

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

**MONDAY, OCTOBER 31, 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/82000935026>. 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: **820 0093 5026**. 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.

# **AGENDA**

**Roll Call**

**Public Comment**

## **Review of Agendas**

- 1. Approval of Minutes: October 19, 2022**
- 2. Review and Approve Draft Agenda:**
  - a. 11/15/22 – 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**

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

## **Unscheduled Items**

- 9. Discussion Regarding Design and Strengthening of Policy Committee Process and Structure (Including Budget Referrals)**
- 10. 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, November 14, 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, October 27, 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**

**WEDNESDAY, OCTOBER 19, 2022  
2:30 P.M.**

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf  
Alternate: Councilmember Kate Harrison

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

**Public Comment** – 2 speakers

## **Review of Agendas**

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

**Action:** M/S/C (Wengraf/Hahn) to approve the minutes of 9/28/2022.

**Vote:** All Ayes.

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

a. 11/3/22 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Arreguin/Wengraf) to approve the agenda of 11/3/2022 with the changes noted below.

- *Item Added: Contract: Robert Half (City Manager)*
- *Item 10 Robert Half (Fire) – removed from the agenda by the City Manager*
- *Item 12 Fire Aside (City Manager) – revised dollar amounts*
- *Item 18 Meals on Wheels (City Manager) – revised donation amount*
- *Item 19 Robert Half (IT) – removed from the agenda by the City Manager*
- *Item 26 Down Payment Assistance (Taplin) – revised item submitted; Councilmembers Harrison and Hahn added as co-sponsors*
- *Item 27 La Pena (Bartlett) – Councilmember Hahn and Mayor Arreguin added as co-sponsors*
- *Item 28 Affordable Housing (Bartlett) – Councilmembers Hahn and Harrison added as co-sponsors*
- *Item 34a/b Measure FF (Commission) – referred to the Public Safety Committee*
- *Item 36 Traffic Calming (Kesarwani) – moved to Consent Calendar*
- *Item 37 No Right on Red (Taplin) – moved to Consent Calendar; Councilmember Wengraf added as a co-sponsor*
- *Item 38 SB 379 (Harrison) – revised item submitted; moved to Consent Calendar; Councilmember Hahn and Mayor Arreguin added as co-sponsors*
- *Item 39 Fines & Fees (Robinson) – revised item submitted; Councilmember Hahn added as a co-sponsor; referred to Health, Life Enrichment, Equity & Community Committee*
- *Item 50 BPD Update (City Manager) – moved to Action Calendar for the November 15, 2022 regular meeting*

Order of Action Calendar

Item 32 Harriet Tubman Terrace

Item 33 Surveillance Technology Reports

Item 29 ZAB Appeal

Item 30 ZAB Appeal

Item 31 Fair Workweek

Item 35 Budget Priorities

**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** – request for City Manager report in 2023 regarding pandemic/endemic update and status of local emergency
6. **Council Referrals to Agenda Committee for Scheduling** – received and filed
7. **Land Use Calendar** – received and filed

## Referred Items for Review

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

**Action:** 1 speaker. Discussion held regarding the end of the state-declared emergency on 2/28/2023 and the impact on local meetings. The Committee recommended returning to in-person hybrid meetings starting with the December 6, 2022 regular meeting.

## Unscheduled Items

9. **Discussion Regarding Design and Strengthening of Policy Committee Process and Structure (Including Budget Referrals)**
10. **Strengthening and Supporting City Commissions: Guidance on the Development of Legislative Proposals**

## Items for Future Agendas

- None

## Adjournment

**Action:** M/S/C (Arreguin/Hahn) to approve the minutes on 9/28/2022.

**Vote:** Ayes – Hahn, Arreguin; Noes – None; Abstain – None; Absent – Wengraf.

Councilmember Wengraf absent 3:58 p.m. – 4:24 p.m.

Adjourned at 4:24 p.m.

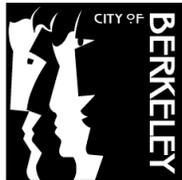
I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on October 19, 2022.

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Mark Numainville, City Clerk

## **Communications**

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**DRAFT AGENDA**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, November 15, 2022**  
**6:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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*Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at [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 teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.*

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

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

## Preliminary Matters

### Roll Call:

**Land Acknowledgement Statement:** *The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.*

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

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

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

## Consent Calendar

*The Council will first determine whether to move items on the agenda for "Action" or "Information" to the "Consent Calendar", or move "Consent Calendar" items to "Action." Three members of the City Council must agree to pull an item from the Consent Calendar or Information 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. Minutes for Approval**

**From: City Manager**

**Recommendation:** Approve the minutes for the Council meetings of September 6 (closed), September 13 (special and regular), September 19 (closed), September 20 (closed, special and regular), September 29 (closed and regular), October 11 (special and regular), October 20 (closed), and October 28 (closed).

**Financial Implications:** None

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

### **2. Renewal of the Elmwood Avenue BID for Calendar Year 2023**

**From: City Manager**

**Recommendation:** Adopt a Resolution approving the Elmwood Business Improvement District Advisory Board's (hereafter "Elmwood BID Advisory Board" or "the Advisory Board") recommendation that Council: 1) approve the 2022 Annual Report and preliminary budget for proposed improvements in the District for calendar year 2023; 2) declare its intent to levy an assessment to finance improvements in the District for calendar year 2023 and 3) direct the City Clerk to schedule a public hearing on the renewal of the assessment for December 6, 2022.

**Financial Implications:** See report

Contact: Eleanor Hollander, Economic Development, (510) 981-7530

### **3. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on November 15, 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 - \$11,384,039

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

## Consent Calendar

- 4. Contract: Station Automation Inc., DBA PSTrax for Real-time, Paperless Check-off and Asset Management Software**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to enter into a contract with Station Automation Inc., DBA PSTrax for real-time, paperless check-off and asset management software, for a total amount not to exceed \$125,000.  
**Financial Implications:** Measure Q Fund - \$125,000  
Contact: David Sprague, Fire, (510) 981-3473
- 5. Contract No. 32000116 Amendment Genasys, Inc. for Outdoor Warning System**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000116 with Genasys, Inc. for Outdoor Warning System, increasing the amount by \$200,000 for a total not to exceed amount of \$2,174,457.  
**Financial Implications:** Measure FF Public Safety - \$200,000  
Contact: David Sprague, Fire, (510) 981-3473
- 6. Contract: Harold Dichoso for Providing Temporary Consulting Services for the Health, Housing, and Community Services (HHCS) Department.**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract, with any amendments, with Harold Dichoso for providing consulting services to the Department of Health, Housing, and Community Services Office of the Director related to the Health Justice Internship Program for a term of 8 months. The total not-to-exceed contract amount is \$90,000.  
**Financial Implications:** Bioterrorism Grant Fund - \$90,000  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 7. Measure P: Contract No. 31900273 Amendment- Bay Area Community Services (BACS) North County Housing Resource Center – Shallow Subsidy Program and Contract No. 32200051 Amendment: WeHOPE for Mobile Showers and Laundry Services**  
**From: City Manager**  
**Recommendation:** 1. Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 31900273 with Bay Area Community Services (BACS) to shift unspent funds from the Measure P- funded Shallow Subsidy Program to a Flexible Funding Pool Program.  
2. Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32200051 with WeHOPE to add \$127,380 for an amount not to exceed \$375,667 to provide mobile shower and laundry services through June 30, 2023.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

## Consent Calendar

### 8. **New Classification Deputy City Attorney IV**

**From: City Manager**

**Recommendation:** Adopt a Resolution to expand the Deputy City Attorney series by establishing the Deputy City Attorney IV classification with a monthly stepped salary range of \$15,936.37 - \$19,593.60 effective November 15, 2022.

**Financial Implications:** None

Contact: Donald E. Ellison, Human Resources, (510) 981-6800

### 9. **Amendments to On-Call Waterfront Engineering, Design, Environmental Permitting and Construction Administration Services Contract No. 32000261 with COWI North America, Inc, and Contract No. 32000263 with Transystems Corporation**

**From: City Manager**

**Recommendation:** Adopt two Resolutions authorizing the City Manager to execute amendments to Contract No. 32000261 with COWI North America, Inc., and Contract No. 32000263 with Transystems Corporation, for on-call waterfront engineering, design, environmental permitting and construction administration services by increasing the contract amount by \$1,000,000 and the duration by twelve months each, from June 30, 2023 through June 30, 2024, to a total not-to-exceed amount of \$2,000,000 each.

**Financial Implications:** See report

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

### 10. **Contract Awards: Sharjo, Inc. dba ServiceMaster Recovery Management and Belfor USA Group, Inc. for on-call Emergency Restoration, Mitigation and Remediation Services**

**From: City Manager**

**Recommendation:** Adopt two Resolutions authorizing the City Manager or designee to execute the following contracts for on-call emergency restoration, mitigation and remediation services, each for a period of December 1, 2022 through December 31, 2025:

1. Sharjo, Inc. dba ServiceMaster Recovery Management for an amount not to exceed \$150,000.

2. Belfor USA Group, Inc. for an amount not to exceed \$150,000.

**Financial Implications:** See report

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

## Consent Calendar

- 11. Contract No. 10413B Amendment: LAZ Parking LLC for Managing City-Owned Off-Street Parking Facilities**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10413B with LAZ Parking, LLC, a parking management company, to provide management services for the Telegraph Channing, Oxford, and Center Street Garages, extending the term to December 31, 2024 and increasing the contract amount by \$5,162,424 for a total not-to-exceed of \$16,252,375.  
**Financial Implications:** Off-Street Parking Fund - \$5,162,424  
Contact: Liam Garland, Public Works, (510) 981-6300
- 12. Contract No. 10340 (ERMA 111976-1) Amendment: HF&H Consultants, LLC for the Update of Rate Model**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10340 (ERMA 111976-1) with HF&H Consultants, LLC for the Update of the Zero Waste Rate Schedules, extending the term to June 30, 2025, and increasing the contract by \$75,000 for a total contract amount not to exceed \$325,000.  
**Financial Implications:** Zero Waste Fund - \$75,000  
Contact: Liam Garland, Public Works, (510) 981-6300
- 13. Contract No. 117610-1 Amendment Columbia Electric, Inc. for On-Call Electrical Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 117610-1 with Columbia Electrical, Inc., increasing the current contract by \$300,000 for a total not to exceed amount of \$375,000 and extending the contract through June 30, 2025.  
**Financial Implications:** General Fund - \$300,000  
Contact: Liam Garland, Public Works, (510) 981-6300

## Consent Calendar

**14. Sewer and Access Road Easement and Installation Agreements with Paulonia Investment, LLC and Little Tree Investment, Inc., and James Robert Higgins and Summary Vacation of Existing Sewer Easements**

**From: City Manager**

**Recommendation:**

1. Adopt first readings of three Ordinances authorizing the City Manager to execute easement and installation agreements and any amendments for sewer pipe facilities with:

A. Paulonia Investment, LLC and Little Tree Investment, Inc. for extending, operating, maintaining, and accessing sewer pipe facilities on parcel with APN 063-2969-034-23, and

B. James Robert Higgins for extending, operating, maintaining and accessing sewer pipe facilities on 1033 Miller Avenue (APN 063-2969-034-25) and

C. Paulonia Investment, LLC and Little Tree Investment, Inc. on parcel with APN: 063-2969-034-44 for accessing sewer pipe facilities.

2. Adopt a Resolution to summarily vacate the existing sewer right-of-way easement and sewer reserve easement on parcel with APN 063-2969-034-23.

**Financial Implications:** See report

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

**15. Reinstate Burma (Myanmar) on Berkeley's Oppressive States List**

**From: Peace and Justice Commission**

**Recommendation:** Adopt a Resolution to reinstate Burma (Myanmar) on Berkeley's Oppressive States list; to urge the federal government to strengthen sanctions on the military regime including on its Myanmar Oil and Gas Enterprises (MOGE), and to recognize and support the Burma National Unity Government (NUG), including ensuring the continued representation of Burma at the United Nations by U Kyaw More Tun. Send copies of the Resolution to the congressional delegation and other federal leaders.

**Financial Implications:** Staff time

Contact: Okeya Vance-Dozier, Commission Secretary, (510) 981-7100

## Council Consent Items

**16. Resolution Supporting Trip Reduction Alternative for BUSD Berkeley High School Tennis and Parking Structure Project**

**From: Councilmember Taplin (Author)**

**Recommendation:** Adopt a Resolution in support of a Trip Reduction Alternative to be included in the scope of the Environmental Impact Report for the Berkeley High School Tennis and Parking Structure Project at 2000 Bancroft Way, and send a copy of Resolution to the Berkeley Unified School District (BUSD) Board of Directors.

**Financial Implications:** None

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

## Council Consent Items

**17. Resolution Supporting Removal of Cuba from the U.S. State Sponsor of Terrorism List**

**From: Councilmember Harrison (Author)**

**Recommendation:**

1. Adopt Resolution supporting removal of Cuba from the U.S. State Sponsor of Terrorism List; and
2. Refer to the City Clerk to send copies of the resolution and letters to Representative Lee and Senators Feinstein and Padilla.

**Financial Implications:** Staff time

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

**18. Adopt an Ordinance Adding a Chapter 11.62 to the Berkeley Municipal Code to Regulate the Use of Carryout and Produce Bags and Promote the Use of Reusable Bags** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*

**From: Councilmember Harrison (Author), Councilmember Hahn (Author)**

**Recommendation:**

1. Adopt an ordinance adding a Chapter 11.62 to the Berkeley Municipal Code to regulate the use of carryout and produce bags and promote the use of reusable bags with a phased enforcement and implementation approach, effective with respect to new charges for bags pursuant to Sections 11.63.040 and 11.63.050 and provisions applicable to the City of Berkeley and City-sponsored events pursuant to Section 11.63.090 on January 1, 2023, and administrative regulations for and all provisions in this ordinance effective June 30, 2023.
2. Refer to the City Manager and Public Works to consider a Zero Waste rate modification to provide additional staffing capacity consistent with business and community outreach, support services, implementation, and phased enforcement of this ordinance. In the event that additional or alternative staffing resources are needed, refer to the City Manager to present budgetary options to Council during the Fiscal Year 2023 AAO #1.

*Policy Committee Recommendation: To approve the item with a positive recommendation.*

**Financial Implications:** Staff Time - \$350,000 per year

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

## Council Consent Items

**19. The Berkeley Baby Book Project: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds**

**From: Councilmember Wengraf (Author)**

**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$125 per Councilmember, including \$125 from Councilmember Wengraf, to support the Berkeley Baby Book Project, a non-profit, with funds relinquished to the City's general fund. The relinquishment of funds from Councilmember Wengraf and all other Councilmembers who would like to contribute, will provide books to Berkeley children aged 0-5 years. The books are delivered by USPS and addressed to the child who owns them at no cost to their family. \$125 covers one book delivered to one child every month for 5 years.

**Financial Implications:** Councilmember's Discretionary Funds - \$125  
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

**20. Budget Referral: Closing the Southside Complete Streets Funding Gap**

**From: Councilmember Robinson (Author)**

**Recommendation:** Refer \$1,000,000 to the FY 2023 AAO #1 process to contribute to closing the funding gap for the Southside Complete Streets project to ensure that construction on Bancroft, Dana, & Fulton can proceed on schedule and to prevent the loss of \$7.3M in federal funding.

**Financial Implications:** \$1,000,000

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

## Action Calendar

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

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

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

## Action Calendar – Public Hearings

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

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

## Action Calendar – Public Hearings

*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.*

### **21. Adoption of the 2022 California Fire Code with Local Amendments**

**From: City Manager**

**Recommendation:**

1. Adopt the first reading of an Ordinance (Attachment 1) repealing the Berkeley Fire Code (Berkeley Municipal Chapter 19.48) and reenacting BMC Chapter 19.48;
2. Adopt a Resolution (Attachment 2) setting forth findings of local conditions that require more stringent building standards than those provided by the 2022 California Fire Code (“CFC”) and rescinding Resolution number 69,178–N.S.;
3. Conduct a public hearing and upon conclusion, adopt a Resolution (Attachment 3) establishing annual permit fees, inspection and billing rates for inspection of property sites by the Berkeley Fire Department, and rescinding Resolution number 69,179–N.S. and all Resolutions amendatory thereof.
4. In compliance with state law on adopting such codes by reference, hold a public hearing following the first reading and before the second reading, and schedule the public hearing for December 6, 2022.

**Financial Implications:** See report

Contact: David Sprague, Fire, (510) 981-3473

### **22. Implement Residential Preferential Parking (RPP) Program on the 1900 Block of Vine Street and the 3000 Block of Martin Luther King Jr. Way**

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon its conclusion, adopt a Resolution amending Resolution No. 56,508-N.S. Section 25E and Section 25M by adding a subsection to implement Residential Preferential Parking (RPP) on both sides of the 1900 Block of Vine Street in RPP Area E and the west side of the 3000 Block of Martin Luther King Jr. Way in RPP Area M.

**Financial Implications:** See report.

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

## Action Calendar – New Business

### **23. Update on BPD efforts related to the Improving Hate Crimes Reporting and Response Referral**

**From: City Manager**

Contact: Jennifer Louis, Police, (510) 981-5900

## Action Calendar – Policy Committee Track Items

**24. Referral to City Manager: Tenant Habitability Plan and Amendments to Relocation Ordinance**

**From: Mayor Arreguin (Author)**

**Recommendation:**

1. Refer to the City Manager to review and develop proposed amendments to the Berkeley Municipal Code to require a Tenant Habitability Plan for major construction or renovation at tenant occupied properties. Proposed language modeled after the City of Los Angeles' Tenant Habitability Plan requirements is attached for consideration. The City Manager should also return with information on the costs and staffing needs for implementation for future budget discussions.

2. Refer to the City Manager recommendations from the 4x4 City Council/Rent Board Joint Committee on Housing for amendments to the City's Relocation Ordinance, BMC Chapter 13.84 to strengthen and improve enforcement of the ordinance.

**Financial Implications:** See report

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

**25. Referral: Establishing an Electric Bike Rebate Program and Expanding Low-Income E-Bike Ownership through the Climate Equity Action Fund**

**From: Councilmember Robinson (Author), Councilmember Harrison (Author), Councilmember Taplin (Author)**

**Recommendation:** Refer to the City Manager to establish a two-tiered point-of-sale rebate program to reduce the up-front cost of electric bicycles and necessary safety and security accessories for Berkeley residents, including: -Rebate Level 1: a point-of-sale rebate to be made available to all City of Berkeley residents; -Rebate Level 2: a point-of-sale rebate that covers a higher percentage of the cost than Rebate Level 1, to be made available to low-income City of Berkeley residents.

Refer \$500,000 to the FY 2023 AAO #1 process as follows: -\$400,000 for the point of sale rebate program; -\$100,000 in supplementary funding towards the Climate Equity Action Fund (CEAF) to further facilitate e-bike ownership among low-income Berkeley residents.

**Financial Implications:** See report

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

## Information Reports

**26. Referral Response: Amnesty Program for Unpermitted Dwelling Units**

**From: City Manager**

Contact: Jordan Klein, Planning and Development, (510) 981-7400

**27. LPO NOD: 2119 Marin Avenue/#LMIN2022-0002**

**From: City Manager**

Contact: Jordan Klein, Planning and Development, (510) 981-7400

**28. LPO NOD: 1325 Arch Street/#LMSAP2022-0007**

**From: City Manager**

Contact: Jordan Klein, Planning and Development, (510) 981-7400

## Information Reports

29. **LPO NOD: 2081 Center Street/#LMSAP2022-0006**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400
30. **LPO NOD: 2109 Kala Bagai Way/#LMSAP2022-0008**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400

## Public Comment – Items Not Listed on the Agenda

### Adjournment

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

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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 <https://berkeleyca.gov/>.

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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:

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.



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

CONSENT CALENDAR  
November 15, 2022

To: Honorable Mayor and Members of the City Council

From: Peace and Justice Commission

Submitted by: George Lippman, Chairperson, Peace and Justice Commission

Subject: Reinstate Burma (Myanmar) on Berkeley's Oppressive States List

RECOMMENDATION

Adopt a Resolution to reinstate Burma (Myanmar) on Berkeley's Oppressive States list; to urge the federal government to strengthen sanctions on the military regime including on its Myanmar Oil and Gas Enterprises (MOGE), and to recognize and support the Burma National Unity Government (NUG), including ensuring the continued representation of Burma at the United Nations by U Kyaw More Tun. Send copies of the Resolution to the congressional delegation and other federal leaders.

FISCAL IMPACTS OF RECOMMENDATION

Minimal impact to staff time.

CURRENT SITUATION AND ITS EFFECTS

In 2022, in a new wave of violence and impunity, the military council has publicly executed four democracy activists, and is planning to execute 41 more political prisoners; the dictatorship has also sentenced State Counsellor Aung San Suu Kyi to ten years in prison at hard labor and dismissed the international community's demand for peace talks.

Patterns of arbitrary arrest and detention, of torture and other cruel, inhuman or degrading treatment or punishment and of killings indicate that individuals have been targeted for their political or professional affiliation or for exercising their political rights. Burmese civil society is demanding that the international community give full support to the Burma National Unity Government (NUG), formed by the representatives rightfully chosen in the 2020 elections, including ensuring the continued representation of Burma at the United Nations by U Kyaw More Tun.

The UN Human Rights Council recently called on the international community to "take immediate action to prevent the supply of arms to the military of Myanmar ... and apply other targeted sanctions on military and economic interests, as appropriate."

Reinstate Burma (Myanmar) on Berkeley's Oppressive States List

Consent Calendar  
November 15, 2022

At its regular meeting of September 19, 2022, the Peace and Justice Commission unanimously proposed the attached resolution for the City Council.

M/S/C: (Bohn/Morizawa)

Ayes: Bohn, Gussman, Jacquilin, Leon-Maldonado, Lippman, Maran, Morizawa

Noes: None

Abstain: None

Absent: Lee, Rodriguez

### BACKGROUND

The City of Berkeley has taken several actions to support the restoration of democracy in Burma, renamed to Myanmar by the military regime, including banning contracts with companies doing business in Burma under the Oppressive States ordinance (1990), and raising Burmese freedom flags every August 8 in commemoration of the 8/8/88 people's uprising (2008).

A partial democratic opening was slammed shut in February 2021 by a brutal coup by the Myanmar military council, whereupon State Counsellor Aung San Suu Kyi was overthrown and imprisoned, and the regime has killed more than 2,000 civilians including trade unionists and children, arrested more than 14,000, and displaced more than 1 million people.

After the U.S. government-imposed sanctions on the Myanmar military regime, Berkeley removed the country from its Oppressive States list. However, an important loophole remained in the federal sanctions, allowing U.S. corporations to do business with the Myanmar Oil and Gas Enterprises (MOGE). Chevron's huge contract with MOGE is a big financial boost to the terrorist military council.

### ENVIRONMENTAL SUSTAINABILITY

Oil profits from carbon extraction fuel the brutal repression of the military regime, in addition to their deadly impact on the world's climate. This pattern is all too familiar from the experience of the Russian attack on Ukraine. The U.S. and in particular the locally-based Chevron Corp. contribute to climate change through their investment and tacit complicity in military rule.

### RATIONALE FOR RECOMMENDATION

Reinstating Burma (Myanmar) on Berkeley's list of Oppressive States will send a message of support to Burmese civil society and to the local Burmese community of Berkeley and the Bay Area of the City's ongoing support for their struggle for democracy.

Reinstate Burma (Myanmar) on Berkeley's Oppressive States List

Consent Calendar  
November 15, 2022

This action is consistent with Berkeley's history of solidarity with the Burmese freedom movement over many decades.

ALTERNATIVE ACTIONS CONSIDERED

None

CITY MANAGER

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

CONTACT PERSON

George Lippman, Chair, Peace and Justice Commission  
Okeya Vance-Dozier, Commission Secretary, City Manager's Office, (510) 981-7239

Attachments:

1: Resolution

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

Resolution to Reinstate Burma (Myanmar) on Berkeley's Oppressive States List

WHEREAS, the Peace and Justice Commission advises the City Council on all matters relating to the City of Berkeley's role in issues of peace and social justice (Berkeley Municipal Code Chapter 3.68.070); and

WHEREAS, the Peace and Justice Commission mandate, as amended in 1990, includes Function K of BMC section 3.68.070: "Advise the City Council on matters relating to the responsible investment of public funds in accordance with the responsible investment policy established by Resolution No. 55,141A-NS;" and

WHEREAS, in 1990 the Berkeley City Council passed the Oppressive States Contract Prohibition (Res. 59,853-N.S.), banning contracts with companies doing business in several countries including Burma (Myanmar);<sup>1</sup> and

WHEREAS, in 2003 President George W Bush signed the Burma Freedom and Democracy Act (BFDA) into law, including a ban on all imports from Myanmar and imposed other sanctions; and.

WHEREAS, the Berkeley City Council therefore removed Burma from the Oppressive States list in deference to the federal action; and

WHEREAS, on June 10, 2008, the Berkeley City Council approved a series of resolutions proposed by the Peace and Justice Commission commending the people of Burma for 46 years of struggle against dictatorship, honoring the 20<sup>th</sup> anniversary of the 1988 popular uprising and declaring August 8 as "Burma Day," to be marked by raising Burmese freedom flags at Berkeley City Hall every August 8;<sup>2</sup> and

WHEREAS, in July 2012, the U.S. formally eased sanctions on Myanmar in response to a perceived democratization process, but between 2017 and 2021 the situation in Myanmar deteriorated, with 600,000 Rohingya refugees displaced, and finally State Counsellor Aung San Suu Kyi was overthrown and imprisoned in a military coup in February 2021, whereupon the U.S. gradually resumed aspects of the former sanctions regime; and

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<sup>1</sup>[https://en.wikipedia.org/wiki/Myanmar%E2%80%93United\\_States\\_relations#:~:text=The%20political%20relationship%20between%20the,2007%2C%20further%20strained%20the%20relationship.](https://en.wikipedia.org/wiki/Myanmar%E2%80%93United_States_relations#:~:text=The%20political%20relationship%20between%20the,2007%2C%20further%20strained%20the%20relationship.)

