



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

**MONDAY, APRIL 25, 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/87190567466>. 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: **871 9056 7466**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized by the Chair.

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

# **AGENDA**

**Roll Call**

**Public Comment**

## **Review of Agendas**

- 1. Approval of Minutes: April 11, 2022**
- 2. Review and Approve Draft Agenda:**
  - a. 5/10/22 – 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, May 9, 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 Thursday, April 21, 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**

**MONDAY, APRIL 11, 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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To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **837 9009 7314**. 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.

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

**Public Comment** – 6 speakers.

## **Review of Agendas**

**1. Approval of Minutes: March 28, 2022**

**Action:** M/S/C (Hahn/Arreguin) to approve the minutes of 3/28/22.

**Vote:** All Ayes.

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

a. 4/26/22 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Arreguin/Wengraf) to approve the agenda of the 4/26/22 meeting with the changes noted below.

- *Item Added: Book Festival (Arreguin)*
- *Item 22 Climate/Budget (Commission) – Referred to the Budget & Finance Committee*
- *Item 23 Housing Retention Fund (Arreguin) – Councilmembers Hahn, Harrison, and Bartlett added as co-sponsors*
- *Item 26 AB 2557 (Harrison) – Revised item submitted; Councilmember Hahn added as a co-sponsor*
- *Item 28 Hopkins Corridor (Hahn) – Councilmembers Wengraf and Robinson added as a co-sponsor*
- *Item 29 AB 2234 (Robinson) – Revised item submitted*
- *Item 34 Bonding Capacity (City Manager) – Scheduled for special meeting on 4/26/22*
- *Item 35 Issuance of Bonds (City Manager) – Moved to first action item on 4/26/22*
- *Item 39 Solano Stroll (Hahn) – Moved to 4/26/22 Consent Calendar; Councilmember Harrison added as a co-sponsor*

Order of Items on Action Calendar

Item 35 Issuance of Bonds  
Item 30 ZAB Appeal  
Item 32 Zoning Ordinance  
Item 31 Annual Action Plan  
Item 33 Surveillance Report  
Item 36 Hopkins Corridor  
Item 37a/b Crisis Stabilization  
Item 38a/b Shelter Program

**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** – received and filed

**6. Council Referrals to Agenda Committee for Scheduling** – received and filed

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

## **Referred Items for Review**

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

**Action:** 2 speakers; no action taken.

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

**Action: 2 speakers. Discussion of policies for hybrid meetings:**

- Face covering required except when speaking from dais or podium
- Policy Committees remain virtual-only
- No testing requirement for members of the Council attending in person
- Distancing encouraged on the dais and use of partitions
- Start hybrid meetings with May 10 scheduled meetings

## **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**

- **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 April 11, 2022.

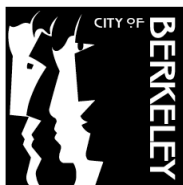
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Mark Numainville, City Clerk

## **Communications**

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## DRAFT AGENDA



## BERKELEY CITY COUNCIL MEETING

Tuesday, May 10, 2022

6:00 PM

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

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 IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION**

*Proof of up-to-date COVID-19 vaccination or verified negative COVID-19 test is required for in-person attendance. In-person attendees are required to wear a mask that covers their nose and mouth for the duration of the meeting. If you are feeling sick, please do not attend in-person.*

*Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx> or [http://berkeley.granicus.com/MediaPlayer.php?publish\\_id=1244](http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244).*

*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 meeting will be recorded and all rules of procedure and decorum apply for in-person attendees and those participating 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. Persons attending the meeting in-person and wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

## 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, February 8, 2022, March 8, 2022, March 22, 2022, and April 12, 2022.

**Financial Implications:** To be determined.

Contact: Farimah Brown, City Attorney, (510) 981-6950

**2. Resolution Reviewing and Ratifying the Proclamation of Local Emergency Due to the Spread of a Severe Acute Respiratory Illness Caused by a Novel (New) Coronavirus (COVID-19)**

**From: City Manager**

**Recommendation:** Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, and March 22, 2022.

**Financial Implications:** None

Contact: Farimah Brown, City Attorney, (510) 981-6950

**3. Calling for a Consolidated General Municipal Election for November 8, 2022**

**From: City Manager**

**Recommendation:**

1. Adopt a Resolution: a. Calling for a General Municipal Election to be consolidated with the Statewide General Election to be held in Berkeley on November 8, 2022; b. Requesting that the Alameda County Board of Supervisors consolidate the City of Berkeley General Municipal Election with the Statewide General Election; c. Authorizing certain procedural and contractual actions; and d. Establishing policies for the filing of candidate statements of qualification.

2. Adopt a Resolution establishing policies and timelines for filing ballot measure arguments.

**Financial Implications:** See report

Contact: Mark Numainville, City Clerk, (510) 981-6900

## Consent Calendar

**4. Amendment: FY 2022 Annual Appropriations Ordinance**

**From: City Manager**

**Recommendation:** Adopt first reading of an Ordinance amending the FY 2022 Annual Appropriations Ordinance No. 7,795–N.S. for fiscal year 2022 based upon recommended re-appropriation of committed FY 2021 funding and other adjustments in the amount of \$53,155,906 (gross) and \$43,380,083 (net).

**Financial Implications:**

Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000

**5. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on May 10, 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:** Various Funds - \$964,022

Contact: Henry Oyekanmi, Finance, (510) 981-7300

**6. Purchase Order: ZOLL Medical Corporation for ECG Monitor/Defibrillators**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a Purchase Order and any amendments with ZOLL Medical Corporation for the purchase of five Advanced Life Support (ALS) ECG Monitor/Defibrillators, associated equipment and a maintenance contract for emergency response vehicles in an amount not to exceed \$250,000.

**Financial Implications:** Measure FF - \$250,000

Contact: Abe Roman, Fire, (510) 981-3473

**7. Contract: Shaw Industries, Inc. for 1900 6th Street Building Carpet Replacement Project**

**From: City Manager**

**Recommendation:** Adopt a Resolution: 1. Pursuant to City Charter Article XI Section 67.2 requirements, accepting the California Multiple Award Schedule bid procedures; 2. Approving the California Multiple Award Schedule Contract with Shaw Industries, Inc. for Carpet Replacements at the 1900 6th Street building. 3. Authorizing the City Manager or her designee to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the terms and conditions of the agreements with Shaw Industries, Inc. in an amount not to exceed \$121,133, which includes a contingency of \$14,552.

**Financial Implications:** Measure GG Fire Prevention Fund - \$121,133

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



## Consent Calendar

- 8. Contract Amendment: JotForm, Inc.**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an amendment and subsequent any amendments or extensions with the JotForm, Inc. to add \$17,808; bringing the contract total to an amount not to exceed \$55,794 and extending the end date from May 12, 2022 through May 12, 2023.  
**Financial Implications:** General Fund - \$17,808  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 9. Meals on Wheels of Alameda County Agency Donations for the Berkeley Meals on Wheels Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting a \$54,167 donation for the Berkeley Meals on Wheels Program from the Meals on Wheels of Alameda County (MOWAC) agency and authorizing acceptance of all subsequent donations received in FY 2022, to be appropriated as part of the Second Amendment to the Annual Appropriations Ordinance.  
**Financial Implications:** Fund Raising Activities Fund - \$54,167 (donation)  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 10. Contract No. 32200074 Amendment: Murray Building, Inc. for Cazadero Camp Jensen Dormitory Construction Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 32200074 with Murray Building, Inc. for the Cazadero Camp Jensen Dormitory Construction Project by adding \$66,450 for a total not-to-exceed contract amount of \$1,528,350.  
**Financial Implications:** Camps Fund - \$66,450  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 11. Contract No. 32000230 Amendment: Robert E. Boyer Construction, Inc. for Berkeley Tuolumne Camp Construction Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 32000230 with Robert E. Boyer Construction, Inc. for the Berkeley Tuolumne Camp Project by adding \$530,832 for a total not-to-exceed contract amount of \$39,350,473.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

## Consent Calendar

- 12. Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the Controlled Equipment Impact Statements, Associated Equipment Use Policies and Equipment.  
**Financial Implications:** See report  
Contact: Jennifer Louis, Police, (510) 981-5900
- 13. Contract No. 100692-2 Amendment: Serological Research Institute for DNA Testing Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 100692-2 and any necessary future amendments with Serological Research Institute (SERI) for the Police Department, increasing the contract amount by \$500,000 for a total not to exceed amount of \$1,500,000 while the contract term expiration will remain until June 30, 2025.  
**Financial Implications:** State Proposition 172 Fund - \$500,000  
Contact: Jennifer Louis, Police, (510) 981-5900
- 14. Vision 2050: Strategic Asset Management Plan and Asset Management Policy**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting the Strategic Asset Management Plan (SAMP) and approving the Asset Management (AM) policy.  
**Financial Implications:** See report  
Contact: Paul Buddenhagen, City Manager's Office, (510) 981-7000; Liam Garland, Public Works, (510) 981-6300
- 15. Public Art Funding for Municipal Capital Improvement Projects Ordinance; Adding Berkeley Municipal Code Chapter 6.13**  
**From: Civic Arts Commission**  
**Recommendation:** Adopt first reading of an Ordinance adding Chapter 6.13 Public Art Funding for Municipal Capital Improvement Projects of the Berkeley Municipal Code to provide for the allocation of one and three quarters percent (1.75%) of the estimated cost of construction associated with eligible municipal capital improvement projects, which shall be used for art and cultural enrichment of public buildings, parks, streets, and other public spaces in the City of Berkeley  
**Financial Implications:** See report  
Contact: Jennifer Lovvorn, Commission Secretary, (510) 981-7530
- 16. Recommendation that Vision 2050 Infrastructure Bond Prioritize Clean Mobility**  
**From: Energy Commission**  
**Recommendation:** The Energy Commission recommends that the Vision 2050 infrastructure bond contemplated for the 2022 ballot prioritize transportation, with an emphasis on building the clean mobility network of the future.  
**Financial Implications:** None  
Contact: Billi Romain, Commission Secretary, (510) 981-7400

## Consent Calendar

**17. Budget Referral: City-wide Historic Context Statement**

**From: Landmarks Preservation Commission**

**Recommendation:** Refer to the FY 2023 June budget process an amount between \$250,000 to \$275,000 from the General Fund for Berkeley's first City-wide Historic Context Statement.

**Financial Implications:** See report

Contact: Fatema Crane, Commission Secretary, (510) 981-7400

## Council Consent Items

**18. Support SB 1173 – Divestment from Fossil Fuels**

**From: Mayor Arreguin (Author)**

**Recommendation:** Adopt a Resolution in support of SB 1173 (Gonzalez), which would require the California Public Employees Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS) to divest from fossil fuel companies. Send a copy of the Resolution to Governor Gavin Newsom, State Senators Nancy Skinner and Lena Gonzalez, and Assemblymember Buffy Wicks.

**Financial Implications:** None

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

**19. Healthy Black Families: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Fund**

**From: Mayor Arreguin (Author)**

**Recommendation:** Adopt a Resolution approving the expenditure of \$20,000 from the Mayor's Office Budget to Healthy Black Families (HBF) for the purposes of covering costs, from February – May 2022, associated with supporting the Ideation of financing for greater affordable housing at BART station developments. This time period coincides with the end (January 2022) and beginning (June 2022) of grants from the Partnership for the Bay's Future awarded to the City of Berkeley in partnership with HBF.

**Financial Implications:** Mayor's Discretionary Funds - \$20,000

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

## Council Consent Items

- 20. Budget Referral: Continuing Anti-Displacement Programs**  
**From: Mayor Arreguin (Author)**  
**Recommendation:** Refer \$1,800,000 (\$900,000 annually) to the FY 2023-2024 Budget Process for continued funding of the following anti-displacement programs (launched in 2017) with the proposed funding source from General Fund tax revenues: 1. Housing Retention Program (administered by the Eviction Defense Center EDC): \$250,000 per fiscal year. This funding will supplement the current COVID-19 emergency rental assistance program to provide funding after the emergency expires; 2. Legal Counseling, Services and Problem Solving for Extremely-Low, Very-Low, Low and Moderate Income Tenants (\$275,000 each to the East Bay Community Law Center and EDC): \$550,000 per fiscal year; 3. Flexible Housing Subsidies for Homelessness Prevention: \$100,000 per fiscal year  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 21. Addition of Semi-diverter Traffic Bollards at the intersection of Newbury Street and Ashby Avenue**  
**From: Councilmember Bartlett (Author)**  
**Recommendation:** Refer to the Fiscal Year 2022/2023 Budget Process, an allocation of \$50,000 to install semi-diverter traffic bollards at the east corner of the intersection at Newbury Street and Ashby Avenue.  
**Financial Implications:** To be determined  
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130
- 22. Dwight Way Traffic Calming Budget Referral**  
**From: Councilmember Harrison (Author)**  
**Recommendation:** Refer a one-time allocation of \$50,000 to the June budget process for traffic calming intersection improvements on Dwight Way between Grant Street and California Street.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

## Council Consent Items

### 23. Budget Referral for Charter Officer Performance Review

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

**Recommendation:** Refer \$120,000 to the budget process to procure professional services from a qualified consultant to assist the City Council in establishing a collaborative review process for performing regular evaluations of the City Attorney and Police Accountability Board Director's performance and direct the City Manager to issue a Request for Proposal (RFP) to contract with an experienced firm that will engage the City Council and the City Attorney and Police Accountability Board Director in performance evaluation similar to the City Manager's evaluation process. The RFP shall be reviewed by the City Council Agenda and Rules Committee prior to issuance. The Agenda and Rules will make a recommendation to the entire City Council, for approval, prior to entering into any contract.

The performance evaluation process should begin following the scheduled approval of the Biennial Budget in June of 2022 and establish an annual evaluation schedule that includes interim updates on a quarterly basis—similar to the City Manager's evaluation process described in the May 14, 2019 Council referral for performance evaluations.

**Financial Implications:** \$120,000

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

## Action Calendar

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

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

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

## Action Calendar – Public Hearings

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

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

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

## Action Calendar – Pubic Hearings

**24. FY 2023 and FY 2024 Proposed Budget and Proposed Budget Public Hearing #1**

**From: City Manager**

**Recommendation:** Accept the FY 2023 and FY 2024 Proposed Biennial Budget for review and consideration by the City Council and final adoption on June 28, 2022 and conduct Public Hearing #1 on the FY 2023 and FY 2024 Proposed Budget.

**Financial Implications:** See FY 2023 and FY 2024 Proposed Biennial Budget

Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000

## Action Calendar – Policy Committee Track Items

**25. Berkeley Housing Authority Loan Forgiveness**

**From: Mayor Arreguin (Author)**

**Recommendation:** Adopt a Resolution forgiving a \$300,000 Housing Trust Loan to the Berkeley Housing Authority. Forgiving this outstanding loan will enable BHA to provide additional housing to families in Berkeley.

**Financial Implications:** Housing Trust Fund - \$300,000

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

**26. Efficiency Unit Ordinance**

**From: Councilmember Taplin (Author)**

**Recommendation:** Refer to the City Manager and Planning Commission to adopt objective standards for Efficiency Units pursuant to California Housing and Safety Code § 17958.1, developing an ordinance to amend the Berkeley Municipal Code modeled after standards implemented in the City of Davis and the City of Santa Barbara.

**Financial Implications:** Staff time

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

**27. Resolution Declaring May as Jewish American Heritage Month**

**From: Councilmember Wengraf (Author)**

**Recommendation:** Adopt a Resolution declaring the month of May as Jewish American Heritage Month in appreciation of the achievements and contributions made by members of the Jewish Community.

**Financial Implications:** None

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

## Information Reports

**28. Fiscal Year 2022 Mid-Year Budget Update**

**From: City Manager**

Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000

## Information Reports

29. **LPO NOD: 1940 Hearst Avenue/#LMIN2021-0003**  
**From: City Manager**  
Contact: Alene Pearson, Planning and Development, (510) 981-7400
30. **LPO NOD: 2523 Piedmont Avenue/#LMIN2021-0004**  
**From: City Manager**  
Contact: Alene Pearson, Planning and Development, (510) 981-7400
31. **LPO NOD: 2580 Bancroft Way – Application LMSAP2022-0003**  
**From: City Manager**  
Contact: Alene Pearson, Planning and Development, (510) 981-7400
32. **Mental Health Commission Work Plan 2022-2023**  
**From: Mental Health Commission**  
Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400

## Public Comment – Items Not Listed on the Agenda

### Adjournment

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

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 made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street as well as posted on the City's website at <http://www.cityofberkeley.info>.

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

City Clerk Department - 2180 Milvia Street, First Floor  
Tel: 510-981-6900, TDD: 510-981-6903, Fax: 510-981-6901  
Email: [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info)

Libraries: Main – 2090 Kittredge Street,  
Claremont Branch – 2940 Benvenue, West Branch – 1125 University,  
North Branch – 1170 The Alameda, South Branch – 1901 Russell

**COMMUNICATION ACCESS INFORMATION:**

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

Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.



Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.

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Civic Arts Commission

CONSENT CALENDAR

May 10, 2022

To: Honorable Mayor and Members of the City Council

From: Civic Arts Commission

Submitted by: Modesto Covarrubias, Chair

Subject: Public Art Funding for Municipal Capital Improvement Projects Ordinance;  
Adding Berkeley Municipal Code Chapter 6.13

RECOMMENDATION

Adopt first reading of an Ordinance adding Chapter 6.13 (Public Art Funding for Municipal Capital Improvement Projects, Attachment 1) of the Berkeley Municipal Code to provide for the allocation of one and three quarters percent (1.75%) of the estimated cost of construction associated with eligible municipal capital improvement projects, which shall be used for art and cultural enrichment of public buildings, parks, streets, and other public spaces in the City of Berkeley.

FISCAL IMPACTS OF RECOMMENDATION

The City of Berkeley's existing public art funding policy, which was established in 1999 (Attachment 2), stipulates that eligible municipal Capital Improvement Projects are to dedicate 1.5% of the cost of their construction for public art. The proposed Public Art Funding Ordinance for Municipal Capital Improvement Projects increases the percentage from 1.5% to 1.75% for public art. The fiscal impacts of the recommendation are as follows:

- The increased percentage may result in a change to the amount allocated for public art. For example, the annual baseline allocation to the Public Art Fund has been \$65,164, which has been calculated as 1.5% of the cost of eligible capital projects. By increasing the percentage to 1.75% the annual allocation would be \$76,025, an annual increase of \$10,861. However, with the proposed policy change the amount allocated for public art will be tied to the actual amounts appropriated by Council for eligible capital projects, and as such, the allocations for art will rise and fall with any increase or decrease to capital appropriations and the eligibility of those capital projects.
- The proposed Public Art Funding Ordinance also recommends that the City take "reasonable efforts to include funds for public art" in all eligible projects which may allow additional Capital Improvement Project appropriations to comply with the 1.75% for art requirement. This includes any new CIP appropriations (beyond the baseline CIP appropriations) for eligible capital projects on the biennial and

mid-cycle budget adoption (July 1) and any new eligible capital appropriations adopted in the Amendments to the Annual Appropriation Ordinance (November and May). These midyear capital project appropriations have historically not included a set-aside for public art because the policy and procedures developed in 1999 were based upon a once annual budgeting process and did not account for amendments to the annual appropriation ordinance (AAOs 1 & 2).

- The fiscal impacts will vary from year to year because the CIP appropriations which occur as part of the AAO1 and AAO2 always vary; and will depend on the eligibility of the projects. An analysis of the CIP appropriations in FY21 and FY22 for both Parks Recreation and Waterfront (PRW) Department and Public Works (PW) Department shows that there were some eligible projects included in the AAOs that would have generated funds for public art. However, the difference in total amount allocated annually to public art utilizing the current budgeting practice versus the proposed methodology was negligible for these two years.
- The Public Art Funding amount of 1.75% of the estimated cost of construction will be calculated during the budgeting process at all three times of the year when capital project appropriations are adopted by Council. As part of the budget planning process, City departments will use an accepted percentage of 75% of the total capital project budget amount as the accepted “estimated cost of construction.” This reflects an assumption for excluded “soft costs” of project design and staff time. The resulting estimated cost of construction will be the basis for the calculation of the 1.75% for art amount. This amount will not be revised should the department’s estimates be incorrect, unless there is a future new appropriation, at which time the percent for art calculation will be made based upon the “estimated cost of construction” for the new appropriation.
- The Civic Arts Commission shall recommend and the Council, by resolution, shall adopt guidelines for the administration and implementation of this chapter which will specifically describe the process for identifying the eligible capital projects during all three times annually when the City makes budget appropriations.

There will be no fiscal impacts to the majority of the CIP budget because the following types of capital projects are excluded from this policy: (i) ADA compliance projects (not including projects where ADA compliance is a portion of a larger project); (ii) Emergency repair projects; (iii) Cyclical replacement and repair of trails, outdoor furnishings, or fencing (not including projects where these are a portion of a larger project); (iv) Studies and environmental review; (v) Roof replacement (not including projects where roof replacement is a portion of a larger project); (vi) Mechanical, security, A/V equipment, and HVAC, upgrades and repairs (not including projects where these are a portion of a larger project); (vii) Utilities projects, except where the project includes construction or reconstruction of a building; (viii) Vehicle repair and replacement; (ix) IT purchases and installations; (x) Seismic upgrades and waterproofing (not including projects where

these are a portion of a larger project); (xi) Projects where the majority (more than 50%) of the cost is allocated to elements located underground; and (xii) Projects where prohibited by federal or state law, including projects or portions of projects funded by grants from non-city sources that prohibit expenditure of funds for art.

The Civic Arts Commission's Public Art Budgets will designate as separate any funds that are restricted by funding source for specific uses or locations. Appropriations for public art shall only be expended for acquisition of public art in a manner consistent with the specific restrictions established for each funding source.

### CURRENT SITUATION AND ITS EFFECTS

The Public Art Funding Ordinance is a Strategic Plan Priority Project, advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities. Throughout the City of Berkeley, creative works of public art breathe life into the built environment and reflect the unique character of our city. Public art engages artists to enhance Berkeley's public spaces, which in turn improves the quality of life for residents and visitors alike.

While the City of Berkeley has an existing "percent-for-art" policy, which was established by resolution in 1999, funding for public art has not kept pace as a proportion of the City's capital budget as the CIP budget has increased over the past two decades. In response to the Civic Arts Commission's request that staff provide clear and transparent information regarding the determination of the Public Art Fund budget, the Office of Economic Development worked in collaboration with staff from the Budget Division in the City Manager's Office, the Public Works Department, and the Parks, Recreation, and Waterfront Department, to analyze the City of Berkeley's funding for public art (Attachment 3). A key finding of this analysis was that the City of Berkeley's existing public art funding policy is no longer compatible with the City's current processes for budgeting and capital planning. The Civic Arts Commission recommends establishing this new public art funding policy to address the findings detailed in the staff analysis.

Additionally, the City of Berkeley established the Public Art in Private Development policy by Ordinance in 2017, which requires qualifying private development projects to either incorporate a public art element or pay an in-lieu fee to the Private Percent for Art fund. The Civic Arts Commission recommends establishing this new public art funding policy for municipal projects as an Ordinance so that the two public art policies have parity.

Lastly, the Civic Arts Commission recommends increasing the municipal public art percentage from 1.5% to 1.75% to align with the percentage for "On-Site" public art required for qualifying private development in Berkeley.

On February 23, 2022, Berkeley's Civic Arts Commission voted unanimously to

recommend that City Council adopt a City of Berkeley ordinance: Public Art Funding for Municipal Capital Improvement Projects. (M/S/C: Bullwinkel/Passmore. Ayes — Anno, Blecher, Bullwinkel, Covarrubias, Dhesi, Ozol, Passmore, Woo; Nays — None; Abstain — None; Absent — None.)

### BACKGROUND

The City has completed over 80 public art projects since its inception in 1967, with many of the early works commissioned through the City's own voluntary contributions, philanthropic donations, and grant funding. The City's longstanding Public Art Program includes a City collection valued at \$3 million dollars with numerous public artworks installed throughout the city.

On June 1, 1999, the Berkeley City Council adopted Resolution No. 60,048-N.S., thereby establishing the City's current public art funding policy and program. Under this policy and program, each of the City of Berkeley's eligible capital projects are to dedicate 1.5% of the project's construction costs for the commissioning of a public art element for incorporation into the project, or contribute an equivalent amount to the City's Public Art Fund for the creation of off-site works of public art.

The 1999 Resolution established that, as part of the development of the City's budget, City staff should engage with the Civic Arts Commission in a planning process to determine the list of eligible capital projects; the ultimate determination of the list is left to the discretion of the City Manager. The policy includes an exemption for "any improvement for which the source of funding, or any applicable law or regulation, prohibits or restricts the use of funds for [public art]." The policy also established that a project's 'soft costs'—including project management, architectural and engineering costs, planning costs, environmental review, legal fees, and feasibility studies—are exempt.

In practice, the Budget Office has determined an annual contribution to the Public Art Fund by applying the 1.5% calculation to the original budget figures for a limited number of baseline capital funding sources and project categories. The planning process as detailed by the 1999 public art funding resolution is no longer compatible with the City's current processes and procedures for capital project planning and related budget appropriations. Currently, due to the multiple sources of small allocations of funding received into the Public Art Fund, the vast majority of public art projects are implemented as off-site works of art. For some major capital projects, the determination of the public art contribution is determined at the project level, and the funding is used for an on-site public art element, a supplemental contribution to the Public Art Fund, or a combination of the two approaches. An example of public art integrated into a City capital improvement project includes the new public art at San Pablo Park, which was funded by Measure T-1.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

### CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

There are no identifiable California Environmental Quality Act effects or opportunities associated with the subject of this report.

### RATIONALE FOR RECOMMENDATION

The Civic Arts Commission recommends establishing a new Public Art Funding policy for municipal capital improvement projects in order to align public art funding determinations with the City's current processes for budgeting and capital planning. Furthermore, establishing the new Public Art Funding policy for municipal projects as an Ordinance will allow the two public art policies to have parity. Lastly, the Civic Arts Commission recommends increasing the municipal public art percentage from 1.5% to 1.75% to align with the percentage for "On-Site" public art required for qualifying private development in Berkeley. The additional one quarter of one percent (0.25%) is a small increase relative to the overall budgets of eligible capital improvement projects, but this percentage will provide more funding for public art which may be used to commission new work or to care for the artwork already in the City's public art collection.

### ALTERNATIVE ACTIONS CONSIDERED

The Civic Arts Commission considered leaving the Public Art Funding policy as a resolution, however decided to recommend the policy be adopted as an Ordinance so that the requirement would be formally adopted into the City's municipal code in order to have legislative parity with the Public Art on Private Development requirement of the Berkeley Municipal Code, Chapter 23.316. The Civic Arts Commission also considered recommending that the percentage set aside from municipal capital improvement projects for public art be increased to two percent (2%), however there was an interest in aligning the municipal requirement with the Public Art on Private Development policy, which is one and three quarters percent (1.75%) for on-site public art projects.

### CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report. The revised implementation plan for this process will result in no significant financial impacts to departmental operations as (1) the majority of capital projects will be considered to be exempt; (2) the proposed General Fund baseline allocation to the Public Arts Fund will be increased to offset the additional percentage charged to eligible capital projects.

CONTACT PERSON

Jennifer Lovvorn, Secretary, Civic Arts Commission, Office of Economic Development,  
981-7533

Attachments:

- 1: Ordinance: Public Art Funding on Municipal Capital Improvement Projects
- 2: Resolution No. 60,048-N.S. (1999 "1.5% for Art" Resolution)
- 3: Analysis of Public Art Funding from City of Berkeley Construction Projects

ORDINANCE NO. -N.S.

PUBLIC ART FUNDING FOR MUNICIPAL CAPITAL IMPROVEMENT PROJECTS;  
ADDING BERKELEY MUNICIPAL CODE CHAPTER 6.13

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

Section 1. That Berkeley Municipal Code Chapter 6.13 is added as follows:

**6.13 APPROPRIATION FOR PUBLIC ART FOR MUNICIPAL CAPITAL IMPROVEMENT PROJECTS**

**6.13.010 Purpose.**

The City of Berkeley believes that the cultivation and development of a livable city is enhanced by the presence of public art and creative expressions available for the enjoyment of all members of the community. Public art enhances community vitality, fosters a sense of belonging, and provides opportunities to meaningfully involve community members in the design of their environment. Furthermore, public art provides professional opportunities for artists, which contributes to the economic sustainability of the arts community. The City of Berkeley is committed to strengthening its municipal public art program by enhancing the funds available for public art and ensuring flexibility to provide equitable public art experiences in the City of Berkeley that are timely, meaningful, and relevant. Therefore, it is the purpose of this Chapter and the policy of this City to provide for the allocation of one and three quarters percent (1.75%) of the estimated cost of construction associated with municipal capital improvement projects to be paid into the Public Art Fund, which shall be used for art and cultural enrichment of public buildings, parks, streets, and other public spaces in the City of Berkeley.

**6.13.020 Public Art Fund Allocation.**

(a) It shall be City policy to set aside one and three quarters percent (1.75%) of its estimated capital improvement project (CIP) budgets, as defined in this section, for the purpose of providing public art. Except as provided in this section, all CIP projects shall be subject to this policy, including but not limited to buildings, shelters, parking garages and lots, restrooms, small structures, parks, medians, landscaping, plazas, gateways, bridges, walls, tunnels, street and road construction. CIP projects include new construction, as well as renovations and alterations. Salaries and benefits of public employees supporting CIP projects shall not be included in the CIP budget subject to this ordinance. This policy shall apply to all capital improvement projects included in the annual capital improvement program (CIP) budget, as well as capital improvement projects funded through any amendment to the annual appropriation ordinance.

(b) The following CIP projects are excluded from this policy:

- (i) ADA compliance projects (not including projects where ADA compliance is a portion of a larger project).
- (ii) Emergency repair projects.
- (iii) Cyclical replacement and repair of trails, outdoor furnishings, or fencing (not including projects where these are a portion of a larger project).
- (iv) Studies and environmental review.
- (v) Roof replacement (not including projects where roof replacement is a portion of a larger project).
- (vi) Mechanical, security, A/V equipment, and HVAC, upgrades and repairs (not including projects where these are a portion of a larger project).
- (vii) Utilities projects, except where the project includes construction or reconstruction of a building.
- (viii) Vehicle repair and replacement.
- (ix) IT purchases and installations.
- (x) Seismic upgrades and waterproofing (not including projects where these are a portion of a larger project).
- (xi) Projects where the majority (more than 50%) of the cost is allocated to elements located underground.
- (xii) Projects where prohibited by federal or state law, including projects or portions of projects funded by grants from non-city sources that prohibit expenditure of funds for art.

**6.13.030 Reasonable efforts to include funds for public art.**

(a) City staff shall use reasonable efforts to obtain appropriate approvals from any funding source for any capital improvement project, to allow use of one and three quarters percent (1.75%) of such funds for the acquisition of public art as provided in this title. Such efforts shall include, without limitation, identifying public art in grant applications for capital improvement projects, efforts to include expenditures for public art in developer funded infrastructure projects, and efforts to allocate for public art in developer-constructed infrastructure and public facilities.

(b) If the city enters into an agreement with another public entity, whereby city funds are transferred to such other public entity for the capital improvement project that



would otherwise be deemed subject to the public art requirements under this title, city staff shall use reasonable efforts to include in such agreement, whenever it is lawful to do so, a requirement that the recipient entity or its successor in interest shall take appropriate measures to insure that not less than one and three quarters percent (1.75%) of the city funds so transferred are expended for acquisition of public art.

(c) Before proposing a bond issue or making a request for an appropriation for the construction of any of the projects set forth in this Chapter, the officer, board or commission concerned shall add thereto for the Public Art allocation associated with the proposed CIP project, one and three quarters percent (1.75%) of the gross estimated construction cost. Where funding eligibility is limited by law or funding agency rules, the Public Art allocation shall be based upon one and three quarters percent (1.75%) of eligible construction costs. For any public bond raising funds for capital percentage, the designated Public Art allocation percentage will be stated in the bond language presented to voters.

(d) Nothing in this section is intended to prohibit the city council from adopting an ordinance or resolution establishing a public art contribution for any project otherwise excluded from this policy or setting the public art contribution for any project at greater than one and three quarters percent (1.75%) of the CIP budget.

(e) Aggregation of Funds. Funds shall be deposited into the Public Art Fund. Per BMC Chapter 6.14, the Civic Art Commission shall determine public or publicly-accessible sites for art funded by the one and three quarters percent (1.75%) for art policy. Funds may be expended on public art at any appropriate site within the city. Funds from two or more CIP projects may be pooled to fund a single work of art. Funds may be used for permanent or temporary public art.

(f) The Civic Arts Commission shall recommend and the Council, by resolution, shall adopt guidelines for the administration and implementation of this chapter.

**6.13.040 Definitions. For purposes of this Section:**

- "Alteration" of a building, aboveground structure, or transportation improvement project shall include substantial changes to elements such as walls, partitions, or ceilings on 2/3 or more of the total floor space, excluding basements. "Substantial changes" shall include additions to, renovation of, removal of, and modification of such elements.
- "Construction cost" shall mean the total estimated construction contract award amount, including the costs of all built-in fixtures, unless otherwise agreed to by the Civic Arts Commission. "Construction cost" shall not include movable or personal property or construction cost contingency.

- "Public Art" shall mean the acquisition and installation of original works of art (including limited editions), or temporary installation, display, or presentation of the same, on City property for aesthetic and cultural enhancement of public buildings and public spaces and engagement of the public with the creative work of artists, as approved by the Civic Arts Commission.
- "Public Art Collection" shall mean the various artworks owned by the City under the jurisdiction of the Civic Arts Commission that are accessioned by action of the Commission into the Public Art Collection.
- "Transportation improvement project" refers to Public Works projects which include both aboveground and below-ground transportation-related projects; boarding ramps; transit platforms; terminals and transportation systems with their attendant passenger amenities, such as shelters, seating, lighting, landscaping, and signage; transportation-related structures such as maintenance and operating facilities; power substations; and street/highway-related transit improvements such as bridges and overpasses.

**6.13.050 Administrative Fees.**

The Civic Arts Commission shall supervise and control the expenditure of all funds appropriated for public art and shall allocate up to twenty percent (20%) of said funds for all necessary and reasonable administrative costs incurred in connection therewith unless such administrative fee is limited or prohibited by the funding source.

**6.13.060 Maintenance and Conservation Funds.**

The Civic Arts Commission may set aside and expend up to ten percent (10%) of the total public art allocation for each project for maintenance and conservation of artworks in the Public Art Collection. When permitted by the funding source, funds set aside pursuant to this Section shall be invested in an interest-bearing account when the total of such funds set aside exceeds \$10,000.

**6.13.070 Miscellaneous Provisions.**

(a) Construction and installation of public art shall comply with the requirements of all applicable building codes, laws, ordinances, rules and regulations.

(b) Nothing in this Section shall be construed to limit or abridge the jurisdiction of the officer, board or commission of the participating City department to supervise and control the expenditure of project funds other than the one and three quarters percent (1.75%) allocation for public art.

