority vote of the Board, except that the Board may not adopt rules that conflict with the enabling Charter amendment (Measure II) or the Commissioners' Manual.

C. AGENDA ITEMS – REGULAR MEETINGS

Individual Board members shall submit agenda items to the Board secretary by 12:00 noon one week before the meeting date.

D. COMMUNICATIONS

Individual Board members shall submit communications to be included in the agenda packet to the Board secretary by 12:00 noon one week before the meeting date to ensure inclusion in the packet. Communications received after this deadline and before 3:00 p.m. on the meeting day will be distributed via email and/or hard copy at the meeting. If communications are received after 3:00 p.m. on the meeting day, the Board secretary will make every effort, but cannot guarantee, to have hard copies available at the meeting.

E. MEETING PROCEDURES

1. Items shall be introduced by the Board member or staff member who proposed the item. The Chair shall then allow an initial period for discussion by recognizing Board members in rotation to ensure that each Board member has the opportunity to speak before a Board member is allowed to speak again. Board members are allowed a maximum of two minutes to speak each time they are given the floor.
2. After a motion on the item is made and seconded, the Chair will recognize the maker of the motion, and then the seconder, to speak. After that, the Chair will recognize Board members in rotation, giving each Board member the opportunity to speak before a Board member is allowed to speak again. Board members are allowed a maximum of one minute to speak each time they are given the floor, and must confine their remarks to the merits of the motion. The Chair may give the

maker of the motion an additional minute to speak before putting the matter to a vote.

3. A pending motion may be modified by a “friendly amendment”; that is, by a proposed amendment that is accepted by the maker and seconder of the motion.
4. Action on a motion may be by either voice or general consent. In either case, the Chair shall repeat, or ask the Board secretary to repeat, the motion before the action.
5. Guest speakers who are not on the agenda may address the Board only by general consent, or upon a formal motion.
6. None of these procedural rules shall supersede the procedures set forth in Robert’s Rules of Order.

F. PUBLIC COMMENT

1. Public comment shall be agendized near the beginning and at the end of each Board meeting. The Chair, subject to the consent of the Board, may determine the time limit for each speaker and the total number of speakers.
2. Before an agenda item is heard, the Chair or Vice-Chair may poll members of the public present to determine if a significant number of them wish to speak on a particular agenda item. If so, the Chair or Vice-Chair may move that public comment on that item can be heard just before the item.

G. POLICY COMPLAINTS AND REVIEWS

1. A request for the Board to review a BPD policy, practice, or procedure may be initiated by a member of the public by filing a policy complaint on a form provided by the Office of the Director of Police Accountability, and is considered a “policy complaint.”
 - a) Policy complaints should be reviewed by staff and brought to the Board for discussion and action within 30 days of filing or the next regular meeting of the Board if the 30 days has expired.
 - b) Additionally, a public comment period shall be agendized immediately preceding consideration of the policy complaint, limited to comments on that complaint. Policy complainants will be allowed to speak for five minutes. Other members of the public will be allowed up to three minutes; the time allotted is subject to the discretion of the Chair, who will consider the number of persons wishing to speak. Board members may ask policy complainants brief questions. The BPD will be given an opportunity to respond to the Board. The Board may accept the policy complaint upon a majority vote.
2. The Board may initiate a review of a BPD policy, practice, or procedure upon a majority vote.
3. a) For policy complaints or policy reviews, Board members shall then determine

how to proceed. Possible actions include, but are not limited to: considering the issue as a whole Board, assigning a Board member to research the issue, asking staff to investigate or research the issue, or establishing a subcommittee. If a subcommittee is created it will seek BPD involvement in its policy review and, upon completing its review, will present its conclusions and recommendations to the full Board.

- b) The full Board may recommend to the BPD, City Manager, or City Council that the BPD adopt a new policy, revise an existing policy, or take no action. Upon conclusion, a policy complaint shall be formally closed by a majority vote of the Board.

H. REGULAR MEETINGS

Regular meetings shall be held on the second and fourth Wednesday of the month, except in the months of August, November, and December. The Board shall not meet in August, and shall meet only on one Wednesday of the month in November and December. Exceptions shall be made when a meeting day falls on a religious holiday.

Regular meetings shall commence at 7:00 p.m., and shall be held at a location or locations as may be determined by the Board, or virtually via teleconference when allowed by an emergency order.

I. ELECTIONS

1. Elections shall be held during the second January meeting of each year. During the Board meeting preceding the election meeting, the nomination of the Chair will precede the nomination of the Vice-Chair, and the following nomination process will be followed for each office:
 - a) The presiding Chair declares the nomination process open.
 - b) A Board member nominates another Board member or themselves. A Board member must be present in order to be nominated and may decline the nomination.
 - c) The nomination is seconded (the nomination fails if there is no second).
2. At the second January meeting of the year, the following election process will be followed for each office:
 - a) Additional nominations shall occur in accordance with section I.1.
 - b) Each nominee is allowed two (2) minutes to express their reason for seeking the position. A nominee may decline this opportunity.
 - c) Board members pose questions to each candidate.
 - d) The presiding Chair calls for a roll vote and then announces the winner, except in the following circumstances:
 - i. If there is only one nominee for a position, the presiding Chair may seek or move a vote by acclamation.

- ii. If a tie occurs among nominees, the presiding Chair will conduct a second round of voting, including any additional nominations.
 - iii. If a clear winner is still not identified after a second round of voting, the presiding Chair will conduct a coin toss to break the tie and determine a winner. The Board secretary will assign “heads” and “tails.”
3. The Board secretary will record the maker and the second of the nomination motion as well as the total votes and results per office.
4. The outgoing Chair and Vice-Chair will be given the opportunity to make 2-minute departing statements after the election process takes place. The newly-elected Chair and Vice-Chair will assume their positions at the end of the meeting.

J. APPOINTMENT OF MEMBERS OF THE PUBLIC TO SUBCOMMITTEES

1. In accordance with the City Charter, the Chair may appoint members of the public to policy subcommittees to which they have applied through an open application process. Candidates for the Board subcommittees must complete and file an application form with the Office of the Director of Police Accountability. Subcommittee vacancies shall be widely advertised and publicly posted. The Board will launch an initial application process to solicit interest from Berkeley residents who wish to serve on Board subcommittees. After the initial application period, the Board will accept applications on a rolling basis. Such appointments are subject to approval of the Board. Members of the public seeking to serve on a subcommittee must: a) be residents of the City of Berkeley; b) submit an application detailing their interest and qualifications and c) present themselves at a Board meeting before or at the time of the appointment and speak on the public record on their intent to serve and what they will bring to the subcommittee work and deliberations. The Chair shall endeavor to appoint members to subcommittees in a manner that is broadly inclusive and reflective of race, ethnicity, age, gender identity, sexual orientation, economic status, neighborhoods, and various communities of interest in the City. Toward that end, in soliciting applications for Board subcommittees, the Director of Police Accountability shall reach out to civic, community, and civil rights organizations, among others.
2. Members of the public appointed to subcommittees are non-voting members and may not be selected to be the subcommittee Chair
3. Board members must constitute a majority of membership of any subcommittee. A quorum of Board members must be present to convene a meeting.
4. The term of appointment for members of the public appointed to subcommittees shall not exceed the life of the subcommittee and members can serve consecutive terms. If a subcommittee must be reauthorized, any members of the public serving on the subcommittee must be reappointed by the Chair, subject to the approval of the Board.

5. A public member of a subcommittee who is absent from two consecutive subcommittee meetings is automatically removed from the subcommittee, but may be reinstated by the Chair if good cause for the absences is shown.
6. The Chair, subject to the approval of the Board, may remove a member of the public from a subcommittee for good cause. Examples of good cause are: failure to work cooperatively with subcommittee members; unruly or disruptive behavior at meetings; or failure to participate in the work of the subcommittee.
7. All actions by the Chair to appoint, reappoint, or remove a member of a public to or from a subcommittee shall occur at a Board meeting.
8. In accordance with the City Charter, policy subcommittee members shall not have access to confidential personnel file information or any other confidential information.

K. MUTUAL AID AGREEMENTS

The Board shall constitute a mutual aid subcommittee no later than the first meeting in February of each year to review the compendium of agreements made between the BPD and other law enforcement entities. The Board or the subcommittee may determine which agreements to review.

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Police Accountability Board
Standing Rules
10.27.2021

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###



Office of the Mayor

02a.12

CONSENT CALENDAR

March 8, 2022

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín (Author), Councilmembers Terry Taplin (Co-Sponsor), Ben Bartlett (Co-Sponsor), and Rigel Robinson (Co-Sponsor)

Subject: Support of SB 922

RECOMMENDATION

Adopt a Resolution in support of SB 922 (Wiener), which would permanently exempt transportation-related projects from CEQA. Send a copy of the Resolution to Governor Gavin Newsom, State Senators Scott Wiener and Nancy Skinner, and Assemblymember Buffy Wicks.

BACKGROUND

The California Environmental Quality Act (CEQA) requires an assessment of environmental impacts of certain proposed projects before approval. Certain projects, such as increasing services on rail lines, are exempt. Under SB 288, signed into law in September 2020, additional transportation projects including bus rapid transit projects, pedestrian and bicycle facilities, and zero-emission charging stations also became exempt. However, most of these exemptions are set to expire on January 1, 2023, with bicyclist project exemptions expiring on January 1, 2030. In July 2020, the City Council voted to send a letter of support for SB 288 (Attachment 3).

In recent years, Berkeley has updated its Bike Plan and Pedestrian Plan, while also pursuing efforts to improve transportation safety such as Vision Zero. Not only do these plans aim to improve safety and accessibility, but they also double as helping us achieve goals outlined under the Climate Action Plan and Vision Zero. Transportation accounts for approximately 60% of Berkeley's greenhouse gas emissions, so advancing projects that promote sustainable forms of transportation are critical to reducing our carbon footprint. SB 288 has allowed for the acceleration of such projects that aim to meet and implement these goals. If SB 288 is allowed to sunset, it risks placing delays on these projects.

SB 922, introduced by State Senator Scott Wiener, would extend the exemptions outlined in SB 288 indefinitely.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The transportation sector comprises 60 percent of Berkeley's greenhouse gas emissions. Ensuring the acceleration of sustainable infrastructure investments, which promote walking, biking, and taking public transit, is aligned with the goals put forth in the City's Climate Action Plan.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

- 1: Resolution
- 2: Text of SB 922
- 3: Council Item in Support of SB 288

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

IN SUPPORT OF SB 922

WHEREAS, transportation accounts for 60% of greenhouse gas emissions produced in Berkeley; and

WHEREAS, advancing projects that support alternative modes of transportation such as public transit, bicycling, and walking are vital to both increasing accessibility and safety and reducing our carbon footprint; and

WHEREAS, the City of Berkeley has recently updated its Bike Plan and Pedestrian Plan, and is moving forward with Vision Zero and Vision 2050; all of these programs and plans call for increased transportation infrastructure to reduce reliance on vehicles and improve safety; and

WHEREAS, the California Environmental Quality Act (CEQA) requires an assessment of environmental impacts of certain proposed projects before approval, with some transportations exempt, which was greatly expanded under SB 288; and

WHEREAS, SB 288, supported by the Berkeley City Council and signed into law in September 2020, has most of its provisions expire in January 2023, and exemptions to certain bicycle programs expiring in January 2030, which would risk delaying future transportation projects aimed at achieving the goals outlined in Berkeley's aforementioned policies; and

WHEREAS, SB 922, introduced by State Senator Scott Weiner, would extend the CEQA exemptions for transportation projects under SB 288 indefinitely.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports SB 922.

BE IT FURTHER RESOLVED that a copy of the Resolution be sent to Governor Gavin Newsom, State Senators Scott Wiener and Nancy Skinner, and Assemblymember Buffy Wicks.

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SENATE BILL

No. 922

Introduced by Senator Wiener

February 3, 2022

An act to amend Sections 21080.20 and 21080.25 of the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 922, as introduced, Wiener. California Environmental Quality Act: exemptions: transportation-related projects.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA, until January 1, 2030, exempts from its requirements bicycle transportation plans for an urbanized area for restriping of streets and highways, bicycle parking and storage, signal timing to improve street and highway intersection operations, and related signage for bicycles, pedestrians, and vehicles under certain conditions.

This bill would extend the above exemption indefinitely. The bill would also repeal the requirement that the bicycle transportation plan is for an urbanized area and would extend the exemption to an active transportation plan or pedestrian plan, or for a feasibility and planning study for active transportation, bicycle facilities, or pedestrian facilities.

CEQA exempts from its requirements certain projects located in an urbanized area, including transit prioritization projects, as defined, and projects for pedestrian and bicycle facilities or for the institution or increase of new bus rapid transit, bus, or light rail services on public or highway rights-of-way. For those exempted projects exceeding \$100,000,000 in 2020 United States dollars, CEQA, except as provided, requires the lead agency to complete and consider the results of a project business case and a racial equity analysis, as specified, and would require the lead agency, before exempting a project from CEQA, to hold at least 3 noticed public meetings in the project area, as provided. CEQA requires the lead agency, before granting an exemption for projects under the above provisions, to certify that those projects will be carried out by a skilled and trained workforce, except as provided. If the lead agency determines to carry out a project exempt under the above provisions, CEQA requires the lead agency to file a notice of exemption with the Office of Planning and Research and the county clerk of the county in which the project is located. Existing law repeals the above-described exemption on January 1, 2023.

This bill would extend the exemption indefinitely. The bill would revise and recast the exemption to, among other things, repeal the requirement that the exempted projects are located in an urbanized area, extend the exemption by revising the definition of transit prioritization projects, and require projects for the institution or increase of new bus rapid transit, bus, or light rail service to be located on a site that is wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau. The bill would revise the requirements for the project business case and racial equity analysis and noticed public meetings to apply to exempted projects exceeding \$100,000,000 and would additionally require the lead agency to complete an analysis of residential displacement and suggest anti-displacement strategies, designs, or actions for those projects for which at least 50% of the project or projects' stops and stations are located in an area at risk of residential displacement and will have a maximum of 15-minute peak headways. The bill would provide that the lead agency may make the skilled and trained workforce certification concurrent with the granting of the exemption and would provide that the certification requirement is not required under specified circumstances.

The bill would specify that the revision made by this measure to the exemption for projects for the institution or increase of new bus rapid

transit, bus, or light rail service may apply to projects for which a notice of exemption is filed before January 1, 2023. The bill would, for projects exempted by the above-described provisions for which a notice of exemption was filed before January 1, 2023, authorize the lead agency to either certify that the project will be completed by a skilled and trained workforce after the granting of the exemption or exempt those projects from the certification requirement if the lead agency demonstrates compliance with certain conditions.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Transit and sustainable transportation are critical to achieving
4 California's ambitious environmental goals. Transportation makes
5 up 40 percent of the state's emissions of greenhouse gases. To
6 encourage people to drive less, the state must continue to build
7 high-quality transit, bicycle lanes, and pedestrian-friendly
8 infrastructure. Bringing down our transportation emissions by
9 providing more sustainable options is essential for limiting global
10 warming and avoiding the most devastating climate impacts.

11 (b) California has invested billions of dollars in reducing the
12 environmental impacts stemming from the transportation sector,
13 including almost \$4,000,000,000 as part of the fiscal year 2021–22,
14 to convert the state's light- and heavy-duty vehicle fleet to zero
15 emission, including its transit vehicles.

16 (c) Additionally, on July 12, 2021, the Transportation Agency
17 adopted the Climate Action Plan for Transportation Infrastructure.
18 The plan outlines how the state will prioritize sustainable
19 transportation projects in all discretionary funding decisions. The
20 plan builds on Executive Order N-19-19 and Executive Order
21 N-79-20 signed by Governor Newsom in 2019 and 2020,
22 respectively, targeted at reducing emissions of greenhouse gases
23 in transportation to reach the state's ambitious climate goals.

24 SEC. 2. Section 21080.20 of the Public Resources Code is
25 amended to read:

26 21080.20. (a) This division does not apply to *an active*
27 *transportation plan, a pedestrian plan, or a bicycle transportation*

SB 922

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1 ~~plan for an urbanized area~~ for the restriping of streets and
 2 highways, bicycle parking and storage, signal timing to improve
 3 street and highway intersection operations, and the related signage
 4 for bicycles, pedestrians, and ~~vehicles.~~ *vehicles, or for a feasibility*
 5 *and planning study as described in Section 15262 of Title 14 of*
 6 *the California Code of Regulations.*

7 (b) Before determining that a project *described in subdivision*
 8 *(a)* is exempt pursuant to this section, the lead agency shall hold
 9 noticed public hearings in areas affected by the ~~bicycle~~
 10 ~~transportation plan~~ *project* to hear and respond to public comments.
 11 Publication of the notice shall be no fewer times than required by
 12 Section 6061 of the Government Code by the public agency in a
 13 newspaper of general circulation in the area affected by the
 14 proposed project. If more than one area will be affected, the notice
 15 shall be published in the newspaper of largest circulation from
 16 among the newspapers of general circulation in those areas.

17 (c) If a local agency determines that a project is not subject to
 18 this division pursuant to this section and it determines to approve
 19 or carry out that project, the notice shall be filed with the Office
 20 of Planning and Research and the county clerk in the county in
 21 which the project is located in the manner specified in subdivisions
 22 (b) and (c) of Section 21152.

23 ~~(d) This section shall remain in effect only until January 1, 2030,~~
 24 ~~and as of that date is repealed.~~

25 SEC. 3. Section 21080.25 of the Public Resources Code is
 26 amended to read:

27 21080.25. (a) For purposes of this section, the following
 28 definitions apply:

29 (1) “Affordable housing” means any of the following:

30 (A) Housing that is subject to a recorded covenant, ordinance,
 31 or law that restricts rents or sales prices to levels affordable, as
 32 defined in Section 50052.5 or 50053 of the Health and Safety
 33 Code, to persons and families of moderate, lower, or very low
 34 income, as defined in Section 50079.5, 50093, or 50105 of the
 35 Health and Safety Code, respectively.

36 (B) Housing that is subject to any form of rent or price control
 37 through a public entity’s valid exercise of its police power.

38 (C) Housing that had been occupied by tenants within five years
 39 from the date of approval of the development agreement by a
 40 primary tenant who was low income and did not leave voluntarily.

1 (2) “Bicycle facilities” includes, but is not limited to, bicycle
2 parking, bicycle sharing facilities, and bikeways as defined in
3 Section 890.4 of the Streets and Highways Code.

4 (3) “High occupancy vehicle” means a vehicle with two or more
5 occupants.

6 ~~(2)~~

7 (4) “Highway” means a way or place of whatever nature,
8 publicly maintained and open to the use of the public for purposes
9 of vehicular travel. “Highway” includes a street.

10 (5) “Local agency” means a public transit operator, city, county,
11 city and county, special district, joint powers authority, local or
12 regional transportation agency, or congestion management agency.

13 ~~(3)~~

14 (6) “New automobile capacity” means any new lane mileage
15 of any kind other than sidewalks or bike lanes.

16 (7) “Part-time transit lanes” means designated highway
17 shoulders that support the operation of transit vehicles during
18 specified times.

19 ~~(4)~~

20 (8) “Project labor agreement” has the same meaning as defined
21 in paragraph (1) of subdivision (b) of Section 2500 of the Public
22 Contract Code.

23 (9) “Public transit operator” has the same meaning as in
24 Section 99210 of the Public Utilities Code.

25 ~~(5)~~

26 (10) “Skilled and trained workforce” has the same meaning as
27 provided in Chapter 2.9 (commencing with Section 2600) of Part
28 1 of Division 2 of the Public Contract Code.

29 ~~(6)~~

30 (11) “Transit lanes” means street design elements that delineate
31 space within the roadbed as exclusive to transit use, either full or
32 part time.

33 ~~(7)~~

34 (12) “Transit prioritization projects” means any of the following
35 transit project types on ~~highways~~: highways or in the public
36 right-of-way:

37 ~~(A) Signal coordination.~~

38 ~~(B) Signal timing modifications.~~

39 ~~(C) Signal phasing modifications.~~

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1 (A) Signal and stop sign changes, such as signal coordination,
 2 signal timing modifications, signal modifications, or the installation
 3 of traffic signs.

4 ~~(D)~~

5 (B) The installation of wayside technology and onboard
 6 technology.

7 ~~(E)~~

8 (C) The installation of ramp meters.

9 ~~(F)~~

10 (D) The installation of dedicated transit lanes, transit queue
 11 jump or bypass lanes, or ~~very high occupancy~~ high-occupancy
 12 vehicle lanes, and shared turning lanes, lanes and turn restrictions,
 13 the narrowing of lanes to allow for dedicated transit lanes or
 14 transit reliability improvements, or the widening of existing transit
 15 travel lanes by removing or restricting street parking.

16 (E) Transit stop changes, including, but not limited to, the
 17 installation of transit bulbs and the installation of transit boarding
 18 islands.

19 (F) Pedestrian improvements, including, but not limited to,
 20 widening sidewalks, pedestrian bulbs and pedestrian refuge
 21 islands, and other improvements that increase pedestrian access
 22 to transit.

23 ~~(8) “Very high occupancy vehicle” means a vehicle with six or
 24 more occupants.~~

25 (b) This division does not apply to any of the following projects:

26 (1) Pedestrian and bicycle facilities, including new facilities.
 27 For purposes of this paragraph, “bicycle facilities” include, but
 28 are not limited to, bicycle parking, bicycle sharing facilities, and
 29 bikeways as defined in Section 890.4 of the Streets and Highways
 30 Code, facilities, within the public right-of-way.

31 (2) Projects that improve customer information and wayfinding
 32 for transit riders, bicyclists, or ~~pedestrians~~ pedestrians within the
 33 public right-of-way.

34 (3) Transit prioritization projects.

35 (4) On highways with existing public transit service or that will
 36 be implementing public transit service within six months of the
 37 conversion, a project for the designation and conversion of general
 38 purpose lanes to bus-only lanes or highway shoulders to bus-only
 39 part-time transit lanes, for use either during peak congestion hours
 40 or all day.

1 (5) A project for the institution or increase of new bus rapid
 2 transit, bus, or light rail service, including the construction of
 3 ~~stations, stations or terminals~~, on existing public rights-of-way or
 4 existing highway rights-of-way, whether or not the right-of-way
 5 is in use for public mass transit. *The project shall be located on a*
 6 *site that is wholly within the boundaries of an urbanized area or*
 7 *urban cluster, as designated by the United States Census Bureau.*

8
 9 (6) A project to construct or maintain infrastructure *or facilities*
 10 to charge or refuel zero-emission transit ~~buses, vehicles~~, provided
 11 the project is carried out by a public transit agency ~~that is subject~~
 12 ~~to, and~~ in compliance with, the State Air Resources Board's
 13 Innovative Clean Transit regulations (Article 4.3 (commencing
 14 with Section 2023) of Chapter 1 of Division 3 of Title 13 of the
 15 California Code of Regulations) *or any regulations identified by*
 16 *the State Air Resources Board's 2020 Mobile Source Strategy,*
 17 *adopted on October 28, 2021,* and the project is located on property
 18 owned by the ~~transit local agency or within an existing public~~
 19 ~~right-of-way.~~ *right-of-way or on property owned by a public or*
 20 *private utility.*

21 (7) The maintenance, repair, relocation, replacement, or removal
 22 of any utility infrastructure associated with a project identified in
 23 paragraphs (1) to (6), inclusive.

24 (8) A project that consists exclusively of a combination of any
 25 of the components of a project identified in paragraphs (1) to (7),
 26 inclusive.

27 (9) A project carried out by a ~~city or county~~ *local agency* to
 28 ~~reduce or eliminate minimum parking requirements.~~ *requirements*
 29 *or institute parking maximums, remove or restrict parking, or*
 30 *implement transportation demand management requirements.*

31 (c) Except as provided in subdivision ~~(e); (f)~~, a project exempt
 32 from this division under this section shall meet all of the following
 33 criteria:

34 (1) A ~~public~~ *local agency* is carrying out the project and is the
 35 lead agency for the project.

36 ~~(2) The project is located in an urbanized area.~~

37 ~~(3) The project is located on or within an existing public~~
 38 ~~right-of-way.~~

39 (4)

1 (2) The project ~~shall~~ *does* not add physical infrastructure *or*
 2 *striping* that increases new automobile capacity on existing
 3 rights-of-way except for minor modifications needed for the
 4 efficient and safe movement of transit vehicles, such as extended
 5 merging lanes. The project shall not include the addition of any
 6 auxiliary lanes.