<sup>2</sup> "US City Declares August 8 'Burma Day,'" [https://www2.irrawaddy.com/article.php?art\\_id=12680Day](https://www2.irrawaddy.com/article.php?art_id=12680Day),' [https://www2.irrawaddy.com/article.php?art\\_id=12680](https://www2.irrawaddy.com/article.php?art_id=12680)

Taking Action on the City of Berkeley's Commitment to Abortion Access

Action Calendar  
November 15, 2022

WHEREAS, the renewed sanctions grant an exception for investment in the Myanmar Oil and Gas Enterprises (MOGE), a partner of Chevron Corporation, prompting criticism from human rights groups including Human Rights Watch, which stated, "By allowing deals with Myanmar's state-owned oil company, the U.S. looks like it caved to industry pressure and undercut Aung San Suu Kyi and others in Myanmar who are promoting government accountability;"<sup>3</sup> and Chevron and Total own a majority controlling interest in a huge oil project that has generated billions of dollars for the regime;<sup>4</sup> and

WHEREAS, since its 2021 coup that toppled Burma's democratic government, the terrorist Myanmar military council has killed more than 2,000 civilians including trade unionists and children, arrested more than 14,000, and displaced more than 1 million people; and

WHEREAS, in 2022, in a new wave of violence and impunity, the military council has publicly executed four democracy activists, and is planning to execute 41 more political prisoners; the dictatorship has also sentenced State Counsellor Aung San Suu Kyi to ten years in prison at hard labor and dismissed the international community's demand for peace talks, including what it has committed to under the ASEAN's five-point consensus;<sup>5</sup> and

WHEREAS, credible allegations of crimes documented in the present and previous reports represent only a fraction of the violations and abuses that the people of Myanmar have had to endure since February 1, 2021. Patterns of arbitrary arrest and detention, of torture and other cruel, inhuman or degrading treatment or punishment and of killings, particularly in Yangon, Mandalay, Sagaing, Bago, Magway and Tanintharyi Regions, seem to indicate that individuals have been targeted for their political or professional affiliation or for exercising their political rights;<sup>6</sup> and

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<sup>3</sup> "US to Invest in Burma's Oil," <https://www.rfa.org/english/news/myanmar/sanctions-07112012185817.html>

<sup>4</sup> "Chevron, in partnership with Total, PTT, and Myanmar Oil and Gas Enterprise (MOGE), holds equity in one of the largest investment projects in Myanmar (Burma): the Yadana gas field and pipeline that has generated billions of dollars for the Myanmar military junta. Together, Total and Chevron have a majority controlling interest in the Yadana project. Since it seized power in the February 2021 coup d'etat, the Myanmar military now holds total control over MOGE," Human Rights Watch, <https://www.hrw.org/news/2022/04/22/myanmar-aseans-failed-5-point-consensus-year>

<sup>5</sup> "UN Security Council Calls For Five-point ASEAN Consensus To Cease Myanmar Crisis," <https://www.republicworld.com/world-news/rest-of-the-world-news/un-security-council-calls-for-five-point-asean-consensus-to-cease-myanmar-crisis.html#:~:text=The%20ASEAN%20five-point%20consensus%20states%20that%20there%20should,peaceful%20solution%20in%20the%20interests%20of%20the%20people>

<sup>6</sup> "Press briefing notes on Myanmar, " UN Office of the High Commissioner on Human Rights, March 16, 2021, <https://www.ohchr.org/en/taxonomy/term/762?page=16>

Taking Action on the City of Berkeley's Commitment to Abortion Access

Action Calendar  
November 15, 2022

WHEREAS, Burmese civil society is calling for the UN Credential Committee to re-elect U Kyaw More Tun the Ambassador from Burma to the UN;<sup>7</sup> and.

WHEREAS, the UN Human Rights Council recently called on the international community to "Take immediate action to prevent the supply of arms to the military of Myanmar or other armed parties in the country, in accordance with the call made by the General Assembly, and apply other targeted sanctions on military and economic interests, as appropriate."<sup>8</sup>

THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that the Council urges the U.S. Congress to require and President Joe Biden to extend sanctions to Myanmar's state-owned oil company, Myanmar Oil and Gas Enterprises (MOGE), and any other state-owned companies in Myanmar; and to provide support for and recognize the Burma National Unity Government (NUG), formed by the representatives rightfully chosen in the 2020 elections.

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that Council urge the U.S. Ambassador to the United Nations to ensure the continued representation of Burma by U Kyaw More Tun.

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that the country of Burma (Myanmar) be reinstated on Berkeley's Oppressive States list and be fully subject to the City's Oppressive States Ordinance.

BE IT FURTHER RESOLVED that the City Clerk send a copy of this resolution to Berkeley's congressional delegation, Senator Dianne Feinstein, Senator Alex Padilla, and Representative Barbara Lee, Representatives Jackie Speier and Ro Khanna, Secretary of State Antony Blinken, and U.S. Ambassador to the United Nations Linda Thomas-Greenfield.

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<sup>7</sup> <https://specialadvisorycouncil.org/2022/09/united-nations-general-assembly-accept-credentials-nug/>;  
<https://actionnetwork.org/petitions/myanmar-for-u-kyaw-moe-tun>;  
<https://www.passblue.com/2022/09/13/the-un-general-assembly-must-fix-myanmars-muddled-representation-and-send-a-profound-message-to-the-junta/>;  
<https://burmacampaign.org.uk/civil-society-calls-on-un-to-retain-myanmars-ambassador-u-kyaw-moe-tuns-accreditation-to-the-un/>

<sup>8</sup> <https://www.ohchr.org/en/press-releases/2022/09/un-report-calls-urgent-action-halt-access-revenue-and-arms-supplies-myanmar>

CONSENT CALENDAR

Nov. 15, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin

Subject: Resolution Supporting Trip Reduction Alternative for BUSD Berkeley High School Tennis and Parking Structure Project

RECOMMENDATION

Adopt a Resolution in support of a Trip Reduction Alternative to be included in the scope of the Environmental Impact Report for the Berkeley High School Tennis and Parking Structure Project at 2000 Bancroft Way, and send a copy of Resolution to the Berkeley Unified School District (BUSD) Board of Directors.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

On September 7, 2022, the Berkeley Unified School District (BUSD) Board of Directors voted to remove plans for a new operations facility at 2000 Bancroft Way, at the intersection of Milvia Street. This would leave only a new parking garage and tennis course in this project, with a proposed \$27 million expenditure of funds from Measure G, the 2020 BUSD facilities bond measure. Due to a number of CEQA challenges, while the operations facility “was originally the most economical option, it is the opinion of the [BUSD] staff and the District’s consultants that this is no longer the best course of action to take.”<sup>1</sup>

However, mitigation of community impacts from a new parking garage would still be substantial, for benefits that remain uncertain. For example, the new Center Street Garage offers 720 parking spaces, but has been unable to provide sufficient revenue to fully cover revenue bond debt servicing and operational costs without additional subsidy. In Fiscal Year 2021, the City of Berkeley allocated \$1,910,250 from the General Fund and \$1,915,050 from the Rate Stabilization Fund to balance the Off-Street Parking Fund. Daytime vacancy rates remain in the double digits for parking garages in downtown Berkeley. This suggests that parking is currently over-supplied in the downtown area at current prices.

Increasing the supply of parking risks increasing Vehicle Miles Traveled (VMT), undermining both the City and District’s stated goals on promoting emissions reductions to mitigate climate change. According to research by UCLA parking scholar Donald Shoup, motorists searching for underpriced or free parking can increase the average

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<sup>1</sup> BUSD Board of Directors Meeting. September 7, 2022.

VMT of a local trip by as much as 0.5 miles per trip, or 5 additional miles per day per curb space.<sup>2</sup>

The BUSD Sustainability Plan, approved in 2019, states: “Single family car trips shall be reduced to less than 20% by 2025, with 80% of students who live within a 2-mile radius getting to school via Active Transportation (walking and bicycling).”<sup>3</sup> The BUSD Climate Literacy Resolution No. 22-018, passed in 2021, states that “transportation is the number one source of climate emissions in the City of Berkeley.” Because the proposed parking garage site on Milvia Street would be at the intersection of two protected bike lanes—the completed Milvia Bikeway and planned lanes on Bancroft—while adjacent intersections at Durant and Shattuck are identified as high-risk intersections in Berkeley’s Vision Zero Action Plan.<sup>4</sup> The intersection of Bancroft and Shattuck was the site of a recent tragic fatality earlier this year.<sup>5</sup> Concentrating parking at this site could increase the risk of collisions for vulnerable road users, particularly cyclists and pedestrians, at a time when it is the stated policy of the City and District to encourage these modes of transportation.

In addition to the Build Alternative, the Environmental Impact Report could include a Trip Reduction Alternative, as outlined in a comment letter by the advocacy group Walk Bike Berkeley.<sup>6</sup>

Consistent with existing City and District policies aiming to reduce Vehicle Miles Traveled, a Trip Reduction Alternative may include three basic elements:

- Transportation Demand Management (TDM)
- Leasing of existing garage space
- Workforce housing

All of these policies can be used in tandem to mitigate transportation challenges for BUSD staff by shortening commutes with transit-oriented housing; filling up vacant parking spaces in adjacent garages; and providing commute allowances, pre-tax transit benefits, and other sustainable transportation incentives as part of a TDM program.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

In its 2018 Progress Report, the California Air Resources Board stated: “Even if the share of new car sales that are [electric] grows nearly 10-fold from today, California

<sup>2</sup> Shoup, D. C. (2006). Cruising for parking. *Transport policy*, 13(6), 479-486.

<sup>3</sup> <https://www.berkeleyschools.net/wp-content/uploads/2019/10/BUSD-Sustainability-Plan.pdf>

<sup>4</sup> <https://berkeleyca.gov/sites/default/files/2022-02/Berkeley-Vision-Zero-Action-Plan.pdf>

<sup>5</sup> Raguso, E. (2022, Oct. 20). Man struck by dump truck driver dies after Berkeley crash. *The Berkeley Scanner*. Retrieved from <https://www.berkeleyscanner.com/2022/10/20/traffic-safety/truck-driver-strikes-person-wheelchair-berkeley/>

<sup>6</sup> [https://drive.google.com/file/d/18wp\\_g5Y6K-g2jnfSnvZqGFn\\_NO-i-Rfn/view](https://drive.google.com/file/d/18wp_g5Y6K-g2jnfSnvZqGFn_NO-i-Rfn/view)

would still need to reduce [Vehicle Miles Traveled] per capita [by] 25 percent to achieve the necessary [emissions] reductions for 2030.”<sup>7</sup>

Because of its proximity to jobs and public transit, climate scholars at UC Berkeley have identified infill housing as Berkeley’s most impactful local policy lever for reducing greenhouse gas emissions.<sup>8</sup> Workforce housing could thus reduce emissions while also reducing demand for parking at BUSD facilities.

**CONTACT PERSON**

Councilmember Taplin      Council District 2      510-981-7120

**Attachments:**

1: Resolution

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<sup>7</sup> California Air Resources Board. (2018). 2018 Progress Report: California’s Sustainable Communities and Climate Protection Act. CARB. Retrieved from [https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report\\_SB150\\_112618\\_02\\_Report.pdf](https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report_SB150_112618_02_Report.pdf)

<sup>8</sup> Wheeler, S. M., Jones, C. M., & Kammen, D. M. (2018). Carbon footprint planning: quantifying local and state mitigation opportunities for 700 California cities. *Urban Planning*, 3(2), 35-51.

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

RESOLUTION SUPPORTING TRIP REDUCTION ALTERNATIVE FOR BERKELEY  
HIGH SCHOOL PARKING GARAGE AND TENNIS COURT PROJECT

WHEREAS, transportation accounts for the majority of greenhouse gas emissions in the City of Berkeley; and

WHEREAS, the Berkeley Unified School District's Sustainability Plan calls for reducing the share of school commutes by single-occupancy motor vehicles to less than 20% by 2025; and

WHEREAS, the intersections of Bancroft, Durant, and Shattuck are identified as high-risk intersections for traffic collisions in the City of Berkeley's Vision Zero Action Plan; and

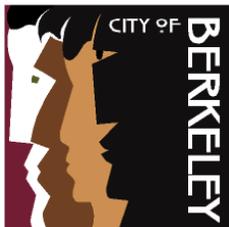
WHEREAS, the Center Street Garage still has substantial weekday vacancies, and has necessitated over \$3.8 million in City expenditures to cover debt servicing and operational costs, suggesting a glut of parking supply in the downtown area; and

WHEREAS, the City of Berkeley is committed to eliminating traffic fatalities and greenhouse gas emissions by enabling car-free and car-light commuting, reducing Vehicle Miles Traveled, promoting safe streets and walkable, transit-accessible urban design; and

WHEREAS, the City of Berkeley greatly values the essential public service of Berkeley Unified School District educators, staff, and administrators in educating the future leaders of Berkeley; and

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley supports the study of a Trip Reduction Alternative within the scope of the Environmental Impact Review for the Berkeley High School Parking Garage and Tennis Courts Project, including the study of a Transportation Demand Management (TDM) program, garage leasing, and workforce housing development;

BE IT FURTHER RESOLVED that the City of Berkeley welcomes a continued partnership with the Berkeley Unified School District in promoting environmental justice and providing the best possible working conditions for BUSD staff.



Kate Harrison  
Vice Mayor, District 4

CONSENT CALENDAR  
November 15, 2022

To: Honorable Mayor and Members of the City Council  
From: Vice Mayor Harrison  
Subject: Resolution Supporting Removal of Cuba from the U.S. State Sponsor of Terrorism List

RECOMMENDATION

1. Adopt resolution supporting removal of Cuba from the U.S. State Sponsor of Terrorism List; and
2. Refer to the City Clerk to send copies of the resolution and letters to Representative Lee and Senators Feinstein and Padilla.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

Cuba was removed from the State Sponsor of Terrorism list by President Obama in 2015 after an exhaustive review by the State Department and the intelligence community, and the Trump Administration did not cite any new facts to warrant placing Cuba back on the list. The Trump Administration's restrictions limit mutually beneficial dialog and exchange between U.S. and Cuban people, harm small privately owned Cuban businesses, reduce the flow of money and goods to ordinary Cuban people, and limit the flow of necessary humanitarian supplies and equipment. It is in the public interest for the City of Berkeley to join 114 members of Congress in calling on President Biden to reverse the designation.

BACKGROUND

On December 16, 2021, a letter signed by 114 members of Congress, including California Representatives Lee, Swalwell, Lowenthal, Eshoo, Huffman, DeSaulnier, Eshoo, Waters, Bass, Garamendi, Lofgren, Khanna, Jacobs, McNerney, Takano, Thompson, Speier, Matsui, Bera, Sanchez, Chu, Vargas, Roybal-Allard, Porter, Napolitano, Barragan, Porter, and Gomez, requested that the policies of the United States with respect to Cuba be returned to those negotiated and implemented by President Obama.<sup>1</sup>

The enclosed resolution provides support for the restoration of relations between the

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<sup>1</sup> "McGovern, Meeks, Lee, Rush Lead 114 Members of Congress Calling for Biden Administration to Support Human Rights & Humanitarian Needs in Cuba," December 16, 2021, <https://mcgovern.house.gov/news/documentsingle.aspx?DocumentID=398780>

United States and Cuba to those put in place by President Obama with a view of completely ending all U.S. policies and practices aimed at the economic isolation of Cuba.

ATTACHMENTS

1. Resolution
2. Letters

FISCAL IMPACTS OF RECOMMENDATION

City Clerk staff time will be needed to send letters to the City's federal representatives.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

CONTACT PERSON

Vice Mayor Kate Harrison, (510) 981-7140

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

SUPPORTING REMOVAL OF CUBA FROM THE U.S. STATE SPONSOR OF  
TERRORISM LIST

WHEREAS, Cuba was removed from the State Sponsor of Terrorism list by President Obama in 2015 after an exhaustive review by the State Department and the intelligence community, and the Trump Administration did not cite any new facts to warrant placing Cuba back on the list; and

WHEREAS, the Trump Administration's restrictions limit mutually beneficial dialog and exchange between U.S. and Cuban people, harm small privately owned Cuban businesses, reduce the flow of money and goods to ordinary Cuban people, and limit the flow of necessary humanitarian supplies and equipment; and

WHEREAS, a letter to President Biden on December 16, 2021 signed by 114 members of Congress, including California Representatives Lee, Swalwell, Lowenthal, Eshoo, Huffman, DeSaulnier, Eshoo, Waters, Bass, Garamendi, Lofgren, Khanna, Jacobs, McNerney, Takano, Thompson, Speier, Matsui, Bera, Sanchez, Chu, Vargas, Roybal-Allard, Porter, Napolitano, Barragan, Porter, and Gomez, requested that the policies of the United States with respect to Cuba be returned to those negotiated and implemented by President Obama.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports the restoration of relations between the United States and Cuba to those put in place by President Obama with a view of completely ending all U.S. policies and practices aimed at the economic isolation of Cuba.

BE IT FURTHER AND FINALLY RESOLVED that the City Clerk send copies of this resolution and accompanying letters to Representative Lee and Senators Feinstein and Padilla.

The Honorable Senator Feinstein  
United States Senate  
331 Hart Senate Office Building  
Washington, D.C. 20510

**Re: Support for Removal of Cuba from the U.S. State Sponsor of Terrorism List**

Dear Senator Feinstein:

The Berkeley City Council would like to convey its urgent support for removing Cuba from the U.S. State Sponsor of Terrorism List.

Cuba was removed from the State Sponsor of Terrorism list by President Obama in 2015 after an exhaustive review by the State Department and the intelligence community, and the Trump Administration did not cite any new facts to warrant placing Cuba back on the list. The Trump Administration's restrictions limit mutually beneficial dialog and exchange between U.S. and Cuban people, harm small privately owned Cuban businesses, reduce the flow of money and goods to ordinary Cuban people, and limit the flow of necessary humanitarian supplies and equipment. It is in the public interest for the City of Berkeley to join 114 members of Congress in calling on President Biden to reverse the designation.

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The enclosed Berkeley City Council resolution provides support for the restoration of relations between the United States and Cuba to those put in place by President Obama with a view of completely ending all U.S. policies and practices aimed at the economic isolation of Cuba.

Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council

The Honorable Senator Padilla  
United States Senate  
112 Hart Senate Office Building  
Washington, DC 20510

**Re: Support of Ukraine, Continued Diplomacy, and Adherence to Constitutional Procedure With Respect to Armed Conflict Amidst Ongoing Tensions**

Dear Senator Feinstein:

The Berkeley City Council would like to convey its urgent support for removing Cuba from the U.S. State Sponsor of Terrorism List.

Cuba was removed from the State Sponsor of Terrorism list by President Obama in 2015 after an exhaustive review by the State Department and the intelligence community, and the Trump Administration did not cite any new facts to warrant placing Cuba back on the list. The Trump Administration's restrictions limit mutually beneficial dialog and exchange between U.S. and Cuban people, harm small privately owned Cuban businesses, reduce the flow of money and goods to ordinary Cuban people, and limit the flow of necessary humanitarian supplies and equipment. It is in the public interest for the City of Berkeley to join 114 members of Congress in calling on President Biden to reverse the designation.

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The enclosed Berkeley City Council resolution provides support for the restoration of relations between the United States and Cuba to those put in place by President Obama with a view of completely ending all U.S. policies and practices aimed at the economic isolation of Cuba.

Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council

The Honorable Congresswoman Lee  
United States House of Representatives  
2470 Rayburn House Office Building  
Washington, D.C. 20515

**Re: Support of Ukraine, Continued Diplomacy, and Adherence to Constitutional Procedure With Respect to Armed Conflict Amidst Ongoing Tensions**

The Berkeley City Council would like to convey its urgent support for removing Cuba from the U.S. State Sponsor of Terrorism List.

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The enclosed Berkeley City Council resolution provides support for the restoration of relations between the United States and Cuba to those put in place by President Obama with a view of completely ending all U.S. policies and practices aimed at the economic isolation of Cuba.

Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council



Kate Harrison  
Vice Mayor, District 4

CONSENT CALENDAR  
November 15, 2022

To: Honorable Mayor and Members of the City Council  
From: Vice Mayor Harrison and Councilmember Hahn  
Subject: Adopt an Ordinance Adding a Chapter 11.62 to the Berkeley Municipal Code to Regulate the Use of Carryout and Produce Bags and Promote the Use of Reusable Bags

RECOMMENDATION

1. Adopt an ordinance adding a Chapter 11.62 to the Berkeley Municipal Code to regulate the use of carryout and produce bags and promote the use of reusable bags with a phased enforcement and implementation approach, effective with respect to new charges for bags pursuant to Sections 11.63.040 and 11.63.050 and provisions applicable to the City of Berkeley and City-sponsored events pursuant to Section 11.63.090 on January 1, 2023, and administrative regulations for and all provisions in this ordinance effective June 30, 2023.
2. Refer to the City Manager and Public Works to consider a Zero Waste rate modification to provide additional staffing capacity consistent with business and community outreach, support services, implementation, and phased enforcement of this ordinance. In the event that additional or alternative staffing resources are needed, refer to the City Manager to present budgetary options to Council during the Fiscal Year 2023 AAO #1.

POLICY COMMITTEE RECOMMENDATION

On October 6, 2022, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Harrison/Taplin) to approve the item with a positive recommendation. Vote: Ayes – Taplin, Harrison; Noes – None; Abstain – None; Absent – Robinson.

BACKGROUND

Californians throw away 123,000 tons of plastic bags each year, and much of it finds its way into regional and international waterways.<sup>1</sup> The situation is only getting worse with

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<sup>1</sup> Environment California, “Keep Plastic Out of the Pacific,”  
<https://environmentcalifornia.org/programs/cae/keep-plastic-out-pacific>.

Adopt an Ordinance Adding a Chapter 11.62 to the Berkeley Municipal Code to Regulate the Use of Carryout and Produce Bags and Promote the Use of Reusable Bags

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18 billion more pounds of plastic added to the already colossal amount in our seas.<sup>2</sup> Today, there are 100 million tons of trash in the North Pacific Subtropical Gyre;<sup>3</sup> in some parts, plastic outweighs plankton 6 to 1.<sup>4</sup>

Legislative action at the state level has been successful in achieving reductions in plastic bag pollution. According to the 2018 Change the Tide report, restrictions on plastic bags such as that in effect in California have resulted in a “steady drop” in plastic grocery bags found on California beaches. Berkeley is also in the process of making substantial progress on its restriction of plastic litter in the city through the Single Use Foodware and Litter Reduction ordinance (BMC Chapter 11.64).<sup>5</sup> The ordinance restricts food providers from offering take-out and dine-in food in single-use disposable ware. These items include “containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids, sleeves, condiment containers, spill plugs, paper or foil wrappers, liners and any other items used to hold, serve, eat, or drink Prepared Food.”<sup>6</sup> Notably, plastic bags do not fall within the purview of the Single Use Foodware and Litter Reduction ordinance.

In order to take a further step in protecting the environment and reaching our zero-waste goal, Berkeley must consider more aggressive action to close critical loopholes in state and county law with regard to plastic carryout and produce bags.

California currently prohibits the sale of certain plastic bags that fall into several categories, based on composition, intended use and business size and type. The statewide Single-Use Carryout Bag Ban prevents the sale of “single-use” plastic carryout bags in most large grocery stores, retail stores with a pharmacy, convenience stores, food marts, and liquor stores. Affected stores may offer reusable or recycled paper bags to a customer at the point of sale. Despite these restrictions, the law provides for the sale of plastic bags that are more than 2.25 mils thick in these stores, and exempts a number of key commercial establishments such as restaurants, general retailers, farmers markets, and other smaller businesses. Until 2025, State law also fully exempts

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<sup>2</sup> Division of Boating and Waterways, “The Changing Tide,” [http://dbw.parks.ca.gov/pages/28702/files/Changing%20Tide%20Summer%202018%20HQ%20\(1\).pdf](http://dbw.parks.ca.gov/pages/28702/files/Changing%20Tide%20Summer%202018%20HQ%20(1).pdf).

<sup>3</sup> The North Pacific Gyre, also known as the North Pacific Subtropical Gyre, is a system of ocean currents that covers much of the northern Pacific Ocean. It stretches from California to Japan and contains the Great Pacific Trash Patch, or Pacific trash vortex. National Geographic, “Great Pacific Garbage Patch,” <https://www.nationalgeographic.org/encyclopedia/great-pacific-garbage-patch/>.

<sup>4</sup> Environment California, “Keep Plastic Out of the Pacific,” <https://environmentcalifornia.org/programs/cae/keep-plastic-out-pacific>.

<sup>5</sup> Berkeley Municipal Code, Chapter 11.64 Single Use Foodware and Litter Reduction.

<sup>6</sup> Berkeley Municipal Code Section 11.64.020D.

plastic film bags in grocery stores used for carrying produce from the shelf to the check stand.<sup>7</sup>

This proposed ordinance intends to expand the scope of existing regulation to further reduce plastic waste across exempt and non-preempted categories, namely carryout bags provided by any retail store not regulated by the state, City and City-sponsored events, and pre-checkout bags at large grocery stores, avoiding further destruction of the local, regional and global environment.

### State Restrictions on Plastic Bags

California's legislature decided in 2014 to take a step to limit single-use plastic bag waste. Senate Bill 270 regulates stores of a certain size and type offering plastic film carryout bags at checkout. As a result, thin film bags, known as flimsily bags or t-shirt bags, are no longer available at larger retail, grocery and liquor stores. The law also sets a minimum price of at least \$0.10 for thicker plastic film bags.<sup>8</sup>

The scope of state regulation with regard to thicker plastic bags includes minimum percentage of post-consumer recycled plastics, and banning plastic bags deemed adequate for only one use. The state defines single-use plastic bags as thin film bags—bags made out of flexible sheets of plastic usually of polyethylene resin. State legislation distinguishes between single-use film bags and reusable ones based on their thickness, measured in mils—1 thousandth of an inch.

The ban however does not apply to other types of plastic bags deemed reusable or to smaller retailers and restaurants. Many plastic film bags, in particular, are still permitted under SB 270. They are permitted for sale as long as: the bags contain more than 20% post-consumer recycled material<sup>9</sup>; are recyclable in the state of California; are properly labeled as containing post-consumer recycled material; can carry over 22lb for a minimum of 175ft for at least 125 uses; and are at least 2.25 mils thick.

Despite the assumption of reusability, there is limited evidence to suggest that thicker plastic bags are being repurposed to the degree accounted for by SB 270. Some studies suggest that fewer than 1% of people actually reuse the thicker and thus technically-reusable film bags.<sup>10</sup> This erroneous legislative assumption can be addressed at the local level at least in stores not regulated by the state.

<sup>7</sup> Ban on Single-Use Carryout Bags (SB 270 / Proposition 67) Frequently Asked Questions, Office of the Attorney General and CalRecycle, April 2017, <https://www.calrecycle.ca.gov/Plastics/CarryOutBags/FAQ/>.