(c) This ordinance shall not be applied retroactively to projects for which a public art allocation previously would not have been required, nor to those projects for which project funding has been approved by prior voter action but not yet appropriated or expended. Nor shall this ordinance be construed to allow for an increase in the total

public art allocation for a project that is already underway or for which the public art allocation has already been established.

(d) Ownership. All art acquired pursuant to this chapter shall be acquired in the name of the City of Berkeley as part of the Public Art Collection and title shall vest in the City of Berkeley.

**6.13.080 Superseding Effect.**

The ordinance codified in this chapter shall supersede and supplant Resolution No. 60,048-N.S. adopted by City Council on June 1, 1999.

Section 2. The provisions of this Ordinance apply to all municipal capital appropriations approved for Fiscal Year 2023 and beyond.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

RESOLUTION NO. 60,048-N.S.

ESTABLISHING A PROGRAM TO FUND THE DEVELOPMENT OF VISUAL ART IN PUBLIC PLACES, INCLUDING ART DEVELOPED IN CONJUNCTION WITH CITY CONSTRUCTION PROJECTS

WHEREAS, the cultivation and development of a livable community is enhanced by the presence of works of art and creative expression available for the enjoyment of all citizens; and

WHEREAS, in 1985, the City Council adopted Ordinance No. 5603-N.S., Berkeley Municipal Code Chapter 6.14, to promote the cultivation and creation of works of visual art in public places; and

WHEREAS, in 1980, the City Council adopted Ordinance No. 5253-N.S., Berkeley Municipal Code Chapter 3.12, establishing the Civic Arts Commission, and charged it with a variety of duties related to fostering programs for the cultural enrichment of the City; and

WHEREAS, the development of the physical infrastructure of the City provides numerous opportunities for creative expression by integrating artistic features into said infrastructure; and

WHEREAS, developing works of art in conjunction with City construction projects can contribute elements of beauty and creativity to all neighborhoods of the City; and

WHEREAS, a successful City-wide program to foster the development of works of art requires the collaboration of various City departments which are commonly involved in the construction of public improvements, the City Manager, the Civic Arts Commission and members of the community; and

WHEREAS, in those circumstances in which it is not feasible to incorporate artistic features into a particular public improvement, the public interest will be served by allocating sufficient funding to develop works of art separate from the public improvement; and

WHEREAS, the terms of this Resolution should be applied in a manner consistent with the requirements of Chapters 3.12 and 6.14 of the Berkeley Municipal Code.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

Section 1. DEFINITIONS

“Administrative Costs” shall mean the expenditures necessary for implementation of the requirements of this Resolution, including, but not limited to, project management, soliciting proposals, public education, promotion, maintenance and risk management.

“Annual City Public Art Plan” shall mean the annual planning document which sets forth goals and objectives for development of works of art, including, art developed in conjunction with City construction projects during that Fiscal Year and any expenditures from the City’s Public Art Fund.

“Artist” shall mean a person who has completed works of art which meet contemporary artistic standards prevailing in major metropolitan areas.

“City Manager” shall mean the City Manager or his, or her, designee.

“Eligible Capital Project” shall mean any improvement to public property which the City Manager has approved for application of the requirements of this Resolution. This term shall not be interpreted to include any improvement for which the source of funding, or any applicable law or regulation, prohibits or restricts the use of funds for the purposes of this Resolution.

“Public Art Element” shall mean that component, feature, characteristic, or portion of a public improvement incorporated for artistic purposes.

“Public Art Fund” shall mean the budget account established by the City for receipt of funds derived from Eligible Capital Projects which may be expended for the purpose of incorporating artistic elements into public improvements or acquiring, creating, installing, presenting or displaying Off-Site Works of Art.

“Project Budget” shall mean the costs attributable to constructing a public improvement subject to the terms of this Resolution, including, construction, hazardous materials abatement, and procurement of goods intended for incorporation into the improvement. Project Budget shall not be interpreted to include costs associated with land use planning consultants, feasibility studies, environmental review, land acquisition costs, legal fees, architecture/engineering costs, construction management, geotechnical surveys, and historical surveys.

“Off-Site Work of Art” shall mean Works of Art as defined in Chapter 6.14 of the Berkeley Municipal Code which are acquired, created, installed, presented or displayed at a location other than the site of the Eligible Capital Project from which funds were derived under Section III of this Resolution.

Section 2. ANNUAL PLANNING

A. As part of the City’s budget process, the City Manager shall submit to the Civic Arts Commission a report identifying all public improvements which satisfy both of the following criteria: 1) expenditures will be made from the Project Budget during the following budget cycle, and 2) designation as an Eligible Capital Project would not result in detriment to the project.

B. Pursuant to Chapter 6.14 of the Berkeley Municipal Code, the Civic Arts Commission shall thereafter assign a different rank to each public improvement identified pursuant to Section A above based on the potential benefits to the community of designating the improvement as an Eligible Capital Project.

C. Pursuant to Chapter 6.14 of the Berkeley Municipal Code, the Civic Art Commission shall issue to the City Manager an Annual City Public Art Plan presenting its recommendations: 1) for public improvement projects which should be designated as Eligible Capital Projects, and 2) any expenditures from the Public Art Fund for the acquisition, creation, installation, presentation or display of Off-Site Works of Art during that Fiscal Year. The Annual City Public Art Plan shall include an explanation of the benefits and detriments, if any, associated with each proposal.

D. The City Manager shall then identify which, if any, of the recommended public improvements shall be finally designated as Eligible Capital Projects for that Fiscal Year.

### Section 3. FUNDING

A. A sum equal to one percent (1%) of the Project Budget for each Eligible Capital Project shall be transferred to the Public Art Fund and utilized solely to develop and install a work of art integrated into the completed improvement, regardless of whether it contributes to the purpose and function of the improvement, including, but not limited to, color, shape, design, texture, general appearance, or decoration which is designed and constructed integrally with the public improvement itself.

B. In addition to the amount specified in Section III(A), above, a sum equal to one half percent (0.5%) of the Project Budget for each Eligible Capital Project shall be transferred to the Public Art Fund and utilized solely for Administrative Costs.

C. Funds designated for the Public Art Fund shall be transferred not later than the date on which funds for the Project Budget have been encumbered.

D. In the event that the final cost of designing and constructing the Public Art Element is less than one and one half percent (1.5%) of the Project Budget, the unused funds will be retained in the Public Art Fund and utilized for the creation of Off-Site Works of Art.

E. In the event that the Eligible Capital Project will result in a public improvement which is inaccessible to the public, such as an underground structure, or for which it is not feasible to incorporate the Public Art Element, the funds designated for the Public Art Element shall be transferred to the Public Art Fund and may be used for the creation of Off-Site Works of Art.

Section 4. MANAGEMENT OF PUBLIC ART ELEMENT

The City Manager is authorized to manage the development and implementation of the Public Art Element in accordance with Chapter 6.14 of the Berkeley Municipal Code governing Visual Art in Public Places. The City Manager may use any reasonably efficient means and methods to design a Public Art Element, including, but not limited to, the following:

- A. Retain an artist to design the Public Art Element independently of the architects/engineers who are responsible for designing the public improvement.
- B. Require as part of the selection process that the architects/engineers who are responsible for designing the public improvement retain an artist as a functioning member of the design team to design the Public Art Element concurrently with the design of the public improvement.
- C. Require as part of the competitive solicitation process that the contractor responsible for building the public improvement retain an artist to design the Public Art Element.

Section 5. PUBLIC ART FUND

- A. The City Manager shall establish budget accounts to receive funds transferred pursuant to Sections III(A) and (B), above. Monies in the Public Art Fund, if not expended in any particular Fiscal Year, shall be carried over to the next Fiscal Year, unless the source of the funds, or applicable laws or regulations, prohibit such action. Generally accepted accounting principles will be utilized to ensure that the funds are utilized in a manner consistent with this Resolution.
- B. Nothing herein shall be interpreted to prohibit the City from soliciting and receiving grants, donations, bequests, or gifts from any source, public or private, for deposit in the Public Art Fund to be expended in a manner consistent with this Resolution.
- C. Monies in the Public Art Fund shall not be expended for the purposes of awarding grants to artists or arts organizations under City Council Resolution No. 55,832-N.S.

Section 6. OFF-SITE WORKS OF ART

- A. Pursuant to Section 3.12.060(F) of the Berkeley Municipal Code, the Civic Arts Commission shall review and make recommendations for expenditures from the Public Art Fund for the acquisition, creation, installation, presentation or display of Off-Site Works of Art.
- B. The City Manager shall manage the acquisition, creation, installation, presentation and display of Off-Site Works of Art.

Section 7. GRANTS

All City departments shall include in any application for grant funds for an Eligible Capital Project an amount sufficient for the Public Art Element, unless said inclusion would be detrimental to the City.

Section 8. RULES AND REGULATIONS

It is the intent of the City Council to allow the City Manager flexibility in attaining the goals of this Resolution; therefore, the City Manager is authorized to establish rules and regulations consistent with the intent of this Resolution and the Berkeley Municipal Code for the purposes of implementing this Resolution.

Section 9. EFFECTIVE DATE

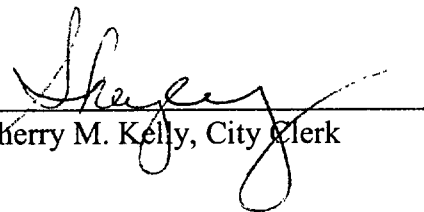
This resolution shall become effective June 1, 1999.


The foregoing Resolution was adopted by the Berkeley City Council on May 25, 1999 by the following vote:

Ayes: Councilmembers Armstrong, Breland, Maio, Olds, Shirek, Spring, Woolley, Worthington and Mayor Dean.

Noes: None.

Absent: None.

Attest:   
Sherry M. Kelly, City Clerk

  
Shirley Dean, Mayor





Office of Economic Development

December 26, 2019

To: David White, Deputy City Manager  
 From: Jordan Klein, Economic Development Manager  
 Subject: Public Art Funding from City of Berkeley Construction Projects

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### *Introduction*

Over the past five years, the annual contribution to the Public Art Fund has decreased, even as the City's Capital Improvement Program (CIP) budget has generally increased (see Table 1).

The Civic Arts Commission has requested that staff provide clear and transparent information regarding the determination of the Public Art Fund budget, and that the City Auditor audit the determination of the Public Art Fund budget. In response, the Office of Economic Development, working in collaboration with staff from the Budget Division in the City Manager's Office, the Public Works Department (PW) and the Parks, Recreation, and Waterfront Department (PRW), has prepared this memo to (1) summarize the current situation regarding funding for the City of Berkeley's public art program; (2) identify outstanding issues regarding the Public Art program budgeting; and (3) make recommendations for near-term and longer-term actions to address those issues.

Table 1: CIP and Public Art Budget, 2016-2021

Fiscal Year	Capital Improvement Plan, Original Budget	Public Art Fund, Original Budget <sup>1</sup>
2021	\$59,765,721	\$65,164
2020	111,962,162	65,164
2019	39,926,908	65,164
2018	81,571,653	69,364
2017	32,908,296	70,940
2016	36,151,639	71,502

### *Background*

On June 1, 1999, the Berkeley City Council adopted Resolution No. 60,048-N.S. (Attachment 1, hereafter referenced as 'the 1999 Resolution'), thereby establishing the City's current public art policy and program, and the Public Art Fund.<sup>2</sup> Under this policy and program, each of the City of Berkeley's eligible capital projects must dedicate 1.5% of the project's construction costs for the commissioning of a public art element for incorporation into the project, or to contribute an equivalent amount to the City's Public Art Fund for the creation of off-site works of public art.

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1: This table does not include the public art contribution for the Center Street Garage, which comprised fund transfers to the Public Art Fund in FY2017 (\$222,860) and FY2019 (\$51,924), and design and construction of the Cube Gallery (\$106,060).

2: In 2017 the City of Berkeley established the Public Art in Private Development policy and program, which requires qualifying private development projects to either incorporate a public art element or pay an in lieu fee to the Private Percent for Art fund. That program is distinct from the program described in this memo.

The 1999 Resolution establishes that as part of the development of the City’s budget, City staff should engage with the Civic Arts Commission in a planning process to determine the list of eligible capital projects; the ultimate determination of the list is left to the discretion of the City Manager. It also notes that the policy should not be applied to “any improvement for which the source of funding, or any applicable law or regulation, prohibits or restricts the use of funds for [public art].” The Resolution also establishes that a project’s ‘soft costs’—including project management, architectural and engineering costs, planning costs, environmental review, legal fees, and feasibility studies—are not eligible for application of the policy.

In practice, the Budget Office has determined an annual contribution to the Public Art Fund by applying the 1.5% calculation to the original budget figures for a limited number of capital funding sources and project categories. For some (but not all) of those ‘off the top’ funding contributions, a deduction is made for soft costs. The vast majority of public art projects are implemented as off-site works of art. For some major capital projects (including Center Street Garage as the most recent example), the determination of the public art contribution is determined at the project level, and the funding is used for an on-site public art element, a supplemental contribution to the Public Art Fund, or a combination of the two approaches.

#### *Staff Review of 2020 CIP and Public Art Budget*

Office of Economic Development (OED) staff, in consultation with staff from the Budget Office, PW, and PRW, reviewed the Fiscal Year (FY) 2020 capital program by project, together with the FY 2020 Public Art Fund calculation spreadsheet provided by the Budget Office, to determine which projects had been identified as eligible capital projects for application of the public art requirement, and which projects had been excluded (see Attachment 2). Staff found the following:

- FY 2020 eligible capital projects. The following list includes those projects that were funded by expense accounts from which a contribution to the Public Art Fund was made.
  - ADA Building Improvements
  - FY 2020 Street Rehabilitation Projects
  - ADA Curb Ramp Repairs
  - Traffic Calming Program
  - Finger Dock & Piling Replacement
  - Rose Garden-Phase II
  - San Pablo Play Structure
  - West Campus Pool Filter
  - George Florence Play Equipment
  - King School Play Area
  - Ohlone Basketball Court
  - Parks Minor Maintenance Projects
  - Public Works Building Maintenance Projects

The total budget amount for these projects is \$4,894,278, or 4.4% of the total FY 2020 CIP budget. Capital Planning staff observed that the budgets for several of these projects include soft costs; thus if the guidelines established in the Resolution were more strictly enforced, it could result in a reduction of the Public Art Fund contribution.

- Staff identified the following capital projects that could be eligible for application of the public art policy, but to which the policy has not yet been applied.
  - EV Charging stations (\$600,000)
  - Police Parking Marina facility (\$481,570)

- Sacramento Street Complete Street Project (\$47,000)
- Telegraph Channing Elevator Replacement (\$300,000)

The total budget for these projects is \$1,428,570. Application of the public art policy would require a contribution of up to \$21,429 to the Public Art Fund.<sup>3</sup>

- Many of the funding streams that are used to finance CIP projects prohibit the use of funds for public art projects. These funding streams include state and regional gas taxes (e.g., Measure B, Measure BB, and Vehicle Registration Fees), special property assessments (e.g., Street Lighting Fee, Sanitary Sewer Fee, Storm Drain Fee), certain grant funds, development agreement proceeds, and insurance claims for camp repairs. In FY 2020, these funding streams accounted for \$79,730,929, or 71.2% of the total CIP budget.
- Sixteen CIP projects, totaling \$14,106,220 or 12.6% of the total CIP budget, are funded through Measure T1 Bond proceeds. One (1) percent of the total bond proceeds have been dedicated to public art projects; those funds are managed separately from the general Public Art Fund, and are being used to implement public art projects at North Berkeley Senior Center and San Pablo Park. The Civic Arts Commission has expressed frustration and disappointment that the public art contributed was calculated at 1% rather than 1.5% in accordance with the 1999 Resolution.

In staff's review of the CIP, we noted that some of the Measure T1 Bond proceeds are being used to fund non-construction projects (e.g., conceptual plans and studies) and project management costs. In addition, each of the construction projects has associated soft costs that are ineligible for application of the public art policy. Therefore, if staff used the 1999 Resolution methodology (1.5% of construction costs) rather than the current methodology (1% of total bond proceeds), the resulting contribution to public art might actually be less.

- The CIP includes non-construction projects and soft costs that are ineligible for application of the public art policy, including debt service, vehicle and other equipment replacement, software, and design and engineering costs. In FY 2020 the budget for these projects totaled \$10,116,148, or 9.0% of the total CIP budget.

### *Outstanding Issues*

- The process for calculation of the annual contribution to the Public Art Fund that is outlined in the 1999 Resolution is not compatible with the City's other regular processes for budgeting and capital planning. The consensus among staff—including staff from the Civic Arts program, PW and PRW capital planning, and Budget Office—is that except for major projects (e.g., projects greater than \$10 million) the Budget Office's current process (a flat application to qualifying funding streams and project categories) should be maintained.
- Staff also observes that budget appropriations that occur in November and spring typically exclude funds for the public art program. At least two of the FY 2020 projects noted above, where the public art requirement has not been applied but may warrant application, fall into this category – Police Parking Marina Facility, and Sacramento Street Complete Streets.

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3: The total budget for these projects (\$1,428,570) may include soft costs, or other costs that are ineligible for application of the public art calculation. Those costs would need to be excluded from the calculation, which could reduce the Public Art Fund contribution.

- Actual expenditures on major projects sometimes exceed budgeted amounts, and those additions are often excluded from the public art program. For example, actual expenditures on construction of the Center Street Garage increased by roughly \$5.4 million over the originally budgeted expenditures; however, the project's public art contribution was calculated based on the original budget. The project's compliance with the public art policy required an additional contribution of \$81,306 to the Public Art Fund, which was allocated by City Council on December 3, 2019.
- The public art policy was applied to the majority of, but not all, maintenance projects and expenditures from qualifying funding sources. Capital planning staff noted the vast deferred maintenance needs of the City's infrastructure and capital assets, and the urgent need to direct as much funding as possible towards the completion of those projects. Parks staff observed that the application of the policy to Measure F funds expended on 'Minor Maintenance' projects is incorrect and should be reversed for FY21.

Civic Arts program staff noted that the City's public art collection also suffers from deferred maintenance issues, and that there is a nexus for application of the public art policy to expenditures on maintenance projects in order to provide a reliable funding source for collection maintenance.

### *Recommendations*

The following near-term and mid-term activities could address and resolve the outstanding issues identified above.

#### Near-term actions:

- Include allocations to the Public Art Fund, for the purpose of bringing the projects referenced above into compliance with the public art policy, for inclusion in the mid-cycle budget update. This would include an allocation of \$21,429 to the Public Art Fund for the EV Charging Stations, Police Parking Marina facility, Sacramento Street Complete Street Project, and Telegraph Channing Elevator Replacement.
- Establish as a regular practice that staff from the Budget Office, Civic Arts Program, and PW and PRW capital planning teams engage twice per year to review and plan for public art policy implementation.
- Incorporate into any mid-year budget expenditures on capital projects a review by Budget Office staff for public art policy applicability.
- Consider whether and how the policy should be applied to minor maintenance projects (versus major projects and new improvements).

#### Longer-term actions:

- Amend the 1999 Resolution to update the public art policy, in collaboration with the City Manager's Office, Capital Planning staff from PW and PRW, and the Civic Arts Commission, and with careful consideration of the following:

- Update the process and timing for the determination of the annual contribution to the Public Art Fund to be better aligned with the City's budgeting and capital planning processes, and with consideration of staffing and budget constraints.
- Establish more clear criteria to determine which projects and capital funding sources are eligible for application of the public art policy, especially with regards to expenditures on maintenance and repairs.
  
- Establish as a regular practice that grant applications for capital projects include expenditures on public art in the proposed budget, whenever possible without jeopardizing the application.
  
- For future bond measures for public construction projects, ensure that the public art policy is appropriately incorporated into the final bond language.

Attachments:

- 1- Resolution No. 60,048-N.S. Establishing the Percent for Art Program
- 2- FY2020 Capital Improvement Plan Budgeted Expenditures By Project By Fund, with Percent for Art Applicability

Cc:

Paul Buddenhagen, Deputy City Manager  
Teresa Berkeley-Simmons, Budget Manager  
Scott Ferris, Director, Parks, Recreation & Waterfront  
Phil Harrington, Director, Public Works  
Civic Arts Commission

RESOLUTION NO. 60,048-N.S.

ESTABLISHING A PROGRAM TO FUND THE DEVELOPMENT OF VISUAL ART IN PUBLIC PLACES, INCLUDING ART DEVELOPED IN CONJUNCTION WITH CITY CONSTRUCTION PROJECTS

WHEREAS, the cultivation and development of a livable community is enhanced by the presence of works of art and creative expression available for the enjoyment of all citizens; and

WHEREAS, in 1985, the City Council adopted Ordinance No. 5603-N.S., Berkeley Municipal Code Chapter 6.14, to promote the cultivation and creation of works of visual art in public places; and

WHEREAS, in 1980, the City Council adopted Ordinance No. 5253-N.S., Berkeley Municipal Code Chapter 3.12, establishing the Civic Arts Commission, and charged it with a variety of duties related to fostering programs for the cultural enrichment of the City; and

WHEREAS, the development of the physical infrastructure of the City provides numerous opportunities for creative expression by integrating artistic features into said infrastructure; and

WHEREAS, developing works of art in conjunction with City construction projects can contribute elements of beauty and creativity to all neighborhoods of the City; and

WHEREAS, a successful City-wide program to foster the development of works of art requires the collaboration of various City departments which are commonly involved in the construction of public improvements, the City Manager, the Civic Arts Commission and members of the community; and

WHEREAS, in those circumstances in which it is not feasible to incorporate artistic features into a particular public improvement, the public interest will be served by allocating sufficient funding to develop works of art separate from the public improvement; and

WHEREAS, the terms of this Resolution should be applied in a manner consistent with the requirements of Chapters 3.12 and 6.14 of the Berkeley Municipal Code.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

Section 1. DEFINITIONS

“Administrative Costs” shall mean the expenditures necessary for implementation of the requirements of this Resolution, including, but not limited to, project management, soliciting proposals, public education, promotion, maintenance and risk management.

“Annual City Public Art Plan” shall mean the annual planning document which sets forth goals and objectives for development of works of art, including, art developed in conjunction with City construction projects during that Fiscal Year and any expenditures from the City’s Public Art Fund.

“Artist” shall mean a person who has completed works of art which meet contemporary artistic standards prevailing in major metropolitan areas.

“City Manager” shall mean the City Manager or his, or her, designee.

“Eligible Capital Project” shall mean any improvement to public property which the City Manager has approved for application of the requirements of this Resolution. This term shall not be interpreted to include any improvement for which the source of funding, or any applicable law or regulation, prohibits or restricts the use of funds for the purposes of this Resolution.

“Public Art Element” shall mean that component, feature, characteristic, or portion of a public improvement incorporated for artistic purposes.

“Public Art Fund” shall mean the budget account established by the City for receipt of funds derived from Eligible Capital Projects which may be expended for the purpose of incorporating artistic elements into public improvements or acquiring, creating, installing, presenting or displaying Off-Site Works of Art.

“Project Budget” shall mean the costs attributable to constructing a public improvement subject to the terms of this Resolution, including, construction, hazardous materials abatement, and procurement of goods intended for incorporation into the improvement. Project Budget shall not be interpreted to include costs associated with land use planning consultants, feasibility studies, environmental review, land acquisition costs, legal fees, architecture/engineering costs, construction management, geotechnical surveys, and historical surveys.

“Off-Site Work of Art” shall mean Works of Art as defined in Chapter 6.14 of the Berkeley Municipal Code which are acquired, created, installed, presented or displayed at a location other than the site of the Eligible Capital Project from which funds were derived under Section III of this Resolution.

Section 2. ANNUAL PLANNING

A. As part of the City’s budget process, the City Manager shall submit to the Civic Arts Commission a report identifying all public improvements which satisfy both of the following criteria: 1) expenditures will be made from the Project Budget during the following budget cycle, and 2) designation as an Eligible Capital Project would not result in detriment to the project.

B. Pursuant to Chapter 6.14 of the Berkeley Municipal Code, the Civic Arts Commission shall thereafter assign a different rank to each public improvement identified pursuant to Section A above based on the potential benefits to the community of designating the improvement as an Eligible Capital Project.

C. Pursuant to Chapter 6.14 of the Berkeley Municipal Code, the Civic Art Commission shall issue to the City Manager an Annual City Public Art Plan presenting its recommendations: 1) for public improvement projects which should be designated as Eligible Capital Projects, and 2) any expenditures from the Public Art Fund for the acquisition, creation, installation, presentation or display of Off-Site Works of Art during that Fiscal Year. The Annual City Public Art Plan shall include an explanation of the benefits and detriments, if any, associated with each proposal.

D. The City Manager shall then identify which, if any, of the recommended public improvements shall be finally designated as Eligible Capital Projects for that Fiscal Year.

### Section 3. FUNDING

A. A sum equal to one percent (1%) of the Project Budget for each Eligible Capital Project shall be transferred to the Public Art Fund and utilized solely to develop and install a work of art integrated into the completed improvement, regardless of whether it contributes to the purpose and function of the improvement, including, but not limited to, color, shape, design, texture, general appearance, or decoration which is designed and constructed integrally with the public improvement itself.

B. In addition to the amount specified in Section III(A), above, a sum equal to one half percent (0.5%) of the Project Budget for each Eligible Capital Project shall be transferred to the Public Art Fund and utilized solely for Administrative Costs.

C. Funds designated for the Public Art Fund shall be transferred not later than the date on which funds for the Project Budget have been encumbered.

D. In the event that the final cost of designing and constructing the Public Art Element is less than one and one half percent (1.5%) of the Project Budget, the unused funds will be retained in the Public Art Fund and utilized for the creation of Off-Site Works of Art.

E. In the event that the Eligible Capital Project will result in a public improvement which is inaccessible to the public, such as an underground structure, or for which it is not feasible to incorporate the Public Art Element, the funds designated for the Public Art Element shall be transferred to the Public Art Fund and may be used for the creation of Off-Site Works of Art.



Section 4. MANAGEMENT OF PUBLIC ART ELEMENT

The City Manager is authorized to manage the development and implementation of the Public Art Element in accordance with Chapter 6.14 of the Berkeley Municipal Code governing Visual Art in Public Places. The City Manager may use any reasonably efficient means and methods to design a Public Art Element, including, but not limited to, the following:

- A. Retain an artist to design the Public Art Element independently of the architects/engineers who are responsible for designing the public improvement.
- B. Require as part of the selection process that the architects/engineers who are responsible for designing the public improvement retain an artist as a functioning member of the design team to design the Public Art Element concurrently with the design of the public improvement.
- C. Require as part of the competitive solicitation process that the contractor responsible for building the public improvement retain an artist to design the Public Art Element.

Section 5. PUBLIC ART FUND

- A. The City Manager shall establish budget accounts to receive funds transferred pursuant to Sections III(A) and (B), above. Monies in the Public Art Fund, if not expended in any particular Fiscal Year, shall be carried over to the next Fiscal Year, unless the source of the funds, or applicable laws or regulations, prohibit such action. Generally accepted accounting principles will be utilized to ensure that the funds are utilized in a manner consistent with this Resolution.
- B. Nothing herein shall be interpreted to prohibit the City from soliciting and receiving grants, donations, bequests, or gifts from any source, public or private, for deposit in the Public Art Fund to be expended in a manner consistent with this Resolution.
- C. Monies in the Public Art Fund shall not be expended for the purposes of awarding grants to artists or arts organizations under City Council Resolution No. 55,832-N.S.

Section 6. OFF-SITE WORKS OF ART

- A. Pursuant to Section 3.12.060(F) of the Berkeley Municipal Code, the Civic Arts Commission shall review and make recommendations for expenditures from the Public Art Fund for the acquisition, creation, installation, presentation or display of Off-Site Works of Art.
- B. The City Manager shall manage the acquisition, creation, installation, presentation and display of Off-Site Works of Art.

Section 7. GRANTS

All City departments shall include in any application for grant funds for an Eligible Capital Project an amount sufficient for the Public Art Element, unless said inclusion would be detrimental to the City.

Section 8. RULES AND REGULATIONS

It is the intent of the City Council to allow the City Manager flexibility in attaining the goals of this Resolution; therefore, the City Manager is authorized to establish rules and regulations consistent with the intent of this Resolution and the Berkeley Municipal Code for the purposes of implementing this Resolution.

Section 9. EFFECTIVE DATE

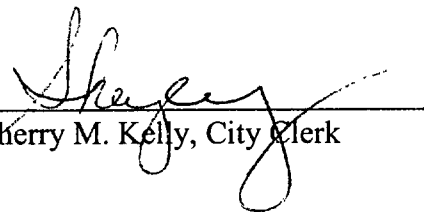
This resolution shall become effective June 1, 1999.


The foregoing Resolution was adopted by the Berkeley City Council on May 25, 1999 by the following vote:

Ayes: Councilmembers Armstrong, Breland, Maio, Olds, Shirek, Spring, Woolley, Worthington and Mayor Dean.

Noes: None.

Absent: None.

Attest:   
Sherry M. Kelly, City Clerk

  
Shirley Dean, Mayor

Citywide Capital Program By Project, with Public Art Requirement Applicability

Citywide Capital Program by Project, by Fund								
Public Art Policy Applicability								
Fund	Category	Project Name		FY2020 Total	Funds Eligible for Public Art Policy Application	Ineligible Funds	Notes / Rationale for Ineligibility	FY2020 Public Art Fund Contribution
	Transportation	Pavement Markings (incl. Roadway Thermo Marking)		\$ 50,000	\$ -	\$ 50,000	Funded by Excess Property Transfer Tax	\$ -
		EV Charging Stations @ Corp Yard and Marina		\$ 600,000	\$ -	\$ 600,000	Funded by Excess Property Transfer Tax; may warrant policy application	\$ -
<b>10 Total</b>	<b>General Fund</b>			<b>\$ 650,000</b>	<b>\$ -</b>	<b>\$ 650,000</b>		<b>\$ -</b>
330	PRW	Berkeley Tuolumne Camp (BTC)		\$ 49,795,822	\$ -	\$ 49,795,822	Funding source prohibition	\$ -
		Cazadero Camp - Landslide Repair		\$ 854,306	\$ -	\$ 854,306	Funding source prohibition	\$ -
<b>330 Total</b>	<b>Camp Fund</b>			<b>\$ 50,650,128</b>	<b>\$ -</b>	<b>\$ 50,650,128</b>		<b>\$ -</b>
369	Unallocated	Transportation	Traffic Calming Devices Replacement & Maintenance	\$ 50,000	\$ -	\$ 50,000	Funding source prohibition	\$ -
369		Streets	Street Rehabilitation FY 2020 State Transportation Tax	\$ 445,303	\$ -	\$ 445,303	Funding source prohibition	\$ -
			Street Rehabilitation FY 2020 SB1	\$ 1,500,000	\$ -	\$ 1,500,000	Funding source prohibition	\$ -
			Street Rehabilitation FY 2021 State Transportation Tax	\$ 50,000	\$ -	\$ 50,000	Funding source prohibition	\$ -
<b>369 Total</b>	<b>Gas Tax</b>			<b>\$ 2,045,303</b>	<b>\$ -</b>	<b>\$ 2,045,303</b>		<b>\$ -</b>
			Pavement Marking Program	\$ 150,000	\$ -	\$ 150,000	Funding source prohibition	\$ -
391		Streets	Street Rehabilitation FY2020	\$ 700,000	\$ -	\$ 700,000	Funding source prohibition	\$ -
<b>391 Total</b>	<b>Measure B LS&amp;R</b>			<b>\$ 850,000</b>	<b>\$ -</b>	<b>\$ 850,000</b>		<b>\$ -</b>
392			Milvia Bikeway Project	\$ 76,000	\$ -	\$ 76,000	Funding source prohibition	\$ -
392			Citywide Bicycle Parking	\$ 13,334	\$ -	\$ 13,334	Funding source prohibition	\$ -
392			Transportation Impact Fee Nexus Study & Transportation Impact Study Guidelines	\$ 28,183	\$ -	\$ 28,183	Funding source prohibition	\$ -
			Bike & Ped CIP (Contingency)	\$ 75,000	\$ -	\$ 75,000	Funding source prohibition	\$ -
<b>392 Total</b>	<b>Measure B B&amp;P</b>			<b>\$ 192,517</b>	<b>\$ -</b>	<b>\$ 192,517</b>		<b>\$ -</b>

Citywide Capital Program By Project, with Public Art Requirement Applicability

Fund	Category	Project Name	FY2020 Total	Funds Eligible for Public Art Policy Application	Ineligible Funds	Notes / Rationale for Ineligibility	FY2020 Public Art Fund Contribution
397	Streets	Street Rehabilitation FY2020	\$ 155,000	\$ -	\$ 155,000	Funding source prohibition	\$ -
397	Sidewalks	Proactive and Responsive Sidewalk Repair Projects	\$ 200,000		\$ 200,000	Funding source prohibition	\$ -
<b>397 Total</b>	<b>Measure F</b>		<b>\$ 355,000</b>		<b>\$ 355,000</b>		<b>\$ -</b>
406	Transportation	San Pablo/Ashby Intersection Traffice Signal Improvements	\$ 76,000	\$ -	\$ 76,000	Funding source prohibition	\$ -
406	Streets	Street Rehabilitation FY2020 - BB LSR Sales Tax	\$ 2,200,000	\$ -	\$ 2,200,000	Funding source prohibition	\$ -
406	Sidewalks	Proactive and Responsive Sidewalk Repair Projects	\$ 100,000	\$ -	\$ 100,000	Funding source prohibition	\$ -
406	Transportation	Traffic Calming Program	\$ 50,000	\$ -	\$ 50,000	Funding source prohibition	\$ -
406	Transportation	Traffic Signal Maintenance	\$ 250,000	\$ -	\$ 250,000	Funding source prohibition	\$ -
406	Transportation	Transportation Impact Fee Nexus Study & Transportation Impact Study Guidelines	\$ 28,183	\$ -	\$ 28,183	Funding source prohibition	\$ -
<b>406 Total</b>	<b>Measure BB LS&amp;R</b>		<b>\$ 2,704,183</b>	<b>\$ -</b>	<b>\$ 2,704,183</b>		<b>\$ -</b>
407	Transportation	Shattuck Reconfiguration	\$ 118,354	\$ -	\$ 118,354	Funding source prohibition	\$ -
407	Transportation	Ninth Street Pathway Phase II	\$ 83,557	\$ -	\$ 83,557	Funding source prohibition	\$ -
407		San Pablo/Ashby Intersection Traffice Signal Improvements	\$ 110,000	\$ -	\$ 110,000	Funding source prohibition	\$ -
407		Sacramento St./North Berkeley BART Complete Sts	\$ 273,253	\$ -	\$ 273,253	Funding source prohibition	\$ -
407		Citywide Bicycle Parking	\$ 26,664	\$ -	\$ 26,664	Funding source prohibition	\$ -
<b>407 Total</b>	<b>Mesure BB B&amp;P</b>		<b>\$ 611,828</b>	<b>\$ -</b>	<b>\$ 611,828</b>		<b>\$ -</b>
450		Minor Maintenance	\$ 550,000	\$ 412,500	\$ 137,500	Soft costs excluded	\$ 6,188
450		Gilman Reserve/ Facility Assmt./ Sewer-Laterals	\$ 100,000	\$ 75,000	\$ 25,000	Soft costs excluded	\$ 1,125
450		W. Campus Pool Filter	\$ 175,000	\$ 131,250	\$ 43,750	Soft costs excluded	\$ 1,969
450		Rose Garden-Phase II (see Meas. T1 proj wksht)	\$ 50,000	\$ 37,500	\$ 12,500	Soft costs excluded	\$ 563
450		San Pablo Play Equipment (see Meas. T1 proj wksht)	\$ 200,000	\$ 150,000	\$ 50,000	Soft costs excluded	\$ 2,250
450		George Florence Play Equipment (see Meas. T1 proj wksht)	\$ 125,000	\$ 93,750	\$ 31,250	Soft costs excluded	\$ 1,406
450		King School Park Play Area	\$ 50,000	\$ 37,500	\$ 12,500	Soft costs excluded	\$ 563
450		Ohlone Basketball	\$ 300,000	\$ 225,000	\$ 75,000	Soft costs excluded	\$ 3,375
<b>450 Total</b>	<b>Parks Tax</b>		<b>\$ 1,550,000</b>	<b>\$ 1,162,500</b>	<b>\$ 387,500</b>		<b>\$ 17,438</b>