7 ~~(5)~~

8 (3) The construction of the project shall not require the
 9 demolition of affordable housing units.

10 ~~(6)~~

11 (d) (1) For a project exceeding one hundred million dollars
 12 ~~(\$100,000,000) in 2020 United States dollars; (\$100,000,000)~~, a
 13 project exempt from this division under this section shall also meet
 14 all of the following:

15 (A) The project is incorporated in a regional transportation plan,
 16 sustainable communities strategy, general plan, or other plan that
 17 has undergone a programmatic-level environmental review
 18 pursuant to this division within 10 years of the approval of the
 19 project.

20 (B) The project’s construction impacts are fully mitigated
 21 consistent with applicable law.

22 (C) (i) The lead agency shall complete and consider the results
 23 of a project business case and a racial equity analysis. The Office
 24 of Planning and Research may set standards for the project business
 25 case and the racial equity analysis or delegate that authority to
 26 metropolitan planning organizations.

27 (ii) The project business case required under this subparagraph
 28 shall set forth the rationale for why the project should be
 29 implemented to solve a problem or address an opportunity, outline
 30 strategic goals and objectives of the project, evaluate other options
 31 to achieve the project’s objectives, describe the economic costs
 32 and benefits of the project, describe the financial implications of
 33 the project, and establish what is required to deliver and operate
 34 the project.

35 (iii) The racial equity analysis required under this subparagraph
 36 shall identify the racial equity impacts of the project, identify who
 37 will benefit from and be burdened by the project, and, where
 38 significant or disproportionate impacts exist, suggest strategies,
 39 designs, or actions to mitigate those impacts.

1 (D) The lead agency shall hold noticed public meetings as
2 follows:

3 (i) Before determining that a project is exempt pursuant to this
4 section, the lead agency shall hold at least three noticed public
5 meetings in the project area to hear and respond to public
6 comments.

7 (ii) At least one of the three public meetings shall review the
8 project business case and the racial equity analysis. The review of
9 these documents does not inhibit or preclude application of this
10 section.

11 (iii) The lead agency shall conduct at least two noticed public
12 meetings annually during project construction for the public to
13 provide comments.

14 (iv) The public meetings held pursuant to clauses (i) to (iii),
15 inclusive, shall be in the form of either a public community
16 planning meeting held in the project area or in the form of a
17 regularly scheduled meeting of the governing body of the lead
18 agency.

19 (E) The lead agency shall give public notice of the meetings in
20 subparagraph (D) to the last known name and address of all the
21 organizations and individuals that have previously requested notice
22 and shall also give the general public notice using at least one of
23 the following procedures:

24 (i) Publication of the notice in a newspaper of general circulation
25 in the area affected by the project. If more than one area will be
26 affected, the notice shall be published in the newspaper of largest
27 circulation from among the newspapers of general circulation in
28 those areas.

29 (ii) Posting of the notice onsite and offsite in the area where the
30 project is located.

31 (iii) Posting of the notice on the lead agency’s internet website
32 and social media accounts.

33 (2) *In addition to the requirements of paragraph (1), for a*
34 *project described in that paragraph for which at least 50 percent*
35 *of the project or project’s stops and stations are located in an area*
36 *that is at risk of residential displacement and that will have a*
37 *maximum of 15-minute peak headways, the local agency shall*
38 *complete an analysis of residential displacement and suggest*
39 *anti-displacement strategies, designs, or actions.*

40 (d)

1 (e) (1) (A) Except as provided in subdivision ~~(e)~~, (f), in
 2 addition to the requirements of subdivision (c), before *or*
 3 *concurrent with* granting an exemption under this section, the lead
 4 agency shall *take an action at a public meeting of its governing*
 5 *board to certify that the project will be completed by a skilled and*
 6 *trained workforce.*

7 (B) *Subparagraph (A) does not apply if the lead agency has an*
 8 *existing policy or certification approved by its governing board*
 9 *that requires the use of a skilled and trained workforce to complete*
 10 *the project if the lead agency is a signatory to a project labor*
 11 *agreement that will require the use of a skilled and trained*
 12 *workforce on the project.*

13 (2) (A) Except as provided in subparagraph (B), for a project
 14 that is exempted under this section, the lead agency shall not enter
 15 into a construction contract with any entity unless the entity
 16 provides to the lead agency an enforceable commitment that the
 17 entity and its subcontractors at every tier will use a skilled and
 18 trained workforce to perform all work on the project or a contract
 19 that falls within an apprenticeship occupation in the building and
 20 construction trades in accordance with Chapter 2.9 (commencing
 21 with Section 2600) of Part 1 of Division 2 of the Public Contract
 22 Code.

23 (B) Subparagraph (A) does not apply if any of the following
 24 requirements are met:

25 (i) The lead agency has entered into a project labor agreement
 26 that will bind all contractors and subcontractors performing work
 27 on the project ~~or the lead agency has contracted~~ to use a skilled
 28 and trained workforce and the entity has agreed to be bound by
 29 that project labor agreement.

30 (ii) The project or contract is being performed under the
 31 extension or renewal of a project labor agreement that was entered
 32 into by the lead agency before January 1, 2021.

33 (iii) ~~The lead agency has~~ *entity contracted to perform the project*
 34 *entered into a project labor agreement that will bind the lead agency*
 35 *entity and all its subcontractors at every tier performing the project*
 36 *or the lead agency has contracted* to use a skilled and trained
 37 workforce.

38 ~~(e)~~

39 (f) Subdivisions (c) and ~~(d)~~ (e) do not apply to a project
 40 described in paragraph (9) of subdivision (b).

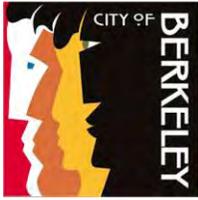
1 ~~(f)~~
 2 (g) If the lead agency determines that a project is not subject to
 3 this division pursuant to this section, and the lead agency
 4 determines to carry out that project, the lead agency shall file a
 5 notice of exemption with the Office of Planning and Research and
 6 the county clerk of the county in which the project is located in
 7 the manner specified in subdivisions (b) and (c) of Section 21152.

8 ~~(g) This section shall remain in effect only until January 1, 2023,~~
 9 ~~and as of that date is repealed.~~

10 (h) (1) *The amendments made to paragraph (5) of subdivision*
 11 *(b) by the measure adding this paragraph may apply to projects*
 12 *for which a lead agency has filed a notice of exemption under this*
 13 *section before January 1, 2023.*

14 (2) *For projects for which a lead agency has filed a notice of*
 15 *exemption under this section before January 1, 2023,*
 16 *notwithstanding subdivision (d), as it read on December 31, 2022,*
 17 *the lead agency may certify that the project will be completed by*
 18 *a skilled and trained workforce after the granting of the exemption*
 19 *under this section or the lead agency may demonstrate compliance*
 20 *with subparagraph (B) of paragraph (1) of subdivision (e).*

O



CITY COUNCILMEMBER
RIGEL ROBINSON
DISTRICT 7

CONSENT CALENDAR
July 28, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmember Rigel Robinson and Councilmember Ben Bartlett
Subject: Support for SB 288: Sustainable Transportation COVID-19 Recovery Act

RECOMMENDATION

Send a letter to Senator Scott Wiener, Senator Nancy Skinner, and Assemblymember Buffy Wicks in support of Senate Bill 288, which would exempt specified transportation projects from environmental review under CEQA, including bus rapid transit projects, pedestrian and bicycle facilities, and zero-emission charging stations.

BACKGROUND

The California Environmental Quality Act requires agencies to assess the significant environmental impacts of proposed discretionary projects before approval. Current law exempts certain categories of projects from CEQA requirements, including increases to service on existing rail or highway rights-of-way.

SB 288, introduced by Senator Scott Wiener, would extend the following existing exemptions until 2030: 1) bicycle transportation plans for an urbanized area for restriping of streets and highways, 2) bicycle parking and storage, 3) signal timing to improve street and highway intersection operations, and 4) related signage for bicycles, pedestrians, and vehicles under certain conditions. Additionally, this bill would further exempt projects relating to updated and new transit stations, bus rapid transit lines, safer streets for biking and walking, zero-emission vehicle charging facilities, and repairs for bridge and transit storage facilities.

The environmental benefits of public transit, bicycle, and pedestrian infrastructure are already well-documented. The City of Berkeley Climate Action Plan states that to meet our greenhouse gas reduction goals, “transportation modes such as public transit, walking and bicycling must become the primary means of fulfilling our mobility needs, and remaining motor vehicle use must be far less carbon-intensive.”¹ Recommended actions to achieve this goal include:

- Increasing the safety, reliability, and frequency of public transit.
- Accelerating implementation of the City’s Bicycle and Pedestrian Plans and continuing efforts to make walking and cycling safe, healthy, and enjoyable alternatives to driving.

¹ https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Berkeley%20Climate%20Action%20Plan.pdf

- Creating incentives for low-carbon vehicles such as electric vehicles and plug-in hybrids.

Several other countries, such as Canada and Germany, do not require full environmental impact reviews for sustainable transportation projects since they are presumed to have a positive impact on the environment.² Delays in such projects due to CEQA reviews and lawsuits can add years to project timelines, driving up costs and obstructing the rapid infrastructure investments we need to effectively combat climate change.

Accelerating sustainable transportation projects is especially important now, as unemployment skyrockets and transportation agencies and cities across California struggle with strained budgets due to the COVID-19 pandemic. According to the bill text, “investments in building public transit, complete streets, and bicycle lanes are proven job generators and can help California avoid an extreme and prolonged recession by growing and protecting jobs. Studies have shown that complete streets projects create an average of 10 jobs per one million dollars. Investments in public transportation result in an average of 13 jobs per one million dollars spent and have a 5 to 1 economic return.”³

SB 288 would put the City of Berkeley on the right track towards economic recovery and meeting our GHG reduction goals. The Council should support the passage of this legislation, and send the attached letter of support to Senator Scott Wiener, Senator Nancy Skinner, and Assemblymember Buffy Wicks.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

The transportation sector comprises 60 percent of Berkeley’s greenhouse gas emissions. Ensuring the acceleration of sustainable infrastructure investments, which promote walking, biking, and taking public transit, is aligned with the goals put forth in the City’s Climate Action Plan.⁴

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Attachments:

1: Letter of support

² <https://sf.streetsblog.org/2020/06/16/bill-would-streamline-transit-bike-and-ped-projects/>

³ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB288

⁴ <https://www.cityofberkeley.info/climate/>

2: Bill text

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB288

July 28, 2020

The Honorable Scott Wiener
California State Senate
State Capitol, Room 5100
Sacramento, CA 95814

RE: City of Berkeley's Support for Senate Bill 288

Dear Senator Wiener,

The Berkeley City Council would like to convey our full support for SB 288, regarding CEQA exemptions for sustainable transportation projects such as updated and new transit stations, bus rapid transit lines, pedestrian and bicycle projects, zero-emission vehicle charging facilities, and repairs for bridge and transit storage facilities.

As California sets out on a long road of economic recovery from the impacts of COVID-19, renewed investment in public transit, pedestrian, and bicycle infrastructure will create much-needed jobs. As the state slowly begins the process of re-opening safely, we must also ensure that polluting vehicle traffic does not bounce back to pre-COVID levels, which would prevent California from reaching its stated goal of reducing greenhouse gas emissions 40 percent below 1990 levels by 2030.

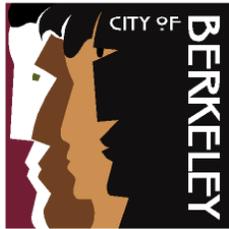
Environmental reviews for public transportation projects that are inherently pro-environment are often lengthy, expensive, and can cause years of delay. Especially at a time when public transit agencies and cities are suffering from reduced ridership and severe budget cuts, these additional costs and delays can render projects infeasible altogether.

California should be fast-tracking such projects, not delaying them. The Berkeley City Council supports SB 288 and thanks you for taking the lead on this important issue.

Sincerely,

The Berkeley City Council

CC: Senator Nancy Skinner
Assemblymember Buffy Wicks



Office of the Mayor

02a.13

CONSENT CALENDAR

March 8, 2022

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Opposition to the California Two-Thirds Legislative Vote and Voter Approval for Fee and Charge Increases Initiative

RECOMMENDATION

Adopt a Resolution to oppose Initiative 21-0042A1, the California Two-Thirds Legislative Vote and Voter Approval for Fee and Charge Increases Initiative. Send a copy of the Resolution to the League of California Cities.

BACKGROUND

Initiative 21-0042A1, the California Two-Thirds Legislative Vote and Voter Approval for Fee and Charge Increases Initiative, also known by supporters as the deceptively named “Taxpayer Protection and Government Accountability Act” is a proposed California proposition for the November 2022 election.

The proposed proposition would limit the ability of voters and state and local governments to raise revenues for government services. It does so by requiring any new or higher tax be passed by at least two-thirds. It also eliminates voters’ ability to advise how to spend revenues from proposed general tax on same ballot as the proposed tax. All measures passed between January 2022 and November 2022 would be invalidated unless reenacted within 12 months. It also expands the definition of “taxes” to include certain regulatory fees, broadening application of tax approval requirements.

This initiative is based on a proposed 2018 proposition that was ultimately withdrawn by its proponents after it received heavy opposition from local governments, labor and public safety leaders, infrastructure advocates, and businesses. The Berkeley City Council voted unanimously to approve Resolution No. 68,401–N.S., opposing the 2018 revision of this proposition.

FINANCIAL IMPLICATIONS

If the initiative is approved by California voters, it would make it more difficult for local voters to pass measures needed to fund local services and infrastructure

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

If the initiative is approved by California voters, it would impact our ability to raise funds to advance environmental measures outlined in our Climate Action Plan and Vision 2050.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1: Resolution

2: Text of Initiative 21-0041A1

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

IN OPPOSITION OF INITIATIVE 21-0042A1

WHEREAS, an association representing California's wealthiest corporations is behind a deceptive proposition aimed for the November 2022 statewide ballot; and

WHEREAS, the measure creates new constitutional loopholes that allow corporations to pay far less than their fair share for the impacts they have on our communities, including local infrastructure, our environment, water quality, air quality, and natural resources; and

WHEREAS, the measure includes undemocratic provisions that would make it more difficult for local voters to pass measures needed to fund local services and infrastructure, and would limit voter input by prohibiting local advisory measures where voters provide direction on how they want their local tax dollars spent; and

WHEREAS, the measure makes it much more difficult for state and local regulators to issue fines and levies on corporations that violate laws intended to protect our environment, public health and safety, and our neighborhoods; and

WHEREAS, the measure puts billions of dollars currently dedicated to state and local services at risk, and could force cuts to public schools, fire and emergency response, law enforcement, public health, parks, libraries, affordable housing, services to support homeless residents, mental health services, and more; and

WHEREAS, the measure would also reduce funding for critical infrastructure like streets and roads, public transportation, drinking water, new schools, sanitation, and utilities.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby opposes Initiative 21-0042A1.

BELL, McANDREWS & HILTACHK, LLP
ATTORNEYS AND COUNSELORS AT LAW
455 CAPITOL MALL, SUITE 600
SACRAMENTO, CALIFORNIA 95814

(916) 442-7757
FAX (916) 442-7759
www.bmhjlaw.com

21-0042 Amdt. # 1

January 4, 2022

RECEIVED

JAN 04 2022

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Anabel Renteria
Initiative Coordinator
Office of the Attorney General
State of California
PO Box 994255
Sacramento, CA 94244-25550

Re: Initiative 21-0042 - Amendment Number One

Dear Initiative Coordinator:

Pursuant to subdivision (b) of Section 9002 of the Elections Code, enclosed please find Amendment #1 to Initiative No. 21-0042 "The Taxpayer Protection and Government Accountability Act." The amendments are reasonably germane to the theme, purpose or subject of the initiative measure as originally proposed.

I am the proponent of the measure and request that the Attorney General prepare a circulating title and summary of the measure as provided by law, using the amended language.

Thank you for your time and attention processing my request.

Sincerely,



Thomas W. Hiltachk

The Taxpayer Protection and Government Accountability Act

[Deleted codified text is denoted in ~~strikeout~~. Added codified text is denoted by *italics and underline*.]

Section 1. Title

This Act shall be known, and may be cited as, the Taxpayer Protection and Government Accountability Act.

Section 2. Findings and Declarations

(a) Californians are overtaxed. We pay the nation's highest state income tax, sales tax, and gasoline tax. According to the U.S. Census Bureau, California's combined state and local tax burden is the highest in the nation. Despite this, and despite two consecutive years of obscene revenue surpluses, state politicians in 2021 alone introduced legislation to raise more than \$234 *billion* in new and higher taxes and fees.

(b) Taxes are only part of the reason for California's rising cost-of-living crisis. Californians pay billions more in hidden "fees" passed through to consumers in the price they pay for products, services, food, fuel, utilities and housing. Since 2010, government revenue from state and local "fees" has more than doubled.

(c) California's high cost of living not only contributes to the state's skyrocketing rates of poverty and homelessness, they are the pushing working families and job-providing businesses out of the state. The most recent Census showed that California's population dropped for the first time in history, costing us a seat in Congress. In the past four years, nearly 300 major corporations relocated to other states, not counting thousands more small businesses that were forced to move, sell or close.

(d) California voters have tried repeatedly, at great expense, to assert control over whether and how taxes and fees are raised. We have enacted a series of measures to make taxes more predictable, to limit what passes as a "fee," to require voter approval, and to guarantee transparency and accountability. These measures include Proposition 13 (1978), Proposition 62 (1986), Proposition 218 (1996), and Proposition 26 (2010).

(e) Contrary to the voters' intent, these measures that were designed to control taxes, spending and accountability, have been weakened and hamstrung by the Legislature, government lawyers, and the courts, making it necessary to pass yet another initiative to close loopholes and reverse hostile court decisions.

Section 3. Statement of Purpose

(a) In enacting this measure, the voters reassert their right to a voice and a vote on new and higher taxes by requiring any new or higher tax to be put before voters for approval. Voters also intend that all fees and other charges are passed or rejected by the voters themselves or a governing body elected by voters and not unelected and unaccountable bureaucrats.

(b) Furthermore, the purpose and intent of the voters in enacting this measure is to increase transparency and accountability over higher taxes and charges by requiring any tax measure placed on the ballot—

either at the state or local level—to clearly state the type and rate of any tax, how long it will be in effect, and the use of the revenue generated by the tax.

(c) Furthermore, the purpose and intent of the voters in enacting this measure is to clarify that any new or increased form of state government revenue, by any name or manner of extraction paid directly or indirectly by Californians, shall be authorized only by a vote of the Legislature and signature of the Governor to ensure that the purposes for such charges are broadly supported and transparently debated.

(d) Furthermore, the purpose and intent of the voters in enacting this measure is also to ensure that taxpayers have the right and ability to effectively balance new or increased taxes and other charges with the rapidly increasing costs Californians are already paying for housing, food, childcare, gasoline, energy, healthcare, education, and other basic costs of living, and to further protect the existing constitutional limit on property taxes and ensure that the revenue from such taxes remains local, without changing or superseding existing constitutional provisions contained in Section 1(c) of Article XIII A.

(e) In enacting this measure, the voters also additionally intend to reverse loopholes in the legislative two-thirds vote and voter approval requirements for government revenue increases created by the courts including, but not limited to, *Cannabis Coalition v. City of Upland*, *Chamber of Commerce v. Air Resources Board*, *Schmeer v. Los Angeles County*, *Johnson v. County of Mendocino*, *Citizens Assn. of Sunset Beach v. Orange County Local Agency Formation Commission*, and *Wilde v. City of Dunsmuir*.

Section 4. Section 3 of Article XIII A of the California Constitution is amended to read:

Sec. 3(a) Every levy, charge, or exaction of any kind imposed by state law is either a tax or an exempt charge.

(b)(1) (a) Any change in state statute law which results in any taxpayer paying a new or higher tax must be imposed by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, and submitted to the electorate and approved by a majority vote, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property, may be imposed. Each Act shall include:

(A) A specific duration of time that the tax will be imposed and an estimate of the annual amount expected to be derived from the tax.

(B) A specific and legally binding and enforceable limitation on how the revenue from the tax can be spent. If the revenue from the tax can be spent for unrestricted general revenue purposes, then a statement that the tax revenue can be spent for "unrestricted general revenue purposes" shall be included in a separate, stand-alone section. Any proposed change to the use of the revenue from the tax shall be adopted by a separate act that is passed by not less than two-thirds of all members elected to each of the two houses of the Legislature and submitted to the electorate and approved by a majority vote.

(2) The title and summary and ballot label or question required for a measure pursuant to the Elections Code shall, for each measure providing for the imposition of a tax, including a measure proposed by an elector pursuant to Article II, include:

(A) The type and amount or rate of the tax;

(B) The duration of the tax; and

(C) The use of the revenue derived from the tax.

(c) Any change in state law which results in any taxpayer paying a new or higher exempt charge must be imposed by an act passed by each of the two houses of the Legislature. Each act shall specify the type of exempt charge as provided in subdivision (e), and the amount or rate of the exempt charge to be imposed.

(d) ~~(b)~~ As used in this section and in Section 9 of Article II, "tax" means every ~~any~~ levy, charge, or exaction of any kind imposed by the State state law that is not an exempt charge, except the following:

(e) As used in this section, "exempt charge" means only the following:

~~(1) a charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of conferring the benefit or granting the privilege to the payor.~~

~~(1) (2) A reasonable charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable actual costs to the State of providing the service or product to the payor.~~

~~(2) (3) A charge imposed for the reasonable regulatory costs to the State incident to issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.~~

~~(3) A levy, charge, or exaction collected from local units of government, health care providers or health care service plans that is primarily used by the State of California for the purposes of increasing reimbursement rates or payments under the Medi-Cal program, and the revenues of which are primarily used to finance the non-federal portion of Medi-Cal medical assistance expenditures.~~

~~(4) A reasonable charge imposed for entrance to or use of state property, or the purchase, rental, or lease of state property, except charges governed by Section 15 of Article XI.~~

~~(5) A fine, or penalty, or other monetary charge including any applicable interest for nonpayment thereof, imposed by the judicial branch of government or the State, as a result of a state administrative enforcement agency pursuant to adjudicatory due process, to punish a violation of law.~~

~~(6) A levy, charge, assessment, or exaction collected for the promotion of California tourism pursuant to Chapter 1 (commencing with Section 13995) of Part 4.7 of Division 3 of Title 2 of the Government Code.~~

~~(f) (e) Any tax or exempt charge adopted after January 1, 2022 2010, but prior to the effective date of this act, that was not adopted in compliance with the requirements of this section is void 12 months after the effective date of this act unless the tax or exempt charge is reenacted by the Legislature and signed into law by the Governor in compliance with the requirements of this section.~~

~~(g) (1) (d) The State bears the burden of proving by a preponderance of the clear and convincing evidence that a levy, charge, or other exaction is an exempt charge and not a tax. The State bears the burden of proving by clear and convincing evidence that the amount of the exempt charge is reasonable and that the amount charged does not exceed the actual cost of providing the service or product to the payor. ~~that the amount is no more than necessary to cover the reasonable costs of the governmental activity and~~~~

that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity

(2) The retention of revenue by, or the payment to, a non-governmental entity of a levy, charge, or exaction of any kind imposed by state law, shall not be a factor in determining whether the levy, charge, or exaction is a tax or exempt charge.

(3) The characterization of a levy, charge, or exaction of any kind as being voluntary, or paid in exchange for a benefit, privilege, allowance, authorization, or asset, shall not be a factor in determining whether the levy, charge, or exaction is a tax or an exempt charge.

(4) The use of revenue derived from the levy, charge or exaction shall be a factor in determining whether the levy, charge, or exaction is a tax or exempt charge.

(h) As used in this section:

(1) "Actual cost" of providing a service or product means: (i) the minimum amount necessary to reimburse the government for the cost of providing the service or product to the payor, and (ii) where the amount charged is not used by the government for any purpose other than reimbursing that cost. In computing "actual cost" the maximum amount that may be imposed is the actual cost less all other sources of revenue including, but not limited to taxes, other exempt charges, grants, and state or federal funds received to provide such service or product.