<sup>8</sup> California Legislature, Senate Bill 270,

[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201320140SB270](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201320140SB270)

<sup>9</sup> In 2020, the percentage required will increase to 40% post-consumer recycled material.

<sup>10</sup> Save Our Shores, "Help Ban Plastic Bags," <https://saveourshores.org/help-ban-plastic-bags/>

Aside from SB 270, the only other legislation governing plastic bag usage in Berkeley is an Alameda County ordinance implementing SB 270 and local ordinances regulating the type of plastic allowed in food packaging.<sup>11</sup> Data from Alameda County revealed that through regulation “plastic bags found in storm drains decreased by 44 percent, indicating that the ordinance has been successful in reducing single use plastic bag litter.” However, by not addressing plastic produce bags and defining reusable bags as any film bag exceeding 2.25 mils, current regional law shares many of the shortcomings of state legislation.<sup>1213</sup>

### Local Restrictions on Plastic Bags

Contested but upheld in a 2016 ballot measure,<sup>14</sup> SB 270 set a statewide code that has been built upon by numerous local governments, including many in the Bay Area. However, it is important to note that jurisdictions that already had local ordinances in place before 2016 enjoy greater regulatory latitude than Berkeley due to state preemption.

Palo Alto is one of the most recent cities to amend its municipal code and take the extra step in limiting the distribution of film bags. By splitting plastic bags into three categories by use—produce bags, checkout bags, and product bags—the city is able to differentiate regulation for each purpose. Its ordinance<sup>15</sup> bans grocery stores and farmers markets from packaging food in film bags, requiring instead the use of compostable plastics. For checkout, Palo Alto mandates that all stores only offer their customers recycled paper bags or reusable bags, a term it defines in accordance with California law as a bag thicker than 2.25 mils.

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<sup>11</sup> Alameda County Waste Management Authority, “Ordinance Regulating the use of carryout bags and promoting the use of reusable bags,” <http://reusablebagsac.org/acwma-ordinance-2012-2-amended-ordinance-2016-2>.

<sup>12</sup> Berkeley Municipal Code Chapter 11.58 Prohibition of Chlorofluorocarbon-Processed Food Packaging, <https://www.codepublishing.com/CA/Berkeley/cgi/NewSmartCompile.pl?path=Berkeley11/Berkeley1158/Berkeley1158.html>.

<sup>13</sup> Berkeley Municipal Code Chapter 11.60 Polystyrene Foam, Degradable and Recyclable Food Packaging, <https://www.codepublishing.com/CA/Berkeley/cgi/NewSmartCompile.pl?path=Berkeley11/Berkeley1160/Berkeley1160.html>.

<sup>14</sup> Ballotpedia, “California Proposition 67, Plastic Bag Ban Veto Referendum (2016),” [https://ballotpedia.org/California\\_Proposition\\_67,\\_Plastic\\_Bag\\_Ban\\_Veto\\_Referendum\\_\(2016\)](https://ballotpedia.org/California_Proposition_67,_Plastic_Bag_Ban_Veto_Referendum_(2016))

<sup>15</sup> Palo Alto Municipal Code, “Chapter 5.35 Retail and Food Service Establishment Checkout Bag Requirements,” <https://www.cityofpaloalto.org/civicax/filebank/documents/63550>.

San Francisco has similar provisions.<sup>16</sup> It decided in July 2019<sup>17</sup> to both increase the amount of money charged for checkout bags from \$0.10 to \$0.25 and ban what it calls plastic film “pre-checkout bags”—defined as a non-recyclable or compostable “bag provided to a customer before the customer reaches the point of sale,” nearly identical in definition to Palo Alto’s produce bag language. San Francisco drew inspiration from Monterey, Pacifica, Santa Cruz and Los Altos, all of which charge more than SB270 requires for plastic bags.<sup>18</sup> The ordinance also specifically referenced an Irish law, which increased the price of plastic checkout bags from 15 cents to 22 cents, reducing plastic checkout usage by more than 95 percent, as precedent.<sup>19</sup>

Yet there are some cities that have gone even farther in their restriction of single-use plastics. Although Capitola does not ban plastic produce/pre-checkout bags, it notably redefined the thickness of a reusable bag as equal or exceeding 4 mils, instead of 2.25 mils.<sup>20</sup> This means that any carryout bag provided by a retailer in the city is more durable than those considered multi-use by the state of California.

New York State recently introduced a plastic bag reduction ordinance that provides a number of precedents for a potential Berkeley ordinance. It bans all plastic carryout bags less than 10 mils thick (four times California’s limit).<sup>21</sup>

Given the progress many cities and states have made in regulating plastic bags, to the extent permitted by state law, Berkeley has many examples to emulate.

### Past Efforts in Berkeley

Berkeley attempted to pass its own plastic bag ban in 2010.<sup>22</sup> In the years following councilmembers have pushed for reform, calling for an ordinance to improve upon

<sup>16</sup> San Francisco Municipal Code Chapter 17: Plastic Bag Reduction Ordinance, [http://library.amlegal.com/nxt/gateway.dll/California/environment/chapter17plasticbagreductionordinance?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca](http://library.amlegal.com/nxt/gateway.dll/California/environment/chapter17plasticbagreductionordinance?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca).

<sup>17</sup> San Francisco Municipal Code, “Ordinance amending the Environment Code,” <https://sfbos.org/sites/default/files/o0172-19.pdf>.

<sup>18</sup> Isabela Agnus, “San Francisco bumps bag fee up to 25 cents,” <https://www.sfgate.com/news/article/SF-bumps-bag-fee-25-cents-plastic-produce-ban-14102908.php>.

<sup>19</sup> Republic of Ireland Department of Communications, Climate Action & Environment, “Plastic Bags,” <https://www.dccae.gov.ie/en-ie/environment/topics/waste/litter/plastic-bags/Pages/default.aspx>.

<sup>20</sup> Capitola Municipal Code Chapter 8.07: Single-use Plastic and Paper Carryout Bag Reduction, <https://www.codepublishing.com/CA/Capitola/#!/Capitola08/Capitola0807.html#8.07>.

<sup>21</sup> New York State, Bag Waste Reduction Law, <https://law.justia.com/codes/new-york/2021/env/article-27/title-28/27-2803/>

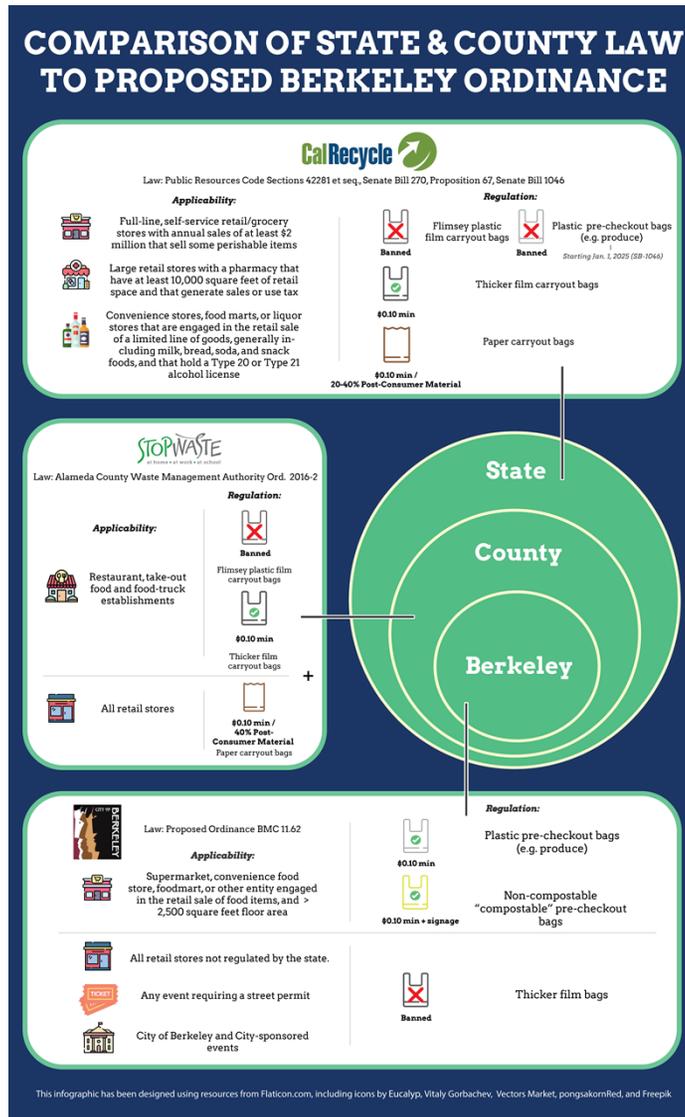
<sup>22</sup> Berkeley City Council, “Berkeley Bag Reduction Ordinance,” [https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Solid\\_Waste/BagReductionDraftOrdinance.100316.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Solid_Waste/BagReductionDraftOrdinance.100316.pdf).

Adopt an Ordinance Adding a Chapter 11.62 to the Berkeley Municipal Code to Regulate the Use of Carryout and Produce Bags and Promote the Use of Reusable Bags

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county and state legislation.<sup>23</sup> Yet the threat of lawsuits<sup>24</sup> and movement and preemption on the state and county levels appear to have delayed local reform.

**The Proposed Ordinance**



<sup>23</sup> Kriss Worthington, "Adopt Expanded Single Use Plastic Bag Ban/Paper Bag Fee Ordinance," [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/2012/01Jan/2012-01-31\\_Item\\_25\\_Adopt\\_Expanded\\_Single\\_Use\\_Plastic\\_Bag.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/2012/01Jan/2012-01-31_Item_25_Adopt_Expanded_Single_Use_Plastic_Bag.pdf).

<sup>24</sup> Doug Oakley, "Berkeley's plan for plastic bag ban part of larger movement," <https://www.mercurynews.com/2009/12/23/berkeleys-plan-for-plastic-bag-ban-part-of-larger-movement/>.

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This proposed ordinance picks up where prior attempts failed, bringing Berkeley more or less on par with many of its neighbors in tightening restrictions on plastic bag sales. On some points, this ordinance ensures that the City again becomes a leader in environmental regulation. The following details the key changes that close loopholes in state and local law:

- **Grocery Stores > 2,500 sq. ft.**

Before September 2022, State and County laws were completely silent with respect to regulating plastic film pre-checkout bags (e.g., produce bags). This loophole was the original impetus for this ordinance, which was first introduced in 2019.

Thanks to ongoing advocacy and possibly to the media attention surrounding this ordinance, state leaders have moved to close this loophole (SB-1046 – 2022), but only effective beginning in 2025.

In response and in anticipation of the new State law, the latest version of the proposed Berkeley ordinance was updated at committee to regulate grocery stores with more than 2,500 square feet of retail space (consistent with the Berkeley Healthy Checkout Ordinance) by requiring store owners to apply a minimum charge of \$0.10 for each plastic film pre-checkout bag provided, regardless of thickness.

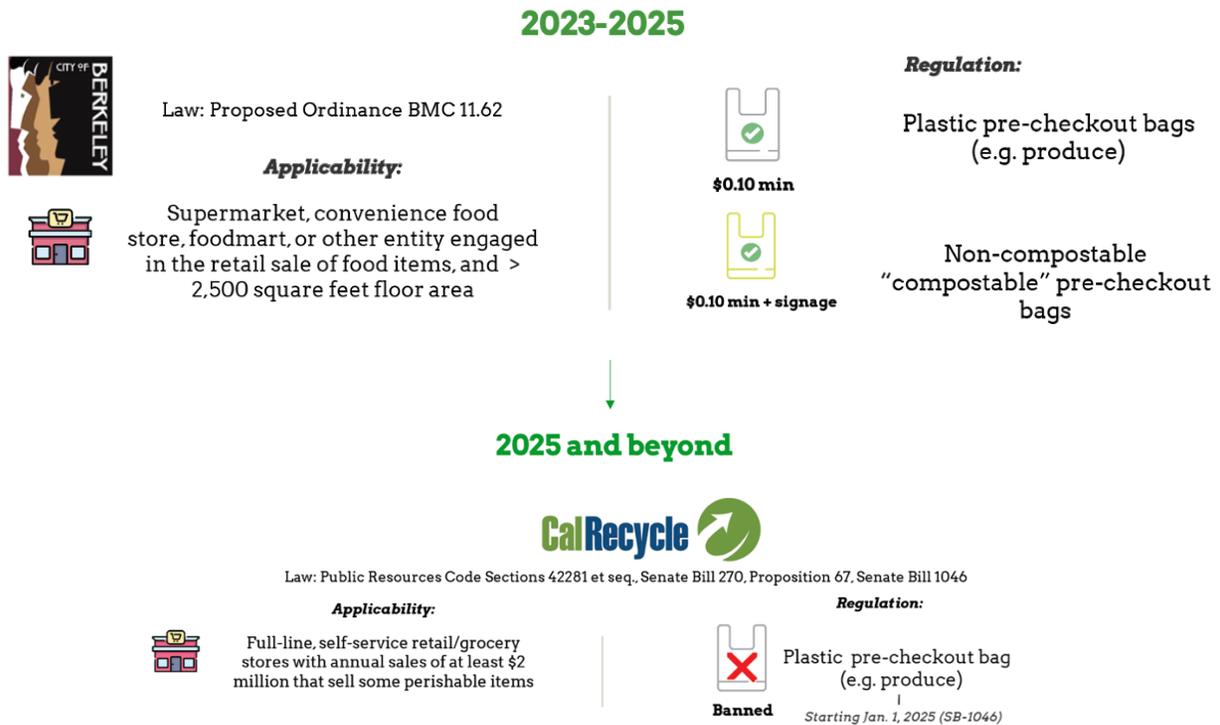
As part of the hearing process at FITES, it came to the attention of the City that many if not all pre-checkout compostable produce bags provided by grocery stores are not actually composted by the City's compost facility, Blossom Valley. Compostable bags decompose at a different rate than organic compost, and therefore are separated from compost piles and thrown in the trash. This reality creates a potential for misleading customers and the public.

Therefore, in addition, any pre-checkout bag deemed non-compostable by the City's composting facility would incur a \$0.10 minimum charge as well. Truly compostable bags can be provided free of charge.

Beginning in 2025, when SB-1046 comes into effect, plastic film pre-checkout bags would be completely prohibited. The state plans to only allow paper or compostable bags to be provided as defined (however reusable bags may still be sold). At that time, any Berkeley pre-checkout provisions pertaining to grocery stores that are preempted by the onset of SB-1046 would be phased out. This arrangement provides a glidepath for grocery stores to incentivize the phasing out or disincentivizing of plastic film and non-compostable pre-checkout bags:

Adopt an Ordinance Adding a Chapter 11.62 to the Berkeley Municipal Code to Regulate the Use of Carryout and Produce Bags and Promote the Use of Reusable Bags

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- **Retail Stores Not Regulated by State**

Current State and County laws include a glaring loophole with respect to thicker carryout bags. Despite successfully phasing out flimsier carryout plastic bags (< 2.25 mills) across nearly all sectors, they effectively promoted and normalized thicker plastic bags. The result has been a boon for the plastic industry and has caused considerable environmental destruction.

The State currently regulates full-line, self-service retail stores with gross annual sales of at least \$2 million that sell a line of dry groceries, canned goods, or nonfood items, and some perishable items, large retail stores with a pharmacy that have at least 10,000 square feet of retail space, and most convenience stores, food marts, or liquor stores. All other retail stores are currently unregulated by the State and only partially regulated by the County.



State Definitions of Retail Store



Full-line, self-service retail stores with annual sales of at least \$2 million that sell some perishable items



Large retail stores with a pharmacy that have at least 10,000 square feet of retail space and that generate sales or use tax



Convenience stores, food marts, or liquor stores that are engaged in the retail sale of a limited line of goods, generally including milk, bread, soda, and snack foods, and that hold a Type 20 or Type 21 alcohol license

Despite state preemption from further carryout regulation in Grocery Stores, Berkeley’s proposed ordinance would ban thicker plastic bags in all retail stores not already regulated by the State and County. Therefore, retail stores covered under the Berkeley ordinance would only be able to provide paper carryout bags for a \$0.10 charge, or truly reusable bags:



All retail stores not regulated by the state.



Banned

Thicker film bags

• **Restaurants**

The author considered closing State and County carryout bag loopholes applicable to restaurants, but determined that pandemic-related hardships and complications related to pick up and delivery orders, and the onset of significant new state regulation of organic waste (SB-1383) all contributed to making further regulation infeasible at this time. However, the author and Council may revisit this issue at a later date.

The only new provision of this Berkeley ordinance applying specifically to restaurants is that a restaurant providing a customer with a plastic film carryout bag, at the customer’s request, in order to carry leftovers after sit-down meal service, will incur a minimum of \$0.10 charge. No such fee will apply to paper bags provided for such purpose.



Plastic bags provided to customers after meal to carry home leftovers include \$ 0.10 charge.

- **Permitted Events, City events, and City-sponsored events**

Many of the same loopholes applicable to grocery stores and retail stores also exist at permitted events. Therefore, the Berkeley ordinance extends the same regulations applied to private businesses to any event, or person therein, requiring a street event permit pursuant to Berkeley Municipal Code 13.44.040 and not subject to State law.

In addition, the ordinance specifies that the City of Berkeley and any City-sponsored event shall provide or sell to a customer or participant only recycled content paper bags or reusable carry-out bags for the purpose of carrying away goods or other materials from the point of sale or event.



Any event requiring a street permit



City of Berkeley and City-sponsored events



**Banned**

Thicker film bags

- **All stores**

In response to reports of certain stores refusing customers' reusable bags, the ordinance provides that any establishment regulated by Public Resources Code Section 42281, Alameda County Waste Management Authority Ordinance 2016-02, or this proposed Berkeley ordinance, except Restaurants with respect to takeout orders, shall not unreasonably deny a customer from using bags or containers of any type that they bring themselves.

However, establishments may refuse, at their sole discretion, any customer-provided bag or container that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended food item, or that appears to be excessively soiled or unsanitary. If the customer accepts a store-provided bags or containers in lieu, any required charge will apply.

- **Exemptions and Waivers**

The proposed Berkeley ordinance exempts all product bags,<sup>25</sup> or bags sold in packages containing multiple bags such as those intended for use as garbage, prescription medication, pet waste or yard waste bags, or which are integral to the use of other objects, from regulation consistent with County and State law.

In addition, except as regulated by State law, the ordinance allows covered entities and food product stores to provide recycled content paper bags as carryout bags to persons in the California Special Supplemental Food Program for Women, Infants, and Children, CalFresh, and Supplemental Food Program for free.

Additionally, the ordinance provides the City Manager with the authority to prescribe and adopt rules, regulations and forms for covered entities or food product stores to obtain a partial waiver from any requirement of this ordinance upon sufficient evidence by the applicant that the provisions of this Chapter would cause undue hardship. The phrase "undue hardship" may include, but is not limited to situations where compliance with the requirements of this Chapter would deprive a person of a legally protected right.

## **Committee Outreach and Implementation**

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<sup>25</sup> Bags that are integral to the packaging of a product such as film or other bags used to fully encapsulate liquid or semi-liquid takeout food items (e.g., soup containers) to prevent spillage; bags to hold prescription medication dispensed from a pharmacy; or bags designed to be placed over articles of clothing on a hanger at dry cleaning or laundry facility.

Adopt an Ordinance Adding a Chapter 11.62 to the Berkeley Municipal Code to Regulate the Use of Carryout and Produce Bags and Promote the Use of Reusable Bags

CONSENT CALENDAR  
November 15, 2022

The Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee (FITES) held numerous hearings over the course of nearly three years. The Committee initially recommended that Council refer to the Zero Waste and Energy Commissions to hold a series of outreach hearings, however, the Commissions declined to hold such hearings, and the Commissions were reorganized due to Council action. In response, the FITES Committee held three public hearings to hear from large grocery stores, City staff (with respect to City events and permits) and retail stores. Before each meeting, Committee staff conducted outreach to impacted businesses and business organizations/associations (in the case of retail) with phone calls and/or emails. The Committee listened to businesses and the public and made numerous changes the ordinance.

In addition, the author conducted sustained outreach to the Alameda County Waste Management Authority and City staff to seek advice, input and to ensure coordination. Authority staff have indicated that they will watch Berkeley's ordinance closely and will consider adopting relevant provisions countywide.

The ordinance will be effective with respect to new charges for bags pursuant to carryout bags for restaurants and plastic and non-accepted compostable pre-checkout bags (Sections 11.63.040 and 11.63.050) on January 1, 2023. In addition, provisions applicable to the City of Berkeley and City-sponsored events pursuant to Section 11.63.090 will be effective on January 1, 2023. However, administrative regulations for and all other provisions will be effective beginning on June 30, 2023. Staff indicate that they need to time to hire additional staff and to conduct outreach to effected businesses. Enforcement of the ordinance is expected to be reactive and complaint-based, and not proactive.

#### FISCAL IMPLICATIONS

Staff costs will be necessary for the launch, for outreach and education, enforcement, administration and analysis. Staff costs, estimated at \$350,000 per year, will likely be recovered through increases to Zero Waste rates.

#### ENVIRONMENTAL SUSTAINABILITY

Reducing the amount of discarded plastic bags—previously classified as multi-use or compostable—in the city of Berkeley will result in less over all waste and fewer plastic that makes it into local and regional waterways. Reducing plastic waste is also a key strategy towards addressing climate change and phasing out fossil fuels.

#### CONTACT PERSON

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

ORDINANCE NO. –N.S.

ADDING CHAPTER 11.63 TO THE BERKELEY MUNICIPAL CODE TO REGULATE  
THE USE OF CARRYOUT AND PRE-CHECKOUT BAGS AND PROMOTING THE USE  
OF REUSABLE BAGS

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

Section 1. That Chapter 11.63 of the Berkeley Municipal Code is added to read as follows:

**Chapter 11.63**

**REGULATING THE USE OF CARRYOUT AND PRE-CHECKOUT BAGS AND  
PROMOTING THE USE OF REUSABLE BAGS**

**Sections:**

**11.63.010 Findings and purpose.**

**11.63.020 Definitions.**

**11.63.030 Carryout Bag restrictions for Covered Entities.**

**11.63.040 Carryout Bag restrictions for Restaurants**

**11.63.050 Pre-checkout Bag restrictions for Food Product Stores and Covered  
Entities.**

**11.63.060 Unreasonable denial of customer bags or containers.**

**11.63.070 General exemptions.**

**11.63.080 Waivers—applicability and process to obtain.**

**11.63.090 Carry-out bag restrictions for the City of Berkeley and City-sponsored  
events.**

**11.63.100 Duties, responsibilities and authority of the City of Berkeley.**

**11.63.110 Liability and enforcement.**

**11.63.120 Severability.**

**11.63.130 Construction.**

**11.63.140 Effective date.**

**11.63.010 Findings and purpose.**

The Council of the City of Berkeley finds and declares as follows:

- A. Single-use plastic bags and plastic produce bags are a significant contributor to street litter, ocean pollution, marine and other wildlife harm and their production creates greenhouse gas emissions.
- B. The production, consumption and disposal of plastic-based bags contribute significantly to the depletion of natural resources. Plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and present a great harm to the global environment.
- C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain plastic bags can also contain microplastics that present a great harm to our seawater and freshwater life, which indirectly presents a threat to human life.
- D. It is in the interest of the health, safety and welfare of all who live, work and do business in the City that the amount of litter on public streets, parks and in other public places be reduced.
- E. The City of Berkeley must eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. Reduction of plastic bag waste furthers this goal.
- F. The State of California and Alameda County Waste Management Authority both regulate single-use, paper, and reusable carryout bags respectively under SB 270/Proposition 67 and Ordinance 2012-02 (as amended by Ordinance 2016-02). However, neither currently address all establishments or pre-checkout (e.g., produce) bags to carry fruits, vegetables, and other loose or bulky items while shopping before reaching the checkout area. These bags, which are often plastic, share many of the same physical qualities as single-use plastic carryout bags no longer permitted in California, and are difficult to recycle, reuse or compost.
- G. The State also does not regulate the price of bags provided at the point of sale by restaurants and streets events, including farmers' markets. While the County's Ordinance 2016-02 regulates restaurant carryout bags, it allows thicker film plastic.
- H. The City of Berkeley currently regulates a number of disposable plastic items through the Single-Use Foodware and Litter Reduction Ordinance (Ord. 7639-NS § 1 (part), 2019), but does not impose regulations with respect to bags. It is in the public interest to reduce plastic and paper waste in areas not preempted by the State of California.
- I. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan, as amended, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

**11.63.020 Definitions.**

- A. "Accepted Compostable Pre-Checkout Bag" means a bag that is accepted by the City's compost facility as having the requisite and appropriate physical qualities for controlled biological decomposition in conjunction with other organic solid waste.

B. "Carryout Bag" means a bag provided at the check stand, cash register, point of sale or other location for the purpose of transporting food or merchandise out of a Covered Entity or Restaurant. Carryout Bags do not include Pre-checkout or Product Bags.

C. "Covered Entity" means any of the following:

(1) any event, or Person therein, requiring a street event permit pursuant to Berkeley Municipal Code 13.44.040 and not subject to the requirements of Public Resources Code Section 42281; and

(2) any other commercial establishment other than a Restaurant that sells perishable or nonperishable goods including, but not limited to, clothing, food and personal items directly to a customer, and that is not subject to the requirements of Public Resources Code Section 42281.

D. "Customer" means any Person obtaining goods from a Covered Entity, Food Product Store or Restaurant.

E. "Food Product Store" means a supermarket, convenience food store, foodmart, or other entity engaged in the retail sale of goods that include perishable and nonperishable food items, and with a total floor area over 2,500 square feet.

F. "Person" means an individual, firm, public or private corporation, limited liability company, partnership, industry or any other entity whatsoever.

G. "Pre-checkout Bag" means a Recycled Content Paper Bag, Accepted Compostable Pre-Checkout Bag, or plastic film bag provided or sold to a customer to carry produce, bulk food, or other food items to the point of sale inside a store.

H. "Product Bags" are bags that are integral to the packaging of a product such as film; bags used to fully encapsulate liquid or semi-liquid takeout food items (e.g., soup containers) to prevent spillage; bags to hold prescription medication dispensed from a pharmacy; or bags designed to be placed over articles of clothing on a hanger at dry cleaning or laundry facility.

