



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

**TUESDAY, FEBRUARY 14, 2023**

**2:30 P.M.**

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Ben Bartlett

**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://cityofberkeley-info.zoomgov.com/j/1615510345> . 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 **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and Enter Meeting ID: **161 551 0345**. 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: January 30, 2023**
- 2. Review and Approve Draft Agenda:**
  - a. 2/28/23 – 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. Analysis of Return to In-Person Meetings of City Legislative Bodies**

## Referred Items for Review

### 9. **Bureaucratic Effectiveness and Referral Improvement and Prioritization Effort (BE RIPE)**

**From: Councilmember Droste (Author)**

**Referred: January 4, 2023**

**Due: June 5, 2023**

**Recommendation:** In order to ensure that the City focuses on high-priority issues, projects, and goals and affords them the resources and funding such civic efforts deserve, the City Council should consult with the City Manager's Office to develop and adopt a suite of revisions to the City Council Rules of Procedure and Order that would implement the following provisions:

1. Beginning in 2023, Councilmembers shall submit no more than one major legislative proposal or set of amendments to any existing ordinance per year, with the Mayor permitted to submit two major proposals, for a maximum of ten major Council items per year.
2. In 2023 and all future years, Councilmembers shall be required to submit major items before an established deadline. Council shall then prioritize any new legislative items as well as any incomplete major items from the previous year using the Reweighted Range Voting (RRV) process. This will help establish clear priorities for staff time, funding, and scheduling Council work sessions and meetings. For 2023 alone, the RRV process should include outstanding/incomplete Council items from all previous years. In 2024 and thereafter, the RRV process should only incorporate outstanding/incomplete major items from the prior year. However, Councilmembers may choose to renominate an incomplete major policy item from an earlier year as their single major item.
3. During deliberations at a special worksession, Council retreat, and/or departmental budget presentations, Council and the City Manager should develop a work plan that establishes reasonable expectations about what can be accomplished by staff given the list of priorities as ranked by RRV. Council should also consult with the City Manager and department heads, particularly the City Attorney's office, Planning Department, and Public Works Department on workload challenges (mandates outside Council priorities, etc.), impacts, reasonable staff output expectations, and potential corrective actions to ensure that mandated deadlines are met, basic services are provided, and policy proposals are effectively implemented.
4. Budget referrals and allocations from City Council must be explicitly related to a previously established or passed policy/program, planning/strategy document, and/or an external funding opportunity related to one of these. As a good government practice, councilmembers and the Mayor may not submit budget referrals which direct funds to a specific organization or event. Organizations which receive City funding must submit at least annually an application detailing, at a minimum: the civic goal(s)/purpose(s) for which City funds are used, the amount of City funding received for each of the preceding five years, and quantitative or qualitative accounting of the results/outcomes for the projects that made use of those City funds. Organizations receiving more than \$20,000 in City funds should be required to provide quantitative data regarding the number of individuals served and other outcomes.
5. Ensuring that any exceptions to these provisions are designed to ensure flexibility in the face of an emergency, disaster, or urgent legal issue/liability and narrowly tailored to be consistent with the goals of enhanced efficiency, effectiveness, fairness, and focus.

**Financial Implications:** See report

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

## Referred Items for Review

10. Discussion of Potential Changes and Enhancements to the City Council Legislative Process

## Unscheduled Items

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

## Items for Future Agendas

- Discussion of items to be added to future agendas

## Adjournment – Next Meeting Monday, February 27, 2023

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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, February 9, 2023.



Mark Numainville, City Clerk

## **Communications**

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



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

**MONDAY, JANUARY 30, 2023**

**2:30 P.M.**

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Ben Bartlett

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

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Written communications submitted by mail or e-mail to the Agenda & Rules Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

**Roll Call:** 2:36 p.m. Present: Bartlett (for Wengraf), Arreguin. Absent: Hahn

**Public Comment** – 6 speakers.

## **Review of Agendas**

**1. Approval of Minutes: January 17, 2023**

**Action:** M/S/C (Arreguin/Bartlett) to approve the minutes of 1/17/23.

**Vote:** Ayes – Bartlett, Arreguin; Noes – None; Absent - Hahn.

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

2/14/23 – 6:00 p.m. Regular City Council Meeting

**Action:** 6 speakers. M/S/C (Arreguin/Bartlett) to approve the 2/14/23 agenda with the changes noted below.

- *Item Added: Affordable Housing Mitigation (Harrison) – Action Calendar - Public Hearing, to be agendized with Item 1 on the agenda from the City Manager*
- *Item 1 Affordable Housing Mitigation (City Manager) – Scheduled for 2/14/23 Action Calendar - Public Hearing*
- *Item 12 Southside Impact Fee (Robinson) – Revised material submitted. Scheduled for 2/14/23 Consent Calendar*

**Vote:** Ayes – Bartlett, Arreguin; Noes – None; Absent - Hahn.

Order of Items on Action

Item 1 Affordable Housing Mitigation (City Manager)

Item Added: Affordable Housing Mitigation (Harrison)

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

- None Selected

**4. Adjournments In Memory**

1. Chimey Lee, Community Activist
2. Mel Martynn, Community Activist

## **Scheduling**

**5. Council Worksessions Schedule** – Mayor Arreguin noted that the special meeting to consider the Hopkins Corridor Plan has been rescheduled from February 2, 2023 to April 18, 2023.

**6. Council Referrals to Agenda Committee for Scheduling**

**Action:** (Arreguin/Bartlett) to schedule the Climate Action Plan and Resilience Update for the March 14, 2023 regular City Council meeting.

**Vote:** Ayes – Bartlett, Arreguin; Noes – None; Absent - Hahn.

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

**Action:** 4 speakers. Discussion held. No action taken.

**9a. Adding a Youth Member to the Environment and Climate Commission**

**From:** Youth Commission

**Referred:** January 4, 2023

**Due:** June 5, 2023

**Recommendation:** That Council adds a seat on the Environment and Climate Commission for a person under 18 years of age; and that Student Director on the Berkeley Unified School Board nominates the new youth commissioner and that the full board confirms the appointment.

**Financial Implications:** None

Contact: Ginsi Bryant, Commission Secretary, (510) 981-6700

**9b. Support for Youth Appointee to Environment and Climate Commission**

**From:** Environment and Climate Commission

**Referred:** January 4, 2023

**Due:** June 5, 2023

**Recommendation:** Refer to the City Manager to evaluate the feasibility of, and subsequently prepare draft legal language to enable, a tenth voting Environment & Climate Commission (ECC) member, representing youth, nominated by a suitable body or individual and confirmed by a suitable board of elected officials.

If feasible, the ECC recommends that a youth representative be nominated by the BUSD Student Director and confirmed by the full BUSD Board of Directors, in alignment with the recommendation passed by the Youth Commission.

**Financial Implications:** See report

Contact: Billi Romain, Commission Secretary, (510) 981-7400

## Referred Items for Review

**9c. Adopt an Ordinance Amending Berkeley Municipal Code Chapter 3.82 Modifying Membership and Appointment Procedures for the Environment and Climate Commission**

**From: Councilmember Harrison (Author)**

**Referred: January 4, 2023**

**Due: June 5, 2023**

**Recommendation:** Adopt an Ordinance Amending Berkeley Municipal Code Chapter 3.82 Modifying Membership and Appointment Procedures for the Environment and Climate Commission

**Financial Implications:** See report

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

**Action:** 7 speakers. M/S/C (Arreguin/Bartlett) to send the items from the Youth Commission, Environment and Climate Commission, and Councilmember Harrison to the City Council with a qualified positive recommendation that the item proposed by Councilmember Harrison be adopted as revised to state that the full City Council will appoint the members to the two youth seats on the Environment and Climate Commission, and that the Berkeley Unified School District Board of Directors will provide recommendations to the City Council on candidates for the youth seats.

**Vote:** Ayes – Bartlett, Arreguin; Noes – None; Absent - Hahn.

## Referred Items for Review

### 10. **Bureaucratic Effectiveness and Referral Improvement and Prioritization Effort (BE RIPE)**

**From: Councilmember Droste (Author)**

**Referred: January 4, 2023**

**Due: June 5, 2023**

**Recommendation:** In order to ensure that the City focuses on high-priority issues, projects, and goals and affords them the resources and funding such civic efforts deserve, the City Council should consult with the City Manager's Office to develop and adopt a suite of revisions to the City Council Rules of Procedure and Order that would implement the following provisions:

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3. During deliberations at a special worksession, Council retreat, and/or departmental budget presentations, Council and the City Manager should develop a work plan that establishes reasonable expectations about what can be accomplished by staff given the list of priorities as ranked by RRV. Council should also consult with the City Manager and department heads, particularly the City Attorney's office, Planning Department, and Public Works Department on workload challenges (mandates outside Council priorities, etc.), impacts, reasonable staff output expectations, and potential corrective actions to ensure that mandated deadlines are met, basic services are provided, and policy proposals are effectively implemented.
4. Budget referrals and allocations from City Council must be explicitly related to a previously established or passed policy/program, planning/strategy document, and/or an external funding opportunity related to one of these. As a good government practice, councilmembers and the Mayor may not submit budget referrals which direct funds to a specific organization or event. Organizations which receive City funding must submit at least annually an application detailing, at a minimum: the civic goal(s)/purpose(s) for which City funds are used, the amount of City funding received for each of the preceding five years, and quantitative or qualitative accounting of the results/outcomes for the projects that made use of those City funds. Organizations receiving more than \$20,000 in City funds should be required to provide quantitative data regarding the number of individuals served and other outcomes.
5. Ensuring that any exceptions to these provisions are designed to ensure flexibility in the face of an emergency, disaster, or urgent legal issue/liability and narrowly tailored to be consistent with the goals of enhanced efficiency, effectiveness, fairness, and focus.

**Financial Implications:** See report

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

**Action:** Item continued to the next meeting.

## Referred Items for Review

**11. Reforms to Public Comment Procedures at meetings of the Berkeley City Council**

**From: Councilmember Droste (Author)**

**Referred: January 4, 2023**

**Due: June 5, 2023**

**Recommendation:** Adopt a Resolution revising the City Council Rules of Procedure and Order: Section IV. Conduct of the Meeting and Appendix C Temporary Rules for The Conduct of City Council Meetings Through Video Conference During The Covid-19 Emergency to:

1. Consolidate non-agenda public comment, public comment on the Consent Calendar, and public comment on Action Items into a single public comment period toward the start of the Council meeting (consistent with the Berkeley Unified School District's public comment procedure), and continue to provide for additional time for public comment at the end of meetings;
2. Adopt reasonable limits on the overall number of public speakers (consistent with rulings from the Second District Court of Appeal) with a mechanism for the City Council to extend public comment; and
3. Rescind Resolution No. 70,091– N.S

**Financial Implications:** See report

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

**Action:** 6 speakers. M/S/C (Arreguin/Bartlett) to send the item to the City Council with a negative recommendation that no action be taken on the item.

**Vote:** Ayes – Bartlett, Arreguin; Noes – None; Absent - Hahn.

**12. Discussion of Potential Changes and Enhancements to the City Council Legislative Process**

**Action:** Item continued to the next meeting.

## Unscheduled Items

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

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

## Items for Future Agendas

- None

## Adjournment

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

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

Adjourned at 4:29 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on January 30, 2023.

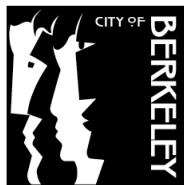
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Rose Thomsen, Deputy City Clerk

## **Communications**

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**DRAFT AGENDA**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, February 28, 2023**  
**6:00 PM**

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

JESSE ARREGUIN, MAYOR

Councilmembers:

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

DISTRICT 5 – SOPHIE HAHN  
 DISTRICT 6 – SUSAN WENGRAF  
 DISTRICT 7 – RIGEL ROBINSON  
 DISTRICT 8 – MARK HUMBERT

***PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION***

*For in-person attendees, face coverings or masks that cover both the nose and the mouth are required. Physically distanced seating will be available. If you are feeling sick, please do not attend the meeting in person.*

*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 ZOOM for GOV 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 **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and enter Meeting ID: <<INSERT MEETING ID HERE>>. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*Please be mindful that the meeting will be recorded and all rules of procedure and decorum apply for in-person attendees and those participating by teleconference or videoconference.*

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

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

## Preliminary Matters

### Roll Call:

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

## Consent Calendar

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



## Consent 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 January 10 (special), January 17 (regular), January 18 (special), January 30 (closed) and January 31 (special and regular).

**Financial Implications:** None

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

### 2. Donation to the Animal Shelter from the Stephen and Mary Birch Foundation

**From: City Manager**

**Recommendation:** Adopt a Resolution accepting a donation from the estate of Stephen and Mary Birch in the sum of \$5,000.