(2) "Extend" includes, but is not limited to, doing any of the following with respect to a tax or exempt charge: lengthening its duration, delaying or eliminating its expiration, expanding its application to a new territory or class of payor, or expanding the base to which its rate is applied.

(3) "Impose" means adopt, enact, reenact, create, establish, collect, increase or extend.

(4) "State law" includes, but is not limited to, any state statute, state regulation, state executive order, state resolution, state ruling, state opinion letter, or other legal authority or interpretation adopted, enacted, enforced, issued, or implemented by the legislative or executive branches of state government. "State law" does not include actions taken by the Regents of the University of California, Trustees of the California State University, or the Board of Governors of the California Community Colleges.

Section 5. Section 1 of Article XIII C of the California Constitution is amended, to read:

Sec. 1. Definitions. As used in this article:

(a) "Actual cost" of providing a service or product means: (i) the minimum amount necessary to reimburse the government for the cost of providing the service or product to the payor, and (ii) where the amount charged is not used by the government for any purpose other than reimbursing that cost. In computing "actual cost" the maximum amount that may be imposed is the actual cost less all other sources of revenue including, but not limited to taxes, other exempt charges, grants, and state or federal funds received to provide such service or product.

(b) "Extend" includes, but is not limited to, doing any of the following with respect to a tax, exempt charge, or Article XIII D assessment, fee, or charge: lengthening its duration, delaying or eliminating its expiration, expanding its application to a new territory or class of payor, or expanding the base to which its rate is applied.

~~(c) (a)~~ "General tax" means any tax imposed for general governmental purposes.

~~(d)~~ "Impose" means adopt, enact, reenact, create, establish, collect, increase, or extend.

~~(e) (b)~~ "Local government" means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity, or an elector pursuant to Article II or the initiative power provided by a charter or statute.

~~(f)~~ "Local law" includes, but is not limited to, any ordinance, resolution, regulation, ruling, opinion letter, or other legal authority or interpretation adopted, enacted, enforced, issued, or implemented by a local government.

~~(g) (c)~~ "Special district" means an agency of the State, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.

~~(h) (d)~~ "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

~~(i) (e)~~ As used in this article, and in Section 9 of Article II, "tax" means every ~~any~~ levy, charge, or exaction of any kind, imposed by a local government law that is not an exempt charge., ~~except the following:~~

~~(i)~~ As used in this section, "exempt charge" means only the following:

~~(1)~~ A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.

~~(1) (2)~~ A reasonable charge imposed for a specific local government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable actual costs to the local government of providing the service or product.

~~(2) (3)~~ A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

~~(3) (4)~~ A reasonable charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.

~~(4) (5)~~ A fine, or penalty, or other monetary charge including any applicable interest for nonpayment thereof, imposed by the judicial branch of government or a local government administrative enforcement agency pursuant to adjudicatory due process, as a result of to punish a violation of law.

~~(5) (6)~~ A charge imposed as a condition of property development. No levy, charge, or exaction regulating or related to vehicle miles traveled may be imposed as a condition of property development or occupancy.

~~(6) (7)~~ An Assessments and property related fees assessment, fee, or charge imposed in accordance with the provisions of subject to Article XIII D, or an assessment imposed upon a business in a tourism marketing district, a parking and business improvement area, or a property and business improvement district.

(7) A charge imposed for a specific health care service provided directly to the payor and that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the health care service. As used in this paragraph, a "health care service" means a service licensed or exempt from licensure by the state pursuant to Chapters 1, 1.3, or 2 of Division 2 of the Health and Safety Code.

The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.

Section 6. Section 2 of Article XIII C of the California Constitution is amended to read:

Sec. 2. Local Government Tax Limitation. Notwithstanding any other provision of this Constitution:

(a) Every levy, charge, or exaction of any kind imposed by local law is either a tax or an exempt charge. All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

(b) No local ~~law government, whether proposed by the governing body or by an elector,~~ may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(c) ~~Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).~~ (d) No local ~~law government, whether proposed by the governing body or by an elector,~~ may impose, ~~extend, or increase~~ any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

(d) The title and summary and ballot label or question required for a measure pursuant to the Elections Code shall, for each measure providing for the imposition of a tax, include:

(1) The type and amount or rate of the tax;

(2) the duration of the tax; and

(3) The use of the revenue derived from the tax. If the proposed tax is a general tax, the phrase "for general government use" shall be required, and no advisory measure may appear on the same ballot that would indicate that the revenue from the general tax will, could, or should be used for a specific purpose.

(e) Only the governing body of a local government, other than an elector pursuant to Article II or the initiative power provided by a charter or statute, shall have the authority to impose any exempt charge. The governing body shall impose an exempt charge by an ordinance specifying the type of exempt charge

as provided in Section 1(j) and the amount or rate of the exempt charge to be imposed, and passed by the governing body. This subdivision shall not apply to charges specified in paragraph (7) of subdivision (i) of Section 1.

(f) No amendment to a Charter which provides for the imposition, extension, or increase of a tax or exempt charge shall be submitted to or approved by the electors, nor shall any such amendment to a Charter hereafter submitted to or approved by the electors become effective for any purpose.

(g) Any tax or exempt charge adopted after January 1, 2022, but prior to the effective date of this act, that was not adopted in compliance with the requirements of this section is void 12 months after the effective date of this act unless the tax or exempt charge is reenacted in compliance with the requirements of this section.

(h)(1) The local government bears the burden of proving by clear and convincing evidence that a levy, charge or exaction is an exempt charge and not a tax. The local government bears the burden of proving by clear and convincing evidence that the amount of the exempt charge is reasonable and that the amount charged does not exceed the actual cost of providing the service or product to the payor.

(2) The retention of revenue by, or the payment to, a non-governmental entity of a levy, charge, or exaction of any kind imposed by a local law, shall not be a factor in determining whether the levy, charge, or exaction is a tax or exempt charge.

(3) The characterization of a levy, charge, or exaction of any kind imposed by a local law as being paid in exchange for a benefit, privilege, allowance, authorization, or asset, shall not be factors in determining whether the levy, charge, or exaction is a tax or an exempt charge.

(4) The use of revenue derived from the levy, charge or exaction shall be a factor in determining whether the levy, charge, or exaction is a tax or exempt charge.

Section 7. Section 3 of Article XIII D of the California Constitution is amended, to read:

Sec. 3. Property Taxes, Assessments, Fees and Charges Limited

(a) No tax, assessment, fee, ~~or~~ charge, or surcharge, including a surcharge based on the value of property, shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:

(1) The ad valorem property tax imposed pursuant to described in Section 1(a) of Article XIII and Section 1(a) of Article XIII A, and described and enacted pursuant to the voter approval requirement in Section 1(b) of Article XIII A.

(2) Any special non-ad valorem tax receiving a two-thirds vote of qualified electors pursuant to Section 4 of Article XIII A, or after receiving a two-thirds vote of those authorized to vote in a community facilities district by the Legislature pursuant to statute as it existed on December 31, 2021.

(3) Assessments as provided by this article.

(4) Fees or charges for property related services as provided by this article.

(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.

Section 8. Sections 1 and 14 of Article XIII are amended to read:

Sec. 1 Unless otherwise provided by this Constitution or the laws of the United States:

(a) All property is taxable and shall be assessed at the same percentage of fair market value. When a value standard other than fair market value is prescribed by this Constitution or by statute authorized by this Constitution, the same percentage shall be applied to determine the assessed value. The value to which the percentage is applied, whether it be the fair market value or not, shall be known for property tax purposes as the full value.

(b) All property so assessed shall be taxed in proportion to its full value.

(c) All proceeds from the taxation of property shall be apportioned according to law to the districts within the counties.

Sec. 14. All property taxed by state or local government shall be assessed in the county, city, and district in which it is situated. Notwithstanding any other provision of law, such state or local property taxes shall be apportioned according to law to the districts within the counties.

Section 9. General Provisions

A. This Act shall be liberally construed in order to effectuate its purposes.

B. (1) In the event that this initiative measure and another initiative measure or measures relating to state or local requirements for the imposition, adoption, creation, or establishment of taxes, charges, and other revenue measures shall appear on the same statewide election ballot, the other initiative measure or measures shall be deemed to be in conflict with this measure. In the event that this initiative measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other initiative measure or measures shall be null and void.

(2) In furtherance of this provision, the voters hereby declare that this measure conflicts with the provisions of the "Housing Affordability and Tax Cut Act of 2022" and "The Tax Cut and Housing Affordability Act," both of which would impose a new state property tax (called a "surcharge") on certain real property, and where the revenue derived from the tax is provided to the State, rather than retained in the county in which the property is situated and for the use of the county and cities and districts within the county, in direct violation of the provisions of this initiative.

(3) If this initiative measure is approved by the voters, but superseded in whole or in part by any other conflicting initiative measure approved by the voters at the same election, and such conflicting initiative is later held invalid, this measure shall be self-executing and given full force and effect.

C. The provisions of this Act are severable. If any portion, section, subdivision, paragraph, clause, sentence, phrase, word, or application of this Act is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this Act. The People of the State of California hereby declare that they would have adopted this Act and each and every portion, section, subdivision, paragraph, clause, sentence, phrase, word, and application not

declared invalid or unconstitutional without regard to whether any portion of this Act or application thereof would be subsequently declared invalid.

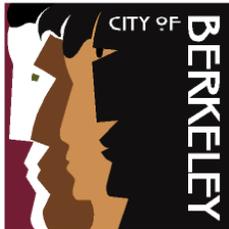
D. If this Act is approved by the voters of the State of California and thereafter subjected to a legal challenge alleging a violation of state or federal law, and both the Governor and Attorney General refuse to defend this Act, then the following actions shall be taken:

(1) Notwithstanding anything to the contrary contained in Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code or any other law, the Attorney General shall appoint independent counsel to faithfully and vigorously defend this Act on behalf of the State of California.

(2) Before appointing or thereafter substituting independent counsel, the Attorney General shall exercise due diligence in determining the qualifications of independent counsel and shall obtain written affirmation from independent counsel that independent counsel will faithfully and vigorously defend this Act. The written affirmation shall be made publicly available upon request.

(3) A continuous appropriation is hereby made from the General Fund to the Controller, without regard to fiscal years, in an amount necessary to cover the costs of retaining independent counsel to faithfully and vigorously defend this Act on behalf of the State of California.

(4) Nothing in this section shall prohibit the proponents of this Act, or a bona fide taxpayers association, from intervening to defend this Act.



Kate Harrison
Vice Mayor, District 4

02a.14

CONSENT CALENDAR
March 8, 2022

To: Honorable Mayor and Members of the City Council

From: Vice Mayor Harrison (Author), Mayor Arreguín (Co-Sponsor), and Councilmember Taplin (Co-Sponsor)

Subject: Adopt a Resolution Supporting Relinquishment of Council Office Budget Funds to the General Fund and Grant of Such Funds for the Berkeley Commission on the Status of Women's Annual Dues to the Association of California Commissions for Women

RECOMMENDATION

Adopt a Resolution approving the expenditure of \$100 each from Vice Mayor Harrison, Mayor Arreguín, and Councilmember Taplin's office budgets to the Association of California Commissions for Women to cover the prorated 2021-2022 annual membership dues and full dues for 2022-2023 for the Berkeley Commission on the Status of Women, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of the aforementioned Mayor and Council office budgets, and providing for prospective "pre-approval" of such dues on an ongoing basis.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

Berkeley Commission on the Status of Women has no means to pay for its membership dues to the Association of California Commissions for Women. This resolution provides a short-term and long-term means of paying such dues.

BACKGROUND

In past years the Commission has been affiliated with the statewide organization of commissions. Affiliation fees were waived for the 2020 fiscal year and were cut in half for the 2021 fiscal year. In order to remain a member in good standing, the Commission needs to pay the prorated affiliation fee of \$100 for this year and the entire \$200 fee for next year (see attached). This Resolution also establishes such dues payments as a "pre-approved" expense in future years as part of the Council's annual resolution pursuant to Resolution No. 70,072-N.S.

The Association of California Commissions for Women provides a voice for women of all races, creeds and economic status throughout the State of California. The benefits of Association membership include collaborating with other commissions on strategic planning, networking to achieve local commission goals and pursue initiatives, training, leadership, event planning/conventions, and raising awareness of women's Issues.

Adopt a Resolution Supporting Relinquishment of Council Office Budget Funds to the General Fund and Grant of Such Funds for the Berkeley Commission on the Status of Women's Annual Dues to the Association of California Commissions for Women

CONSENT CALENDAR
March 8, 2022

FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact; \$300 is available from Office Budget discretionary accounts.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No discernable impact.

CONTACT PERSON

Vice Mayor Kate Harrison, (510) 981-7140

ATTACHMENTS

1. Resolution
2. 2021-2022 ACCW Annual Membership Form

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

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Vice Mayor Kate Harrison, Mayor Arreguín and Councilmember Taplin have funds in their office expenditure accounts; and

WHEREAS, a non-profit tax-exempt entity, the Association of California Commissions for Women, requires funds in the amount of \$300 to provide Berkeley's Commission of the Status of Women with the prorated annual membership dues amount for 2021-2022 and the full amount for 2022-2023; and

WHEREAS, the provision of such funds for dues payments would enhance and further facilitate the Commission's ongoing municipal public purpose, including providing Berkeley Commissioners with opportunities to collaborate with other commissions on strategic planning, networking to achieve local commission goals and pursue initiatives, training, leadership, event planning/conventions, and generally raising awareness of women's issues; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the \$100 each relinquished by Vice Mayor Harrison, Mayor Arreguín and Councilmember Taplin from their Council Office Budget shall be granted to the Association of California Commissions for Women on behalf of Berkeley Commission on the Status of Women to cover dues payments that further the Commission's municipal public purpose.

BE IT FURTHER AND FINALLY RESOLVED that further dues expenses beyond the 2022-2023 period shall be considered "pre-approved" pursuant to Resolution No. 70,072 N.S.



2021-2022 Annual Membership Form

https://www.accwca.com/

EIN#: 61-2004081

For Fiscal Year July 1, 2021 - June 30, 2022

PLEASE RETURN THIS FORM WITH YOUR COMMISSION'S PAYMENT

The Association of California Commissions for Women (ACCW) relies on the participation and contributions of each California Commission for Women to sustain its mission, which is to promote viability, strength, and effectiveness of member Commissions within the State of California.

CONTACT INFORMATION:

Name of Commission: _____ Commission
Email/Telephone: _____
Commission Website Address: _____ Commission Mailing Address: _____
2021-2022 Commission Chair Name: _____
Chair Email: _____
2021-2022 Commission Vice Chair Name: _____
Vice-Chair Email: _____
Commission Terms (ex. Fiscal Year or Calendar Year) _____
Staff Contact Name/Title: _____
Staff Email/Phone: _____
ACCW Delegate Name: _____
ACCW Delegate Email/Phone: _____

ANNUAL DUES for 2021-2022* - PRO-RATED for 2021-22. DUE by January 30, 2022

Table with 3 columns: Regular Membership Fee, Full Year membership, Pro-rated 2021-2022. Rows include Gold Membership (\$500/\$250), Commission Membership (\$200/\$100), College/University Commission Membership (\$150/\$75), and Individual Membership (\$50/\$25).

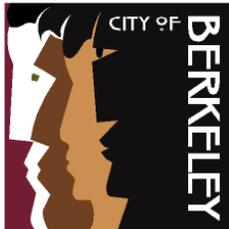
*Pro-rated membership applies now until June 30, 2022, membership renewals will be due as of July 1, 2022. Pro-rated fees listed are at a 50% discount.

**Gold Membership - premium level

PAYMENT

Send payment by check:
ACCW (Association of California Commissions for Women)
281 Magnolia Avenue, Vacaville, CA 95688 OR

Send payment electronically Pay via Zelle to ACCW using the email address:
accwdues@gmail.com
ACCW EIN#: 61-2004081



Kate Harrison
Vice Mayor, District 4

02a.15

CONSENT CALENDAR
March 8, 2022

To: Honorable Mayor and Members of the City Council
From: Vice Mayor Harrison
Subject: Adopt Resolutions Referring to the City Manager to Establish a Policy of Reducing or Waiving Park Fees for Free, Permitted Outdoor Theater, Arts Events, and Other Events Based on Objective Public Welfare Criteria and Relinquishing Council Funds to Support the San Francisco Mime Troupe's Payment of Park Fees for Its 2022 Free Outdoor Performance Season

RECOMMENDATION

Adopt Two Resolutions:

1. Establishing a policy and referring to the City Manager to create a process to reduce or waive City Park Fees for free and permitted outdoor theater, arts events, and other events as appropriate based on objective consideration of their benefits to the public welfare, including but not limited to educational content, non-profit status, and means.
2. Approving the expenditure of an amount not to exceed \$500 per Councilmember including \$500 from Vice Mayor Harrison, to the San Francisco Mime Troupe, the non-profit fiscal sponsor of 2022 Berkeley Park performances, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Vice Mayor Harrison and any other Councilmembers who would like to contribute.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

The City of Berkeley has a long tradition of supporting theater, artists and the educational and entertainment value associated with live performance and other events. Unfortunately, the arts community has been devastated by the COVID-19 pandemic. Despite important investments through the Berkeley Relief Fund and other policies, smaller and less well-funded organizations are still facing hardships with respect to renewing free outdoor events in Berkeley's parks. At the same time, Park Fees have risen dramatically since the pandemic; according to the San Francisco Mime Troupe, Parks permit fees have nearly tripled since 2019. Until 1999, the City waived Park Fees for free theater performances in Berkeley parks in recognition of their educational, entertainment, and public welfare contributions to the people of Berkeley.

Although it is critical that Berkeley recovers its costs to maintain its park and facilitate events, when appropriate, it is also critical the City recognize and facilitate the contribution of less well-off arts organizations to Berkeley's civic and artistic culture and

Adopt Resolutions Referring to the City Manager to Establish a Policy of Reducing or Waiving Park Fees for Free, Permitted Outdoor Theater, Arts Events, and Other Events Based on Objective Public Welfare Criteria and Relinquishing Council Funds to Support the San Francisco Mime Troupe's Payment of Park Fees for Its 2022 Free Outdoor Performance Season

CONSENT CALENDAR
March 8, 2022

fabric. For example, within the indoor context, the City of Berkeley has already provided millions worth of rent to help the Berkeley Repertory Theater and additional COVID-19 deferments of building permit, inspection, connection, and impact fees for arts workforce housing and workshop space. Freight and Salvage, Shotgun Players, and Aurora Theatre Company have also received city grants and assistance. It is critical that the City recognize the contributions of its outdoor theater and arts organizations as well.

It is therefore in the public interest to establish a policy and refer to the City Manager to create a process to reduce or waive City Park Fees for free and permitted outdoor theater, arts events, and other events as appropriate based on due consideration of their benefits to public welfare, non-profit status, and means.

BACKGROUND

It has come to the attention of the Council that the COVID-19 pandemic and increasing fees for Berkeley parks events have imperiled the ability for certain arts and other organizations that contribute greatly to Berkeley fabric, culture, and wellbeing to continue to provide free performances and events.

For example, the San Francisco Mime Troupe (SFMT) is currently considering whether to indefinitely suspend all future free theater (with voluntary donations) performances within Berkeley parks. SFMT is an historic democratically run, worker-owned, multi-ethnic, multi-generational, multi-cultural, gender-balanced, and 501(c)3 nonprofit theater of social justice. Their mission is to create and produce theater that presents a working-class analysis of the events that shape our society, that exposes social and economic injustice, that demands revolutionary change on behalf of working people, and to present this analysis before the broadest possible audience with artistry and humor. Due to the pandemic, the SFMT have not performed in Berkeley since 2019 but had planned to restart performances this year.

The Troupe has a long tradition of offering free theater for audiences across San Francisco Bay Area parks City Parks, including Berkeley, from July 4th through Labor Day. Until 1999, the City waived Park Fees for free San Francisco Mime Troupe performances in Berkeley parks, including Live Oak, Cedar Rose and Willard. Substantially increased fees since 2019 will make Berkeley performances cost prohibitive. Park Fees are established pursuant to BMC 6.46, and while the ordinance provides exemptions for an "indigent person," it does not appear that there is such a comparable or similar waiver process for organizations. Fees were last updated as part of Resolution N.S. 69,892 in May 2021, and range from \$180 to \$1000 per event (not including insurance requirements) depending on the number of participants and resident status. At the same time, SFMT is not eligible for certain city grants that would help soften the blow of the increased permit fees.

The purpose of Berkeley's park system is to provide residents of Berkeley and visitors alike with *free access* to recreation, peaceful relaxation, entertainment and other benefits. The public park system stands in direct contrast to private alternatives.

Adopt Resolutions Referring to the City Manager to Establish a Policy of Reducing or Waiving Park Fees for Free, Permitted Outdoor Theater, Arts Events, and Other Events Based on Objective Public Welfare Criteria and Relinquishing Council Funds to Support the San Francisco Mime Troupe's Payment of Park Fees for Its 2022 Free Outdoor Performance Season

CONSENT CALENDAR
March 8, 2022

It is in the public interest to pass a resolution referring to the City Manager to create a process to reduce or waive City Park Fees for free and permitted outdoor theater, arts events, and other events as appropriate based on objective consideration of their benefits to the public welfare, including but not limited to educational content, non-profit status, and means.

It is also in the public interest for Councilmembers to relinquish office funds to the SFMT to help cover fees for their 2022 park performances. Even though the new fee reduction and waiver policy will hopefully assist organizations such as SFMT, the organization has to plan its performances and permits in advance and cannot wait for the development and adoption of such policy.

FISCAL IMPACTS OF RECOMMENDATION

Current fees range from \$180 to \$700 per event. The exact financial impact cannot be determined until staff develop objective criteria for which organizations qualify for reduced or waived fees. Any reduction in fees should be considered within the context of the value of free events to the people of Berkeley and associated patronage of local Berkeley businesses and City services.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Outdoor performances can be a low-carbon activity as compared to other forms of indoor and outdoor entertainment.

CONTACT PERSON

Vice Mayor Kate Harrison, (510) 981-7140

ATTACHMENTS

1. Resolution 1
2. Resolution 2

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

RESOLUTION REFERRING TO THE CITY MANAGER TO ESTABLISH A POLICY OF
REDUCING OR WAIVING PARK FEES FOR FREE AND PERMITTED OUTDOOR
THEATER, ARTS EVENTS, AND OTHER EVENTS BASED ON OBJECTIVE PUBLIC
WELFARE CRITERIA

WHEREAS, the City of Berkeley has a long tradition of supporting and encouraging free theater, artistic, and other events, and the educational and entertainment value associated with live performance and outdoor spaces; and

WHEREAS, unfortunately, the arts community has been devastated by the COVID-19 pandemic; and

WHEREAS, park fees have risen substantially in recent years, threatening the viability of ongoing free and permitted outdoor theater, arts, and other events sponsored by non-profit organizations of limited means; and

WHEREAS, although it is important that Berkeley recovers its costs to maintain its parks and facilitate events, when appropriate, it is also critical the City recognize and facilitate the contribution of less well-off arts organizations to Berkeley's civic and artistic culture and fabric; and

WHEREAS, the public park system stands in direct contrast to private alternatives with a purpose of providing residents of Berkeley and visitors alike with free and relatively low-carbon access to recreation, peaceful relaxation, entertainment and other benefits.

NOW, THEREFORE BE IT RESOLVED, by the Council of City of Berkeley that it refers to the City Manager to create a process to reduce or waive City Park Fees for free, permitted outdoor theater, arts events, and other events as appropriate based on objective consideration of their benefits to the public welfare, including but not limited to educational content, non-profit status, and means.

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

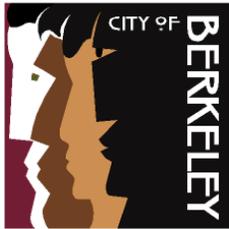
AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Vice Mayor Kate Harrison has funds in her office expenditure account; and

WHEREAS, a non-profit tax exempt entity, the San Francisco Mime Troupe, seeks funds in the amount of at least \$500 to provide the following public services to educate and entertain Berkeley audiences through outdoor theater performances in Berkeley parks; and

WHEREAS, the provision of such services would fulfill the municipal public purpose of supporting and encouraging free theater, art, and community interaction through free educational outdoor performances open to all Berkeley residents and visitors; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to \$500 per office shall be granted to the San Francisco Mime Troupe to fund municipal public purpose services of free educational theater in Berkeley's public parks.