Citywide Capital Program By Project, with Public Art Requirement Applicability

Fund	Category	Project Name	FY2020 Total	Funds Eligible for Public Art Policy Application	Ineligible Funds	Notes / Rationale for Ineligibility	FY2020 Public Art Fund Contribution	
607	T1	PRW	AQUATIC PARK TIDE TUBES	\$ 220,835	\$ -	\$ 220,835	1% for Public Art Accounted Separately	\$ -
607		PRW	FRANCES ALBRIER COMMUNITY CENTER	\$ 425,000	\$ -	\$ 425,000	1% for Public Art Accounted Separately	\$ -
607		PRW	GROVE PARK PHASE 2	\$ 880,325	\$ -	\$ 880,325	1% for Public Art Accounted Separately	\$ -
607		PRW	LIVE OAK COMMUNITY CENTER	\$ 4,232,106	\$ -	\$ 4,232,106	1% for Public Art Accounted Separately	\$ -
607		PRW	UNIVERSITY AVE,MARINA,SPINNAKER ST	\$ 83,022	\$ -	\$ 83,022	1% for Public Art Accounted Separately	\$ -
607		PRW	MUNICIPAL PIER	\$ 2,056,908	\$ -	\$ 2,056,908	1% for Public Art Accounted Separately	\$ -
607		PRW	GEORGE FLORENCE PLAY STRUC	\$ 531,703	\$ -	\$ 531,703	1% for Public Art Accounted Separately	\$ -
607		PRW	SAN PABLO PLAY EQUIP	\$ 1,056,715	\$ -	\$ 1,056,715	1% for Public Art Accounted Separately	\$ -
607		PRW	STRAWBERRY CREEK PARK PH 2	\$ 1,131,389	\$ -	\$ 1,131,389	1% for Public Art Accounted Separately	\$ -
607		PRW	ROSE GRDN PTHWAYS,TENNIS CRT,PERG	\$ 345,835	\$ -	\$ 345,835	1% for Public Art Accounted Separately	\$ -
607		PRW	GILMAN N. FLDHOSE/RSTRM	\$ 172,025	\$ -	\$ 172,025	1% for Public Art Accounted Separately	\$ -
607		PRW	WILLARD CLUBHOUSE RENO	\$ 197,025	\$ -	\$ 197,025	1% for Public Art Accounted Separately	\$ -
607		Facilities	Veteran's Building	\$ 148,215	\$ -	\$ 148,215	1% for Public Art Accounted Separately	\$ -
607			Corporation Yard	\$ 50,467	\$ -	\$ 50,467	1% for Public Art Accounted Separately	\$ -
607			Public Safety Building	\$ 19,762	\$ -	\$ 19,762	1% for Public Art Accounted Separately	\$ -
607		Streets	Street Rehabilitation FY 2020	\$ 2,554,888	\$ -	\$ 2,554,888	1% for Public Art Accounted Separately	\$ -
<b>607 Total</b>	<b>T1 Bonds</b>			<b>\$ 14,106,220</b>	<b>\$ -</b>	<b>\$ 14,106,220</b>		<b>\$ -</b>
609		IT	ERP Replacement Fund	\$ 2,734,552		\$ 2,734,552	Non-construction project	\$ -
<b>609 Total</b>	<b>ERP Replacement</b>			<b>\$ 2,734,552</b>		<b>\$ 2,734,552</b>		<b>\$ -</b>
891		IT	PC Replacement (PC-R) and Server Replacement	\$ 540,370		\$ 540,370	Non-construction project	\$ -
<b>891 Total</b>				<b>\$ 540,370</b>		<b>\$ 540,370</b>		<b>\$ -</b>

Citywide Capital Program By Project, with Public Art Requirement Applicability

Fund	Category	Project Name	FY2020 Total	Funds Eligible for Public Art Policy Application	Ineligible Funds	Notes / Rationale for Ineligibility	FY2020 Public Art Fund Contribution
610	Facilities	Roof Replacement	\$ 290,000	\$ 164,773	\$ 125,227	Emergency repairs and maintenance - included at approximately 58%	\$ 2,472
610		Building Assesment (Contingency)	\$ 70,000	\$ 39,773	\$ 30,227	Emergency repairs and maintenance - included at approximately 58%	\$ 597
610		Civic Center Carpet Replacement	\$ 440,000	\$ 250,000	\$ 190,000	Emergency repairs and maintenance - included at approximately 58%	\$ 3,750
610		Fire Station 6 Drill Tower	\$ 45,000	\$ 25,568	\$ 19,432	Emergency repairs and maintenance - included at approximately 58%	\$ 384
610		HazMat Storage Upgrade	\$ 35,000	\$ 19,886	\$ 15,114	Emergency repairs and maintenance - included at approximately 58%	\$ 298
610		Police Parking Enforcement Marina Facility and Parking Lot Improver	\$ 250,000		\$ 250,000	May warrant policy application	\$ -
610		ADA Building Improvements	\$ 100,000	\$ 100,000	\$ -		\$ 1,500
610	PRW	Rose Garden-Phase II	\$ 100,000	\$ 75,000	\$ 25,000	Soft costs excluded	\$ 1,125
610	PRW	San Pablo Play Structure	\$ 300,000	\$ 225,000	\$ 75,000	Soft costs excluded	\$ 3,375
610	Debt Svc	Ball Fields Acquisition Debt Service	\$ 249,971		\$ 249,971	Non-capital project	\$ -
610	Debt Svc	Animal Shelter Debt Service/2010 COP Animal Shelter	\$ 402,613		\$ 402,613	Non-capital project	\$ -
610	Debt Svc	Theater Debt Service	\$ 249,971		\$ 249,971	Non-capital project	\$ -
610	Debt Svc	University Ave. W/C Debt Service	\$ 406,952		\$ 406,952	Non-capital project	\$ -
610	Streets	Street Rehabilitation FY2020	\$ 1,825,050	\$ 1,725,000	\$ 100,050	Soft costs excluded	\$ 25,875
610		Street Rehabilitation FY2021	\$ 99,950	\$ -	\$ 99,950	Design costs	\$ -
610	5302-431-6520	Sidewalks	\$ 100,000	\$ -	\$ 100,000	Project deemed ineligible (sidewalk repairs)	\$ -
610		Sidewalks	\$ 500,000	\$ -	\$ 500,000	Project deemed ineligible (sidewalk repairs)	\$ -
610		Sidewalks	\$ 285,000		\$ 285,000	Project deemed ineligible (sidewalk repairs)	\$ -
610		Sidewalks	\$ 50,000		\$ 50,000	Project deemed ineligible (sidewalk repairs)	\$ -
610		Sidewalks	\$ 200,000	\$ 200,000	\$ -		\$ 3,000
610	Transportation	Bicycle Plan Implementation	\$ 119,278	\$ 119,278			\$ 1,789
610	Transportation	San Pablo/Ashby Intersections Improvements	\$ 606,662		\$ -	Bayer Mitigation \$ - Funding source prohibition	\$ -

Citywide Capital Program By Project, with Public Art Requirement Applicability

Fund	Category	Project Name	FY2020 Total	Funds Eligible for Public Art Policy Application	Ineligible Funds	Notes / Rationale for Ineligibility	FY2020 Public Art Fund Contribution
610	Transportation	Sacramento St Complete Streets/North Berkeley BART	\$ 47,000		\$ 47,000	May warrant policy application	\$ -
470	5307 Other Infrastructure	Coucil Supp. - Funding for Street Lighting	\$ 416,608		\$ 416,608	Property Fee - 218 Funding source prohibition	\$ -
	Other Infrastructure	Underground Utility Distrcit No. 48 Project	\$ 250,000		\$ 250,000	Placeholder for fire safety project w/PG&E; monies gathered from unspent fund balances (where art funds have already been taken), salary savings, etc.	\$ -
	Transportation	Traffic Calming Program	\$ 50,000	\$ 50,000	\$ -		\$ 750
<b>610 Total</b>	<b>Capital Improvement</b>		<b>\$ 7,489,055</b>	<b>\$ 2,994,278</b>	<b>\$ 4,494,777</b>	<b>Rama's spreadsheet for Public Art calculation shows \$2,994,278 from this fund. Please indicate which additional projects were included.</b>	<b>\$ 44,914</b>
613	Bay Area Air Quality	Citywide Bicycle Parking	\$ 60,000		\$ 60,000	Funding source prohibition	\$ -
<b>613 Total</b>			<b>\$ 60,000</b>		<b>\$ 60,000</b>		<b>\$ -</b>
642	Sidewalks	50/50 Program	\$ 100,000		\$ 100,000	Funding source prohibition (Money is from private property owners for sidewalk repairs)	\$ -
<b>642 Total</b>	<b>Private Party Sidewalk</b>		<b>\$ 100,000</b>		<b>\$ 100,000</b>		<b>\$ -</b>
		Milvia Bikeway Project	\$ 273,000		\$ 273,000	Funding source prohibition	\$ -
		Sacramento St./North Berkeley BART Complete Sts	\$ 1,364,202		\$ 1,364,202	Funding source prohibition	\$ -
		Southside Complete Streets	\$ 506,640		\$ 506,640	Funding source prohibition	\$ -
<b>674 Total</b>	<b>CALTRANS</b>		<b>\$ 2,143,842</b>		<b>\$ 2,143,842</b>		<b>\$ -</b>
820	Facilities	Transfer Station AirCo building upgrade for office use	\$ 385,000		\$ 385,000	Design, planning and other soft costs	\$ -
820	Facilities	Transfer Station Rebuild Final Geotechnical Site investigation to support engineering design	\$ 100,000		\$ 100,000	Design, planning and other soft costs	\$ -
		Solid Waste & Recycling Transfer Station Rebuild CEQA process	\$ 1,200,000		\$ 1,200,000	Design, planning and other soft costs	\$ -
<b>820 Total</b>	<b>Zero Waste</b>		<b>\$ 1,685,000</b>		<b>\$ 1,685,000</b>		<b>\$ -</b>



Citywide Capital Program By Project, with Public Art Requirement Applicability

Fund	Category	Project Name	FY2020 Total	Funds Eligible for Public Art Policy Application	Ineligible Funds	Notes / Rationale for Ineligibility	FY2020 Public Art Fund Contribution
825		Finger Dock & Piling Replacement	\$ 250,000	\$ 187,500	\$ 62,500	Soft costs excluded	\$ 2,813
825		Sewer Lateral Work	\$ 100,000		\$ 100,000		\$ -
825		Marina Debt Service	\$ 485,719		\$ 485,719	Non-capital project	\$ -
825	PRW	Minor Maintenance	\$ 150,000		\$ 150,000		\$ -
<b>825 Total</b>	<b>Marina Operations</b>		<b>\$ 985,719</b>	<b>\$ 187,500</b>	<b>\$ 798,219</b>		<b>\$ 2,813</b>
830	Sewers	Sewer Rehab - Sanitary Sewer Master Plan	\$ 623,106		\$ 623,106	Enterprise Fund - 218 Funding source prohibition	\$ -
830	Sewers	San Pablo (City's Limit to Limit)	\$ 3,256,112		\$ 3,256,112	Enterprise Fund - 218 Funding source prohibition	\$ -
830		Neilson, Berryman, et al	\$ 4,515,649		\$ 4,515,649	Enterprise Fund - 218 Funding source prohibition	\$ -
830		Seawall Dr, Seventh St, et al	\$ 5,099,864		\$ 5,099,864	Enterprise Fund - 218 Funding source prohibition	\$ -
830		West Frontage (Caltrans ROW)	\$ 182,617		\$ 182,617	Enterprise Fund - 218 Funding source prohibition	\$ -
830		Urgent Repairs FY 2020	\$ 503,457		\$ 503,457	Enterprise Fund - 218 Funding source prohibition	\$ -
830		MH Rehab FY 2020	\$ 503,457		\$ 503,457	Enterprise Fund - 218 Funding source prohibition	\$ -
830		Parker St, MLK Wy, et al	\$ 1,035,441		\$ 1,035,441	Enterprise Fund - 218 Funding source prohibition	\$ -
830		MLK Wy, Cedar St, et al	\$ 782,526		\$ 782,526	Enterprise Fund - 218 Funding source prohibition	\$ -
830		Walnut St, The Alameda, et al	\$ 593,927		\$ 593,927	Enterprise Fund - 218 Funding source prohibition	\$ -
830		Urgent Repairs FY 2021	\$ 84,731		\$ 84,731	Enterprise Fund - 218 Funding source prohibition	\$ -
830		MH Rehab FY 2021	\$ 84,731		\$ 84,731	Enterprise Fund - 218 Funding source prohibition	\$ -
<b>830 Total</b>	<b>Sanitary Sewer</b>		<b>\$ 17,265,619</b>		<b>\$ 17,265,619</b>		<b>\$ -</b>
831		Berkeley Rose Garden Drainage	\$ 679,239		\$ 679,239	Property Fee - 218 Funding source prohibition	\$ -
831		GI Allston Way Permeable Paver Maintenance	\$ 200,000		\$ 200,000	Property Fee - 218 Funding source prohibition	\$ -
831		Storm Drainage Repairs - Wildcat/Shelby Trail	\$ 75,000		\$ 75,000	Property Fee - 218 Funding source prohibition	\$ -
831		Piedmont Avenue Green Infrastructure	\$ 25,000		\$ 25,000	Property Fee - 218 Funding source prohibition	\$ -
831		Storm Drain Planning & Studies	\$ 750,000		\$ 750,000	Property Fee - 218 Funding source prohibition	\$ -
<b>831 Total</b>	<b>Clean Storm</b>		<b>\$ 1,729,239</b>		<b>\$ 1,729,239</b>		<b>\$ -</b>
		Telegraph Channing Elevator Replacement	\$ 300,000		\$ 300,000	May warrant policy application	\$ -
<b>835 Total</b>	<b>Off Street Parking</b>		<b>\$ 300,000</b>		<b>\$ 300,000</b>		<b>\$ -</b>
		Police Parking Enforcement Marina Facility and Parking Lot Improvement	\$ 231,570		\$ 231,570	May warrant policy application	\$ -
<b>840 Total</b>	<b>Parking Meter Fund</b>		<b>\$ 231,570</b>		<b>\$ 231,570</b>		<b>\$ -</b>
860	Equipment	Vehicle Replacement	\$ 2,611,000		\$ 2,611,000	Non-construction project	\$ -



**Citywide Capital Program By Project, with Public Art Requirement Applicability**

Fund	Category	Project Name	FY2020 Total	Funds Eligible for Public Art Policy Application	Ineligible Funds	Notes / Rationale for Ineligibility	FY2020 Public Art Fund Contribution
860 Total	Equip. Replacement		\$ 2,611,000		\$ 2,611,000		\$ -
<b>Grand Total</b>			<b>\$ 111,591,145</b>	<b>\$ 4,344,278</b>	<b>\$ 107,246,867</b>		<b>\$ 65,164</b>





Energy Commission

CONSENT CALENDAR

May 10, 2022

To: Honorable Mayor and Members of the City Council  
 From: Energy Commission  
 Submitted by: Bentham Paulos, Chairperson, Energy Commission  
 Subject: Recommendation that Vision 2050 Infrastructure Bond Prioritize Clean Mobility

RECOMMENDATION

The Energy Commission recommends that the Vision 2050 infrastructure bond contemplated for the 2022 ballot prioritize transportation, with an emphasis on building the clean mobility network of the future.

FISCAL IMPACTS OF RECOMMENDATION

No fiscal impacts are associated with this recommendation at this time.

CURRENT SITUATION AND ITS EFFECTS

The Council will soon be considering a ballot measure to provide revenues for infrastructure improvements. There are three major reasons for those funds to focus on transportation. First, the majority of Berkeley's greenhouse gas emissions come from transportation, as do California's. Transportation is also the largest local contributor to conventional pollutants, such as particulates, nitrogen oxides, and smog, which impact public health. This is especially true along arterial roads, where a substantial amount of new housing is being built. There are two strategies to reduce global warming pollution from cars: we can get gasoline out of cars by encouraging electric vehicles, and we can get people out of cars by encouraging a suite of mobility options, such as transit, walking, biking, and other electric devices like scooters.

Second, Berkeley has been encouraging and is planning for a substantial increase in housing to meet growing population demand, lower the cost of living, and provide housing to the unhoused. Housing and transportation are two sides of the same coin. The Regional Housing Needs Assessment (RHNA) envisions almost 9000 new housing units this decade, in addition to plans UC Berkeley has to increase enrollment and housing.<sup>1</sup> This substantial increase in population will boost demands for transportation, putting a premium on non-car mobility. Expanding the population without improving transportation will quickly erode quality of life.

Third, the need to repair streets is an opportunity to follow through on the many plans formulated in recent years on safety, biking, walking, and safe routes to schools (collectively referred to as complete streets). It is a chance to build the diverse low-

<sup>1</sup> City of Berkeley Housing Element Update 2023-2031, <https://www.cityofberkeley.info/housingelement/>

carbon, low-stress, and low-danger transportation system for the Berkeley of tomorrow. Enabling more transportation options will lower the cost of living and increase the quality of life for all.

At its March 23, 2022 meeting, the Energy Commission voted to send this recommendation to City Council by a vote of 5-0-0-0 [(Zuckerman), Second (Guliasi), Ayes: (Paulos, Wolf, Tahara, Guliasi, Zuckerman). Noes: None. Abstain: None. Absent: None].

### BACKGROUND

The Commission was briefed on the concept of a ballot measure by Public Works Director Liam Garland on December 1, 2021. Mr. Garland laid out the many pressing needs Berkeley has for improvement, as reflected in the Vision 2050 plan. We think transportation is the most important thing to focus on, and think that voters will agree.

Specifically we would call attention to [Measure B](#), passed by voters in Austin, Texas in 2020. Proposition B raised \$460 million in general obligation bonds for transportation infrastructure including sidewalks, transportation-related bikeways, urban trails, transportation safety projects (Vision Zero), safe routes to school, and substandard streets.<sup>2</sup> We believe this structure is a good model for Berkeley to emulate. The Austin Council's resolution is included as Attachment 1 to this report.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

An infrastructure bond is an opportunity to make the capital investments that guide the future of the city in ways that address sustainability and climate priorities. No infrastructure is more important right now, and more of our City government's responsibility, than transportation.

### RATIONALE FOR RECOMMENDATION

The Energy Commission recommends that the City focus on transportation for this infrastructure bond, with specific allocations in the measure to ensure sufficient funding is available for the full range of complete streets measures.

### ALTERNATIVE ACTIONS CONSIDERED

We did not consider alternative actions.

### CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's report.

### CONTACT PERSON

Billi Romain, Energy Commission Secretary, 510-981-7432

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<sup>2</sup> City of Austin, 2020 Mobility Elections Proposition B, <https://www.austintexas.gov/2020PropB>.

Attachments:

1: Austin, Texas City Council, "Proposition B Contract with Voters," (Council Resolution No. 20200812-011), August 12, 2020.

**RESOLUTION NO. 20200812-011**

**WHEREAS**, equitable mobility and accessibility are vital to a functioning and prosperous society; and

**WHEREAS**, the average American family spends more on transportation-related expenses than all other types of expenses except housing; and

**WHEREAS**, transportation costs are regressive and lower-income residents spend a larger share of their resources on mobility; and

**WHEREAS**, Black, Latinx, lower-income, immigrant, and differently-abled residents have disproportionately lower access to car ownership; and

**WHEREAS**, transportation and mobility systems, at 35 percent, accounted for the largest share relative to any other category of greenhouse gas emissions in Travis County in 2010; and

**WHEREAS**, between 2012 and 2019, an average of 79 people died each year using Austin's transportation system, accounting for a total of 635 fatalities, 210 of whom were people walking; and

**WHEREAS**, the Imagine Austin Comprehensive Plan (2012) calls for a "complete-streets design that includes features such as traffic calming elements, street trees, wide sidewalks, and pedestrian, bicycle, and transit access throughout Austin, considering the safety needs of people of all ages and abilities"; and

**WHEREAS**, the Austin Strategic Mobility Plan (ASMP) (2019) calls for a 50/50 mode share whereby 50 percent of commutes are made in ways other than driving alone and envisions completing the Bicycle, Sidewalk, and Urban Trails Plans by 2039; and

**WHEREAS**, the ASMP directs transportation decisions to be centered on equity, including a policy to “partner with the public and private sectors to expand and improve mobility solutions for historically underserved communities”; and

**WHEREAS**, the Vision Zero Action Plan (2016) sets the goal of eliminating traffic deaths and serious injuries by 2025; and

**WHEREAS**, in June 2020, Council adopted Ordinance No. 20200611-045, approving specific changes to implement speed management; and

**WHEREAS**, the Austin Sidewalk Plan/ADA Transition Plan (2016) sets a target to “address all very high and high priority sidewalks within one-quarter mile of all identified schools, bus stops, and parks” by constructing sidewalks at a rate of 39 miles per year; and

**WHEREAS**, the Austin Bicycle Plan (2014) sets the goal of implementing, by 2025, 80 percent of an all-ages-and-abilities bicycling network to increase ridership, improve safety, and provide equitable access; and

**WHEREAS**, the Austin Community Climate Plan (2015) set the goal of reaching net-zero community-wide greenhouse gas emissions by 2050; and

**WHEREAS**, Council’s Strategic Direction 2023 has as one of its mobility goals to: “Provide equitable access to multimodal transportation choices to link people to

opportunities, such as education, healthcare, healthy food including community amenities such as grocery stores, open space, and jobs, especially in historically underserved and underrepresented communities”; and

**WHEREAS**, City Council is ordering a Special Election to be held on November 3, 2020 for the purpose of asking the voters to authorize \$460 million in general obligation bonds for transportation and mobility purposes; and

**WHEREAS**, City Council desires that the \$460 million bond program be completed within six years from the date Council approves the first project funded with these bond funds and in accordance with the guidance and procedures set forth in this resolution; and

**WHEREAS**, The Corridor Program Office (CPO) is strategically leveraging transportation improvement bond dollars to achieve comprehensive community outcomes and policy initiatives by partnering with other City departments, developers, non-profit organizations and agencies to extend the scope of the corridor transportation improvement projects so that together we can amplify the community, culture, and the mobility experience; and

**WHEREAS**, CPO has identified high impact opportunity areas that fall within districts, gateways or nodes along the nine Corridors in the Corridor Construction Program, including William Cannon, North and South Lamar, East MLK, East Riverside, Guadalupe, Burnet, Slaughter Lane, and Airport Boulevard; **NOW, THEREFORE,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**



The Council, by this official action, reaffirms its commitment to the voters regarding the conditions and guidance contained in the ordinance calling the November 2020 Bond election. Further, Council, by this official action, clarifies and declares its intent and commitment to the voters to create a contract with the voters that specifies that the proceeds from the bonds and notes shall be used for the projects and programs identified in the ordinance calling the November 2020 Bond election.

**BE IT FURTHER RESOLVED:**

Council, by this official action declares its intent to contract with the voters as to the following permissible purposes for which bond proceeds must be expended and the processes that must be followed in determining and prioritizing those expenditures.

**BE IT FURTHER RESOLVED:**

City Council desires to allocate the \$460 million for transportation improvements identified in the Austin Strategic Mobility Plan as follows:

- \$80 Million for Sidewalks, including construction and rehabilitation of high- and very-high priority sidewalk segments and elimination of ADA barriers and gaps in the sidewalk system.
- \$80 Million for Urban Trails, including construction of transportation-related Tier I urban trails and identification of alignments and development of designs for transportation-related Tier II urban trails.

- \$40 Million for transportation-related Bikeways, including implementation of the All Ages and Abilities Bicycle Network.
- \$65 Million for Safety/Vision Zero, including projects that reduce conflicts and improve safety for all users by systematically implementing both major reconstruction and rapid implementation of low-cost, high-impact engineering countermeasures, including speed management.
- \$20 Million for implementation of Safe Routes to Schools Infrastructure Plans.
- \$19 Million for Local Transit Enhancement Program as described in the Austin Strategic Mobility Plan, including projects not being delivered by Project Connect that improve the speed and reliability of public transportation service.
- \$1 Million for Neighborhood Partnering Program, including active transportation mobility projects that leverage community-led partnerships.
- \$53 Million for Improvements to Substandard Streets, prioritizing fully funding Johnny Morris Drive and at a minimum \$35 million toward the full construction of Ross Road per the April 19th, 2019 engineer study both the north and south portions of Ross Road, Cooper Lane, Circle S Road, and including the 2016 list of substandard streets reflected in the contract with the voters for the 2016 bond election, as well as the Preliminary Engineering Reports (PER) for Nuckols Crossing Road and Bradshaw Road.

- \$102 Million for Major Capital Improvements to be used for the Longhorn Dam Bridge, Congress Avenue Urban Design Initiative, Barton Springs Road Improvements, and South Pleasant Valley Corridor Improvements, as well as, in an amount not to exceed \$5 million, Corridor Program Projects not funded through the Corridor Construction Program (Council Resolution 20180426-028) to build pedestrian and associated infrastructure included in the corridor programs for the following roads: Slaughter Lane, North Lamar Boulevard, South Lamar Boulevard, Guadalupe Street, Martin Luther King Jr. Boulevard, Burnet Road, and Riverside Drive.

**BE IT FURTHER RESOLVED:**

Funding for Barton Springs Road Improvements shall only be used for improvements between Barton Boulevard and Lou Neff Road after completion of the preliminary engineering study for a Barton Springs Bridge, which shall include a community engagement process, and after presentation of improvement options, a public hearing, and approval of options by City Council. Any improvements shall be aligned with the Zilker Park Vision Plan once approved by Council.

**BE IT FURTHER RESOLVED:**

The funding shall be used in a manner that provides equitable access to transportation choices that connect people to opportunities, such as education, healthcare, healthy food

and grocery stores, open space, and jobs, especially in historically underserved and underrepresented communities.

**BE IT FURTHER RESOLVED:**

The City Manager is directed to develop recommendations for implementation of these proposals in manner that prioritizes investments in traditionally underserved communities, low-income communities, and other vulnerable communities; and anticipates unintended consequences that may disproportionately affect historically underserved and underrepresented populations and proactively mitigates these effects. Existing project prioritization criteria for all programs identified in this resolution should be reevaluated and, where necessary, modified to further prioritize equitable outcomes.

**BE IT FURTHER RESOLVED:**

Council contracts with the voters to adopt guidelines for the implementation of this bond program in a manner that maximizes opportunities for local hiring, apprenticeships, and other workforce development activities in traditionally underserved communities, low-income communities, and other vulnerable communities.

**BE IT FURTHER RESOLVED:**

Council contracts with the voters to adopt guidelines for implementation of the projects funded with these bond funds that maximizes opportunities to integrate green infrastructure, increase the urban tree canopy, complete open space connections, and enhance water quality.



**BE IT FURTHER RESOLVED:**

The City Manager is directed to analyze existing capital project delivery systems and processes in order to recommend potential changes and resource requirements to accelerate project delivery and maximize the number of projects to be included in the \$460 Million Bond Program to be completed within six years of Council approval of the first project funded with these bond funds.

**BE IT FURTHER RESOLVED:**

Council has taken formal action to approve the reimbursement of expenditures of funds to construct certain streets that are part of the Quarter Cent program with the expectation to issue certificates of obligation to finance the street improvements, and council contracts with the voters that proceeds of the bonds will not be used to fund those streets for which council has previously issued the reimbursement resolutions.

**BE IT FURTHER RESOLVED:**

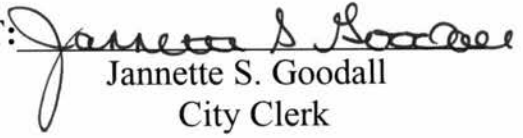
Council contracts with the voters that proceeds of the bonds will not be used to fund streets, sidewalks and related mobility infrastructure in connection with the redevelopment of properties at 7211 N. Interstate 35, Austin, Texas, and 7309 N. Interstate 35, Austin, Texas.

**BE IT FURTHER RESOLVED:**

The City may amend the funding levels and purposes established in this resolution, after a bond proposition passes, only to the extent that the amendments comply with the

law, comply with the ballot language passed by the voters, comply with the guidance in the preceding Be It Resolved Clauses in this resolution, and with an affirmative vote from the City Council.

**ADOPTED:** August 12, 2020

**ATTEST:**   
Jannette S. Goodall  
City Clerk



Landmarks Preservation Commission

CONSENT CALENDAR

May 10, 2022

To: Honorable Mayor and Members of the City Council  
 From: Landmarks Preservation Commission (LPC)  
 Submitted by: Charles Enchill, Chairperson, Landmarks Preservation Commission  
 Subject: Budget Referral: City-wide Historic Context Statement

RECOMMENDATION

Refer to the FY 2023 June budget process an amount between \$250,000 to \$275,000 from the General Fund for Berkeley's first City-wide Historic Context Statement.

BACKGROUND

At a regular meeting of the Landmarks Preservation Commission on March 3, 2022, the LPC took action to send to Council the attached Letter of Support (Vote: 7-0-0-2; Moved: Leuschner; Second: Schwartz; Yes: Adams, Crandall, Enchill, Finacom, Leuschner, Montgomery, Schwartz; No: none; Abstain: none; Absent: Johnson, Twu).

SUMMARY

The LPC recommends that City Council refer an amount between \$250,000-275,000 to the FY 2023 budget (in June 2022) for preparation of Berkeley's first City-wide Historic Context Statement (HCS). The HCS would respond to the increasing growth pressures facing the city and the resultant conflicts between growth and preservation of existing housing. It would create a centralized resource for developers and property owners in place of the piecemeal requirements which are costly to them and time-consuming for city staff. It would conform to the practice of the National Park Service and other California Certified Local Governments which have prepared such statements; and it could provide the framework for a City-wide historical survey in the future.

FISCAL IMPACTS OF RECOMMENDATION

This referral refers to the budget process the consideration of an amount between \$250,000-\$275,000 from the General Fund for a citywide Historic Context Statement.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Historic studies and surveys can help protect existing buildings which are associated with substantial embodied carbon.

ALTERNATIVE ACTIONS CONSIDERED

City Council may consider this item for a future budget cycle.

CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report.

CONTACT PERSON

Fatema Crane, Secretary, Landmarks Preservation Commission, 510-981-7413

Attachments:

1: Letter of Support – Landmarks Preservation Commission to City Council, dated March 3, 2022



Date: March 3, 2022

To: City Council

From: Landmarks Preservation Commission

Subject: Funding Request for Development of a City-wide Historic Context Statement

### Executive Summary

The Landmarks Preservation Commission is requesting that City Council refer \$250,000-275,000 to the FY 2023 budget (in June 2022) to fund a Historic Context Statement (HCS). We believe that this budget will realistically cover the cost of an HCS that addresses the chronological/neighborhood development of Berkeley, a selection of chapters on thematic/cultural histories in Berkeley, and an additional evaluative framework. It is difficult to estimate the costs of an HCS until the RFP period, and the costs of public hearings/input may inflate the budget, hence a range. The impacts of COVID-19 may also affect the HCS budget, which is another reason for this range.

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The City of Berkeley is facing enormous growth pressure which impacts its existing historical fabric. This growth comes from, but is not necessarily limited to: growth in enrollment of the UC campus; growth in the Bay Area job market for technical workers who desire to live in Berkeley; changes in State Law permitting greater density in a majority of neighborhoods; and lack of privately-owned undeveloped land. As a result, the City's jurisdictional bodies (Zoning Adjustments Board, Landmarks Preservation Commission, and City Council) face increasing conflicts between preservation of existing housing and construction of new housing. In addition, homeowners, housing developers and design professionals, must already work under the constraints of government regulation and financing implications, and even the uncertainty about historic preservation of individual properties.

Resolving these conflicts is extremely difficult. For a medium-sized city, the history of Berkeley is remarkably complex. A bayfront workers settlement, largely immigrant; farms and dairies; an academic community who commissioned a selection of impressive architects for their homes; development of blue-collar housing in the flats, including a significant population of African-Americans and Japanese immigrants; and development of the streetcar suburbs in the hills are just some of the large themes in Berkeley's history. Even a single block of the built environment is an expression of the people, movements,

and histories that have occupied it. A given block in Berkeley might contain a Bernard Maybeck, a nondescript building significant for Berkeley's pre-World War II Japanese American community, or a garage where revolutionaries planned a renowned protest. None of these sites, however, exist in a vacuum. They are the results of larger-scale forces, movements, ideas, and contexts. Berkeley's built environment — more than most — is the result of many pioneering ideas on living and architecture. The city's history is one of the most dimensional in California (if not the United States), and its built environment expresses that.

The history of Berkeley, its university, its residents, architects, politicians have been the subject of many studies and books, but never have they been centralized in any formal manner — or at least in a manner which seeks to make history central to city planning efforts. It is a standard preservation practice for cities as culturally and historically rich as Berkeley commission a citywide HCS, or ultimately, a Historic Resources Survey (HRS). Berkeley has only an outdated "windshield survey" from the 1970s and an HCS of Downtown Shattuck with a district survey from 2015. Because of this, historical information is fragmented, at times inaccessible, and difficult to reference.

A Historic Context Statement, the integral piece to a City-wide survey, would serve to not only resolve conflicts that are being accelerated from growth, but also centralize historical information, and further the policies within Berkeley's General Plan. An HCS would provide a more complete and robust picture of Berkeley's history and illuminate other areas to further document and survey. An HCS is a sizable document with many "chapters," but there are typically two sections. The first is a general historical overview of a city where each chapter addresses a chronological period of growth and development (e.g.: Founding of the College of California and Berkeley 1860-1870). (The Downtown Shattuck Avenue survey would essentially be under the umbrella of this section of a HCS.) The second part of an HCS, which is more flexible and subject to the ideas of the commission, explores significant themes. These chapters might address the history of ethnic community, a political movement, or other histories which aren't confined to a single period of growth.