**Financial Implications:** Donation - \$5,000

Contact: Peter Radu, City Manager's Office, (510) 981-7000

### 3. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on February 28, 2023

**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 - \$2,220,000

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

## Consent Calendar

- 4. Contract: Street Level Advisors and Strategic Economics for Housing Preference Policy Fair Housing Analysis Consultant**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Street Level Advisors (Contractor), with Strategic Economics as a subcontractor, to provide Fair Housing Analysis services for a Housing Preference Policy for the Department of Health, Housing and Community Services (HHCS) from April 1, 2023 to April 1, 2024 in an amount not to exceed \$60,055.  
**Financial Implications:** General Fund - \$60,055  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 5. Final Map of Tract 8573: 2628 Shattuck Avenue**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the final map of Tract Map 8573 for an 81-unit condominium project consisting of 78 residential units and 3 commercial units at 2628 Shattuck Avenue.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 6. Final Map of Tract 8626: 2023-2025 Kala Bagai Way**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the final map of Tract Map 8626 for a 49-unit condominium project consisting of 48 residential units and one commercial unit at 2023-2025 Kala Bagai Way.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 7. Final Map of Tract 8490: 739 Channing Way**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the final map of Tract Map 8490 for a 15-unit condominium project consisting of 10 residential units, 4 live/work units, and one commercial unit and to merge 2 existing parcels at 739 Channing Way.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 8. Bauman Lease Termination and Settlement of Balance Due**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a lease termination agreement with Bauman Wellness (“Bauman”) for its tenancy at 1007 University Ave., including a bill of sale transferring all of Bauman’s assets remaining in the leased premises to City ownership, and a mutual waiver of claims.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300, Farimah Brown, City Attorney, (510) 981-6950

## Council Consent Items

9. **Support for AB-309: Social Housing**  
**From: Councilmember Taplin (Author)**  
**Recommendation:** Send a letter in support of Assembly Bill 2053 to the state legislature.  
**Financial Implications:** Staff time  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
  
10. **Resolution in Support of HR 8040: the People Over the Pentagon Act**  
**From: Councilmember Harrison (Author)**  
**Recommendation:** Adopt resolution and send letters of support for reintroduction and passage of HR 8040: the People Over the Pentagon Act to California's congressional delegation accompanied by provisions for a just transition for workers in militarized industries. HR 8040 calls for reducing the bloated military budget by \$100 billion.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

## Action Calendar

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

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

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

## Action Calendar – Public Hearings

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

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

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

## Action Calendar – Public Hearings

11. **ZAB Appeal: 1262 Francisco Street, Administrative Use Permit #ZP2021-0006**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the decision of the Zoning Adjustments Board to approve Administrative Use Permit ZP#2021-0006, to modify Administrative Use Permit ZP#2020-0122, to add 40 square feet on the first floor and a balcony on the second floor of an existing single-family dwelling unit.  
**Financial Implications:** None  
Contact: Jordan Klein, Planning and Development, (510) 981-7400

## Action Calendar – New Business

12. **Making Berkeley an Employer of Choice**  
**From: City Manager**  
**Recommendation:** Adopt a resolution to support and endorse the City Manager's workplan to implement the City of Berkeley's Employer of Choice initiative. The workplan provides actionable recommendations by Municipal Resource Group (MRG), an independent consultant firm specializing in providing cities, counties, and government agencies with professional strategic services. Consistent with MRG's 90-day Action Plan recommendations, the City Manager is currently requesting authorization to 1) hire two Associate HR Analysts and one Assistant HR Analyst, 2) contract with a branding and marketing agency in an amount not to exceed \$250,000 to help attract, outreach and recruit talent for the City workforce in support of the Human Resources Department; and 3) enhance communications and social media content planning and strategy including support for department communications in a combined amount not to exceed \$200,000.  
**Financial Implications:** See report  
Contact: Dee Williams-Ridley, City Manager, (510) 981-7000
- 13a. **Adding a Youth Member to the Environment and Climate Commission**  
*(Reviewed by the Agenda & Rules Committee)*  
**From: Youth Commission**  
**Recommendation:** That Council adds a seat on the Environment and Climate Commission for a person under 18 years of age; and that Student Director on the Berkeley Unified School Board nominates the new youth commissioner and that the full board confirms the appointment.  
*Policy Committee Recommendation: To send the items from the Youth Commission, Environment and Climate Commission, and Councilmember Harrison to the City Council with a qualified positive recommendation that the item proposed by Councilmember Harrison be adopted as revised to state that the full City Council will appoint the members to the two youth seats on the Environment and Climate Commission, and that the Berkeley Unified School District Board of Directors will provide recommendations to the City Council on candidates for the youth seats.*  
**Financial Implications:** None  
Contact: Ginsi Bryant, Commission Secretary, (510) 981-6700

## Action Calendar – New Business

### 13b. Support for Youth Appointee to Environment and Climate Commission

*(Reviewed by the Agenda & Rules Committee)*

**From: Environment and Climate Commission**

**Recommendation:** Refer to the City Manager to evaluate the feasibility of, and subsequently prepare draft legal language to enable, a tenth voting Environment & Climate Commission (ECC) member, representing youth, nominated by a suitable body or individual and confirmed by a suitable board of elected officials. If feasible, the ECC recommends that a youth representative be nominated by the BUSD Student Director and confirmed by the full BUSD Board of Directors, in alignment with the recommendation passed by the Youth Commission.

*Policy Committee Recommendation: To send the items from the Youth Commission, Environment and Climate Commission, and Councilmember Harrison to the City Council with a qualified positive recommendation that the item proposed by Councilmember Harrison be adopted as revised to state that the full City Council will appoint the members to the two youth seats on the Environment and Climate Commission, and that the Berkeley Unified School District Board of Directors will provide recommendations to the City Council on candidates for the youth seats.*

**Financial Implications:** See report

Contact: Billi Romain, Commission Secretary, (510) 981-7400

### 13c. Adopt an Ordinance Amending Berkeley Municipal Code Chapter 3.82 Modifying Membership and Appointment Procedures for the Environment and Climate Commission *(Reviewed by the Agenda & Rules Committee)*

**From: Councilmember Harrison (Author)**

**Recommendation:** Adopt an Ordinance Amending Berkeley Municipal Code Chapter 3.82 Modifying Membership and Appointment Procedures for the Environment and Climate Commission.

*Policy Committee Recommendation: To send the items from the Youth Commission, Environment and Climate Commission, and Councilmember Harrison to the City Council with a qualified positive recommendation that the item proposed by Councilmember Harrison be adopted as revised to state that the full City Council will appoint the members to the two youth seats on the Environment and Climate Commission, and that the Berkeley Unified School District Board of Directors will provide recommendations to the City Council on candidates for the youth seats.*

**Financial Implications:** See report

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

## Council Action Items

**14. Reforms to Public Comment Procedures at meetings of the Berkeley City Council** *(Reviewed by the Agenda & Rules Committee)*

**From: Councilmember Droste (Author)**

**Recommendation:** Adopt a Resolution revising the City Council Rules of Procedure and Order: Section IV. Conduct of the Meeting and Appendix C Temporary Rules for The Conduct of City Council Meetings Through Video Conference During The Covid-19 Emergency to: 1. Consolidate non-agenda public comment, public comment on the Consent Calendar, and public comment on Action Items into a single public comment period toward the start of the Council meeting (consistent with the Berkeley Unified School District's public comment procedure), and continue to provide for additional time for public comment at the end of meetings; 2. Adopt reasonable limits on the overall number of public speakers (consistent with rulings from the Second District Court of Appeal) with a mechanism for the City Council to extend public comment; and 3. Rescind Resolution No. 70,091– N.S.

*Policy Committee Recommendation: To send the item to the City Council with a negative recommendation that no action be taken on the item.*

**Financial Implications:** See report

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

## Action Calendar – Policy Committee Track Items

**15. Resolution Condemning a Pattern of Attacks Targeting Black Political and Community Leaders**

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

**Recommendation:** Adopt a Resolution Condemning a Pattern of Attacks Targeting Black Political and Community Leaders

**Financial Implications:** None

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

**16. Referral: Creation of an Intersection Daylighting Policy**

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

**Recommendation:** Refer to the City Manager to develop a comprehensive intersection daylighting policy and make recommendations about the implementation of a citywide intersection daylighting program. Staff should consider criteria for identifying priority areas for daylighting such as high-injury streets, streets and intersections with especially high pedestrian traffic, commercial districts, and streets near schools and colleges. Staff should seek input and feedback on the development of such a policy and program from the Transportation & Infrastructure Commission, and other relevant commissions.

**Financial Implications:** See report

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

## Action Calendar – Policy Committee Track Items

17. **Approval of the Public Bank East Bay Viability Study**  
**From: Councilmember Robinson (Author), Mayor Arreguin (Author)**  
**Recommendation:** Refer to the Budget & Finance Policy Subcommittee to review and discuss the Public Bank East Bay Viability Study and consider the following recommendations for the full Council: (1) Adopt a resolution formally adopting the viability study; (2) Adopt a resolution of intention to form the Public Bank East Bay alongside Oakland & Richmond; (3) Refer to the City Manager to coordinate with the Friends of the Public Bank of the East Bay and the staff of the cities of Oakland and Richmond on the development of a business plan for the Public Bank of the East Bay, or designate the appropriate staff to do so; (4) Refer to the City Manager to engage an independent consultant with expertise in banking operations and financing to advise city staff as they coordinate with the Friends of the Public Bank East Bay in the production of a business plan for a public bank  
**Financial Implications:** See report  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

## Information Reports

18. **FY 2023 First Quarter Investment Report: Ended September 30, 2022**  
**From: City Manager**  
Contact: Henry Oyekanmi, Finance, (510) 981-7300

## 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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<https://berkeleyca.gov/your-government/city-council/city-council-agendas>.

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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/>.

Agendas and agenda reports may be accessed via the Internet at:  
<https://berkeleyca.gov/your-government/city-council/city-council-agendas>  
and may be read at reference desks at the following locations:

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

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

**COMMUNICATION ACCESS INFORMATION:**

This meeting is being held in a wheelchair accessible location.

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

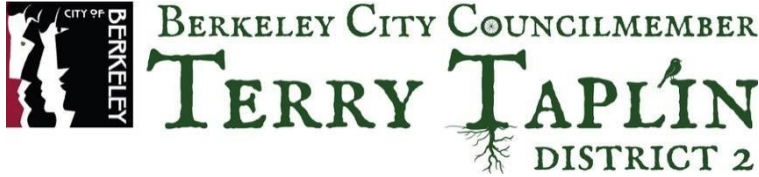
Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.



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

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CONSENT CALENDAR  
February 28, 2023

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Taplin  
 Subject: Support for AB-309: Social Housing.

RECOMMENDATION

Send a letter in support of Assembly Bill 2053 to the state legislature.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

Assembly Bill 309 is an updated version of Assembly Bill 2053 (2022) by Assemblymember Alex Lee (D-San Jose): “The Zenovich-Moscone-Chacon Housing and Home Finance Act establishes the Department of Housing and Community Development and the California Housing Finance Agency and sets forth various programs administered by those entities intended to, among other things, provide a comprehensive and balanced approach to the solution of housing problems of the people of this state.” This includes publicly-owned mixed income housing developments with just cause protections and direct involvement in management by residents.

Because social housing is internally cross-subsidized by higher income households (including rents at market rate), it would avoid the problems of concentrated poverty, disinvestment, and lack of operating subsidies that has afflicted public housing throughout the United States in the past. This model is already working successfully elsewhere in the United States, including Montgomery County, Maryland under the supervision of the Housing Opportunity Commission (HOC)<sup>1</sup>, and Sacramento’s CADA agency.<sup>2</sup> The Berkeley City Council previously voted to send a letter of support for AB-2053 in 2022.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

<sup>1</sup> <https://www.hocmc.org/news-archive/775-hoc-breaks-ground-at-900-thayer-in-silver-spring.html>

<sup>2</sup> <https://www.cadanet.org/resources-agendas/fast-facts>

AB-309

CONSENT CALENDAR  
February 28, 2023

Attachments:

1: Letter

2: Assembly Bill 309 (January 2023 draft)

The Honorable Alex Lee  
State Capitol  
Sacramento, CA 94249

Dear Assembly member Lee:

The City Council of the City of Berkeley is proud to support Assembly Bill 309: Social Housing. We believe that a state housing agency developing publicly-owned, mixed-income housing with a skilled and trained workforce and maintained by diverse communities of residents offers a promising path toward housing abundance and economic justice. We were proud to support your previous bill, AB-2053, The Social Housing Act of 2022.

On November 9, 2021, the Berkeley City Council unanimously passed a resolution recognizing housing as a human right, as well as committing to a study of social housing models in Berkeley. The City Council has recognized that housing security and fair housing opportunity is a core mandate of the public sector, and that it can learn from other countries with successful public sector housing development models, such as Vienna and Singapore. By establishing a statewide Housing Authority to produce and preserve social housing, your bill could have transformative impacts with regards to expanding housing opportunity and providing sustainable community autonomy for Berkeley residents and residents-to-be.

California currently ranks 49<sup>th</sup> out of all 50 states in new homes built per capita, and roughly one-fifth of the population bears an extraordinary rent burden, paying over half of their income in rent. According to the Public Policy Institute of California, over 800,000 households in the state would have stayed above the poverty line in 2019 if housing costs had remained constant at 2013 levels. While progress is incremental, even minor improvements represent real material gains for our most vulnerable residents. Berkeley and other cities are making substantive efforts to increase housing supply, but we are well aware that neither the private market nor publicly subsidies alone can build us out of a housing shortage that was decades in the making. It will take every available strategy on the table, and the City of Berkeley is heartened by your bold and innovative proposal.

With gratitude,

The Berkeley City Council  
2180 Milvia St  
Berkeley, CA 94704

**ASSEMBLY BILL**

**No. 309**

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**Introduced by Assembly Members Lee, Wendy Carrillo, and Kalra**  
**(Coauthors: Assembly Members Bennett, Haney, and Ward)**  
(Coauthors: Senators Allen, Menjivar, and Wiener)

January 26, 2023

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An act to add Section 50103 to the Health and Safety Code, relating to housing.

LEGISLATIVE COUNSEL’S DIGEST

AB 309, as introduced, Lee. Social housing.