I. "Recycled Content Paper Bag" means either a Carryout Bag provided by a Covered Entity or a Pre-checkout Bag provided by a Food Product Store that contains no old growth fiber and a minimum of forty percent (40%) postconsumer recycled material; is one hundred percent (100%) recyclable and compostable, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400; and has printed in a highly visible manner on the outside of the bag the words: "Recyclable," the name and location of the manufacturer, and the percentage of postconsumer recycled content.

J. "Reusable Carryout Bag" means a bag that is specifically designed and manufactured for multiple reuse and meets all of the following requirements:

(1) has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet;

(2) has a minimum volume of 15 liters;

(3) is washable by hand or machine, or is made from a material that can otherwise be cleaned or disinfected;

(4) does not contain lead, cadmium or any other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations for packaging or reusable bags;

(5) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a

statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and (6) is not made of plastic film, regardless of thickness.

K. "Restaurant" means a food or take-out food establishment (including, but not limited to, food sales from vehicles or temporary facilities open to the public) that sells prepared food directly to a customer and is not subject to the requirements of Public Resources Code Section 42281.

L. "Reusable Pre-checkout Bag" means a bag that is specifically designed and manufactured for multiple reuse and meets all of the following requirements:

(1) is washable by hand or machine, or is made from a material that can otherwise be cleaned or disinfected;

(2) does not contain lead, cadmium or any other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations for packaging or reusable bags;

(3) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and

(4) is not made of plastic film, regardless of thickness.

#### **11.63.030 Carryout Bag restrictions for Covered Entities.**

A. No Covered Entity shall provide or sell a Carryout Bag other than Recycled Content Paper Bags or Reusable Carryout Bags at the check stand, cash register, point of sale or other location to a Customer for the purpose of transporting food or merchandise out of such Covered Entity.

B. A Covered Entity may provide or make available for sale to a Customer a Recycled Content Paper Bag, provided that the Covered Entity charge a minimum of ten cents (\$0.10) per bag.

#### **11.63.040 Carryout Bag restrictions for Restaurants.**

A Restaurant providing a Customer with plastic film Carryout Bag, at the Customer's request, in order to carry leftovers after sit-down meal service, shall charge a minimum of ten cents (\$0.10) per bag.

#### **11.63.050 Pre-checkout Bag restrictions and requirements for Food Product Stores and Covered Entities.**

A. A Food Product Store providing a Customer with plastic film Pre-checkout Bags, or Pre-checkout Bags deemed not to be Accepted Compostable Pre-Checkout Bags, shall charge a minimum of ten cents (\$0.10) per bag. Food Product Stores shall consider providing appropriate signage detailing procedures for acquiring and purchasing such bags. Food Product Stores providing Pre-checkout Bags deemed not to be Accepted Compostable Pre-checkout Bags pursuant to this Chapter shall provide signage notifying customers that such bags are not composted and are sent to landfill, and indicating availability of options such as bringing their own bag, or acquiring Recycled Content Paper or Reusable Pre-Checkout Bags.

B. Notwithstanding subsection A, Covered Entities and Food Product Stores may provide plastic film bags as Pre-checkout Bags to Customers free of charge for the sole purpose of separating meats and seafood only upon the specific request of a Customer.

Covered Entities shall not proactively offer Customers plastic film Pre-checkout Bags for such uses.

C. Food Product Stores may provide Recycled Content Paper or Accepted Compostable Pre-checkout Bags free of charge in produce and other aisles.

D. Food Product Stores shall make reasonable efforts to stock and make Reusable Pre-checkout Bags available or for sale.

E. A state law (SB 1046) scheduled to take effect on January 1, 2025 will preempt this Section 11.63.050 with respect to Food Product Stores. At that point, this Section 11.63.050 shall only apply to Covered Entities unless SB 1046 is repealed or otherwise amended.

**11.63.060 Unreasonable denial of customer bags or containers.**

Any establishment regulated by Public Resources Code Section 42281, Alameda County Waste Management Authority Ordinance 2016-02, or this Chapter, except Restaurants with respect to takeout orders, shall not unreasonably deny a customer from using bags or containers of any type that they bring themselves, including in lieu of using bags or containers provided by the establishment. However, establishments may refuse, at their sole discretion, any customer-provided bag or container that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended food item, or that appears to be excessively soiled or unsanitary. If the customer accepts store-provided bags or containers in lieu, any charge required pursuant to this ordinance, other applicable law, or the establishment's policy will apply.

**11.63.070 General exemptions.**

A. Bags exempt from this Chapter include Product Bags, bags sold in packages containing multiple bags such as those intended for use as garbage, pet waste bags, yard waste bags, and bags which are integral to the use of other objects.

B. Nothing in this Chapter prohibits customers from using bags of any type that they bring to the establishment themselves or from carrying away merchandise or materials that are not placed in a bag at point of sale, in lieu of using bags provided by the establishment.

C. Notwithstanding the requirements of Sections 11.63.30 and 11.63.40, Covered Entities and Food Product Stores, except as subject to the requirements of Public Resources Code Section 42281, providing Recycled Content Paper Bags as Carryout Bags at the point of sale or Pre-Checkout Bags before the point of sale, shall provide such bags at no cost to a Customer participating in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code; a Customer participating in Calfresh pursuant to Chapter 1 commencing with Section 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code; and a Customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code.

**11.63.080 Waivers—applicability and process to obtain.**

A. The City Manager shall prescribe and adopt rules, regulations and forms for Covered Entities or Food Product Stores to obtain a partial waiver from any requirement of this ordinance upon sufficient evidence by the applicant that the provisions of this

Chapter would cause undue hardship. The phrase "undue hardship" may include, but is not limited to situations where compliance with the requirements of this Chapter would deprive a person of a legally protected right.

B. Waivers may be granted by the City Manager or their designees, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.

C. The City Manager or their designees shall act on a waiver application no later than 90 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.

**11.63.090 Carry-out bag restrictions for the City of Berkeley and City-sponsored events.**

The City of Berkeley and any City-sponsored event shall provide or sell to a Customer or participant only Recycled Content Paper Bags or Reusable Carry-out Bags for the purpose of carrying away goods or other materials from the point of sale or event.

**11.63.100 Duties, responsibilities and authority of the City of Berkeley.**

The City Manager or their designee shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this Chapter and is hereby authorized to take any and all actions reasonable and necessary to enforce this Chapter including, but not limited to, inspecting any Covered Entity or Food Product Store's premises to verify compliance.

**11.63.110 Liability and enforcement.**

- A. Anyone violating or failing to comply with any requirement of this Chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a requirement of this Chapter until one year after the effective date of such requirement.
- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 11.63.060.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

**11.63.120 Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that

any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

**11.63.130 Construction.**

This Chapter is intended to be a proper exercise of the City's police power, to operate only upon its own officers, agents, employees and facilities and other persons acting within its boundaries, and not to regulate inter-city or interstate commerce. It shall be construed in accordance with that intent.

**11.63.140 Effective date.**

- A. Sections 11.63.040 and 11.63.050 shall take effect January 1, 2023.
- B. Section 11.63.090 shall take effect January 1, 2023.
- C. All other provisions in this ordinance are effective June 30, 2023.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of 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.





Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
November 15, 2022

To: Honorable Mayor and Members of the City Council  
From: Councilmember Wengraf  
Subject: The Berkeley Baby Book Project: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$125 per Councilmember, including \$125 from Councilmember Wengraf, to support the Berkeley Baby Book Project, a non-profit, with funds relinquished to the City’s general fund. The relinquishment of funds from Councilmember Wengraf and all other Councilmembers who would like to contribute, will provide books to Berkeley children aged 0-5 years. The books are delivered by USPS and addressed to the child who owns them at no cost to their family. \$125 covers one book delivered to one child every month for 5 years.

FINANCIAL IMPLICATIONS

No General Fund impacts

BACKGROUND

Research shows that the presence of a generous number of books in the home of a young child is, by itself, a surprisingly strong indicator of later education level attainment, outweighing correlations to income and parent education. Frequent book sharing with babies is the best way to nurture roots of literacy. Ownership makes that easy.

Literacy is a cornerstone of social justice and equality. Without it, full access to and participation in the programs, movements and institutions that shape our culture and society is hindered.

ENVIRONMENTAL SUSTAINABILITY

No impact

CONTACT PERSON

Councilmember Wengraf                      Council District 6                      510-981-7160

- Attachments:  
1: Resolution  
2: Berkeley Baby Book Project Letter

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 FUNDING TO THE BERKELEY BABY BOOK PROJECT

WHEREAS, Councilmember Susan Wengraf has surplus funds in her office expenditure account and will contribute \$125.00 and invites other Councilmembers to join her in contributing; and

WHEREAS, a California non-profit tax-exempt corporation, The Berkeley Baby Book Project, will receive funds in an amount up to \$125.00 per contributing Councilmember's discretionary account; and

WHEREAS, the provision of such services would fulfill the municipal public purpose of providing a generous number of books to children aged 0-5 to read and have as their own; and

WHEREAS, research shows that books in a young child's home is a surprisingly strong indicator of later education level attainment, outweighing correlations to income and parent education.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget, up to \$125 per office, shall be granted to The Berkeley Baby Book Project.



# The Berkeley Baby Book Project

October 2022

Dear Berkeley City Council Members,

Literacy is key to full participation in our society from Kindergarten to the Board room, from kitchen experiments to the Science Lab, from school rules to the Halls of Congress. We need all our children to participate fully in shaping their future.

Yet most literacy programs begin after the first 3 years of life, missing windows of rapid and crucial brain development *in the very earliest months*. Infants make meaning from sound beginning at birth. By 8 months they are able to focus on details, discern nuances of color and shape, to make meaning from images on a page described to them. This is the start of literacy - the ability to attach sound and *meaning* to these squiggles on a page.

Putting books into a child's hands and home is the most efficient, effective way to increase the odds that child will have strong roots of literacy before they enter school. And with **Dolly Parton's Imagination Library** it is also the most economical and Joyful. That's why we are an Imagination Library (IL) Program Affiliate. The IL Program sends well-selected, age-appropriate books monthly by mail to children 0 to age 5 who live in an area served by an IL Affiliate. BBBP registers children for the Program and pays IL for books mailed to them. There is no cost to families.

We began in Berkeley, my hometown, in 2015. I knew how to get started and, to quote a former Berkeley City Councilwoman, "*Things start here and go long.*" Berkeley attracts attention. I knew if we were successful here, it would help us to bring the IL Program to other East Bay Cities.

Nearly **800 Berkeley children receive IL books**, and have been for several years running. Emeryville, added in 2021, has 125+, and in April we launched an IL Program for Richmond & San Pablo, where 185 children are now registered. Our longstanding relationship with Head Start sites in Berkeley and Emeryville was key to making that launch smooth.

For now, we pay \$2.10 per book mailed to a child we register. Help us keep growing.

**\$25 = 12 books for 1 child    \$250 = 60 books for 2 children  
\$500 = 120 books for 5 years monthly to 4 children**

*Mail a check to The BBBP, PO Box 8213, Berkeley, 94707 or donate online at [www.thebbbp.org](http://www.thebbbp.org)*

Putting a book a month in a child's hands is just one, small thing. But, it is a *joyous* thing, it is a *powerful* thing. And it is a *long game* thing. We are in it for that long game. Please join us.

Seena Hawley, Executive Director

510-292-1346

[seena@thebbbp.org](mailto:seena@thebbbp.org)

P.O. Box 8213, Berkeley, CA 94707

[www.thebbbp.org](http://www.thebbbp.org)

A 501(c)(3) organization EIN 46-1358633

**Total Books Mailed to East Bay babies & children in our Imagination Library Programs since our IL Program launched in 2015 with Berkeley Head Start sites:**  
**91,230**

**Books Mailed to Richmond/San Pablo since April 2022:**  
**2,034**

**Books Mailed to ZIP Code 94608 (Emeryville) since August 2021:**  
**817**

From Our 2022 Survey

**"Your program helped me realize the importance of books starting at birth."**

Is there more value in child books starting from the very beginning? (n=177 responses)



"Instead of a favorite toy, my son has a favorite book "Green Tractor" 🚗 thanks to IL team.. He loves his books. Thank you so much for helping in bringing children back to books :)"

Does your child spend more time with books or their other toys/book shelves? (n=162 responses)



"Les agradezco que tengan este programa que beneficia a la comunidad. En especial a las niñas y a sus familias. Gracias infinitas!!!"

(google translation):

"I thank you for having this program that benefits the community. Especially to the children and their families. Infinite thanks!!"

How long has your child worked together to read books? (n=162 responses)



"I love the questions on the inside of the book cover to stimulate parent-child interaction!"

"Some of their absolute favorite books have come from IL, Dolly's "I am a rainbow" has been a longtime standout favorite."

**We have received books we wouldn't have chosen that the kids have loved so it's help to expand all of our horizons."**

"Our 4 year old loves sitting and "reading" her books to her baby brother!"

(play-reading is pre-reading 😊)

"Our son is so excited every time a new book comes in the mail. We love reading the stories together and we are always revisiting old favorites on his bookshelf. He is old enough now that he's rediscovering past books and getting new things out of the stories."

*(A child can't do this with borrowed book. Good literature – and IL books are – has layers of meaning. It's great to re-read an old favorite and find new meanings & connections at any age.)*



CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

**02a.20**

CONSENT CALENDAR  
 November 15, 2022

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Rigel Robinson (Author)  
 Subject: Budget Referral: Closing the Southside Complete Streets Funding Gap

RECOMMENDATION

Refer \$1,000,000 to the FY 2023 AAO #1 process to contribute to closing the funding gap for the Southside Complete Streets project to ensure that construction on Bancroft, Dana, & Fulton can proceed on schedule and to prevent the loss of \$7.3M in federal funding.

CURRENT SITUATION AND ITS EFFECTS

On February 22, 2022, the Berkeley City Council adopted a resolution approving the conceptual designs for the Southside Complete Streets Project on Dana Street from Dwight Way to Bancroft Way; Bancroft Way from Milvia Street to Piedmont Avenue; Fulton Street from Dwight Way to Bancroft Way; and Telegraph Avenue from Dwight Way to Bancroft Way, and directed the City Manager to direct staff to proceed with the detailed engineering design of the project.

Two important projects elements are different today than at the initial phases of the Southside Complete Streets Project:

1. Construction costs have risen dramatically during the pandemic. The California Construction Cost Index (CCCI) increased by approximately 2-4% each year between 2016 and 2020. In 2021, the CCCI increased by 13.4%. This represents a cumulative increase of 16.2% over the past two years. Cost estimates for the project have increased dramatically.
2. Through the community engagement process, the Southside Complete Streets Project has landed on conceptual designs that are an expansion of the project's scope. The February 22 vote approved a conceptual design for Telegraph Avenue that includes a plaza on Telegraph Avenue and contemplates limits on private automobiles on Telegraph Avenue. This is the result of a community-driven effort to pedestrianize the blocks of Telegraph from Bancroft to Dwight. This approach was also contemplated in the 2016 Telegraph Public Realm Plan. This conceptual design, however, will be more costly than initially anticipated for the Southside Complete Streets Project.

As a result, staff have concluded that the existing \$8.3M allocated for delivering the Southside Complete Streets Project will not be sufficient for all four street segments. In

fact, even if Telegraph Avenue is separated from the project and separate funding is pursued to construct the concept design for Telegraph Avenue, the existing \$8.3M allocation will not quite be sufficient to construct the other three street segments: Bancroft, Dana, & Fulton.

As a result, the Telegraph Avenue segment will be treated as a separate project. Additional resources are required to pursue the Telegraph project. Now, it is critical that we close the funding gap to allow the construction of Bancroft, Dana, & Fulton to proceed.

The city has a critical January 2023 funding obligation deadline in order to remain eligible for the \$7.3M of the project budget represented by Federal Aid.

The latest cost estimate from staff is a \$7.852 million shortfall from currently allocated grant and matching funds for Bancroft, Dana, & Fulton.

Closing this funding gap can be achieved through a variety of sources, including UC LRDP settlement funds and Measure BB Local Streets and Roads funds. To fully close the funding gap, an allocation from the general fund will be necessary.

Construction is expected to start in July of 2023 (FY24) and continue for about 14 months, ending in September 2024 (FY25), so there is an opportunity to spread the shortfall over multiple years. Construction of these street segments has been anticipated in 2023 and is accounted for in the paving plan. Further delay of these street segments could jeopardize our federal funding and disrupt the paving plan. It is essential that these three street segments, Bancroft, Dana, & Fulton, remain on schedule.

This budget referral urges the council to allocate \$1,000,000 in General Fund resources to ensure that the city is able to close the funding gap for Bancroft, Dana, & Fulton and construction of those street segments can begin on schedule. Not doing so could risk jeopardizing the \$7.3M in federal aid that has been allocated to the project.

### BACKGROUND

The Southside Complete Streets project will improve conditions for people walking, biking, riding transit, driving, and delivering goods and services in Berkeley's Southside neighborhood along Telegraph Avenue, Bancroft Way, Fulton Street, and Dana Street.

Berkeley's Southside neighborhood has a rich history and a bright future as a community hub that serves many functions. The neighborhood is growing, and more people are walking, biking, taking transit, using rideshare, and having packages delivered. Today, Southside streets provide access to many vibrant local businesses, community and cultural destinations, healthcare, and multi-family and single-family

residences. As the main gateway to UC Berkeley's campus, many students, faculty, and staff rely on the Southside neighborhood for housing, food, and other daily needs.

The Southside Complete Streets Project will apply the vision and goals identified in previous planning efforts to create a cohesive street design. The goals of the project are to improve safety, comfort, and access for all users for decades to come. When implemented, the project will bring improvements for people walking, biking, driving, and taking transit. These improvements will also support economic development and cultural vitality of the district.

Numerous studies, documents, and plans have recommended changes to Southside streets. The City's Vision Zero Action Plan identifies Bancroft Way as a "High Injury Street" in need of traffic safety improvements, with a history of severe injury and fatality traffic crashes for people walking, biking, and driving. Among other recommendations, the Southside Area Plan recommended conversion of Bancroft Way, Durant Avenue, and Dana Street from one-way to two-way streets to improve transit reliability and pedestrian and bicycle safety; calm traffic; and improve vehicle circulation. The Berkeley Bicycle Plan recommends continuous Cycle Tracks on Bancroft Way, Dana Street, and Fulton Street to close gaps in the proposed citywide Low Stress Bikeway Vision Network. To address chronic transit delays through the Southside, the AC Transit Major Corridors study recommends a continuous Bus Rapid Transit facility on Telegraph Avenue and Bancroft Way, connecting to Oakland to the south and to Shattuck Avenue/University Avenue to the north. The City of Berkeley's General Plan Transportation Element Policy T-4 Transit-First Policy gives priority to alternative transportation and transit over single-occupant vehicles on Transit Routes. Policy T-22 seeks to reduce wait times and transfer times for pedestrians taking transit by implementing improvements such as transit-only lanes and traffic signal improvements. Additionally, Policy T-55 designates Bancroft Way, Durant Avenue, and Telegraph Avenue as the "highest priority routes" for transit improvements in the Southside area. The Telegraph Avenue Public Realm Plan recommends a phased approach to improving and increasing pedestrian space along Telegraph Avenue's relatively narrow existing sidewalks, culminating in a "shared street" configuration; the plan notes that it will need to be updated to include the future possibility of dedicated bus lanes.

#### FINANCIAL IMPLICATIONS

\$1,000,000 to fund construction of the Southside Complete Streets Project. Not closing the funding gap for the Southside Complete Streets Project could result in a loss of \$7.3M in already allocated federal aid.

#### ENVIRONMENTAL SUSTAINABILITY

Installation of protected bikeways, widening sidewalks, and improving pedestrian crossings is anticipated to increase walking and biking, which is consistent with the 2009 Berkeley Climate Action Plan Policy that calls for expanding and improving Berkeley's bicycle and pedestrian infrastructure. Installation of bus-only lanes is

anticipated to improve bus reliability and decrease travel times, making on-street transit a more attractive mode of transportation. The 2009 Berkeley Climate Action Plan sets targets of reducing transportation emissions 33% below year 2000 levels by 2020, and 80% below year 2000 levels by 2050. The Plan further states that transportation modes such as public transit, walking, and bicycling must become the primary means of fulfilling the City's mobility needs in order to meet these targets.

CONTACT PERSON

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

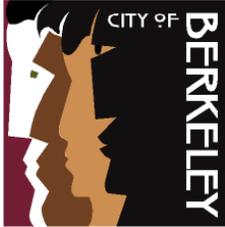
Attachments:

1: Telegraph Public Realm Plan

<https://www.berkeleyside.com/wpcontent/uploads/2016/09/Telegraph-Public-Realm-Plan-Final-Low-Res.pdf>

2: Berkeley Southside Complete Streets Project Website

<https://berkeleysouthsidecompletestreets.org/>



Office of the Mayor

ACTION CALENDAR  
November 15, 2022

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Referral to City Manager: Tenant Habitability Plan and Amendments to Relocation Ordinance

RECOMMENDATION

1) Refer to the City Manager to review and develop proposed amendments to the Berkeley Municipal Code to require a Tenant Habitability Plan for major construction or renovation at tenant occupied properties. Proposed language modeled after the City of Los Angeles' Tenant Habitability Plan requirements is attached for consideration. The City Manager should also return with information on the costs and staffing needs for implementation for future budget discussions.

2) Refer to the City Manager recommendations from the 4x4 City Council/Rent Board Joint Committee on Housing for amendments to the City's Relocation Ordinance, BMC Chapter 13.84 to strengthen and improve enforcement of the ordinance.

BACKGROUND**Relocation Ordinance**

The Relocation Ordinance, Berkeley Municipal Code Chapter 13.84, which was adopted in 1986, is the primary tool for tenants who are displaced from their home due to mandated or voluntary code-compliance repairs that requires the tenant to temporarily vacate their home. After a lengthy review process which included input from community stakeholders and City commissions, the Ordinance was substantially amended in 2011. Since its inception, the purpose of the Ordinance has always been "...to provide relocation services and require property owners to make certain payments to ..tenant households temporarily relocated as a result of code enforcement...or voluntary code compliance..." (B.M.C. 13.84.010). The Ordinance applies to all residential households and provides few exceptions when work is mandated (B.M.C. 13.84.020B [definition of household and unit], 13.84.020C, 13.84.030B [definition of natural disaster which exempts property owners from complying with the Ordinance]).<sup>1</sup>

<sup>1</sup> It is noted that there has been some misunderstanding of the Ordinance's applicability within the City. It is important to note that the Ordinance applies to all residential tenancies and not just those covered by the City's Rent Stabilization and Good Cause for Eviction Ordinance and that fires that are not a "natural event" such as a "forest fire" do implicate and trigger the Ordinance.

The following section describes how the Ordinance operates in theory and in practice as well as difficulties and concerns that have arisen since its most recent 2011 implementation.

## 1. Eligibility

### **\*Application:**

Initially, the City's Relocation Ordinance is only available to parties if either the City determines the unit cannot be safely occupied while City-mandated code compliance work is being undertaken or if it is determined that voluntary code compliance work or fumigation work initiated by the owner necessitates the tenant temporarily vacating their unit (B.M.C. 13.84.030A; 13.84.060A, C).

### **\* Practice:**

In practice, the triggering aspect of the Ordinance is one of its greatest blind spots. It is understood throughout the City that there will hardly ever be a circumstance that, when asked, the Building Official will opine that the tenant **must** vacate in order for code compliance work to be done. This aspect of the Ordinance's administration is relevant since the scenario that usually occurs is when either the owner wishes to have the tenant vacate and the tenant doesn't want to, or the tenant wants to vacate and the owner doesn't believe the work requires the tenant to vacate. It is noted that parties are sometimes able to work out these differences and voluntarily comply with the Ordinance's requirements or agree to other terms that are mutually acceptable. This is often done however after substantial counseling, guidance and direction from City staff.<sup>2</sup>

## 2. Property Owner Responsibilities

### **\*Application:**

Once the Ordinance is triggered and there is no dispute between the owner and tenant regarding the applicability of the Ordinance, the owner is responsible for providing relocation payments directly to the tenant household (13.84.040). Under the Ordinance, payments fall into one of two categories; work that is to be completed in less than thirty days and work that will take thirty days or more.

For work to be done in less than thirty days all tenant households are to receive a per diem rate currently set at anywhere from \$120 to \$166 per day depending on size of household with increases of \$15 per day for additional household members above three (13.84.070). The rate can increase per Council resolution.

For work that is anticipated to take longer than thirty days the household receives a flat \$400 dislocation allowance, moving and storage costs as well as rent differential if the tenant finds a comparable unit with a higher rent. The rent differential however may not exceed a ceiling established annually by the Rent Board and is based on the number of

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<sup>2</sup> It is noted that properties that are damaged due to fire are the exception to these scenarios since fire-damaged buildings will often be yellow or red tagged by the Fire Marshall, thus, in theory, automatically triggering the Ordinance since by the very nature of the City's actions, the unit and/or property is not currently habitable.

bedrooms in the unit (13.74.070B). In lieu of either the per diem payments or rent differential payments, the owner may offer an alternative unit to the tenant household that is comparable to the unit being vacated. The rent, when offered, cannot exceed the tenant's rent from the unit being vacated and the vacating tenant always has the right to return (13.84.070G). The landlord is not obligated to offer the tenant alternative housing and the burden in finding alternative housing lies with the tenant.

**\*Practice:**

The primary disconnect that has surfaced regarding the distinction between the two categories of eligibility (thirty days or less versus thirty days or more) is the difficulty tenants have in actually finding short-term housing when the repairs are anticipated to take longer than thirty days. Staff has repeatedly been informed by tenants seeking short-term, temporary housing that it is scarce and hard to find. While sublets can be found, temporary housing for only a month or two is most often found within the student community and usually only for the summer months.

Another concern raised by tenants when entering the short-term housing market is the that the rental price often exceeds the rent differential ceilings established by the City. This results in the tenant paying the excess difference out of pocket. Finally, given the vagaries of the work being done at the tenants' unit, it is often difficult, if not impossible, for the tenant seeking housing to truthfully inform the new landlord just how long their tenancy is going to be. While there is no legal obligation on the part of a tenant to divulge such information prior to renting, many tenants have shared with staff the dilemma this issue often presents.

When the work is anticipated to be less than thirty days, tenants experience different difficulties. Initially, tenants state that the current per diem rates are lagging behind actual hotel rates. Staff has not been able to confirm this and a more recent survey has not been done.