Sophie Hahn
City Council District 5

02a.16

CONSENT CALENDAR
March 8, 2022

To: Honorable Members of the City Council

From: Councilmembers Sophie Hahn and Ben Bartlett (Co-Authors),
Councilmember Kate Harrison (Co-Sponsor)

Subject: Budget Referral: Grant Writing Services

RECOMMENDATION

Refer \$300,000 to the FY 2022-2023 budget process to expand the City's capacity to seek and obtain grants and launch funded projects by hiring or contracting for writing and RFP/grant/program administration support.

BACKGROUND

Berkeley is an innovative City, pursuing ambitious programs and initiatives with the vigor and vision of a much larger jurisdiction. Innovation requires a significant investment of City resources and staff time. In addition, Berkeley has aging infrastructure and longstanding initiatives that require additional funding to achieve success. To support these efforts and increase revenues, the City has access to Federal, State, County, Regional, and, in some instances, private funds.

Currently, grant-writing and application responsibilities are distributed across City departments, which independently seek new grant opportunities and submit applications. While the City does receive many awards, the application process can be time consuming for Staff, who are stretched more thinly than ever due to pandemic response and staffing shortages. At the same time, with the current Federal administration's massive new investments, State of California surpluses, and significant philanthropic initiatives by private foundations, unprecedented monies are being made available to address a wide variety of needs in our community.

In addition to grant writing, extra support can be deployed to assist with the preparation of RFPs related to grant-funded and other initiatives, and with reports and other grant and program-related requirements, to expedite implementation and administration of new projects for which funds have been received and/or allocated by the City Council.

[On October 3, 2017, Council approved a referral for the City Manager to](#) issue a request for information (RFI) to explore grant writing services from specialized municipal grant-writing firms, and report back to Council. On [May 14, 2019 the City Manager reported back to Council](#) the results of the City's RFI process. On July 27, 2021, [the City Council directed the City Manager to move forward to establish needs and select a firm or firms to supplement the City's grant writing capacity](#), and provide a budget referral in time to be considered for the November 2021 AAO update, such that a new firm or firms could be in place by January of 2022.

To date, no additional support for grant writing and grant/program launch and administration has been obtained. This item refers to the upcoming budget process funds to obtain grant writing and program launch/administration support via the hiring of an individual with grant-writing, RFP, and grant/program administration expertise, or the hiring of one or more outside consultants specializing in this work.

FINANCIAL IMPLICATIONS

Budget request for \$300,000, to enable the City to move forward to address these longstanding needs. Expenses to be offset by the value of additional grants successfully awarded.

CURRENT SITUATION AND ITS EFFECTS

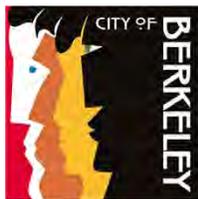
As our Nation and State recover from the COVID-19 crisis, there are a record number of grants available to cities from Federal, State, County, Regional, and private sources. An unexpected surplus in the California budget has resulted in further unprecedented opportunities to obtain funding for a wide range of City of Berkeley priorities. To access these rapidly-developing, highly competitive funds, Berkeley should supplement its ability to write timely, successful grants by bringing in professional grant writing services. Once funds have been obtained, Berkeley could also benefit from help with preparation of RFPs, reports, and other grant/program administration, to ensure funded programs can be launched expeditiously.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Sophie Hahn Council District 5 510-981-7150



CITY COUNCILMEMBER
RIGEL ROBINSON
 DISTRICT 7

02a.17

CONSENT CALENDAR
 March 8, 2022

To: Honorable Mayor and Members of the City Council
 From: Councilmember Rigel Robinson
 Subject: Support for AB 1713: Idaho Stop

RECOMMENDATION

Send a letter to Assemblymember Tasha Boerner Horvath, Senator Nancy Skinner, and Assemblymember Buffy Wicks in support of Assembly Bill 1713, which would allow adult bicyclists to proceed through stop signs after yielding the right-of-way to immediate hazards.

BACKGROUND

Assembly Bill 1713 would permit bicyclists 18+ to treat stop signs as yield signs, also known as an “Idaho Stop.” This bill is a revised, narrower version of AB 122, a bill that the City of Berkeley endorsed last year. AB 122 was passed by the Assembly and Senate before being vetoed by Governor Newsom. In his veto message, Newsom wrote that “the approach in AB 122 may be especially concerning for children, who may not know how to judge vehicle speeds or exercise the necessary caution to yield to traffic when appropriate.” The updated bill responds to this concern by limiting the applicability of the provisions to adults only.

Currently, California Vehicle Code requires bicyclists to abide by the same laws as motorists — that is, to come to a full stop at a stop sign, even if the street is completely empty or no vehicles are close enough to constitute an immediate hazard. However, it is much more difficult to stop and restart repeatedly on a human-powered vehicle than it is in a car. For bicyclists who may not be as athletic, or who ride older and more inefficient bikes, this requires a significant exertion of energy and may deter them from biking longer distances. Highlighting the disparate impact of mandatory stop signs on bicyclists, a 2001 UC Berkeley Physics Department study determined that on routes with frequent stops, a person operating a bike must exert five times the energy in order to maintain speed.¹

The Idaho Stop law, allowing bicyclists to treat stop signs as yield signs, has been in effect in the State of Idaho since 1982. A 2010 UC Berkeley School of Public Health Environmental Science Division study, which compared injury and fatality rates in Idaho with data from structurally similar cities in states still lacking a traffic stop exemption,

¹ <https://nacto.org/wp-content/uploads/2012/06/Fajans-J.-and-M.-Curry.-2001..pdf>

found that these conventions make our streets safer.² Quantitative results demonstrated Idaho conditions to be 30.4 percent safer for bicyclists overall, with an immediate 14.5 percent decrease in injuries in the year following the law's implementation. In researchers' interviews with police officers, public officials, bicycle advocacy groups, and the general public, "these inquiries strongly supported adoption of the Idaho Law, and no entity whatsoever identified any negative safety result associated with passage of the law."

Recognizing the safety benefits of such a law and the climate imperative to improve the convenience of bicycling in Berkeley, Council referred to the Transportation Commission in 2019 to consider deprioritizing enforcement of the Idaho Stop convention. Because the City does not have jurisdiction over state vehicle code, AB 1713 is needed to codify the traffic law exemption rather than just deprioritizing enforcement of it.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No impact.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170
Angie Chen, Legislative Assistant

Attachments:

- 1: Letter of support
- 2: Bill text

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1713

² <http://denver.streetsblog.org/wp-content/uploads/sites/14/2018/02/idaho-law-jasonmeggs-2010version-2.pdf>

March 8, 2022

The Honorable Tasha Boerner Horvath
Assemblymember, 76th District
State Capitol, Room 4150
Sacramento, CA 95814

RE: City of Berkeley's Support for Assembly Bill 1713

Dear Assemblymember Tasha Boerner Horvath,

The Berkeley City Council would like to convey our full support for Assembly Bill 1713 to permit bicyclists 18+ to treat stop signs as yield signs, legalizing a common, safe, and energy-conserving maneuver.

The law currently treats bicyclists and motorists the same in this regard, despite it being much more difficult to stop and restart repeatedly on a bicycle. The additional exertion of energy required to come to frequent full stops acts as a deterrent to bicycling, in direct opposition to our climate imperative to encourage more people to bike instead of drive.

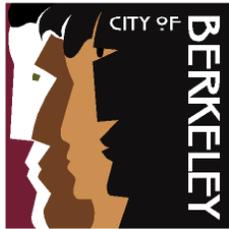
In addition, Black people and people of color are disproportionately stopped and cited by law enforcement for vehicle code infractions, including when riding a bike. AB 1713 will provide clarity to the law and prohibit law enforcement from using harmless infractions as pretext to detain and cite, while also decreasing potentially lethal interactions with law enforcement.

The Berkeley City Council supports AB 1713 and thanks you for continuing to push on this important issue.

Sincerely,

The Berkeley City Council

CC: Senator Nancy Skinner
Assemblymember Buffy Wicks



Disaster and Fire Safety Commission

02a.18

ACTION CALENDAR
March 8, 2022

To: Honorable Mayor and Members of the City Council
From: Disaster and Fire Safety Commission
Submitted by: José Luis Bedolla, Chairperson, Disaster and Fire Safety Commission
Subject: Parking Enforcement of Existing Parking Code in Fire Zones 2 & 3

RECOMMENDATION

The Disaster and Fire Safety Commission (DFSC) recommends that Council direct the Berkeley Police Department to enforce existing Berkeley Municipal Code in all Fire Zones.

FISCAL IMPACTS OF RECOMMENDATION

Fully enforcing the existing parking code may require increased staff time from the Police Department - Parking Enforcement (or, in the future, the proposed Department of Transportation, "BerkDOT"). Exact costs and staff time are unknown.

CURRENT SITUATION AND ITS EFFECTS

As another fire season rages, we are again seeing record-setting, deadly wildfires in California. The largest current fire is the Caldor Fire, which has burned 219,267 acres¹ and even threatened Berkeley Echo Lake. There is a continued concern about the level of preparedness for egress from Berkeley's Fire Zones 2 and 3.

The Berkeley Fire Department continues to educate the public on the importance of making and practicing an evacuation plan; for many residents of Fire Zones 2 and 3, a safe evacuation will depend on the ability to drive a vehicle away from the threat before being overtaken by a moving fire.

Many streets in these neighborhoods are narrow and winding, which limits both access – the ability for emergency vehicles to go into these areas, and egress – the ability for residents to escape a fire (see, Exhibit 1) These limitations are exacerbated by constant and flagrant violations of existing parking restrictions by Berkeley residents, visitors, and delivery vehicles, which cause additional pinch points and compress the available space for vehicles to drive on the roads. Additionally, illegally parked vehicles block sidewalks, creating a hazard for pedestrians and persons using wheelchairs. There seems to be a culture of illegal parking that continues due to a lack of consequence (see, Exhibit 2)

¹ <https://www.fireweatheravalanche.org/fire/state/california>

The continual violations of existing parking restrictions create a life-safety hazard in the hills in all emergency situations, and especially in a wildfire scenario, when rapid evacuation of residents will be necessary.

The City is planning to impose further parking restrictions under its “Safe Passages” program as needed to ensure sufficient access and egress during a wildfire on these narrow streets. If existing parking restrictions are not enforced, there is little reason to expect additional restrictions to have any positive impact on the situation.

Exhibit 1: Street widths of >10 and <26 feet

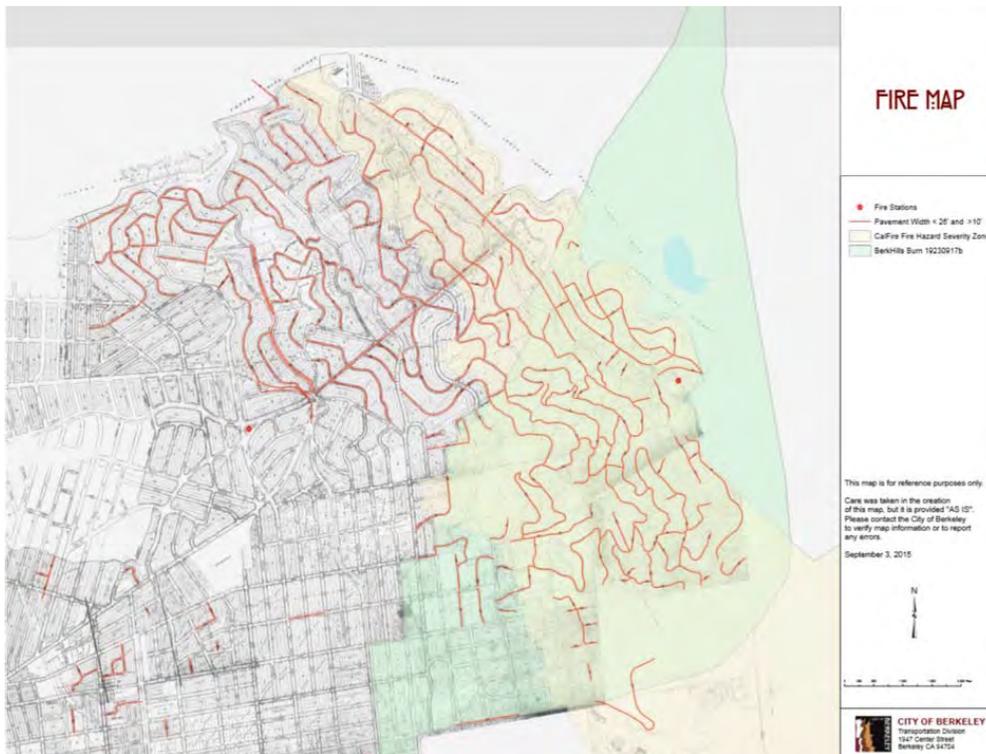


Exhibit 2, (select pictures taken on 7/28/2021 ~12:30 PM)



Los Angeles St

Quail St

Keefer St

Thousand Oaks St

BACKGROUND

The City of Berkeley has been repeatedly notified of access and egress concerns due to a lack of parking restrictions and a lack of parking enforcement in the Hills Fire Zones, including but not limited to two prior recommendations by the Disaster and Fire Safety Commission:

In February 2016, Council approved a January 12, 2016 recommendation from DFSC requesting that it:

“refer to staff the Design of a parking restriction program in the Hills Fire Zone to ensure access for emergency vehicles and to allow for safe evacuations in an emergency and to hold public meetings to get community input in the design of such a program

That recommendation stated:

“Today we are 24 years after the devastating Oakland Hills Fire and 50 years after concern was first expressed for the safety of residents given the conditions that will save lives in the Berkeley Hills”

In December 2019, the DFSC submitted a recommendation to Council, “Recommendation to Immediately Fund and Implement the Safe Passages Program and Additional Actions to Ensure Emergency Equipment Access to All Parts of the City” which included a number of recommended actions to prioritize parking restrictions in Berkeley’s Fire Zones as part of a Safe Passages program.

Parking issues have been discussed in other recommendations over many years, including recommendations to implement new parking restrictions in Fire Zones 2 and 3 to ensure safe access and egress for emergency vehicles.

Safe Passages - Project in Progress:

At this time, the Berkeley Fire Department has allocated staff time and funding towards Safe Passages work in the next few years. In the Safe Passages project, staff will evaluate and document the problem of emergency access and egress in the City’s Fire Zones and lead an interdepartmental program in addressing this problem through parking restrictions, increased enforcement, signage, and public education. The Safe Passages project is likely to result in an expansion of “No Parking” areas on dangerously narrow and/or winding streets in the Hills Fire Zones.

As Safe Passages is a multi-year project that is still just getting off the ground, the DFSC is now providing this urgent recommendation to enforce existing parking restrictions in the meantime.

This recommendation does not preclude or replace the need for new parking restrictions and other improvements that are expected to be an outcome of the Safe Passages project.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identified environmental effects or opportunities associated with the action requested in this report.

RATIONALE FOR RECOMMENDATION

As seen in the years of background and the multiple times that parking restrictions have been recommended by the DFSC and by Council, we believe there is a consensus that narrow streets that impede emergency vehicle access are a threat to life safety in Berkeley.

A consistent lack of enforcement sends the message that parking restrictions in the Hills are not important, but in truth these restrictions are crucial for life-safety in these neighborhoods. Illegally parked vehicles exacerbate already insufficient space on many narrow streets, potentially limiting access for emergency vehicles as well as hindering a wildfire evacuation.

ALTERNATIVE ACTIONS CONSIDERED

Alternatives could be considered as part of the City's Safe Passages program and could include changing streets to one way only rather than two way, adding additional red curbing, especially on the smallest width streets in Zones 2 and 3, and adding to the Fire District Parking Restrictions. Each of these has the possibility of cost and additional community involvement and consultation before implementation. We recommend that enforcement of existing laws be increased while simultaneously planning and developing these other improvements.

CITY MANAGER

The City Manager refers this recommendation to the budget process.

Staff concurs that the narrow and winding streets in the Berkeley Hills, makes traveling under normal conditions challenging. Illegal parking can exacerbate ingress and egress of vehicles during an emergency event.

Currently, Parking Enforcement Officers (PEOs) are deployed across the City using a "beat" structure with their primary focus being to provide enforcement to metered and residential parking permit (RPP) areas. They respond to other locations within their beat by complaint only. Due to staffing challenges, PEOs are frequently tasked with providing coverage to larger geographical areas. At this time, current resources and staffing models do not allow the robust analysis, project management, and enforcement that is being recommended.

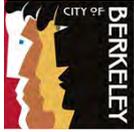
Many of these issues are being discussed within the Fire Department's Safe Passage Program. The scope of this recommendation will take time, staffing, and the funding of new positions to fully address all aspects of the Safe Passage Program. Until a comprehensive program can be developed, the Police Department will offer voluntary overtime to offer extra patrols to provide enforcement of restricted parking zones throughout the City during Red Flag events.

CONTACT PERSON

Keith May, Secretary, Disaster and Fire Safety Commission, 510-981-5508

Jennifer Tate, Berkeley Police Department Traffic Bureau, 510-981-5983

02a.19



Rashi Kesarwani
Councilmember District 1

CONSENT CALENDAR

March 8, 2022

TO: Honorable Mayor and Members of City Council

FROM: Councilmember Rashi Kesarwani (Author)

SUBJECT: Referral to Implement State Law AB 43 for Reduced Speed Limits on High-Injury Commercial Corridors

RECOMMENDATION

Refer to the City Manager to implement state law AB 43 on high-injury commercial corridors as identified in our Vision Zero Annual Report, 2020-2021¹ in order to allow a reduction in speed limits by 5 miles per hour.

Upon completion of this referral, we note that a budget allocation would be needed in the amount of \$25,000 to \$50,000 for new speed limit signage. Funding will be requested later (likely for the FY 2023-24 budget) in order to allow time for staff to determine the applicable streets for additional signage.

CURRENT SITUATION AND ITS EFFECTS

New State Law AB 43 Allows for Reduction of Speed Limits on Streets with a High Percentage of Commercial Activity. Assembly Bill 43, signed into law in October 2021, allows cities to take into account the presence of vulnerable pedestrian groups such as seniors, children, people with disabilities and unhoused individuals when setting speed limits and allowing them to reduce speeds on certain types of streets. The law provides for reducing speed limits on non-commercial streets beginning June 30, 2024. Beginning January 2022, local jurisdictions may reduce speed limits on a highway contiguous to a business activity district as follows:

- 30 miles per hour speed limit may be reduced by 5 miles per hour to 25 miles per hour; and
- 25 miles per hour may be reduced to 20 miles per hour.²

¹ See City of [Berkeley Vision Zero Annual Report, 2020-2021](#), March 2021

² See the text for [Assembly Bill No. 43](#), section 22358.9 (a) (1)

The new speed limits apply only to those streets that comply with the below conditions:

- A maximum of four traffic lanes;
- A maximum posted 30 or 25 miles per hour speed limit immediately prior to and after the business activity district if establishing a 25 or 20 miles per hour speed limit;
- The business activity district meeting the criteria of at least three of the below listed requirements:
 1. 50 percent or more of the fronting property consisting of retail and/or dining commercial uses;
 2. Inclusion of parking spaces along the road;
 3. Traffic signals and stop signs located at intervals of no more than 600 feet;
 4. Marked crosswalks not controlled by a traffic control device.

According to the map shown below, several of our busiest commercial corridors (such as: Gilman, San Pablo, Shattuck, Telegraph and University) are also among our high-injury network of streets. This referral requests staff to consider reducing speeds along those applicable commercial areas in the interest of enhancing public safety and protecting the health and well being of pedestrians inhabiting those areas.

BACKGROUND

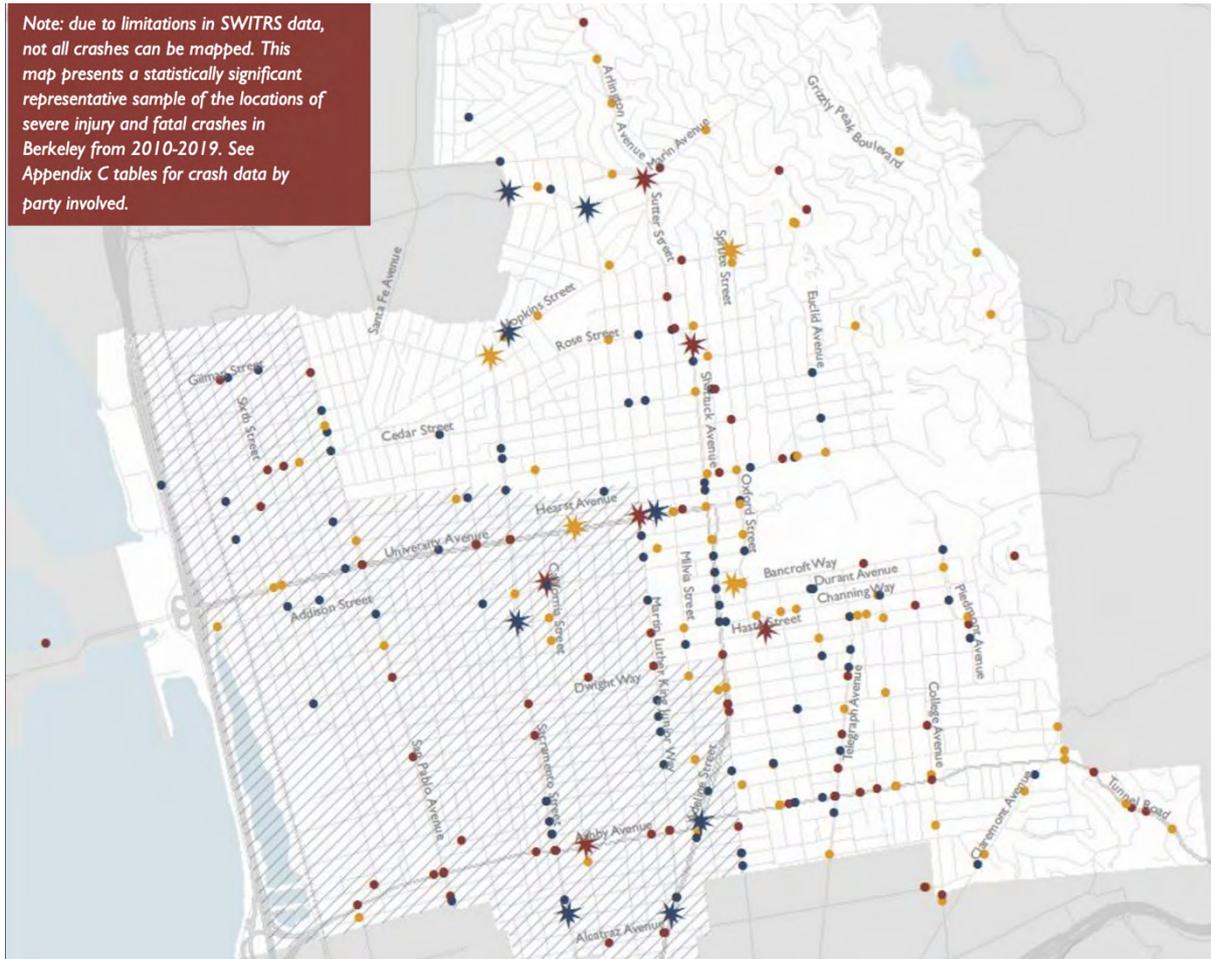
Berkeley Has Established a Vision Zero Goal. In March of 2018, Berkeley adopted a Vision Zero Resolution³ seeking to end all traffic-related deaths and severe injuries on our streets by 2028. Passage of this resolution officially joined us to the network of cities throughout the country mobilized to address the significant numbers of injuries and fatalities on the nation's roadways, and to pursue safe mobility for all users.⁴ By adopting this resolution, Berkeley committed to an equity-focused data driven approach to eliminate traffic fatalities and severe injuries recognized as a result of how our streets are designed and regulated. As such, traffic fatalities and injuries are understood *not* as inevitable, rather preventable through attention to data indicating causes of collisions and designing projects emphasizing safety.