The Zenovich-Moscone-Chacon Housing and Home Finance Act establishes the Department of Housing and Community Development and the California Housing Finance Agency and sets forth various programs administered by those entities intended to, among other things, provide a comprehensive and balanced approach to the solution of housing problems of the people of this state. The act sets forth various definitions that govern its construction.

This bill would define “social housing” for purposes of the Zenovich-Moscone-Chacon Housing and Home Finance Act. The bill would make findings and declarations relating to social housing and would state the intent of the Legislature to subsequently further the Social Housing Act to address the shortage of affordable homes by developing housing for people of all income levels, prioritizing low-income households.

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

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

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

3 (a) The housing crisis has reached unprecedented and  
4 unacceptable proportions in the State of California, where more  
5 than two in five households spend greater than 30 percent of their  
6 income on housing and more than one in five households spend  
7 greater than 50 percent of their income on housing.

8 (b) The United States Department of Housing and Urban  
9 Development defines cost-burdened families as those who pay  
10 more than 30 percent of their income for housing and may have  
11 difficulty affording necessities such as food, clothing,  
12 transportation, and medical care. Severe rent burden is defined as  
13 paying more than 50 percent of one’s income on rent.

14 (c) Housing burden creates severe financial, physical, and  
15 emotional impacts on households.

16 (d) The affordable housing crisis has imposed a significant toll  
17 on the California economy, as overpriced rents depress the  
18 California gross domestic product by approximately 2 percent and  
19 more than 600,000 people leave the state annually in search of  
20 lower rent.

21 (e) Current efforts, while laudable, have proven insufficient in  
22 resolving the state’s affordable housing crisis, since 97 percent of  
23 cities and counties have been unable to meet the regional housing  
24 needs assessment targets for very low income, low-income, and  
25 moderate-income housing.

26 (f) With such a great failure to meet the housing needs of  
27 California residents, the state has a duty to act and help localities  
28 fill the gap, by financing publicly owned, affordable housing built  
29 sustainably with union labor, based on the widely successful  
30 Vienna and Singapore models and many other successful models  
31 of mixed-income rental and ownership housing.

32 SEC. 2. Section 50103 is added to the Health and Safety Code,  
33 to read:

34 50103. “Social housing” means any housing with all of the  
35 following characteristics:

36 (a) The housing units are owned by a public entity or a local  
37 housing authority.

1 (b) If a housing unit is in a social housing development, the  
2 development contains housing units that accommodate a mix of  
3 household income ranges, including extremely low income, very  
4 low income, low income, moderate income, and above-moderate  
5 income.

6 (c) Residents of housing units are afforded, at a minimum, all  
7 protections granted to tenants with tenancies in private property  
8 under Section 1946.2 of the Civil Code, including protection  
9 against termination without just cause or for any discriminatory,  
10 retaliatory, or other arbitrary reason, and shall be afforded due  
11 process prior to being subject to eviction procedures, in addition  
12 to other protections provided by this title.

13 (d) Residents of the housing units have the right to participate  
14 directly and meaningfully in decisionmaking affecting the operation  
15 and management of their housing units.

16 (e) The housing units shall be protected for the duration of their  
17 useful life from being sold or transferred to a private for-profit  
18 entity or a public-private partnership.

19 SEC. 3. It is the intent of the Legislature to subsequently amend  
20 this measure to further the Social Housing Act to address the  
21 shortage of affordable homes by developing housing for people  
22 of all income levels, prioritizing low-income households.

O



Kate Harrison  
Councilmember, District 4

CONSENT CALENDAR  
February 28, 2023

To: Honorable Members of the City Council  
From: Councilmember Kate Harrison  
Subject: Resolution in Support of HR 8040: the People Over the Pentagon Act

RECOMMENDATION

Adopt resolution and send letters of support for reintroduction and passage of HR 8040: the People Over the Pentagon Act to California's congressional delegation accompanied by provisions for a just transition for workers in militarized industries. HR 8040 calls for reducing the bloated military budget by \$100 billion.

BACKGROUND

The 2021-22 Pentagon Budget was \$723 billion, larger than that of the next seven countries combined, eleven times greater than Russia's military budget and four times the size of China's – far in excess of what is required to defend the United States and support our allies. The Pentagon Budget for 2023 includes a \$33 billion increase over the 2021-2022 budget, and, unlike that of every other major federal agency, has never been successfully audited.

The federal budget is key to addressing many urgent unmet national priorities, including housing, infrastructure, renewable energy, health care, education, environmental degradation and remediation, economic insecurity, and climate change, that are not allocated sufficient resources in large part because of excessive military spending.

Since 2019, the People Over Pentagon campaign and coalition has sought to reduce the size of the Pentagon budget by reallocating funds to critical domestic and human needs. U.S. House Representatives Barbara Lee (D-Calif.) and Mark Pocan (D-Wisc.) introduced The People Over Pentagon Act (H.R. 8040) last year to redirect \$100 billion from the three-quarters-of-a-trillion-dollar Pentagon budget in military spending.<sup>1</sup>

The proposed reallocation would not affect pay, healthcare, or retirement benefits for military personnel and their families. In addition, a 2021 Congressional Budget Office report found that this redirection of funds could be accomplished without impacting the defense of the United States.<sup>2</sup>

<sup>1</sup> <https://peopleoverpentagon.org/bill/>

<sup>2</sup> <https://www.cbo.gov/publication/57128>

In 2019, the Project on Government Oversight, Center for International Policy, and Public Citizen found that the following cuts could be made:

- 1 – Don't create a Space Force—save \$2.6 billion.
- 2 – Eliminate the Overseas Contingency Operations account—save \$68.8 billion to \$174 billion.
- 3 – Cut service contracting by 15 percent—save \$26 billion.
- 4 – End use-it-or-lose-it contract spending—save \$18 billion.
- 5 – Freeze operations and maintenance budget levels—save \$6 billion.
- 6 – Replace some military personnel with civilian employees—save \$200 million.
- 7 – Provide \$16 billion per year for naval ship construction—save \$4.6 billion.
- 8 – Retain a nuclear triad with 8 submarines, 150 intercontinental ballistic missiles (ICBMs), and 1,000 warheads—save \$100 million.
- 9 – Defer or cancel development of the B-21 Bomber—save \$3 billion.
- 10 – Reduce the size of the bomber force by retiring the B-1B—save \$1.8 billion.
- 11 – Cancel the Long-Range Standoff Weapon—save \$1.4 billion.
- 12 – Replace future F-35s with F-16s and F-18s—save \$2.4 billion.
- 13 – Reduce U.S. presence in Afghanistan by half—save \$23.15 billion.
- 14 – Retire the F-22—save \$2.9 billion.
- 15 – Cancel the Ground-Based Midcourse Defense System (GMD)—save \$2.5 billion.
- 16 – Cancel development and production of a new missile in the Ground-Based Strategic Deterrent Program—save \$400 million.
- 17 – Cancel the Ford-class carrier program—save \$1 billion.
- 18 – Authorize another Base Realignment and Closure process—save \$2 billion per year.
- 19 – Authorize a Base Realignment and Closure process for the nuclear labs—save \$1 billion per year.
- 20 – Implement open Defense Department Inspector General recommendations—save \$2.3 billion.



21 – Reduce administrative waste, including excessive contractor staffing—save \$25 billion.

22 – Reduce active troop presence in Europe to 40,000—save \$1.5 billion.

23 – Reduce active troop presence in the India-Pacific Command Region to 66,000—save \$2.36 billion.<sup>3</sup>

The National Priorities Project found that cuts consistent with H.R. 8040 could:

- power every household in the United States with solar energy;
- hire one million elementary school teachers;
- provide free tuition for a supermajority of public college students;
- send every household in the U.S. a \$700 check.<sup>4</sup>

The Alameda County Democratic Central Committee passed a similar resolution.

In the interest of providing critical domestic and human services to Berkeley's population, it is in the public interest for the Council to convey its support for reintroduction and passage of H.R. 8040 with a just transition for workers in militarized industries.

#### FINANCIAL IMPLICATIONS

Limited staff time associated with sending a letter to designated recipients.

#### ENVIRONMENTAL SUSTAINABILITY

The U.S. military is one of the world's largest emitters of greenhouse gases and has a long history of environmental destruction.

#### CONTACT PERSON

Councilmember Kate Harrison 510-981-7140

#### ATTACHMENTS:

1. Resolution
2. Support Letters
3. HR 8040

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<sup>3</sup> <https://peopleoverpentagon.org/guidetocuts/>

<sup>4</sup> <https://www.nationalpriorities.org/interactive-data/trade-offs/?state=00&program=111111>

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

IN SUPPORT OF HR 8040: PEOPLE OVER THE PENTAGON ACT

WHEREAS, the 2021-22 Pentagon Budget was \$723 billion, larger than that of the next seven countries combined, eleven times greater than Russia's military budget and four times the size of China's – far in excess of what is required to defend the United States and support our allies; and

WHEREAS, the Pentagon Budget for 2023 includes a \$33 billion increase over the 2021-2022 budget, and, unlike that of every other major federal agency, has never been successfully audited; and

WHEREAS, The federal budget is key to addressing many urgent unmet national priorities, including housing, infrastructure, renewable energy, health care, education, environmental degradation and remediation, economic insecurity, and climate change, that are not allocated sufficient resources in large part because of excessive military spending; and

WHEREAS, members of the House are pursuing an ongoing effort to decrease the military budget, and the Congressional Budget Office has produced the study 'National Defense Under a Smaller Budget.'

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it supports these efforts and the reintroduction and passage of HR 8040 to reduce the military budget by \$100 billion, accompanied by provisions for a just transition for workers in militarized industries.

BE IT FURTHER RESOLVED that the Clerk send a copy of this Resolution and letters of support to Senators Feinstein and Padilla, and Congresswoman Lee.

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

**RE: Berkeley City Council Support for HR 8040: People Over the Pentagon Act**

Dear Senator Feinstein,

We write to express our strong support for reintroduction and passage of HR 8040: People Over the Pentagon Act, which would cut \$100 billion from the Pentagon budget and reallocate it to critical domestic and human services.

The 2021-22 Pentagon Budget was \$723 billion, larger than that of the next seven countries combined, eleven times greater than Russia's military budget and four times the size of China's – far in excess of what is required to defend the United States and support our allies. The Pentagon Budget for 2023 includes a \$33 billion increase over the 2021-2022 budget, and, unlike that of every other major federal agency, has never been successfully audited.

The federal budget is key to addressing many urgent unmet national priorities, including housing, infrastructure, renewable energy, health care, education, environmental degradation and remediation, economic insecurity, and climate change, that are not allocated sufficient resources in large part because of excessive military spending.

We respectfully request that the bill be amended to include provisions for a just transition for workers in militarized industries.

For these reasons, the Berkeley City Council strongly supports reintroduction and passage of HR 8040.

Sincerely,

The Berkeley City Council

Senator Alex Padilla  
112 Hart Senate  
Office Building  
Washington, DC 20510

**RE: Berkeley City Council Support for HR 8040: People Over the Pentagon Act**

Dear Senator Padilla,

We write to express our strong support for reintroduction and passage of HR 8040: People Over the Pentagon Act, which would cut \$100 billion from the Pentagon budget and reallocate it to critical domestic and human services.

The 2021-22 Pentagon Budget was \$723 billion, larger than that of the next seven countries combined, eleven times greater than Russia's military budget and four times the size of China's – far in excess of what is required to defend the United States and support our allies. The Pentagon Budget for 2023 includes a \$33 billion increase over the 2021-2022 budget, and, unlike that of every other major federal agency, has never been successfully audited.

The federal budget is key to addressing many urgent unmet national priorities, including housing, infrastructure, renewable energy, health care, education, environmental degradation and remediation, economic insecurity, and climate change, that are not allocated sufficient resources in large part because of excessive military spending.

We respectfully request that the bill be amended to include provisions for a just transition for workers in militarized industries.

For these reasons, the Berkeley City Council strongly supports reintroduction and passage of HR 8040.

Sincerely,

The Berkeley City Council

Representative Barbara Lee  
2470 Rayburn House Office Building  
Washington, DC 20515

**RE: Berkeley City Council Support for HR 8040: People Over the Pentagon Act**

Dear Representative Lee,

We write to express our strong support for reintroduction and passage of HR 8040: People Over the Pentagon Act, which would cut \$100 billion from the Pentagon budget and reallocate it to critical domestic and human services.

The 2021-22 Pentagon Budget was \$723 billion, larger than that of the next seven countries combined, eleven times greater than Russia's military budget and four times the size of China's – far in excess of what is required to defend the United States and support our allies. The Pentagon Budget for 2023 includes a \$33 billion increase over the 2021-2022 budget, and, unlike that of every other major federal agency, has never been successfully audited.

The federal budget is key to addressing many urgent unmet national priorities, including housing, infrastructure, renewable energy, health care, education, environmental degradation and remediation, economic insecurity, and climate change, that are not allocated sufficient resources in large part because of excessive military spending.

We respectfully request that the bill be amended to include provisions for a just transition for workers in militarized industries.

For these reasons, the Berkeley City Council strongly supports reintroduction and passage of HR 8040.

Sincerely,

The Berkeley City Council

117TH CONGRESS  
2D SESSION

# H. R. 8040

To reduce the amount authorized to be appropriated for the Department of Defense for fiscal year 2023, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 2022

Ms. LEE of California (for herself, Mr. POCAN, Mr. GRIJALVA, Ms. JAYAPAL, Ms. NORTON, Ms. SCHAKOWSKY, Mr. BLUMENAUER, Mr. MCGOVERN, Mrs. WATSON COLEMAN, and Ms. OMAR) introduced the following bill; which was referred to the Committee on Armed Services

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## A BILL

To reduce the amount authorized to be appropriated for the Department of Defense for fiscal year 2023, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “People Over Pentagon  
5 Act of 2022”.