A city-wide survey is a long-term goal for LPC, but staff's current workload only allows for an HCS. However, an HCS is the first step of a city-wide survey (a more quantitative, case-by-case evaluation of a City's built environment). Given more staff time, perhaps from a reduced workload because of the HCS, a city-wide survey could be commissioned in the future and the HCS could be its first piece. Regardless, the following are examples of Historic Context Statements completed by other cities:

- [Palm Springs: Historic Resources Inventory & Context Statement](#)
  - Note: the Historic Context Statement is the main piece of the city-wide survey. Palm Springs also has a good example of the general development/growth chapters, which are the first section as previously discussed.
- [San Francisco: Historic Context Statements](#)
  - San Francisco has completed numerous individual HCSs as well, but organizes them under categories: Cultural, Geographic, Thematic, and Architectural. They have very good examples of thematic chapters, the second section of a HCS as previously discussed.
- [San Diego: Historic Contexts and Surveys](#)
  - The City of San Diego does an excellent job organizing their HCSs with and without surveys (bottom of webpage).

In addition, we'd like to point out two documents which refine the scope of the HCS and a City-wide survey (a plausible future goal, but not a current goal):

- [The Los Angeles Historic Resource Survey Report: A Framework for a Citywide Historic Resource Survey](#) (see pages 19-30)
  - Perhaps the most complete and definitive guide to creating a city-wide survey in California, as well as the HCS.
- ["Writing Historic Context Statements" by the CA Office of Historic Preservation](#)

More than anything, however, the HCS creates a comprehensive understanding of a city's history and where it is expressed in the built environment. This serves a valuable function in the planning department, particularly for a city with such a stock of historic resources. In outlining these important sites, the HCS aids Planning in targeting development (or in other cases, aids developers in understanding properties are most likely to be historic resources). The different chapters of the HCS are easily paired with Specific and Neighborhood Plans, if not the General Plan.

Since the 1970s, the City has not invested money in primary historic resource research and documentation. Because of this, Berkeley has no centralized resource to reference, much of its preservation planning is reactive and discretionary. One example of this is the Historic Resource Evaluation (HRE), a requirement which is expensive for property-owners, time consuming for staff, and overwhelmingly does not result in identification of historic resources. When a structure >40 years old files a permit for "substantial" changes (which may include an ADU or a bedroom addition), an HRE is required to analyze whether the property could be a historic resource. HREs cost homeowners anywhere

between \$3,000 and \$10,000 which is yet another way project costs pile up, projects are prolonged for both staff and the property owner, and unpermitted work is galvanized.

The HCS could aim to reduce costs or the need of stand-alone studies. (The HRE would still be required for demolitions and projects which affect historic resources.) This would be accomplished by adding an “Evaluative Framework” to the HCS, an addendum which clarifies historic resource designation criteria, eligibility, and would further streamline staff time. The Evaluative Framework sets a guiding framework for staff and LPC decisions on historic resources in addition to saving countless homeowners thousands of dollars per project. Because an HCS is most effective as it stays updated or periodically captures additional themes, it provides guidance on properties *most likely* to be historic resources. The HCS, however, does not prohibit any property from being designated a Landmark/Structure of Merit based on new information that may have been unknown during the time of the HCS.

Berkeley is a city with an incredible history that is reflected in its built environment. A Historic Context Statement is a standardized preservation practice, not to mention an expected practice by the Certified Local Government program, of which Berkeley has been a member since 2000. As our city undergoes housing development, battles over preservation are only going to worsen. An HCS is integral to avoiding these conflicts, targeting sustainable development, and incentivizing preservation. It is a resource for historians and city planners alike, one that seeks to assemble the many histories which make Berkeley such a historic place.

To this effect, the Landmarks Preservation Commission is requesting that City Council refer \$250,000-275,000 to the FY 2023 budget (in June 2022) to fund a Historic Context Statement. We believe that this budget will realistically cover the cost of an HCS that addresses the chronological/neighborhood development of Berkeley, a selection of chapters on thematic/cultural histories in Berkeley, and an additional evaluative framework. It is difficult to estimate the costs of an HCS until the RFP period, and the costs of public hearings/input may inflate the budget, hence a range. The impacts of COVID-19 may also affect the HCS budget, which is another reason for this range.

Signed by Charles Enchill, LPC Chairperson

On behalf of the Landmarks Preservation Commission

Vote: 7-0-0-2

Yes: Adams, Crandall, Enchill, Finacom, Leuschner, Montgomery, Schwartz; No: none; Abstain: none;

Absent: Johnson, Twu.



Office of the Mayor

CONSENT CALENDAR  
May 10, 2022

To: Honorable Members of the City Council  
 From: Mayor Jesse Arreguín  
 Subject: Support SB 1173 – Divestment from Fossil Fuels

RECOMMENDATION

Adopt a Resolution in support of SB 1173 (Gonzalez), which would require the California Public Employees Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS) to divest from fossil fuel companies. Send a copy of the Resolution to Governor Gavin Newsom, State Senators Nancy Skinner and Lena Gonzalez, and Assemblymember Buffy Wicks.

BACKGROUND

The impacts of human-caused climate change are becoming increasingly unavoidable. Without taking bold and immediate action to reduce our greenhouse gas emissions, the world will heat above 2C by 2100. Such an event would lead to vast ecological destruction and mass extinctions, in addition to increased drought and food crop failures that could destabilized human society, disproportionately impacting those living in poverty.

California has been a leader in addressing climate change. Under State law, California must procure 60% of all electricity from renewable resources by 2030, and be carbon-free by 2045. SB 32, approved in 2016, requires California's greenhouse gas emissions to be 40% below 1990 levels by 2030. State policies around climate change have been evolving based on the latest science, with an acceleration of these efforts necessary to address the projections in the latest report by the United Nations' Intergovernmental Panel on Climate Change (IPCC), which says that the only way to stay below 1.5C is to have carbon emissions peak in 2025, followed by a rapid decline and reaching net-zero by the middle of the century.

Locally, extensive work has been done to mitigate our impacts on the climate. There is a goal to reach net-zero carbon emissions by 2045 or earlier. Electrification policies and improvements to transportation infrastructure to encourage moving away from gasoline-powered vehicles have also been approved. Under the City of Berkeley's Investment Policy, there has been a divestment from publicly traded fossil fuel companies and banks that finance pipelines and fossil fuel infrastructure. The rationale for this is the cost of the impacts of climate change outweigh any return on investment from such companies.

SB 1173, introduced by State Senator Lena Gonzalez, will help meet the State's climate action goals by prohibiting the California Public Employees Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS) from investing in fossil fuel companies. Additionally, divestment from such companies must be done by 2027. Currently, CalPERS and CalSTRS have almost \$9 billion invested in fossil fuel companies. This bill builds upon the work we have done locally to divest from fossil fuels.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: Resolution
- 2: Text of SB 1173
- 3: SB 1173 Fact Sheet

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

IN SUPPORT OF SB 1173 – DIVESTMENT FROM FOSSIL FUELS

WHEREAS, California is susceptible to the consequences of climate change, with more drought, shrinking water supplies, rising sea levels, and larger and more frequent wildfires all likely to be experienced in the coming decades; and

WHEREAS, climate change is an issue of environmental justice, disproportionately impacting Indigenous communities, communities of color, and low-income communities due to historical oppression, inequity of power, and lack of access to resources for prevention and relief; and

WHEREAS, immediate action is need to keep the world from heating above 2C by 2100, which would result in to vast ecological destruction and mass extinctions, in addition to increased drought and food crop failures; and

WHEREAS, according to the latest report by the United Nations' Intergovernmental Panel on Climate Change (IPCC), the only way to stay below 1.5C is to have carbon emissions peak in 2025, followed by a rapid decline and reaching net-zero by the middle of the century; and

WHEREAS, California has several policies to address climate change, including reducing greenhouse gas emissions by 40% of 1990 levels by 2030 and becoming carbon free by 2045; and

WHEREAS, Berkeley has acted to mitigate our impacts on the climate, including a goal to reach net-zero carbon emissions by 2045 or earlier, and to encourage moving away from gasoline-powered vehicles, with transportation accounting for 60% of the city's greenhouse gas emissions; and

WHEREAS, under the City of Berkeley's Investment Policy, there has been a divestment from publicly traded fossil fuel companies and banks that finance pipelines and fossil fuel infrastructure; and

WHEREAS, currently, the California Public Employees Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS) have almost \$9 billion invested in fossil fuel companies; and

WHEREAS, a Corporate Knights study found if CalPERS and CalSTRS had divested in 2010 they would have gained \$11.9 and \$5.5 billion respectively by 2019; and

WHEREAS, SB 1173, introduced by State Senator Lena Gonzalez, will help meet the State's climate action goals by prohibiting CalPERS and CalSTRS from investing in fossil fuel companies and to divest from such companies by 2027.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports SB 1173.

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



AMENDED IN SENATE APRIL 6, 2022

**SENATE BILL**

**No. 1173**

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**Introduced by Senators Gonzalez and Wiener**

February 17, 2022

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An act to amend Section 16642 of, and to add Section 7513.76 to, the Government Code, relating to public retirement systems.

LEGISLATIVE COUNSEL'S DIGEST

SB 1173, as amended, Gonzalez. Public retirement systems: fossil fuels: divestment.

The California Constitution grants the retirement board of a public employee retirement system plenary authority and fiduciary responsibility for investment of moneys and administration of the retirement fund and system. These provisions qualify this grant of powers by reserving to the Legislature the authority to prohibit investments if it is in the public interest and the prohibition satisfies standards of fiduciary care and loyalty required of a retirement board.

Existing law prohibits the boards of the Public Employees' Retirement System and the State Teachers' Retirement System from making new investments or renewing existing investments of public employee retirement funds in a thermal coal company, as defined. Existing law requires the boards to liquidate investments in thermal coal companies on or before July 1, 2017, and requires the boards, in making a determination to liquidate investments, to constructively engage with thermal coal companies to establish whether the companies are transitioning their business models to adapt to clean energy generation. Existing law provides that it does not require a board to take any action unless the board determines in good faith that the action is consistent

**SB 1173**

— 2 —

with the board’s fiduciary responsibilities established in the California Constitution.

This bill would prohibit the boards of the Public Employees’ Retirement System and the State Teachers’ Retirement System from making new investments or renewing existing investments of public employee retirement funds in a fossil fuel company, as defined. The bill would require the boards to liquidate investments in a fossil fuel company on or before July 1, 2027. *The bill would temporarily suspend the above-described liquidation provision upon a good faith determination by the board that certain conditions materially impact normal market mechanisms for pricing assets, as specified, and would make this suspension provision inoperative on January 1, 2035.* The bill would provide that it does not require a board to take any action unless the board determines in good faith that the action is consistent with the board’s fiduciary responsibilities established in the California Constitution.

This bill would require the boards, commencing February 1, 2024, and annually thereafter, to file a report with the Legislature and the Governor, containing specified information, including a list of fossil fuel companies of which the board has liquidated their investments. The bill would provide that board members and other officers and employees shall be held harmless and be eligible for indemnification in connection with actions taken pursuant to the bill’s requirements, as specified.

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. Section 7513.76 is added to the Government
- 2 Code, to read:
- 3 7513.76. (a) The Legislature finds and declares all of the
- 4 following:
- 5 (1) The combustion of coal, oil, and natural gas, known as fossil
- 6 fuels, is the single largest contributor to global climate change.
- 7 (2) Climate change affects all parts of the California economy
- 8 and environment, and the Legislature has adopted numerous laws
- 9 to mitigate greenhouse gas emissions and to adapt to a changing
- 10 climate.

1 (3) Fossil fuel companies' plans to expand production, public  
2 relations campaigns, and efforts to obstruct climate stabilization  
3 policies are incompatible with California's climate goals, and our  
4 obligation to current and future generations.

5 (4) The production of fossil fuels and the effects of climate  
6 change resulting from the use of fossil fuels all lead to  
7 disproportionate adverse impacts on low-income communities and  
8 communities of color.

9 (5) A transition away from fossil fuels to clean energy will  
10 create greater employment, support the economy, and improve  
11 public health.

12 (6) The purpose of this section is to require the Public  
13 Employees' Retirement System and the State Teachers' Retirement  
14 System, consistent with, and not in violation of, their fiduciary  
15 responsibilities, to divest their holdings of fossil fuel company  
16 investments as one part of the state's broader efforts to decarbonize  
17 the California economy and to transition to clean, pollution-free  
18 energy resources.

19 (b) As used in this section, the following definitions apply:

20 (1) "Board" means the Board of Administration of the Public  
21 Employees' Retirement System or the Teachers' Retirement Board  
22 of the State Teachers' Retirement System, as applicable.

23 (2) "Company" means a sole proprietorship, organization,  
24 association, corporation, partnership, venture, or other entity, or  
25 its subsidiary or affiliate, that exists for profitmaking purposes or  
26 to otherwise secure economic advantage.

27 (3) "Investment" means the purchase, ownership, or control of  
28 publicly issued stock, corporate bonds, or other debt instruments  
29 issued by a company. "Investments" also includes purchase,  
30 ownership, or control of mutual funds and exchange-traded funds,  
31 unless the board is satisfied on reasonable grounds that a mutual  
32 fund or exchange-traded fund is unlikely to have in excess of 2  
33 percent of its assets, averaged annually, directly or indirectly  
34 invested in fossil fuel companies.

35 (4) "Public employee retirement funds" means the Public  
36 Employees' Retirement Fund described in Section 20062 of this  
37 code, and the Teachers' Retirement Fund described in Section  
38 22167 of the Education Code.

39 (5) "Fossil fuel" means petroleum oil, natural gas, and thermal  
40 coal. Thermal coal is coal used to generate electricity, such as that

1 which is burned to create steam to run turbines. Thermal coal does  
2 not mean metallurgical coal or coking coal used to produce steel.

3 (6) “Fossil fuel company” means one of the 200 largest publicly  
4 traded fossil fuel companies, as established by carbon content in  
5 the companies’ proven oil, gas, and coal reserves.

6 (c) The board shall not make additional or new investments or  
7 renew existing investments of public employee retirement funds  
8 in a fossil fuel company.

9 (d) (1) The board shall liquidate investments in a fossil fuel  
10 company on or before July 1, 2027.

11 (2) *Notwithstanding paragraph (1), this subdivision shall be*  
12 *suspended upon a good faith determination by the board that an*  
13 *act of God, war, or other unforeseeable event creates conditions*  
14 *that materially impact normal market mechanisms for pricing*  
15 *assets and shall only be reinstated upon a subsequent good faith*  
16 *finding of the board that market conditions have substantially*  
17 *returned to normal ex-ante. Upon such a finding, the board shall*  
18 *have six months to liquidate any remaining investments in a fossil*  
19 *fuel company*

20 (3) *Paragraph (2) shall remain in effect only until January 1,*  
21 *2035, and as of that date is inoperative.*

22 (e) (1) Commencing February 1, 2024, and annually on  
23 February 1 thereafter, the board shall create a report that includes  
24 the following:

25 (A) A list of fossil fuel companies of which the board has  
26 liquidated its investments pursuant to subdivision (d).

27 (B) A list of fossil fuel companies with which the board still  
28 has not liquidated its investments.

29 (C) A list of fossil fuel companies of which the board has not  
30 liquidated its investments as a result of a determination made  
31 pursuant to subdivision (f) that a sale or transfer of investments is  
32 inconsistent with the fiduciary responsibilities of the board as  
33 described in Section 17 of Article XVI of the California  
34 Constitution and the board’s findings adopted in support of that  
35 determination.

36 (D) *An analysis of methods and opportunities to rapidly and*  
37 *effectively reduce dependence on fossil fuels and transition to*  
38 *alternative energy sources in a realistic timeframe that avoids*  
39 *negatively contributing to economic conditions particularly*

1 *damaging to public employee retirement funds and to overall net*  
2 *employment earnings of the state's workforce.*

3 (2) The board shall submit the report to the Legislature, in  
4 compliance with Section 9795, and to the Governor, and shall post  
5 the report on the board's internet website.

6 (f) Nothing in this section shall require a board to take action  
7 as described in this section unless the board determines in good  
8 faith that the action described in this section is consistent with the  
9 fiduciary responsibilities of the board described in Section 17 of  
10 Article XVI of the California Constitution.

11 SEC. 2. Section 16642 of the Government Code, as amended  
12 by Section 3 of Chapter 459 of the Statutes of 2019, is amended  
13 to read:

14 16642. (a) Present, future, and former board members of the  
15 Public Employees' Retirement System or the State Teachers'  
16 Retirement System, jointly and individually, state officers and  
17 employees, research firms described in subdivision (d) of Section  
18 7513.6, and investment managers under contract with the Public  
19 Employees' Retirement System or the State Teachers' Retirement  
20 System shall be indemnified from the General Fund and held  
21 harmless by the State of California from all claims, demands, suits,  
22 actions, damages, judgments, costs, charges, and expenses,  
23 including court costs and attorney's fees, and against all liability,  
24 losses, and damages of any nature whatsoever that these present,  
25 future, or former board members, officers, employees, research  
26 firms as described in subdivision (d) of Section 7513.6, or contract  
27 investment managers shall or may at any time sustain by reason  
28 of any decision to restrict, reduce, or eliminate investments  
29 pursuant to Sections 7513.6, 7513.7, 7513.74, 7513.75, and  
30 7513.76.

31 (b) This section shall remain in effect only until Section 7513.74  
32 is repealed, and as of that date is repealed.

33 SEC. 3. Section 16642 of the Government Code, as added by  
34 Section 4 of Chapter 459 of the Statutes of 2019, is amended to  
35 read:

36 16642. (a) Present, future, and former board members of the  
37 Public Employees' Retirement System or the State Teachers'  
38 Retirement System, jointly and individually, state officers and  
39 employees, research firms described in subdivision (d) of Section  
40 7513.6, and investment managers under contract with the Public

**SB 1173**

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1 Employees' Retirement System or the State Teachers' Retirement  
2 System shall be indemnified from the General Fund and held  
3 harmless by the State of California from all claims, demands, suits,  
4 actions, damages, judgments, costs, charges, and expenses,  
5 including court costs and attorney's fees, and against all liability,  
6 losses, and damages of any nature whatsoever that these present,  
7 future, or former board members, officers, employees, research  
8 firms as described in subdivision (d) of Section 7513.6, or contract  
9 investment managers shall or may at any time sustain by reason  
10 of any decision to restrict, reduce, or eliminate investments  
11 pursuant to Sections 7513.6, 7513.7, 7513.75, and 7513.76.

12 (b) This section shall become operative upon the repeal of  
13 Section 7513.74.

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## SB 1173 (Gonzalez) Fossil Fuel Divestment

### SUMMARY

Senate Bill (SB) 1173 will prohibit the California Public Employees Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS) from investing in fossil fuel companies, and require that they divest any current investments by 2027.

### BACKGROUND/PROBLEM

Californians, along with states and nations around the globe, are facing the real and immediate threats of climate change and its ever-growing impacts on our health, safety, environment, and our ability to pass on a livable planet to future generations.

California has been a world leader in taking steps to combat the causes of climate change, and have set historic carbon reduction goals and taken meaningful actions to help prevent environmental destruction and protect communities who bear the overwhelming brunt of carbon emissions.

Despite these forward-thinking actions, California's multi billion dollar retirement pension funds are actively investing billions of dollars in the very fossil fuel companies that are causing climate change.

CalPERS and CalSTRS, which invest the pension funds of state employees and teachers, have an investing power of \$469 billion and \$327 billion, respectively. A recent report estimates that out of these funds CalPERS invests \$5.5 billion in fossil fuel companies and CalSTRS invests \$3.4 billion.<sup>1</sup>

governmental regulation driving markets away from fossil fuels, it has become clear that the fossil fuel industry may be a risky and myopic financial investment. Major investment management firms, BlackRock and Meketa, have concluded that divestment from fossil fuels actually improves, not weakens, investment returns.<sup>2</sup> A further study has shown that if CalPERS and CalSTRS had divested from fossil fuels in 2010 they would have gained \$11.9 and \$5.5 billion in returns by 2019.<sup>3</sup>

Many of the beneficiaries and union members whose retirement futures are invested by CalPERS and CalSTRS have passed resolutions calling for the divestment of fossil fuels, including the United Teachers of Los Angeles, the California Federation of Teachers, and the California Faculty Association.

An estimated 1,500 institutions with over \$39 trillion in assets have already committed to divestment, including the University of California, the California State University, the State and City of New York, the State of Maine, the Vatican, and the province of

Quebec.

The Legislature already began the work of divesting from dangerous carbon emitting companies through the passage of SB 185 (De Leon, Chapter 605, Statutes of 2015), which required CalPERS and CalSTRS to liquidate their investments in thermal coal companies. Further, Governor Newsom also recently issued an Executive Order on Climate Change (EO N-19-19) which called on CalPERS and CalSTRS to "leverage the state's \$700 billion investment portfolio to advance California's climate leadership."

<sup>1</sup><https://climatesafepensions.org/wp-content/uploads/2021/12/CSPN-The-Quiet-Culprit.pdf>

carbon-free technologies, and consumer choice and

<sup>2</sup><https://ieefa.org/major-investment-advisors-blackrock-and-meketa-provide-a-fiduciary-path-through-the-energy-transition/>

<sup>3</sup><https://drive.google.com/file/d/1k27W2oTzaqueEZrvit4RLfve6pvakqMI/view>

**SOLUTION**

SB 1173 seizes the momentum of the worldwide divestment movement and continues the bold and progressive actions that California must take to address climate change. SB 1173 ends the contradictory and incongruous policies that position the state as a leader in the fight against climate, while simultaneously investing billions in the fossil fuel companies that are causing climate change.

Specifically, SB 1173 will prohibit CalPERS and CalSTRS from investing in the top 200 fossil fuel companies, and require that they divest any current investments in those fossil fuel companies by 2027. Additionally, SB 1173 will require CalPERS and CalSTRS to annually report, beginning in 2024 on their divestment progress

**SUPPORT**

California Faculty Association (Sponsor)  
Fossil Free California (Sponsor)

**CONTACT**

Trevor Taylor, Legislative Director  
(916) 651-4033  
Trevor.Taylor@sen.ca.gov







Office of the Mayor

CONSENT CALENDAR  
May 10, 2022

To: Members of the City Council

From: Mayor Jesse Arreguín

Subject: Healthy Black Families: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Fund

**RECOMMENDATION**

Adopt a Resolution approving the expenditure of \$20,000 from the Mayor's Office Budget to Healthy Black Families (HBF) for the purposes of covering costs, from February – May 2022, associated with supporting the Ideation of financing for greater affordable housing at BART station developments. This time period coincides with the end (January 2022) and beginning (June 2022) of grants from the Partnership for the Bay's Future awarded to the City of Berkeley in partnership with HBF.

**BACKGROUND**

On November 30, 2021, City Council approved Resolution #70,117-N.S. for a grant from the San Francisco Foundation for Ideation Facilitation for funding affordable housing at the BART stations, North Berkeley and Ashby. The Mayor's Office, in partnership with Health Black Families (HBF), submitted the Breakthrough Grant application to Partnership for the Bay's Future and were successful in their efforts. The Breakthrough Grant will fund a fellow and also HBF for two (2) years in order to move forward the work of the Ideation Team. Funding for the Breakthrough Grant begins in June 2022.

HBF has been engaged as a participant in the Ideation Process and has also been engaging with the South Berkeley community in support of the Joint Vision Priorities document developed by the Community Advisory Group for the BART development projects, and also the local preference policy since February 1, 2022. This effort has required, and will continue to require, many hours of staff time without a source of payment.

Additionally, HBF has continued to move forward the work of the Local Preference Policy (also funded by a Breakthrough Grant for Protection and Preservation of Affordable Housing that began in February 2020 and ended January 2022) that was recommended in the Adeline Corridor Plan and is proposed to be incorporated into the Ashby BART project and EBB. A proposed Local Preference Policy was recommended by the HAC on April 7, 2022 and will be coming to the Council for future action. As the

policy will be coming to the Council, additional support is needed for community engagement on the draft proposal.

On March 16, 2022, HBF reached out to the Mayor's Office to inquire as to funding availability to support these efforts from February through May 2022. There is no other contract with HBF, incorporating a similar scope of work, that could be increased to reimburse HBF for the time that is being expended. The Mayor's Office budget has the resources to cover the HBF request due to the impact of COVID-19 on the timing of filling vacant staff positions.

FINANCIAL IMPLICATIONS

No General Fund impact; \$20,000 is available from Mayor Arreguín's Office Budget discretionary accounts.

ENVIRONMENTAL SUSTAINABILITY

There are no environmental impacts associated with the recommendations in this report.

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

1. Resolution

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, Mayor Jesse Arreguin has surplus funds in his office expenditure account; and

WHEREAS, a California non-profit tax exempt corporation, Healthy Black Families seeks funds in the amount of \$20,000 to provide the following public services: to provide support and participation in the Equitable Black Berkeley Ideation Process from February – May 2022; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose: of paying personnel expenses associated with participation in ideating creative affordable housing financial support in a reparative framework for the BART development projects at North Berkeley and Ashby stations.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor from his Council Office Budget of \$20,000 shall be granted to Healthy Black Families to fund personnel expenses for their participation in Equitable Black Berkeley Ideation.





Office of the Mayor

CONSENT CALENDAR  
May 10, 2022

To: Members of the City Council

From: Mayor Jesse Arreguín

Subject: Budget Referral: Continuing Anti-Displacement Programs

RECOMMENDATION

Refer \$1,800,000 (\$900,000 annually) to the FY 2023-2024 Budget Process for continued funding of the following anti-displacement programs (launched in 2017) with the proposed funding source from General Fund tax revenues:

- 1) Housing Retention Program (administered by the Eviction Defense Center EDC): \$250,000 per fiscal year. This funding will supplement the current COVID-19 emergency rental assistance program to provide funding after the emergency expires
- 2) Legal Counseling, Services and Problem Solving for Extremely-Low, Very-Low, Low and Moderate Income Tenants (\$275,000 each to the East Bay Community Law Center and EDC): \$550,000 per fiscal year
- 3) Flexible Housing Subsidies for Homelessness Prevention: \$100,000 per fiscal year

BACKGROUND***Housing Retention Program/COVID Emergency Rental Assistance***

The Housing Retention Program is an essential tool in preventing tenant displacement and preserving Berkeley's racial, economic and cultural diversity. In 1993, the City of Berkeley began the Homeless Prevention Grants Program, which in 2008 became the Housing Retention Program (HRP).

The program was reconstituted and bolstered in 2017 with an increased allocation of \$250,000 annually which was continued in all budgets since FY 2019. The City Council's annual allocation of General Fund revenues was made possible due to the passage of Measure U1 in 2016 which increased the business license tax for large rental properties, generating between \$4-7 Million annually.

At the onset of the COVID-19 pandemic and resulting shelter in place order, the City Council launched the Berkeley Relief Fund and allocated \$3 Million to initially capitalize the fund, to be split three ways between rental assistance, grants for arts non-profits and grants to small businesses. Tenant rent assistance was funded \$1,000,000 to expand the Housing Retention Program during this emergency with an additional \$900,000 added as private donations came in through the East Bay Community

Foundation. Approved households were eligible to receive up to \$5,000 as a one-time grant, and an additional one-time grant of up to \$10,000 during the specified COVID-19 emergency. Additional funding was provided through a CBDG CARES grant from the Federal Government. A separate budget referral to continue funding of the COVID Emergency Rental Assistance Program with funds available through the American Rescue Plan Act (ARPA) was approved at the April 26, 2022 City Council meeting.

Funding for this program is needed as many low-income households remain in massive debt that has accrued over the course of the pandemic. Under Berkeley's eviction moratorium, people cannot be evicted for lack of payment of rent during the local state of emergency, but property owners can seek back payment of rent through the courts. Additionally, increased inflation and cost of living, which disproportionately impacts low-income households, could put some people in a position of falling behind on rent in the coming months.

The purpose of this additional \$250,000 annual allocation for rental assistance is to supplement the Housing Retention Program to support more eligible households who have outstanding rent debt due to the pandemic and to continue the Housing Retention Program after the expiration of the local state of emergency.

***Legal Counseling, Services and Problem Solving for Extremely-Low, Very-Low, Low and Moderate Income Tenants***

The unprecedented rental housing crisis has resulted in increased displacement and eviction of low-income residents in Berkeley. One of the priorities of the City Council is to provide services to low-income households to prevent displacement.

At the June 25, 2019 City Council Meeting, the FY 2020-21 Biennial Budget was approved, allocating \$900,000 each year for anti-displacement programs. Of this, \$550,000 was earmarked for eviction defense and housing counseling each year. Due to the adoption of Measure U1 at the 2016 election, and new additional General Fund revenues, the Council initially authorized an annual funding of \$300,000 for this purpose for both FY 2018 and 2019 at its July 25, 2017 meeting. Measure U1 also required the Housing Advisory Commission to advise the City Council on programs to prevent homelessness and expand affordable housing. As part of its charge, the HAC recommended that the Council allocate a portion of General Fund revenues derived from the Measure U1 tax for anti-displacement programs. To more expediently implement Council's action, these funds were transferred to the Rent Board whose staff administered, monitored, and reported to Council regarding the program funding during those years. This action also took place during FY 22.

When this item was initially considered in 2017, Council expressed interest in expanding the scope of services provided by Eviction Defense Center (EDC) and East Bay Community Law Center (EBCLC) to provide counseling and advocacy to tenants seeking to avoid displacement by exercise of rights afforded by other local laws. The funding provided by the Rent Board is not adequate to achieve the Council's objective of fully preventing displacement during the current housing emergency, when low and

middle-income tenants are particularly vulnerable to displacement if not provided with sufficient and competent legal defense. There is also a need for additional funding to provide counseling and representation to tenants relating to city ordinances such as the Tenant Protection Ordinance and Tenant Buyout Ordinance. Both EDC and EBCLC have once again requested \$275,000 to cover this expanded scope of work to serve the broadest number of Berkeley tenants.

***Flexible Housing Subsidy Pool***

In June 2017, the City Council established the Flexible Housing Subsidy Pool as a new anti-displacement tool. These funds can be used for a variety of purposes, including emergency rental subsidies for people who have been evicted or are experiencing homelessness. Since the fund was established it has helped tenants with emergency funding of up to \$1,500 per incident and \$5,000 maximum per household in grants.

**FINANCIAL IMPLICATIONS**

Total allocation of \$1,800,000 (\$900,000 annually) from General Fund revenues. Since 2017, the City has funded these three programs out of Measure U1 tax receipts, and it is recommended that the Council continue this funding for the next two fiscal years.

**ENVIRONMENTAL SUSTAINABILITY**

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

**CONTACT PERSON**

Mayor Jesse Arreguín      510-981-7100







CONSENT CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett (Author)

Subject: Addition of Semi-diverter Traffic Bollards at the intersection of Newbury Street and Ashby Avenue.

RECOMMENDATION

Refer to the Fiscal Year 2022/2023 Budget Process, an allocation of \$50,000 to install semi-diverter traffic bollards at the east corner of the intersection at Newbury Street and Ashby Avenue.

CURRENT SITUATION

Recently, Newbury Street has been plagued with dangerous driving behaviors that threaten pedestrians, cyclists, property, and other vehicles. The observed behaviors include speeding, substance-impaired awareness, not stopping at stop signs, and not yielding to pedestrians and bicyclists.

Within the past few years, dangerous driving behaviors along Newbury Street have resulted in numerous episodes of near-miss accidents for pedestrians and bicyclists, collision damage to parked vehicles, and residential property damage collisions from vehicles speeding into Newbury Street to escape police pursuits along Ashby Avenue. Of the greatest safety concern is that, within the past year, the intersection of Newbury Street and Ashby Avenue (Highway SR-13) has been the site of one fatal vehicle accident and two near-fatal vehicle accidents.

BACKGROUND

Newbury Street is one block long, narrow, and extends from Russell Street to Ashby Avenue. The community it serves is residential, and it has an increasing number of families with infants and young children. Decades ago, the street was bordered by a coal yard at one end and a lightly used thoroughfare at the other end. Outside of use by residents, there was very little vehicle traffic. Over the recent decades, the coal yard, at one end of the street, was replaced by the Berkeley Bowl Market. At the other end of the street, the lightly used thoroughfare became Highway SR-13. In addition, the Ashby Bart Station (with its cross-bay commuters) was built only a block away. Individually, each of these changes had impacts on the vehicle traffic along Newbury Street. Combined, these changes have significantly contributed to Newbury Street being increasingly dangerous for both residents and non-residents. Now, with planned major housing projects in the immediate area, there may be further increases in vehicle traffic along Newbury Street and, with it, additional vehicle hazards.

The City must support infrastructure that promotes pedestrian and bicyclist safety and reduces traffic collisions in order to avoid further tragedies. Further work needs to be done in order to deter traffic violations and ensure pedestrian and bike safety. The

residents of the neighborhood that is plagued by dangerous and illegal driving want to see clear safe passage for pedestrians and bicyclists, as well as a reduction of vehicle collisions and property damage.

### RATIONALE FOR RECOMMENDATION

In Berkeley, street safety is a priority. Based on consultations with constituents and reported vehicle incidents, action must be taken to substantially decrease traffic violations and prevent the potential for serious injury on this street. The urgency for this action is particularly high given the number of young children who live at or near this street as well as patrons of the Berkeley Bowl Market, BART commuters, and the increasing number of cyclists.

Based on consultation with community residents, there is a consensus of opinion that vehicle traffic along Newbury Street has become increasingly dangerous for pedestrians, cyclists, parked cars, and property. There is overwhelming support for measures that reduce the traffic dangers along Newbury Street, especially at the intersection of Newbury Street and Ashby Avenue (Highway SR-13).

At the intersection of Newbury Street, vehicles traveling along Ashby Avenue (Highway SR-13) are not controlled by traffic lights or stop signs. Vehicles that are speeding along Ashby Avenue tend to maintain an excess speed as they turn to enter Newbury Street. In addition, vehicles illegally parked in yellow zones at the east corner of the intersection create blind spots for west-bound vehicles that are speeding onto Newbury Street. These unsafe conditions significantly contribute to vehicle dangers on Newbury Street.