Also of note is the fact that most hotel rooms do not have adequate cooking facilities thus the tenant household must rely on food that does not require full cooking facilities such as oven/stove. This results in a higher per diem expense from the household which already does not include a separate per diem for food cost. As a result of the inherent problems with tenants staying in hotels, many have turned towards short-term rentals such as Airbnb and VRBO. These however often exceed the City's per diem rate and, by their very nature, are limited to stays of fourteen days or less.<sup>3</sup>

Finally, we believe that the voluntariness of an owner offering a vacant unit to a tenant being relocated should be amended and made compulsory. Given the difficulties in

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<sup>3</sup> While the City's Short-term Rental Ordinance allows stays of up to 90 days, any stay longer than fourteen days converts the occupancy to a potential rent-controlled tenancy, thus many owners limit stays to fourteen days or less (B.M.C. 23C.22 et seq.)

finding alternative housing if an owner has a vacant unit elsewhere in the City it should be offered to the tenant as part of the Ordinance.

### 3. Challenges/Appeals

#### **\*Application:**

When the code enforcement work is mandated by the City and the City has deemed the unit uninhabitable while the work is being done, the tenant or owner may dispute this determination by seeking a hearing with the Housing Advisory Commission (“HAC”) (B.M.C. 13.84.050). To the best of our knowledge appeals of this nature are extremely rare since most commonly the determination by the City in these instances often are the result of a fire at the property resulting in the building being either yellow or red tagged.

When the work is of a voluntary nature to bring the unit/property into code compliance the appeal process is more problematic.

If the tenant disagrees with a landlord contention that the tenant must vacate, or if either party disputes the amount of the relocation benefits to be paid or any other terms of the Ordinance, the parties must first engage in some form of conflict resolution/mediation. As part of its services, the Rent Board offers mediations to try and resolve Relocation Ordinance disputes (B.M.C. 13.84.100).

Only after such efforts have been made with no result, an owner can seek a hearing with the Housing Advisory Commission. Such request must be filed within five days after conflict resolution has occurred (B.M.C. 13.84.100A2).

If a tenant disagrees with the owner’s demand that the tenant vacates, a request is to be filed with the Building Official also within five days of completion of conflict resolution. Upon receipt, the Building Official is then empowered to determine whether relocation is necessary. That decision is final (B.M.C. 13.84.100A3).

#### **\*Practice:**

In practice, one of the problems lies with the fact that owner challenges to a tenant’s right to relocation benefits must first flow through the HAC. Depending on when the HAC is meeting, an inordinate amount of time may pass prior to such hearing. Given the immediacy of the situation, with a tenant moving out, either into a hotel or longer-term temporary housing and seeking immediate relocation payments to cover the move, this built-in delay creates extreme burdens on the tenant household if the owner is, in fact, challenging the tenants’ right to the benefits.

The central concern however with the appeal process lies in the fact that, in most cases, if a tenant wishes to move but the owner feels such a move is not necessary, there is no mechanism for a tenant to seek that type of determination. The actual issue

of relocation only rises to the forefront when the owner claims it is necessary when obtaining permits to do the work.<sup>4</sup>

When the Ordinance was last discussed in detail at this committee, former Rent Board commissioner Igor Tregub raised a number of salient points on this issue. Mr. Tregub voiced concerns, which are shared by us, that there are many scenarios wherein a tenant would need to vacate even though the work contemplated could, technically, be done with the tenant remaining in the unit. Mr. Tregub offered compelling hypotheticals such as a tenant who is suffering from illness or severe allergies to dust or mold but is still forced to remain in the unit; a tenant who works from home but now cannot since the repair work would severely disrupt the tenant's use during the day; a senior or disabled tenant whose daily life would be severely impacted if they had to remain in the unit while such substantial repair work was done.

We have heard from staff working on the Ordinance that these are real-life situations which have occurred over the years and is one of the central driving forces behind this effort to revamp and reimagine how the Ordinance operates.

#### 4. City Involvement in Relocation Payments

##### **\*Application:**

While the Ordinance anticipates City involvement for issues such as actual determination of the need to vacate, setting the relocation rates and building in an appeal process, enforcement of the Ordinance largely remains up to the parties.

In cases where an owner fails to make required relocation benefits to the tenant, the City may provide such payment and then seek reimbursement from the owner (B.M.C. 13.84.080). Should this occur, the City is then able to assess a lien on the owner's property in order to recover the costs incurred (B.M.C. 13.84.080A).

##### **\*Practice:**

In practice this have never happened. We are aware of at least one case where the owner acknowledged the application of the Ordinance, made some initial payments but then refused to continue as required. Tenants in this building asked the City to provide payment as allowed under the Ordinance but the City balked claiming there was no money in the City's budget to allow for such disbursement. This is problematic and is also one of the points raised when the Ordinance was last discussed in detail. We believe that, at a minimum, this should change and the City should be either be

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<sup>4</sup> One of the flaws of the Ordinance and the City's processes is that while certain permits have a small box for owners to check stating relocation is required, this box is hardly ever checked and owners then unilaterally proceed to demand the tenant move. In addition, City staff has made clear that they do not have the resources to review permits in order to ascertain whether relocation would be required. Thus, the entire Ordinance and its administration appears to be hamstrung right at the offset since owners rarely trigger it at the time required, the City doesn't review the permits in real time to determine relocation and the tenant has no recourse under the Ordinance to seek relocation if the owner isn't requesting it.

mandated to make payments or the funds need to be provided to make payments when determined. The City, through its assessments and liens is in a much better place to recover these funds than a tenant who is in the midst of relocating, not having the bare resources to pay for such moving expenses and is thus compelled to file a lawsuit which can take years to collect what is legally owed them.

### **Overview**

A review of the Relocation Ordinance shows an Ordinance that was improved back in 2011 but through design and administration has several crucial flaws that need addressing. The actual benefits need to be increased, offering another vacant unit to a displaced tenant should be compulsory, the City should provide payments when the owner refuses, tenants should have a mechanism to trigger the ordinance as opposed to just owners and the requirements for a tenant vacating need to be drastically expanded to cover scenarios other than the technical nature of the work being contemplated.

In response a staff proposal making fixes to the Relocation Ordinance, in December 2019, the 4x4 Joint Committee on Housing made the following recommendation:

#### **Amendments to Relocation Ordinance:**

**(Tregub/Alpert) Carried: 6-0-0-2. Absent: Robinson, Harrison.**

**Refer to Council the following recommendations:**

- a. Amend the Relocation Ordinance to specify and broaden the parties who can trigger the Ordinance, including tenants in question.**
- b. Increase the per diem reimbursement rates to current market rate and index regular increases to cost of living increases.**
- c. Institute a new, or strengthen an existing, appeals body to adjudicate appeals related to the Relocation Ordinance.**
- d. Maintain City involvement by establishing a revolving fund, possible with U1 funds, with which the City can pay tenants' relocation costs and seek reimbursement from owners who will not pay tenants directly.**
- e. Amend the Relocation Ordinance to consider tenants' health conditions and chemical sensitivities, and the needs of differently abled tenants in determining whether the Ordinance is triggered.**
- f. Explore how Los Angeles created and implemented their Habitability Plan to learn about best practices that could be incorporated into Berkeley's Relocation Ordinance.**

- g. Specify a City Department that will lead the administration, enforcement, and outreach efforts related to the Relocation Ordinance.**
- h. Explore whether a permit form can be created or existing forms can be amended to help determine if a project triggers the Relocation Ordinance at the time project permits are applied for.**
- i. Cross-check the Relocation Ordinance with the Demolition Ordinance to identify gaps and ensure compatibility between the two in an effort to make tenants whole.**

Despite the 4x4's vote in December 2019, the proposal never made it to Council due to the pandemic which halted pending legislation in order to focus on the City's response to COVID-19. Now that the Emergency Operations Center has disbanded and City employees have returned to their normal duties, these recommendations are being presented to Council with the goal of referring it to City staff for additional review.

### **Tenant Habitability Plan**

As mentioned in the 4x4's recommendations for amendments to the Relocation Ordinance, recommendation (f) calls for learning how to incorporate a Tenant Habitability Plan (THP). This will help resolve concerns about disputes on when a tenant needs to temporarily vacate a unit by establishing objective standards and processes for such an action. This can also be used as a tool to mitigate impacts on adjacent residences in infill developments, which are becoming more commonplace.

A THP would be required for construction and substantial repairs, such as the replacement of any structural, electrical, plumbing or mechanical system that requires a permit under the Berkeley Municipal Code. It also includes abatement of hazardous materials, such as lead paint and asbestos, and repairs required by a Building Official in Notice of Violation. This work is most likely to restrict use, access, and peaceful enjoyment of the property.

A THP would provide general identification information for the property owner, general contractor, and affected tenants to maintain proper communication. It will provide a description of the scope of work to be undertaken, including an estimate timeline of the project and its impacts on each unit, and how it would impact each unit (including impacts on personal property, such as the removal of furniture to complete the project). It will identify mitigation measures that would be adopted. If tenants are to remain in place, the landlord shall voluntarily reduce the tenants' rent to compensate for any disruption. If a tenant is not satisfied with the outcome, they can file a petition to the City.

There are several Departments that could administer the THP requirements, including the Permit Service Center, Housing Code Enforcement/Rental Housing Safety Program Staff, HHCS, and the Rent Board. The City Manager should review what Department is best suited to be the main point of reference as a part of this referral.

The responsible agency would review the THP within five days. If there are deficiencies in the plan, they will provide the property owner written indications of what needs to be planned, in which the property owner would be able to make amendments. Both the property owner and tenant would have an opportunity to appeal the determining agency's determination regarding the THP.

A draft of a THP, which is based off the program created by the City of Los Angeles in 2005, can be found in Attachment 1.

#### FINANCIAL IMPLICATIONS

Staff time involved in reviewing the Tenant Habitability Plan proposal and amendments to the Relocation Ordinance. If adopted additional funding and increased staffing would be needed as well as coordination with other departments to implement proposals.

#### ENVIRONMENTAL SUSTAINABILITY

No identifiable environmental effects

#### CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

#### Attachments:

- 1: Draft language of Tenant Habitability Plan
- 2: Memo Provided to 4x4 Committee on Tenant Habitability Plan (THP) Proposal
3. PowerPoint Presentation to 4x4 Committee on THP
- 4: City of Los Angeles Tenant Habitability Program, Section 152.00 of LA Municipal Code
- 5: Current Copy of the Relocation Ordinance, BMC Chapter 13.84

## DRAFT

### 19.40.125 Tenant Habitability Plan

#### 1251 – Purpose and Intent

In its adoption of Section 19.40.125 *et seq.* of this Code, the City recognizes that construction and repairs on Rental Units or adjacent to such Rental units can create hardships on tenants; especially those who are senior citizens, persons on fixed incomes and low and moderate-income households. The City also recognizes that there is a shortage of decent, safe, and sanitary affordable housing in Berkeley. The City further declares, in its adoption of section 19.40.125 *et seq.* of this Code, that it is in the public interest of the people of Berkeley to protect and promote the existence of sound and wholesome residential buildings, dwelling units, and neighborhoods by the adoption and enforcement of such standards, regulations, and procedures as will remedy the existence or prevent the development or creation of dangerous, substandard, or unsanitary and deficient residential buildings and dwelling units.

However, both preventative maintenance as well as code enforcement related maintenance sometimes involves the replacement or substantial modification of major building systems or the abatement of hazardous materials and, by its very nature, such work generally makes rental units untenable, as defined by California Civil Code Section 1941.1, on a temporary basis.

Additionally, through the passage of AB 68, AB 670, AB 881, SB 13, and SB 9 \_\_\_\_\_ the State of California has passed several laws which have streamlined the ability to build on lots and in and next to residential units that are already occupied by residential housing. These provisions have recently been extended to include not only units built in owner-occupied lots but also investment properties owned by developers who are not local to the area.

This article is adopted to facilitate landlord investment in renovations and the construction of new housing without subjecting tenants to either untenable housing conditions during such renovation work or forced permanent displacement. The tenant habitability program requires landlords to mitigate such temporary untenable conditions, either through actions to ensure that tenants can safely remain in place during construction, or through the temporary relocation of tenants to alternative housing accommodations. These two options should not be regarded as mutually exclusive but rather as complementary approaches that might be appropriate to different stages of the renovation process.

#### 1252 – Definitions

The following words and phrases, whenever used in this article, shall be construed as defined in this section. Words and phrases not defined here shall be construed as defined in Section 13.76.040 of this Code if defined in that section.

**Construction** means construction on tenant occupied buildings, lots, or adjacent units. This includes elective upgrades that do not arise to Substantial Repairs but require permits,

construction of entirely new units or division or creation of additional units from already existing residential units.

**Emergency Repairs.** Repairs that must be completed in less than 48 hours shall be exempt from the habitability plan process.

**Repairs in Response to Notice of Violation** means repairs that must be completed to correct a notice of violation.

### **Notice of Construction on Occupied Buildings**

**Notice of Substantial Repairs or Construction** means a written notice, served by the landlord upon a tenant or tenant household at least 60 days prior to the commencement of any substantial repairs or Construction that uses a form established by the [responsible agency], and advises the tenant of forthcoming Substantial Repairs or Construction, the impact of such work on the tenant, and measures the landlord will take to mitigate the impact on the tenant.

**Substantial Repairs** means work performed either on a rental unit or on the building containing the rental unit that brings the unit into compliance with the Housing Code by making substantial repairs and that cannot be made while the tenant lives there improves the property by prolonging its useful life or adding value, and involves either or both of the following:

1. Replacement or substantial modification of any structural, electrical, plumbing or mechanical system that requires a permit under the Berkeley Municipal Code.
2. Abatement of hazardous materials, such as lead-based paint and asbestos, in accordance with applicable federal, state and local laws.
3. Repairs required by Building Official in Notice of Violation pursuant to 19.40.100

**Temporary Relocation** means the payment of relocation costs or the providing of a comparable rental unit in accordance with a Tenant Habitability Plan and Berkeley's Relocation Services and Pavements For Residential Tenant Households Ordinance (Berkeley Mun. Code § 13.84.010 *et seq.*) The temporary relocation of a tenant from his/her permanent place of residence shall not constitute the voluntary vacation of the unit and shall not terminate the status and rights of a tenant, including the right to reoccupy the same unit, upon the completion of the Primary Renovation Work and any Related Work.

## **1253 – Procedure for Undertaking Substantial Repairs and Construction on Occupied Properties**

### **1253.1 Building Permits**

A. No landlord shall undertake Substantial Repairs or commence Construction on Property without first obtaining all necessary permits, pursuant to this Code.

B. The Planning Department shall only clear a landlord's application for a permit for Substantial Repairs or Construction on Occupied Properties if all of the following conditions have been met:

1. The landlord has submitted a Tenant Habitability Plan to the [responsible agency], in accordance with sections 1253.2 and 1253.3, which the [responsible agency] finds to adequately mitigate the impact of the Substantial Repairs or Construction upon affected tenants; and
2. The landlord has submitted a declaration documenting service to affected tenants of both a Notice of Substantial Repairs and a copy of the non-confidential portions of the Tenant Habitability Plan in accordance with section 1254.
3. The landlord has paid any plan submission fee established by regulation under Berkeley Municipal Code section 13.76.060(F).

### **1253.2 Tenant Habitability Plan**

A. At a minimum, a Tenant Habitability Plan shall provide the following information, together with any other information Berkeley's [responsible agency] deems necessary to ensure that the impact of Substantial Repairs and Construction or any related work upon affected tenants is adequately mitigated:

1. Identification of the landlord, the general contractor responsible for the Substantial Repairs or Construction, and any specialized contractor responsible for hazardous material abatement, including but not limited to lead-based paint and asbestos.
2. Identification of all affected tenants including the current rent each tenant pays and the date of each tenant's last rent increase. In accordance with California Civil Code Sec. 1798 et seq., information regarding tenants shall be considered confidential.
3. Description of the scope of work covering the Substantial Repairs or Construction. Such description shall address the overall work to be undertaken on all affected units and common areas, the specific work to be undertaken on each affected unit, an estimate of the total project cost and time, and an estimate of the cost and time of renovation for each affected unit.
4. Identification of the impact of the Substantial Repairs or Construction on the habitability of affected rental units, including a discussion of impact severity and duration with regard to noise, utility interruption, exposure to hazardous materials, interruption of fire safety systems, inaccessibility of all or portions of each affected rental unit, and disruption of other tenant services.

5. Identification of the mitigation measures that will be adopted to ensure that tenants are not required to occupy an untenable dwelling, as defined in California Civil Code Section 1941.1. Such measures may include the adoption of work procedures that allow a tenant to remain on-site and/or the temporary relocation of tenants. If due to a declared state of emergency, childcare, eldercare, documented disabilities or work schedule or place of work that makes 8:00 - 5:00 pm Monday through Friday a grave burden, then a reasonableness standard shall be used reflecting the tenant's specific situation.
6. Identification of the impact of the Substantial Repairs or Construction on the personal property affected tenants, including work areas which must be cleared of furnishings and other tenant property, and the exposure of tenant property to theft or damage from hazards related to work or storage.
7. Identification of the mitigation measures that will be adopted to secure and protect tenant property from reasonably foreseeable damage or loss.
8. Identification of a phone number and email address of a responsible party who will be responsive to tenant complaints regarding the execution of the Substantial Repairs.
9. If tenants are to remain in place, the landlord shall voluntarily reduce the tenants' rent to compensate the tenant for any disruption to their tenancy. If a tenant feels the landlord's rent reduction is inadequate, the tenant may file a petition with Berkeley's Rent Program under section 11.100.070(c) or pursue any other legal remedy.

### **1253.3 Plan Acceptance**

- A. The [responsible agency] shall make a determination regarding the adequacy of a landlord's Tenant Habitability Plan within five working days of the [responsible agency]'s receipt of the plan for review. The [responsible agency] shall accept those plans which meet the requirements of section 1251.2 of this section and which it determines, with reference to the standards set forth in California Civil Code Section 1941.1, and in accordance with any applicable regulations or guidelines adopted under section 13.76.060(F)., will adequately mitigate the impacts of Substantial Repairs upon tenants. The Tenant Habitability Plan may allow for the temporary disruption of major systems during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. While brief periods of scheduled untenability between 8:00 and 5:00 am may be acceptable, a tenant's tenancy shall not be substantially disrupted for extended periods or in a manner that would be unreasonably disruptive to the tenant. In determining whether a disruption is reasonable, the [responsible agency] shall consider any relevant issue raised by the tenant, such as the tenant working from home, sleeping during the day, etc. At no point shall tenants

be exposed to toxic or hazardous materials including, but not limited to, lead-based paint and asbestos.

- B. The [responsible agency]'s acceptance of a Tenant Habitability Plan shall be subject to the landlord having no outstanding balances due for rent registration or code enforcement fees.
- C. The [responsible agency] shall provide landlords with written indications of deficiencies which must be addressed whenever a Tenant Habitability Plan is determined to be inadequate. A landlord may submit an amended plan in order to correct identified deficiencies.
- D. Landlords and tenants may appeal the [responsible agency]'s determination regarding a Tenant Habitability Plan to a hearing officer. The appeal shall be made in writing, upon appropriate forms provided by the [responsible agency], and shall specify the grounds for appeal, such as the plan being overly disruptive or that a temporary relocation should or should not be provided. The appeal shall be filed within 15 calendar days of the service of the Building Division's determination. The requested hearing shall be held within 30 calendar days of the filing of the appeal following the procedures adopted under. The hearing officer shall issue a written decision within ten calendar days of the hearing on the appeal, with a copy of the decision served on the landlord and the tenants by first class mail, postage prepaid, or in person.

#### **1253.4 Notice of Substantial Repairs or Construction**

- A. Notice of Substantial Repairs or Construction shall be written in the language in which the original lease was negotiated and shall provide the following information:
  - 1. The estimated start and completion dates of any Substantial Repairs associated with the accepted Tenant Habitability Plan.
  - 2. A description of the Substantial Repairs to be performed and how it will impact that particular tenant or household.
  - 3. Whether temporary relocation will be required, and if so, a notice concerning tenants' rights under Berkeley's Fair Rent, Just Cause For Eviction and Homeowner Protection Ordinance (section 13.100 et seq.) and Berkeley's Relocation Ordinance (section 11.102 et seq.)
  - 4. Instructions that tenants with questions should consult the landlord or the Rent Board.
  - 5. Notice of a tenant's right to reoccupy the units under the existing terms of tenancy upon completion of Notice of Substantial Repairs

6. Notice that the tenant may appeal the [responsible agency]’s acceptance of a Tenant Habitability Plan provided such request is submitted within 15 days of the tenant's receipt of the Notice of Substantial Repairs
7. Notice that a tenant can make complaints to the responsible party identified in section 1253.2 (A)(1).
8. A disclaimer in at least 24 point bold font on the first page of the notice stating “THIS IS NOT AN EVICTION NOTICE. IF YOU IF YOU HAVE QUESTIONS CONCERNING YOUR RIGHTS AS A TENANT CALL 510-981-\_\_\_\_\_.

### **1254 – Notice and Service Requirements**

After the [responsible agency] accepts the Tenant Habitability Plan, a landlord shall serve a copy of the Tenant Habitability Plan, Notice of Substantial Repairs or Construction, and a summary of the provisions of this article on the tenant. Service of these items shall be provided in the manner prescribed by Section 1162 of the California Code of Civil Procedure and at least 60 days prior to the date on which the Substantial Repairs or Construction are scheduled to begin.

### **1255 - Notices of Violation**

- A. Habitability Plan submittal requirement upon finding of substandard housing pursuant to 19.40.090
  1. Building Officials shall include in Notice of Violation pursuant to 19.40.1002 whether Habitability Plan must be submitted;
  2. Building Official shall require submittal of Habitability Plan anytime owner or agent of owner has failed to apply for permits or submit a Habitability Plan when it would have been required and all Construction or repairs shall be halted until compliance is obtained.

If such pause in construction leaves the rental unit substandard, temporary relocation may be triggered.

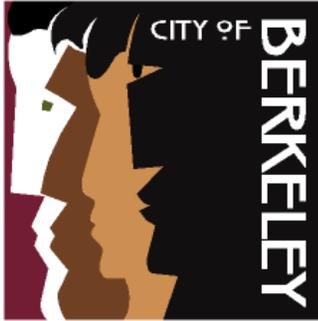
### **1256 - Remedies**

- A. A landlord who fails to abide by the terms of an accepted Tenant Habitability Plan shall be denied individual rent adjustments under Section 13.76.120 of this Code, absent extenuating circumstances.
- B. In any action by a landlord to recover possession of a rental unit under section 13.76.130(A)(7), the tenant may raise as an affirmative defense the failure of the landlord to comply with any provisions contained in this article. It shall be a complete defense to an unlawful detainer that a tenant’s appeal under section 1253.3(D) is pending at the time

of filing the unlawful detainer complaint, or was decided less than fourteen days before the filing of the Unlawful Detainer unlawful detainer complaint.

- C. Any person who willfully or knowingly with the intent to deceive, makes a false statement or representation, or knowingly fails to disclose a material fact in any plan or notice required under this article, or in any declaration, application, hearing or appeal permitted under this article, including oral or written evidence presented in support thereof, shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this chapter shall be punished by a fine of not more than \$1,000.00 or by imprisonment in the County Jail for a period of not more than six months or both.
- D. Nothing in this article shall be construed to deprive a person of due process rights guaranteed by law, including, but not limited to, a right to appeal the [responsible agency]'s determination regarding a Tenant Habitability Plan to a hearing officer.
- E. The remedies provided by this article are in addition to any other legal or equitable remedies and are not intended to be exclusive. In addition to potentially other violations, a landlord's failure to provide, or bad faith deviation from a Tenant Habitability Plan shall be actionable as a failure to "exercise due diligence in completing repairs" pursuant to section 13.79.060(C)(7).

3.



**Jesse Arreguin**  
Mayor

**Leah Simon-Weisberg**  
Chair, Berkeley Rent Board

### Tenant Habitability Plan for City of Berkeley Proposal Discussion

#### What is the purpose of Tenant Habitability Plan:

1. Prevent permanent displacement when **substantial repairs** are needed;
2. Allow and facilitate substantial repairs while requiring mitigation of the possible negative impact on tenants of said repairs
3. Prevention of unsafe and harassing approaches to construction whether for the purposes of new construction or substantial repairs while tenants remain at property.
4. Create objective standards and processes to best prevent unsafe and harassing approaches to construction.
5. Respond to the recent phenomena of infill projects where tenants are in occupancy. (Harper Street)

#### When does a landlord need to fill out a tenant habitability plan?

##### Situations of work inside, outside or adjacent to occupied unit:

1. Planned Repair by landlord
2. Planned Construction by landlord
3. Requested Repairs by tenant
4. Emergency Repairs
5. Tenant complains about unsafe or nuisance construction

##### Timeframes for notification can be different for the different kinds of work

Option 1) An approved tenant habitability plan is required before **any work** is done to a property with a building that has one or more residential dwelling units. (Simple check-box if no buildings are tenant occupied).

Option 2) RHSP definition: An approved tenant habitability plan is required before **any work** to any dwelling which is rented, leased, let or hired out to be occupied for consideration.

**What “work” should trigger the requirement that the landlord must fill out form and provide mitigation?**

**Menu of Options:**

1. Any work requiring a permit.
2. Substantial repair and mediation: seismic retrofits, elevator repairs, and when hazardous materials such as lead paint or asbestos are being remediated.
3. Any work in the following section:

**Berkeley Code Sections Referenced:**

Berkeley Code sections that could be referenced: Title 19 – Buildings and Construction.

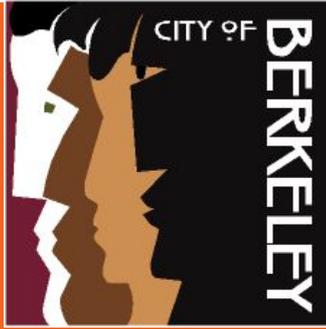
- Berkeley Building Code BMC Chapter 19.29
  - Berkeley Residential Code BMC Chapter 19.30
  - Berkeley Electrical Code BMC Chapter 19.32
  - Berkeley Mechanical Code BMC Chapter 19.34
  - Berkeley Plumbing Code BMC Chapter 19.36
  - BMC Chapter 19.38: Seismic Hazard Mitigation Program for Unreinforced Masonry Buildings
  - BMC Chapter 19.39: Potentially Hazardous Buildings Containing Soft, Weak, or Open Front Stories
  - BMC Chapter 19.50: Elevators-buildings with ten or more units and two or more stories
4. Requiring habitability plan submittal when a property with a tenant occupied structure receives a **notice of violation for code violations** including unpermitted work and other housing code violations. In Berkeley work without permit can be cited by either a building inspector or a housing inspector, both of which are in the Planning Department.
  5. Requiring mitigations when work is being done **adjacent to a tenant’s unit** for a sustained period of time.
  6. Requiring a habitability plan for work on properties that have a structure with a **dwelling unit will cover the ADU situations** we heard about where a tenant could not access their unit or tenant parking spaces were temporarily or

permanently removed due to ADU construction. Building permits are required for all ADUs so no specific requirement for ADUs needs to be included to cover this situation.