6 **SEC. 2. SENSE OF CONGRESS.**

7 It is the sense of Congress that—

1 (1) many of the most urgent threats to the na-  
2 tional security of the United States are not military  
3 in nature;

4 (2) the Federal budget should reflect the na-  
5 tional priorities of the United States; and

6 (3) in order to better protect the security of all  
7 people and address the national priorities of the  
8 United States, the budget of the Department of De-  
9 fense should be reduced and the associated savings  
10 should be reallocated.

11 **SEC. 3. REDUCTION IN AMOUNTS AUTHORIZED TO BE AP-**  
12 **PROPRIATED FOR THE DEPARTMENT OF DE-**  
13 **FENSE FOR FISCAL YEAR 2023.**

14 (a) IN GENERAL.—The amount authorized to be ap-  
15 propriated for the Department of Defense for 2023 is—

16 (1) the aggregate amount appropriated for the  
17 Department of Defense for fiscal year 2022 in divi-  
18 sion C of the Consolidated Appropriations Act, 2022  
19 (Public Law 117–103), reduced by

20 (2) \$100,000,000,000.

21 (b) FUNDING FOR CERTAIN ACCOUNTS.—The  
22 amount authorized to be appropriated for each of the fol-  
23 lowing accounts of the Department of Defense shall be the  
24 amount authorized to be appropriated for such account  
25 for fiscal year 2022:

1 (1) The Defense Health Program.

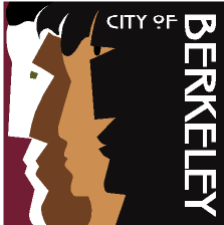
2 (2) Each military personnel account.

3 (3) Each account providing for pay and benefits  
4 for persons appointed into the civil service as defined  
5 in section 2101 of title 5, United States Code.

6 (c) APPLICATION OF FUNDING CUTS.—In reducing  
7 funding for Department of Defense programs in accord-  
8 ance with subsection (a), the Secretary of Defense shall  
9 take into consideration the findings and recommendations  
10 contained in the Congressional Budget Office report enti-  
11 tled “Illustrative Options for National Defense Under a  
12 Smaller Defense Budget” and dated October 2021.

○





Youth Commission

ACTION CALENDAR

February 28, 2023

To: Honorable Mayor and Members of the City Council  
 From: Youth Commission  
 Submitted by: Nina Thompson, Chair, Youth Commission  
 Subject: Adding a youth member to the Environment and Climate Commission

RECOMMENDATION

That Council adds a seat on the Environment and Climate Commission for a person under 18 years of age; and that Student Director on the Berkeley Unified School Board nominates the new youth commissioner and that the full board confirms the appointment.

POLICY COMMITTEE RECOMMENDATION

On January 30, 2023, the Agenda and Rules Committee adopted the following action: M/S/C (Arreguin/Bartlett) to send the items from the Youth Commission, Environment and Climate Commission, and Councilmember Harrison to the City Council with a qualified positive recommendation that the item proposed by Councilmember Harrison be adopted as revised to state that the full City Council will appoint the members to the two youth seats on the Environment and Climate Commission, and that the Berkeley Unified School District Board of Directors will provide recommendations to the City Council on candidates for the youth seats. Vote: Ayes – Bartlett, Arreguin; Noes – None; Absent - Hahn.

FISCAL IMPACTS OF RECOMMENDATION

No fiscal impact.

CURRENT SITUATION AND ITS EFFECTS

Currently, the only youth involvement in city policymaking is the Youth Commission. The Youth Commission is an important and powerful voice for youth in our city. Youth are affected by every policy decision made by the City Council, in particular, decisions to do with climate change. Youth will be affected by the decisions we make now for the rest of their lives, but are not seriously involved in making those decisions. The current Climate and Environment Commission has no designated seat for youth. This means that the commission lacks the valuable lived experience and perspectives of youth. It is imperative that youth's voices are considered when addressing climate change.

Youth Commission Meeting Monday, May 9, 2022

Action Item: **Adding a youth member to the Environment and Climate Commission**  
**M/S/Kaplan-Pettus/Thompson:** Aye's: Weisberg, Kaplan-Pettus, Chokkalingam, Schlosberg, Thompson, Powell, and Jay. Noe's: None. Abstain: None. Absent: Sanders

## BACKGROUND

In 1979 the City Council, by establishing the Youth Commission, recognized the importance of elevating the voices of young people in the city policy process. The enabling legislation of the Youth Commission states that the goal of the commission is to “give youth a voice in effecting City policy and services”. Since that time, the Youth Commission has done its best to navigate city policy bureaucracy and elevate the needs of youth in our city. However, youth voices have been lacking in the majority of city policy decisions.

## ENVIRONMENTAL SUSTAINABILITY AND CLIMATE CHANGE

There are no direct environmental impacts of this proposal. However, youth have the most to lose from the future of our environment and decisions about sustainability and hence should have a seat at the table when discussing environmental policy.

## RATIONALE FOR RECOMMENDATION

The proposal would expand youth involvement in city policymaking and better fulfill the vision laid out in the enabling legislation of the Youth Commission. The Environment and Climate Commission will benefit from the youth perspective. The youth member will help the commission understand the needs and capabilities of youth in our city. The youth member will help the commission to harness the power of young people’s experiences to better fulfill their mission. Young people will need to be part of our city’s, and our world’s, long-term environmental approach. This young person should not be tokenized but should be a full voting member of the commission. The commission should be required to fully engage youth in their planning process. The only way to ensure youth have a fair voice on the commission is if they are treated with respect and dignity by being allowed to fully participate and vote on all matters before the commission. If the city fails to give the youth member of the commission a full vote they risk the commission ignoring young people’s perspectives on this critical issue.

We recommend that the Student Director on the Berkeley Unified School Board nominates the youth commissioner and that the full board confirms their choice. This will better ensure that the representative is in line with the interests of the youth and reduce the risk of over politicization of the appointee.

## ALTERNATIVE ACTIONS CONSIDERED

We also considered the City of Berkeley Youth Commission appointing the new youth commissioner to the Environment and Climate Commission. We would support this if council feels it is a better approach.

## CITY MANAGER

The City Manager supports youth participation in the City’s boards and commissions. Currently, a student/youth in Berkeley may be appointed by the Mayor or a Councilmember to 26 of the City’s 30 commissions. With regards to expanding the number of seats on the Environment and Climate Commission (ECC) to reserve seats for persons between 12 and 19 years old, there are some potential alternatives or considerations that the council may wish to weigh.

- Raise the lower end of the age range from 12 to 14 or limit the designated seats to high school students. Commissions often meet until 9pm or 10pm in the evening, which may be difficult for middle school students. If the students are not able to attend regularly for the duration of the meeting, their absence can affect the quorum of the commission and the commission's ability to conduct business.
- Modify the ECC enabling legislation to require that one or two of the nine seats on the ECC to be filled with a "student" as defined. There are other city commissions that have reserved seats for certain interest groups or categories of commissioners (Mental Health Commission, Design Review Commission).
- Consider adding the additional seats as part of a pilot program or add a sunset date to evaluate the impact and effectiveness of the additional reserved appointments to determine if permanently expanding the membership is the best course of action.
- Clarify the intent to limit this practice to the ECC. Significant expansion of this practice would cause a large shift in how commission appointments are made and could result in requests for reserved seats from other agencies or interest groups.

#### CONTACT PERSONS

Nina Thompson, Chair, Youth Commission

Ginsi Bryant, Secretary, Youth Commission, 981-6678

#### Attachments:

1: Resolution

RESOLUTION NO. ##-###

AMENDING THE ENABLING LEGISLATION OF THE ENVIRONMENT AND CLIMATE COMMISSION (3.82) TO: ADD A SEAT TO THE ENVIRONMENT AND CLIMATE COMMISSION

WHEREAS, Youth (persons under 18 years of age) are unable to vote in council or mayoral elections; and

WHEREAS, youth (persons under 18) are not represented in the City of Berkeley Environment and Climate Commission; and

WHEREAS, the voices of youth (persons under 18) have valuable ideas for policy; and

WHEREAS, youth (persons under 18) are capable of serving and participating in city commissions; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Berkeley amends the enabling legislation of the Environment and Climate Commission (Section 3.82) to:

1. Add a seat to the Environment and Climate Commission.
2. The Berkeley Unified School District Board of Directors Student Director shall nominate the new youth commissioner.
3. The Berkeley Unified School District Board of Directors shall confirm the appointment to the Environment and Climate Commission,
4. The following desirable criteria may guide, but not restrict, the Berkeley Unified School District Board of Directors in making appointments:
  - a) To be residents of the City;
  - b) To be between the ages of twelve and eighteen;
5. The youth commissioner shall serve for no more than two years on the Environment and Climate Commission as the appointee of the Berkeley Unified School District.
6. The youth commissioner may continue to serve on the Environment and Climate Commission in the event they are no longer between the ages of 12-18.
7. The youth commissioner may be re-appointed in accordance with the provisions of Sections [2.04.030](#) through [2.04.130](#).
8. The youth commissioner shall be a fully-appointed member of the Environment and Climate Commission.



Environment and Climate Commission

ACTION CALENDAR  
February 28, 2023

To: Honorable Mayor and Members of the City Council  
 From: Environment and Climate Commission (ECC)  
 Submitted by: Ben Gould, Chairperson, ECC  
 Subject: Support for Youth Appointee to Environment and Climate Commission

### RECOMMENDATION

Refer to the City Manager to evaluate the feasibility of, and subsequently prepare draft legal language to enable, a tenth voting Environment & Climate Commission (ECC) member, representing youth, nominated by a suitable body or individual and confirmed by a suitable board of elected officials.

If feasible, the ECC recommends that a youth representative be nominated by the BUSD Student Director and confirmed by the full BUSD Board of Directors, in alignment with the recommendation passed by the Youth Commission.

### POLICY COMMITTEE RECOMMENDATION

On January 30, 2023, the Agenda and Rules Committee adopted the following action: M/S/C (Arreguin/Bartlett) to send the items from the Youth Commission, Environment and Climate Commission, and Councilmember Harrison to the City Council with a qualified positive recommendation that the item proposed by Councilmember Harrison be adopted as revised to state that the full City Council will appoint the members to the two youth seats on the Environment and Climate Commission, and that the Berkeley Unified School District Board of Directors will provide recommendations to the City Council on candidates for the youth seats. Vote: Ayes – Bartlett, Arreguin; Noes – None; Absent - Hahn.

### FISCAL IMPACTS OF RECOMMENDATION

Some staff time to review existing law and develop proposal. If enacted, having an additional ECC commissioner could result in slightly increased demands on staff time for ECC.

### CURRENT SITUATION AND ITS EFFECTS

With no youth voice on the Environment and Climate Commission, City staff and commissioners lack valuable perspective and insight into the perspectives of an important community demographic, which stands to be the most significantly impacted by the Commission's recommendations and City action (or lack thereof) on climate and environmental issues.

Historically, the ECC's predecessor commissions have been unsuccessful in engaging youth constituencies and stakeholders. Without youth perspectives, City policymaking is biased towards community members who have the time and resources to engage in local governance – typically older, wealthier residents, who are unlikely to directly experience some of the longer-term environmental consequences of climate policy.

The feasibility analysis and draft language from City staff should consider existing law in BMC 2.04.030 through 2.04.120, including:

- BMC 2.04.050, which establishes commissions at nine members,
- BMC 2.04.060 and related provisions, which restricts appointments to individual City Council members,
- BMC 2.04.140 and 2.04.145, which requires affidavits of residency for all commissioners, and
- BMC 2.04.040 (B) (2), which provides provisions for City Council majority appointment where the number of commission members is greater than nine.

At the Environment and Climate Commission meeting of Wednesday, September 28, 2022, ECC voted 6-2-0-0 to: Approve recommendations in support of Youth Member proposal and recommend one appointee nominated by BUSD Student Director and confirmed by the full BUSD Board of Directors, in alignment with the original May 9, 2022 Youth Commission proposal. M/S/Hedlund/Gould: Ayes: Ranney, McGuire, Tahara, Guliasi, Lunaparra, Gould. Noes: Hedlund, Allen. Abstain: None. Absent: None.

### BACKGROUND

The City of Berkeley established a Youth Commission in 1979, with the stated goal of “giving] youth a voice in effecting City policy and services.” However, environment and climate change issues are critical matters affecting all youth, yet youth have no institutionalized process for interacting or engaging with City environmental policy, and City Council has consistently failed to appoint any individuals under the age of 18 to the Environment and Climate Commission (ECC) or its predecessor commissions (the Energy Commission [EC] and the Community Environmental Advisory Commission [CEAC]). To date, the Youth Commission is the primary, and possibly only, City body to which individuals under 18 are appointed on a regular basis.

In May 2022, the Youth Commission passed a recommendation to establish a youth appointee to the ECC. However, the item has not yet been taken up by City Council.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE CHANGE

Supporting greater engagement of marginalized non-voting community members in environmental policymaking will result in more diverse perspectives and likely to produce better policymaking and feedback for staff, improving environmental sustainability overall.

RATIONALE FOR RECOMMENDATION

The proposal would expand youth involvement in city policymaking and allow ECC to better reflect and represent the broad interests of the community, without imposing an undue burden on City staff, Council, or otherwise impairing the functioning of the commission.