### VEHICLE TRAFFIC BOLLARD DIVERTERS

Traffic bollard diverters are a recognized method for reducing vehicle traffic dangers in Berkeley. According to a 2015 study, *“Traffic diversion has been quite effective in many of the neighborhoods where the bollards have been installed. The Claremont neighborhood is a prime example of this success. Traffic that used to spill into the neighborhood during peak commuter hours is now unable to penetrate the interior. Children can safely walk from their homes to Monkey Island Park without encountering commuters slicing frantically through the back streets to get from Claremont Blvd. to Derby St. At the same time, cyclists and pedestrians are able to pass through the barriers and therefore have unrestricted access to any part of the neighborhood.”*

Berkeley is currently served by two types of traffic bollard diverter systems; Full-diverter bollards and Semi-diverter bollards. A full diverter bollard completely blocks access to, and exit from, one end of the street. The blocked end of the street creates a cul-de-sac. Although this method is effective at reducing vehicle traffic, it may contribute to other street problems such as impaired access for emergency and delivery vehicles, vehicle and property damage from drivers making a u-turn at the blocked end of the street, and illegal dumping of trash at the “dead end” cul-de-sac. This is especially true for full-diverter bollards that are installed on narrow streets.

Semi-diverter traffic bollards block only half of one end of the street. The bollard prevents entrance to the street on one side, while it maintains exit from the street on the other side. This allows for a smooth flow of traffic along the street. It avoids the potential bollard problems of impaired emergency and delivery vehicle access as well as the need for vehicle u-turns to exit the street. In addition, it reduces the motivation for illegal dumping.

Installation of a semi-diverter bollard system at the east corner of the Newbury Street and Ashby Avenue (Highway SR-13) intersection would significantly reduce the traffic vehicle dangers along Newbury Street. The bollard system would prevent access to Newbury Street from vehicles traveling along Ashby Avenue (Highway SR-13). This safety measure is especially important for west-bound vehicles that are speeding along Ashby Avenue and are partially blinded by illegally parked vehicles on the east corner of the intersection prior to turning into Newbury Street.

Vehicles can enter Newbury Street from Russell Street. Vehicles traveling along Ashby Avenue can turn onto Adeline Street and travel one block to Russell Street. Exit from Newbury Street can be by Russell Street, as well as by the non-barricaded section of Newbury Street at the Ashby Avenue intersection. Doing this would contain the traffic flow, make it easier for pedestrians, cyclists, and property along Newbury Street, and decrease the number of traffic violations. Although this item is not a silver bullet in addressing all of the problems, it is a needed step in order to bring much-needed safety to the area.

#### TRAFFIC BOLLARD DIVERTERS ALONG ASHBY AVENUE

Traffic bollard diverters are especially recognized as a preventive measure for vehicle traffic along Ashby Avenue (Highway SR-13). From Telegraph Avenue to Shattuck Avenue, all streets along the Ashby Avenue corridor are currently protected by bollard traffic diverters. Newbury Street is the only street between the major thoroughfares of Telegraph Avenue and Adeline Street that is not protected by a bollard traffic diverter system (see photos).

Both types of traffic bollard diverter systems are located along Ashby Avenue; Full-diverter bollards and Semi-diverter bollards. Newbury Street would best be served with a semi-diverter traffic bollard system.

#### ENVIRONMENTAL SUSTAINABILITY

No adverse effects on the environment are anticipated. A semi-diverter bollard conversion will help mitigate traffic, promote pedestrian safety, and create a safer intersection for families, pedestrians, and bicyclists. Drivers heading along Ashby Avenue can easily access Newbury Street by utilizing Russell Street, one block away.

#### FISCAL IMPACTS

Staff time and additional costs are to be determined by the Public Works Department.

#### CONTACT PERSON

Councilmember Ben Bartlett	510-981-7130
James Chang	510-981-7131
Hillary Phan	510-981-7131



Kate Harrison  
Vice Mayor, District 4

CONSENT CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council Councilmember  
From: Vice Mayor Harrison  
Subject: Dwight Way Traffic Calming Budget Referral

RECOMMENDATION

Refer a one-time allocation of \$50,000 to the June budget process for traffic calming intersection improvements on Dwight Way between Grant Street and California Street.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

With the City Council's adoption of Vision Zero goals in March 2018, Berkeley embarked on a mission to eliminate all traffic deaths and severe injuries by the year 2028.<sup>1</sup> Along with the Pedestrian Plan and the Bicycle Plan, the Vision Zero Action Plan outlines a broad path to accomplish this ambitious goal as well as specific infrastructural recommendations to make Berkeley's streets safer for all who use them. Despite the ambitious goals set by Vision Zero and the recent progress of improvements to infrastructure, motorists continue to strike pedestrians and cyclists at an alarming rate.

BACKGROUND

Berkeley Residents have identified the section of Dwight Way between Grant Street and California Street as an area of particular concern where drivers have routinely failed to adhere to posted speed limits creating an unsafe environment for pedestrians. Improvements at Dwight and California – including pedestrian bulb-outs, relocated crosswalks and a center median that serves to slow traffic and provide a safe stopping point for bicyclists and pedestrians have already made that intersection safer. However, there are 9 blocks on Dwight between Sacramento and Martin Luther King Boulevard and only California has enjoyed these improvements. Between 2016 and 2021 there were 13 motor vehicle collisions on Dwight between Grant and California, of which 8 occurred at the intersection between Dwight Way and Grant Street. Residents of the neighborhood have gathered signatures for a Neighborhood Request for Traffic Calming Study which was submitted to the City of Berkeley's Public Works Department in December 2021.

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<sup>1</sup> [https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Transportation/Berkeley\\_Vision\\_Zero\\_Action\\_Plan\\_Approved\\_03102020.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley_Vision_Zero_Action_Plan_Approved_03102020.pdf)

FINANCIAL IMPLICATIONS

\$50,000 for design and materials for treatments such as bulb-outs, center medians, rectangular flashing beacons or other intersection improvement treatments recommended by the City of Berkeley Public Works Department.

ENVIRONMENTAL SUSTAINABILITY

By making intersections safer for bicyclists and pedestrians, we incentivize use of carbon-neutral modes of transportation. The City estimates that transportation-related emissions accounts for approximately 60% of our community's total annual greenhouse gas emissions.<sup>2</sup> By encouraging alternatives to car transportation by making pedestrian and cyclist infrastructure safer and more accessible, these improvements stand to lower the emissions from our community's dominant source of carbon emissions.

CONTACT PERSON

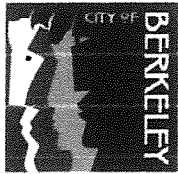
Vice Mayor Kate Harrison, Council District 4, 510-981-7140

ATTACHMENTS:

- 1: Neighborhood Request for Traffic Calming Study
2. Collision Statistics for Dwight Way

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<sup>2</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/12\\_Dec/Documents/2018-12-06\\_WS\\_Item\\_01\\_Climate\\_Action\\_Plan\\_Update\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/12_Dec/Documents/2018-12-06_WS_Item_01_Climate_Action_Plan_Update_pdf.aspx)

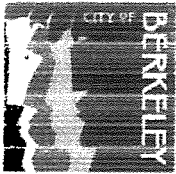


We, the residents of Dwight Way between Sacramento and MCK, Jr. Hwy, <sup>Grant California</sup> hereby request that our location be included in the City of Berkeley Traffic Calming Process in accordance with City Council Resolution No. 64,732-N.S. We have read a copy of the original Neighborhood Request for Traffic Calming Study circulated with this petition and agree with the contents.

Name	Signature	Address	Telephone
Jenn Guitart	[Signature]	1536 Dwight Way	510-759-5090
Kevin Boyd	[Signature]	.. ..	510-350-6802
Catherine Pearson	[Signature]	1716 Dwight Way	631-379-3718
<del>Mary Anne</del>			
Mary Anne	[Signature]	1726 Dwight Way	510 486 8139
JUSTIN FAHEY	[Signature]	1732 DWIGHT WAY	415 608-8477
Harry Oestreicher	[Signature]	2500 Grant St	415.407.6161
Katherine McKenzie	[Signature]	1814 Dwight Way	510 486-8039
David Gliman	[Signature]	1850 Dwight	610 550 1533
Alfred Williams	[Signature]	2448 Grant St	510 847-2016
R. Del Bourgo	[Signature]	1729 Dwight	
Jacqueline Magallon	[Signature]	1721 Dwight way	no phone
Shani Leonard	[Signature]	1703 Dwight Way	510-439-6152
Feather Foxworthy	[Signature]	1701 Dwight Way	415-310-0081
Gwendelyn Enderoglu	[Signature]	1718 Dwight Way	215-896-6615
NADEEM HAIDARY	[Signature]	1733 DWIGHT WAY	203-512-7343
JOSEF ABGTA	[Signature]	1643 Dwight Way	415-283-8749
EVAN LUKE	[Signature]	1635 Dwight Way	510 332 6776
BRYCE R	[Signature]	1637 Dwight Way	510 847-0370
Milo Beckett	[Signature]	1633 Dwight Way	510.417-9454

Please submit completed forms to:

Jesse Peoples  
 City of Berkeley  
 Public Works Transportation Division  
 1947 Center Street, 4<sup>th</sup> Floor  
 Berkeley, CA 94704  
[ipeoples@cityofberkeley.info](mailto:ipeoples@cityofberkeley.info)



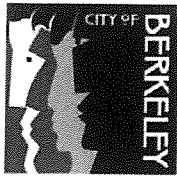
We, the residents of Dwight Way Between ~~San Francisco~~ <sup>Grant</sup> and ~~Market St~~ <sup>California</sup>, hereby request that our location be included in the City of Berkeley Traffic Calming Process in accordance with City Council Resolution No. 64,732-N.S. We have read a copy of the original Neighborhood Request for Traffic Calming Study circulated with this petition and agree with the contents.

Name	Signature	Address	Telephone
THORSTEN Caus	<i>[Signature]</i>	1639 DWIGHT	650-430-1088
Ed Allen	<i>[Signature]</i>	1629 Dwight	510-589-5544
Sandra Chang	<i>[Signature]</i>	1619 Dwight	281-857-3113
JOANN BUNTING	<i>[Signature]</i>	1601 Dwight Way	510-661-4862
Stuart Gabriel	<i>[Signature]</i>	1595 Dwight Way	510-961-2009
Christian Hutchin	<i>[Signature]</i>	1692 Dwight Way	510-333-5206
Paul Gojji	<i>[Signature]</i>	1709 Dwight Way Apt C	415-717-1968
Paisa Joraj	<i>[Signature]</i>	1709 Dwight Way Apt A	947 415 9627
Alexia Perez	<i>[Signature]</i>	1713 Dwight Way <sup>APT A</sup>	(831)444-1362
Jackson Gillespie	<i>[Signature]</i>	1713 Dwight Way (C)	(209)986-3844
REBECCA NASSAR	<i>[Signature]</i>	1713 DWIGHT WAY (D)	530 354 7910
Andrea Pytkonen	<i>[Signature]</i>	1721-A DWIGHT	510 625-6519
Walker Spence	<i>[Signature]</i>	2444 Roosevelt Ave	831-252-1196
Catsked Krause	<i>[Signature]</i>	2442 Roosevelt	925. 915.3018
Samantha Lukas	<i>[Signature]</i>	1730 Dwight Way	415-350-3141
Jane Maxwell	<i>[Signature]</i>	1803 Dwight Way	510-548-2286
ALEXSANDRA POGUE	<i>[Signature]</i>	1708 Dwight Way <sup>APT 2</sup>	916-747-2335
Cindy Ngu	<i>[Signature]</i>	1708 Dwight Way <sup>APT 1</sup>	(408) 870-0227
Randall Baxter	<i>[Signature]</i>	1715 Dwight Way	510 289 5144

Please submit completed forms to:

Jesse Peoples  
 City of Berkeley  
 Public Works Transportation Division  
 1047 Center Street 4th Floor  
 Berkeley, CA 94704  
 jpeoples@cityofberkeley.info



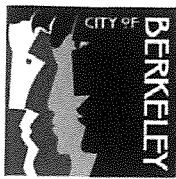


We, the residents of Dwight Way between Grant and Cal. Pomic, hereby request that our location be included in the City of Berkeley Traffic Calming Process in accordance with City Council Resolution No. 64,732-N.S. We have read a copy of the original Neighborhood Request for Traffic Calming Study circulated with this petition and agree with the contents.

Name	Signature	Address	Telephone
TARA KEMP		1670 DWIGHT	818/448-6105
Bethany Henderson		1600 Dwight	608-345-7708
PHIL D MONROE		1700 DWIGHT	510-684-4884
Mariana Valdez		2504 McGee Ave	760 693 2190
Mohammad Rashid		1662 dwight way c	559-399-6213
Alan Franco		1654 Dwight Way E	510-484-1675
Thao Nguyen		1654 Dwight Way #G	2093957233
Malik Powell		1654 Dwight Way #H	<del>510-501-2572</del>
Maria Ruiz		1626 Dwight Way G	510-501-2572
Mohammed Tufair		1626 Dwight way A	925-967-7231
* Yvonne Schwartz		1626 Dwight Way B	510-848-0441
Ricardo Gonzalez		1626 Dwight way K	925 749-0876
Abe Karplus		1626 Dwight way I	831-719-9358
Soumya Gosukonda		1654 Dwight Way F	415-685-3810
James Thomas		1620 Dwight way	612-814-0566
50445 Glenn Taplin		1612 Dwight	510 643 8673
Yoral Sheshori		1713 Dwight TF	415 741 7107
Wendolyn Ojeda		1713 DWIGHT APTG4	424-293-9265
La Donna Byers		1712 Dwight Way #3	510-981-1802

Please submit completed forms to:

Jesse Peoples  
 City of Berkeley  
 Public Works Transportation Division  
 1947 Center Street, 4<sup>th</sup> Floor  
 Berkeley, CA 94704  
[jpeoples@cityofberkeley.info](mailto:jpeoples@cityofberkeley.info)



We, the residents of Dwight Way between Grant and California, hereby request that our location be included in the City of Berkeley Traffic Calming Process in accordance with City Council Resolution No. 64,732-N.S. We have read a copy of the original Neighborhood Request for Traffic Calming Study circulated with this petition and agree with the contents.

Name	Signature	Address	Telephone
Edward Worley		2712 Dwight Way	341 233 8220
Kristin Richerson		2507 McGee Ave	510 684 0112
Emiliana Kell		1682 DWIGHT WAY	510 841-2955
Joseph Levinson		2512 McGee Ave	510 676-1137
Davin Chang		1708 Dwight way	(510) 386-6093
Chris Goodman		1708 Dwight way #6	(510) 678-1880
Martin Jimenez		2400-JEFFERSON	(510) 435-9494
Steve Edlen		2442 McGee Ave	510-848-5990
Helen Holt		1649 Dwight Way	510 841-1565
Kassandra Myhre		1662 Dwight Way	510-908-1363
Ornit Oppenheimer		1678 Dwight Way	(510) 207 6608
Christian Marek		1546 Dwight Way	(510) 841-2115
Francesco Reyes		1706 Dwight Way	510 3060630
Yungher Bai		2509 Dwight	415 2949341
Richard Rothbard		2506 MCGEE	510-694 9179
Mustafa Usibay		1645 Dwight Way	510 8836364
Loc Huynh		1739 Dwight Way	510 2077162

Please submit completed forms to:

Jesse Peoples  
 City of Berkeley  
 Public Works Transportation Division  
 1947 Center Street, 4<sup>th</sup> Floor  
 Berkeley, CA 94704  
[jpeoples@cityofberkeley.info](mailto:jpeoples@cityofberkeley.info)

## City of Berkeley

**Traffic Collision History Report  
Midblock Collisions**

3/17/2022

Page 1

**Arterial: DWIGHT WAY  
Limit 1: CALIFORNIA ST  
Limit 2: GRANT ST**

Total Number of Collisions: 13

Date Range Reported: 7/1/2016 - 6/30/2021

Report No.	Date Time	Dist/Dir	Location	Type of Collision	Motor Veh. Involved With	DOT1	MPC 1	DOT2	MPC 2	PCF	# Inj	# Kld
8293014	11/18/16 16:41	0' In Int.	Dwight Way/Mcgee Ave	Broadside	Other Motor Vehicle	East	Making Left Turn	West	Proceeding Straight	Auto R/W Violation	1	0
8398225	4/21/17 8:02	0' In Int.	Dwight Way/California St	Broadside	Bicycle	North	Proceeding Straight	East	Proceeding Straight	Traffic Signals and Signs	1	0
8446878	5/17/17 13:00	60' West of	Dwight Way/Grant St	Sideswipe	Parked Motor Vehicle	East	Proceeding Straight	East	Parked	Improper Turning	0	0
8501081	9/26/17 7:42	0' In Int.	Dwight Way/California St	Broadside	Bicycle	North	Proceeding Straight	West	Proceeding Straight	Auto R/W Violation	1	0
8543119	11/6/17 15:48	0' In Int.	Dwight Way/Grant St	Broadside	Bicycle	East	Proceeding Straight	East	Proceeding Straight	Traffic Signals and Signs	1	0
8543059	11/27/17 17:45	3' East of	Dwight Way/Grant St	Sideswipe	Pedestrian	East	Proceeding Straight	Not Stated	Proceeding Straight	Ped R/W Violation	1	0
8647226	3/16/18 16:41	0' In Int.	Dwight Way/Grant St	Broadside	Motor Vehicle on Other Roadway	East	Proceeding Straight	Not Stated	Proceeding Straight	Auto R/W Violation	1	0
8653976	3/19/18 11:38	0' In Int.	Dwight Way/Grant St	Broadside	Other Motor Vehicle	South	Proceeding Straight	East	Proceeding Straight	Traffic Signals and Signs	0	0
8841694	1/6/19 10:00	0' In Int.	Dwight Way/Grant St	Rear-End	Other Motor Vehicle	West	Slowing/Stopping	West	Stopped in Road	Unsafe Speed	1	0
8835210	2/14/19 12:30	0' In Int.	Dwight Way/California St	Broadside	Other Motor Vehicle	North	Proceeding Straight	West	Proceeding Straight	Auto R/W Violation	1	0

City of Berkeley

**Traffic Collision History Report  
Midblock Collisions**

3/17/2022  
Page 2

Arterial: DWIGHT WAY  
Limit 1: CALIFORNIA ST  
Limit 2: GRANT ST

Total Number of Collisions: 13  
Date Range Reported: 7/1/2016 - 6/30/2021

Report No.	Date Time	Dist/Dir	Location	Type of Collision	Motor Veh. Involved With	DOT1	MPC 1	DOT2	MPC 2	PCF	# Inj	# Kld
8909488	5/7/19 8:45	0' In Int.	Dwight Way/Grant St	Broadside	Other Motor Vehicle	North	Proceeding Straight	West	Proceeding Straight	Traffic Signals and Signs	0	0
9218807	12/7/20 19:28	0' In Int.	Grant St/Dwight Way	Broadside	Other Motor Vehicle	West	Proceeding Straight	South	Proceeding Straight	Auto R/W Violation	0	0
9254723	3/2/21 16:01	0' In Int.	Dwight Way/Grant St	Rear-End	Other Motor Vehicle	East	Proceeding Straight	East	Stopped in Road	Unsafe Speed	4	0

**City of Berkeley**

**Traffic Collision History Report  
Midblock Collisions**

3/17/2022  
Page 3

Arterial: DWIGHT WAY  
Limit 1: CALIFORNIA ST  
Limit 2: GRANT ST

Total Number of Collisions: 13  
Date Range Reported: 7/1/2016 - 6/30/2021

Report No.	Date Time	Dist/Dir	Location	Type of Collision	Motor Veh. Involved With	DOT1	MPC 1	DOT2	MPC 2	PCF	# Inj	# KId
Total Number of Collisions: 13		Segment Length: 0.25 miles (1,296')										

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**Settings Used For Query**

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**Parameter**

**Setting**

Limit 1	Include Intersection Related
Limit 2	Include Intersection Related
Intermediate Intersections	Include Intersection Related
Sorted By	'Date and Time'





Lori Droste, District 8

**CONSENT CALENDAR**

May 10, 2022

**TO:** Members of the City Council

**FROM:** Councilmember Lori Droste and Mayor Jesse Arreguín

**SUBJECT:** Budget Referral for Charter Officer Performance Review

**RECOMMENDATION**

Refer \$120,000 to the budget process to procure professional services from a qualified consultant to assist the City Council in establishing a collaborative review process for performing regular evaluations of the City Attorney and Police Accountability Board Director's performance and direct the City Manager to issue a Request for Proposal (RFP) to contract with an experienced firm that will engage the City Council and the City Attorney and Police Accountability Board Director in performance evaluation similar to the City Manager's evaluation process. The RFP shall be reviewed by the City Council Agenda and Rules Committee prior to issuance. The Agenda and Rules will make a recommendation to the entire City Council, for approval, prior to entering into any contract.

The performance evaluation process should begin following the scheduled approval of the Biennial Budget in June of 2022 and establish an annual evaluation schedule that includes interim updates on a quarterly basis—similar to the City Manager's evaluation process described in the [May 14, 2019 Council referral](#) for performance evaluations.

**BACKGROUND**

In 2019, Mayor Jesse Arreguín and Councilmember Kate Harrison cited the various benefits for regular independent annual evaluations for charter officers, including opportunities to improve communications, establish goals and objectives, set expectations, and improve organizational function, resulting in a more effective City government.

The City Charter gives the City Council explicit authority to appoint and potentially remove charter officers who directly report to City Council; it also provides a basis for the Council conducting reviews of individuals serving in this position, and outlines a number of performance considerations that could be part of this process.

Article XVIII of the City Charter, which governs the Police Accountability Board and Director of Police Accountability, contains multiple provisions which reflect the City Council's authority over the Director of Police Accountability. Section 14(a) reads, in part: *"The City Council shall appoint the Director of Police Accountability at a noticed public meeting."* Section 14(e) reads in part: *"The City Council may remove the Director of Police Accountability by a two-thirds vote either on its own motion or based on the recommendation of the Police Accountability Board."* And Section 14(b) reads: *"The Director of Police Accountability shall carry out the work of the Board as described herein, which may include the day-to-day operations of the Board office and staff, and performance appraisals and discipline of all subordinate employees of the Board. All such individuals, to the extent that they are employees of the City of Berkeley, shall be subject to the personnel rules governing City of Berkeley employees."*

Taken together, the sections referenced above make clear that the City Council bears authority and responsibility to appoint and remove the Director of Police Accountability, and that as an employee of the City of Berkeley under the authority of the Council, the Director of Police Accountability is subject to regular evaluation/review by the same.

In 2020, Berkeley voters approved Measure KK with 75 percent in support. Per the City Charter amendments adopted under Measure KK, Article XVI Section 113 now reads in part: *"The City Attorney shall be an officer of the City of Berkeley, appointed by a vote of five members of the Council, serving at the will of the Council for an indefinite period, and removed only by a vote of five members of the Council..."*

Additionally, the contract for the current City Attorney includes the following provisions:

*"Within three months of appointment, the City Council shall jointly establish objective, verifiable measures of her performance to be completed during the first year and the City Council shall provide Ms. Brown with a performance evaluation at the end of the first year. During the initial performance evaluation, Ms. Brown shall present to the City Council on her goals and priorities for the City Attorney Department. An assessment of salary increase shall be part of the evaluation process. For each subsequent year during the term of this Agreement, the parties shall endeavor to establish prospective objective, verifiable measures of performance for the ensuing year. As part of the annual performance evaluation, Ms. Brown shall present on goals and priorities for the City Attorney Department and key accomplishments over the past year."*

Therefore both the City Charter and the contract for the current City Attorney provide clear authority for the Council to evaluate the performance of the City Attorney and to make retention/hiring decisions based on these considerations.



Due to staffing demands and other exigencies of the COVID-19 pandemic, the City Council and City Attorney were unable to engage in the evaluation processes established in the City Attorney's contact. Abrupt shifts to remote work, a large and unexpected budget shortfall, maintenance of an Emergency Operations Center, and other factors converged to make an evaluation process impracticable at its originally anticipated time. It is now critical that the City Council resume evaluation procedures for the City Attorney and other Charter officers.

In collaboration with the City Attorney, the Police Accountability Board, and the selected consultant, the City Council can develop criteria for evaluation and recommendations for operational improvements using best practices from other municipalities, similar to approaches from the International City/County Management Association (ICMA) used for evaluation of the City Manager.

**FINANCIAL IMPLICATIONS**

\$120,000

**ENVIRONMENTAL SUSTAINABILITY**

There are no environmental impacts associated with the recommendations in this report.

**CONTACT PERSON**

Councilmember Lori Droste

510-981-7180





Office of the Mayor

CONSENT CALENDAR

May 10, 2022

To: Members of the City Council

From: Mayor Jesse Arreguín

Subject: Berkeley Housing Authority Loan Forgiveness

RECOMMENDATION

Adopt a Resolution forgiving a \$300,000 Housing Trust Loan to the Berkeley Housing Authority. Forgiving this outstanding loan will enable BHA to provide additional housing to families in Berkeley.

BACKGROUND

In April 2012 the Berkeley City Council adopted Resolution 65,672-N.S. approving fund reservation of General Funds from the Housing Trust Fund (HTF) to Berkeley Housing Authority in an amount not to exceed \$300,000 to pay for predevelopment costs associated with the disposition and rehabilitation of 75 units of rental housing owned by BHA.

On February 13, 2013, BHA entered into a Public Housing Disposition Predevelopment Loan with the City of Berkeley for \$300,000 at an annual interest rate of 3%, payable in five years. BHA used the loan proceeds to pay for relocation expenses of former low-income housing tenants and for fees associated with the disposition of the 75 low income housing units. The Berkeley City Council approved Resolution 66,076-N.S. on April 2, 2013, changing annual interest rate to 0% and extending the term for another five years. The loan will become due and payable in 2023.

BHA has requested that the City of Berkeley forgo repayment of the \$300,000 loan balance to cover short-falls in the Housing Choice Voucher Program that would have been covered through the Housing Assistance Payment (HAP) funding or disposition proceeds. Forgiveness of the loan will allow BHA to serve/assist up to fifteen low income families in Berkeley for one year, providing more affordable housing units in Berkeley.

FINANCIAL IMPLICATIONS

\$300,000 from the Housing Trust Fund

ENVIRONMENTAL SUSTAINABILITY

There are no environmental impacts associated with the recommendations in this report.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

RESOLUTION NO. \_\_\_\_\_

**FORGIVENESS OF THE CITY OF BERKELEY HOUSING TRUST FUND LOAN IN THE AMOUNT OF \$300,000 TO THE BERKELEY HOUSING AUTHORITY**

WHEREAS, in December 2009, the Berkeley Housing Authority (BHA) submitted an application to the federal Department of Housing and Urban Development (HUD) to transfer its public housing units to another entity to rehabilitate and manage the units more effectively; and

WHEREAS, in February 2010, HUD approved BHA's disposition application and selected Related Companies of California as the entity to serve as the developer, manager, and long-term owner of BHA's 75 rental housing units; and

WHEREAS, in April 2012 the Berkeley City Council adopted Resolution 65,672-N.S. approving fund reservation of General Funds from the Housing Trust Fund (HTF) to BHA in the amount not to exceed \$300,000 to pay for predevelopment costs associated with the disposition and rehabilitation of 75 units of rental housing owned by BHA; and

WHEREAS, on February 13, 2013 the Berkeley Housing Authority entered into a Public Housing Disposition Predevelopment Loan with the City of Berkeley for \$300,000 at an annual interest rate of 3%, payable in five years; and

WHEREAS, on April 2, 2013 the City of Berkeley Council approved Resolution 66,076-N.S. changing the annual interest rate of the loan to 0% and extending the term for another five years; and

WHEREAS, the Berkeley Housing Authority used the loan proceeds to pay for relocation expenses of former low-income housing tenants and fees associated with the disposition of the 75 low income housing units; and

WHEREAS, the loan is scheduled to mature on February 7, 2023; and

WHEREAS, BHA has requested that the City of Berkeley forgo repayment of the \$300,000 loan proceeds in order to cover administrative costs in the Housing Choice Voucher Program rather than using the Housing Assistance Payment (HAP) funding or disposition proceeds; and

WHEREAS, forgiveness of the loan would allow BHA to serve/assist up to fifteen low income families in Berkeley for one year and create more affordable housing units in Berkeley.

NOW THEREFORE BE IT RESOLVED that the Berkeley City Council forgives repayment of the \$300,000 loan made to the Berkeley Housing Authority (BHA) in February 2013.



CONSENT CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin

Subject: Efficiency Unit Ordinance

### RECOMMENDATION

Refer to the City Manager and Planning Commission to adopt objective standards for Efficiency Units pursuant to California Housing and Safety Code § 17958.1, developing an ordinance to amend the Berkeley Municipal Code modeled after standards implemented in the City of Davis and the City of Santa Barbara.

### FINANCIAL IMPLICATIONS

Staff time.

### CURRENT SITUATION AND ITS EFFECTS

Establishing standards for Efficiency Units is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

BMC Chapter 23F.04 defines Group Living Accommodations (GLAs) as a “building or portion of a building designed for or accommodating a residential use by persons not living together as a household.” This broad category includes several distinct housing types, such as Dormitories and Residential Hotels. While this definition rests on cohabitation by multiple persons not constituting a “household,” state law provides a legal framework for establishing positive efficiency unit standards for one- or two-person households. California Housing and Safety Code § 17958.1 allows local governments to “permit efficiency units for occupancy by no more than two persons which have a minimum floor area of 150 square feet and which may also have partial kitchen or bathroom facilities, as specified by the ordinance.” The City of Berkeley currently lacks such an ordinance.

Berkeley’s current standards for Residential Hotels disincentivizes their production, limiting the supply of lower-cost housing that could be built without limited or no public subsidies. Development standards in Commercial districts are equivalent to those in R-3 zones, requiring a minimum of 350 square feet of total lot area per occupant, inclusive of 90 square feet of open space per occupant. This effectively permits fewer residents by area than other residential uses and reduces financial feasibility. For example, a proposed multifamily apartment development at 2720 San Pablo Ave. in the C-W district is on a 9,576 square-foot project site, with 25 dwelling units and a total of 97 bedrooms.

If it were a GLA project such as a residential hotel, it would only be permitted a maximum of 27 bedrooms.

## BACKGROUND

Berkeley has made insufficient progress on meeting its state-mandated Regional Housing Need Allocation (RHNA) goals for low- and moderate-income housing in the 2014-2022 RHNA cycle. As recently as the city's 2020 Housing Pipeline Report, the city had only fulfilled 23% of its moderate-income RHNA goals, 21% of its RHNA goals for Very-Low Income households, and a mere 4% for Low-Income households. Berkeley's next RHNA cycle is estimated to mandate roughly 3 times as many units as the previous cycle's total of 2,959 units across all income tiers. In 2019, development costs in the San Francisco Bay Area averaged \$600,000 for new housing funded by 9% Low Income Housing Tax Credits.<sup>1</sup>

According to an October 2014 report on affordable housing development by several state housing agencies, "for each 10 percent increase in the number of units, the cost per unit declines by 1.7 percent."<sup>2</sup> A 2020 study by UC Berkeley's Terner Center on affordable housing projects funded by 9% Low Income Housing Tax Credits reported: "On average, efficiencies of scale translate into a reduction of about \$1,162 for every additional unit in a project."<sup>3</sup>

Because GLAs typically offer lower market rents for smaller dwelling units, certain types of GLAs including Residential Hotels are exempted from Berkeley's Affordable Housing Mitigation Fee requirements pursuant to BMC 23C.12.020.B. With the exception of Dormitories, GLA units also count toward Berkeley's RHNA housing production targets for low- and moderate-income households if rents meet household affordability thresholds. Lower-cost housing forms with smaller dwelling units such as Single Room Occupancy (SRO) hotels have historically provided a significant portion of affordable housing for cities in the San Francisco Bay Area and nationwide without public subsidies for construction, but current zoning has made projects with this type of cost-effective unit size practically infeasible throughout much of Berkeley's transit-rich corridors.

The lack of Efficiency Unit standards has contributed to some consternation in the community with respect to recent GLA projects. For instance, an appeal of Use Permit # ZP2018-0229 for a Residential Hotel project at 2435 San Pablo Avenue—a permit that the City Council upheld in 2021—criticized the project as "neither fish nor fowl" because the project was designated as a Residential Hotel but resembled an Efficiency Unit

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<sup>1</sup> Reid, C. (2020). The Costs of Affordable Housing Production: Insights from California's 9% Low-Income Housing Tax Credit Program. *UC Berkeley Terner Center for Housing Innovation*. Retrieved from [https://ternercenter.berkeley.edu/wp-content/uploads/pdfs/LIHTC\\_Construction\\_Costs\\_March\\_2020.pdf](https://ternercenter.berkeley.edu/wp-content/uploads/pdfs/LIHTC_Construction_Costs_March_2020.pdf)

<sup>2</sup> California Department of Housing and Community Development, et al. (2014). *Affordable Housing Cost Study: Analysis of the Factors that Influence the Cost of Building Multi-Family Affordable Housing in California*. Retrieved from [https://www.treasurer.ca.gov/ctcac/affordable\\_housing.pdf](https://www.treasurer.ca.gov/ctcac/affordable_housing.pdf)

<sup>3</sup> See footnote 1.

project.<sup>4</sup> If the project were an Efficiency Unit, the individual efficiency kitchens and bathrooms would be subject to State standards (or local standards if the City were to adopt them), and the communal kitchens would be an amenity for residents rather than a requisite feature of a Residential Hotel.

Other jurisdictions in California have availed themselves of state authority to establish local standards. For example, the City of Davis establishes a definition of Efficiency Units pursuant to CHSC § 17958.1 with “a minimum floor area of two hundred twenty square feet and shall have a bathroom facility and a partial kitchen or kitchenette.”<sup>5</sup> Davis Municipal Code § 40.01.010(e) and Santa Barbara Municipal Code § 30.185.040 establish standards for Efficiency Units consistent with state law.<sup>67</sup> Santa Barbara’s standards also enable a minimum floor area of 150 square feet for “Affordable Efficiency Units” subject to deed restrictions for low- and very-low income households.