### **Who should Administer the program?**

Berkeley Departments that could administer habitability plan requirements:

- Permit Service Center (within Planning Department)
- Housing Code Enforcement and Rental Housing Safety Staff (both are also within Planning Department)
- HHCS (as long as they are involved in Relocation Ordinance)
- Rent Board, Rent Board Hearings unit best to assist with hearing/complaint process



**Jesse Arreguin**  
Mayor

**Leah Simon-Weisberg**  
Chair  
Berkeley Rent  
Stabilization

# UPDATE ON TENANT HABITABILITY AND PLAN IMPLEMENTATION

Revise Berkeley B.M.C. Chapter 13.84 (“Relocation Ordinance”) to better protect tenants during construction due to necessary repairs, new construction of ADUs and other additional housing units.

4x4 Housing Task Force, July 12, 2022

# REVIEW

1. We reviewed memo accessing the gaps in our relocation ordinance when tenants are facing repairs in their units and construction
  2. Reviewed Recommendations
-

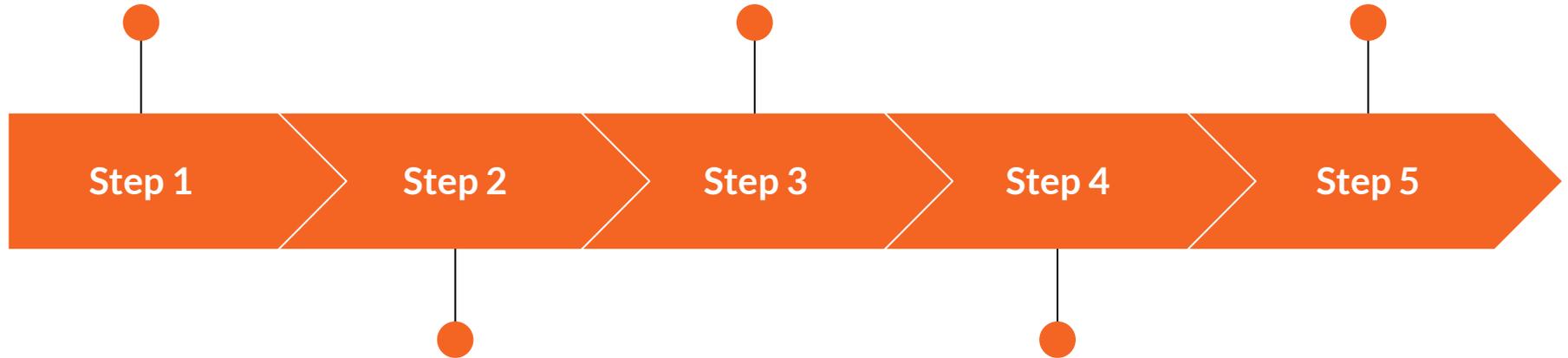
# Goals for next meeting

# Reminder of what a Tenant Habitability Plan

Provide THP to  
permitting agency

Landlord may apply for  
permit

Construction begins!



5 days for agency to  
approve or deny based  
on objective standards

Approved THP served on tenant 60 days before  
work can commence with Notice of Primary  
Renovation Work;  
THP plan, summary of plan and relocation option  
if work will last more than 30 days.

# Tenant Habitability Plan City of Berkeley Proposal

## What is the purpose of Tenant Habitability Plan:

1. Prevent permanent displacement when **substantial repairs** are needed;
2. Allow and facilitate substantial repairs while requiring mitigation of the possible negative impact on tenants of said repairs
3. Prevention of unsafe and harassing approaches to construction whether for the purposes of new construction or substantial repairs while tenants remain at property.
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5. Respond to the recent phenomena of \_\_\_\_\_ infill projects where tenants are in occupancy. (Harper Street)

## **Context and consideration:**

**Situations of work inside, outside or adjacent to occupied unit:**

- 1. Planned Repair by landlord**
- 2. Planned Construction by landlord**
- 3. Requested Repairs by tenant**
- 4. Emergency Repairs**
- 5. Tenant complains about unsafe or nuisance construction**



## When does a landlord need to fill out a tenant habitability plan?

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**What “work” should trigger the requirement that the landlord must fill out form and provide mitigation?**

## Menu of Work

1. Any work requiring a permit
2. Substantial repair and mediation: seismic retrofits, elevator repairs, and when hazardous materials such as lead paint or asbestos are being remediated

### 3. Any work in the following section:

## Menu of Work

#### **Berkeley Code Sections Referenced:**

Berkeley Code sections that could be referenced: Title 19 – Buildings and Construction.

- Berkeley Building Code BMC Chapter 19.29
- Berkeley Residential Code BMC Chapter 19.30
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- Berkeley Mechanical Code BMC Chapter 19.34
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- BMC Chapter 19.38: Seismic Hazard Mitigation Program for Unreinforced Masonry Buildings
- BMC Chapter 19.39: Potentially Hazardous Buildings Containing Soft, Weak, or Open Front Stories
- BMC Chapter 19.50: Elevators-buildings with ten or more units and two or more stories

# Menu

4. Requiring habitability plan submittal when a property with a tenant occupied structure receives a **notice of violation for code** violations including unpermitted work and other housing code violations. In Berkeley work without permit can be cited by either a building inspector or a housing inspector, both of which are in the Planning Department.
5. Requiring mitigations when work is being done **adjacent to a tenant's unit** for a sustained period of time.

6. Requiring a habitability plan for work on **properties that have a structure with a dwelling unit will cover the ADU situations** we heard about where a tenant could not access their unit or tenant parking spaces were temporarily or permanently removed due to ADU construction. Building permits are required for all ADUs so no specific requirement for ADUs needs to be included to cover this situation.

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—

# Direction for next steps?

## ARTICLE 2

# TENANT HABITABILITY PROGRAM

(Added by Ord. No. 176,544, Eff. 5/2/05.)

### Section

- 152.00 Title.
- 152.01 Declaration of Purpose.
- 152.02 Definitions.
- 152.03 Procedure for Undertaking Primary Renovation Work.
- 152.04 Notice and Service Requirements.
- 152.05 Permanent Relocation Assistance.
- 152.06 Temporary Relocation and Temporary Replacement Housing.
- 152.07 Remedies.
- 152.08 Authority of Commission to Regulate.

### SEC. 152.00. TITLE.

(Added by Ord. No. 176,544, Eff. 5/2/05.)

This article shall be known as the Tenant Habitability Program.

### SEC. 152.01. DECLARATION OF PURPOSE.

(Added by Ord. No. 176,544, Eff. 5/2/05.)

In its adoption of Section 151.00*et seq.* of this Code, the City recognized that displacement from rental housing creates hardships on renters who are senior citizens, persons on fixed incomes and low and moderate income households, particularly when there is a shortage of decent, safe and sanitary housing at affordable rent levels in the City. The City has also declared, in its adoption of Section 161.101*et seq.* of this Code, that it is in the public interest of the people of Los Angeles to protect and promote the existence of sound and wholesome residential buildings, dwelling units and neighborhoods by the adoption and enforcement of such standards, regulations and procedures as will remedy the existence or prevent the development or creation of dangerous, substandard, or unsanitary and deficient residential buildings and dwelling units.

The primary renovation program has been established to encourage landlords to extend the useful life of the rental housing stock in Los Angeles by reinvesting in the infrastructure of their properties. Through rent adjustments authorized by this chapter, landlords are able to recover a substantial portion of these renovation costs. However, Primary Renovation Work involves the replacement or substantial modification of major building systems or the abatement of hazardous materials and, by its very nature, such work generally makes rental units untenable, as defined by California Civil Code Section 1941.1, on a temporary basis.

This article is adopted to facilitate landlord investment in Primary Renovation Work without subjecting tenants to either untenable housing conditions during such renovation work or forced permanent displacement. The tenant habitability program requires landlords to mitigate such temporary untenable conditions, either through actions to ensure that tenants can safely remain in place during construction or through the temporary relocation of tenants to alternative housing accommodations. These two options should not be regarded as mutually exclusive but rather as complementary approaches that might be appropriate to different stages of the renovation process.

**SEC. 152.02. DEFINITIONS.****(Added by Ord. No. 176,544, Eff. 5/2/05.)**

The following words and phrases, whenever used in this article, shall be construed as defined in this section. Words and phrases not defined here shall be construed as defined in Sections 12.03, 151.02 and 162.02 of this Code, if defined in those sections.

**Notice of Primary Renovation Work.** Written notice, served by the landlord upon a tenant or tenant household at least 60 days, or as otherwise modified pursuant to Section 152.04, prior to the commencement of any Primary Renovation Work or Related Work and using a form established by the Department, advising the tenant of forthcoming Primary Renovation Work and Related Work, the impact of such work on the tenant, and measures the landlord will take to mitigate the impact on the tenant. **(Amended by Ord. No. 183,893, Eff. 11/22/15.)**

**Temporary Relocation.** The moving of a tenant from the tenant's permanent residence to habitable temporary housing accommodations in accordance with a Tenant Habitability Plan. The temporary relocation of a tenant from his/her permanent place of residence shall not constitute the voluntary vacation of the unit and shall not terminate the status and rights of a tenant, including the right to reoccupy the same unit, upon the completion of the Primary Renovation Work and any Related Work, subject to any rent adjustments as may be authorized under this chapter.

**SEC. 152.03. PROCEDURE FOR UNDERTAKING PRIMARY RENOVATION WORK.****(Added by Ord. No. 176,544, Eff. 5/2/05.)****A. Building Permits.**

1. No landlord shall undertake Primary Renovation Work without first obtaining a permit, pursuant to Sections 91.106, 92.0129, 92.0132, 93.0201, 94.103, or 95.112.2 of this Code. This requirement applies to all Primary Renovation Work, regardless of whether such work is eligible for a rent adjustment under any of the provisions of Section 151.07 A.1. of this Code and regardless of which provision of that subdivision, if any, is intended to be used as a ground for seeking a rent adjustment following the completion of the work.

2. The Department shall clear a landlord's application for a permit for Primary Renovation Work if both of the following conditions have been met:

a. The landlord has submitted a Tenant Habitability Plan which, in accordance with Subsection C. of this section, the Department finds to adequately mitigate the impact of Primary Renovation Work and any Related Work upon affected tenants; and

b. The landlord has submitted a declaration documenting service to affected tenants of both a Notice of Primary Renovation Work and a copy of the non-confidential portions of the Tenant Habitability Plan.

**B. Tenant Habitability Plan.** At a minimum, a Tenant Habitability Plan shall provide the following information, together with any other information the Department deems necessary to ensure that the impact of Primary Renovation Work and any Related Work upon affected tenants is adequately mitigated:

1. Identification of the landlord, the general contractor responsible for the Primary Renovation Work, and any specialized contractor responsible for hazardous material abatement, including but not limited to

lead-based paint and asbestos.

2. Identification of all affected tenants including the current rent each tenant pays and the date of each tenant's last rent increase. In accordance with California Civil Code Sec. 1798 *et seq.*, information regarding tenants shall be considered confidential.

3. Description of the scope of work covering the Primary Renovation Work and any Related Work. Such description shall address the overall work to be undertaken on all affected units and common areas, the specific work to be undertaken on each affected unit, an estimate of the total project cost and time, and an estimate of the cost and time of renovation for each affected unit.

4. Identification of the impact of the Primary Renovation Work and Related Work on the habitability of affected rental units, including a discussion of impact severity and duration with regard to noise, utility interruption, exposure to hazardous materials, interruption of fire safety systems, inaccessibility of all or portions of each affected rental unit, and disruption of other tenant services.

5. Identification of the mitigation measures that will be adopted to ensure that tenants are not required to occupy an untenable dwelling, as defined in California Civil Code Section 1941.1, outside of the hours of 8:00 am through 5:00 pm, Monday through Friday, and are not exposed at any time to toxic or hazardous materials including, but not limited to, lead-based paint and asbestos. Such measures may include the adoption of work procedures that allow a tenant to remain on-site and/or the temporary relocation of tenants.

6. Identification of the impact of the Primary Renovation Work and Related Work on the personal property of affected tenants, including work areas which must be cleared of furnishings and other tenant property, and the exposure of tenant property to theft or damage from hazards related to work or storage.

7. Identification of the mitigation measures that will be adopted to secure and protect tenant property from reasonably foreseeable damage or loss.

### C. Plan Acceptance.

1. The Department shall make a determination regarding the adequacy of a landlord's Tenant Habitability Plan within five working days of the Department's receipt of the plan for review. The Department shall accept those plans which meet the requirements of Subsection B. of this section and which it determines, with reference to the standards set forth in California Civil Code Section 1941.1 and in accordance with any regulations or guidelines adopted by the Commission, will adequately mitigate the impacts of Primary Renovation Work and any Related Work upon tenants. The Tenant Habitability Plan may allow for the temporary disruption of major systems during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, without requiring the relocation of tenants in order to adequately mitigate the impacts upon the affected tenants. However tenants should not be exposed at any time to toxic or hazardous materials including, but not limited to, lead-based paint and asbestos.

2. The Department's acceptance of a Tenant Habitability Plan shall be subject to the landlord having no outstanding balances due for rent registration or code enforcement fees.

3. The Department shall provide landlords with written indications of deficiencies which must be addressed whenever a Tenant Habitability Plan is determined to be inadequate. A landlord may submit an amended plan in order to correct identified deficiencies.

4. Landlords and tenants may appeal the Department's determination regarding a Tenant Habitability Plan to a hearing officer. The appeal shall be made in writing, upon appropriate forms provided by the Department, and shall specify the grounds for appeal. The appeal shall be filed within 15 calendar days of the service of the Department's determination, as required by Section 152.04 of this Code and shall be

accompanied by the payment of an administrative fee of \$35.00. The requested hearing shall be held within 30 calendar days of the filing of the appeal following the procedures set forth in Section 151.07 A.3. of this Code. The hearing officer shall issue a written decision within ten calendar days of the hearing on the appeal, with a copy of the decision served on the landlord and the tenants by first class mail, postage prepaid, or in person.

**D. Notice of Primary Renovation Work.** Notice of Primary Renovation Work shall be written in the language in which the original lease was negotiated and shall provide the following information:

1. The estimated start and completion dates of any Primary Renovation Work and Related Work associated with a Tenant Habitability Plan accepted by the Department.
2. A description of the Primary Renovation Work and Related Work to be performed and how it will impact that particular tenant or household.
3. The details of temporary relocation, if necessitated by the Primary Renovation Work, and associated tenant rights under this article.
4. Instructions that tenants with questions should consult the landlord, the Department, or the Department's designee.
5. Notice of a tenant's right to reoccupy the units under the existing terms of tenancy upon completion of Primary Renovation Work, subject to rent adjustments as authorized under this chapter.
6. Notice that the tenant may appeal the Department's acceptance of a Tenant Habitability Plan in cases where the tenant does not agree with the landlord regarding the necessity for the tenant to either be temporarily displaced or remain in place during Primary Renovation Work, provided such request is submitted within 15 days of the tenant's receipt of the Notice of Primary Renovation Work.

#### **SEC. 152.04. NOTICE AND SERVICE REQUIREMENTS.**

**(Added by Ord. No. 176,544, Eff. 5/2/05.)**

After the Department accepts the Tenant Habitability Plan, a landlord shall serve a copy of the Tenant Habitability Plan, Notice of Primary Renovation Work, a summary of the provisions of this article and, if applicable, a permanent relocation agreement form on any tenant affected by the Primary Renovation Work. Service of these items shall be provided in the manner prescribed by Section 1162 of the California Code of Civil Procedure and at least 60 days prior to the date on which the Primary Renovation Work and any Related Work is scheduled to begin.

For purposes of the Mandatory Earthquake Reduction requirements in LAMC Sections 91.9301, *et seq.*, and 91.9501, *et seq.*, and as authorized by Section 152.08 of this article, the Commission shall have the authority by regulation to modify the service and notice requirements. **(Added by Ord. No. 183,893, Eff. 11/22/15.)**

#### **SEC. 152.05. PERMANENT RELOCATION ASSISTANCE.**

**(Added by Ord. No. 176,544, Eff. 5/2/05.)**

**A.** If the Primary Renovation Work and any Related Work will impact the tenantability of a rental unit for 30 days or more, any tenant affected by the Primary Renovation Work and Related Work shall have the option to voluntarily terminate the tenancy in exchange for permanent relocation assistance pursuant to Section 151.09 G. of this Code and the return of any security deposit that cannot be retained by the landlord under applicable law. If the Primary Renovation Work and Related Work continues for 30 days longer than the projected completion

date set forth in the later of either the Tenant Habitability Plan or any modifications thereto accepted by the Department, the tenant's option to accept permanent relocation assistance shall be renewed. **(Amended by Ord. No. 183,893, Eff. 11/22/15.)**

**B.** A tenant may request to receive permanent relocation assistance within 15 days of service of the Tenant Habitability Plan. The tenant must inform the landlord of the decision to select permanent relocation by mailing or personally delivering a completed Permanent Relocation Agreement form to the landlord or agents thereof. Thereafter, the landlord shall have 15 days to provide the tenant with relocation assistance in the manner and for the amounts set forth in Section 151.09 G. of this Code.

**C.** Nothing in this section relieves the landlord from the obligation to provide relocation assistance pursuant to an administrative agency action or any other provision of federal, state or local law. If a tenant is entitled to monetary relocation benefits pursuant thereto, such monetary benefits shall operate as credit against any other monetary benefits required to be paid to the tenant under this section.

**D.** For purposes of the Mandatory Earthquake Reduction requirements in LAMC Sections 91.9301, *et seq.*, and 91.9501, *et seq.*, and as authorized by Section 152.08 of this article, the Commission shall have the authority by regulation to extend the time provisions by up to the maximum of an additional 180 days. **(Amended by Ord. No. 183,893, Eff. 11/22/15.)**

**SEC. 152.06. TEMPORARY RELOCATION AND TEMPORARY REPLACEMENT HOUSING.**  
**(Added by Ord. No. 176,544, Eff. 5/2/05.)**

**A.** The landlord shall indicate in its Tenant Habitability Plan whether the temporary relocation of one or more tenant households is necessary. Pursuant to Section 152.03 of this Code, the Department independently may determine whether temporary relocation is necessary in conjunction with its review of the Tenant Habitability Plan. The Department may also require the temporary relocation of a tenant at any time during the project if the Department determines temporary relocation is necessary to ensure the health or safety of the tenant.

**B.** The temporary relocation of a tenant pursuant to this article shall not constitute the voluntary vacating of that rental unit and shall not terminate the status and rights of a tenant, including the right to reoccupy the tenant's rental unit upon the completion of the Primary Renovation Work and any Related Work.

**C.** A tenant who is temporarily relocated as a result of Primary Renovation Work shall continue to pay rent in the manner prescribed by any lease provision or accepted in the course of business between the landlord and the tenant.

**D.** A landlord shall pay for all temporary housing accommodation costs and any costs related to relocating the tenant to temporary housing accommodations, regardless of whether those costs exceed rent paid by the tenant. The landlord shall also pay any costs related to returning the tenant to his/her unit, if applicable. The Commission may adopt guidelines or regulations regarding the payment of moving costs.

**E.** A landlord may choose to place a tenant's rent and any other required payments in an escrow account. All costs of opening and maintaining the escrow account shall be borne by the landlord. Monies deposited into the escrow account shall be distributed in accordance with guidelines or regulations established by the Commission. The cost of opening an escrow account is not recoverable under Section 151.07 A.1.d. of this Code. **(Amended by Ord. No. 177,103, Eff. 12/18/05.)**

**F.** A landlord must temporarily relocate a tenant to habitable temporary housing accommodations if the Primary Renovation Work and any Related Work will make the rental unit an untenable dwelling, as defined in California Civil Code Section 1941.1, outside of the hours of 8:00 am through 5:00 pm, Monday through Friday, or will expose the tenant at any time to toxic or hazardous materials including, but not limited to, lead-based paint and asbestos.

**1. Temporary Replacement Housing Accommodations for 30 or more consecutive days.** If the temporary relocation lasts 30 or more consecutive days, the landlord shall make available comparable housing either within the same building or in another building. For purposes of this section, a replacement unit shall be comparable to the existing unit if both units are comparable in size, number of bedrooms, accessibility, proximity to services and institutions upon which the displaced tenant depends, amenities, including allowance for pets, if necessary, and, if the tenant desires, location within five miles of the rental unit. The landlord and tenant may agree that the tenant will occupy a non-comparable replacement unit provided that the tenant is compensated for any reduction in services.

**2. Temporary Replacement Housing Accommodations for fewer than 30 consecutive days.** If the temporary relocation lasts less than 30 consecutive days, the landlord shall make available temporary housing that, at a minimum, provides habitable replacement accommodations within the same building or rental complex, in a hotel or motel, or in other external rental housing. The Commission may adopt guidelines or regulations regarding temporary housing. If the temporary housing is in a hotel, motel or other external rental housing, it shall be located no greater than two miles from the tenant's rental unit, unless no such accommodation is available, and contain standard amenities such as a telephone.

**3. Per Diem Payment.** A landlord and tenant may mutually agree to allow the landlord to pay the tenant a per diem amount for each day of temporary relocation in lieu of providing temporary replacement housing. The agreement shall be in writing and signed by the landlord and tenant and shall contain the tenant's acknowledgment that he/she received notice of his/her rights under this section and that the tenant understands his/her rights. The landlord shall provide a copy of this agreement to the Department.

**G.** The landlord shall provide written notice, before the tenant is temporarily displaced, advising the tenant of the right to reoccupy the unit under the existing terms of tenancy once the Primary Renovation Work and any Related Work is completed. Unless the landlord provides the temporary replacement housing, the tenant shall provide the landlord with the address to be used for future notifications by the landlord. When the date on which the unit will be available for reoccupancy is known, or as soon as possible thereafter, the landlord shall provide written notice to the tenant by personal delivery, or registered or certified mail, and shall provide a copy of that notice to the Department. If the tenant was temporarily relocated for over 30 days and has a separate tenancy agreement with a third party housing provider, the landlord shall give the tenant a minimum of 30 days written notice to reoccupy. In all other cases, the landlord shall give the tenant a minimum of seven days written notice to reoccupy, unless the landlord gave the tenant written notice of the date of reoccupancy prior to the start of temporary relocation.

#### **SEC. 152.07. REMEDIES.**

**(Added by Ord. No. 176,544, Eff. 5/2/05.)**

**A.** A landlord who fails to abide by the terms of an accepted Tenant Habitability Plan shall be denied individual rent adjustments under Section 151.07 A.1.(d) of this Code, absent extenuating circumstances.

**B.** In any action by a landlord to recover possession of a rental unit, the tenant may raise as an affirmative defense the failure of the landlord to comply with any provisions contained in this article.

**C.** Any person who willfully or knowingly with the intent to deceive, makes a false statement or representation, or knowingly fails to disclose a material fact in any plan or notice required under this article, or in any declaration, application, hearing or appeal permitted under this article, including oral or written evidence presented in support thereof, shall be guilty of a misdemeanor.

Any person convicted of a misdemeanor under the provisions of this chapter shall be punished by a fine of not more than \$1,000.00 or by imprisonment in the County Jail for a period of not more than six months or both.

Each violation of any provision of this chapter and each day during which such violation is committed, or continues, shall constitute a separate offense.

D. Any person who fails to provide relocation assistance pursuant to Section 152.05 of this Code shall be liable in a civil action to the person to whom such assistance is due for damages in the amount of the unpaid relocation assistance, together with reasonable attorney's fees and costs as determined by the court.

E. Any person who breaches any duty or obligation set forth in Section 152.06 of this Code shall be liable in a civil action by any person, organization or entity, for all actual damages, special damages in an amount not to exceed the greater of twice the amount of actual damages or \$5,000, and reasonable attorney's fees and costs as determined by the court. Damages of three times the amount of the actual damages may be awarded in a civil action for willful failure to comply with the payment obligations, to provide safe, decent and sanitary temporary replacement housing, or to allow a tenant to reoccupy a rental unit once the primary work is completed.

F. Any agreement, whether written or oral, waiving any of the provisions contained in this article shall be void as contrary to public policy.

G. Nothing in this article shall be construed to deprive a person of due process rights guaranteed by law, including, but not limited to, a right to appeal the Department's determination regarding a Tenant Habitability Plan to a hearing officer.

H. The remedies provided by this article are in addition to any other legal or equitable remedies and are not intended to be exclusive.

#### **SEC. 152.08. AUTHORITY OF COMMISSION TO REGULATE.**

**(Amended by Ord. No. 183,893, Eff. 11/22/15.)**

A. The Commission shall be responsible for carrying out the provisions of this article and shall have the authority to issue orders and promulgate policies, rules and regulations to effectuate the purposes of this article. All such rules and regulations shall be published once in a daily newspaper of general circulation in the City of Los Angeles, and shall take effect upon such publication. The Commission may make such studies and investigations, conduct such hearings, and obtain such information as it deems necessary to promulgate, administer and enforce any regulation, rule or order adopted pursuant to this article.

B. In order to provide sufficient time for owners to comply with the Mandatory Earthquake Hazard Reduction requirements in LAMC Sections 91.9301, *et seq.*, and 91.9501, *et seq.*, the Commission may do the following:

1. Modify the service and notice requirements set forth in Section 152.04 this article; and/or

2. Grant, upon request by owner, an extension of up to 180 days beyond the original project completion date without triggering the permanent relocation assistance requirements set forth at Section 151.09 G. of this Code. Prior to granting an owner's request to extend project completion dates, the Commission shall notify the Department of Building and Safety of the request. If work performed pursuant to Mandatory Earthquake Hazard Reduction Requirements is not completed by the original project completion date or by a subsequent date authorized by RAC, any tenant, subtenant, lessee, sublessee, or other person(s) entitled to use and/or occupy the building or residential unit affected by such work shall have the option to voluntarily terminate the tenancy in exchange for permanent relocation assistance, pursuant to Section 151.09 G., and the return of any security deposit that cannot be retained by the owner under applicable law.