ALTERNATIVE ACTIONS CONSIDERED

The ECC considered asking the Youth Commission to send a nonvoting liaison to bridge the two commissions, but determined that a nonvoting position limited to public comment was unlikely to be effective at recruiting and sustaining interest from young people.

The ECC considered having the youth member be nominated by the Youth Commission and approved by the City Council, but determined that BUSD was better equipped to engage a wide range of students and youth, and having BUSD make the appointment would align with Berkeley's laws allowing 16- and 17-year-old youth to vote in School Board elections.

CITY MANAGER

The City Manager supports youth participation in the City's boards and commissions. Currently, a student/youth in Berkeley may be appointed by the Mayor or a Councilmember to 26 of the City's 30 commissions. With regards to expanding the number of seats on the Environment and Climate Commission (ECC) to reserve seats for persons between 12 and 19 years old, there are some potential alternatives or considerations that the Council may wish to weigh.

- Raise the lower end of the age range from 12 to 14 or limit the designated seats to high school students. Commissions often meet until 9pm or 10pm in the evening, which may be difficult for middle school students. If the students are not able to attend regularly for the duration of the meeting, their absence can affect the quorum of the commission and the commission's ability to conduct business.
- Modify the ECC enabling legislation to require that one or two of the nine seats on the ECC to be filled with a "student" as defined. There are other city commissions that have reserved seats for certain interest groups or categories of commissioners (Mental Health Commission, Design Review Commission).
- Consider adding the additional seats as part of a pilot program or add a sunset date to evaluate the impact and effectiveness of the additional reserved appointments to determine if permanently expanding the membership is the best course of action.
- Clarify the intent to limit this practice to the ECC. Significant expansion of this practice would cause a large shift in how commission appointments are made and could result in requests for reserved seats from other agencies or interest groups.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE CHANGE

Supporting greater engagement of marginalized non-voting community members in environmental policymaking will result in more diverse perspectives and likely to produce better policymaking and feedback for staff, improving environmental sustainability overall.

CONTACT PERSON

Ben Gould, Chair, Environment and Climate Commission  
Billi Romain, Secretary, Environment and Climate Commission





Kate Harrison  
Councilmember District 4

ACTION CALENDAR  
February 28, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison

Subject: Adopt an Ordinance Amending Berkeley Municipal Code Chapter 3.82  
Modifying Membership and Appointment Procedures for the Environment and  
Climate Commission

RECOMMENDATION

Adopt an Ordinance Amending Berkeley Municipal Code Chapter 3.82 Modifying Membership and Appointment Procedures for the Environment and Climate Commission.

POLICY COMMITTEE RECOMMENDATION

On January 30, 2023, the Agenda and Rules Committee adopted the following action: M/S/C (Arreguin/Bartlett) to send the items from the Youth Commission, Environment and Climate Commission, and Councilmember Harrison to the City Council with a qualified positive recommendation that the item proposed by Councilmember Harrison be adopted as revised to state that the full City Council will appoint the members to the two youth seats on the Environment and Climate Commission, and that the Berkeley Unified School District Board of Directors will provide recommendations to the City Council on candidates for the youth seats. Vote: Ayes – Bartlett, Arreguin; Noes – None; Absent - Hahn.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

Berkeley's high school aged youth stand to inherit a planet devastated by the escalating climate emergency, yet are currently unable to vote in local, state, and federal elections. Global warming is an existential issue that encompasses nearly all ecological, political and socio-economic issues. This decade is widely considered pivotal in determining the ultimate severity of warming. Berkeley's Commission system is a critical avenue for engaging with and impacting the local legislative process. While Council is technically permitted to appoint such youth as members of the Environment and Climate Commission, there is currently no formal process for encouraging and facilitating the Berkeley Unified School District (BUSD) Board to formally recommend to Council members to the Commission. Unlike the Council, the BUSD Board includes a Student Director that directly represents students. Consistent with existing processes for the Youth and Peace and Justice Commissions, and given the importance of environmental and climate issues to youth, it is in the public interest to provide high school-aged youth

Adopt an Ordinance Amending Berkeley Municipal Code Chapter 3.82 Modifying Membership and Appointment Procedures for the Environment and Climate Commission

with two permanent voting seats on the Commission to be appointed by the full Council with candidates recommended by the BUSD Board.

**BACKGROUND**

Currently, the only formalized Commission-based youth involvement in City policymaking are the Youth and Peace and Justice Commissions. Over the past year, youth have organized and mobilized to petition the Council to add an additional voice for youth on issues of the environment and climate.

In 2022, both the Youth and Environment and Climate Commissions have formally endorsed the concept of adding voting membership for high school-aged youth on the Environment and Climate Commission.<sup>1</sup>

This item includes an ordinance, drafted in consultation with the Clerk and City Manager’s offices. The proposed amendments to BMC 3.82 would accomplish the following:

- adds two seats to the Commission to be appointed by Council as a body upon recommendation of candidates by BUSD, with a preference for appointees who are residents of the City (while recognizing that some students may live outside of the district), between the ages of sixteen and twenty-five (while providing ultimate discretion to the Council consistent with current procedures on the Youth and Peace and Justice Commissions), and a demonstrated commitment or interest in the work of the Commission;
- provides for BUSD Board to appoint one of its Board members as a non-voting liaison representative to the Environment and Climate Commission.

This ordinance is being proposed on its own merits and following consultation with the Clerk’s and City Manager’s offices. Adoption of this ordinance is in no way intended to endorse the concept of amending other Commissions to include BUSD appointments. This item also recognizes and appreciates that expanding membership of Commissions is not without impact to Clerk staff time and resources.

**ATTACHMENTS**

1. Ordinance Amending Berkeley Municipal Code Chapter 3.82

**FISCAL IMPACTS OF RECOMMENDATION**

City Clerk staff time is needed to adopt procedures related to appointing and verifying the status of Council appointed members.

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<sup>1</sup> Environment and Climate Commission Minutes, September 28, 2022  
[https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/ECC2022-09-28\\_Minutes.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/ECC2022-09-28_Minutes.pdf); Agenda Regular Meeting of the Environment and Climate Commission, September 28, 2022, [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-09-28\\_ECC\\_Agenda%20-%20Packet\\_0.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-09-28_ECC_Agenda%20-%20Packet_0.pdf).

Adopt an Ordinance Amending Berkeley Municipal Code Chapter 3.82 Modifying Membership and Appointment Procedures for the Environment and Climate Commission

**ENVIRONMENTAL SUSTAINABILITY**

There are no direct environmental impacts of this proposal. However, the City legislative process would benefit from more robust youth participation.

**CONTACT PERSON**

Councilmember Kate Harrison, (510) 981-7140

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 3.82 MODIFYING  
MEMBERSHIP AND APPOINTMENT PROCEDURES FOR THE  
ENVIRONMENT AND CLIMATE COMMISSION

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

Section 1. That Berkeley Municipal Code Chapter 3.82 is amended to read as follows:

ENVIRONMENT AND CLIMATE COMMISSION

Sections:

- 3.82.010 Established--Membership--Appointment.
- 3.82.020 Council representative as commission liaisons -- ~~Functions~~.
- 3.82.030 Organization, meetings, rules and procedures.
- 3.82.040 Functions.

**3.82.10 Established--Membership--Appointment.**

A. An Environment and Climate Commission is established. The commission shall consist of ~~nine~~ eleven members. ~~Appointments to the commission shall be made, and vacancies on the commission shall be filled, in accordance with the provisions of Sections 2.04.030 through 2.04.130. City Council shall appoint representatives with appropriate expertise and demonstrated commitment to the areas outlined in the functions section 3.04.40.~~

A.B. One member of the Commission shall be appointed by each City Councilmember. ~~Appointments to the commission shall be made,~~ and vacancies on the commission shall be filled, in accordance with the provisions of Sections 2.04.030 through 2.04.130. City Council shall appoint representatives members with appropriate expertise and demonstrated commitment to the areas outlined in the functions section ~~3.0482.040~~.

B.C. Two members of the Commission shall be appointed by the Berkeley City Council as a body with candidates recommended by the Berkeley Unified School District Board of Directors and subject to the following:

(1) The following desirable criteria may guide, but not restrict, the Council in appointing candidates to the Commission:

i. Appointees to be residents of the City;

ii. Appointees to be between the ages of sixteen and twenty-five;

(2) Appointees shall have demonstrated commitment or interest in the areas outlined in Section 3.82.040.

~~G.D.~~ ~~B.~~ For purposes of determining term limits under Section 3.02.040, a commissioner's service on the Energy Commission or the Community Environmental Advisory Commission shall be counted toward their service upon their appointment to the Environment and Climate Commission.

**3.82.020 Council representative as commission liaison.**

The City Council and School Board may appoint one of its members to act as a non-voting, uncompensated liaison representative to the Environment and Climate Commission. The functions of such liaison representatives are:

- A. To attend meetings of said commission;
- B. To advise the Council and School Board of the background, reasons and rationale behind decisions and recommendations of said commission; and
- C. On request of any member of said commission, to advise the commission of policies, procedures and decisions of the council and School Board that may bear on matters under discussion by the commission.

**3.82.030 Organization, meetings, rules and procedures.**

A. The commission annually shall elect one of its members as the chairperson and one of its members as the vice-chairperson. One or more officers or employees of the City designated by the City Manager shall serve as secretary of the commission.

B. The commission shall establish a regular place and time for meeting. All meetings shall be noticed as required by law and shall be scheduled in a way to allow for maximum input from the public. The frequency of commission meetings shall be as determined by City Council Resolution. The scheduling of special meetings in addition to those established by City Council resolution, except special meetings that take the place of cancelled regular meetings, shall be subject to approval by the City Council. A request for a special meeting shall include the reason for the proposed meeting and should be expedited on the City Council's agenda, or in the alternative, placed before the Agenda Committee for approval.

C. The commission may make and alter rules governing its organization and procedures which are consistent with this Chapter or any other applicable ordinance of the City.

D. A majority of the members appointed to the commission shall constitute a quorum and the affirmative vote of a majority of the members appointed is required to take any action.

E. The commission shall keep an accurate record of its proceedings and transactions.

**3.82.040 Functions.**

The Environment and Climate Commission shall be an advisory board and shall review and advise the City Council on matters related to emerging issues, policies, projects, programs, planning efforts, activities, and funding of environmental sustainability and climate change mitigation, adaptation and resilience. Its scope will include work to advance the goals of advancing green buildings and resource efficiency; decarbonizing buildings and transportation; engaging and educating the community; addressing the impacts and welfare of all species, including animals, insects, and plants; reducing greenhouse gas emissions; reducing toxics and preventing pollution; and supporting environmental justice.

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 ~~Council Chamber~~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.



Lori Droste  
Councilmember, District 8

ACTION CALENDAR  
February 28, 2023

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

**From:** Councilmember Lori Droste

**Subject:** Reforms to Public Comment Procedures at meetings of the Berkeley City Council

**Recommendation**

Adopt a Resolution revising the City Council Rules of Procedure and Order: Section IV. Conduct of the Meeting and Appendix C Temporary Rules for The Conduct of City Council Meetings Through Video Conference During The Covid-19 Emergency to:

1. Consolidate non-agenda public comment, public comment on the Consent Calendar, and public comment on Action Items into a single public comment period toward the start of the Council meeting (consistent with the Berkeley Unified School District's public comment procedure), and continue to provide for additional time for public comment at the end of meetings;
2. Adopt reasonable limits on the overall number of public speakers (consistent with rulings from the Second District Court of Appeal) with a mechanism for the City Council to extend public comment; and
3. Rescind Resolution No. 70,091– N.S

**POLICY COMMITTEE RECOMMENDATION**

On January 30, 2023, the Agenda and Rules Committee adopted the following action: M/S/C (Arreguin/Bartlett) to send the item to the City Council with a negative recommendation that no action be taken on the item. Vote: Ayes – Bartlett, Arreguin; Noes – None; Absent - Hahn.

**Current Situation and Its Effects**

City Council has occasionally tried to rebalance the City's approach to public comment at Council meetings to create a more welcoming atmosphere, conduct the people's business efficiently, and ensure elected officials have time to give items due consideration. Unfortunately, members of the public, applicants/appellants, and staff frequently have to wait for hours before an item is heard or unexpectedly moved to another meeting. This is due to the way public comment was established prior to the tenure of any of the current Councilmembers or the Mayor. This prevents many ordinary people, particularly those who have small children or work long hours, from having a reasonable opportunity to provide public comment and hear the Council deliberate. It also deprives the Council of the time needed for adequate consideration of items, especially major policy efforts, and frequently pushes important items to future meetings.

**Background and Rationale**

Pursuant to the Brown Act, Section 54954.3, members of the public shall be afforded the opportunity to speak on any agenda item of a substantive nature providing they are first recognized by the presiding officer. City Council greatly values input and comment from a broad

cross-section of the public on legislative matters. The City of Berkeley and Councilmembers appreciate and admire the dedication of the many mainstays at public comment. Nevertheless, other community members often feel overwhelmed and intimidated by the prospect of enduring hours-long City Council meetings, not just to provide public comment but to even hear the Council's discussions. Having to wait through hours of public comment (much of which is often duplicative) before one gets to participate and/or hear the position of one's elected representatives is neither fair, equitable, nor good for democracy.

Public comment and Council procedures have undergone iterations before. Most recently, Mayor Arreguín offered a very successful and equitable amendment to require three councilmembers to agree to pull an item from the consent calendar to the action calendar, instead of one councilmember or four public speakers. This change dramatically helped meetings run smoother and ensured that uncontroversial and broad-consensus consent calendar items were not subject to attempts at obstructionism or unduly long debates which extended meeting times.