Data Reveals Berkeley's Network of High-Injury Streets. Our Vision Zero program uses information based on the most recent 10 years of collision data available through the Statewide Integrated Traffic Records System (SWITRS). This information indicates on which streets the highest number of accidents occur, as well as the types of California Vehicle Code Violations associated with the collisions. The map below shows the location of 277 severe injury and fatality crashes between 2010 and

³ See [Resolution No. 68,371-N.S. In Support of Vision Zero](#), adopted March 27, 2018

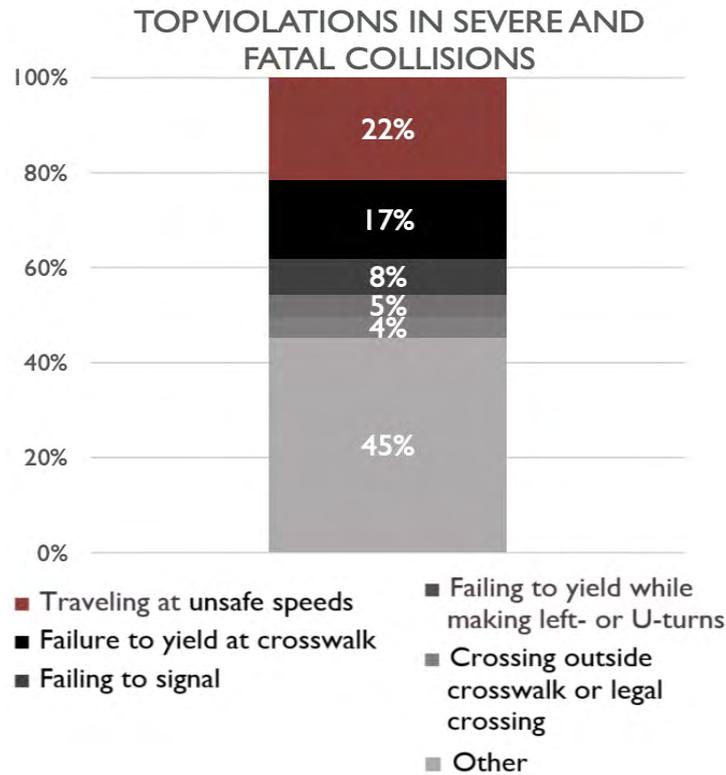
⁴ See the [Vision Zero](#) Website

2019, also representing the streets where the greatest number of fatality and severe injury crashes occurred.



Source: [City of Berkeley Vision Zero Annual Report 2020-2021](#), p. 9

During these same years, the top two traffic violations resulting in severe injuries or deaths on Berkeley streets were: drivers traveling at unsafe speeds and drivers not yielding at crosswalks, as shown in the chart below.



Source: [City of Berkeley Vision Zero Annual Report 2020-2021](#), p. 5

Studies have shown that the faster a colliding vehicle is traveling, the more damage is done to the struck pedestrian.⁵ As speeding is shown as the top violation resulting in severe injuries and deaths on Berkeley streets, reducing speed limits can both save lives and lessen the severity of injury.

FISCAL IMPACTS

Staff time to determine which commercial corridors are AB 43 applicable. Funding will be requested later (likely for the FY 2023-24 budget) in order to allow time for staff to determine the applicable streets for additional signage. Costs for new speed limit signs are \$250 per sign, and staff time for installation will need to be budgeted. Budget is unlikely to exceed \$50,000.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Safe streets encourage increased pedestrian, bicycle and micro-mobility usage, reducing greenhouse gas emissions from non-electric vehicles. This aligns with the City’s Strategic Plan priority to be a global leader in addressing climate change, protecting the environment, and advancing environmental justice.

⁵ See [U.S. Department of Transportation National Highway Traffic Safety Administration: Literature Review on Vehicle Travel Speeds and Pedestrian Injuries](#), October 21, 1999

CONTACT

Rashi Kesarwani, Councilmember District 1

(510) 981-7110

02a.20



CONSENT CALENDAR

March 8, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin (Author) and Councilmember Robinson (Co-Sponsor)

Subject: AB43 Speed Limit Reductions

RECOMMENDATION

Refer to the City Manager, the reduction of speed limits, in accordance with AB43, on streets that fall within the following categories:

- High Injury Streets
 - Addison Street, Adeline Street, Alcatraz Avenue, Arlington Avenue, Ashby Avenue, Bancroft Way, California Street, Cedar Street, Channing Way, Claremont Avenue, College Avenue, Durant Avenue, Dwight Way, Euclid Avenue, Gilman Street, Grizzly Peak Boulevard, Haste Street, Hearst Avenue, Hopkins Street, Martin Luther King Junior Way, Milvia Street, Oxford Street, Piedmont Avenue, Rose Street, Sacramento Street, San Pablo Avenue, Santa Fe Avenue, Sixth Street, Spruce Street, Telegraph Avenue University Avenue
- Business Activity Districts, as defined by the California Vehicle Code
- Senior Zones, as defined by AB43 as “that area approaching or passing a senior center building or other facility primarily used by senior citizens”
 - Acton Street, Carleton Street, Delaware Street, Ellis Street, Oregon Street, and any other streets meeting the definitions described by AB43 that staff identifies
- Any residential streets that may now qualify for AB43 speed limit reductions that were not previously defined as High-Injury Streets during the crafting of the Vision Zero Action Plan

BACKGROUND

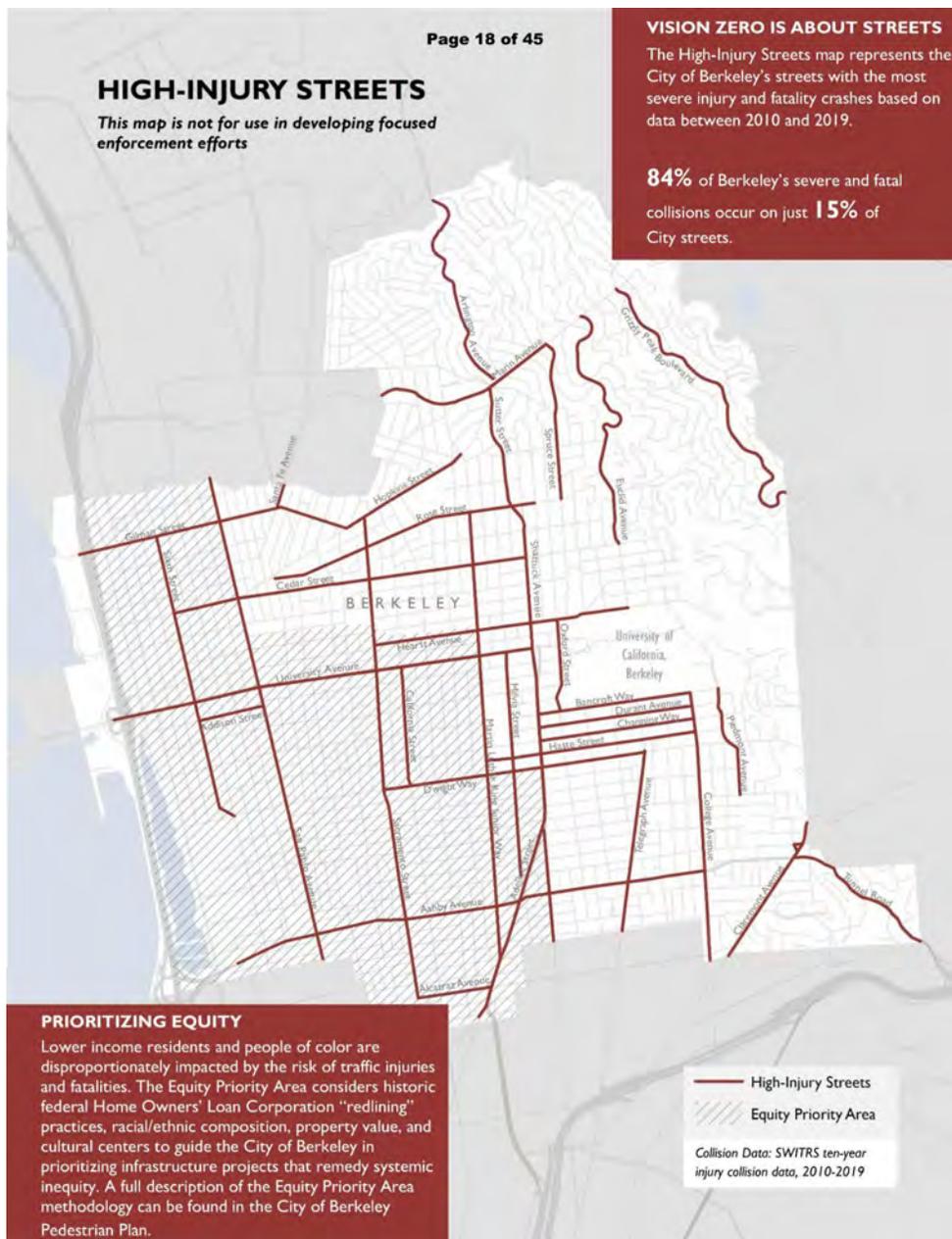
Last year, the state legislature passed Assembly Bill 43, which changes the rules that govern when and how the state and local governments can change speed limits on roadways under their jurisdiction.¹ The bill, which went on to be signed by Governor Newsom and is now law, allows the City of Berkeley to take into consideration the

¹ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB43

presence of at-risk groups, such as seniors, people with disabilities, the unhoused, and children, when setting speed limits. It also allows a lower speed limit to be set on streets with many injuries and fatalities, sets a prima facie speed limit of 25 miles per hour on state highways located in business or residential districts, and authorizes CalTrans to lower the speed limit on those roadways even further when considering the safety of the aforementioned at-risk groups.²

The streets of Berkeley have proven to be incredibly dangerous to all types of people who have been a pedestrian here, but some groups are more likely to be injured or killed as a pedestrian. As noted in Berkeley's Vision Zero Action Plan, lower income residents, people of color, seniors, and people with disabilities are all disproportionately the victims of traffic accidents as pedestrians. Injuries and fatalities are not distributed evenly across Berkeley either, as the Vision Zero Action Plan breaks down:

² https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB43



3

Each of the streets noted in red on the above map as a “High-Injury Street” are far deadlier for pedestrians than the average Berkeley street. It is on those streets, and any street where an at-risk group is more likely to be traveling, that it is most important that speed limits be reduced as soon as possible. AB43 allows for the reduction of speed limits in any business district as well, which are defined in the California Vehicle Code as streets where “50 percent or more of the contiguous property fronting thereon is

³https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley_Vision_Zero_Action_Plan_Approved_03102020.pdf

occupied by buildings in use for business.”⁴ While there is a large degree of overlap between High-Injury Streets and streets with a high degree of business activity, the City of Berkeley must take full advantage of AB43 and target business activity streets for reduced speed limits as well.

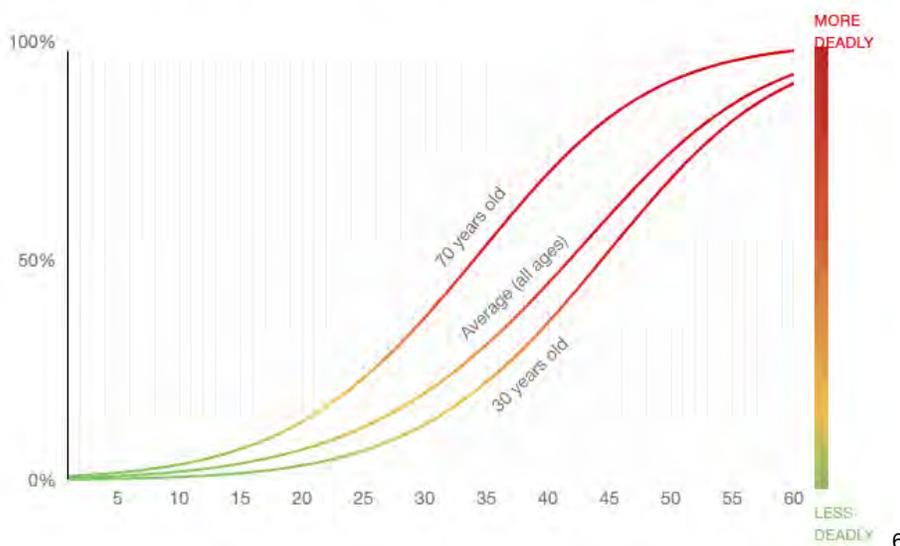
RATIONALE FOR RECOMMENDATION

At the heart of the Vision Zero Action Plan is the central goal for the City of Berkeley to reduce all traffic fatalities and severe injuries by the year 2028. While much has been done to integrate traffic calming measures widely and limit automobile mode-share, the City is still nowhere near on pace to meet its ambitious goals set out by Vision Zero. Reducing speed limits can and must be a central part of achieving Berkeley’s Vision Zero goals, not least of all due to the remarkably higher chances of survival pedestrians have when struck by a vehicle going at lower speeds.



The Chance of Being Killed by a Car Going

Roll over the curved lines to see the risk at any speed



FISCAL IMPACTS

Staff time and an estimated \$4,000 per block of each street where speed limits are reduced.

⁴ [VEHICLE CODE Section 235](#)

⁵ https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley_Vision_Zero_Action_Plan_Approved_03102020.pdf

⁶ <https://www.propublica.org/article/unsafe-at-many-speeds>

ALTERNATIVES CONSIDERED

Continued pursuit of traffic calming on an improvement-by-improvement basis, wherein few of the prescriptions of the Vision Zero Action Plan, Bicycle Plan, and Pedestrian Plan are proposed each year and even fewer are funded. Should the City persist in underfunding implementation of Vision Zero, we risk seeing 2028 pass without eliminating traffic injuries and fatalities.

ENVIRONMENTAL IMPACTS AND CLIMATE 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.⁷ 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

⁷https://www.cityofberkeley.info/Clerk/City_Council/2018/12_Dec/Documents/2018-12-06_WS_Item_01_Climate_Action_Plan_Update_pdf.aspx



02a.21

ACTION CALENDAR
MARCH 8, 2022

To: Honorable Mayor and Members of the City Council
From: Councilmember Taplin
Subject: Equitable Safe Streets and Climate Justice Resolution

RECOMMENDATION

Adopt a resolution committing the expenditure of City and state/federal matching/recurring funds on city-maintained roads, sidewalks, and bike lanes to accelerate safety improvements in a manner consistent with City, State, and Federal policy on street safety, equity, accessibility, and climate change; refer to the City Manager adoption of the NACTO Urban Street Design Guide as the default engineering standard for city streets, restricting city use of the Manual on Uniform Traffic Control Devices subject to engineering judgment, and transferring legal liability for safe streets designs from individual city engineering/Public Works staff to the City of Berkeley.

FINANCIAL IMPLICATIONS

According to the Federal Highway Administration:

“It is generally significantly less expensive to install safety improvements as part of a resurfacing project than to build it as a standalone project ... The cost for adding bike lanes during a resurfacing project costs approximately 40 percent of the cost of adding the lanes as a standalone project.”¹

This resolution calls for the full integration of safety features at the time of re-paving of all streets in the city, in a manner consistent with City, State,² and Federal³ policy, which will result in substantial material and staff time savings, while also saving the lives of Berkeley residents.

CURRENT SITUATION AND ITS EFFECTS

Under current practices in Berkeley, safe streets interventions like bikeways, separated lanes, raised pedestrian crossings, and corner bulb-outs are often implemented only

¹ https://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/resurfacing/page04.cfm#cost_a2

² “Caltrans to Require ‘Complete Streets’ Features in Planning and Design of All New Projects” <https://dot.ca.gov/news-releases/news-release-2021-039>

³ Under the Infrastructure Investment and Jobs Act of 2021, “MPOs must use 2.5 percent of their overall funding to develop and adopt complete streets policies, active transportation plans, transit access plans, transit-oriented development plans, or regional intercity rail plans.” <https://nacto.org/program/state-and-federal-policy/>

after a pedestrian or cyclist has been injured or killed by a driver. Many examples exist of streets that had been recently re-paved without safety features that were then re-designed after residents expressed their anger over pedestrians and cyclists being severely injured or killed by a driver.

According to the Federal Highway Administration, implementing safe streets features at the time of re-paving, rather than as stand-alone, post-facto projects, can significantly cut the costs of these safety interventions.⁴ This resolution calls for the full integration of safety features at the time of re-paving of all streets in the city, which will result in substantial material and staff time savings, while also saving the lives of Berkeley residents.

The Equitable Safe Streets and Climate Justice Resolution is a Strategic Plan Priority Project, advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND

Personal cars and trucks are the leading source of climate pollution in the City of Berkeley, causing 59% of all greenhouse gasses within city limits – more than all residential and commercial energy use, combined.⁵ They are also among the leading causes of violent injury and death in the city, with a growing number of deadly and injurious conflicts between people driving cars and vulnerable road users including pedestrians, the elderly, residents who use mobility devices, and bicyclists. Lower income Berkeley residents and people of color are disproportionately impacted by the risk of traffic injuries and fatalities.⁶

Berkeley also has among the highest percentages of people who take transit, walk, and ride bicycles of any city of its size in the United States.⁷ In spite of this fact, most of our streets are designed in such a way that makes them unsafe for pedestrians, transit users, or for use by people who use mobility devices or bicycles.

This disparity can be resolved through better engineering and design of our city streets, which will save lives and often result in substantial savings for the city. In addition, new state legislation (AB-43, 2021) recognizes that high vehicle speeds are a primary factor in deadly and dangerous street conditions, and empowers California cities to lower speed limits on certain city streets to reduce traffic collisions and protect vulnerable road users.⁸

⁴ https://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/resurfacing/page04.cfm#cost_a2

⁵ [https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Presentations_Item_5_\(6pm\)_Pres_CMO_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Presentations_Item_5_(6pm)_Pres_CMO_pdf.aspx)

⁶ Berkeley Vision Zero Action Plan, March 10, 2019, page 13.

⁷ <https://www.vitalsigns.mtc.ca.gov/commute-mode-choice>

⁸ Assembly Bill 43, Traffic Safety, 2021
https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=20210220AB43

Recent History: Safety Measures Follow Tragedy, Increase Costs

According to the Federal Highway Administration:

“It is generally significantly less expensive to install safety improvements as part of a resurfacing project than to build it as a standalone project ... The cost for adding bike lanes during a resurfacing project costs approximately 40 percent of the cost of adding the lanes as a standalone project.”⁹

Over the past several years, safety conditions for Berkeley residents and visitors who do not drive have deteriorated, as evidenced by the growing number of crashes in Berkeley that have resulted in pedestrian and cyclist injury or death.¹⁰ In spite of the deaths and injuries on our streets, these crashes often do not result in safety improvements.

However, when local residents express sufficient outrage to City Hall over deadly conditions, the City sometimes rapidly responds with permanent or semi-permanent safety features – but had these features preceded, rather than followed, the crashes, they would have resulted in both lower costs to the city, and fewer traumatic injuries and deaths.

Examples of recent Berkeley street re-paving projects that led to increased costs due to a lack of safety features include:

- **Fulton (Oxford):** In 2015, Berkeley Public Works repaved Fulton/Oxford Street between Bancroft Way and Dwight, but did not add a safe bikeway as called for in Berkeley’s 2000 Bicycle Plan. Shortly afterward, Megan Schwarzman was hit and severely injured by a driver while bicycling.¹¹ After being pressured by the community to act, the City Council directed staff to re-stripe the roadway with a safer bikeway, adding 3 months of unplanned work and staff time. Costs would have been lower if the bikeway had been planned and implemented in a manner more consistent with existing city policy, and concurrent with re-paving.
- **Hearst:** After adoption of the 2000 Berkeley Bicycle Plan, Berkeley Public Works repaved Hearst Avenue, but did not include a safe bikeway, as called for in the Bicycle Plan. After years of pressure from residents concerned about street safety, Berkeley finally rebuilt and repaved the street in 2016 with safer facilities, and at significant cost. Costs would have been lower if the bikeway had been planned and implemented in a manner consistent with existing city policy, and concurrent with re-paving.
- **Milvia Street:** Berkeley repaved Milvia Street downtown using Measure BB funds (2014), and then in 2019, repaved Milvia Street in south Berkeley. But neither

⁹ https://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/resurfacing/page04.cfm#cost_a2

¹⁰ <https://www.sfchronicle.com/local/article/Berkeley-bicycle-activist-struck-by-car-hours-16037329.php>

¹¹ Raguso, E. (2016). Bike lane opens by near-fatal crash site. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2016/05/12/bike-lane-opens-in-berkeley-by-near-fatal-crash-site-no-charges-filed-yet-against-driver-who-police-say-was-high>

repaving included safe streets interventions called for in the then-approved bike plans. Berkeley then added extensive safe bicycling facilities in 2021/2022. Costs would have been lower if the bikeway had been planned and implemented in a manner consistent with existing city policy, and concurrent with re-paving.

- **Dwight/California:** In 2021, Berkeley embarked on safety improvements at the corner of Dwight and California, a “bicycle boulevard” and a “safe route to school,” after local residents expressed outrage over two children who were struck by drivers on their way to school. California and Dwight Streets were re-surfaced in 2015, but did not include enhancements to improve pedestrian and cyclist crossing conditions at this intersection.
- **Concrete diagonal diverters:** Berkeley installed many concrete diagonal diverters back in the 1970’s, and had to come back later with separate concrete work to make bicycle cut-throughs in these diverters for bikes to access neighborhood streets. Costs would have been lower if the cut-throughs had been included in the original design.

Street Safety First: Berkeley City Policy

In recent years, the traffic engineering profession has developed extensive tools and engineering guidelines for cities that seek to safely meet the mobility needs of all residents, including those who drive cars, walk, use mobility devices, ride bicycles, and/or use transit.

Many of these new tools, such as the Urban Streets Design Guide by the National Association of City Transportation Officials (NACTO), provide turnkey solutions for cities seeking to design and engineer roads to improve street safety for all road users. The Design Guide was developed in part to help cities seeking to enhance safety, and in part out of growing concern over the proven inadequacy of the Federal Highway Administration’s Manual on Uniform Traffic Control Devices (MUTCD), which has led to dangerous and deadly conditions for vulnerable road users.¹²¹³¹⁴

In fact, in several cases, the proscriptions of the MUTCD have delayed or precluded street safety improvements in Berkeley.¹⁵ Part of the reason may be that, under current case law, engineers may sometimes be held personally liable for deaths or injuries that can be proven to be the result of street engineering and design.

¹² Schmitt, A. (2021). Let’s Throw Away These Rules of the Road. *Bloomberg*. Retrieved from <https://www.bloomberg.com/news/articles/2021-05-05/it-s-time-to-rewrite-the-road-builders-rule-book>

¹³ National Association of City Transportation Officials. (2021). 25,000 Comments Calling for Safety and Equity Reforms to Once-Obscure Federal Street Manual. *NACTO*. Retrieved from <https://nacto.org/2021/05/20/25000-comments-call-for-reforming-mutcd/>

¹⁴ Shill, G. & Bronin, S. (2021). Rewriting Our Nation’s Deadly Traffic Manual. *Harvard Law Review*. Retrieved from <https://harvardlawreview.org/2021/10/rewriting-our-nations-deadly-traffic-manual/>

¹⁵ Harrington, T. (2021). Berkeley’s plans to make Dwight and California safer get mixed reviews. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2021/05/16/berkeleys-plans-to-make-dwight-and-california-safer-get-mixed-reviews>

Over the past year, both the Federal Highway Administration¹⁶ and Caltrans¹⁷ have issued guidance that allows city traffic engineers to use NACTO's Urban Streets Design Guide in place of the MUTCD for projects that use Federal or State transportation funds. In addition, FHWA has issued guidance that, in states where vulnerable road users make up 15% or more of the total number of fatalities in a state in a given year, the state is required to dedicate at least 15% of its Highway Safety Improvement Program funds the following fiscal year to projects that address the safety of these road users. Additionally, the new guidance incorporates legislative changes to permit 100% Federal funding for certain pedestrian and bicyclist projects.¹⁸

Adopt New Complete Streets Engineering Guidelines

This resolution directs all City departments with a role in the design, engineering, maintenance, and administration of Berkeley surface streets to formally adopt the NACTO Urban Streets Design Guide as the primary design and engineering manual for Berkeley city streets.