C. Before modifying service and notice requirements and/or granting time extensions under its authority in subparagraph B. of this section, the Commission shall find that the modifications and/or time extensions are necessary to carry out the purpose of the Mandatory Earthquake Hazard Reduction requirements of this Code.





RENT

# Primary Renovation Application Questionnaire

- 1. Is construction work involving repairing or replacing major building systems?  Yes  No
- 2. Was the work done to comply with an order issued by the Department of Building & Safety or, the LA Housing & Community Investment Department?  Yes  No
- 3. Does this project improve the property by: increasing its useful life, or adding value?  Yes  No

And  
Involves either one or both of the following:

- a) Replacement or substantial modification of a structural, electrical, plumbing, or mechanical system (that requires a permit under LAMC)  Yes  No
- b) Abatement of hazardous materials, such as lead-based paint and asbestos?  Yes  No

- 4. Did a licensed contractor(s) perform the work?  Yes  No
- 5. Does the work involved require a permit?  Yes  No
- 6. Was the Tenant Habitability Plan (THP) approved prior to start of work?  Yes  No  
(If you do not have an approved THP on file, please submit Capital Improvement on-line application.)
- 7. Did you wait 60 days to start the work after THP approval?  Yes  No  
(If not, please submit Capital Improvement on-line application.)
- 8. Have you submitted a Primary Renovation (PR) application within the last 5 years?  Yes  No  
(PR Cost Recovery application submission is limited to every 5 years per APN.)

9. PR rent increase is permanent and implemented in two phases. In most cases, a PR proposed rent increase is lower than a Capital Improvement proposed rent increase based on the same amount of per unit cost.

I have read it.

10. Do you want to apply for PR?  Yes  No

For more information please call (213) 928-9063.

CONTINUE

## Chapter 13.84

# RELOCATION SERVICES AND PAYMENTS FOR RESIDENTIAL TENANT HOUSEHOLDS

Sections:

- 13.84.010 Purpose.**
- 13.84.020 Definitions.**
- 13.84.025 Notice.**
- 13.84.030 Eligibility for relocation services and assistance.**
- 13.84.040 Owner responsibilities.**
- 13.84.050 Relocation payment and appeals procedures for code enforcement activity.**
- 13.84.060 Relocation payment procedures for voluntary code compliance.**
- 13.84.070 Relocation and other payments.**
- 13.84.080 City's involvement in relocation payments.**
- 13.84.090 Move-back option.**
- 13.84.100 Conflict resolution and appeal procedures for voluntary code compliance.**
- 13.84.110 Private right of action.**
- 13.84.120 Severability.**

### **13.84.010 Purpose.**

The purpose of this chapter is to provide relocation services and require property owners to make certain payments to residential tenant households temporarily relocated as a result of code enforcement activities or voluntary code compliance in order to alleviate hardships associated with such relocations; to facilitate the correction of code violations; and to protect the health, safety and welfare of Berkeley residents. (Ord. 7212-NS § 1 (part), 2011)

### **13.84.020 Definitions.**

- A. "Code enforcement" or "code enforcement activity" means an activity or activities initiated by the City to require an owner to bring the property into compliance with applicable laws including, but not limited to, actions by the Building Official or Fire Marshal after a fire ordering relocation.
- B. "Household" or "tenant household" for purposes of this chapter means one or more individuals entitled to the occupancy of a rental unit or room who share living expenses.

- C. "Natural disaster" means any natural event which results in damage to property, such as, but not limited to, an earthquake, flood, or forest fire.
- D. "Owner" means a person, persons, corporation, partnership or any other entity possessing ownership of a property individually, jointly, in common or in any other manner or their agent or assignee.
- E. "Relocate" or "relocation" means the required vacating of a residential unit or room by a tenant household and the moving temporarily into another unit or room as a result of repairs required to bring the building or a portion thereof which contains a residential unit or room occupied by the tenant household into code compliance whether such repairs are undertaken because of code enforcement or through voluntary code compliance as defined below.
- F. "Residential unit" or "unit" means a building or portion of a building designed for, or occupied exclusively by, one or more persons living as a household.
- G. "Room" means a room in a hotel or boarding house or a rented room in a private dwelling occupied by a tenant household for at least thirty (30) consecutive days.
- H. "Voluntary code compliance" means actions voluntarily initiated by an owner to achieve compliance with applicable laws including, but not limited to, fumigation, as well as to seismically retrofit a building on the inventory of potentially hazardous soft story buildings established under Chapter [19.39](#) so as to remove it from such inventory under Section [19.39.080.B](#) if such retrofit is required by the City. (Ord. 7456-NS § 1, 2016; Ord. 7212-NS § 1 (part), 2011)

### **13.84.025 Notice.**

Whenever any notice or other communication is required by this chapter to be served on, provided, given or delivered to, or filed with any person, that notice or communication may be communicated by personal delivery, certified mail, first class mail, e-mail, or any other similar method that will provide a written record of the notice or communication. (Ord. 7212-NS § 1 (part), 2011)

### **13.84.030 Eligibility for relocation services and assistance.**

- A. A tenant household shall be eligible for relocation assistance and payments pursuant to this chapter if the City determines that the condition of a building or portion thereof is such that a unit or room cannot be safely occupied by that tenant household while the building or portion thereof is being brought into code compliance and if such condition was not primarily or entirely created by the tenant household occupying the unit or room.
- B. A tenant household shall not be eligible for relocation assistance and payments pursuant to this chapter if the required relocation of the tenant household is the result of an earthquake or other natural disaster. (Ord. 7212-NS § 1 (part), 2011)

### **13.84.040 Owner responsibilities.**

- A. The owner shall be responsible for providing relocation payments directly to the tenant household required to relocate pursuant to this chapter. The owner is also responsible for complying with Section [13.76.130](#) (rent stabilization and eviction for good cause ordinance).
- B. If the owner or the City determines that relocation is necessary, the owner shall provide a written notice of temporary relocation to any affected tenant households thirty (30) days in advance of the required relocation unless the City orders abatement that requires relocation in less than thirty (30) days and, in such case, the owner shall provide a notice within ten (10) days of the City's abatement order. Such notice shall summarize the repairs to be undertaken and the estimated duration of relocation. Any such notice which the owner serves upon a tenant household shall refer to and shall be accompanied by a copy of this chapter and the City's request for relocation payment form. Nothing in this section shall relieve the owner of their obligation to serve any notice that would otherwise be required pursuant to state or local law.
- C. The owner shall notify the tenant household when repairs are completed and permit the tenant household to reoccupy the residential unit or room as per Section [13.84.090](#). The tenant household shall retain all rights of tenancy that existed prior to relocation, except as set forth in Section [13.84.070.G.2](#). (Ord. 7212-NS § 1 (part), 2011)

### **13.84.050 Relocation payment and appeals procedures for code enforcement activity.**

- A. Whenever a building or portion thereof which contains a residential unit or room is declared in violation of any law, the Building Official or Fire Marshal, as appropriate, shall determine whether the repairs necessary to abate the violation(s) can reasonably be accomplished without relocation of the tenant household in possession of the unit or room. Such determination shall be served in the same manner as the notice of violation. The absence of an express determination that relocation is required shall be deemed a determination that relocation is not required.
- B. Any affected tenant household or owner who disputes a determination made by the Building Official or Fire Marshal under subsection A of this section may file a written request for a hearing by the Housing Advisory Commission. Such request for hearing must be filed within ten (10) days of the date of the notice from the Building Official or Fire Marshal.
- C. Appeals of determinations by the Building Official or Fire Marshal of the necessity to relocate due to an imminent threat to life and safety shall not delay enforcement of the vacation ordered by the Building Official or Fire Marshal.
- D. The determination by the Building Official or Fire Marshal that a tenant household is required to relocate pursuant to this chapter shall not relieve the owner of their obligation to provide a notice of temporary relocation pursuant to Section [13.84.040](#). Any such notice which the owner serves upon a tenant household shall refer to and shall be accompanied by a copy of this chapter, and the City's request for relocation payment form. Nothing in this

section shall relieve the owner of their obligation to serve any notice that would otherwise be required pursuant to state or local law.

E. Each tenant household which has been served with a notice of temporary relocation from the owner indicating that relocation is required in accordance with the notice of violation shall complete a request for relocation payment form to calculate the amount of the initial payment to which the household is entitled pursuant to Section [13.84.070](#). The tenant household shall serve the completed request for relocation payment to the owner within thirty (30) days after receipt of the notice of temporary relocation.

F. Within five business days after receipt of the tenant household's completed request for relocation payment form, the owner shall make the initial relocation payment directly to the tenant household as per Section [13.84.070](#), or follow the conflict resolution and appeal procedure as specified in Section [13.84.100](#). (Ord. 7212-NS § 1 (part), 2011)

### **13.84.060 Relocation payment procedures for voluntary code compliance.**

A. Whenever an owner applies for a building permit to bring a residential unit or room into code compliance, the owner shall be required to specify whether repairs will necessitate the tenant household occupying the unit or room to relocate.

B. The City shall provide the owner with a notice containing information about the tenant household's relocation rights pursuant to this chapter, as well as a copy of this chapter and a City contact number where additional information can be obtained.

C. If the owner determines that relocation may be necessary to undertake repairs to bring the property into code compliance or as a result of fumigation, the owner shall serve all affected tenant households with a notice of temporary relocation, a copy of this chapter, and a copy of the City's request for relocation payment form. These documents shall be provided to tenants at least thirty (30) days in advance of the required relocation. Nothing in this section shall relieve the owner of their obligation to serve any notice that would otherwise be required pursuant to state or local law.

D. If the tenant household disagrees with the owner's determination of the necessity to relocate, the tenant household may follow the conflict resolution and appeals procedure as specified in Section [13.84.100](#).

E. The Building Official must receive acknowledgment(s) of receipt by the tenant household(s) of the documents required by subsection C of this section before the City will issue the building permits necessary to undertake repairs. Such acknowledgment may be in the form of the tenant household's signature asserting receipt, or other proof substantiating that a notice was delivered to the affected tenant household(s).

F. Each tenant household which has been served with the notice required by subsection C of this section or the Building Official's determination pursuant to Section [13.84.100](#).A.3 shall complete a request for relocation payment form to calculate the amount of the initial payment to which the household is entitled pursuant to Section [13.84.070](#). The tenant household shall notify the owner of the amount of payment to which the tenant household is entitled within thirty (30) days of receipt of the notice from the owner.

G. Within ten (10) days after receipt of the tenant household's completed relocation payment form, the owner shall make the initial relocation payment directly to the tenant household as per Section [13.84.070.K](#) or follow the conflict resolution and appeal procedure as specified in Section [13.84.100](#).

H. The relocation of a tenant household pursuant to this chapter shall not terminate the tenancy of the relocated household. The relocated household shall have the right to reoccupy the unit or room from which it was relocated as soon as the unit or room is ready for reoccupancy, except as set forth in Section [13.84.070.G.2](#). (Ord. 7212-NS § 1 (part), 2011)

### **13.84.070 Relocation and other payments.**

A. Households to be relocated for twenty-nine (29) consecutive days or less, including households covered under section [13.84.040.B](#), shall be entitled to the following relocation payments:

1. A per diem payment to compensate for hotel or motel accommodations and meals. Such payment amount shall be established by City Council resolution and be based upon tenant household size.
2. Reimbursement for daily boarding costs for pets lawfully occupying the unit or room from which the tenant household was relocated at the date of relocation if the tenant household's temporary accommodation does not accept pets. The tenant household shall receive reimbursement for reasonable boarding costs. The maximum reimbursement rate shall be established by City Council resolution. The tenant household must provide proof of the actual boarding costs incurred in order to receive reimbursement from the owner. For purposes of this section, "pets" shall exclude any pet that is customarily kept in an enclosure such as a cage, terrarium or aquarium, and the number of pets lawfully occupying a unit or room shall be the number specifically permitted by written agreement.
3. The initial relocation payment shall be due within ten (10) days of the owner's receipt of the tenant household's request for relocation payment. If the period of relocation is less than ten (10) days, the initial relocation payment shall include the per diem payment for the full period. If the period of relocation exceeds ten (10) days, the initial relocation payment shall include either:
  - (a) A lump sum per diem payment for the full period of relocation; or
  - (b) The per diem payment for a minimum of ten (10) days, with subsequent payment contingent upon verification of hotel costs incurred by the tenant household. Such payments are due to the tenant household immediately upon owner's receipt of documentation verifying the household's expenses. If the tenant household does not incur hotel costs, it is only entitled to receive a meal allowance for each member of the household during the remaining period of relocation.

B. Households to be relocated for a period of thirty (30) consecutive days or longer shall be entitled to relocation payments that include all of the following:

1. A one-time dislocation allowance to help defray incidental relocation expenses. The amount of the dislocation allowance shall be established by City Council resolution.

2. The household's choice of reimbursement for actual moving and storage expenses or a fixed payment, subject to the following requirements:
    - (a) If a fixed payment is chosen, no documentation of expenses is necessary. The amount of the fixed payments shall be established by City Council resolution.
    - (b) Reimbursement for actual documented moving and storage expenses shall include both moving costs to the replacement unit(s) and moving costs back to the original unit. Moving costs shall consist of actual reasonable costs of moving, including transportation of personal property, packing and unpacking, insurance of personal property while in transit, compensation for any damage occurring during moving, storage of personal property, disconnection and reconnection of utility services and any additional reasonable costs associated with the required moving. Payments for a one-way move shall not exceed rates established in the fixed residential moving cost schedule approved by the Federal Highway Administration and published in the federal register on a periodic basis.
  3. If the rental costs incurred by the tenant household during the period of relocation exceed the amount of rent being paid on the unit or room to be vacated, the household shall be eligible for a rent differential payment. The rent differential payment shall be equal to the difference between the rent paid on the unit or room to be vacated and the rent paid for a unit or room temporarily leased during the period of relocation, with the following restrictions:
    - (a) The rent differential payment shall not exceed a ceiling established annually by the City based on the average market rent statistics gathered and published by the rent stabilization program for the prior calendar year.
    - (b) The ceiling for the rent differential payment shall be based on the bedroom size of the unit or room to be vacated, with the exception of payments for relocation from rooms which shall be calculated on the same basis as payment for relocation from a studio apartment.
    - (c) The rent differential payment for a tenant household receiving a rental subsidy shall be based on the amount of rent paid by the tenant household for the unit or room leased by the tenant household during the period of relocation. The owner may coordinate with the entity providing the subsidy to assure the continuity of the rental subsidies during the period of relocation.
  4. Reimbursement for the documented utility cost(s) that the tenant household incurs in their replacement housing, if the owner had been paying that particular utility cost for the vacated unit or room.
- C. The initial relocation payment pursuant to subsection [B](#) of this section shall be due within ten (10) days of the owner's receipt of the tenant household's request for relocation payment, and shall include:
1. The dislocation allowance;
  2. Either the fixed payment for moving and storage costs if applicable, or payment for moving costs based on a reasonable estimate from a qualified professional mover;

3. The rent differential payment for one month or, if the relocation is anticipated to exceed ninety (90) days, then the initial payment shall include the rent differential payment for the first three-month period.

D. Subsequent payments for rent differential, utilities and storage costs pursuant to subsections [B.2.b](#) through [B.4](#) of this section, when applicable, shall be made on a monthly basis thereafter. Such payments shall be made at least seven days in advance of when the tenant household's monthly rental payment is due. Instead of monthly payments the owner may make one lump sum payment for the full amount due for the rent differential payments to the tenant household. If the tenant household qualifies for reimbursement for monthly storage or utilities costs, these payments continue on a monthly basis or upon receipt by the owner of documentation that verifies the household's expenses.

E. Payments pursuant to subsections [B.2.b](#) through [B.4](#) of this section, when applicable, shall continue until such time that the unit from which the tenant household was relocated is available for occupancy or the tenant household has notified the owner of their intent to permanently vacate the unit.

F. If the tenant household has not been offered the opportunity to reoccupy the unit from which it relocated within six months from the date of their relocation, the tenant household shall be entitled to receive an additional dislocation allowance payment. The tenant household must provide written request for the additional dislocation payment to the owner which includes confirmation of their intent to reoccupy the unit. Such payment is due within ten (10) days after receipt of the tenant household's request. Acceptance of such payment does not constitute a tenant household's relinquishment of any tenancy rights.

G. 1. In lieu of the per diem payments in subsection A of this section, or rent differential and utility payments in subsections B.3 and B.4 of this section, the owner may offer an alternate rental unit or room to the tenant household that is comparable to the unit or room being vacated and is owned by the owner. The amount of rent paid by the household for such unit or room shall not exceed the rent being paid on the unit or room from which the tenant household relocated. If the tenant household accepts the owner's offer, the tenant household does not relinquish its right to reoccupy the unit or room from which it is being relocated unless the tenant household provides written notice surrendering possession of the unit or room. A tenant household that accepts an alternate unit or room is entitled to receive the dislocation allowance in subsection [B.1](#) of this section and compensation for moving and storage costs if applicable as provided in subsection [B.2](#) of this section.

2. If the tenant household does not timely notify the owner of its intent to reoccupy the unit or room under Section [13.84.090](#) and seeks to remain in its alternate unit, it thereby surrenders its right to reoccupy the unit or room from which it has relocated and terminates its tenancy of that unit or room, and the rent for the alternate unit or room shall not be limited by this chapter and may be increased to an amount otherwise permissible by Chapter [13.76](#). Nothing in this section limits the owner's right to evict a tenant household pursuant to Section [13.76.130.A.11](#).

H. A tenant household that is relocated for thirty (30) days or more shall not be responsible for any rent due on the unit or room from which it was relocated during the period of relocation and failure to pay rent during this period shall not constitute relinquishment of tenancy rights.

- I. The owner and tenant household may mutually agree upon temporary housing and relocation payments other than that provided by this chapter. Such agreement shall be in writing and signed by both the owner and tenant household with a copy provided to the City's Housing and Community Services Department.
- J. If a tenant household's actual relocation period is shorter than the period for which the owner has paid, the tenant household must repay the overpaid amount to the owner within thirty (30) days of receiving written notice from the owner of the overpayment. If the tenant household has incurred a financial obligation to pay rent, utilities, or storage costs during the remaining period of their relocation, these costs may be deducted from the amount to be repaid to the owner, subject to the provisions of subsection B of this section.
- K. All payments to tenant households under this chapter shall be made to those persons in the tenant household from whom the owner has received rental payments during the immediately preceding rental period, in the same proportion in which such payments were made. The owner shall have no liability or other obligation with respect to further division or allocation of such payments among the members of the tenant household. Nothing in this section shall be construed to affect the determination of the actual number of tenants in the tenant household for purposes of Chapter [13.76](#).
- L. The size of a tenant household shall be determined based on the number of individuals entitled to occupy the unit or room at the time a determination of the Building Official is served under Section [13.84.050](#) or a notice of temporary relocation is served under Section [13.84.060.C](#).
- M. Upon receipt of the full relocation payment under this chapter and a notice of temporary relocation, the tenant household shall relocate within thirty (30) calendar days. Failure to relocate pursuant to such notice may entitle the landlord to issue a notice to vacate and be a basis for good cause eviction pursuant to Section 13.76.130.A.7.a.
- N. The City Council shall by resolution adopt a reasonable reimbursement rate for the following based upon surveys of prevailing costs for services, subject to limitations set forth in this chapter and any additional limitations set forth in the resolution:
1. Per diem rates for hotel accommodations and meal allowance pursuant to subsections [A.1](#) and [A.3](#) of this section;
  2. Maximum boarding costs for pets pursuant to subsection [A.2](#) of this section;
  3. Dislocation allowance pursuant to subsections [B.1](#) and [F](#) of this section;
  4. Fixed payments for moving and storage pursuant to subsection [B.2](#) of this section. (Ord. 7456-NS § 2, 2016; Ord. 7212-NS § 1 (part), 2011)

### **13.84.080 City's involvement in relocation payments.**

The City may provide payment required by Section [13.84.070](#) to tenant households in situations where the owner fails or refuses to pay for required relocation costs. The City shall recover from the owner all costs incurred as a result of making such payments. In order for the City to consider such payments, a request must be made by the

tenant household to the City Manager or their designee within twenty (20) days from the owner's failure or refusal to make the required payments as required in Sections [13.84.050.F](#) and [13.84.060.G](#).

A. Upon receipt of a request from a tenant household the City shall mail a written notice to the owner of the owner's obligation under this chapter to provide relocation assistance and payment and the time when payment is required. The notice shall also specify that failure to make required payments may result in the City making such payments and recovering the costs of doing so from the owner through a special assessment lien on the owner's property that shall include an administrative lien fee.

B. If within ten (10) days of the receipt of the notice provided pursuant to subsection A of this section the owner continues to fail or refuse to make the necessary payments, the City may make the required relocation payment to the household. The City shall then bill the owner for the amount of payment, plus any administrative and other costs it would not have otherwise incurred. If the owner does not pay the City within a thirty (30) day period, the City may recover the costs as a special assessment lien on the owner's property along with an administrative lien fee in accordance with Chapter [1.24](#). The City Manager or their designee shall notify the owner. (Ord. 7212-NS § 1 (part), 2011)

### **13.84.090 Move-back option.**

A. The relocation of a tenant household pursuant to this chapter shall not terminate the tenancy of the relocated household. The relocated household shall have the right to reoccupy the unit or room from which it was relocated as soon as the unit or room is ready for reoccupancy, and the tenant household shall retain all rights of tenancy that existed prior to the displacement.

B. If a household wishes to avail itself of this option, it must inform the owner of its current address during the period of relocation.

C. For tenant households displaced for thirty (30) consecutive days or more, owners shall notify the tenant household at least thirty (30) days in advance of the availability of the unit or room. Within ten (10) days of receipt of the notice of availability, a tenant household must notify the owner if it wishes to reoccupy the unit or room. The owner must hold the unit or room vacant at no cost to the tenant household for thirty (30) days from the date the tenant household's written notice of its intent to reoccupy the unit or room is received.

D. For households displaced for twenty-nine (29) consecutive days or less and receiving a per diem payment, owners shall notify the household at least one day in advance of the availability of the unit or room. The household shall be entitled to receive a per diem payment for up to twenty-four (24) hours after receiving such notice that the unit or room is ready for occupancy. Within ten (10) days of receipt of the notice of availability from the owner, the household must notify the owner of its intent to reoccupy the unit or room.

E. A unit or room shall be deemed to be permanently surrendered and the tenancy terminated when the tenant household provides notice in writing to the owner that it does not intend to reoccupy the unit or room from which it was relocated or does not notify the owner of its intent to reoccupy the unit or room. If the owner has not made relocation payments as required by this chapter and the unit or room becomes permanently vacated, then it shall be presumed that the surrender of the right of possession of the unit or room was involuntary unless the owner

has received a written notice from the tenant household permanently surrendering its right to their unit or room. (Ord. 7212-NS § 1 (part), 2011)

### **13.84.100 Conflict resolution and appeal procedures for voluntary code compliance.**

A. Appeals under this chapter related to voluntary code compliance shall be filed as set forth below. Appeal procedures related to code enforcement activity are addressed in Section [13.84.050](#).

1. If the tenant household disputes the owner's determination of the necessity for relocation, or either party disputes the amount of relocation payments or other terms of the relocation, the City may refer the parties to a conflict resolution or mediation service provided through the Rent Stabilization Board or any other appropriate entity upon request by both parties for such referral in lieu of an appeal to the Building Official per subsection [A.3](#) of this section. The purpose of such referral shall be the negotiation of a mutually acceptable agreement pertaining to the terms of the relocation. If no agreement is reached, then either party may follow the appeals procedure as set forth in this section. Nothing in this chapter shall preclude the parties from meeting on their own at any time, with or without a mediator, in an attempt to resolve their disagreements.

2. If the owner disagrees with the tenant household's claim for relocation payments, and such disagreement cannot be resolved through conflict resolution or mediation, then the owner may file a written request for a hearing by the Housing Advisory Commission as to the amount of the claim, or their responsibility for relocation assistance pursuant to this chapter. Such request must be filed within five business days of the conclusion of mediation or within ten (10) days of the owner's receipt of the tenant household's claim of relocation payments as set forth in Section [13.84.050.E](#) or [13.84.060.F](#), whichever comes later.

3. If the tenant household disagrees with the owner as to the necessity to relocate, and such disagreement cannot be resolved through conflict resolution or mediation, the tenant household may request in writing that the Building Official make a determination. Such request must be filed within five business days of the conclusion of mediation, or within ten (10) days of the tenant household's receipt of the relocation notice in Section [13.84.060.C](#), whichever comes later. The Building Official shall determine whether relocation is necessary and the owner shall serve all affected tenant households with a copy of the Building Official's determination. This decision shall be final.

B. All hearings conducted before the Housing Advisory Commission shall be scheduled for the next available meeting unless a postponement is agreed upon by all parties. The Commission may convene a special meeting if delay of a hearing until the next regularly scheduled meeting would create a hardship. The owner and all affected tenant households shall be notified of the time and place of the hearing at least ten (10) days before the date of hearing. The Commission shall render its decision on any such appeal within ten (10) days after the hearing on the appeal is closed. The Commission's decision shall be final.

C. Nothing in this chapter shall in any way preclude or limit any aggrieved party from seeking judicial review after such person has exhausted the administrative remedies provided by this chapter. However, it shall be conclusively

presumed that a litigant has not exhausted their administrative remedies as to any issue which is not raised in the administrative proceedings authorized herein. (Ord. 7212-NS § 1 (part), 2011)

### **13.84.110 Private right of action.**

Any tenant that believes that the provisions of this chapter have been violated shall have the right to file an action for injunctive relief and/or damages. Treble damages may be awarded for willful failure to comply with the payment obligations established by this chapter and for actual damages incurred by a household as a result of the owner's willful failure to offer the relocated household the opportunity to reoccupy the unit from which it relocated. In any action brought under this chapter, the court may award reasonable attorney fees to any prevailing party. (Ord. 7212-NS § 1 (part), 2011)

### **13.84.120 Severability.**

If any provision of this chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the chapter shall not be invalidated. (Ord. 7212-NS § 1 (part), 2011)

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**The Berkeley Municipal Code is current through Ordinance 7830-NS, passed July 26, 2022.**

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.berkeleyca.gov](http://www.berkeleyca.gov)

[Code Publishing Company](#)



CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 November 15, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson (Author), Vice Mayor Kate Harrison (Author), and Councilmember Terry Taplin (Author)

Subject: Referral: Establishing an Electric Bike Rebate Program and Expanding Low-Income E-Bike Ownership through the Climate Equity Action Fund

RECOMMENDATION

Refer to the City Manager to establish a two-tiered point-of-sale rebate program to reduce the up-front cost of electric bicycles and necessary safety and security accessories for Berkeley residents, including:

- Rebate Level 1: a point-of-sale rebate to be made available to all City of Berkeley residents
- Rebate Level 2: a point-of-sale rebate that covers a higher percentage of the cost than Rebate Level 1, to be made available to low-income City of Berkeley residents.