Even with that positive change, the current approach to public comment ironically does not likely widen opportunities for civic engagement; but instead serves to preclude a more representative sample of participants—as political scientists from Boston University have [found](#). Currently, many residents must wait for extended periods of time in order to provide public comment on specific legislation, since no specific times are available for when a piece of legislation will be heard. This means that people who may care deeply about a particular issue are discouraged from participating in favor of those who have a general interest in speaking and the time to sit through the entirety of a meeting. Although their commitment and interest are commendable, such individuals are not necessarily representative of the broader public.

[The Brown Act](#) actually provides leeway for the City to consider other approaches to public comment. Under the Brown Act, the City must allow the public to comment on any agenda item; and there are certain items that require ensuring public comment from all interested parties (e.g., quasi-judicial proceedings and public hearings where due process demands allowing comment from all participants). But for most items, the Brown Act permits agencies to limit the amount of time for public comment on any given item, provided that such limits are content-neutral. For example, for most Council items, the City Council would be permitted under the Brown Act to impose a 10-minute limit on public comment, comprising ten speakers with one minute each, with the speakers determined on a lottery or first-come, first-served basis. Alternatively, the City Council could also adopt a content-neutral limitation on the number of speakers for a general public comment period at the start of each meeting which covers all agenda and non-agenda comments—as proposed in this item.

In its decision in the 2018 *Ribakoff v. City of Long Beach, et al.* decision, the Second District Court of Appeal ruled in part:

*“On the other hand, having no limit on either the length of any particular presentation by a member of the public **or on the number of public speakers (or on the total time for public comment)** has the potential for endless discussion—given the potential that there will be a far greater number of members of the public who may wish to speak to an issue than there are staff and guests who make presentations concerning it. The number of staff and invited guests speaking on a topic will clearly be limited; **the potential for public speakers is potentially extensive and needs some reasonable limitation.**”*



*We do not suggest that members of the public may not have expertise, or that their presentations would be of lesser value than those of the invited, expert staff and guest speakers, **only that their number must be considered in weighing the time allotted to public participation.** Indeed, this concern was a factor in shaping the text of Government Code section 54954.3 as it moved through the Legislature with amendments to the Brown Act adopted in 1986. On the one hand, the Legislature declared the importance of open governance and the public's right to participate. On the other, it **validated enactment of limits on public speakers so that the business of government could function.** (Gov. Code, § 54954.3.)<sup>23</sup>[emphasis added]"*

Members of the public would still have ample additional means of addressing their concerns to councilmembers, including in-person meetings and office hours, written correspondence, emails, telephone calls, and social media/online platforms. Although it is beyond the scope of this item, the City may also wish to explore expanding and enhancing Berkeley Considers to provide a new platform for community members to provide comments on upcoming Council items. Berkeley could potentially pioneer having a “one-stop shop” for members of the public to provide feedback on upcoming Council items and have that feedback delivered to Council in a formalized and easily visualized format.

### **Best Practices**

#### *Berkeley Unified School District*

The Berkeley Unified School District has adopted [a practice](#) that is likely more conducive to allowing a broader participation of residents in the civic process. There are two opportunities for public comment, one at the beginning and one at the end of the meeting. By allowing public comment at the beginning of the meeting, individuals do not have to wait for hours for an item with an unknown start time. And In other cities, the presiding officer can limit individual presentations, the amount of time allotted for public input, and/or limit the number of speakers with similar positions. This item proposes to use the approach used by BUSD.

### **Fiscal Impacts**

De minimis costs for staff to revise local and public-facing digital copies of the City Council's Rules of Procedure and time and materials costs for any printing of physical copies.

Long-term fiscal impacts are speculative, but reduced Council and staff time for the receipt and management of in-person and virtual public comment have a strong potential to reduce City costs. The cost reductions would be highly variable depending on the number and nature of staff present at any given City Council meeting.

### **Alternative Actions Considered**

Alternative Actions include but are not limited to:

- Leaving existing public comment policies and procedures unchanged.
- Adopting a limit on the number of public speakers for each item.

These options were rejected in favor of the more “tried and true” approach currently used by the Berkeley Unified School District, as well as other jurisdictions and agencies across California.

### **Contact Person**

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

RE-ADOPTING THE CITY COUNCIL RULES OF PROCEDURE AND ORDER AND  
RESCINDING RESOLUTION NO. 70,091–N.S.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the revised sections of the City Council Rules of Procedure and Order attached hereto as Exhibit A shall replace wholesale the corresponding sections of the existing City Council Rules of Procedure and Order attached hereto as Exhibit B and incorporated by reference.

BE IT FURTHER RESOLVED that the revised City Council Rules of Procedure and Order (Exhibit B as amended by Exhibit A) shall govern all proceedings of the City Council therein described, subject to the exceptions and deviations provided for in such rules.

BE IT FURTHER RESOLVED that violation of these rules shall not be construed as a penal offense, except as provided for by the adopted Rules of Procedure and Order.

BE IT FURTHER RESOLVED that the Council shall review its Rules of Procedure and Order in March of each odd-numbered year per [April 26, 2016 City Council action](#).

BE IT FURTHER RESOLVED that Resolution No 70,091–N.S. is hereby rescinded.

Exhibits

Exhibit A: Sections of the City Council Rules of Procedure and Order to be revised

Exhibit B: Existing City Council Rules of Procedure and Order

## Exhibit A: Sections of the City Council Rules of Procedure and Order to be Revised

### IV. CONDUCT OF MEETING

#### A. Comments from the Public

Public comment will be taken in the following order:

- An initial ~~ten-minute~~ period of public comment on non-agenda items, the consent calendar, action items (excluding public hearings, appeals, and/or other quasi-judicial matters), and information items, after the commencement of the meeting and immediately after Ceremonial Matters and City Manager Comments.
- ~~Public comment on the Consent and Information Calendars.~~
- Public comment on action items, any appeals, and/or public hearings, and/or other quasi-judicial matters requiring extended public comment for due process purposes, as they are taken up under procedures set forth in the sections governing each below.
- Public comment on non-agenda items from any speakers who did not speak during the first round of ~~non-agenda~~ public comment at the beginning of the meeting.

Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. A speaker wishing to yield their time shall identify themselves, shall be recognized by the chair, and announce publicly their intention to yield their time. Disabled persons shall have priority seating in the front row of the public seating area.

A member of the public may only speak once at public comment ~~on any single item~~, unless called upon by the Mayor or a Councilmember to answer a specific inquiry, or unless the individual is speaking with respect to a public hearing, a quasi-judicial matter, and/or any other item requiring unrestricted public comment as a matter of due process.

Prior to the general public comment period, the Presiding Officer shall announce any planned changes to the order of the agenda, including any items which are being moved to the Consent Calendar and/or any items that are being removed from the agenda at the prerogative of the Presiding Officer and/or the item's sponsor(s).

The Presiding Officer will request that persons wishing to speak, line up at the podium, raise their hands on Zoom, or otherwise indicate their intent to speak in order to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking virtually or in person, each speaker may speak for two minutes at the discretion of the Presiding Officer. If there are more than ten persons interested in speaking, the Presiding Officer shall limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one another, however no one speaker shall have more than four minutes.

A maximum of 50 individuals shall be permitted to speak or yield time during the general public comment period. This maximum shall apply whether speakers are virtual, in person, or a combination of the two. In the event that more than 50 individuals wish to speak at a fully virtual or fully in-person Council meeting, speaking opportunities shall be given on a "first come, first served" basis.

In the event that more than 50 individuals wish to speak at a "hybrid" Council meeting (with both a virtual and in-person component), 25 in-person speakers shall be allowed to speak first.

followed by 25 virtual speakers. For both the virtual and in-person queues, speakers shall be recognized in the order they lined up or provided virtual notification of their intent to speak. If the queue for either type of speaker is exhausted while speakers of the other type remain, the remaining individuals in either queue will be allowed to speak, up to the overall 50-speaker maximum.

The maximum number of speakers/yielders may be increased up to 100 total individuals by a two-thirds (2/3) vote of the City Council. Increases above 100 total individuals speaking or yielding shall require a unanimous vote of the City Council. In no case shall these limits be applied to items which require unconstrained public comment to ensure due process.

These procedures/limits also apply to public hearings except for those which would be precluded by the types of due process public hearings specifically provided for in Section 2, below.

### **1. Public Comment on Consent Calendar and Information Items.**

As described above, public comment on the "Consent Calendar" will be taken as part of the general public comment period at the start of the Council meeting following Ceremonial Matters and any comments from the City Manager.

Prior to this initial general public comment period, the Council will first determine whether to move items on the agenda for "Action" or "Information" to the "Consent Calendar," and/or move "Consent Calendar" items to "Action." Items that remain on the "Consent Calendar" are voted on in one motion as a group. "Information" items are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent."

The Council will then take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. A speaker may only speak once during the period for public comment on Consent Calendar and Information items. Following the initial period of general public comment, the three or more members of City Council may still move items from the "Consent Calendar" to "Action," but no additional items can be moved onto the Consent Calendar once public comment has commenced.

At any time during, or immediately after, the initial period of general public comment on Information and Consent items, the Mayor or any Councilmember may move any Information or Consent item to "Action." Three or more members of the City Council, including the Mayor, may move any Consent Item to "Action." Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

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

### **2. Public Comment on Action Items.**

After the initial ten minutes of public comment on non-agenda items, public comment on consent and information items, and adoption of the Consent Calendar, the public may comment on each remaining item listed on the agenda for action as the item is taken up.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

~~If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.~~

~~This procedure also applies to public hearings except those types of public hearings specifically provided for in this section, below.~~

**32. Appeals Appearing on Action Calendar.**

With the exception of appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission, appeals from decisions of City commissions appear on the "Action" section of the Council Agenda. Council determines whether to affirm the action of the commission, set a public hearing, or remand the matter to the commission. Appeals of proposed special assessment liens shall also appear on the "Action" section of the Council Agenda. Appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission are automatically set for public hearing and appear on the "Public Hearings" section of the Council Agenda. The procedures for public comment on appeals from these two bodies and attendant public hearings shall be the same as described below for all other commission appeals.

Time shall be provided for public comment for persons representing both sides of the action/appeal and each side will be allocated seven minutes to present their comments on the appeal. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have seven minutes to comment and the applicant shall have seven minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have seven minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have seven minutes to comment and the persons supporting the action of the board or commission on appeal shall have seven minutes to comment. In the case of an appeal of a proposed special assessment lien, the appellant shall have seven minutes to comment.

After the conclusion of the seven-minute comment periods, members of the public may comment on the appeal. Comments from members of the public regarding appeals shall be limited to one minute per speaker. Any person that addressed the Council during one of the seven-minute periods may not speak again during the public comment period on the appeal. Speakers may yield their time to one other speaker, however, no speaker shall have more than two minutes. Each side shall be informed of this public comment procedure at the time the Clerk notifies the parties of the date the appeal will appear on the Council agenda.

**43. Public Comment on Non-Agenda Matters.**

~~Immediately following Ceremonial Matters and the City Manager Comments and prior to the Consent Calendar, persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting.~~

Individuals wishing to address the Council about non-agenda matters may do so during the initial period of general public comment, and will count toward the overall limit on the number of individuals making public comment.

The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.

~~Persons submitting speaker cards are not required to list their actual name, however they must list some identifying information or alternate name in order to be called to speak.~~ For the second round of public comment on non-agenda matters, the Presiding Officer retains the authority to limit the number of speakers by subject. The Presiding Officer will generally request that persons wishing to speak, line up at the podium, raise their hand on zoom, or otherwise to be recognized to determine the number of persons interested in speaking at that time. Each speaker will be entitled to speak for two minutes each unless the Presiding Officer determines that one-minute is appropriate given the number of speakers.

Pursuant to this document, no Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items. If any agenda item remains unfinished at 11:00 p.m. or the expiration of any extension after 11:00 p.m., it will be referred to the Agenda & Rules Committee for scheduling pursuant to Chapter II, Section F. In that event, the meeting shall be automatically extended for up to fifteen (15) minutes for public comment on non-agenda items.

#### 54. Ralph M. Brown Act Pertaining to Public Comments.

The Brown Act prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the agenda. However, the Council may refer a matter to the City Manager.

### **APPENDIX C. TEMPORARY RULES FOR THE CONDUCT OF CITY COUNCIL MEETINGS THROUGH VIDEO CONFERENCE DURING THE COVID-19 EMERGENCY**

#### **Public Comment Speaking Time**

With the exception of prescribed times in the Rules of Procedure for public hearings, the amount of time for each speaker during public comment is limited to ~~two~~one minutes maximum and that speakers can only address an agenda item once, ~~however the Presiding Officer has the discretion to reduce speaker time if needed in order to allow the orderly conduct of the meeting, subject to the consent of a majority of the City Council.~~ Speakers may yield their time for a maximum of four minutes per individual. If a speaker wishes to yield their time, they must indicate so when called on by the Presiding Officer and state who they are yielding their speaker time to. The Presiding Officer will keep a list with the names and amount of time yielded to individuals.

In order to inform members of the public of their place in the speaker's queue, the Presiding Officer will call the names of 5 speakers at a time.