The resolution further directs all City departments to restrict use of the MUTCD, which has been proven to lead to unsafe street designs,¹⁹ to only those projects where the Public Works Director certifies, in writing, that the MUTCD is better suited to achieving the City's goal of reducing vehicle speeds, enhancing safety features for pedestrians, cyclists, and people who use mobility devices, and ending traffic conflicts between cars and other road users.

In all cases where the MUTCD must be used, all City departments shall first exercise "engineering judgment," as defined in the MUTCD, to ensure safe street designs, including such judgment as may result in modification or overruling of MUTCD standards. In cases where "engineering judgment" can not be used to reduce vehicle speeds or otherwise enhance street safety conditions for all road users, all City departments shall issue formal findings, approved by the Public Works director, that document why a street can not be made safe for all road users, and vehicle speed and throughput must be prioritized.

The resolution directs city departments to ensure that all requests for funding related to any project, on any surface street, sidewalk, bicycle facility, or other transportation infrastructure within city borders, prioritize and implement designs that ensure the safety

¹⁶ "National Roadway Safety Strategy," US Department of Transportation, Jan 2022
<https://www.transportation.gov/NRSS>

¹⁷ "Caltrans to Require 'Complete Streets' Features in Planning and Design of All New Projects," Dec 20, 2021 <https://dot.ca.gov/news-releases/news-release-2021-039>

¹⁸ https://safety.fhwa.dot.gov/hsip/rulemaking/docs/BIL_HSIP_Eligibility_Guidance.pdf

¹⁹ See footnote 12.

of vulnerable users who are not in private automobiles, as established in numerous past policy directives of the Berkeley City Council.²⁰

This resolution further prohibits all City departments from spending any city financial resources on any street that does not include the “best in class” design for Complete Streets unless the safety benefits are outweighed by other considerations, all of which are fully documented in a transparent manner for legal review, and approved by the Public Works Director.

It further prohibits City departments from requiring traffic studies or other measurements related to impacts on “Level of Service” (vehicle speed/throughput) in consideration of street safety improvements, if such improvements will either a) improve safe travel conditions for vulnerable road users, or b) reduce Vehicle Miles Traveled, as established by State of California²¹ and City of Berkeley climate and land use policies, or c) if such improvements are otherwise consistent with guidance in the Complete Streets provisions of NACTO and Caltrans.

It further directs all departments to maintain the priority of street safety interventions in situations where budget is a limiting factor in street repair/improvements, by prioritizing the use of “quick build”²² approaches which improve street safety via rapidly-deployed, lower-cost, temporary measures. In such cases, the Public Works Director will provide the City with a memo explaining the budget shortfall and define a process for closing the funding gap to install permanent safety features when funds become available; or if City departments demonstrate, via appropriate studies and documentation approved by the Public Works Director, an urgent need to complete such repairs/improvements without temporary or permanent safety interventions.

Finally, this resolution establishes that it is the policy of the City of Berkeley to prioritize human lives and safety over the speed and convenience of private automobiles and, as such, in cases where the city engineering staff’s approved safe street designs are found to be at fault for damages from a crash, the city will accept legal and financial responsibility for such damages should a court of law so find, and release engineering staff from any personal or professional liability.

²⁰ e.g. Berkeley Bicycle Plan, 2017; Berkeley Pedestrian Plan, 2020; BIBIMBAP [[https://www.cityofberkeley.info/Clerk/City_Council/2019/10_Oct/Documents/2019-10-29_Item_31_Referral_Develop_a_Bicycle_Lane_-_Rev_\(2\).aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/10_Oct/Documents/2019-10-29_Item_31_Referral_Develop_a_Bicycle_Lane_-_Rev_(2).aspx)]; Berkeley Pedestrian Safety Report 1998; Downtown Area Plan, 2012; West Berkeley Plan, 1993; Adeline Corridor Specific Plan (in progress); University Avenue Plan, 1996.

²¹ California Senate Bill 743, passed in 2013, mandates that jurisdictions can no longer use automobile delay – commonly measured by Level of Service (LOS) – in transportation analysis under the California Environmental Quality Act (CEQA). Full implementation was delayed until 2019. <https://www.vta.org/projects/level-service-los-vehicle-miles-traveled-vmt-transition>

²²“Quick build” projects are reversible, adjustable traffic safety improvements that can be installed relatively quickly. Unlike major capital projects that may take years to plan, design, bid and construct, quick-build projects are constructed within weeks or months and are intended to be evaluated and reviewed within the initial 24 months of construction. <https://www.sfmta.com/vision-zero-quick-build-projects>

The resolution finally establishes, as a matter of policy, that spending City funds to repair a damaged car is always the preferred outcome to spending city resources on the medical bills or death expenses of any non-motorist road user in the City of Berkeley.

Definitions:

- **Complete Streets:** On December 11, 2012, Berkeley City Council adopted a Complete Streets Policy (Resolution 65,978-N.S.) to guide future street design and repair activities. “Complete Streets,” describes a comprehensive, integrated transportation network with infrastructure and design that allows safe and convenient travel along and across streets for all users, including pedestrians, bicyclists, persons with disabilities, motorists, movers of commercial goods, users and operators of public transportation, emergency vehicles, seniors, children, youth, and families.²³
- **NACTO Urban Street Design Guide:** An engineering manual for cities that adopt Complete Streets policies.
- **Level of Service (LOS):** A discontinued method of evaluating transportation infrastructure projects based on vehicle speed and throughput; SB 743, passed in 2013, prohibited LOS in CEQA analysis in the State of California, but the law is under-enforced and LOS is still commonly used.
- **Vehicle Miles Traveled (VMT):** A measure of the impact of car use on air quality and street safety based on the number of miles traveled by car. It is long-standing policy of the City of Berkeley and the State of California to reduce VMT to achieve climate and safe streets policies.
- **MUTCD:** The Manual on Uniform Traffic Control Devices. This controversial manual has been blamed for dangerous street designs throughout the United States. Federal and State transportation authorities are in the process of revising it, and have encouraged jurisdictions that seek to accelerate progress on safe streets to use other engineering and street design guidelines.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

While cars represent the majority of the climate pollution within the city at 59%, Berkeley also has a very high mode share²⁴ among residents and visitors who walk, ride transit, use mobility devices, and ride bicycles. These modes of travel are the lowest-carbon options available, and the City has many policies focused on incentivizing and increasing their use.

However, abundant research about mode choice shows that people hesitate to shift to more sustainable forms of mobility in areas with deadly and dangerous car traffic – which describes most of the City of Berkeley.²⁵

²³ <https://www.cityofberkeley.info/completestreetspolicy/>

²⁴ https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley-Bicycle-Plan-2017-Executive%20Summary.pdf

²⁵ Raguso, E. (2020). Berkeleyside interactive maps: Cyclist and pedestrian injury crashes in 2019. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2020/01/28/berkeleyside-interactive-maps-cyclist-and-pedestrian-injury-crashes-in-2019>

In addition to having a high mode share for non-car modes, Berkeley also has among the highest rates, per capita, of traffic violence involving people not in cars. The correlation is direct: Our unsafe streets are harming people, and preventing the city from achieving its goals on both climate action, and safe mobility.

CONTACT PERSON

Councilmember Taplin Council District 2 510-981-7120

ATTACHMENTS

1. Resolution
2. City of Palo Alto resolution adopting the NACTO Urban Bikeway Design Guide
3. City of Oakland Public Works Director letter of endorsement of NACTO Urban Street Design Guide
4. Assembly Bill 43 (2021)

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

EQUITABLE SAFE STREETS AND CLIMATE JUSTICE RESOLUTION

WHEREAS, Berkeley's climate action plan calls for an 80% reduction in climate pollution by 2050, and private automobiles represent 59% of the City's climate pollution; and

WHEREAS, progress on Berkeley's climate action plan will depend in large part on reducing "vehicle miles traveled," or the amount people drive private cars within city limits; and

WHEREAS, Berkeley's bicycle plan proposed in 1971 called for a city-wide network of safe bicycle routes; and

WHEREAS, Berkeley adopted an action plan for Vision Zero in 2019; and

WHEREAS, Berkeley's existing policy on street engineering and safety calls for "Complete Streets" as defined by the National Association of City Transportation Officials (NACTO); and

WHEREAS, the overwhelming majority of Berkeley's streets, traffic signals, intersections, and related transportation infrastructure have been designed, engineered, and maintained for the priority of automobile speed/"Level of Service" above safe travel options for people who walk, take transit, use mobility devices, or ride bicycles; and

WHEREAS, the city follows the inadequate, outdated and discredited guidance of the Manual on Uniform Traffic Control Devices in determining appropriate street safety designs; and

WHEREAS, some case law suggests that engineers are, on occasion, held personally liable for street designs they have approved in their professional capacity;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that any and all funds generated or otherwise allocated by the City and its voters via taxes, bonds, state/federal grants, and other revenues that are to be used for the design, engineering, construction, and maintenance of city streets and related facilities shall only be disbursed for projects that fully integrate Complete Streets (as defined by NACTO) and all feasible safety interventions designed to reduce automobile speed and protect the lives of people outside of automobiles;

BE IT FURTHER RESOLVED that in all cases where Complete Streets can not be fully implemented, or in cases where the MUTCD must be used in place of the NACTO Urban Streets Design Guide, City Staff shall use "engineering judgment" to prioritize the safety of vulnerable road users, and not rely on MUTCD "warrants" and other proscriptions;

BE IT FURTHER RESOLVED that in all cases where the MUTCD must be used, and where “engineering judgment” can not be used to reduce vehicle speeds or otherwise enhance street safety conditions for all road users, all City departments shall issue formal findings, approved by the Public Works director, that document why a street can not be made safe for all road users, and vehicle speed and throughput must be prioritized;

BE IT FURTHER RESOLVED that pursuant to AB-43 (2021), no city official shall apply the “85th percentile” rule in the process of setting speed limits on city streets, but rather, determine via safety studies and other documented engineering findings by the Public Works Director, when higher speeds are appropriate and are the safest option for all road users;

BE IT FURTHER RESOLVED that it is the policy of the City of Berkeley that, should a court of law find the city legally liable for any damages that result from a driver crashing into a “safe street” intervention under this resolution, the City of Berkeley shall assume liability, and not city traffic engineering or public works staff; and that accepting legal and financial liability for such damages are the City’s preferred alternative to traffic fatalities and injuries on our streets.



City of Palo Alto City Council Staff Report

(ID # 6222)

Report Type: Consent Calendar**Meeting Date: 10/26/2015****Summary Title: Adoption of NACTO Design Guidelines****Title: Adoption of a Resolution to Adopt the National Association of City Transportation Officials (NACTO) Design Guidelines****From: City Manager****Lead Department: Planning and Community Environment****Recommendation**

Adopt the proposed Resolution (Attachment A) to adopt the National Association of City Transportation Officials (NACTO) Urban Street Design Guide and Urban Bikeway Design Guide as supplements to the City of Palo Alto Bicycle and Pedestrian Plan.

Executive Summary

Adopting the National Association of City Transportation Officials (NACTO) street design guides will provide additional support in the City's efforts to introduce complete street ideas into the design and operation of streets by providing design guidance on transportation infrastructure. City staff will continue to work proactively with the community to provide convenient, safe, and context-sensitive facilities that promote increased use by people who walk and bicycle. When NACTO guidance or other design guidance is used, the City will continue to utilize sound planning and engineering judgment when determining the best solution for a local need.

Background

Streets often fail to provide their surrounding communities with a space where people can safely walk, bicycle, drive, take transit, and socialize. Complete Streets integrates people and place in the planning, design, construction, operation, and maintenance of our transportation networks. Cities are leading the movement to redesign and reinvest in our streets as cherished public spaces for people, as well as critical arteries for traffic.

The National Association of City Transportation Officials (NACTO) facilitates the exchange of transportation ideas, insights and best practices among cities, while fostering a cooperative approach to key issues facing cities and metropolitan areas. The NACTO Urban Street Design Guide and Urban Bikeway Design Guide offer a vision for improving the safety and livability of our streets for people who walk, bicycle, drive, and ride transit. The guidance and flexibility

articulated in these guides serve as an additional tool for planning modern city streets to safely accommodate current and future residents, workers and visitors within limited space.

In September 2014, Governor Jerry Brown signed Assembly Bill 1193, the Protected Bikeways Act. AB 1193 eliminates a requirement previously imposed on local agencies to follow Caltrans bikeway design rules on local streets and roads. AB 1193 grants cities flexibility to use alternative design standards, such as those published by the National Association of City Transportation Officials (NACTO), on locally-owned streets and roads. Prior to utilizing alternative designs, the law requires all of the following conditions be met:

- (1) The alternative criteria have been reviewed and approved by a qualified engineer with consideration for the unique characteristics and features of the proposed bikeway and surrounding environs.
- (2) The alternative criteria, or the description of the project with reference to the alternative criteria, are adopted by resolution at a public meeting, after having provided proper notice of the public meeting and opportunity for public comment.
- (3) The alternative criteria adhere to guidelines established by a national association of public agency transportation officials.

Discussion

The City of Palo Alto Comprehensive Plan, Climate Action Plan, and Bicycle and Pedestrian Transportation Plan establish clear support and priority for investing in non-motorized transportation, improving access to transit, and reducing dependence on single-occupant vehicles to improve the overall efficiency of the transportation system.

The passage of the Protected Bikeways Act in September 2014 requires that if a local agency wishes to use an alternative design standard, that this design standard be adopted by resolution at a public meeting.

Adopting the NACTO street design guides will provide additional support in the City's efforts to introduce complete street ideas into the design and operation of streets by providing design guidance on transportation infrastructure. City staff will continue to work proactively with the community to provide convenient, safe, and context-sensitive facilities that promote increased use by people who walk and bicycle. When NACTO guidance or other design guidance is used, the City will continue to utilize sound planning and engineering judgment when determining the best solution for a local need.

Attachment A provides a proposed Resolution to adopt the NACTO Design Guidelines.

The NACTO Guides may be reviewed or ordered online as outlined in Attachment B. A hardcopy is available *for review only* at the City of Palo Alto Transportation Division, 250 Hamilton Avenue, 5th floor.

NACTO Urban Bikeway Design Guide

The NACTO Urban Bikeway Design Guide is based on the experience of the best cycling cities in the world. To create the guide, the authors conducted a worldwide literature search of design guidelines and real-life experience and worked closely with a panel of planning professionals from NACTO member cities, as well as traffic engineers, planners, and academics.

Most of these treatments are not directly referenced in the current version of the AASHTO Guide to Bikeway Facilities, although they are virtually all (with two exceptions) permitted under the Manual on Uniform Traffic Control Devices (MUTCD). The MUTCD is published by the Federal Highway Administration (FHWA) to define the standards used by road managers nationwide to install and maintain traffic control devices on all public streets, highways, bikeways, and private roads open to public travel. The MUTCD, which has been administered by the FHWA since 1971, is a compilation of national standards for all traffic control devices, including road markings, highway signs, and traffic signals. It is updated periodically to accommodate the nation's changing transportation needs and address new safety technologies, traffic control tools and traffic management techniques.

In August 2013, the Federal Highway Administration issued a memorandum officially supporting use of the NACTO Urban Bikeway Design Guide. All of the NACTO Urban Bikeway Design Guide treatments are in use internationally and in many cities around the United States.

For each treatment in the Urban Bikeway Design Guide, NACTO provides three levels of guidance:

- Required: elements for which there is a strong consensus that the treatment cannot be implemented without.
- Recommended: elements for which there is a strong consensus of added value.
- Optional: elements that vary across cities and may add value depending on the situation.

NACTO emphasizes that treatments must be tailored to the individual situation with thorough documentation of decisions. To assist with this, the NACTO Urban Bikeway Design Guide links to companion reference material and studies.

Palo Alto Pedestrian and Bicycle Advisory Committee Review

Staff brought a draft proposed Resolution to the Palo Alto Pedestrian and Bicycle Advisory Committee (PABAC) for input on August 4, 2015. PABAC members suggested minor edits to the Resolution which have been incorporated by staff. On September 1, 2015, PABAC reviewed the revised Resolution and passed a unanimous motion recommending adoption of the NACTO guidelines by the City Council.

Planning and Transportation Commission Review

On September 9, 2015, the Planning and Transportation Commission unanimously recommended the City Council adopt the Resolution adopting the NACTO guidelines.

Resource Impact

Adopting the NACTO Design Guidelines will give the City flexibility in designing bicycle and pedestrian facilities. There is no definable impact on the cost of future capital projects.

Policy Implications

Adoption of the NACTO Design Guides as supplementary guidelines is consistent with the Comprehensive Plan, Bicycle + Pedestrian Transportation Plan, and Climate Action Plan.

Environmental Review

Adoption of this resolution does not meet the definition of a project, therefore no environmental review is required.

Attachments:

- Attachment A: Resolution to Adopt NACTO Urban Street and Bikeway Design Guidelines (PDF)
- Attachment B: Design Guides (PDF)

NOT YET APPROVED

Resolution No. _____

Resolution of the Council of the City of Palo Alto Adopting the National Association of City Transportation Officials Urban Street Design and Bikeway Design Guidelines

RECITALS

- A. The City of Palo Alto Comprehensive Plan, Climate Action Plan, and Bicycle and Pedestrian Plan establish clear support and priority for investing in non-motorized transportation, improving access to transit, and reducing dependence on single-occupant vehicles to improve the overall efficiency of the transportation system.
- B. The National Association of City Transportation Officials (NACTO) Urban Street Design Guide available at <http://nacto.org/publication/urban-street-design-guide> and Urban Bikeway Design Guide available at <http://nacto.org/publication/urban-bikeway-design-guide/> offers supplementary guidance on complete streets to cities nationally.
- C. The NACTO Urban Street Design Guide and Urban Bikeway Design Guide offer a vision for improving the safety and livability of our streets for people who walk, bicycle, drive, and ride transit. The guidance and flexibility articulated in these guides serve as an additional tool for planning modern city streets to safely accommodate current and future residents, workers and visitors within limited space.
- D. The State Department of Transportation (Caltrans) has endorsed NACTO guides to “put additional tools in the tool box for both Caltrans staff and local agencies to reference when making project decisions on facilities for which they are responsible.”
- E. The NACTO Urban Street Design Guide and Urban Bikeway Design Guide are intended as supplemental guidelines and do not create mandatory requirements.
- F. The City of Palo Alto will work proactively with the community to provide convenient, safe, and context-sensitive facilities that promote increased use by people who walk and bicycle.
- G. When NACTO guidance or other design guidance is utilized, the City of Palo Alto will continue to utilize sound planning and engineering judgment when determining the best solution for a local need.
- H. The Palo Alto Pedestrian and Bicycle Advisory Committee and Planning and Transportation Commission have transmitted their recommendations.

NOT YET APPROVED

NOW, THEREFORE, the Council of the City of Palo Alto RESOLVES as follows:

SECTION 1. The Council hereby adopts the NACTO Urban Street Design Guide and Urban Bikeway Design Guide referenced in Paragraph B above, and as amended from time to time, as supplements to the City of Palo Alto Bicycle Plan.

SECTION 2. The Council finds that the adoption of this resolution does not meet the definition of a project under Public Resources Code Section 21065, thus, no environmental assessment under the California Environmental Quality Act is required.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Senior Assistant City Attorney

City Manager

Director of Planning and Community Environment

Director of Administrative Services

NACTO Urban Street Design Guide

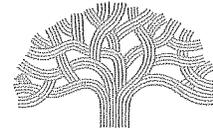
Please visit:

<http://nacto.org/publication/urban-street-design-guide/>

NACTO Urban Bikeway Design Guide

Please visit:

<http://nacto.org/publication/urban-bikeway-design-guide/>



CITY OF OAKLAND

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Public Works Agency
Brooke A. Levin
Interim Agency Director

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December 16, 2013

Janette Sadik-Khan
National Association of City Transportation Officials (NACTO)
55 Water Street, Floor 9
New York, NY 10041

RE: Letter of Endorsement for the NACTO Urban Street Design Guide

Dear Ms. Sadik-Khan:

On behalf of the City of Oakland, I am writing to express support for the National Association of City Transportation Officials (NACTO) *Urban Street Design Guide*, and endorse the Guide's use in the design of Oakland streets.

The Guide represents a vision for world-class city street design that matches Oakland's leadership goals and community desires. Urban transportation is in the midst of unprecedented change as the demands placed upon our streets and the needs of our citizens require an increasingly multimodal transportation network. Pressures, from public health to climate change to mobile technology, are redefining urban streets and opening opportunities for innovation.

The *Urban Street Design Guide* offers concrete guidance to meet these challenges and improve the safety and livability of our streets for pedestrians, bicyclists, drivers, and transit users. City streets demand a unique approach that are often not adequately addressed by conventional design guidelines. In Oakland, we value NACTO's role in developing targeted national guidance that allows local agencies to design and implement more successful projects. The *Urban Street Design Guide* provides a new and important direction for cities, and will be an indispensable tool in planning and designing Oakland's streets.

As such, the City of Oakland officially adopts the NACTO *Urban Street Design Guide* as an integral and effective tool for designing streets and public spaces.

Sincerely,

Brooke A. Levin
Interim Director, Public Works Agency

cc: Michael J. Neary, Assistant Director, Department of Engineering and Construction

Assembly Bill No. 43

CHAPTER 690

An act to amend Sections 627, 21400, 22352, 22354, 22358, and 40802 of, and to add Sections 22358.6, 22358.7, 22358.8, and 22358.9 to, the Vehicle Code, relating to traffic safety.

[Approved by Governor October 8, 2021. Filed with Secretary of State October 8, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 43, Friedman. Traffic safety.

(1) Existing law establishes various default speed limits for vehicles upon highways, as specified. Existing law authorizes state and local authorities to adjust these default speed limits, as specified, based upon certain findings determined by an engineering and traffic survey. Existing law defines an engineering and traffic survey and prescribes specified factors that must be included in the survey, including prevailing speeds and road conditions. Existing law authorizes local authorities to consider additional factors, including pedestrian and bicyclist safety.

This bill would authorize local authorities to consider the safety of vulnerable pedestrian groups, as specified.

(2) Existing law establishes a prima facie speed limit of 25 miles per hour on any highway, other than a state highway, located in any business or residence district, as defined. Existing law authorizes a local authority to change the speed limit on any such highway, as prescribed, including erecting signs to give notice thereof.

This bill would establish a prima facie speed limit of 25 miles per hour on state highways located in any business or residence district and would authorize the Department of Transportation (Caltrans) to change the speed limit on any such highway, as prescribed, including erecting signs to give notice thereof.

(3) Existing law establishes a speed limit of 65 miles per hour on state highways, as specified. Existing law authorizes Caltrans to declare a speed limit on any such highway, as prescribed, of 60, 55, 50, 45, 40, 35, 30, or 25 miles per hour, including erecting signs to give notice thereof. Existing law also authorizes a local authority, on a section of highway, other than a state highway, where the speed limit is 65 miles per hour to declare a lower speed limit, as specified.

This bill would additionally authorize Caltrans and a local authority to declare a speed limit of 20 or 15 miles per hour, as specified, on these highways.

(4) Existing law authorizes a local authority, without an engineering and traffic survey, to declare a lowered speed limit on portions of highway, as

specified, approaching a school building or school grounds. Existing law limits this authority to sections of highway meeting specified requirements relating to the number of lanes and the speed limit of the highway before the school zone.

This bill would similarly authorize a lowered speed limit on a section of highway contiguous to a business activity district, as defined, and would require that certain violations be subject to a warning citation, for the first 30 days of implementation.

(5) Existing law requires Caltrans, by regulation, to provide for the rounding up or down to the nearest 5 miles per hour increment of the 85th percentile speed of free-flowing traffic on a portion of highway as determined by a traffic and engineering survey. Existing law requires the Judicial Council to create and implement an online tool by June 30, 2024, for the adjudication of traffic infractions, among other things.

This bill would authorize a local authority to further reduce the speed limit, as specified, and require that certain violations be subject to a warning citation, for the first 30 days of implementation. The bill would, in some circumstances, authorize the reduction of a speed limit beginning June 30, 2024, or when the Judicial Council has developed an online tool for adjudicating traffic infraction violations, whichever is sooner. The bill would require Caltrans to accordingly revise the California Manual on Uniform Traffic Control Devices, as specified.