Refer \$500,000 to the FY 2023 AAO #1 process as follows:

- \$400,000 for the point of sale rebate program
- \$100,000 in supplementary funding towards the Climate Equity Action Fund (CEAF) to further facilitate e-bike ownership among low-income Berkeley residents.

BACKGROUND

In April 2022, the U.N.'s Intergovernmental Panel on Climate Change (IPCC) released its Working Group III report stating: "[w]ithout immediate and deep emissions reductions across all sectors, limiting global warming to 1.5°C is beyond reach."<sup>1</sup> Globally, emissions will need to nearly halve by 2030, and Berkeley's fair share of 2030 emissions reductions are significantly higher.

Specifically, the report suggests that cities have a critical role to play, especially with regard to facilitating the "electrification of transport in combination with low-emission energy sources." As of Berkeley's most recent 2019 sector-based GHG inventory, emissions from the transportation accounted for a significant 326,568 metric tons of carbon dioxide equivalent, nearly all of which arises from the use of fossil-fuel burning vehicles.

<sup>1</sup> <https://www.ipcc.ch/report/ar6/wg3/resources/press/press-release>

Although the City has set an ambitious goal of 15,000 total registered electric vehicles (EV) by 2025, electric vehicles comprised just 6.3% of all new vehicle registrations in 2020. Even accounting for Governor Newsom's executive order requiring that all new vehicle sales be zero emissions by 2035, it will be decades before the City could eliminate personal vehicle emissions through vehicle electrification alone.<sup>2</sup>

Therefore, in addition to vehicle electrification, the City must also look at additional measures to replace vehicle trips, such as e-bike incentives. The pandemic triggered an unexpected boom in e-bike popularity in the U.S., with a more than 240% increase in sales in FY 2020-2021.<sup>3</sup> In Europe, Forbes estimates that e-bike sales will nearly increase fivefold over this decade, reaching or exceeding two times the total number of annual car registrations.<sup>4</sup>

The majority of Berkeley's topographical landscape is ideal for bicycling, and e-bikes play a promising role in improving the bikeability of the city's most challenging hillside terrain. E-bikes also come in various adaptive configurations to provide accessibility and mobility to individuals with disabilities.

E-bike trips have also shown to replace car trips. In one study, the subset of respondents who did not regularly bicycle as an adult now ride weekly or daily after having purchased an e-bike.<sup>5</sup> For existing or new bicyclists, the study found that e-bikes helped riders overcome hills, thus prolonging distances ridden and increasing frequency of trips. It also found that the top two reasons for converting to e-bikes were to replace car trips and reduce the physical effort associated with biking. Further studies show that 11 to 46 percent of car trips were replaced by e-bike trips, and that 35 to 50 percent of e-bike trips would have been taken by car had the e-bike been unavailable.<sup>6</sup>

In addition, recent and local real-world monitoring and research by Walk Bike Berkeley indicates that:

- E-bikes get anywhere from 1000 to almost 4000 miles per gallon equivalent;
- E-bikes cost less than a penny a mile to charge;
- E-bikes can go 40 to 140 times as far as a 30-mpg gas car per pound of climate emissions with California's electric energy mix;

<sup>2</sup> <https://www.gov.ca.gov/2020/09/23/governor-newsom-announces-california-will-phase-out-gasoline-powered-cars-dramatically-reduce-demand-for-fossil-fuel-in-californias-fight-against-climate-change/>

<sup>3</sup> <https://www.npd.com/news/blog/2021/the-cycling-market-pedals-ahead-in-2021/>

<sup>4</sup> <https://www.forbes.com/sites/carltonreid/2020/12/02/e-bike-sales-to-grow-from-37-million-to-17-million-per-year-by-2030-forecast-industry-experts/>

<sup>5</sup> [https://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=1163&context=trec\\_reports](https://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=1163&context=trec_reports)

<sup>6</sup>

[https://escholarship.org/content/qt3mm040km/qt3mm040km\\_noSplash\\_e0fa17490f118088cd8424ce93c83794.pdf?t=pq2c3f](https://escholarship.org/content/qt3mm040km/qt3mm040km_noSplash_e0fa17490f118088cd8424ce93c83794.pdf?t=pq2c3f)

- E-bikes are about 10 to 30 times more efficient than electric cars at fighting climate change;
- E-bikes get 30 to 100 times more miles per pound of battery than an electric car.<sup>7</sup>

Taken as a whole, the evidence suggests that the City has a substantial opportunity to act on its climate goals through the promotion of e-bikes, and that the City can begin to do so with a small investment compared to other investments in transportation.

A point-of-sale rebate is preferable to a sales tax rebate or an after-the-fact rebate for two reasons. First, point-of-sale incentives are up-front, unlike a sales tax rebate (often not considered at decision points) or a post-purchase rebate (which doesn't change the initial price and is a particular burden to lower-income buyers). As a result, a point of sale rebate is more likely to induce behavior change. A tiered program, with both a universal rebate and an equity rebate, in addition to separate but complementary equity programs, is desirable because the City has an interest in mode shift for all residents, not least of which because GHGs, VMT, and car ownership generally are correlated with income.<sup>8</sup> That is, the more a program can induce behavior change among higher income households, the higher impact it can have on sheer numbers.

The tiered point-of-sale rebate also provides additional support for low-income purchasers. On top of working in tandem with the forthcoming Climate Equity Action Fund programs, a tiered rebate can layer on top of state or regional e-bike rebate programs, detailed below, to provide a deeper subsidy for low-income residents and potentially allow them to cover the entire cost of their e-bike purchase.

The California Air Resources Board (CARB) has begun to outline a \$10 million e-bike incentive program that is open to California residents, set to launch in early 2023. Applicants at 225% and 400% of the federal poverty level are eligible. Participants making under 400% FPL can get a \$750 stipend for regular e-bikes and \$1500 for cargo or adaptive e-bikes.<sup>9</sup>

With a goal of 5 million electric vehicles by 2050 in the Bay Area, the Metropolitan Transportation Commission (MTC) has \$65 million in funding for local electrification initiatives, with a particular focus on equity. Similarly, East Bay Community Energy (EBCE) is also developing their own \$2 million incentive program for 2023, as well as an e-bike lending library pilot program.<sup>10</sup> While this program is still under development, the City of Oakland has released their plans for a similar pilot program that would fund 500 e-bikes specifically for low-income neighborhoods, operating as a rental library system.

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<sup>7</sup> Walk Bike Berkeley, "E-Bike 1000 MPG Project," <https://sites.google.com/view/ebikestudy>.

<sup>8</sup> <https://transweb.sjsu.edu/sites/default/files/1426-household-income-and-vehicle-fuel-economy-in-california.pdf>

<sup>9</sup> [https://www.calbike.org/bike\\_purchase\\_incentives/](https://www.calbike.org/bike_purchase_incentives/)

<sup>10</sup> <https://mtc.ca.gov/planning/transportation/transportation-electrification>

To launch this program, the City of Oakland is using a \$1 million state grant and plans to launch the initiative as early as this winter.<sup>11</sup>

As part of the \$600,000 Climate Equity Action Fund (CEAF) established by Council in 2021, the program included an Electric Mobility Access Pilot aimed at enhancing mobility for low-income community members in ways that reflect community priorities and support transportation modal shifts consistent with the Electric Mobility Roadmap. Specifically, the Access Pilot seeks to ensure equity in access to electric mobility, improve alternatives to driving, and achieve zero carbon emissions.

Proposed projects include those that increase access to bicycles, electric bicycles, electric scooters, or other forms of micromobility to support low-income residents in Berkeley. Staff recently issued and completed a request for proposal process. Staff plan to contract with Waterside Workshops, a community based organization dedicated to engaging youth and the community through hands-on learning in bicycle mechanics and to gain confidence, develop work skills, and access the tools and resources needed to lead healthy, sustainable lives.

This item proposes to increase electric bicycle-based incentives totaling \$100,000 for low-income communities either through existing CEAF programs or new programs. This item is intended to allow equity subsidies to be stacked on top of universal point of sale rebates to maximize affordability and accessibility as well as to allow community input on program design that might better serve their needs.

In the development of the point-of-sale program, staff should consider:

- Opportunities for economic development by partnering with local bicycle shops in the City of Berkeley
- Allowing certain safety- or security-related e-bike accessories (e.g. bike locks, helmets, and lights) to be eligible for the rebate
- Data collection opportunities to inform future programs
- Setting rebate levels with the relevant state and regional programs in mind

#### FINANCIAL IMPLICATIONS

\$500,000 from the General Fund.

#### ENVIRONMENTAL SUSTAINABILITY

Furthers the goals of the City's Climate Action Plan by incentivizing mode shift away from private vehicles and reducing transportation-related carbon emissions.

#### CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Vice Mayor Kate Harrison, (510) 981-7140

<sup>11</sup> <https://oaklandside.org/2022/08/08/electric-bike-library-planned-for-oakland/>

Councilmember Terry Taplin, (510) 981-7120



<b>Upcoming Worksessions and Special Meetings</b> <i>start time is 6:00 p.m. unless otherwise noted</i>	
Scheduled Dates	
Nov. 15	African American Holistic Resource Center (4:00 p.m.)

<b>Unscheduled Workshops</b>
None

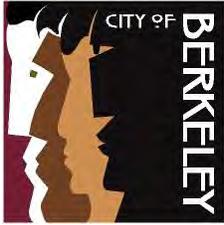
<b>Unscheduled Presentations (City Manager)</b>
1. Civic Arts Grantmaking Process & Capital Grant Program 2. Fire Facilities Study Report 3. Civic Center Vision Project (March 2023) 4. Local Pandemic/Endemic Update Report

	<b>City Council Referrals to the Agenda &amp; Rules Committee and Unfinished Business for Scheduling</b>
	None

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>			
2018 Blake Street (construct multi-family residential building)	ZAB		11/3/2022
1643-47 California St (new basement level and second story)	ZAB		11/3/2022
2065 Kittredge Ave (construct an 8-story, mixed-use building)	ZAB		TBD
<b>Remanded to ZAB or LPC</b>			
1205 Peralta Avenue (conversion of an existing garage)			
<b>Notes</b>			

10/26/2022





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.

<b><u>Boards and Commissions</u></b>	<b><u>Meetings Held Under COVID March - Oct</u></b>	<b><u>Regular Mtg. Date</u></b>	<b><u>Secretary</u></b>	<b><u>Dept.</u></b>	<b><u>Resume Regular Schedule in January 2021?</u></b>	<b><u>Note</u></b>
Fair Campaign Practices Commission	9	3rd Thur.	Sam Harvey	CA	YES	Have been meeting regularly under COVID Emergency
Open Government Commission	6	3rd Thur.	Sam Harvey	CA	YES	Have been meeting regularly under COVID Emergency
Animal Care Commission	0	3rd Wed.	Amelia Funghi	CM	YES	
Police Review Commission	10	2nd & 4th Wed.	Katherine Lee	CM	YES	Have been meeting regularly under COVID Emergency
Disaster and Fire Safety Commission	4	4th Wed.	Keith May	FES	YES	
Community Health Commission	0	4th Thur.	Roberto Terrones	HHCS	YES	
Homeless Commission	0	2nd Wed.	Josh Jacobs	HHCS	YES	
Homeless Services Panel of Experts	5	1st Wed	Josh Jacobs	HHCS	YES	
Human Welfare & Community Action Commission	0	3rd Wed.	Mary-Claire Katz	HHCS	YES	
Mental Health Commission	1	4th Thur.	Jamie Works-Wright	HHCS	YES	
Sugar-Sweetened Beverage Product Panel of Experts	0	3rd Thur.	Dechen Tsering	HHCS	YES	
Civic Arts Commission	2	4th Wed.	Jennifer Lovvorn	OED	YES	
Elmwood BID Advisory Board	1	Contact Secretary	Kieron Slaughter	OED	YES	
Loan Administration Board	0	Contact Secretary	Kieron Slaughter	OED	YES	
Solano Avenue BID Advisory Board	2	Contact Secretary	Eleanor Hollander	OED	YES	
Design Review Committee	6	3rd Thur.	Anne Burns	PLD	YES	Have been meeting regularly under COVID Emergency
Energy Commission	0	4th Wed.	Billi Romain	PLD	YES	
Landmarks Preservation Commission	6	1st Thur.	Fatema Crane	PLD	YES	Have been meeting regularly under COVID Emergency
Planning Commission	3	1st Wed.	Alene Pearson	PLD	YES	Have been meeting regularly under COVID Emergency
Zoning Adjustments Board	11	2nd & 4th Thur.	Shannon Allen	PLD	YES	Have been meeting regularly under COVID Emergency
Parks and Waterfront Commission	4	2nd Wed.	Roger Miller	PRW	YES	
Commission on Disability	0	1st Wed.	Dominika Bednarska	PW	YES	
Public Works Commission	4	1st Thur.	Joe Enke	PW	YES	
Zero Waste Commission	0	4th Mon.	Heidi Obermeit	PW	YES	
Commission on the Status of Women	0	4th Wed.	Shallon Allen	CM	YES - LIMITED	Secretary has intermittent COVID assignments

<u>Boards and Commissions</u>	<u>Meetings Held Under COVID March - Oct</u>	<u>Regular Mtg. Date</u>	<u>Secretary</u>	<u>Dept.</u>	<u>Resume Regular Schedule in January 2021?</u>	<u>Note</u>
Commission on Aging	0	3rd Wed.	Richard Castrillon	HHCS	REDUCED FREQUENCY	Significant Dept. resources assigned to COVID response
Housing Advisory Commission	0	1st Thur.	Mike Uberti	HHCS	REDUCED FREQUENCY	Significant Dept. resources assigned to COVID response
Measure O Bond Oversight Committee	0	3rd Monday	Amy Davidson	HHCS	REDUCED FREQUENCY	Significant Dept. resources assigned to COVID response
Transportation Commission	2	3rd Thur.	Farid Javandel	PW	REDUCED FREQUENCY	Staff assigned to COVID response
Children, Youth, and Recreation Commission	0	4th Monday	Stephanie Chu	PRW	NO - SEPT 2021	Staff assigned to COVID response
Youth Commission	0	2nd Mon.	Ginsi Bryant	PRW	NO - SEPT 2021	Staff assigned to COVID response
Community Environmental Advisory Commission	0	2nd Thur.	Viviana Garcia	PLD	NO - JUNE 2021	Staff assigned to COVID response
Cannabis Commission	0	1st Thur.	VACANT	PLD	NO - JAN. 2022	Staff vacancy
Peace and Justice Commission	0	1st Mon.	VACANT	CM	NO	Staff vacancy
Commission on Labor	0	3rd Wed., alternate mon	Kristen Lee	HHCS	NO	Staff assigned to COVID response
Personnel Board	1	1st Mon.	La Tanya Bellow	HR	NO	Staff assigned to COVID response

## RESOLUTION NO. 69,331-N.S.

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

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

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

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

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

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

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

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

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

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

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

Section 1. Boards and Commissions

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

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

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

Category B

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

Transportation Commission  
Youth Commission  
Zero Waste Commission  
Loan Administration Board

Section 2. City Council Policy Committees

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

Section 3. City Council

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

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

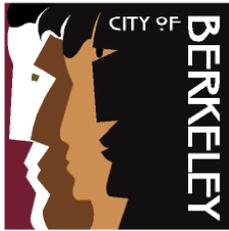
Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.

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

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



Office of the City Manager

October 22, 2020

To: Berkeley Boards and Commissions

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

Subject: Commission Meetings During COVID-19 Emergency

This memo serves to provide a summary and update of the status of meetings of Berkeley Boards and Commissions during the COVID-19 emergency declaration.

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

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

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

Effective October 12, 2020, all City boards and commissions may meet once to develop and finalize their work plan for 2021 and to complete any Council referrals directly related to the COVID-19 pandemic response. A second meeting may be held to complete this work with specific authorization by the City Manager. It is recommended that the meeting(s) occur by the end of February 2021.

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

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

Page 2

October 22, 2020

Re: Commission Meetings During COVID-19 Emergency

To assist commissions with the development of their work plan and to provide the City Council with a consistent framework to review the work plans, the City Manager has developed the following items to consider in developing the work plan that is submitted to the City Council agenda.

Prompts for Commissions to use in work plan:

- What commission items for 2021 have a direct nexus with the COVID-19 response or are the result of a City Council referral pertaining to COVID-19?
- What commission items for 2021 are required for statutory reasons?
- What commission items for 2021 are required for budgetary or fund allocation reasons?
- What commission items for 2021 support council-adopted or voter-adopted mission critical projects or programs?
- What are the anticipated staff demands (above and beyond baseline) for analysis, data, etc., to support commission work in 2021 (baseline duties = posting agendas, creating packets, attend meetings, minutes, etc.)?

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

Meeting frequency for boards and commissions will continue to be evaluated on a regular basis by the City Manager in consultation with Department Heads and the City Council. More frequent meetings by commissions will be permitted as the conditions under COVID-19 dictate.

Thank you for your service on our boards and commissions. The City values the work of our commissions and we appreciate your partnership and understanding as we address this pandemic as a resilient and vibrant community.

Attachments:

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

cc: Mayor and City Councilmembers  
Senior Leadership Team

RESOLUTION NO. 69,331-N.S.

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

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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 31, 2022

To: Agenda & Rules Committee

From: Dee Williams-Ridley, City Manager

Subject: Return to In-Person City Council Meetings and Status of Meetings of City Legislative Bodies

---

This memo provides an update regarding the return to in-person meetings by the City Council and other legislative bodies.

On October 19, 2022 the Agenda & Rules committee discussed the return to in-person meetings and recommended that the City Council return to in-person meetings starting with the December 6, 2022 meeting. The in-person meetings of the City Council will continue to allow for remote participation by the public.

Governor Newsom announced that he will end the statewide emergency declaration for COVID-19 on February 28, 2023. Rescinding the emergency declaration will end the exemptions to the Brown Act that were codified in AB 361. These exemptions allowed for remote participation by members of the legislative bodies without the need to notice the remote participation location or make the remote location accessible to the public.

In the past legislative session, AB 2449 was signed into law to extend the Brown Act exemptions in AB 361, but only for certain circumstances and for a limited duration of time. The provisions of AB 2449 are cumbersome and complicated and do not provide any long-term extension of the Brown Act exemptions used during the statewide declared emergency. A summary of AB 2449 is attached to this memo.

After February 28, 2023, if a member of the City Council participates remotely, but does not qualify for the exemptions in AB 2449, the remote location will be listed on the agenda, and the remote location must be available to the public.

### **Hybrid Meetings of the City Council**

Since the start of the pandemic in March of 2020, the City Council has held six hybrid meetings from the Boardroom. These hybrid meetings allowed for in-person participation and virtual participation for the public and the City Council. The meetings

were successful from a technology and logistics standpoint and a regular return to hybrid meetings should be manageable from a staff and meeting management perspective. Resources and processes will be continuously evaluated by staff throughout the transition to a regular hybrid meeting structure.

For the hybrid meetings staff developed meeting protocols for members of the public in attendance and the City Council. With the changing public health conditions related to COVID-19, these meeting protocols need to be reviewed and revised prior to the December 6 meeting. The current version of the protocols that were last used in June 2022 are attached for review.

City staff will continue to test the Boardroom technology with the IT Department, BUSD IT, and Berkeley Community Media to ensure smooth functionality. Communication with the public about the return to in-person (hybrid) meetings will be sent out through multiple channels in advance of December 6.

### **Status of Other Legislative Bodies**

City boards and commissions have been meeting virtual-only during the state declared emergency. When the state declared emergency expires on February 28, 2023, these bodies will return to in-person only meetings.

With over 30 commissions, there are approximately 350 commission meetings per year. Often there are multiple commissions meeting on the same day. The City does not currently have the videoconference infrastructure in place to provide for hybrid meetings for commissions. In addition, in a hybrid setting it is more difficult to manage and conduct meetings while attempting to provide meaningful participation by commissioners and the public. City staff will communicate with commission secretaries and commissioners to facilitate the transition back to in-person meetings. Staff will also analyze the costs for expanding videoconference capabilities throughout the City.

City Council policy committees may have the potential to meet in a hybrid format after February 28, 2023. In order to accommodate hybrid meetings, the videoconference capabilities in 2180 Milvia will need to be significantly expanded. This analysis is currently underway.

For both commissions and policy committees, the videoconference aspect of the meeting is for the public only. The members of the legislative bodies will be at the physical meeting location as previously discussed.

## Summary of AB 2449 (Att. 1)

### **Current Law**

Under current law [AB 361 (R. Rivas), Chapter 165, Statutes of 2021], The exemptions included in AB 361 only apply during a declared state of emergency as defined under the California Emergency Services Act. (Gov. Code §§ 52953(e)(1), (e)(4).) In addition, one of the following circumstances must apply:

- State or local officials have imposed or recommended measures to promote social distancing.
- The legislative body is meeting to determine whether, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
- The legislative body has determined that, as a result of the emergency, meeting in person presents imminent risks to the health or safety of attendees.

With the lifting of the State of Emergency, the provisions of AB 361 cannot be met, and therefore localities must return to pre-pandemic Brown Act provisions.

### **Recently Enacted Legislation on Remote Meetings**

The State legislature recently enacted, and the Governor signed AB 2449 (Rubio) [Chapter 285, Statutes of 2022] which provides under incredibly limited circumstances, the ability to have a minority amount of a Brown Act body members participate remotely. The measure is slated to sunset January 1, 2026.

### General Requirements

1. A quorum of the council must participate in person at its public meeting site within the boundaries of the jurisdiction (e.g., city hall/council chambers).
2. A member who wishes to participate remotely must have either “just cause” or “emergency circumstances.”

“Just cause” is defined as:

- A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires the councilmember to participate remotely.
- A contagious illness that prevents a member from attending in person.
- A need related to a physical or mental disability not otherwise accommodated under the ‘reasonable accommodation’ provisions of the Americans with Disabilities Act.
- Travel while on official business of the legislative body or another state or local agency.

“Emergency circumstances” is defined as “a physical or family medical emergency that prevents a member from attending in person.”

### Procedures and Limitations

A. When using the ‘Just cause’ exception:

1. The elected/appointed official must provide a general description of the circumstances relating to their need at the earliest opportunity possible, including at the start of the meeting.
2. A councilmember may not appear remotely due to “just cause” for more than two meetings per calendar year.

B. When using the 'emergency circumstances' exception:

1. The elected/appointed official must give a general description of the emergency circumstances, but the member is not required to disclose any medical diagnosis, disability, or personal medical information.
2. The governmental body must take action to approve the request prior to the remote participant being able to participate in any further business.

C. In all circumstances the following must occur:

1. The elected/appointed official must disclose at the meeting before any action is taken whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.
2. The member must participate through both audio and visual technology (e.g., the member must be on-screen).

D. Limited use despite narrow circumstances:

1. A member cannot attend meetings remotely for a period of more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.

## 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. These administrative policies supplement the City Council Rules of Procedure and Order.

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 are 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. The relevant capacity limits will be posted at the meeting location.

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.

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.
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**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 if staff determines that attendance is likely to exceed the capacity of the Boardroom. 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. In-Meeting Procedures**

**Revised and Supplemental Materials**

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

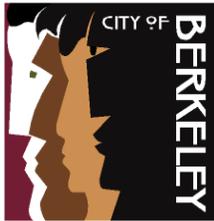
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**Communications from the Public**

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.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220SCR5](https://leginfo.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**

Graham Knaus, Executive Director  
CA State Assoc. of Counties  
[gknaus@counties.org](mailto:gknaus@counties.org)

Jean Kinney Hurst, Legislative Advocate  
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Carolyn Coleman, Executive Director  
League of CA Cities  
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Laura Preston, Legislative Advocate  
Assoc. of CA School Administrators  
[lpreston@acsa.org](mailto:lpreston@acsa.org)

Staci Heaton, Acting Vice President of  
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Rural County Representatives of CA  
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RE: Transition Period Prior to Repeal of COVID-related Executive Orders

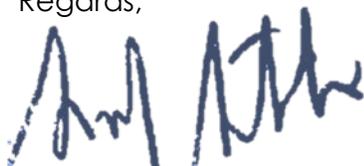
Dear Mr. Knaus, Ms. Miller, Ms. Hurst, Ms. Preston, Ms. Heaton, Ms. King, Ms. Coleman, Ms. Blacet-Hyden, Mr. McCormick, Mr. Anderson, and colleagues,

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 over a vertical line.

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.

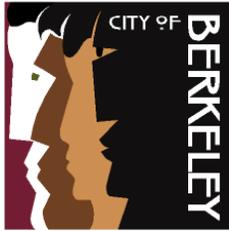
The [Occupational Safety and Health Standards Board](#), a seven-member body appointed by the Governor, is the standards-setting agency within the Cal/OSHA program. The Standards Board's objective is to adopt reasonable and enforceable standards at least as effective as federal standards. The Standards 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.

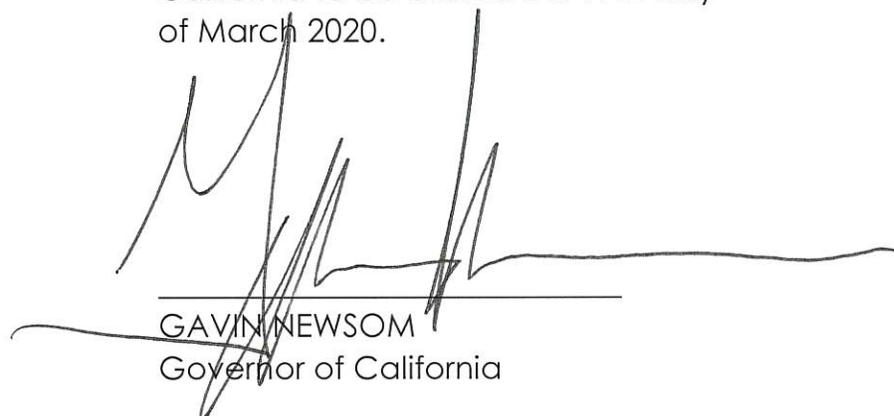
All of the foregoing provisions concerning the conduct of public meetings shall apply only during the period in which state or local public health officials have imposed or recommended social distancing measures.

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