Public Comment on Non-Agenda Matters ~~will~~may be conducted in the order of hands raised on the Zoom platform or based upon a lottery or similar system, ~~and will be limited to either the first~~

~~10 speakers during the initial round of Non-Agenda public comment, as well as all hands raised during the closing round of Non-Agenda public comment at the conclusion to the meeting, until such time that the meeting adjourns. If there are five or fewer speakers with hands raised for Public Comment on Non-Agenda Matters, each speaker will have two minutes to address the City Council. If there are more than five speakers with their hands raised then speaker time will be limited to one minute per person. The procedure for selection of Non-Agenda speakers prescribed in the Rules of Procedure by random draw is suspended for videoconference meetings where there is no physical meeting location.~~

**Exhibit B:  
City Council Rules of Procedure and Order**



# The Berkeley City Council Rules of Procedure and Order

Adopted by Resolution No. 70,091–N.S.

Effective October 26, 2021

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## I. DUTIES

### A. Duties of Mayor

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

### B. Duties of Councilmembers

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

### C. Motions to be Stated by Chair

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

### D. Decorum by Councilmembers

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

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

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

### E. Voting Disqualification

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

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

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

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

## II. MEETINGS

### A. Call to Order - Presiding Officer

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

### B. Roll Call

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

### C. Quorum Call

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

### D. Council Meeting Conduct of Business

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

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

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

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

**E. Adjournment**

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

**F. Unfinished Business**

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

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

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

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

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

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

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

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

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

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

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

**I. Ad Hoc Subcommittees**

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

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

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

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

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

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

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



### III. AGENDA

#### A. Declaration of Policy

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

#### B. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**3. Submission of Agenda Items.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**6. Scheduling a Presentation.**

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

**D. Packet Preparation and Posting**

**1. Preparation of the Packet.**

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

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

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



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

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

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

**4. Failure to Meet Deadlines.**

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

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

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

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

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

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

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

**F. Closed Session Documents**

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

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

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

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

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

#### Full Council Track

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

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

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

#### Policy Committee Track

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

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

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

### Time Critical Track

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

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

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

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

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

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

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

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

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

Committees shall have the following qualities/components:

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

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

Within 120 days of the referral date, either (1) the committee Chair may accept the Primary Author's request, either in writing, or in person at a meeting of the committee, that the item remain in committee until a date certain (more than one extension may be requested by the Primary Author); or (2) the committee may vote to send the item to the Agenda & Rules Committee to be placed on a Council Agenda with a Committee recommendation consisting of one of the four options listed below. The Committee Chair shall report any extension granted outside of a meeting to the Committee by email or verbally at the next Committee meeting.

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

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

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

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

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

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

Once the item is voted out of a Policy Committee, the final item will be resubmitted to the agenda process by the Primary Author, and it will return to the Agenda & Rules Committee

on the next available agenda. The Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the following Council agenda. Only items that receive a Positive Recommendation can be placed on the Consent Calendar.

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

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

Six committees are authorized, each comprised of three Councilmembers, with a fourth Councilmember appointed as an alternate. Each Councilmember and the Mayor will serve on two committees. The Mayor shall be a member of the Agenda and Rules Committee. The committees are as follows:

1. Agenda and Rules Committee
2. Budget and Finance Committee
3. Facilities, Infrastructure, Transportation, Environment, and Sustainability
4. Health, Life Enrichment, Equity, and Community
5. Land Use, Housing, and Economic Development
6. Public Safety

The Agenda & Rules Committee shall establish the Policy Committee topic groupings, and may adjust said groupings periodically thereafter in order to evenly distribute expected workloads of various committees.

All standing Policy Committees of the City Council are considered “legislative bodies” under the Brown Act and must conduct all business in accordance with the Brown Act.

### **6. Role of City Staff at Committee Meetings**

Committees will be staffed by appropriate City Departments and personnel. As part of the committee process, staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item. Staff analysis at the Policy Committee level is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

## IV. CONDUCT OF MEETING

### A. Comments from the Public

Public comment will be taken in the following order:

- An initial ten-minute period of public comment on non-agenda items, after the commencement of the meeting and immediately after Ceremonial Matters and City Manager Comments.
- Public comment on the Consent and Information Calendars.
- Public comment on action items, appeals and/or public hearings as they are taken up under procedures set forth in the sections governing each below.
- Public comment on non-agenda items from any speakers who did not speak during the first round of non-agenda public comment at the beginning of the meeting.

Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. A speaker wishing to yield their time shall identify themselves, shall be recognized by the chair, and announce publicly their intention to yield their time. Disabled persons shall have priority seating in the front row of the public seating area.

A member of the public may only speak once at public comment on any single item, unless called upon by the Mayor or a Councilmember to answer a specific inquiry.

#### 1. Public Comment on Consent Calendar and Information Items.

The Council will first determine whether to move items on the agenda for “Action” or “Information” to the “Consent Calendar,” or move “Consent Calendar” items to “Action.” Items that remain on the “Consent Calendar” are voted on in one motion as a group. “Information” items are not discussed or acted upon at the Council meeting unless they are moved to “Action” or “Consent.”

The Council will then take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. A speaker may only speak once during the period for public comment on Consent Calendar and Information items. No additional items can be moved onto the Consent Calendar once public comment has commenced.

At any time during, or immediately after, public comment on Information and Consent items, the Mayor or any Councilmember may move any Information or Consent item to “Action.” Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

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



**2. Public Comment on Action Items.**

After the initial ten minutes of public comment on non-agenda items, public comment on consent and information items, and adoption of the Consent Calendar, the public may comment on each remaining item listed on the agenda for action as the item is taken up.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

This procedure also applies to public hearings except those types of public hearings specifically provided for in this section, below.

**3. Appeals Appearing on Action Calendar.**

With the exception of appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission, appeals from decisions of City commissions appear on the "Action" section of the Council Agenda. Council determines whether to affirm the action of the commission, set a public hearing, or remand the matter to the commission. Appeals of proposed special assessment liens shall also appear on the "Action" section of the Council Agenda. Appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission are automatically set for public hearing and appear on the "Public Hearings" section of the Council Agenda.

Time shall be provided for public comment for persons representing both sides of the action/appeal and each side will be allocated seven minutes to present their comments on the appeal. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have seven minutes to comment and the applicant shall have seven minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have seven minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have seven minutes to comment and the persons supporting the action of the board or commission on appeal shall have seven minutes to comment. In the case of an appeal of proposed special assessment lien, the appellant shall have seven minutes to comment.

After the conclusion of the seven-minute comment periods, members of the public may comment on the appeal. Comments from members of the public regarding appeals shall be limited to one minute per speaker. Any person that addressed the Council during one of the seven-minute periods may not speak again during the public comment period on the appeal. Speakers may yield their time to one other speaker, however, no speaker shall have more than two minutes. Each side

shall be informed of this public comment procedure at the time the Clerk notifies the parties of the date the appeal will appear on the Council agenda.

#### **4. Public Comment on Non-Agenda Matters.**

Immediately following Ceremonial Matters and the City Manager Comments and prior to the Consent Calendar, persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting.

The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.

Persons submitting speaker cards are not required to list their actual name, however they must list some identifying information or alternate name in order to be called to speak.

For the second round of public comment on non-agenda matters, the Presiding Officer retains the authority to limit the number of speakers by subject. The Presiding Officer will generally request that persons wishing to speak, line up at the podium to be recognized to determine the number of persons interested in speaking at that time. Each speaker will be entitled to speak for two minutes each unless the Presiding Officer determines that one-minute is appropriate given the number of speakers.

Pursuant to this document, no Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items. If any agenda item remains unfinished at 11:00 p.m. or the expiration of any extension after 11:00 p.m., it will be referred to the Agenda & Rules Committee for scheduling pursuant to Chapter II, Section F. In that event, the meeting shall be automatically extended for up to fifteen (15) minutes for public comment on non-agenda items.

#### **5. Ralph M. Brown Act Pertaining to Public Comments.**

The Brown Act prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the agenda. However, the Council may refer a matter to the City Manager.

#### **B. Consent Calendar**

There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, Councilmembers, boards, commissions, City Auditor and City Manager deem to be of such nature that no debate or inquiry

will be necessary at the Council meetings. Ordinances for second reading may be included in the Consent Calendar.

It is the policy of the Council that the Mayor or Councilmembers wishing to ask questions concerning Consent Calendar items should ask questions of the contact person identified prior to the Council meeting so that the need for discussion of consent calendar items can be minimized.

Consent Calendar items may be moved to the Action Calendar by the Council. Action items may be reordered at the discretion of the Chair with the consent of Council.

**C. Information Reports Called Up for Discussion**

Reports for Information designated for discussion at the request of the Mayor or any Councilmember shall be added to the appropriate section of the Action Calendar and may be acted upon at that meeting or carried over as pending business until discussed or withdrawn. The agenda will indicate that at the request of Mayor or any Councilmember a Report for Information may be acted upon by the Council.

**D. Written Communications**

Written communications from the public will not appear on the Council agenda as individual matters for discussion but will be distributed as part of the Council agenda packet with a cover sheet identifying the author and subject matter and will be listed under "Communications." All such communications must have been received by the City Clerk no later than 5:00 p.m. fifteen days prior to the meeting in order to be included on the agenda.

In instances where an individual forwards more than three pages of email messages not related to actionable items on the Council agenda to the Council to be reproduced in the "Communications" section of the Council packet, the City Clerk will not reproduce the entire email(s) but instead refer the public to the City's website or a hard copy of the email(s) on file in the City Clerk Department.

All communications shall be simply deemed received without any formal action by the Council. The Mayor or a Councilmember may refer a communication to the City Manager for action, if appropriate, or prepare a consent or action item for placement on a future agenda.

Communications related to an item on the agenda that are received after 5:00 p.m. fifteen days before the meeting are published as provided for in Chapter III.C.4.

**E. Public Hearings for Land Use, Zoning, Landmarks, and Public Nuisance Matters**

The City Council, in setting the time and place for a public hearing, may limit the amount of time to be devoted to public presentations. Staff shall introduce the public hearing item and present their comments.

Following any staff presentation, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Such reports shall include a brief statement describing the name, date,

place, and content of the contact. Written reports shall be available for public review in the office of the City Clerk prior to the meeting and placed in a file available for public viewing at the meeting.

This is followed by five-minute presentations each by the appellant and applicant. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have five minutes to comment and the applicant shall have five minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have five minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have five minutes to comment and the persons supporting the action of the board or commission on appeal shall have five minutes to comment. In the case of a public nuisance determination, the representative(s) of the subject property shall have five minutes to present.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Any person that addressed the Council during one of the five-minute periods may not speak again during the public comment period on the appeal. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

#### **F. Work Sessions**

The City Council may schedule a matter for general Council discussion and direction to staff. Official/formal action on a work session item will be scheduled on a subsequent agenda under the Action portion of the Council agenda.

In general, public comment at Council work sessions will be heard after the staff presentation, for a limited amount of time to be determined by the Presiding Officer.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

After Council discussion, if time permits, the Presiding Officer may allow additional public comment. During this time, each speaker will receive one minute. Persons who spoke during the prior public comment time may be permitted to speak again.

**G. Protocol**

People addressing the Council may first give their name in an audible tone of voice for the record. All remarks shall be addressed to the Council as a body and not to any member thereof. No one other than the Council and the person having the floor shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer. No question shall be asked of a Councilmember except through the Presiding Officer.

## V. PROCEDURAL MATTERS

### A. Persons Authorized to Sit at Tables

No person, except City officials, their representatives and representatives of boards and commissions shall be permitted to sit at the tables in the front of the Council Chambers without the express consent of the Council.

### B. Decorum

No person shall disrupt the orderly conduct of the Council meeting. Prohibited disruptive behavior includes but is not limited to shouting, making disruptive noises, such as boos or hisses, creating or participating in a physical disturbance, speaking out of turn or in violation of applicable rules, preventing or attempting to prevent others who have the floor from speaking, preventing others from observing the meeting, entering into or remaining in an area of the meeting room that is not open to the public, or approaching the Council Dais without consent. Any written communications addressed to the Council shall be delivered to the City Clerk for distribution to the Council.

### C. Enforcement of Decorum

When the public demonstrates a lack of order and decorum, the presiding officer shall call for order and inform the person(s) that the conduct is violating the Rules of Order and Procedure and provide a warning to the person(s) to cease the disruptive behavior. Should the person(s) fail to cease and desist the disruptive conduct, the presiding officer may call a five (5) minute recess to allow the disruptions to cease.

If the meeting cannot be continued due to continued disruptive conduct, the presiding officer may have any law enforcement officer on duty remove or place any person who violates the order and decorum of the meeting under arrest and cause that person to be prosecuted under the provisions of applicable law.

### D. Precedence of Motions

When a question or motion is before the Council, no motion shall be entertained except:

1. To adjourn;
2. To fix the hour of adjournment;
3. To lay on the table;
4. For the previous question;
5. To postpone to a certain day;
6. To refer;
7. To amend;
8. To substitute; and
9. To postpone indefinitely.

These motions shall have precedence in order indicated. Any such motion, except a motion to amend or substitute, shall be put to a vote without debate.

**E. Robert's Rules of Order**

Robert's Rules of Order have been adopted by the City Council and apply in all cases except the precedence of motions in Section V.D shall supersede.

**F. Rules of Debate****1. Presiding Officer May Debate.**

The presiding officer may debate from the chair; subject only to such limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges as a member of the Council by reason of that person acting as the presiding officer.

**2. Getting the Floor - Improper References to be avoided.**

Members desiring to speak shall address the Chair, and upon recognition by the presiding officer, shall confine themselves to the question under debate.

**3. Interruptions.**

A member, once recognized, shall not be interrupted when speaking unless it is to call a member to order, or as herein otherwise provided. If a member, while speaking, were called to order, that member shall cease speaking until the question of order is determined, and, if in order, the member shall be permitted to proceed.