(6) Existing law defines a speed trap and prohibits evidence of a driver's speed obtained through a speed trap from being admissible in court in any prosecution against a driver for a speed-related offense. Existing law deems a road where the speed limit is not justified by a traffic and engineering survey conducted within the previous 7 years to be a speed trap, unless the roadway has been evaluated by a registered engineer, as specified, in which case the speed limit remains enforceable for a period of 10 years. Existing law exempts a school zone, as defined, from certain provisions relating to defining a speed trap.

This bill would extend the period that a speed limit justified by a traffic and engineering survey conducted more the 7 years ago remains valid, for purposes of speed enforcement, if evaluated by a registered engineer, as specified, to 14 years.

This bill would also exempt a senior zone and business activity district, as defined, from those provisions.

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

SECTION 1. Section 627 of the Vehicle Code is amended to read:

627. (a) "Engineering and traffic survey," as used in this code, means a survey of highway and traffic conditions in accordance with methods determined by the Department of Transportation for use by state and local authorities.

(b) An engineering and traffic survey shall include, among other requirements deemed necessary by the department, consideration of all of the following:

- (1) Prevailing speeds as determined by traffic engineering measurements.
- (2) Accident records.
- (3) Highway, traffic, and roadside conditions not readily apparent to the driver.

(c) When conducting an engineering and traffic survey, local authorities, in addition to the factors set forth in paragraphs (1) to (3), inclusive, of subdivision (b) may consider all of the following:

(1) Residential density, if any of the following conditions exist on the particular portion of highway and the property contiguous thereto, other than a business district:

(A) Upon one side of the highway, within a distance of a quarter of a mile, the contiguous property fronting thereon is occupied by 13 or more separate dwelling houses or business structures.

(B) Upon both sides of the highway, collectively, within a distance of a quarter of a mile, the contiguous property fronting thereon is occupied by 16 or more separate dwelling houses or business structures.

(C) The portion of highway is longer than one-quarter of a mile but has the ratio of separate dwelling houses or business structures to the length of the highway described in either subparagraph (A) or (B).

(2) Safety of bicyclists and pedestrians, with increased consideration for vulnerable pedestrian groups including children, seniors, persons with disabilities, users of personal assistive mobility devices, and the unhoused.

SEC. 2. Section 21400 of the Vehicle Code is amended to read:

21400. (a) The Department of Transportation shall, after consultation with local agencies and public hearings, adopt rules and regulations prescribing uniform standards and specifications for all official traffic control devices placed pursuant to this code, including, but not limited to, stop signs, yield right-of-way signs, speed restriction signs, railroad warning approach signs, street name signs, lines and markings on the roadway, and stock crossing signs placed pursuant to Section 21364.

(b) The Department of Transportation shall, after notice and public hearing, determine and publicize the specifications for uniform types of warning signs, lights, and devices to be placed upon a highway by a person engaged in performing work that interferes with or endangers the safe movement of traffic upon that highway.

(c) Only those signs, lights, and devices as are provided for in this section shall be placed upon a highway to warn traffic of work that is being performed on the highway.

(d) Control devices or markings installed upon traffic barriers on or after January 1, 1984, shall conform to the uniform standards and specifications required by this section.

SEC. 3. Section 22352 of the Vehicle Code is amended to read:

22352. The prima facie limits are as follows and shall be applicable unless changed as authorized in this code and, if so changed, only when signs have been erected giving notice thereof:

(a) Fifteen miles per hour:

(1) When traversing a railway grade crossing, if during the last 100 feet of the approach to the crossing the driver does not have a clear and unobstructed view of the crossing and of any traffic on the railway for a distance of 400 feet in both directions along the railway. This subdivision does not apply in the case of any railway grade crossing where a human flagperson is on duty or a clearly visible electrical or mechanical railway crossing signal device is installed but does not then indicate the immediate approach of a railway train or car.

(2) When traversing any intersection of highways if during the last 100 feet of the driver's approach to the intersection the driver does not have a clear and unobstructed view of the intersection and of any traffic upon all of the highways entering the intersection for a distance of 100 feet along all those highways, except at an intersection protected by stop signs or yield right-of-way signs or controlled by official traffic control signals.

(3) On any alley.

(b) Twenty-five miles per hour:

(1) On any highway, in any business or residence district unless a different speed is determined by local authority or the Department of Transportation under procedures set forth in this code.

(2) When approaching or passing a school building or the grounds thereof, contiguous to a highway and posted with a standard "SCHOOL" warning sign, while children are going to or leaving the school either during school hours or during the noon recess period. The prima facie limit shall also apply when approaching or passing any school grounds which are not separated from the highway by a fence, gate, or other physical barrier while the grounds are in use by children and the highway is posted with a standard "SCHOOL" warning sign. For purposes of this subparagraph, standard "SCHOOL" warning signs may be placed at any distance up to 500 feet away from school grounds.

(3) When passing a senior center or other facility primarily used by senior citizens, contiguous to a street other than a state highway and posted with a standard "SENIOR" warning sign. A local authority may erect a sign pursuant to this paragraph when the local agency makes a determination that the proposed signing should be implemented. A local authority may request grant funding from the Active Transportation Program pursuant to Chapter 8 (commencing with Section 2380) of Division 3 of the Streets and Highways Code, or any other grant funding available to it, and use that grant funding to pay for the erection of those signs, or may utilize any other funds available to it to pay for the erection of those signs, including, but not limited to, donations from private sources.

SEC. 4. Section 22354 of the Vehicle Code is amended to read:

22354. (a) Whenever the Department of Transportation determines upon the basis of an engineering and traffic survey that the limit of 65 miles

per hour is more than is reasonable or safe upon any portion of a state highway where the limit of 65 miles is applicable, the department may determine and declare a prima facie speed limit of 60, 55, 50, 45, 40, 35, 30, 25, 20, or 15 miles per hour, whichever is found most appropriate to facilitate the orderly movement of traffic and is reasonable and safe, which declared prima facie speed limit shall be effective when appropriate signs giving notice thereof are erected upon the highway.

(b) This section shall become operative on the date specified in subdivision (c) of Section 22366.

SEC. 5. Section 22358 of the Vehicle Code is amended to read:

22358. (a) Whenever a local authority determines upon the basis of an engineering and traffic survey that the limit of 65 miles per hour is more than is reasonable or safe upon any portion of any street other than a state highway where the limit of 65 miles per hour is applicable, the local authority may by ordinance determine and declare a prima facie speed limit of 60, 55, 50, 45, 40, 35, 30, 25, 20, or 15 miles per hour, whichever is found most appropriate to facilitate the orderly movement of traffic and is reasonable and safe, which declared prima facie limit shall be effective when appropriate signs giving notice thereof are erected upon the street.

(b) This section shall become operative on the date specified in subdivision (c) of Section 22366.

SEC. 6. Section 22358.6 is added to the Vehicle Code, to read:

22358.6. The Department of Transportation shall, in the next scheduled revision, revise and thereafter maintain the California Manual on Uniform Traffic Control Devices to require the Department of Transportation or a local authority to round speed limits to the nearest five miles per hour of the 85th percentile of the free-flowing traffic. However, in cases in which the speed limit needs to be rounded up to the nearest five miles per hour increment of the 85th-percentile speed, the Department of Transportation or a local authority may decide to instead round down the speed limit to the lower five miles per hour increment. A local authority may additionally lower the speed limit as provided in Sections 22358.7 and 22358.8.

SEC. 7. Section 22358.7 is added to the Vehicle Code, to read:

22358.7. (a) If a local authority, after completing an engineering and traffic survey, finds that the speed limit is still more than is reasonable or safe, the local authority may, by ordinance, determine and declare a prima facie speed limit that has been reduced an additional five miles per hour for either of the following reasons:

(1) The portion of highway has been designated as a safety corridor. A local authority shall not deem more than one-fifth of their streets as safety corridors.

(2) The portion of highway is adjacent to any land or facility that generates high concentrations of bicyclists or pedestrians, especially those from vulnerable groups such as children, seniors, persons with disabilities, and the unhoused.

(b) (1) As used in this section, “safety corridor” shall be defined by the Department of Transportation in the next revision of the California Manual

on Uniform Traffic Control Devices. In making this determination, the department shall consider highways that have the highest number of serious injuries and fatalities based on collision data that may be derived from, but not limited to, the Statewide Integrated Traffic Records System.

(2) The Department of Transportation shall, in the next revision of the California Manual on Uniform Traffic Control Devices, determine what constitutes land or facilities that generate high concentrations of bicyclists and pedestrians, as used in paragraph (2) of subdivision (a). In making this determination, the department shall consider density, road use type, and bicycle and pedestrian infrastructure present on a section of highway.

(c) A local authority may not lower a speed limit as authorized by this section until June 30, 2024, or until the Judicial Council has developed an online tool for adjudicating infraction violations statewide as specified in Article 7 (commencing with Section 68645) of Chapter 2 of Title 8 of the Government Code, whichever is sooner.

(d) A local authority shall issue only warning citations for violations of exceeding the speed limit by 10 miles per hour or less for the first 30 days that a lower speed limit is in effect as authorized by this section.

SEC. 8. Section 22358.8 is added to the Vehicle Code, to read:

22358.8. (a) If a local authority, after completing an engineering and traffic survey, finds that the speed limit is still more than is reasonable or safe, the local authority may, by ordinance, retain the current speed limit or restore the immediately prior speed limit if that speed limit was established with an engineering and traffic survey and if a registered engineer has evaluated the section of highway and determined that no additional general purpose lanes have been added to the roadway since completion of the traffic survey that established the prior speed limit.

(b) This section does not authorize a speed limit to be reduced by any more than five miles per hour from the current speed limit nor below the immediately prior speed limit.

(c) A local authority shall issue only warning citations for violations of exceeding the speed limit by 10 miles per hour or less for the first 30 days that a lower speed limit is in effect as authorized by this section.

SEC. 9. Section 22358.9 is added to the Vehicle Code, to read:

22358.9. (a) (1) Notwithstanding any other law, a local authority may, by ordinance, determine and declare a 25 or 20 miles per hour prima facie speed limit on a highway contiguous to a business activity district when posted with a sign that indicates a speed limit of 25 or 20 miles per hour.

(2) The prima facie limits established under paragraph (1) apply only to highways that meet all of the following conditions:

(A) A maximum of four traffic lanes.

(B) A maximum posted 30 miles per hour prima facie speed limit immediately prior to and after the business activity district, if establishing a 25 miles per hour speed limit.

(C) A maximum posted 25 miles per hour prima facie speed limit immediately prior to and after the business activity district, if establishing a 20 miles per hour speed limit.

(b) As used in this section, a “business activity district” is that portion of a highway and the property contiguous thereto that includes central or neighborhood downtowns, urban villages, or zoning designations that prioritize commercial land uses at the downtown or neighborhood scale and meets at least three of the following requirements in paragraphs (1) to (4), inclusive:

(1) No less than 50 percent of the contiguous property fronting the highway consists of retail or dining commercial uses, including outdoor dining, that open directly onto sidewalks adjacent to the highway.

(2) Parking, including parallel, diagonal, or perpendicular spaces located alongside the highway.

(3) Traffic control signals or stop signs regulating traffic flow on the highway, located at intervals of no more than 600 feet.

(4) Marked crosswalks not controlled by a traffic control device.

(c) A local authority shall not declare a prima facie speed limit under this section on a portion of a highway where the local authority has already lowered the speed limit as permitted under Sections 22358.7 and 22358.8.

(d) A local authority shall issue only warning citations for violations of exceeding the speed limit by 10 miles per hour or less for the first 30 days that a lower speed limit is in effect as authorized by this section.

SEC. 10. Section 40802 of the Vehicle Code is amended to read:

40802. (a) A “speed trap” is either of the following:

(1) A particular section of a highway measured as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance.

(2) A particular section of a highway with a prima facie speed limit that is provided by this code or by local ordinance under paragraph (1) of subdivision (b) of Section 22352, or established under Section 22354, 22357, 22358, or 22358.3, if that prima facie speed limit is not justified by an engineering and traffic survey conducted within five years prior to the date of the alleged violation, and enforcement of the speed limit involves the use of radar or any other electronic device that measures the speed of moving objects. This paragraph does not apply to a local street, road, school zone, senior zone, or business activity district.

(b) (1) For purposes of this section, a local street or road is one that is functionally classified as “local” on the “California Road System Maps,” that are approved by the Federal Highway Administration and maintained by the Department of Transportation. It may also be defined as a “local street or road” if it primarily provides access to abutting residential property and meets the following three conditions:

(A) Roadway width of not more than 40 feet.

(B) Not more than one-half of a mile of uninterrupted length. Interruptions shall include official traffic control signals as defined in Section 445.

(C) Not more than one traffic lane in each direction.

(2) For purposes of this section, “school zone” means that area approaching or passing a school building or the grounds thereof that is

contiguous to a highway and on which is posted a standard “SCHOOL” warning sign, while children are going to or leaving the school either during school hours or during the noon recess period. “School zone” also includes the area approaching or passing any school grounds that are not separated from the highway by a fence, gate, or other physical barrier while the grounds are in use by children if that highway is posted with a standard “SCHOOL” warning sign.

(3) For purposes of this section, “senior zone” means that area approaching or passing a senior center building or other facility primarily used by senior citizens, or the grounds thereof that is contiguous to a highway and on which is posted a standard “SENIOR” warning sign, pursuant to Section 22352.

(4) For purposes of this section, “business activity district” means a section of highway described in subdivision (b) of Section 22358.9 in which a standard 25 miles per hour or 20 miles per hour speed limit sign has been posted pursuant to paragraph (1) of subdivision (a) of that section.

(c) (1) When all of the following criteria are met, paragraph (2) of this subdivision shall be applicable and subdivision (a) shall not be applicable:

(A) When radar is used, the arresting officer has successfully completed a radar operator course of not less than 24 hours on the use of police traffic radar, and the course was approved and certified by the Commission on Peace Officer Standards and Training.

(B) When laser or any other electronic device is used to measure the speed of moving objects, the arresting officer has successfully completed the training required in subparagraph (A) and an additional training course of not less than two hours approved and certified by the Commission on Peace Officer Standards and Training.

(C) (i) The prosecution proved that the arresting officer complied with subparagraphs (A) and (B) and that an engineering and traffic survey has been conducted in accordance with subparagraph (B) of paragraph (2). The prosecution proved that, prior to the officer issuing the notice to appear, the arresting officer established that the radar, laser, or other electronic device conformed to the requirements of subparagraph (D).

(ii) The prosecution proved the speed of the accused was unsafe for the conditions present at the time of alleged violation unless the citation was for a violation of Section 22349, 22356, or 22406.

(D) The radar, laser, or other electronic device used to measure the speed of the accused meets or exceeds the minimal operational standards of the National Highway Traffic Safety Administration, and has been calibrated within the three years prior to the date of the alleged violation by an independent certified laser or radar repair and testing or calibration facility.

(2) A “speed trap” is either of the following:

(A) A particular section of a highway measured as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance.

(B) (i) A particular section of a highway or state highway with a prima facie speed limit that is provided by this code or by local ordinance under paragraph (1) of subdivision (b) of Section 22352, or established under Section 22354, 22357, 22358, or 22358.3, if that prima facie speed limit is not justified by an engineering and traffic survey conducted within one of the following time periods, prior to the date of the alleged violation, and enforcement of the speed limit involves the use of radar or any other electronic device that measures the speed of moving objects:

(I) Except as specified in subclause (II), seven years.

(II) If an engineering and traffic survey was conducted more than seven years prior to the date of the alleged violation, and a registered engineer evaluates the section of the highway and determines that no significant changes in roadway or traffic conditions have occurred, including, but not limited to, changes in adjoining property or land use, roadway width, or traffic volume, 14 years.

(ii) This subparagraph does not apply to a local street, road, or school zone, senior zone, or business activity district.

O

Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i>	
Scheduled Dates	
March 10	1. Reimagining Public Safety Update
March 15	1. Housing Element Update
April 19	1. Fire Department Standards of Coverage Study 2. BART Station Planning
June 21	
July 19	

There are no Worksessions scheduled for Fall 2022 due to limited meeting dates and cultural/religious holidays.

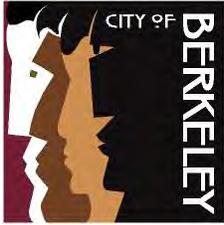
Unscheduled Workshops
<ol style="list-style-type: none"> 1. Cannabis Health Considerations 2. Alameda County LAFCO Presentation

Unscheduled Presentations (City Manager)
<ol style="list-style-type: none"> 1. Civic Arts Grantmaking Process & Capital Grant Program 2. Civic Center – Old City Hall and Veterans Memorial Building (Tentative: Action Item) 3. Mid-Year Budget Report FY 2022 (March 22, 2022)

	<p>City Council Referrals to the Agenda & Rules Committee and Unfinished Business for Scheduling</p>
1.	<p>25. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers <i>(Continued from February 25, 2020. Item contains revised and supplemental materials) (Referred from the May 12, 2020 agenda.)</i></p> <p>From: City Manager</p> <p>Recommendation: 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>Financial Implications: None</p> <p>Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000</p> <p>Note: <i>Referred to Agenda & Rules for future scheduling.</i></p>

CITY CLERK DEPARTMENT			
WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS BEFORE THE CITY COUNCIL			
Address	Board/ Commission	Appeal Period Ends	Public Hearing
NOD – Notices of Decision			
Public Hearings Scheduled			
1527 Sacramento St (second story addition)	ZAB		2/22/2022
1643-47 California St (new basement level and second story)	ZAB		4/26/2022
Remanded to ZAB or LPC			
1205 Peralta Avenue (conversion of an existing garage)	ZAB		
Notes			

2/15/2022



Office of the City Manager

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

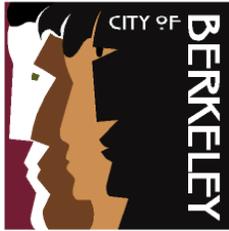
Meeting Date: November 10, 2020

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)

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.

<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>
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

<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.

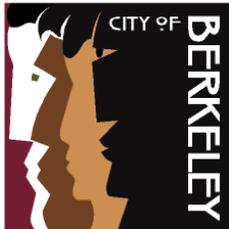
Absent: None.



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.

Page 2
October 22, 2020
Re: Commission Meetings During COVID-19 Emergency

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.



Jesse Arreguin, Mayor

Attest: 

Mark Numalville, City Clerk

The policy below covers the conduct of hybrid City Council meetings (in-person and remote participation) held in accordance with the Government Code and any relevant Executive Orders or State declared emergencies.

I. Vaccination Status

No requirement for vaccination to attend a Council meeting. Staff and Officials will not inquire about vaccination status for any attendees.

II. Health Check

A walk-up temperature check device will be located at the entry to the in-person meeting location. All persons entering the in-person meeting location are required to perform a temperature check upon entering. A handheld non-touch thermometer will be available for individuals with disabilities. Private security personnel will be at the entry location for the duration of the meeting to monitor the temperature check station and mask requirement.

Attendees showing a fever will be directed to attend the meeting via remote participation (Zoom). If an attendee refuses to have their temperature checked, guidance will be provided to the attendee on the requirement and their options for attending remotely and in-person.

Private security personnel will be the primary person for requesting compliance. If removal of a non-compliant person is needed, law enforcement personnel will perform this task.

III. Face Coverings/Mask

Following the State of California and Local Health Officer Guidance, face coverings or masks that cover both the nose and mouth are required for all attendees at an in-person City Council meeting. Face coverings will be provided by the City and available for attendees to use at the meeting.

If an attendee at a Council Meeting is not wearing a mask, a mask will be offered to them to use. If the attendee refuses to wear a mask, a recess will be called in order to provide guidance to the attendee on the requirement and their options for attending remotely and in-person.

Members of the City Council, city staff, and the public are required to wear a mask at all times, including when speaking publicly at the meeting.

Private security personnel will be the primary person for requesting compliance. If removal of a non-compliant person is needed, law enforcement personnel will perform this task.

Hybrid Meeting Procedures for BUSD Boardroom (November 2021)

IV. Physical Distancing

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a council meeting. Relevant CalOSHA requirements for the workplace will be followed as is feasible. Capacity in the audience seating area (including members of the media and staff) at the BUSD Boardroom is limited to 40 persons due to uncertainty about vaccination status of attendees and limiting attendance at indoor events to ensure the comfort and safety of attendees. Conference room capacity is limited to 12 persons. The relevant capacity limits will be posted on the city council agenda and at the meeting location.

V. Protocols for Remote Participation by Mayor or Councilmembers

Upon the repeal of the state-declared emergency, all standard Brown Act requirements will be in effect for members of the Council participating remotely. For the Mayor and Councilmembers participating remotely, the remote location must be accessible to the public and the public must be able to participate and give public comment from the remote location.

- A Councilmember at a remote location will follow the same policies as the Boardroom with regards to vaccination status, temperature checks, and mask requirements.
- A Councilmember at a remote location may impose reasonable capacity limits at their location.

VI. Hand Washing/Sanitizing

There are hand sanitizing stations placed at the entry and strategically throughout the Boardroom. The bathrooms have soap and water for handwashing.

VII. Air Flow/Circulation/Sanitizing

BUSD Facilities Staff performs a vigorous cleaning process after each use of the Boardroom. BUSD upgraded all HVAC filtration to MERV13, and with the inclusion of Needlepoint BiPolar Ionization, is achieving a rating that is closer to MERV18. Additionally, BUSD installed indoor air quality monitoring sensors in all facilities that constantly monitor VOC's CO2, Relative Humidity, and Temperature. The sensors and alarms allow BUSD to ensure that all systems are working properly and as designed. If a sensor trips an alarm, a work order request is generated immediately to ensure the system is repaired expeditiously.

VIII. Overflow in Gymnasium

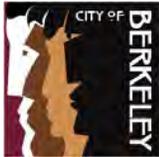
An overflow indoor seating area will be available at the West Campus Gymnasium for every meeting. The capacity of the gymnasium is 100 persons. The overflow area will have a broadcast of the meeting in progress

Hybrid Meeting Procedures for BUSD Boardroom (November 2021)

to allow participants to follow the proceedings and move to the Boardroom at the appropriate time to provide public comment if desired. The broadcast audio and video will be provided to attendees in the overflow area. This area will be monitored by the BUSD security personnel.

IX. Food Provided for Elected Officials and Designated Staff

- No buffet dinner provided.
- Box lunches only. Total of 18 (Mayor & Council [9], City Manager, City Attorney, City Clerk [2], Deputy City Managers [2], BCM Staff, Extras [2])
- Individually packaged snacks will be provided on a common table and drinks will be available in the refrigerator.



URGENT ITEM AGENDA MATERIAL

Government Code Section 54954.2(b)
Rules of Procedure Chapter III.C.5

THIS ITEM IS NOT YET AGENDIZED AND MAY OR MAY NOT BE ACCEPTED FOR THE AGENDA AS A LATE ITEM, SUBJECT TO THE CITY COUNCIL'S DISCRETION ACCORDING TO BROWN ACT RULES

Meeting Date: September 28, 2021

Item Description: Resolution Making Required Findings Pursuant to the Government Code and Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference

This item is submitted pursuant to the provision checked below:

- Emergency Situation (54954.2(b)(1) - majority vote required)
Determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.
- Immediate Action Required (54954.2(b)(2) - two-thirds vote required)
There is a need to take immediate action and the need for action came to the attention of the local agency subsequent to the agenda for this meeting being posted.

Once the item is added to the agenda (Consent or Action) it must be passed by the standard required vote threshold (majority, two-thirds, or 7/9).

Facts supporting the addition of the item to the agenda under Section 54954.2(b) and Chapter III.C.5 of the Rules of Procedure:

Assembly Bill 361 (Rivas) was signed by the Governor on September 16, 2021. This bill allows local legislative bodies to meet using videoconference technology while maintaining the Brown Act exemptions in Executive Order N-29-20 for noticing and access to the locations from which local officials participate in the meeting. Local agencies may only meet with the exemption if there is a state declared emergency.

The bill also requires that local legislative bodies meeting only via videoconference under a state declared emergency to make certain findings every 30-days regarding the need to meet in a virtual-only setting.

The agenda for the September 28, 2021 was finalized and published prior to the Governor signing AB 361 in to law. Thus, the need to take action came to the attention of the local agency after the agenda was distributed. This item qualifies for addition to the agenda with a two-thirds vote of the Council under Government Code Section 54954.2(b)(2).