In 2014, the City of Seattle enacted strict limitations on new “congregate” micro-housing projects, and saw a corresponding increase in production of Small Efficiency Dwelling Units (SEDUs) following this change. However, due to increases in minimum floor area requirements and inability to access affordable housing incentives, the number of new SEDUs completed per year in Seattle has declined.<sup>8</sup>

Nevertheless, the data from Seattle shows a clear marginal benefit to housing affordability. A 2021 study of Seattle’s microhousing market by the firm Kidder Matthews found that the average monthly rent of SEDUs was \$277 or 18% lower than comparable market-rate studio apartments.<sup>9</sup>

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[https://www.cityofberkeley.info/Clerk/City\\_Council/2021/01\\_Jan/Admin\\_Record\\_ZAB\\_Appeal\\_0\\_\(2435\)\\_San\\_Pablo\\_Ave.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/01_Jan/Admin_Record_ZAB_Appeal_0_(2435)_San_Pablo_Ave.aspx)

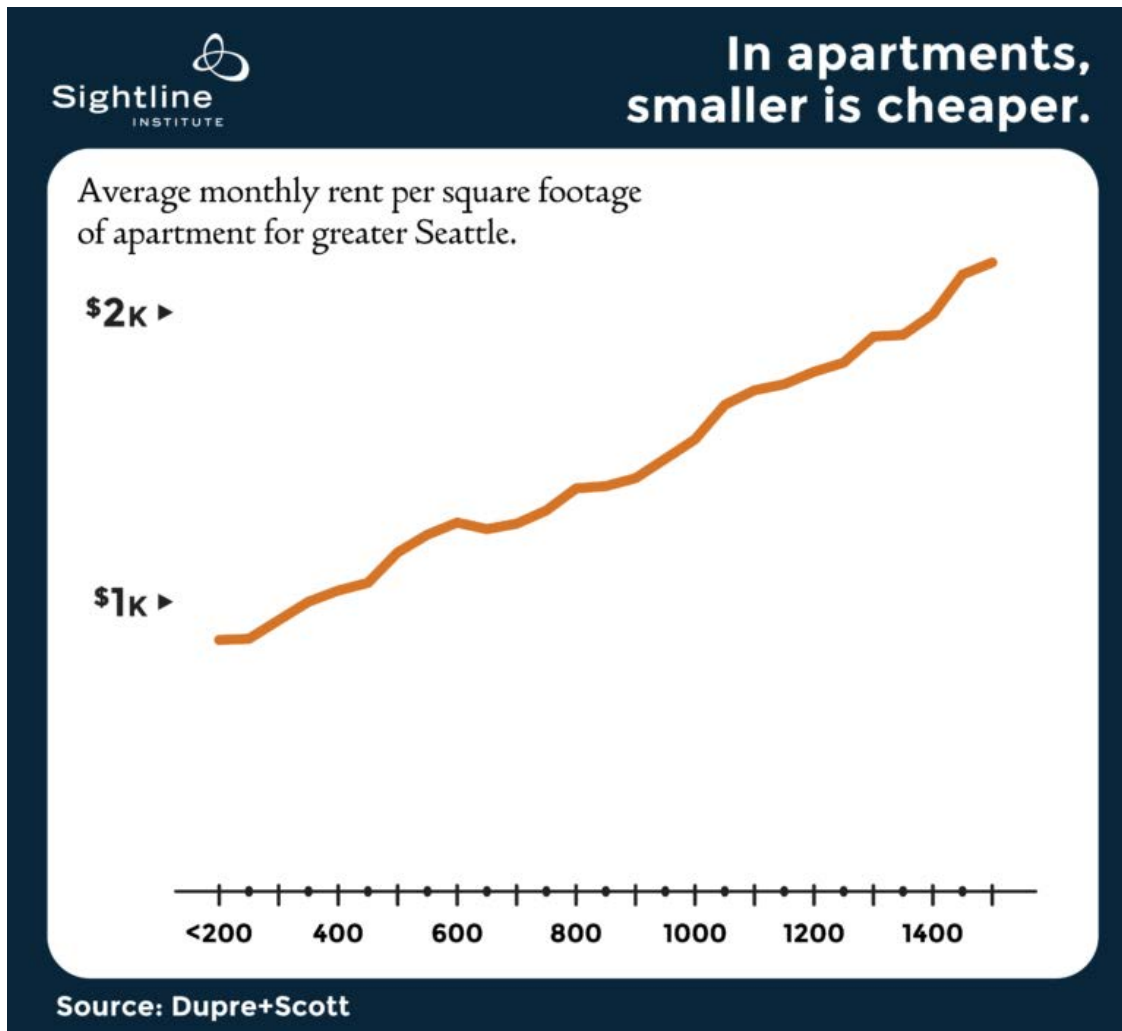
<sup>5</sup> [http://qcode.us/codes/davis/?view=desktop&topic=40-40\\_01-40\\_01\\_010#:~:text=Efficiency%20unit%20has%20the%20meaning,a%20partial%20kitchen%20or%20kitchenette](http://qcode.us/codes/davis/?view=desktop&topic=40-40_01-40_01_010#:~:text=Efficiency%20unit%20has%20the%20meaning,a%20partial%20kitchen%20or%20kitchenette)

<sup>6</sup> [http://qcode.us/codes/davis/?view=desktop&topic=40-40\\_26-40\\_26\\_450](http://qcode.us/codes/davis/?view=desktop&topic=40-40_26-40_26_450)

<sup>7</sup> [https://qcode.us/codes/santabarbara/view.php?topic=30-iii-30\\_185-30\\_185\\_040&frames=on](https://qcode.us/codes/santabarbara/view.php?topic=30-iii-30_185-30_185_040&frames=on)

<sup>8</sup> Neiman, D. (2021). When is Seattle Going to Fix Microhousing? *Sightline Institute*. Retrieved from <https://www.sightline.org/2021/02/04/when-is-seattle-going-to-fix-microhousing/>

<sup>9</sup> Anderson, J. & Simon, D. (2021). 2021 Micro Report. *Kidder Matthews*. Retrieved from [https://secureservercdn.net/72.167.230.230/qjx.818.myftpupload.com/wp-content/uploads/2021/12/2021-Micro-Report\\_Simon-Anderson-Team.pdf?time=1649887261](https://secureservercdn.net/72.167.230.230/qjx.818.myftpupload.com/wp-content/uploads/2021/12/2021-Micro-Report_Simon-Anderson-Team.pdf?time=1649887261)



*Sightline Institute, 2017*<sup>10</sup>

In Berkeley, the 39-unit “Step Up Housing”<sup>11</sup> project at 1367 University Ave. will lease 180 square foot furnished studio units to the nonprofit Building Opportunities for Self Sufficiency (BOSS) for \$1,400 per month, roughly \$600 or 30% lower than local studio apartment rents. The City will be supporting the leasing and operations of the project with Measure P funds to provide permanent supportive housing.

Irrespective of subsidies, this cost is also \$195 below the “fair market rent” for SRO/studio units in Alameda County set by the U.S. Department of Housing and Urban Development (HUD), and roughly the same as Alameda County’s rent limit for deed-restricted studio units for a household earning 60% of Area Median Income.<sup>12</sup>

<sup>10</sup> Neiman, D. (2017). How Seattle Killed Microhousing Again. *Sightline Institute*. Retrieved from <https://www.sightline.org/2017/03/20/how-seattle-killed-micro-housing-again/>

<sup>11</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/02\\_Feb/Documents/2021-02-23\\_Item\\_26\\_Step\\_Up\\_Housing\\_Initiative.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/02_Feb/Documents/2021-02-23_Item_26_Step_Up_Housing_Initiative.aspx)

<sup>12</sup> <https://www.acgov.org/cda/hcd/documents/2021IncomeandRentLimits.pdf>



### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Incentives for affordable housing offer potential to reduce Vehicle Miles Traveled Per Capita by increasing housing options in Berkeley and shortening commute times for a greater share of the local workforce. In an analysis of 252 California Cities, Durst (2021) finds that “each additional affordable housing incentive is associated with a 0.37 percentage point decrease in the share of workers who commute more than 30 minutes.”<sup>13</sup> With transportation accounting for 60% of Berkeley’s carbon footprint, per capita VMT reduction is critical for emissions reductions. Research from UC Berkeley scholars and the CoolClimate Network finds that urban infill offers one of the greatest potential policy levers for municipalities to reduce their greenhouse gas emissions.<sup>14</sup> Notably, this study predates the City of Berkeley’s 2019 prohibition on natural gas in new buildings,<sup>15</sup> which would further reduce the carbon footprint of future Berkeley residents relative to the regional average.

### CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

### ATTACHMENTS

1. City of Santa Barbara Ordinance 5794
2. City of Davis Ordinance 2602

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<sup>13</sup> Durst, N. J. (2021). Residential Land Use Regulation and the Spatial Mismatch between Housing and Employment Opportunities in California Cities. *Terner Center for Housing Innovation*. Retrieved from <http://californialanduse.org/download/Durst%20Residential%20Land%20Use%20Regulation%202020.pdf>

<sup>14</sup> Jones, C. et al. (2017). Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities. *Urban Planning*, 3(2). doi:10.17645/up.v3i2.1218.

<sup>15</sup> Cagle, C. (2019). Berkeley became first US city to ban natural gas. Here's what that may mean for the future. *The Guardian*. Retrieved from <https://www.theguardian.com/environment/2019/jul/23/berkeley-natural-gas-ban-environment>

ORDINANCE NO. 5794

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA AMENDING THE SANTA BARBARA MUNICIPAL CODE BY AMENDING SECTIONS 30.185.040 AND 30.295.020 TO REGULATE ACCESSORY DWELLING UNITS IN THE NON-COASTAL ZONE OF THE CITY, AND REPEAL INTERIM URGENCY ORDINANCE NO. 5930

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 30.185.040 of Chapter 30.185 of Title 30 of the Santa Barbara Municipal Code is amended to read as follows:

**30.185.040 Accessory Dwelling Units**

Accessory dwelling units and junior accessory dwelling units shall be located, developed, and occupied subject to the following provisions:

**A. Purpose.** The purpose of this section is to:

1. Expand opportunities in the City to create additional housing to suit the spectrum of individual lifestyles and space needs, allow more efficient use of existing housing stock and public infrastructure, and provide a range of housing opportunities.
2. Allow accessory dwelling units or junior accessory dwelling units as an accessory use to a primary residential unit, consistent with California Government Code Section 65852.2 or 65852.22, as applicable.
3. Promote accessory dwelling units or junior accessory dwelling units with high-quality designs that are compatible with the surrounding neighborhood, historic resources, and historic districts; preserve the City's visual resources; promote long-term sustainability; and contribute to a desirable living environment.

**B. Definitions.** For the purposes of this section, the following words and phrases shall have the following meanings:

1. ***Accessory Dwelling Unit.*** An attached or a detached residential unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residential unit. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation and be located on the same parcel that the primary residential unit is or will be situated. The following

categories of accessory dwelling units are subject to specific development standards:

- a. ***Special Accessory Dwelling Unit.*** These are specific types of smaller accessory dwelling units and junior accessory dwelling units with certain size, height, and setback standards described in subsection L. Development Standards for Special Accessory Dwelling Units. Special accessory dwelling units allow for more than one accessory dwelling unit on a lot.
- b. ***Standard Accessory Dwelling Unit.*** These are typically larger accessory dwelling units with size, height, and setback standards generally described in subsection G. Development Standards for Standard Accessory Dwelling Units. Standard accessory dwelling units do not allow for more than one accessory dwelling unit on a lot.

An accessory dwelling unit also includes the following:

- a. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.
  - b. A manufactured home, as defined in Section 18007 of the Health and Safety Code.
2. ***Efficiency Kitchen.*** A kitchen that includes at a minimum:
    - a. Appliances for cooking food and refrigeration, either built-in or countertop.
    - b. A sink for food preparation greater than 12 inches by 12 inches, excluding the sink located in the bathroom.
    - c. A food preparation counter.
  3. ***Existing Floor Area.*** A legally permitted building constructed on the site with a final inspection or certificate of occupancy as of the date of application submittal, that conforms to current zoning standards or is legal nonconforming as to current zoning standards.
  4. ***Junior Accessory Dwelling Unit.*** A unit that is no more than 500 square feet in size and contained entirely within the structure of an existing or proposed single residential unit. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing or proposed single residential unit and includes an efficiency kitchen.
  5. ***Passageway.*** A pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.
  6. ***Primary Residential Unit.*** The existing or proposed residential unit on a lot on which an accessory dwelling unit or junior accessory dwelling unit is permitted. The primary residential unit shall comprise one of the residential housing types described in Section 30.295.020.A (i.e., single-unit residential, two-unit residential, multi-unit residential) or mixed-use development.
  7. ***Principal Place of Residence.*** The residence where a property owner actually lives for the greater part of time, or the place where the property owner remains when not called elsewhere for some special or temporary purpose and to which the

property owner returns frequently and periodically, as from work or vacation. There may be only one “principal place of residence,” and where more than one residence is maintained or owned, the burden shall be on the property owner to show that the primary residential unit, or accessory dwelling unit, or junior accessory dwelling unit is the property owner’s principal place of residence as evidenced by qualifying for the homeowner’s tax exemption, voter registration, vehicle registration, or similar methods that demonstrate owner-occupancy. If multiple persons own the property as tenants in common or some other form of common ownership, a person or persons representing at least 50% of the ownership interest in the property shall reside on the property and maintain the property as a principal place of residence. Any person or persons who qualify for the homeowner’s tax exemption under the California State Board of Equalization rules, may qualify as an owner occupant.

**C. Where Permitted.**

1. ***Accessory Dwelling Unit.*** An accessory dwelling unit may be permitted in any zone that allows residential use, located on a lot developed or proposed to be developed with one or more residential units, except as prohibited below.
2. ***Junior Accessory Dwelling Unit.*** A junior accessory dwelling unit may be permitted in any zone that allows residential use, and shall be located on a lot developed with an existing or proposed single residential unit.
3. ***Prohibited Locations.*** No standard accessory dwelling unit shall be permitted on a lot located within the Fire Hazard Area (Extreme Foothill and Foothill), or as may be subsequently retitled in the future as the “Very High Fire Hazard Severity Zone,” as defined in the City’s Community Wildfire Protection Plan adopted by City Council.
  - a. ***Exception for Special Accessory Dwelling Units.*** Accessory dwelling units permitted in accordance with all the configuration, standards, and special procedures outlined in subsection L. Development Standards for Special Accessory Dwelling Units, may be permitted on any lot, including lots located within any Fire Hazard Area (Extreme Foothill and Foothill), or as may be subsequently retitled in the future as the “Very High Fire Hazard Severity Zone,” as defined in the City’s Community Wildfire Protection Plan adopted by City Council, if the lot is zoned to allow for residential use and contains an existing or proposed primary residential unit.

**D. Unit Configuration.**

1. Only one accessory dwelling unit or junior accessory dwelling unit shall be permitted on a lot in addition to the primary residential unit in the configuration set forth in subsections D.2 and 3, below. However, multiple accessory units may be permitted in accordance with all the configuration, standards, and special procedures outlined in subsection L. Development Standards for Special Accessory Dwelling Units.
2. An accessory dwelling unit may be permitted in the following configurations:

- a. Incorporated entirely within an existing or proposed primary residential unit;
  - b. Incorporated entirely within an existing accessory building, including garages, located on the same lot as the primary residential unit;
  - c. Attached to or increasing the size of an existing primary residential unit or accessory building located on the same lot as the primary residential unit; or
  - d. Detached from and located on the same lot as the existing or proposed primary residential unit. An accessory dwelling unit that is attached to another detached accessory building, but not the primary residential unit, or is attached by a breezeway or porch, is considered detached.
3. A junior accessory dwelling unit must be incorporated entirely within the existing floor area of an existing or proposed single residential unit or attached garage.
- E. Sale, Rental, and Occupancy Terms.** All accessory dwelling units and junior accessory dwelling units shall be subject to the following sale, rental, and occupancy terms:
- 1. ***Not to Be Sold Separately.*** An accessory dwelling unit or junior accessory dwelling unit shall not be sold separately from the primary residential unit.
  - 2. ***Rental Terms.*** The accessory dwelling unit or junior accessory dwelling unit may be rented separately from the primary residential unit, however rental terms shall not be less than 31 consecutive days, nor shall rental terms allow termination of the tenancy prior to the expiration of at least one 31-day period occupancy by the same tenant.
  - 3. ***Owner Occupancy.*** The following types of projects are subject to an owner occupancy requirement:
    - a. All lots developed with junior accessory dwelling units; except that owner occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.
    - b. Any accessory dwelling unit located in an RS zone submitted on or after January 1, 2025, unless otherwise prohibited by state law, or upon repeal of Government Code 65852.2 (a)(6)(B) removing the state-imposed prohibition of an owner occupancy requirement, whichever occurs first.
  - 4. ***Owner's Unit.*** If owner occupancy is required, the property owner shall reside in and maintain either the primary residential unit or the accessory dwelling unit/junior accessory dwelling unit, as the property owner's principal place of residence ("owner's unit"). Owners of lots developed with an accessory dwelling unit/junior accessory dwelling unit shall live on the lot as long as the lot is developed with an accessory dwelling unit/junior accessory dwelling unit. Owners may re-designate the primary residential unit or the accessory dwelling unit/junior accessory dwelling unit as the owner's unit upon written notice to the Community Development Director and written approval of the re-designation by the Community Development Director, which approval shall not be denied unreasonably. The property owner shall not rent or lease both the primary



residential unit and the accessory dwelling unit/junior accessory dwelling unit simultaneously.

5. ***Hardship Waiver.*** If owner occupancy is required, in the event of a hardship, such as the death or disability of the property owner, job transfer, or similar significant personal situation which prevents the property owner from occupying one of the units as the owner's unit, a property owner or estate representative may apply for a temporary waiver of the owner-occupation requirement for a specific time period to allow the owner's unit to be occupied by a non-property owner pending disposition of the property through probate or non-probate transfer to a new owner, or the cessation of the circumstances preventing the property owner from occupying the owner's unit on the property. The Community Development Director shall review applications for a hardship waiver. Any such waiver shall specify the period of time for which it is granted, provided that no such waiver may be granted for a period longer than three years.
  6. ***Removal of Recorded Owner Occupancy Requirement.*** With the exception of owner occupancy covenants required to permit a junior accessory dwelling unit, the Community Development Director will, in a form acceptable to the City Attorney, release an owner occupancy requirement recorded against the property prior to adoption of this ordinance upon the request of the property owner. No other covenants required pursuant to this section, and contained in the agreement recorded against the property, shall be released.
- F. Required Features.** Each accessory dwelling unit and junior accessory dwelling unit shall contain, at a minimum, the following features:
1. ***Residential Elements.*** Permanent provisions for separate residential occupancy must be provided as follows within the contiguous livable floor space of the accessory dwelling unit or junior accessory dwelling unit and must be independent from the primary residential unit:
    - a. A kitchen, consisting of a sink, cooking appliance, and refrigeration facilities. A junior accessory dwelling unit may utilize an efficiency kitchen.
    - b. A bathroom consisting of a toilet, sink, and bathtub or shower. A junior accessory dwelling unit may share sanitation facilities with the existing or proposed single residential unit.
    - c. A separate living room.
    - d. A separate sleeping room, except in studio residential units, where a living room is considered a sleeping room.
  2. ***Minimum Floor Area.*** Notwithstanding the dwelling unit minimum described in Section 30.140.150, Residential Unit, the minimum floor area for a newly constructed accessory dwelling unit is as follows:
    - a. ***Efficiency Unit:*** 150 square feet.
    - b. ***Studio Unit:*** 220 square feet.

- c. *All Other Units*: 400 square feet.

Such usable floor area shall be exclusive of open porches, garages, basements, cellars, and unfinished attics. The minimum floor area for accessory dwelling units that are created by converting existing structures is 150 square feet.

3. *Exterior Access*. Exterior access to the unit, that is independent from the primary residential unit, must be provided. An interior connection consisting of one fire-rated lockable door between the primary residential unit and an accessory dwelling unit or junior accessory dwelling unit may be provided.
4. *Fire Sprinklers*. Fire sprinklers are required only if they are required for the primary residential unit.
5. *Permanent Foundation*. Attached and detached units shall be constructed with an approved permanent foundation.
6. *Property Addresses*. Addresses identifying all residential units on the lot, with minimum three- and one-half-inch numbers plainly visible from the street or road fronting the property shall be provided.
7. *Public Sewer*. Accessory dwelling units and junior accessory dwelling units shall be connected to a public sewer. If public sewer connection is not available, approval of a new or expanded onsite wastewater treatment system shall be required in accordance with the procedures from the Code of the County of Santa Barbara California prior to issuance of a building permit.
8. *Water Meter*. Accessory dwelling units shall comply with the water metering requirements of Title 14, Section 14.08.150 E.
9. *Passageway*. No passageway is required in conjunction with the construction of an accessory dwelling unit or junior accessory dwelling unit.

**G. Development Standards for Standard Accessory Dwelling Units.**

1. *Development Standards Generally*. The development standards listed in this section apply to standard accessory dwelling units and junior accessory dwelling units, except for those units permitted in accordance with all the configuration, standards, and special procedures outlined in subsection L. Development Standards for Special Accessory Dwelling Units.
  - a. The reductions and exceptions to the development standards normally applicable to residential development allowed in this section are for the express purpose of promoting the development and maintenance of an accessory dwelling unit on the lot. If for any reason the accessory dwelling unit is not maintained on the lot in conformance with this section, the lot shall be brought into compliance with all of the requirements for the residential development, or with the legal nonconforming condition of the lot prior to the development of the accessory dwelling unit, including, but not limited to, the requirements for open yard, setbacks, and covered parking.

- b. Except as otherwise specified in this subsection, projects developed in accordance with this section shall otherwise comply with the development standards applicable to an attached or detached accessory building for the housing type and the base zone in which the lot is located.
  - c. One primary residential unit shall be designated on a lot on which an accessory dwelling unit or junior accessory dwelling unit is permitted.
  - d. Notwithstanding the size limit of an attached accessory dwelling unit based on a percentage of the proposed or existing primary unit, or lot coverage, floor area ratio, open yard, and minimum lot size standards for an attached or detached accessory dwelling unit, an 800-square-foot, 16-foot high attached or detached accessory dwelling unit may be constructed in compliance with all other development standards for standard accessory dwelling units.
2. **Maximum Floor Area.** The maximum floor area for a standard accessory dwelling unit and junior accessory dwelling unit is as follows:
- a. **Attached Accessory Dwelling Unit.** An accessory dwelling unit that is attached to, and increasing the size of, the primary residential unit shall not exceed 50% of the living area of the existing primary residential unit.
  - b. **Converted Accessory Dwelling Unit.** An accessory dwelling unit that is incorporated entirely within an existing primary residential unit, or within an existing accessory building, is not limited in size except that it shall not exceed the footprint of the existing structure.
  - c. **Detached Accessory Dwelling Unit.** An accessory dwelling unit that is detached from the primary residential unit and may or may not be attached to another detached accessory building, including detached garages, shall not exceed the following maximum floor area based on lot size and number of bedrooms:
    - i. *Lots up to 14,999 square feet and developed with one-bedroom or studio units:* 850 square feet.
    - ii. *Lots up to 14,999 square feet and developed with two or more-bedroom units:* 1,000 square feet.
    - iii. *Lots 15,000 square feet or larger:* 1,200 square feet.
  - d. **Junior Accessory Dwelling Unit.** The maximum floor area of a junior accessory dwelling unit shall be 500 square feet.
3. **Building Separation.** The minimum separation between the primary residential unit and a detached accessory dwelling unit shall be five feet.
4. **Open Yard.** No open yard areas are required for accessory dwelling units or junior accessory dwelling units. The minimum area, dimensions, and location of the required open yard pursuant to Section 30.140.140.C, Open Yards, for the existing or proposed primary residential unit on lots developed with single-unit or two-unit residential, may be reduced as follows in order to construct a standard accessory



dwelling unit pursuant to this subsection, or to construct an accessory dwelling unit proposed over a new or reconstructed maximum 500 square foot garage, provided all other open yard requirements are met:

- a. **Minimum Area.**
    - i. *Lots less than 6,000 square feet:* 500 square feet.
    - ii. *Lots 6,000 up to 7,999 square feet:* 800 square feet.
    - iii. *Lots 8,000 square feet up to 9,999 square feet:* 1,000 square feet.
    - iv. *Lots 10,000 square feet or greater:* 1,250 square feet.
  - b. **Minimum Dimensions.** 15 feet long and 15 feet wide.
  - c. **Location in Driveways and Turnarounds.** Notwithstanding Section 30.140.140.E.6.a, Vehicle Areas, the required open yard may be located in driveways and turnarounds, but not parking areas, in order to allow the construction of a new accessory dwelling unit.
5. **Setbacks.** The following setbacks shall apply to new and converted standard accessory dwelling units approved pursuant to this subsection:
- a. **New Construction.** Newly constructed accessory dwelling units shall comply with the following setback standards:
    - i. **Front Setback:** Meet the minimum front setback for residential structures in the zone, unless further limited by subsection H.8., Front Yard Location, below.
    - ii. **Interior Setback:** Four feet.
  - b. **Conversion.** No setback is required to convert the existing, legally permitted, floor area of a main or accessory building to an accessory dwelling unit. Improvements to existing nonconforming buildings, including conforming additions, are allowed pursuant to Chapter 30.165, Nonconforming Structures, Site Development, and Uses.
  - c. **Substantial Redevelopment.** No setback is required when an existing main or accessory building is substantially redeveloped and converted to an accessory dwelling unit, provided that the new building is reconstructed in the same location and with the same dimensions and floor area as the existing building.
    - i. **Exception for Small Conforming Additions.** One small 150-square-foot conforming first floor addition may be permitted on a substantially redeveloped and converted nonconforming accessory building.
  - d. **New Construction Combined with Replacement of a Nonconforming Garage.** The construction of an accessory dwelling unit may be combined with the demolition and replacement of a nonconforming detached garage if all of the following requirements are met:
    - i. The new garage is reconstructed in the same location and with the same dimensions as the existing garage; or

- ii. The new garage is enlarged only as necessary to provide the same number of parking spaces and to meet the dimension requirements of the City of Santa Barbara Access & Parking Design Standards, but located no closer to the property line as the existing garage; and
  - iii. The accessory dwelling unit is constructed above the reconstructed garage; and
  - iv. The accessory dwelling unit and any additions to the garage shall conform with current setbacks; and
  - v. The new structure shall comply with all applicable height and building story limitations, and all other development standards are met.
- e. **Setback Encroachments.** Setback encroachments allowed pursuant to Section 30.140.090, Encroachments into Setbacks and Open Yards, may be permitted for accessory dwelling units or junior accessory dwelling units.

**H. Architectural Review.** All accessory dwelling units or junior accessory dwelling units shall be subject to the following architectural design criteria as applicable to either new construction or exterior alterations, which shall be reviewed ministerially by the Community Development Director. For purposes of this section, portions of a building or site considered to be the accessory dwelling unit shall include all of the contiguous interior livable floor area of the accessory dwelling unit and any exterior alterations directly attached to, and integral to, the livable floor area of the accessory dwelling unit.

- 1. **Prohibition of Shiny Roofing and Siding.** New roofing and siding materials that are, shiny, mirror-like, or of a glossy metallic finish are prohibited.
- 2. **Roof Tile.** Where a new clay tile roof is proposed, the use of two-piece terra cotta (Mission “C-tile”) roof is required and “S-tile” is prohibited, unless necessary to match the S-tile roof materials of the existing primary residential unit.
- 3. **Skylights.** New skylights shall have flat glass panels. “Bubble” or dome type skylights are not allowed.
- 4. **Glass Guardrails.** New glass guardrails are not allowed, unless necessary to match the glass guardrails of the existing primary residential unit.
- 5. **Garage Conversion.** If a garage is converted to an accessory dwelling unit, the garage door opening shall be replaced with exterior wall coverings, or residential windows and doors, to match the existing exterior garage wall covering and detailing.
- 6. **Grading.** No more than 250 cubic yards of grading (i.e., cut and/or fill under the main accessory dwelling unit building footprint and outside the main building footprint to accommodate the accessory dwelling unit) is proposed in the Hillside Design District or on lots in other parts of the City with a slope of 15% or greater.
- 7. **Height.** The construction of an accessory dwelling unit shall not exceed the following, whichever is greater:
  - a. Height of the primary residential unit;

- b. Number of stories of the primary residential unit; or
- c. 17 feet.

This height limitation is not applicable to an accessory dwelling unit constructed above a garage, however, in no event shall the resulting building exceed the maximum height or number of stories allowed for a detached or attached accessory building in the zone.

8. **Front Yard Location.** The construction of a new detached accessory dwelling unit located in the front yard shall be subject to all of the following:
  - a. The new accessory dwelling unit must be located a minimum of 20 feet back from all front lot lines or meet the minimum front setback for the zone in which the lot is located, whichever is greater.
  - b. Unless constructed over a garage, the new unit shall be:
    - i. No more than one-story and less than 17 feet in height; and
    - ii. Screened from the street by topography, location, or landscape, in a manner designed to blend into the surrounding architecture or landscape, so as to minimize visibility of the accessory dwelling unit to the casual observer as viewed from the street.
9. **Design Style.** New detached or attached accessory dwelling units shall be compatible with the design of the primary residential unit regarding style, fenestration, materials, colors, and details if the accessory dwelling unit meets any of the following:
  - a. Attached to, or if any portion of the accessory dwelling unit is located within 20 feet of, the primary residential unit;
  - b. Located in the Hillside Design District and 20% or greater average slope;
  - c. Two or more stories tall, or 17 feet or taller in building height;
  - d. Located on a site on which there is a historical resource as follows:
    - i. Listed on the National Register of Historic Places or the California Register of Historic Resources;
    - ii. Designated as a City of Santa Barbara Landmark or Structure of Merit; or
    - iii. Located in a designated historic district.
  - e. Located in the front yard.
10. **Privacy Standards.** The construction of an accessory dwelling unit where any portion of the proposed construction is either: two or more stories tall or 17 feet or taller in building height, shall comply with the following:
  - a. Upper story unenclosed landings, decks, and balconies greater than 20 square feet, that face or overlook the adjoining property, shall be located a minimum of 15 feet from the interior lot lines.



- a. Covered parking shall meet the development standards applicable to the primary residential unit within the zone in which the lot is located.
- b. All parking spaces must meet the minimum dimensions and development standards consistent with the City Parking Access & Design Standards and Section 30.175.090 Parking Area Design and Development Standards.
- c. In order to maintain visibility for adjacent driveways and intersections, uncovered parking spaces shall comply with Section 30.140.230, Visibility at Driveways and Intersections.
- d. Replacement uncovered parking spaces may be allowed in a front or interior setback, provided all uncovered parking spaces are contained within the area of an existing paved driveway and no increase to paved areas occurs in the setbacks.
- e. New uncovered parking spaces, that are not replacement parking spaces as described above, may be located three feet from any interior lot line, provided a minimum of three feet in width of planting area is provided for the length of the paved parking area along the interior lot line.
- f. Tandem parking configuration shall meet all the following:
  - i. No more than two automobiles shall be placed one behind the other.
  - ii. Both automobile parking spaces parked in tandem shall be assigned to the same residential unit. Tandem parking shall not create any traffic safety issues.
  - iii. Vertical or stackable tandem parking, provided by means of mechanical lifts, is subject to approval by the Public Works Director. Mechanical lifts shall be fully enclosed within a structure and shall require a recorded maintenance agreement, pursuant to Chapter 30.260, Recorded Agreements.
  - iv. Tandem parking in multi-unit and commercial zones is subject to approval by the Public Works Director. Tandem parking shall not create traffic safety issues.

**K. Fire Hazard Area Standards.** All accessory dwelling units or junior accessory dwelling units located in any Fire Hazard Area as defined in the City's Community Wildfire Protection Plan or as may be subsequently retitled in the future as a "High" or "Very High Fire Hazard Severity Zone" as defined in the Community Wildfire Protection Plan adopted by City Council, shall comply with the following standards as applicable to new construction or parking:

- 1. **No Tandem Parking.** No parking space shall be developed in a tandem configuration.
- 2. **High Fire Construction.** The accessory dwelling unit shall be designed to meet high fire construction standards adopted or enforced by the City, as determined by the Chief Building Official or the Fire Code Official.



3. ***No Variance or Modification.*** No variance or modification to any Fire Code requirements or high fire construction standards shall be permitted.
4. ***Defensible Space.*** The site must meet defensible space requirements, pursuant to Chapter 8.04 of this code, prior to occupancy and those requirements must be maintained.
5. ***Parking.*** One covered or uncovered automobile parking space per unit or bedroom, whichever is less, meeting all of the same parking standards required for the primary residential unit as described in subsection J., Parking Standards, shall be required for an accessory dwelling unit.
  - a. ***Parking Exceptions for Certain Accessory Dwelling Units.*** Automobile parking is not required for an accessory dwelling unit in any of the following instances:
    - i. The accessory dwelling unit is located within a walking distance of one-half mile of a public transit stop, such as a bus stop or train station.
    - ii. The accessory dwelling unit is located within an architecturally and historically significant historic district. For purposes of this provision, El Pueblo Viejo Landmark District, Brinkerhoff Avenue Landmark District, Riviera Campus Historic District, and the El Encanto Hotel Historic District, constitute architecturally and historically significant historic districts within the City and any district hereafter created deemed to be architecturally and historically significant.
    - iii. The accessory dwelling unit is contained entirely within the permitted floor area of the existing primary residential unit or an existing accessory building.
    - iv. When on-street parking permits are required but not offered to the occupant(s) of the accessory dwelling unit.
    - v. When there is a “carshare vehicle” as defined in Chapter 10.73 of this code, located within a walking distance of 500 feet of the accessory dwelling unit.

**L. Development Standards for Special Accessory Dwelling Units.**

1. ***Development Standards Generally.*** The development standards listed in this section apply to specific types of small accessory dwelling units and junior accessory dwelling units with certain size, height, and setback standards that, if followed, allow for an accessory dwelling unit to be permitted on lots in a Fire Hazard Area, or more than one accessory dwelling unit on a lot, and allows additional reductions and exceptions to development standards for open yard and maximum floor area. Applications utilizing the special standards described in this section may not utilize the less restrictive configuration, size, and height standards allowed under another section to achieve a larger unit or more than one unit.

- a. Any reductions and exceptions in this section are for the express purpose of promoting the development and maintenance of a special accessory dwelling unit or junior accessory dwelling unit on the lot. If for any reason the special accessory dwelling unit or junior accessory dwelling unit is no longer maintained on the lot, the lot shall be brought into compliance with all of the requirements for the remaining residential development, or with the legal nonconforming condition of the lot prior to the development of the accessory dwelling unit or junior accessory dwelling unit.
  - b. Except as otherwise specified in this section, projects developed in accordance with this Chapter shall otherwise comply with the development standards applicable to the housing type and base zone in which the lot is located.
  - c. One primary residential unit shall be designated on a lot on which an accessory dwelling unit or junior accessory dwelling unit is permitted. In the case when multiple residential units are existing on a lot, there shall be only one primary residential unit.
2. **Configuration – Single Unit Lots.** A lot developed with only one existing or proposed single-unit residence, may permit one of the following types of special accessory dwelling units:
- a. *Converted Portion of Main Building.* Only one accessory dwelling unit or junior accessory dwelling unit contained entirely within the existing, legally permitted, fully enclosed livable floor area of the existing or proposed primary residential unit; or
  - b. *Converted Accessory Building.* Only one accessory dwelling unit contained entirely within the existing, legally permitted, fully enclosed floor area of a garage or other accessory building on the same lot as the primary residential unit, plus one 150-square-foot conforming first floor addition, if the expansion is limited to accommodating ingress and egress; or
  - c. *One Unit – New Construction.* One newly constructed accessory dwelling unit, detached from any other main or accessory building; or
  - d. *Two Units – Combination.* One junior accessory dwelling unit contained entirely within the existing, legally permitted, fully enclosed livable floor area of the existing or proposed primary residential unit, plus one newly constructed accessory dwelling unit, detached from any other main or accessory building.
3. **Configuration – Two-Unit or Multi-Unit Lots.** A lot developed with two or more existing residential units, may permit one of the following types of special accessory dwelling units:
- a. *Converted Non-Livable Space.* At least one accessory dwelling unit, and up to 25 percent of the existing number of residential units on a lot, may be converted on a lot if contained entirely within portions of existing, legally

permitted, fully enclosed floor area of a residential structure that is not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages; or

- b. *Two Units – New Construction.* No more than two newly constructed accessory dwelling units, detached from the main or accessory building.