Office of the City Attorney

CONSENT CALENDAR
September 28, 2021

To: Honorable Mayor and Members of the City Council
Madame City Manager

From: Farimah Faiz Brown, City Attorney

Subject: Resolution Making Required Findings Pursuant to the Government Code and Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference

RECOMMENDATION

Adopt a resolution making the required findings pursuant to Government Code Section 54953(e)(3) and determining that as a result of the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference.

FISCAL IMPACT OF RECOMMENDATION

To be determined.

CURRENT SITUATION AND ITS EFFECTS

Pursuant to California Government Code section 8630 and Berkeley Municipal Code Chapter 2.88.040, on March 3, 2020, the City Manager, in her capacity as Director of Emergency Services, proclaimed a local emergency due to conditions of extreme peril to the safety of persons and property within the City as a consequence of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19), including a confirmed case in the City of Berkeley. As a result of multiple confirmed and presumed cases in Alameda County, the County has declared a local health emergency. On March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency due to the spread of COVID-19. On March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312.

On March 17, 2020, Governor Newsom signed Executive Order N-29-20, which suspended certain portions of the Ralph M. Brown Act (Cal. Gov. Code § 54950 et seq.) related to the holding of teleconferenced meetings by City legislative bodies. Among other things, Executive Order N-29-20 suspended requirements that each location from which an official accesses a teleconferenced meeting be accessible to the public.

These changes were necessary to allow teleconferencing to be used as a tool for ensuring social distancing. City legislative bodies have held public meetings via videoconference and teleconference pursuant to these provisions since March 2020. These provisions of Executive Order N-29-20 will expire on September 30, 2021.

COVID-19 continues to pose a serious threat to public health and safety. There are now over 4,700 confirmed cases of COVID-19 and at least 55 deaths in the City of Berkeley. Additionally, the SARS-CoV-2 B.1.617.2 (“Delta”) variant of COVID-19 that is currently circulating nationally and within the City is contributing to a substantial increase in transmissibility and more severe disease.

As a result of the continued threat to public health posed by the spread of COVID-19, state and local officials continue to impose or recommend measures to promote social distancing, mask wearing and vaccination. Holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies, and therefore public meetings cannot safely be held in person at this time

Assembly Bill 361 (Rivas), signed into law by Governor Newsom on September 16, 2021, amended a portion of the Brown Act (Government Code Section 54953) to authorize the City Council, during the state of emergency, to determine that, due to the spread of COVID-19, holding in-person public meetings would present an imminent risk to the health or safety of attendees, and therefore City legislative bodies must continue to meet via videoconference and teleconference. Assembly Bill 361 requires that the City Council must review and ratify such a determination every thirty (30) days. Therefore, if the Council passes this resolution on September 28, 2021, the Council will need to review and ratify the resolution by October 28, 2021.

This item requests that the Council review the circumstances of the continued state of emergency posed by the spread of COVID-19, and find that the state of emergency continues to directly impact the ability of the public and members of City legislative bodies to meet safely in person, that holding public meetings of City legislative bodies in person would present imminent risks to the health and safety of attendees, and that state and local officials continue to promote social distancing, mask wearing and vaccination. This item further requests that the Council determine that City legislative bodies, including but not limited to the City Council and its committees, and all commissions and boards, shall continue to hold public meetings via videoconference and teleconference, and that City legislative bodies shall continue to comply with all provisions of the Brown Act, as amended by SB 361.

BACKGROUND

On March 1, 2020, Alameda County Public Health Department and Solano County Public Health Department reported two presumptive cases of COVID-19, pending confirmatory testing by the Centers for Disease Control (CDC), prompting Alameda County to declare a local health emergency.

On March 3, 2020, the City's Director of Emergency Services proclaimed a local emergency due to the spread of COVID-19, including a confirmed case in the City of Berkeley and multiple confirmed and presumed cases in Alameda County.

On March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency due to the spread of COVID-19.

On March 10, 2020, the City Council ratified the Proclamation of Local Emergency. Since that date, there have been over 4,700 confirmed cases of COVID-19 and at least 57 deaths in the City of Berkeley.

On March 17, 2020, Governor Newsom signed Executive Order N-29-20 which suspended certain portions of the Ralph M. Brown Act (Cal. Gov. Code § 54950 et seq.) to allow teleconferencing of public meetings to be used as a tool for ensuring social distancing. As a result, City legislative bodies have held public meetings via teleconference throughout the pandemic. The provisions of Executive Order N-29-20 allowing teleconferencing to be used as a tool for social distancing will expire on September 30, 2021.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Not applicable.

RATIONALE FOR RECOMMENDATION

The Resolution would enable the City Council and its committees, and City boards and commissions to continue to hold public meetings via videoconference and teleconference in order to continue to socially distance and limit the spread of COVID-19.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Farimah Brown, City Attorney, City Attorney's Office (510) 981-6998
Mark Numainville, City Clerk, (510) 981-6908

Attachments:

1: Resolution Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference

RESOLUTION NO. –N.S.

RESOLUTION MAKING THE REQUIRED FINDINGS PURSUANT TO GOVERNMENT CODE SECTION 54953(E)(3) AND DIRECTING CITY LEGISLATIVE BODIES TO CONTINUE TO MEET VIA VIDEOCONFERENCE AND TELECONFERENCE

WHEREAS, in accordance with Berkeley Municipal Code section 2.88.040 and sections 8558(c) and 8630 of the Government Code, which authorize the proclamation of a local emergency when conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a City exist, the City Manager, serving as the Director of Emergency Services, beginning on March 3, 2020, did proclaim the existence of a local emergency caused by epidemic 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, on March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency pursuant to the California Emergency Services Act, in particular, Government Code section 8625; and

WHEREAS, the Proclamation of a State of Emergency issued by Governor Newsom on March 4, 2020 continues to be in effect; and

WHEREAS, on September 16, 2021, Governor Newsom signed into law AB 361, which authorizes the City Council to determine that, due to the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference; and

WHEREAS, the City Council does find that the aforesaid conditions of extreme peril continue to exist, and now include over 4,700 confirmed cases of COVID-19 and at least 55 deaths in the City of Berkeley; and

WHEREAS, the City Council recognizes that the SARS-CoV-2 B.1.617.2 (“Delta”) variant of COVID-19 that is currently circulating nationally and within the City is contributing to a substantial increase in transmissibility and more severe disease; and

WHEREAS, as a result of the continued threat to public health posed by the spread of COVID-19, state and local officials continue to impose or recommend measures to promote social distancing, mask wearing and vaccination; and

WHEREAS, holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies, and therefore public meetings cannot safely be held in person at this time; and

WHEREAS, the City Council will need to again review the need for the continuing necessity of holding City legislative body meetings via videoconference and teleconference by October 28, 2021.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that, pursuant to Government Code section 54953, the City Council has reviewed the circumstances of the continued state of emergency posed by the spread of COVID-19, and finds that the state of emergency continues to directly impact the ability of the public and members of City legislative bodies to meet safely in person, that holding public meetings of City legislative bodies in person would present imminent risks to the health and safety of attendees, and that state and local officials continue to promote social distancing, mask wearing and vaccination; and

BE IT FURTHER RESOLVED that City legislative bodies, including but not limited to the City Council and its committees, and all commissions and boards, shall continue to hold public meetings via videoconference and teleconference; and

BE IT FURTHER RESOLVED that all City legislative bodies shall comply with the requirements of Government Code section 54953(e)(2) and all applicable laws, regulations and rules when conducting public meetings pursuant to this resolution.



OFFICE OF THE GOVERNOR

June 2, 2021

VIA EMAIL

Graham Knaus, Executive Director
CA State Assoc. of Counties
gknaus@counties.org

Jean Kinney Hurst, Legislative Advocate
Urban Counties of CA
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Carolyn Coleman, Executive Director
League of CA Cities
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Laura Preston, Legislative Advocate
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Kristopher M. Anderson, Esq., Legislative
Advocate
Assoc. of CA Water Agencies
krisa@acwa.com

RE: Transition Period Prior to Repeal of COVID-related Executive Orders

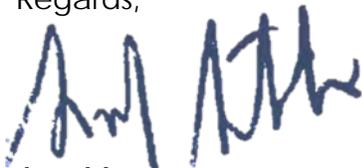
Dear Mr. Knaus, Ms. Miller, Ms. Hurst, Ms. Preston, Ms. Heaton, Ms. King, Ms. Coleman, Ms. Blacet-Hyden, Mr. McCormick, Mr. Anderson, and colleagues,

Thank you for your correspondence of May 18, 2021, inquiring what impact the anticipated June 15 termination of the Blueprint for a Safer Economy will have on Executive Order N-29-20, which provided flexibility to state and local agencies and boards to conduct their business through virtual public meetings during the COVID-19 pandemic.

Please be assured that this Executive Order Provision will not terminate on June 15 when the Blueprint is scheduled to terminate. While the Governor intends to terminate COVID-19 executive orders at the earliest possible date at which conditions warrant, consistent with the Emergency Services Act, the Governor recognizes the importance of an orderly return to the ordinary conduct of public meetings of state and local agencies and boards. To this end, the Governor's office will work to provide notice to affected stakeholders in advance of rescission of this provision to provide state and local agencies and boards time necessary to meet statutory and logistical requirements. Until a further order issues, all entities may continue to rely on N-29-20.

We appreciate your partnership throughout the pandemic.

Regards,

A handwritten signature in blue ink, appearing to read 'Ana Matosantos', written in a cursive style.

Ana Matosantos
Cabinet Secretary



NEWS RELEASE

Release
Number: 2021-58

June 4, 2021

Standards Board Readopts Revised Cal/OSHA COVID-19 Prevention Emergency Temporary Standards

The revised Cal/OSHA standards are expected to go into effect no later than June 15

Sacramento — The Occupational Safety and Health Standards Board on June 3 readopted Cal/OSHA's revised COVID-19 prevention emergency temporary standards.

Last year, the Board adopted health and safety standards to protect workers from COVID-19. The standards did not consider vaccinations and required testing, quarantining, masking and more to protect workers from COVID-19.

The changes adopted by the Board phase out physical distancing and make other adjustments to better align with the state's June 15 goal to retire the Blueprint. Without these changes, the original standards, would be in place until at least October 2. These restrictions are no longer required given today's record low case rates and the fact that we've administered 37 million vaccines.

The revised emergency standards are expected to go into effect no later than June 15 if approved by the Office of Administrative Law in the next 10 calendar days. Some provisions go into effect starting on July 31, 2021.

The [revised standards](#) are the first update to Cal/OSHA's temporary COVID-19 prevention requirements adopted in November 2020.

The Board may further refine the regulations in the coming weeks to take into account changes in circumstances, especially as related to the availability of vaccines and low case rates across the state.

The standards apply to most workers in California not covered by Cal/OSHA's Aerosol Transmissible Diseases [standard](#). Notable revisions include:

- **Face Coverings:**
 - Indoors, fully vaccinated workers without COVID-19 symptoms do not need to wear face coverings in a room where everyone else is fully vaccinated and not showing symptoms. However, where there is a mixture of vaccinated and unvaccinated persons in a room, all workers will continue to be required to wear a face covering.
 - Outdoors, fully vaccinated workers without symptoms do not need to wear face coverings. However, outdoor workers who are not fully vaccinated must continue to wear a face covering when they are less than six feet away from another person.
- **Physical Distancing:** When the revised standards take effect, employers can eliminate physical distancing and partitions/barriers for employees working indoors and at outdoor mega events if they provide respirators, such as N95s, to unvaccinated employees for voluntary use. After July 31, physical distancing

and barriers are no longer required (except during outbreaks), but employers must provide all unvaccinated employees with N95s for voluntary use.

- **Prevention Program:** Employers are still required to maintain a written COVID-19 Prevention Program but there are some key changes to requirements:
 - Employers must review the California Department of Public Health's [Interim guidance for Ventilation, Filtration, and Air Quality in Indoor Environments](#).
 - COVID-19 prevention training must now include information on how the vaccine is effective at preventing COVID-19 and protecting against both transmission and serious illness or death.
- **Exclusion from the Workplace:** Fully vaccinated workers who do not have COVID-19 symptoms no longer need to be excluded from the workplace after a close contact.
- **Special Protections for Housing and Transportation:** Special COVID-19 prevention measures that apply to employer-provided housing and transportation no longer apply if all occupants are fully vaccinated.

The Standards Board will file the readoption rulemaking package with the Office of Administrative Law, which has 10 calendar days to review and approve the temporary workplace safety standards enforced by Cal/OSHA. Once approved and published, the full text of the revised emergency standards will appear in the Title 8 sections [3205](#) (COVID-19 Prevention), [3205.1](#) (Multiple COVID-19 Infections and COVID-19 Outbreaks), [3205.2](#) (Major COVID-19 Outbreaks), [3205.3](#) (COVID-19 Prevention in Employer-Provided Housing) and [3205.4](#) (COVID-19 Prevention in Employer-Provided Transportation) of the [California Code of Regulations](#). Pursuant to the state's [emergency rulemaking process](#), this is the first of two opportunities to readopt the temporary standards after the initial effective period.

The Standards Board also convened a representative subcommittee to work with Cal/OSHA on a proposal for further updates to the standard, as part of the emergency rulemaking process. It is anticipated this newest proposal, once developed, will be heard at an upcoming Board meeting. The subcommittee will provide regular updates at the Standards Board monthly meetings.

The [Occupational Safety and Health Standards Board](#), a seven-member body appointed by the Governor, is the standards-setting agency within the Cal/OSHA program. The Standards Board's objective is to adopt reasonable and enforceable standards at least as effective as federal standards. The Standards Board also has the responsibility to grant or deny applications for permanent variances from adopted standards and respond to petitions for new or revised standards.

The California Division of Occupational Safety and Health, or [Cal/OSHA](#), is the division within the Department of Industrial Relations that helps protect California's workers from health and safety hazards on the job in almost every workplace. [Cal/OSHA's Consultation Services Branch](#) provides free and voluntary assistance to employers to improve their health and safety programs. Employers should call (800) 963-9424 for assistance from Cal/OSHA Consultation Services.

Contact: Erika Monterroza / Frank Polizzi, Communications@dir.ca.gov, (510) 286-1161.

The [California Department of Industrial Relations](#), established in 1927, protects and improves the health, safety, and economic well-being of over 18 million wage earners, and helps their employers comply with state labor laws. DIR is housed within the [Labor & Workforce Development Agency](#)



Office of the City Manager

June 1, 2021

To: Agenda & Rules Committee

From: Dee Williams-Ridley, City Manager

Subject: Preliminary Analysis of Return to In-Person Meetings of City Legislative Bodies

Introduction

This memo responds to the request from the Agenda & Rules Committee on May 17, 2021 for information from the City Manager on the options and timing for a return to in-person meetings for City legislative bodies. The analysis below is a preliminary summary of the considerations and options for returning to in-person meetings.

With the onset of the COVID-19 pandemic, the shelter-in-place order, and the issuance of Executive Order N-29-20 (“Executive Order”) in the spring of 2020, the City quickly adjusted to a virtual meeting model. Now, almost 15 months later, with the Blueprint for a Safer Economy scheduled to sunset on June 15, 2021, the City is faced with a new set of conditions that will impact how public meetings may be held in Berkeley. While the June 15, 2021 date appears to be certain, there is still a great deal of uncertainty about the fate of the Executive Order. In addition, the City is still awaiting concrete, specific guidance from the State with regards to regulations that govern public meetings and public health recommendations that will be in place after June 15, 2021.

For background, Executive Order N-29-20 allows legislative bodies to meet in a virtual setting and suspends the following Brown Act requirements:

- Printing the location of members of the legislative body on the agenda;
- Posting the agenda at the location of members of the legislative body that are remote; and
- Making publicly available remote locations from which members of the legislative body participate.

Meeting Options

There are three groups of City Legislative bodies that are considered in this memo

- City Council;
- City Council Policy Committees; and
- Boards and Commissions.

The three meeting models available are:

- In-person only;
- Virtual only; or
- Hybrid (in-person and virtual).

The scenarios below show the options available for each given set of facts.

Summary Recommendations of Meeting Options	Physical Distancing			No Physical Distancing		
	In-Person	Hybrid	Virtual*	In-Person	Hybrid	Virtual*
	City Council	X	X	X	X	X
Policy Committees			X	X		X
Board and Commissions			X	X		X

* The ability to hold virtual-only meetings is dependent on the status of Executive Order N-29-20

Currently, the Centers for Disease Control recommends physical distancing for unvaccinated persons. While the City and the community have made tremendous progress with regards to vaccination, the City would use the guidelines for unvaccinated persons when making determinations regarding public meetings.

Meeting Type Considerations

Our previous experience pre-pandemic and our experience over the past 15 months demonstrates that the City can conduct all in-person and all virtual meetings. However, the possibility of hybrid meetings presents new questions to consider. The primary concern for a return to in-person meetings using a hybrid model is the impact on the public experience and the legislative process.

Will the legislative body be able to provide a transparent, coherent, stable, informative, and meaningful experience for the both the public in attendance and virtually?

Will the legislative body be able to conduct the legislative process in an efficient, coherent, and meaningful manner with the members split between in-person and virtual, and considering the additional delays and logistical challenges of allowing for public participation in a hybrid model?

For the City Council, testing has shown that the larger space and technology infrastructure at the Boardroom will allow the Council to conduct all three types of meetings (in-person, hybrid, virtual).

For Policy Committees and Commissions, only the “all virtual” or “all in-person” meetings are recommended. Preliminary testing has shown that the audio/visual limitations of the meeting rooms available for these bodies would result in inefficient and cumbersome management of the proceedings in a hybrid model. In addition, there are considerations to analyze regarding the available bandwidth in city facilities and all members having access to adequate devices. Continuing the all virtual model for as long as possible, then switching to an all in-person model when conditions permit provides the best access, participation, and legislative experience for the public and the legislative body.

Other Considerations

Some additional factors to consider in the evaluation of returning to in-person or hybrid meetings are:

- How to address vaccination status for in-person attendees.
- Will symptom checks and/or temperature checks at entry points be required?
- Who is responsible for providing PPE for attendees?
- How are protocols for in-person attendees to be enforced?
- Physical distancing measures for the Mayor and City Councilmembers on the dais.
- Installation of physical barriers and other temporary measures.
- Will the podium and microphone need to be sanitized after every speaker?
- High number of touch points in meeting rooms.
- Will chairs for the public and staff need to be sanitized if there is turnover during the meeting?
- Determining the appropriate capacity for meeting locations.
- The condition and capacity of meeting room ventilation system and air cycling abilities.
- How to receive and share Supplemental Items, Revisions, Urgent Items, and submissions by the public both in-person and virtually.
- Budget including costs for equipment, physical improvements, A/V, PPE, and sanitization.

Conclusion

As stated above, conditions are changing daily, and there is a high degree of uncertainty surrounding the future guidance, regulations, and actions at the state level. Planning, testing and analysis are already underway to prepare for an eventual return to in-person meetings. Staff will continue to monitor the evolving legislative and public health circumstances and advise the committee at future meetings.

Attachment:

1. Executive Order N-29-20

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-29-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS despite sustained efforts, the virus continues to spread and is impacting nearly all sectors of California; and

WHEREAS the threat of COVID-19 has resulted in serious and ongoing economic harms, in particular to some of the most vulnerable Californians; and

WHEREAS time bound eligibility redeterminations are required for Medi-Cal, CalFresh, CalWORKs, Cash Assistance Program for Immigrants, California Food Assistance Program, and In Home Supportive Services beneficiaries to continue their benefits, in accordance with processes established by the Department of Social Services, the Department of Health Care Services, and the Federal Government; and

WHEREAS social distancing recommendations or Orders as well as a statewide imperative for critical employees to focus on health needs may prevent Medi-Cal, CalFresh, CalWORKs, Cash Assistance Program for Immigrants, California Food Assistance Program, and In Home Supportive Services beneficiaries from obtaining in-person eligibility redeterminations; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567 and 8571, do hereby issue the following order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. As to individuals currently eligible for benefits under Medi-Cal, CalFresh, CalWORKs, the Cash Assistance Program for Immigrants, the California Food Assistance Program, or In Home Supportive Services benefits, and to the extent necessary to allow such individuals to maintain eligibility for such benefits, any state law, including but not limited to California Code of Regulations, Title 22, section 50189(a) and Welfare and Institutions Code sections 18940 and 11265, that would require redetermination of such benefits is suspended for a period of 90 days from the date of this Order. This Order shall be construed to be consistent with applicable federal laws, including but not limited to Code of Federal Regulations, Title 42, section 435.912, subdivision (e), as interpreted by the Centers for Medicare and Medicaid Services (in guidance issued on January 30, 2018) to permit the extension of

otherwise-applicable Medicaid time limits in emergency situations.

2. Through June 17, 2020, any month or partial month in which California Work Opportunity and Responsibility to Kids (CalWORKs) aid or services are received pursuant to Welfare and Institutions Code Section 11200 et seq. shall not be counted for purposes of the 48-month time limit set forth in Welfare and Institutions Code Section 11454. Any waiver of this time limit shall not be applied if it will exceed the federal time limits set forth in Code of Federal Regulations, Title 45, section 264.1.
3. Paragraph 11 of Executive Order N-25-20 (March 12, 2020) is withdrawn and superseded by the following text:

Notwithstanding any other provision of state or local law (including, but not limited to, the Bagley-Keene Act or the Brown Act), and subject to the notice and accessibility requirements set forth below, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body or state body. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived.

In particular, any otherwise-applicable requirements that

- (i) state and local bodies notice each teleconference location from which a member will be participating in a public meeting;
- (ii) each teleconference location be accessible to the public;
- (iii) members of the public may address the body at each teleconference conference location;
- (iv) state and local bodies post agendas at all teleconference locations;
- (v) at least one member of the state body be physically present at the location specified in the notice of the meeting; and
- (vi) during teleconference meetings, a least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction

are hereby suspended.

A local legislative body or state body that holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements set forth below, shall have satisfied any requirement that the body allow

members of the public to attend the meeting and offer public comment. Such a body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

Accessibility Requirements: If a local legislative body or state body holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the body shall also:

- (i) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the Americans with Disabilities Act and resolving any doubt whatsoever in favor of accessibility; and
- (ii) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to subparagraph (ii) of the Notice Requirements below.

Notice Requirements: Except to the extent this Order expressly provides otherwise, each local legislative body and state body shall:

- (i) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by the Bagley-Keene Act or the Brown Act, and using the means otherwise prescribed by the Bagley-Keene Act or the Brown Act, as applicable; and
- (ii) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in such means of public observation and comment, or any instance prior to the issuance of this Order in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of such means, a body may satisfy this requirement by advertising such means using "the most rapid means of communication available at the time" within the meaning of Government Code, section 54954, subdivision (e); this shall include, but need not be limited to, posting such means on the body's Internet website.

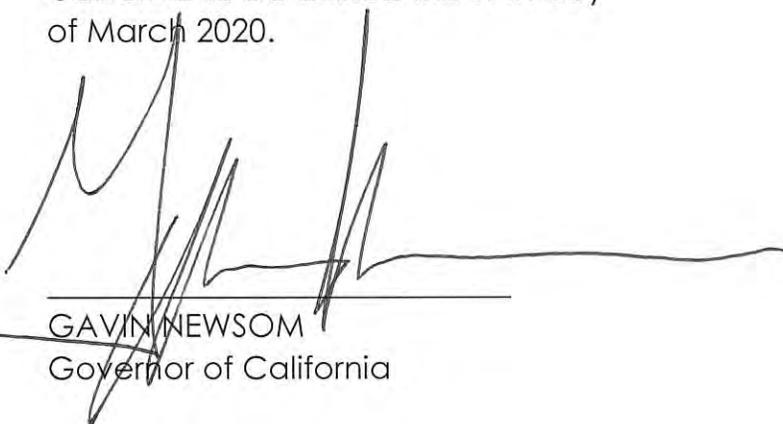
All of the foregoing provisions concerning the conduct of public meetings shall apply only during the period in which state or local public health officials have imposed or recommended social distancing measures.

All state and local bodies are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Bagley-Keene Act and the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide the public access to their meetings.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 17th day of March 2020.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