4. ***Maximum Floor Area***

- a. *Detached Accessory Dwelling Unit.* The maximum floor area of any detached, new construction, special accessory dwelling unit approved pursuant to this subsection is 800 square feet.
- b. *Converted Accessory Dwelling Unit.* An accessory dwelling unit that is incorporated entirely within portions of existing floor area, approved pursuant to this subsection, is not limited in size.
- c. *Junior Accessory Dwelling Unit.* The maximum floor area of a junior accessory dwelling unit shall not exceed 500 square feet.

5. ***Maximum Height – Detached Accessory Dwelling Unit.*** The maximum building height of a detached, new construction, special accessory dwelling unit approved pursuant to this subsection is 16 feet.

6. ***Exempt from Other Size Limitations.*** A special accessory dwelling unit or junior accessory dwelling unit approved pursuant to this subsection is exempt from any other size limitation in this Title.

7. ***Exempt from Open Yard.*** No open yard is required for a special accessory dwelling unit or junior accessory dwelling unit approved pursuant to this subsection. Open yard for any existing residential units on a lot may be reduced or eliminated entirely in order to permit a special accessory dwelling unit meeting all the standards and criteria in this subsection.

**M. Building Permit Required.** All accessory dwelling units and junior accessory dwelling units shall comply with applicable state and local building codes and shall require approval of a building permit. Applications shall be processed pursuant to Chapter 30.205, Common Procedures, and the specific requirements of this section. The City shall ministerially approve or disapprove a complete building permit application for an accessory dwelling unit or junior accessory dwelling unit in compliance with time periods established by state law.

1. ***Combined Permits.*** An accessory dwelling unit or junior accessory dwelling unit permit shall not be combined with a permit for other proposed construction on the site unrelated to the accessory dwelling unit or junior accessory dwelling unit. If a permit application for an accessory dwelling unit or junior accessory dwelling unit is submitted at the same time as a permit application for a new single-unit dwelling, review of the permit for the accessory dwelling unit or junior accessory dwelling unit application shall be delayed until the permit for the single-unit dwelling has been approved.



2. ***Modifications and Minor Zoning Exceptions for Accessory Dwelling Units or Junior Accessory Dwelling Units.*** An accessory dwelling unit or junior accessory dwelling unit that is not in compliance with the development standards of this section may be granted a modification or minor zoning exception if all the required findings can be met, pursuant to the procedures outlined in Chapter 30.250, Modifications, or Chapter 30.245 Minor Zoning Exceptions.
  3. ***Posted Sign.*** Within five calendar days after submitting an initial building permit application to the City, the property owner shall install a public notice in the form of a posted sign on the property in a manner deemed acceptable by the Community Development Director. The sign shall remain posted until a building permit is issued, or the application expires or is withdrawn. At the time of application submittal, the applicant shall sign an affidavit stating that he or she will post the required sign per this subsection. The validity of the permit shall not be affected by the failure of any property owner, resident, or neighborhood or community organization to receive this notice.
- N. **Recorded Agreement.** Before obtaining a building permit for an accessory dwelling unit or junior accessory dwelling unit, the property owner shall execute an agreement, pursuant to Chapter 30.260, Recorded Agreements, containing a reference to the deed under which the property was acquired by the present owner which outlines the requirements regarding the sale, rental, and owner occupancy of lots developed with accessory dwelling units and junior accessory dwelling units as specified in subsection E. of this section.
- O. **Residential Density.** An accessory dwelling unit or junior accessory dwelling unit is a residential use that is consistent with the existing General Plan designations and zoning for lots within the allowable residential zones. Any accessory dwelling unit or junior accessory dwelling unit permitted pursuant to this section does not exceed the allowable density for the lot upon which the accessory dwelling unit or junior accessory dwelling unit is located. (Ord. 5834, 2018)

SECTION 2. Section 30.295.020 of Chapter 30.295 of Title 30 of the Santa Barbara Municipal Code is amended to read as follows:

**30.295.020 Residential Use Classifications.**

**A. Residential Housing Types.**

1. ***Single-Unit Residential.*** One primary residential unit and up to one Accessory Dwelling Unit or one Junior Accessory Dwelling Unit located on a single lot. This classification includes individual mobilehomes and manufactured housing units installed on a foundation system pursuant to Section 18551 of the California Health and Safety Code and meeting the standards of Section 30.185.270, Mobilehomes, Recreational Vehicles and Modular Units, Individual Use.
2. ***Two-Unit Residential.*** No more than two residential units and may include one or more Accessory Dwelling Units located on a single lot. The residential units

may be located in a single building that contains two residential units (also known as a duplex) or in two detached buildings.

3. ***Multi-Unit Residential.*** Three or more attached or detached residential units and may include one or more Accessory Dwelling Units on a single lot. Types of multi-unit residential include townhouses, multiple detached residential units (e.g. bungalow court), and multi-story apartment buildings.

**B. Special Residential Unit Types.**

1. ***Accessory Dwelling Unit.*** An attached or a detached residential unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residential unit. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the primary residential unit is or will be situated. An accessory dwelling unit also includes the following:
  - a. An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.
  - b. A manufactured home, as defined in Section 18007 of the Health and Safety Code.
6. ***Junior Accessory Dwelling Unit.*** A unit that is no more than 500 square feet in size and contained entirely within the structure of an existing or proposed single-unit residential housing type. A junior accessory dwelling unit includes its own separate sanitation facilities, or shares sanitation facilities with the existing or proposed single residential unit and includes an efficiency kitchen.

**SECTION 3. Severability and Interpretation.**

A. **Severability.** If any provision of this Ordinance or the application thereof to any persons or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are hereby declared to be severable.

B. **Interpretation.** This Ordinance shall be construed to confer upon the City the maximum power and authority allowed by state and federal law. In the event state or federal law is found to conflict with and preempt any provision of this Ordinance, or in the event state or federal law changes to conflict with and preempt any provision of this Ordinance, the remaining and non-conflicting provisions of this Ordinance shall be interpreted and construed to give maximum effect to the remaining and non-conflicting provisions so as to effectuate to the greatest extent possible the purposes and restrictions expressed herein.

**SECTION 4. CEQA**

Under California Public Resources Code Section 21080.17, the California Environmental Quality Act (CEQA) does not apply to the adoption of an ordinance by a city or county

implementing the provisions of Section 65852.2 and 65852.22 of the Government Code, which is the state Accessory Dwelling Unit law.

SECTION 5. Local building codes

For purpose of Government Code Section 65852.2(a)(D)(viii) “local building codes” shall mean, but not be limited to, the uniform technical codes adopted through Santa Barbara Municipal Code Chapter 22.04 and any and all objective development, design, and environmental standards and policies adopted by or implemented within the City.

SECTION 6. Effect on Projects in the Permit Process

Applications for Accessory Dwelling Units subject to the City’s Interim Urgency Ordinance No. 5927, extended by Ordinance No. 5930, that were received on or after January 1, 2017 but before the effective date of City Council adoption may continue to be processed in accordance with Government Code 65852.2 provided that a building permit is issued within 60 days after the effective date of the ordinance, or may elect to be processed in accordance with the proposed Title 30 ordinance amendments. All applications for Accessory Dwelling Units submitted on or after the effective date of City Council adoption, and any Accessory Dwelling Unit applications which have not yet received a building permit by the deadlines described above, shall be subject to the proposed Title 30 ordinance amendments.

SECTION 7. Interim Urgency Ordinance No. 5930

Interim Urgency Ordinance No. 5930 shall automatically terminate and have no further force or effect upon the effective date of this ordinance.

**ORDINANCE NO. 5974**

STATE OF CALIFORNIA            )  
   )  
 COUNTY OF SANTA BARBARA    ) ss.  
   )  
 CITY OF SANTA BARBARA        )

I HEREBY CERTIFY that the foregoing ordinance was introduced on October 27, 2020 and adopted by the Council of the City of Santa Barbara at a meeting held on November 10, 2020, by the following roll call vote:

- AYES:                    Councilmembers Eric Friedman, Oscar Gutierrez, Meagan Harmon, Mike Jordan, Kristen W. Sneddon; Mayor Cathy Murillo
- NOES:                   None
- ABSENT:                None
- ABSTENTIONS:       None

IN WITNESS WHEREOF, I have hereto set my hand and affixed the official seal of the City of Santa Barbara on November 11, 2020.



  
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 Sarah P. Gorman, CMC  
 City Clerk Services Manager

I HEREBY APPROVE the foregoing ordinance on November 11, 2020.

  
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 Cathy Murillo  
 Mayor



**ORDINANCE NO. 2602**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS AMENDING VARIOUS SECTIONS OF CHAPTER 40 (ZONING) OF THE DAVIS MUNICIPAL CODE TO IMPLEMENT REGULATIONS REGARDING ACCESSORY DWELLING UNITS, JUNIOR ACCESSORY DWELLING UNITS, AND GUEST HOUSES, AND MAKING A DETERMINATION OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

WHEREAS, effective January 1, 2020, Senate Bill 13 (“SB 13”), Assembly Bill 68 (“AB 68”), Assembly Bill 587 (“AB 587”), Assembly Bill 670 (“AB 670”), and Assembly Bill 881 (“AB 881”) amended state regulations to further encourage the development and limit the standards cities may impose on accessory dwelling units (“ADUs”) and junior accessory dwelling units (“JADUs”). Government Code Section 65852.2 also was amended in 2020 by Senate Bill 1030 (“SB 1030”) and Assembly Bill 3182 (“AB 3182”). To comply with State law as amended by this recent legislation, the City must now update the Municipal Code; and

WHEREAS, on March 10, 2021, the Planning Commission of the City of Davis conducted a duly noticed public hearing on Ordinance No. 2602. At the hearing, all interested persons were given the opportunity to be heard. The Planning Commission received and considered the staff report and all the information, evidence and testimony presented in connection with this Ordinance. Following the close of the public hearing, the Planning Commission recommended approval of Ordinance No. 2602 to the City Council; and

WHEREAS, on May 4, 2021, the City Council of the City of Davis conducted a duly noticed public hearing on Ordinance No. 2602. At the hearing, all interested persons were given the opportunity to be heard. The City Council received and considered the staff report, the Planning Commission’s recommendation, and all the oral and written information, evidence, comments, and testimony presented in connection with this Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The recitals above are true and correct and are hereby incorporated into this Ordinance.

SECTION 2. The General Plan of the City of Davis states that a variety of housing types should be encouraged to meet the housing needs of an economically and socially diverse Davis, and to encourage infill as an alternative to sprawl. The Housing Element of the General Plan of the City of Davis also contains a policy to continue to facilitate ministerial accessory dwelling units and discretionary accessory dwelling units. This Ordinance is therefore consistent with the City’s General Plan.

SECTION 3. The definition of “Accessory dwelling unit” in Section 40.01.10 (Definitions) of Article 40.01 (In General) of Chapter 40 of the Davis Municipal Code is amended to read as follows, with all other definitions to remain the same:

“Accessory dwelling unit (“ADU”). Has the meaning set forth in Government Code Section 65852.2 and means an attached or detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit includes the following: an efficiency unit, as defined in Health and Safety Code Section 17958.1, and a manufactured home, as defined in Health and Safety Code Section 18007.”

SECTION 4. The definition of “Accessory building or structure” in Section 40.01.010 (Definitions) of Article 40.01 (In General) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other definitions to remain the same:

“Accessory building or structure. A structure detached from a primary building located on the same lot and incidental to and subordinate to the principal building or use, including, but not limited to, garages, carports, storage sheds, gazebos, and guest houses. An Accessory Dwelling Unit is not an Accessory Building or Structure and is subject to separate regulations found in Sections 40.26.450 and 40.26.460.”

SECTION 5. The definition of “Guest house” in Section 40.01.010 (Definitions) of Article 40.01 (In General) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other definitions to remain the same:

“Guest house. Living quarters or conditioned space within an accessory building for the use of persons living or employed on the premises, or for temporary use by guests of the occupants of the premises. Such quarters may have bathroom facilities (toilet, sink, tub/shower) and shall have no kitchen facilities. Such quarters shall not be rented or otherwise be used as a separate dwelling. A pool house, workshop, home office or studio is also considered a guest house.”

SECTION 6. The definition of “Apartment, efficiency” in Section 40.01.010 (Definitions) of Article 40.01 (In General) of Chapter 40 of the Davis Municipal Code is hereby repealed.

SECTION 7. The following definitions are hereby added to Section 40.01.10 (Definitions) of Article 40.01 (In General) of Chapter 40 of the Davis Municipal Code to read as follows, with all other definitions to remain the same:

“Accessory dwelling unit, junior (“JADU”). Has the meaning set forth in Government Code Section 65852.22 and means a residential dwelling unit that is no more than 500 square feet in size and is contained entirely within a single-family residence, which does not include the garage. A JADU shall include an efficiency kitchen, and may include separate bathroom facilities or share bathroom facilities with the single-family residence.”

“Attached ADU. An ADU that shares at least one common wall with the primary dwelling.”

“Detached ADU. An ADU that is constructed as a separate structure from an existing or proposed single-family dwelling or multifamily dwelling. An accessory dwelling unit attached



to the primary structure via a roof, breezeway, trellis, or covered walkway shall be considered a detached ADU.”

“Efficiency Unit. Has the meaning set forth in Section 17958.1 of the Health and Safety Code, and may be permitted for occupancy by no more than two persons. The efficiency unit shall have a minimum floor area of 220 square feet and shall have a bathroom facility and a partial kitchen or kitchenette.”

SECTION 8. Section 40.03.045 [Conditional uses permitted with an administrative use permit (AUP)] of Article 40.03 (RESIDENTIAL ONE-FAMILY (R-1) DISTRICT) of Chapter 40 of the Davis Municipal Code is hereby amended in its entirety to read as follows:

“40.03.045 Conditional uses permitted with an administrative use permit (AUP).

The following conditional uses may be permitted in an R-1 district subject to the granting of an administrative use permit (AUP):

(a) Non-ministerial accessory dwelling unit. Accessory dwelling units that are not permitted pursuant to Section 40.26.450 (Ministerial accessory dwelling units) shall be permitted subject to the granting of an administrative use permit and shall be known as non-ministerial accessory dwelling units. Non-ministerial accessory dwelling units shall comply with all of the requirements of Section 40.26.460.

(b) Guest houses. Guest houses are conditionally allowable accessory structures, subject to the granting of an administrative use permit (AUP). Guest houses shall comply with all of the requirements of Section 40.26.470.”

SECTION 9. Subdivisions (h) and (i) of Section 40.04.040 (Conditional Uses) of Article 40.04 (RESIDENTIAL ONE- AND TWO-FAMILY (R-2) DISTRICTS) of Chapter 40 of the Davis Municipal Code are hereby amended to read as follows, with all other subdivisions to remain the same:

“(h) Non-ministerial accessory dwelling units. Accessory dwelling units that are not permitted pursuant to Section 40.26.450 (Ministerial accessory dwelling units) shall be permitted subject to the granting of an administrative use permit and shall be known as non-ministerial accessory dwelling units. Non-ministerial accessory dwelling units shall comply with all of the requirements of Section 40.26.460.

(i) Guest houses. Guest houses are conditionally allowable accessory structures, subject to the granting of an administrative use permit (AUP). Guest houses shall comply with all of the requirements of Section 40.26.470.”

SECTION 10. Subdivision (e) of Section 40.04A.030 (Accessory Uses) of Article 40.04A (RESIDENTIAL ONE- AND TWO-FAMILY CONSERVATION (R2-CD) DISTRICT) of Chapter 40 of the Davis Municipal Code is hereby amended to read in full, with all other subdivisions to remain the same:

“(e) Accessory dwelling units. Accessory dwelling units meeting the requirements of Section 40.26.450.

SECTION 11. Subdivision (g) of Section 40.04A.040 (Conditional Uses) of Article 40.04A (RESIDENTIAL ONE- AND TWO-FAMILY CONSERVATION (R2-CD) DISTRICT) of Chapter 40 of the Davis Municipal Code is amended in its entirety to read as follows, with all other subdivisions to remain the same:

“(g) Conversion of an existing non-conforming non-habitable accessory structure to a guest house as provided for in Section 40.04A.080 of this article; provided that:

(1) The accessory structure was not constructed in violation of any zoning ordinance previously in effect in the district; and

(2) The new use will not constitute a nuisance.”

SECTION 12. A new Section 40.04A.045 is hereby added to Article 40.04A (RESIDENTIAL ONE-AND TWO FAMILY CONSERVATION (R-2CD) DISTRICT) of Chapter 40 of the Davis Municipal Code to read as follows:

“40.04A.045 Conditional uses permitted with an administrative use permit (AUP).

The following conditional uses may be permitted in an R-2CD district subject to the granting of an administrative use permit (AUP):

(a) Non-ministerial accessory dwelling unit. Accessory dwelling units that are not permitted pursuant to Section 40.26.450 (Ministerial accessory dwelling units) shall be permitted subject to the granting of an administrative use permit and shall be known as non-ministerial accessory dwelling units. Non-ministerial accessory dwelling units shall comply with all of the requirements of Section 40.26.460.

(b) Guest houses. Guest houses are conditionally allowable accessory structures, subject to the granting of an administrative use permit (AUP). Guest houses shall comply with all the requirements of Section 40.26.470.”

SECTION 13. Paragraph (3) of Subdivision (a) of Section 40.04A.070 (Parking) of Article 40.04A (RESIDENTIAL ONE- AND TWO-FAMILY CONSERVATION (R2-CD) DISTRICT) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other paragraphs and subdivisions to remain the same:

“(3) Accessory Dwelling Unit Parking. No vehicle parking space is required for an ADU.

SECTION 14. Subdivision (e) of Section 40.07.030 (Accessory Uses) of Article 40.07 (Residential One- and Two-Family and Mobile Home (R-2-MH) District) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other subdivisions to remain the same:



“(e) Accessory dwelling units meeting the requirements of Section 40.26.450.”

SECTION 15. Subdivision (d) of Section 40.14.040 (Accessory Uses) of Article 40.14 (Central Commercial (C-C) District) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other subdivisions to remain the same:

“(d) Accessory dwelling units meeting the requirements of Section 40.26.450.”

SECTION 16. Subdivision (e) of Section 40.15.040 (Accessory Uses) of Article 40.15 (Mixed-Use District) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other subdivisions to remain the same:

“(e) Accessory dwelling units meeting the requirements of Section 40.26.450.”

SECTION 17. Paragraph (15) of Subdivision (c) of Section 40.26.010 (Accessory buildings/structures) of Article 40.26 (Special Uses) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other subdivisions to remain the same:

“(15) Use for Dwelling Purposes. Accessory structures shall not be used for dwelling purposes.”

SECTION 18. Paragraph (8) of Subdivision (d) of Section 40.26.010 (Accessory buildings/structures) of Article 40.26 (Special Uses) of Chapter 40 of the Davis Municipal Code is hereby amended in its entirety and a new paragraph (9) is hereby added to read as follows, with all other subdivisions to be renumbered accordingly and otherwise remain the same:

“(8) Accessory Dwelling Units. In accordance with the underlying zoning district, ministerial accessory dwelling units are subject to the standards in Section 40.26.450, and non-ministerial accessory dwelling units are subject to the standards in Section 40.26.460.

(9) Guest Houses. Guest houses are subject to the standards in Section 40.26.470 and in accordance with the requirements of the underlying zoning district.”

SECTION 19. Section 40.26.450 of Article 40.26 (Special Uses) of Chapter 40 of the Davis Municipal Code is hereby amended in its entirety to read as follows:

“40.26.450 Ministerial Accessory Dwelling Units and Junior Accessory Dwelling Units.

- (a) Purpose. The purpose of this section is to implement the requirements of Government Code Sections 65852.2 and 65852.22 to allow ministerial accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) in a manner that encourages their development but simultaneously minimizes impacts on traffic, parking, density, and other areas where the City is still permitted to exercise local control. ADUs that do not meet the provisions of this Section 40.26.450, shall be considered as non-ministerial ADUs subject to the provisions of Section 40.26.460.

- (b) Definitions. For the purpose of this section, the following definitions apply. Otherwise, the words and phrases shall have the meanings respectively ascribed to them by section 40.01.010.

Manufactured Home. Has the meaning set forth in section 18007 of the Health and Safety Code.

Primary Dwelling. For purposes of this section, means the existing or proposed single-family or multi-family dwelling on the lot where an ADU would be located.

Public Transit. For purposes of this section, has the meaning set forth in Government Code Section 65852.2(j).

- (c) Permitting procedures.

- (1) Before constructing an ADU or converting an existing structure or portion of an existing structure or residence to an ADU or JADU, the applicant shall obtain permits in accordance with the requirements of this section.
- (2) All ADUs and JADUs shall satisfy the requirements of the California Building Standards Code, as amended by the City, and any other applicable laws.
- (3) Building permit approval only. An applicant shall not be required to submit an application for an ADU permit under subsection (d) of this section, and may instead seek building permit only approval for an ADU or JADU, or both, where the proposal satisfies the requirements of Government Code Section 65852.2(e)(1), as the same may be amended from time to time, the California Building Standards Code, as amended by the City, and any other applicable laws. An ADU or JADU approved pursuant to this subsection shall be rented only for terms of 30 days or longer. The following are the categories of ADUs and JADUs that shall be approved under this paragraph (3), unless Government Code Section 65852.2(e)(1) is amended to state otherwise:
  - (A) A JADU within the Primary Dwelling, and an ADU within the Primary Dwelling or an ADU within an existing accessory structure. One ADU and one JADU per lot with a proposed or existing single-family dwelling is allowed if all of the following apply:
    - (i) The JADU is within the proposed space of a single-family dwelling or existing space of a single-family dwelling and the ADU is within either the existing or proposed space of a single-family dwelling or an existing accessory structure. An ADU built in an existing accessory structure may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. Such an expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.



- (I) The space has exterior access from the proposed or existing single-family dwelling.
  - (II) The side and rear setbacks are sufficient for fire and safety.
  - (III) The JADU complies with the requirements of Government Code Section 65852.22 and with the requirements set forth in subsections c, d, and e of this section.
- (B) Detached new construction ADU for Primary Dwelling. This ADU may be combined with a JADU described in subparagraph (a) above. One detached, new construction ADU for a lot with a proposed or existing single-family dwelling if all of the following apply:
- (i) The ADU shall be no more than 800 square feet in size.
  - (ii) The ADU shall not exceed a height limit of 16 feet.
  - (iii) The ADU shall be set back a minimum of four feet from side and rear lot lines.
  - (iv) The ADU shall comply with the front yard setback as required by the zone in which it is located.
- (C) ADU within non-livable space in existing multifamily structure. One ADU within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings. If requested, more than one ADU shall be allowed, up to the number of ADUs that equals 25 percent of the existing multifamily dwelling units in the structure.
- (D) Detached new construction ADUs for existing multifamily dwelling. Not more than two detached ADUs located on a lot that has an existing multifamily dwelling, subject to a height limit of 16 feet and minimum four-foot rear and side setbacks.
- (4) Projects Subject to ADU Permit Review and Timelines.
- (A) The director or his/her designee shall ministerially review and approve an ADU permit application and shall not require a public hearing, provided that the submitted application is complete and demonstrates that the ADU complies with the requirements contained in this section and any other applicable law.
  - (B) ADU permit applications subject to ministerial approval shall be processed within the timelines established by California Government Code Section 65852.2.
  - (C) Where an ADU permit application is submitted with an application for a Primary Dwelling that is subject to discretionary review under this Code, the ADU permit application will be considered separately without discretionary review or a public hearing, following action on the portion of the project subject to discretionary review.

- (D) In addition to obtaining an ADU permit, the applicant shall be required to obtain a building permit and any other applicable construction or related permits prior to the construction of the ADU.
- (d) ADU permit application submittal requirements
- (1) An ADU application is required to be filed with the Department of Community Development and Sustainability for an ADU that does not satisfy the requirements of subsection (c)(3) of this section (Building permit approval only). An ADU application shall be accompanied by the filing fee as established by resolution of the City Council, and shall include, but not be limited to, the following documents and information:
- (A) Name and address of the applicant.
- (B) Owner-Builder Acknowledgment and Information Verification Form.
- (C) Assessor's parcel number(s) of the property.
- (D) Plot Plan (Drawn to Scale). In sufficient detail to clearly describe:
- (i) Physical dimensions of the property.
  - (ii) Location and dimensions of all existing and proposed structures, walls, and fences.
  - (iii) Location and dimensions of all existing and proposed easements, septic tanks, leach lines, seepage pits, drainage structures, and utilities.
  - (iv) Location, dimensions, and names of all adjacent roads, whether public or private.
  - (v) Setbacks.
  - (vi) Existing and proposed methods of circulation, including ingress and egress, driveways, parking areas, and parking structures.
  - (vii) Panoramic color photographs showing the property from all sides and showing adjacent properties.
  - (viii) A description of architectural treatments proposed for the ADU.
  - (ix) Written confirmation from any water district or sewer district providing service of the availability of service.
- (E) Floor plans. Complete floor plans of both existing and proposed conditions shall be provided. Each room shall be dimensioned and resulting floor area calculation included. The use of each room shall be labeled. The size and location of all doors, closets, walls, and cooking facilities shall be clearly depicted. For an attached ADU, the plans must include the Primary Dwelling as well.
- (F) Elevations. North, south, east, and west elevations that show all exterior structure dimensions, all architectural projections, and all openings for both the primary residence and the proposed accessory dwelling unit. For an attached ADU, the plans must include the Primary Dwelling as well.



- (G) Additional Information. Such additional information as shall be required by the Community Development Department Director.
- (2) All ADUs shall satisfy the requirements of Chapter 8, Buildings, of the Davis Municipal Code and require a building permit from the city building official.
- (3) In accordance with State law, ADUs are an accessory use to the Primary Dwelling on the lot. ADUs shall not be considered to exceed the allowable density for the lot.
- (e) Development Standards for ADUs. Except those ADUs approved pursuant to subsection (c)(3) of this section (Building permit approval only), ADUs shall comply with the following development standards:
- (1) Location Restrictions. One ADU shall be allowed on a lot with a proposed or existing Primary Dwelling that is zoned to allow single family or multi-family residential use.
- (2) Development Standards.
- (A) Size restrictions. If there is an existing Primary Dwelling, an Attached ADU shall not exceed fifty percent (50%) of the gross floor area for the Primary Dwelling. A Detached ADU shall not exceed 850 square feet in gross floor area, or 1,000 square feet in gross floor area if the ADU provides more than one bedroom. In no case shall an ADU be less than 220 square feet, or the minimum square footage to allow an “efficiency unit” as defined in Health and Safety Code Section 17958.1, as that law may be amended.
- (B) Height restrictions.
- (i) An Attached or Detached ADU shall not exceed 16 feet in height, except as permitted in (ii) below.
- (ii) An Attached ADU may be constructed on or as the second story of an existing primary single family residence (including the garage area) provided it complies with the height and setbacks as required by the zone in which the property is located.
- (C) Setbacks. No new setback shall be required for an ADU that is constructed within an existing structure or new ADU that is constructed in the same location and with the same dimensions as an existing structure. For all other ADUs, the required minimum setback from side and rear lot lines shall be four feet. An ADU shall comply with all required front yard and street side yard setbacks otherwise required by the Davis Municipal Code.
- (D) Lot Coverage, Floor Area Ratio, and Open Space. An ADU shall conform to all lot coverage, floor area ratio, and open space requirements applicable to the zoning district in which the property is located, except that an ADU that is 800 square feet or less, not more than 16 feet in height, and compliant with a minimum 4-foot side and rear setback, shall be considered consistent with all city development standards, irrespective of any other Municipal Code limitations governing lot coverage, floor area ratio, and open space.

- (E) Design. All Accessory Dwelling Units that are approved subject to the provisions of subdivision (d) shall comply with the following design standards:
- (i) The accessory dwelling unit shall have the same roof pitch as the primary dwelling with matching eave details, but may vary by up to 2/12 more or 2/12 less than the roof pitch of the primary dwelling unit. If the unit is located in a historic conservation zone, it must follow the roof pitch requirements for the design style allowed in that zone or subarea.
  - (ii) A garage converted to an ADU that does not proceed under the building permit only approval process shall include removal of the garage door(s) which shall be replaced with architectural features, including walls, doors, windows, trim and accent details to match the primary structure.
  - (iii) An ADU shall not require exterior alterations to the street-facing façade of a property that is historically designated or in a conservation overlay district.
  - (iv) The architecture of the ADU shall use the same architectural features, including walls, doors, windows, trim and accent details to match the primary structure.
- (F) Exterior access. An ADU shall have a separate exterior access. Access stairs, entry doors and decks must face the primary residence or the alley, if applicable.
- (G) Fire sprinklers. ADUs are required to provide fire sprinklers if they are required for the Primary Dwelling.
- (H) Separation. An ADU shall be located at least 5 feet from the Primary Dwelling.
- (I) Properties Listed on the California Register of Historic Resources. An ADU that has the potential to adversely impact any historical resource listed on the California Register of Historic Resources, shall be designed and constructed in accordance with the “Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings” found at 36 CFR 68.3, as the same may be amended from time to time.
- (3) Parking.
- (A) No additional vehicle parking space is required for a ministerial ADU.
  - (B) When an ADU is created by converting or demolishing a garage, carport or covered parking structure, replacement of parking space(s) eliminated by the construction of the ADU shall not be required as long as the ADU remains in use as a legal ADU.



- (f) Standards for JADUs. In accordance with the standards set forth in Government Code Section 65852.22, JADUs shall comply with the following requirements, unless State law is amended to set forth different standards in which case State law standards will govern.
- (1) A JADU shall be a minimum of 220 square feet and a maximum of 500 square feet of gross floor area. The gross floor area of a shared sanitation facility shall not be included in the maximum gross floor area of a JADU.
  - (2) A JADU must be contained entirely within the walls of the habitable portion of the existing or proposed single-family dwelling. The habitable portion of the single family dwelling does not include the garage or carport.
  - (3) A separate exterior entry from the main entrance to the single-family dwelling shall be provided to serve a JADU.
  - (4) A JADU may include separate sanitation facilities, or may share sanitation facilities with the existing single-family dwelling.
  - (5) A JADU shall include an efficiency kitchen or kitchenette, which shall include all of the following:
    - (A) A cooking facility with appliances.
    - (B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the JADU.
  - (6) No additional parking is required for a JADU.
- (g) Covenant required. Prior to the issuance of a Certificate of Occupancy for the ADU or JADU, the property owner shall record a declaration of restrictions, in a form approved by the City Attorney, placing the following restrictions on the property, the property owner, and all successors in interest:
- (1) The ADU or JADU shall not be sold, transferred, or assigned separately from the Primary Dwelling, but may be rented.
  - (2) The ADU or JADU shall not be used for short term rentals for less than 30 consecutive days.
  - (3) If there is a JADU on the property, either the JADU or Primary Dwelling shall be occupied by the owner of record.
  - (4) The property owner and all successors in interest shall maintain the ADU and/or JADU and the property in accordance with all applicable ADU and/or JADU requirements and standards

- (h) Services, impact fees, and utility connections.
- (1) ADUs shall not be allowed where roadways, public utilities or services are inadequate in accordance with the general plan and zoning designation for the lot.
  - (2) ADUs and JADUs shall have adequate water and sewer services. These services may be provided from the water and sewer points of connection for the Primary Dwelling and not be a separate set of services. For an ADU that is not a conversion of an existing space, a separate utility connection directly between the accessory dwelling unit and the utility may be required. Consistent with Government Code Section 65852.2(f), the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit.
  - (3) The owner of an ADU shall be subject to the payment of all sewer, water and other applicable fees, including impact fees set forth in Government Code Section 66000 et seq., except as follows:
    - (A) ADUs that are less than 750 square feet shall not be subject to impact fees.
    - (B) ADUs that are 750 square feet or more shall be charged impact fees that are proportional in relation to the square footage of the Primary Dwelling unit.
  - (4) The City shall not issue a building permit for an ADU or JADU until the applicant provides a will serve letter from the local water and sewer provider. Notwithstanding the foregoing, if a private sewage disposal system is being used, the applicant must provide documentation showing approval by the Building Official in lieu of the will serve letter by the local sewer provider.
- (i) Fire safety requirements. The construction of all new ADUs and JADUs shall meet minimum standards for fire safety as defined in the Building Code of the City of Davis and the Fire Code of the City of Davis, as the same may be amended by the City from time to time.
- (j) Ownership. No ADU or JADU shall be created for sale or financing pursuant to any condominium plan, community apartment plan, housing cooperative or subdivision map.
- (k) Occupancy. Except as provided elsewhere in this section, ministerial ADUs may be rented or owner occupied.
- (l) Planned Development Districts. In the event that a residential planned development district includes standards that would preclude the construction of a ministerial ADU that would otherwise be permitted under this Section 40.26.450, the requirements of this section shall apply, and shall supersede the planned development standards as applied to ministerial ADUs within the applicable planned development district.”

SECTION 20. A new Section 40.26.460 (Non-Ministerial Accessory Dwelling Units) is hereby added to Article 40.26 (Special Uses) of Chapter 40 of the Davis Municipal Code to read as follows:



“Section 40.26.460 Non-Ministerial Accessory Dwelling Units.

- (a) Purpose. The purpose of this section is to allow accessory dwelling units (ADUs) that do not meet the provisions of Section 40.26.450. Non-ministerial ADUs are subject to the regulations of this section and the approval of an administrative use permit.
- (b) The following standards shall apply to non-ministerial accessory dwelling units:
- (1) The maximum size of a non-ministerial accessory dwelling unit shall be 1,200 square feet.
  - (2) The minimum setbacks shall be:
    - (A) Front yard, the same as is required by the zone where the ADU is located.
    - (B) Street side yard, 15 feet.
    - (C) Interior side yard, five feet.
    - (D) Rear yard, 10 feet.
    - (E) The minimum interior side yard and rear yard shall be three feet if said yards adjoin: an alley, park or greenbelt, or a zoning district that does not principally permit single-family dwellings or two-family dwellings (e.g., districts that permit multiple-family dwellings, nonresidential uses, agriculture, public and semipublic facilities, or similar principal permitted uses). The interior side yard and rear yard for a yard adjoining a zoning district that principally permits single-family or two-family dwellings shall comply with the general requirements in subparagraphs (C) and (D) above.
  - (3) The minimum required distance between the non-ministerial accessory dwelling unit and the primary dwelling unit, and all other structures on the property, shall be in conformance with the California Building Code.
  - (4) The maximum height shall be 30 feet.
  - (5) The maximum lot coverage shall be 50 percent for the primary dwelling and accessory dwelling units and all accessory structures combined.
  - (6) The minimum useable open space is 20 percent.
  - (7) No additional vehicle parking space is required for a non-ministerial ADU.
  - (8) The accessory dwelling unit shall have the same roof pitch as the primary dwelling with matching eave details, but may vary by up to 2/12 more or 2/12 less than the roof pitch of the primary dwelling unit. If the unit is located in a historic conservation zone, it must follow the roof pitch requirements for the design style allowed in that zone or subarea.
  - (9) A garage converted to an ADU that does not proceed under the building permit only approval process shall include removal of the garage door(s) which shall be replaced with architectural features, including walls, doors, windows, trim and accent details to match the primary structure.

- (10) The architecture of the ADU shall use the same architectural features, including walls, doors, windows, trim and accent details to match the primary structure.
  - (11) Fencing or landscaping shall be installed and maintained between the unit and the neighboring property.
  - (12) For an accessory dwelling unit that is constructed as a second story or above a garage, all windows facing the side or rear lot lines shall be made of frosted or etched glass, or otherwise include a privacy film or treatment to ensure privacy for neighboring properties if the lot line abuts another residential property.
  - (13) Adequate open space and landscaping shall be provided for both the primary dwelling unit and the non-ministerial accessory dwelling unit.
- (c) An application for a non-ministerial accessory dwelling unit may be approved only if the Director makes the findings required by Section 40.30A.070.”

SECTION 21. A new Section 40.26.470 is hereby added to Article 40.26 (Special Uses) of Chapter 40 of the Davis Municipal Code to read as follows:

“Section 40.26.470 Guest Houses.

- (a) Purpose. The purpose of this section is to further define and ensure compatibility of small accessory buildings otherwise called guest houses.
- (b) Definitions. For the purposes of this section, the words and phrases shall have the meanings respectively ascribed to them by section 40.01.010.
- (c) The following standards shall apply to guest houses:
  - (1) The maximum lot coverage shall be 50 percent for the total of the primary structure, any accessory dwelling unit, any other accessory structure and the proposed guest house.
  - (2) The maximum total square footage for a guest house is 1,200 square feet or 50 percent of the primary structure, whichever is less.
  - (3) A guest house shall have the same setbacks as an accessory building, pursuant to Section 40.26.010.
  - (4) A guest house shall meet the height requirement for accessory buildings in Section 40.26.010.
  - (5) No parking shall be required for guest houses.
  - (6) Guest houses may have restroom facilities (toilet, sink, bathtub and/or shower) but are prohibited from having a kitchen or cooking facilities.



- (7) Only one guest house is permitted per lot.
- (8) A guest house shall not be rented or leased separate from the principal dwelling unit or otherwise used as a separate dwelling unit.
- (9) A guest house may be rented to a business authorized as a home occupation at the same address.
- (10) Except as otherwise required by Government Code Section 65852.2, no more than one accessory dwelling unit and one guest house may be located on any lot where a single family residence exists on a property.
- (11) A guest house shall comply with all standards applicable to an accessory building/structure in Section 40.26.010, except in the case of a conflict with the provisions herein, in which case the provisions in this section shall govern.

(d) An application for a guest house may be approved only if the Director makes the findings required by Section 40.30A.070.”

SECTION 22. Section 40.30A.070 (Findings for Approval) of Article 40.30A (Administrative Use Permits) of Chapter 40 of the Davis Municipal Code is hereby amended in its entirety to read as follows:

“40.30A.070 Findings for Approval.

An administrative use permit approval shall be approved, conditionally approved, or denied by the Director (or the planning commission or city council if subject to an appeal) pursuant to the requirements of Article 40.39, Administrative Approvals, of this chapter. An administrative use permit shall only be granted for uses that the Zoning Code expressly provides may be authorized upon the approval of an administrative use permit, for example non-ministerial accessory dwelling units, guest houses, and certain cannabis-related uses. Such application may be approved only if the following findings are made:

- (a) Conforms to general plan. The proposed structure or use conforms to the requirements and intent of this chapter and the general plan.
- (b) Conditions and requirements will be met. Any additional conditions and requirements stipulated by the Director (or the planning commission or city council if subject to an appeal) have been or will be met.
- (c) Not detrimental to public welfare. That such use will not, under the circumstances of the particular case, constitute a nuisance or be detrimental to the public welfare of the community.
- (d) Compatible relationship with adjacent properties. That the location and design of the structure or use maintains a compatible relationship with adjacent properties and does not significantly impact the privacy, light, air, solar access or parking of adjacent properties.”

SECTION 23. The City Council determines that this ordinance is exempt from environmental review under the California Environmental Quality Act, (California Public Resources Code §§ 21000, et seq., (“CEQA”) and the CEQA Guidelines (14 California Code of Regulations §§ 15000, et seq.) because this zoning ordinance implements the provisions of Government Code Section 65852.2 and is therefore exempt from CEQA pursuant to Public Resources Code Section 21080.17 and California Code of Regulations Section 15282(h).

SECTION 24. This Ordinance shall take effect and be in full force and effect thirty (30) days from and after the date of its final passage and adoption.

SECTION 25. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

INTRODUCED on the 4th day of May, 2021, and PASSED AND ADOPTED by the City Council of the City of Davis on this 18th day of May, 2021, by the following vote:

AYES: Arnold, Carson, Chapman, Frerichs, Partida

NOES: None

Gloria J. Partida  
Mayor

ATTEST:

T.S. Mirabile, CMC  
City Clerk



Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
May 10, 2022

To: Honorable Mayor and Members of the City Council  
From: Councilmember Wengraf  
Subject: Resolution Declaring May as Jewish American Heritage Month

RECOMMENDATION

Adopt a Resolution declaring the month of May as Jewish American Heritage Month in appreciation of the achievements and contributions made by members of the Jewish Community.

FINANCIAL IMPLICATIONS

None

BACKGROUND

Jewish Americans are an important part of American history and have greatly contributed to all areas of American life and culture since our nation's earliest days. Generations of Jews have come to the United States in search of a better life for themselves and their families, and made invaluable contributions in support of equality and civil rights through their leadership and achievements.

Jewish Americans connect to their Jewish identity in a variety of ways; culturally, ethnically, religiously and by embracing Jewish ethics and values. Jewish Americans are racially, ethnically, socially, politically and economically diverse, with approximately 25 percent of Bay Area Jewish households including a person of color.

In recent years, Jewish Americans have increasingly experienced antisemitism, including but not limited to physical attacks, vandalism, verbal and physical harassment, and hateful comments posted on social media. There is a need for education and policies that are culturally competent when describing, discussing, or addressing the impacts of being Jewish in all aspects of American society, including discourse and policy.

The City of Berkeley condemns antisemitism wherever it exists, and stands with the Jewish American community against hatred or bigotry in our city and country. Berkeley calls upon all residents to celebrate Jewish Americans who have contributed to our country and community, and support opportunities to learn more about Jewish American history and culture.

Berkeley will continue its efforts to confront antisemitism and other forms of hate impacting the Jewish community, support local education about the diversity of our Jewish American community, and integrate Jewish American culture into future programs, activities, and ceremonies throughout the year. [Declaring the month of May](#) as Jewish American Heritage Month in the City of Berkeley supports that work.

ENVIRONMENTAL SUSTAINABILITY

This item does not address environmental sustainability.

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachment:

1: Resolution

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

JEWISH AMERICAN HERITAGE MONTH

WHEREAS, Jewish Americans are an important part of American history and have greatly contributed to all areas of American life and culture since our nation's earliest days; and

WHEREAS, generations of Jews have come to the United States in search of a better life for themselves and their families, and made invaluable contributions in support of equality and civil rights through their leadership and achievements; and

WHEREAS, Jewish Americans connect to their Jewish identity in a variety of ways; culturally, ethnically, religiously and by embracing Jewish ethics and values; and

WHEREAS, Jewish Americans are racially, ethnically, socially, politically and economically diverse, with approximately 25 percent of Bay Area Jewish households including a person of color; and

WHEREAS, in recent years, Jewish Americans have increasingly experienced antisemitism, including but not limited to physical attacks, vandalism, verbal and physical harassment, and hateful comments posted on social media; and

WHEREAS, the City of Berkeley condemns antisemitism wherever it exists, and stands with the Jewish American community against hatred or bigotry in our city and country; and

WHEREAS, there is a need for education and policies that are culturally competent when describing, discussing, or addressing the impacts of being Jewish in all aspects of American society, including discourse and policy.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley hereby declares the month of May as Jewish American Heritage Month in appreciation of the achievements and contributions made by members of the Jewish community. We call upon all residents to celebrate Jewish Americans who have contributed to our country and community, and support opportunities to learn more about Jewish American history and culture.

BE IT FURTHER RESOLVED that Berkeley will continue its efforts to confront antisemitism and other forms of hate impacting the Jewish community, support local education about the diversity of our Jewish American community, and integrate Jewish American culture into future programs, activities, and ceremonies throughout the year.







Mental Health Commission

INFORMATION CALENDAR

May 10, 2022

To: Honorable Mayor and Members of the City Council  
 From: Mental Health Commission  
 Submitted by: Dr. Margaret Fine, Chair, Mental Health Commission  
 Subject: Mental Health Commission Work Plan 2022-2023

INTRODUCTION

At its March 24, 2022 meeting, the Mental Health Commission adopted its 2022-2023 Work Plan.

CURRENT SITUATION AND ITS EFFECTS

On March 24, 2022, the Mental Health Commission adopted the attached work plan through the action detailed below.

The Mental Health Commissioners include: Margaret Fine (Chair), Monica Jones (Vice-Chair), Edward Opton, Andrea Pritchett, Tommy Escarcega, and Councilmember Terry Taplin. On March 25, 2022, the Mental Health Commission adopted the attached work plan through the action detailed below during its regular public meeting.

The 2022-2023 Work Plan is designed to address the public mental health and substance use system for people living with serious mental illness and substance use issues and disorders—many of whom are unhoused, people of color, LGBTQIA+ people, people living with disabilities of all ages. It is further designed to address public mental health and substance use to inform the community at-large, particularly through programs at its public meetings.

The Mental Health Commission advances: 1) a whole person care approach that equitably provides well-integrated, coordinated systems of care to diverse people with mental health and substance use challenges, and 2) a diversion approach to reduce interactions with law enforcement and using hospital emergency rooms, inpatient psychiatric hospitalization, and incarceration for service delivery whenever possible.

Overall, the Work Plan is designed to advance a comprehensive 365/24/7 mental health and substance use system for Berkeley, including implementing an alternative non-police responder program, the Specialized Care Unit, and establishing a crisis stabilization center in Berkeley for people who seek voluntary urgent care. The Work

Plan is designed to further achieve these goals through building partnerships with consumers, families, community, the Division of Mental Health, and community-based organizations. Further, the Mental Health Commission achieves them through membership, Site Visit Subcommittee, and inviting speakers to present about the public mental health and substance use and related systems at public meetings.

Last, the Mental Health Commission has the goal to submit a Blueprint to the Berkeley City Council making recommendations on the public mental health, substance use, and related systems for serving Berkeley people with mental health and substance use challenges. Overall, the Work Plan is designed to champion and demonstrate the importance of equitable, inclusive public mental health and substance use service delivery in the form of tailored culturally safe and responsive services to diverse people and communities.

#### BACKGROUND

In 2016, the City Council adopted direction to commissioners to submit a work plan annually.

#### ENVIRONMENTAL SUSTAINABILITY

There is no identifiable environmental sustainability impact associated with the adoption of this work plan.

#### POSSIBLE FUTURE ACTION

None.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None.

#### CONTACT PERSON

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

#### Attachments:

1: FY 2022-2023 Work Plan

WORK PLAN 2022-2023  
Mental Health Commission for the City of Berkeley

“Contributing to building a comprehensive 365/24/7 behavioral health system for Berkeley.”

- Participate in the selection of the next Division Manager for the Division of Mental Health according to state-mandated duties for the Mental Health Commission.
- Establish a Site Visit Committee that may visit "any facility within the county or jurisdiction where mental health evaluations or services are being provided, including but not limited to, schools, emergency departments, and psychiatric facilities" in alignment with the Mental Health Commission's state-mandated duties.
- Build and continue building partnerships with diverse consumers, families, community, the Division of Mental Health, community-based organizations, including to outreach for new members and by continuing to invite speakers to present and answer questions about the public behavioral health (mental health and substance use) and related systems.
- Develop and advance a diversion program for diverse people with mental health and substance use challenges away from hospital emergency rooms, inpatient psychiatric hospitalization, law enforcement, and criminal legal and incarceration systems. Collaborate with the Mental Health Subcommittee of the Police Accountability Board and the Police Accountability Board to develop a diversion program (Santa Rita Jail Subcommittee).
- Write and submit a Blueprint for the City of Berkeley with recommendations for building a comprehensive 365/24/7 behavioral health system for our city—particularly focused on diverse people with mental health, substance use, and housing challenges and equitable, inclusive care—and submit to the Berkeley City Council, including to ensure joint action with Alameda County.
- Advance establishment of an alternative non-police responder program, the Specialized Care Unit, for the City of Berkeley.
- Advance establishment of a crisis stabilization center in Berkeley to serve diverse individuals with mental health and substance use challenges who voluntarily seek urgent care in our city, including a center that aligns with the SAMHSA National Behavioral Health Crisis Care Guidelines for the definition of crisis stabilization and the minimum expectations for operating a crisis stabilization center.
- Advance using a whole person care approach that equitably provides well-integrated, coordinated systems of care for diverse Berkeley people with

behavioral health challenges, including through current onboarding and use of the Community Health Records by the Division of Mental Health with Alameda County.

- Evaluate levels of equity, disparities, and inclusion for diverse and marginalized people with mental health and substance use challenges who use or attempt to use the Division of Mental Health for the City of Berkeley, including having a Mental Health Commissioner appointed to participate on the Mental Health Equity Committee for this Division of Mental Health.
- Explore changing the titles of the Mental Health Commission, the Manager for Mental Health Services, and the Division of Mental Health to include substance use as appropriate to reflect: 1) the high number of clients served by the Division of Mental Health with mental health and substance use issues and disorders, and 2) the scope and nature of Medi-Cal insurance under CalAIM for people experiencing serious mental illness and substance use disorders at the Division of Mental Health.

Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i>	
Scheduled Dates	
April 21	Special Meeting – Reimagining Public Safety
April 26	Special Meeting – Referral Prioritization Process (RRV) Special Meeting – Berkeley Strategic Transportation Plan Update Special Meeting – Bonding Capacity Study
June 21	1. Ballot Measure Development/Discussion
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"> <li>1. Cannabis Health Considerations</li> <li>2. Alameda County LAFCO Presentation</li> </ol>

Unscheduled Presentations (City Manager)
<ol style="list-style-type: none"> <li>1. Civic Arts Grantmaking Process &amp; Capital Grant Program</li> <li>2. Mid-Year Budget Report FY 2022 (April 2022)</li> </ol>

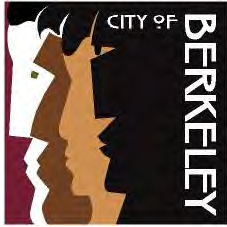
	<p><b>City Council Referrals to the Agenda &amp; Rules Committee and Unfinished Business for Scheduling</b></p>
1.	<p><b>25. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers</b> <i>(Continued from February 25, 2020. Item contains revised and supplemental materials) (Referred from the May 12, 2020 agenda.)</i></p> <p><b>From: City Manager</b></p> <p><b>Recommendation:</b> Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.</p> <p><b>Financial Implications:</b> None</p> <p>Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000</p> <p><b>Note:</b> <i>Referred to Agenda &amp; Rules for future scheduling.</i></p>

CITY CLERK DEPARTMENT			
WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS BEFORE THE CITY COUNCIL			
Address	Board/ Commission	Appeal Period Ends	Public Hearing
<b>NOD – Notices of Decision</b>			
<b>Public Hearings Scheduled</b>			
1643-47 California St (new basement level and second story)	ZAB		4/26/2022
1205 Peralta Avenue (conversion of an existing garage)	ZAB		6/14/2022
<b>Remanded to ZAB or LPC</b>			
<b>Notes</b>			

4/14/2022







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)

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This memo provides supplemental information for the discussion on Item 20 on the November 10, 2020 Council agenda. Below is a summary and update of the status of meetings of Berkeley Boards and Commissions during the COVID-19 emergency declaration and the data collected by the City Manager on the ability of commissions to resume meetings in 2021.

On March 10, 2020 the City Council ratified the proclamation of the Director of Emergency Services for a state of local emergency related to the COVID-19 pandemic. The emergency proclamation has been renewed twice by the Council and remains in effect.

On March 17, 2020 the City Council adopted Resolution No. 69,331-N.S. which placed limitations of the meetings of City legislative bodies, including all boards and commissions. The resolution allows for commissions to meet to conduct time-sensitive, legally mandated business with the authorization of the City Manager. Since that time, several commissions have obtained this approval and held meetings; many other commissions have not met at all since March.

The City Manager has periodically reviewed the status of commission meetings with the City Council Agenda & Rules Committee. Recently, at the October 12, 2020 Agenda & Rules Committee meeting, the City Manager presented a proposal to allow all commissions to meet under limited circumstances. The Committee voted to endorse the City Manager's recommendation.

Effective October 12, 2020, all City boards and commissions may meet once to develop and finalize their work plan for 2021 and to complete any Council referrals directly related to the COVID-19 pandemic response. A second meeting may be held to

complete this work with specific authorization by the City Manager. It is recommended that the meeting(s) occur by the end of February 2021.

Commissions that have been granted permission to meet under Resolution No. 69,331-N.S. may continue to meet pursuant to their existing authorization, and may also meet to develop their 2021 work plan.

Commissions that have not requested meetings pursuant to the Resolution No. 69,331-N.S. may meet pursuant to the limitations listed above.

In response to questions from the Agenda & Rules Committee and the Council, the City Manager polled all departments that support commissions to obtain information on their capacity to support the resumption of regular commission meetings. The information in Attachment 1 shows the information received from the departments and notes each commission's ability to resume a regular, or semi-regular, meeting schedule in 2021.

In summary, there are 24 commissions that have staff resources available to support a regular meeting schedule in 2021. Seven of these 24 commissions have been meeting regularly during the pandemic. There are five commissions that have staff resources available to support a limited meeting schedule in 2021. There are seven commissions that currently do not have staff resources available to start meeting regularly at the beginning of 2021. Some of these seven commissions will have staff resources available later in 2021 to support regular meetings. Please see Attachment 1 for the full list of commissions and their status.

With regards to commission subcommittees, there has been significant discussion regarding the ability of staff to support these meetings in a virtual environment. Under normal circumstances, the secretary's responsibilities regarding subcommittees is limited to posting the agenda and reserving the meeting space (if in a city building). With the necessity to hold the meetings in a virtual environment and be open to the public, it is likely that subcommittee meetings will require significantly more staff resources to schedule, train, manage, and support the work of subcommittees on Zoom or a similar platform. This additional demand on staff resources to support commission subcommittees is not feasible for any commission at this time.

One possible option for subcommittees is to temporarily suspend the requirement for ad hoc subcommittees of city commissions to notice their meetings and require public participation. Ad hoc subcommittees are not legislative bodies under the Brown Act and are not required to post agendas or allow for public participation. These requirements are specific to Berkeley and are adopted by resolution in the Commissioners' Manual. If it is the will of the Council, staff could introduce an item to temporarily suspend these

requirements which will allow subcommittees of all commissions to meet as needed to develop recommendations that will be presented to the full commission.

The limitations on the meetings of certain commissions are due to the need to direct staff resources and the resources of city legislative bodies to the pandemic response. Some of the staff assigned as commission secretaries are engaged in work with the City Emergency Operations Center or have been assigned new duties specifically related to the impacts of the pandemic.

Meeting frequency for boards and commissions will continue to be evaluated on a regular basis by the City Manager and the Health Officer in consultation with Department Heads and the City Council.

Attachments:

1. List of Commissions with Meeting Status
2. Resolution 69,331-N.S.

<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.

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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







## Hybrid Meeting Policies for City Council Meetings Revised May 2022

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.

City Council policy committees and city boards and commissions will continue to meet in a virtual-only setting until the City Council makes the required findings under state law that in-person meetings may resume.

### I. Vaccination Status

Prior to entry, all in-person attendees at the meeting location must present valid proof of “up-to-date” COVID-19 vaccination or a verified negative test conducted within one day prior for an antigen test or two days prior for a PCR test. An attendee is “up-to-date” with their vaccinations if:

- It has been less than 2 months after receiving the initial dose of their Johnson & Johnson Vaccine.
- It has been less than 5 months after receiving the second dose of their two-dose Pfizer or Moderna initial series.
- The attendee has received a booster.

#### *Pre-entry negative testing*

*Definition: Testing must be conducted within one day for an antigen test and within two days for a PCR test prior to entry into an event. Results of the test must be available prior to entry into the facility or venue. Children under 2 years of age are exempt from the testing requirement, consistent with [CDC guidance](#).*

*Verification: See current [CDPH Updated Testing Guidance](#) and [CDPH Over-the-Counter Testing Guidance](#) for acceptable methods of proof of negative COVID-19 test result and information on Over-the-Counter tests. Note: Self-attestation may not be used to verify negative test result, even when using Over-the-Counter (or at home tests) for entry into Indoor Mega Events.*

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Beyond-Blueprint-Framework.aspx>

### II. Health Status Precautions

If a person who desires to attend the meeting in-person is feeling sick, including but not limited to, cough, shortness of breath or difficulty breathing,

fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell, they will be advised to attend the meeting remotely.

If an in-person attendee has been in close contact, as defined below, with a person who has tested positive for COVID-19 in the past five days, they will be advised to attend the meeting remotely.

Close contact is defined as being within approximately 6 feet for greater than 15 minutes over 24 hours within 2 days before symptoms appear (or before a positive test for asymptomatic individuals); or having contact with COVID-19 droplets (e.g., being coughed on while not wearing recommended personal protective equipment).

A voluntary sign in sheet will be available at the meeting entry for in-person attendees. This will assist with contact tracing in case of COVID-19 contact resulting from the meeting.

### **III. Face Coverings/Mask**

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. Members of the City Council, city staff, and the public are required to wear a mask at all times, except when speaking publicly from the dais or at the public comment podium.

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.

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.

### **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.

Audience seating capacity will be at regular allowable levels per the Fire Code. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as

“distanced seating” to accommodate persons with a medical status that requires distancing and for those that choose to distance for personal health reasons.

Conference room capacity is limited to 15 persons. The relevant capacity limits will be posted at the meeting location.

City staff will present remotely in order to reduce the number of persons in the Boardroom and back conference area.

Distancing is encouraged for the dais and partitions will be used as needed for the seating positions on the dais.

**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 and testing requirements, health status precautions, and masking 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**

Berkeley Unified 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 Volatile Organic Compounds, CO<sub>2</sub>, 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 200 persons. The overflow area will have a broadcast of the meeting in progress to allow participants to follow the proceedings and move to the Boardroom at the appropriate time to provide public comment if desired. 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. Maximum of 16 (Mayor & Council [9], City Manager, City Attorney, City Clerk [2], Deputy City Managers [2], BCM Staff)
- Individually packaged snacks will be provided on a common table and drinks will be available in the refrigerator.

**X. In-Meeting Procedures**

**Revised and Supplemental Materials from Staff and Council**

All revised and supplemental materials for items on the agenda submitted after 12:00pm (noon) the day prior to the meeting must be submitted to the City Clerk in both paper AND electronic versions.

- Paper: 42 copies delivered to the Boardroom (distributed per normal procedure)
- Electronic: e-mailed to the Agenda Inbox (posted online)

**Communications from the Public**

A communication submitted by the public during the City Council meeting may be shared as follows.

- Paper: If requested by the Presiding Officer, the document can be displayed in the Boardroom and screen shared on the Zoom.
- Electronic: If requested by the Presiding Officer, the document can be displayed in the Boardroom and screen shared on the Zoom.



Office of the City Attorney

Date: March 3, 2021  
To: Agenda and Rules Committee  
From: Office of the City Attorney  
Re: Continuing Use of Teleconferencing for Public Meetings

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Assembly Bill 361 amended the Ralph M. Brown act to authorize the City to continue to hold teleconferenced meetings during a Governor-declared state of emergency without complying with a number of requirements ordinarily applicable to teleconferencing. For example, under AB 361, the City may hold teleconferenced meetings without:

1. Posting agendas at all teleconference locations
2. Listing each teleconference location in the notice and agenda for the meeting
3. Allowing the public to access and provide public comment from each teleconference location
4. Requiring a quorum of the body to teleconference from locations within City boundaries

(Cal. Gov. Code § 549539(b)(3) & (e)(1).)

Under AB 361, the City can continue to hold teleconferenced meetings without adhering to the above practices as long as the state of emergency continues and either (1) “state or local officials have imposed or recommended measures to promote social distancing,” or (2) the City determines that “meeting in person would present imminent risks to the health or safety of attendees.” (Cal. Gov. Code § 54953(e)(1).)

Every thirty days, the City must review and determine that either of the above conditions continues to exist. (Cal. Gov. Code § 54953(e)(3).) Since September 28, 2021, the City Council has passed a recurring resolution every thirty days determining that both of the above conditions continue to exist and therefore teleconferencing under AB 361 is warranted. The Council may continue to renew the teleconferencing resolution every thirty days, and thereby continue to hold teleconferenced meetings under the procedures it has used throughout the pandemic, until the state of emergency ends. (See Cal. Gov. Code § 54953(e)(3)(A).)

The state of emergency for COVID-19 has been in effect since it was issued by the Governor on March 4, 2020. There is no clear end date for the state of emergency at this time. As recently as February 17, 2022, the Governor stated that, for now, the state will continue to operate under the state of emergency, but that his goal is “to unwind the state

March 2, 2022

Page 2 Re: Continuing Use of Teleconferencing for Public Meetings

of emergency as soon as possible.”<sup>1</sup> Additionally, per a February 25, 2022 *Los Angeles Times* article, Newsom administration officials have indicated that the state of emergency is necessary for the State’s continued response to the pandemic, including measures such as waiving licensing requirements for healthcare workers and clinics involved in vaccination and testing.<sup>2</sup>

On March 15, 2022, the California State Senate Governmental Organization Committee will consider a resolution (SCR 5) ending the state of emergency.<sup>3</sup> Some reporting suggests that the Republican-sponsored resolution is unlikely to pass. Notably, Senate Leader Toni Atkins’ statement on the Senate’s consideration of SCR 5 articulates strong support for the state of emergency.<sup>4</sup>

The Governor has issued an executive order (N-1-22) which extends to March 31, 2022 sunset dates for teleconferencing for state legislative bodies (under the Bagley-Keene Open Meeting Act) and student body organizations (under the Gloria Romero Open Meetings Act).<sup>5</sup> Executive Order N-1-22 does not affect the Brown Act teleconferencing provisions of AB 361, which have a sunset date of January 1, 2024. Therefore, until January 1, 2024, the City may utilize the teleconferencing provisions under AB 361 as long as the state of emergency remains in effect.

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<sup>1</sup> *New York Times*, California Lays Out a Plan to Treat the Coronavirus as a Manageable Risk Not an Emergency (Feb. 17, 2022), <https://www.nytimes.com/2022/02/18/us/california-lays-out-a-plan-to-treat-the-coronavirus-as-a-manageable-risk-not-an-emergency.html>.

<sup>2</sup> *Los Angeles Times*, Newsom scales back some special pandemic rules, but not California’s state of emergency (Feb. 25, 2022), <https://www.latimes.com/california/story/2022-02-25/newsom-scales-back-special-pandemic-rules-but-not-california-state-of-emergency>.

<sup>3</sup> Text of SCR 5 available at: [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220SCR5](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SCR5).

<sup>4</sup> Press release: Senator Toni G. Atkins, Senate Leader Atkins Issues Statement on SCR 5 and the State of Emergency (Feb. 17, 2022), <https://sd39.senate.ca.gov/news/20220217-senate-leader-atkins-issues-statement-scr-5-and-state-emergency>.

<sup>5</sup> Text of Executive Order N-1-22 available at: <https://www.gov.ca.gov/wp-content/uploads/2022/01/1.5.22-Bagley-Keene-waiver-EO.pdf>.

## Hybrid Meeting Policies for City Council Meetings Revised April 2022

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

Prior to entry, all in-person attendees at the meeting location must present valid proof of “up-to-date” COVID-19 vaccination or a verified negative test conducted within one day prior for an antigen test or two days prior for a PCR test. An attendee is “up-to-date” with their vaccinations if:

- It has been less than 2 months after receiving the initial dose of their Johnson & Johnson Vaccine.
- It has been less than 5 months after receiving the second dose of their two-dose Pfizer or Moderna initial series.
- The attendee has received a booster.

#### *Pre-entry negative testing*

*Definition: Testing must be conducted within one day for an antigen test and within two days for a PCR test prior to entry into an event. Results of the test must be available prior to entry into the facility or venue. Children under 2 years of age are exempt from the testing requirement, consistent with [CDC guidance](#).*

*Verification: See current [CDPH Updated Testing Guidance](#) and [CDPH Over-the-Counter Testing Guidance](#) for acceptable methods of proof of negative COVID-19 test result and information on Over-the-Counter tests. Note: Self-attestation may not be used to verify negative test result, even when using Over-the-Counter (or at home tests) for entry into Indoor Mega Events.*

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Beyond-Blueprint-Framework.aspx>

### II. Health Status Precautions

If a person who desires to attend the meeting in-person is feeling sick, including but not limited to, cough, shortness of breath or difficulty breathing, fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell they will be advised to attend the meeting remotely.



If an in-person attendee has been in close contact, as defined below, with a person who has tested positive for COVID-19 in the past five days, they will be advised to attend the meeting remotely.

Close contact is defined as being within approximately 6 feet for greater than 15 minutes over 24 hours within 2 days before symptoms appear (or before a positive test for asymptomatic individuals); or having contact with COVID-19 droplets (e.g., being coughed on while not wearing recommended personal protective equipment relative to employees' duties and responsibilities).

A voluntary sign in sheet will be available at the meeting entry for in-person attendees. This will assist with contact tracing in case of COVID contact resulting from the meeting.

### **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. 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.

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.

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.

### **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.

Audience seating capacity will be at regular allowable levels per the Fire Code. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as "distanced seating" to accommodate persons with a medical status that requires distancing and for those that choose to distance for personal health reasons.

Conference room capacity is limited to 15 persons. The relevant capacity limits will be posted at the meeting location.

City staff will present remotely in order to reduce the number of persons in the Boardroom and back conference area.

**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 and testing requirements, health status precautions, and masking 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 200 persons. The overflow area will have a broadcast of the meeting in progress

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. Maximum of 16 (Mayor & Council [9], City Manager, City Attorney, City Clerk [2], Deputy City Managers [2], BCM Staff)
- Individually packaged snacks will be provided on a common table and drinks will be available in the refrigerator.

## Hybrid Meeting Procedures for BUSD Boardroom (~~November 2021~~February 2022)

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**

Prior to entry, all in-person attendees at the meeting location must present valid proof of “up-to-date” COVID-19 vaccination or a verified negative test conducted within one day prior for an antigen test or two days prior for a PCR test. An attendee is “up-to-date” with their vaccinations if:

- It has been less than 2 months after receiving the initial dose of their Johnson & Johnson Vaccine.
- It has been less than 5 months after receiving the second dose of their two-dose Pfizer or Moderna initial series.
- The attendee has received a booster.

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

### II. **Health ~~Check~~Status Precautions**

If an in-person attendee is feeling sick, including but not limited to, cough, shortness of breath or difficulty breathing, fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell they will be advised to attend the meeting remotely.

If an in-person attendee has been in close contact, as defined below, with a person who has tested positive for COVID-19 in the past five days, they will be advised to attend the meeting remotely.

Close contact is defined as being within approximately 6 feet for greater than 15 minutes over 24 hours within 2 days before symptoms appear (or before a positive test for asymptomatic individuals); or having contact with COVID-19 droplets (e.g., being coughed on while not wearing recommended personal protective equipment relative to employees’ duties and responsibilities).

~~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~~

## Hybrid Meeting Procedures for BUSD Boardroom (~~November 2021~~February 2022)

~~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.

### 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.

Audience seating capacity will be at regular allowable levels per the Fire Code. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as "distanced seating" to accommodate persons with a medical status that requires distancing and for those that choose to distance for personal health reasons.

~~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~~

## Hybrid Meeting Procedures for BUSD Boardroom (~~November 2021~~February 2022)

~~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 ~~42-15~~ persons. The relevant capacity limits will be posted on the city council agenda and at the meeting location.

City staff will present remotely in order to reduce the number of persons in the Boardroom and back conference area.

### 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 and testing requirements, health status precautions, temperature checks, and masking 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.

## Hybrid Meeting Procedures for BUSD Boardroom (~~November 2021~~February 2022)

### **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~~200 persons. The overflow area will have a broadcast of the meeting in progress 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. Maximum of 16 (Mayor & Council [9], City Manager, City Attorney, City Clerk [2], Deputy City Managers [2], BCM Staff)
- Individually packaged snacks will be provided on a common table and drinks will be available in the refrigerator.

## Hybrid Meeting Procedures for BUSD Boardroom (November 2021)

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**

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

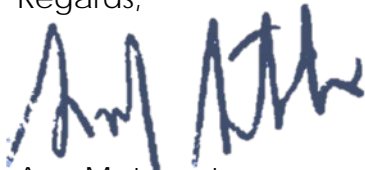
Dear Mr. Knaus, Ms. Miller, Ms. Hurst, Ms. Preston, Ms. Heaton, Ms. King, Ms. Coleman, Ms. Blacet-Hyden, Mr. McCormick, Mr. Anderson, and colleagues,

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](mailto:Communications@dir.ca.gov), (510) 286-1161.

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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

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### 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.

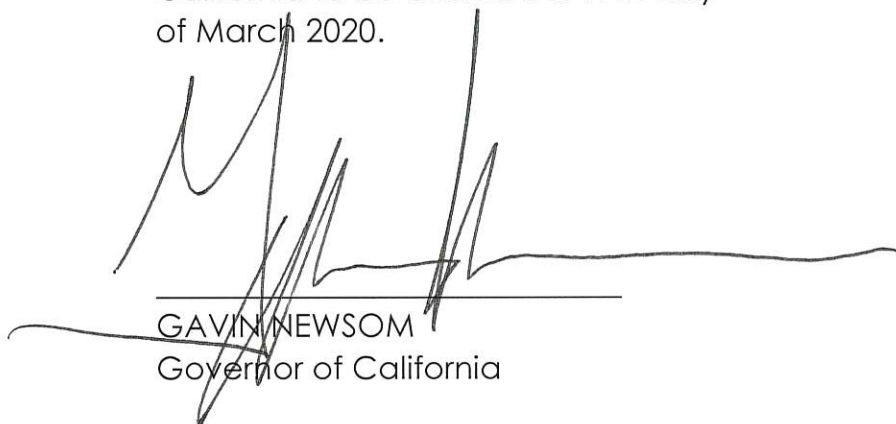


All state and local bodies are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Bagley-Keene Act and the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency 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