**4. Privilege of Closing Debate.**

The Mayor or Councilmember moving the adoption of an ordinance or resolution shall have the privilege of closing the debate. When a motion to call a question is passed, the Mayor or Councilmember moving adoption of an ordinance, resolution or other action shall have three minutes to conclude the debate.

**5. Motion to Reconsider.**

A motion to reconsider any action taken by the Council may be made only during the same session such action is taken. It may be made either immediately during the same session, or at a recessed or adjourned session thereof. Such motion must be made by a member on the prevailing side, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable. Nothing herein shall be construed to prevent any member of the Council from making or remaking the same or other motion at a subsequent meeting of the Council.

**6. Repeal or Amendment of Action Requiring a Vote of Two-Thirds of Council, or Greater.**

Any ordinance or resolution which is passed and which, as part of its terms, requires a vote of two-thirds of the Council or more in order to pass a motion pursuant to such an ordinance or resolution, shall require the vote of the same percent of the Council to repeal or amend the ordinance or resolution.

**G. Debate Limited**

1. Consideration of each matter coming before the Council shall be limited to 20 minutes from the time the matter is first taken up, at the end of which period consideration of such matter shall terminate and the matter shall be dropped to the foot of the agenda, immediately ahead of Information Reports; provided that either of the following two not debatable motions shall be in order:
  - a) A motion to extend consideration which, if passed, shall commence a new twenty-minute period for consideration; or
  - b) If there are one or more motions on the floor, a motion for the previous question, which, if passed by a 2/3 vote, shall require an immediate vote on pending motions.
2. The time limit set forth in subparagraph 1 hereof shall not be applicable to any public hearing, public discussion, Council discussion or other especially set matter for which a period of time has been specified (in which case such specially set time shall be the limit for consideration) or which by applicable law (e.g. hearings of appeals, etc.), the matter must proceed to its conclusion.
3. In the interest of expediting the business of the City, failure by the Chair or any Councilmember to call attention to the expiration of the time allowed for consideration of a matter, by point of order or otherwise, shall constitute unanimous consent to the continuation of consideration of the matter beyond the allowed time; provided, however, that the Chair or any Councilmember may at any time thereafter call attention to the expiration of the time allowed, in which case the Council shall proceed to the next item of business, unless one of the motions referred to in Section D hereof is made and is passed.

**H. Motion to Lay on Table**

A motion to lay on the table shall preclude all amendments or debate of the subject under consideration. If the motion shall prevail, the consideration of the subject may be resumed only upon a motion of a member voting with the majority and with consent of two-thirds of the members present.

**I. Division of Question**

If the question contains two or more propositions, which can be divided, the presiding officer may, and upon request of a member shall, divide the same.

**J. Addressing the Council**

Under the following headings of business, unless the presiding officer rules otherwise, any interested person shall have the right to address the Council in accordance with the following conditions and upon obtaining recognition by the presiding officer:

**1. Written Communications.**

Interested parties or their authorized representatives may address the Council in the form of written communications in regard to matters of concern to them by



submitting their written communications at the meeting, or prior to the meeting pursuant to the deadlines in Chapter III.C.4.

**2. Public Hearings.**

Interested persons or their authorized representatives may address the Council by reading protests, petitions, or communications relating to matters then under consideration.

**3. Public Comment.**

Interested persons may address the Council on any issue concerning City business during the period assigned to Public Comment.

**K. Addressing the Council After Motion Made**

When a motion is pending before the Council, no person other than the Mayor or a Councilmember shall address the Council without first securing the permission of the presiding officer or Council to do so.

**L. Use of Cellular Phones and Electronic Devices**

The use of cell phones during City Council meetings is discouraged for the Mayor and Councilmembers. While communications regarding Council items should be minimized, personal communications between family members and/or caregivers can be taken outside in the case of emergencies. In order to acknowledge differences in learning styles and support tactile learners, note-taking can continue to be facilitated both with a pen and paper and/or on electronic devices such as laptop computers and tablets.

The use cell phones during Closed Session Meetings is explicitly prohibited for the Mayor and Councilmembers.

## VI. FACILITIES

### A. Meeting Location Capacity

Attendance at council meetings shall be limited to the posted seating capacity of the meeting location. Entrance to the meeting location will be appropriately regulated by the City Manager on occasions when capacity is likely to be exceeded. While the Council is in session, members of the public shall not remain standing in the meeting room except to address the Council, and sitting on the floor shall not be permitted.

### B. Alternate Facilities for Council Meetings

The City Council shall approve in advance a proposal that a Council meeting be held at a facility other than the School District Board Room.

If the City Manager has reason to anticipate that the attendance for a meeting will be substantially greater than the capacity of the Board Room and insufficient time exists to secure the approval of the City Council to hold the meeting at an alternate facility, the City Manager shall make arrangements for the use of a suitable alternate facility to which such meeting may be recessed and moved, if the City Council authorizes the action.

If a suitable alternate facility is not available, the City Council may reschedule the matter to a date when a suitable alternate facility will be available.

Alternate facilities are to be selected from those facilities previously approved by the City Council as suitable for meetings away from the Board Room.

### C. Signs, Objects, and Symbolic Materials

Objects and symbolic materials such as signs which do not have sticks or poles attached or otherwise create any fire or safety hazards will be allowed within the meeting location during Council meetings.

### D. Fire Safety

Exits shall not be obstructed in any manner. Obstructions, including storage, shall not be placed in aisles or other exit ways. Hand carried items must be stored so that such items do not inhibit passage in aisles or other exit ways. Attendees are strictly prohibited from sitting in aisles and/or exit ways. Exit ways shall not be used in any way that will present a hazardous condition.

### E. Overcrowding

Admittance of persons beyond the approved capacity of a place of assembly is prohibited. When the meeting location has reached the posted maximum capacity, additional attendees shall be directed to the designated overflow area.

## APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

### Purpose

To establish a uniform policy regarding the naming and renaming of existing and future parks, streets, pathways and other public facilities.

### Objective

- A. To ensure that naming public facilities (such as parks, streets, recreation facilities, pathways, open spaces, public building, bridges or other structures) will enhance the values and heritage of the City of Berkeley and will be compatible with community interest.

### Section 1 – Lead Commission

The City Council designates the following commissions as the ‘Lead Commissions’ in overseeing, evaluating, and ultimately advising the Council in any naming or renaming of a public facility. The lead commission shall receive and coordinate comment and input from other Commissions and the public as appropriate.

#### Board of Library Trustees

Parks and Recreation Commission –Parks, recreation centers, camps, plazas and public open spaces

Public Works Commission –Public buildings (other than recreation centers), streets and bridges or other structures in the public thoroughfare.

Waterfront Commission –Public facilities within the area of the City known as the Waterfront, as described in BMC 3.36.060.B.

### Section 2 – General Policy

- A. Newly acquired or developed public facilities shall be named immediately after acquisition or development to ensure appropriate public identity.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. Public facilities that are renamed must follow the same criteria for naming new facilities. In addition, the historical significance and geographical reference of the established name should be considered when weighing and evaluating any name change.
- D. The City encourages the recognition of individuals for their service to the community in ways that include the naming of activities such as athletic events, cultural presentations, or annual festivals, which do not involve the naming or renaming of public facilities.
- E. Unless restricted by covenant, facilities named after an individual should not necessarily be considered a perpetual name.

### Section 3 – Criteria for Naming of Public Facilities

When considering the naming of a new public facility or an unnamed portion or feature within an already named public facility (such as a room within the facility or a feature within an established park), or, the renaming of an existing public facility the following criteria shall be applied:

- A. Public Facilities are generally easier to identify by reference to adjacent street names, distinct geographic or environmental features, or primary use activity. Therefore, the preferred practice is to give City-owned property a name of historical or geographical significance and to retain these names.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. The naming of a public facility or any parts thereof in recognition of an individual posthumously may only be considered if the individual had a positive effect on the community and has been deceased for more than 1 year.
- D. When a public facility provides a specific programmatic activity, it is preferred that the activity (e.g. skateboard park, baseball diamond) be included in the name of the park or facility.
- E. When public parks are located adjacent to elementary schools, a name that is the same as the adjacent school shall be considered.
- F. When considering the renaming of an existing public facility, in addition to applying criteria A-E above, proper weight should be given to the fact that: a name lends a site or property authenticity and heritage; existing names are presumed to have historic significance; and historic names give a community a sense of place and identity, continuing through time, and increases the sense of neighborhood and belonging.

#### Section 4 –Naming Standards Involving a Major Contribution

When a person, group or organization requests the naming or renaming of a public facility, all of the following conditions shall be met:

- A. An honoree will have made a major contribution towards the acquisition and/or development costs of a public facility or a major contribution to the City.
- B. The honoree has a record of outstanding service to their community
- C. Conditions of any donation that specifies that name of a public facility, as part of an agreement or deed, must be approved by the City Council, after review by and upon recommendation of the City Manager.

#### Section 5 –Procedures for Naming or Renaming of Public Facilities

- A. Any person or organization may make a written application to the City Manager requesting that a public facility or portion thereof, be named or renamed.
  - 1. Recommendations may also come directly of the City Boards or Commissions, the City Council, or City Staff.
- B. The City Manager shall refer the application to the appropriate lead commission as defined in Section 1 of the City's policy on naming of public facilities, for that commission's review, facilitation, and recommendation of disposition.
  - 1. The application shall contain the name or names of the persons or organization making the application and the reason for the requested naming or renaming.
- C. The lead commission shall review and consider the application, using the policies and criteria articulated to the City Policy on Naming and Renaming to make a recommendation to Council.
  - 1. All recommendations or suggestion will be given the same consideration without regard to the source of the nomination
- D. The lead commission shall hold a public hearing and notify the general public of any discussions regarding naming or renaming of a public facility.

1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.
- E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

## APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the Agenda & Rules Committee to request that the Primary Author of an item provide “additional analysis” if the item as submitted evidences a “significant lack of background or supporting information” or “significant grammatical or readability issues.”

These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they are intended to prompt Authors to consider presenting items with as much relevant information and analysis as possible.

Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:

2. Agenda items shall contain all relevant documentation, including the following as Applicable:
  - a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
  - b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
  - c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
  - d. Fiscal impacts of the recommendation;
  - e. A description of the current situation and its effects;
  - f. Background information as needed;
  - g. Rationale for recommendation;
  - h. Alternative actions considered;
  - i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
  - j. Person or persons to contact for further information, with telephone number. If the Primary Author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.

## Guidelines for City Council Items:

1. Title
  2. Consent/Action/Information Calendar
  3. Recommendation
  4. Summary Statement/Current situation and its effects
  5. Background
  6. Review of Existing Plans, Programs, Policies and Laws
  7. Actions/Alternatives Considered
  8. Consultation/Outreach Overview and Results
  9. Rationale for Recommendation
  10. Implementation, Administration and Enforcement
  11. Environmental Sustainability
  12. Fiscal Impacts
  13. Outcomes and Evaluation
  14. Contact Information
  15. Attachments/Supporting Materials
- 

**1. Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

**2. Consent/Action/Information Calendar**

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

**3. Recommendation**

Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

Common action options include:

- Adopt first reading of ordinance
  - Adopt a resolution
  - Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
  - Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
  - Referral to a Commission or to a Standing or Ad Hoc Council Committee
  - Referral to the budget process
  - Send letter of support
  - Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
  - Designate members of the Council to perform some action
-

**4. Summary Statement/ “Current situation and its effects”**

A short resume of the circumstances that give rise to the need for the recommended action(s).

- Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
- Example (fictional):  
*Winter rains are lasting longer than expected. Berkeley’s winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley’s winter shelters open until the end of April, and refers to the Budget Process \$40,000 to cover costs of an additional two months of shelter operations.*

**5. Background**

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

**6. Review of Existing Plans, Programs, Policies and Laws**

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan



- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan

Review of similar legislation previously introduced/passed by Council

Review of County, State and Federal laws/policies/programs/plans, if applicable

## **7. Actions/Alternatives Considered**

- What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
- What solutions/measures are recommended by **advocates, experts, organizations**?
- What is the range of actions considered, and what are some of their major pros and cons?
- Why were other solutions not as feasible/advisable?

## **8. Consultation/Outreach Overview and Results**

- Review/list external and internal stakeholders that were consulted
  - **External:** constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
  - **Internal:** staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, Clerk, etc.
- What reports, articles, books, websites and other materials were consulted?
- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?

## **9. Rationale for Recommendation**

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented,

but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

**10. Implementation, Administration and Enforcement**

Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation?

**11. Environmental Sustainability**

Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

**12. Fiscal Impacts**

Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs.

**13. Outcomes and Evaluation**

State the specific outcomes expected, if any (i.e., *"it is expected that 100 homeless people will be referred to housing every year"*) and what reporting or evaluation is recommended.

**14. Contact Information**

**15. Attachments/Supporting Materials**

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## **APPENDIX C. TEMPORARY RULES FOR THE CONDUCT OF CITY COUNCIL MEETINGS THROUGH VIDEO CONFERENCE DURING THE COVID-19 EMERGENCY**

### **Mayor and Councilmember Speaking Time on Agenda Items**

For the Consent Calendar, the Mayor and Councilmembers will initially have up to five minutes each to make comments. After all members of the Council have spoken (or passed) and after public comment, members will each have two additional minutes to discuss the Consent Calendar.

For non-Consent items, the Mayor and Councilmembers will have two minutes each to make initial comments on an agenda item, except for the author of an agenda item who will have five minutes to initially present the item. After every Councilmember has spoken or declined and after public comment, Councilmembers will each have another five minutes per person to address an item. Debate may be extended beyond a second round of Council comments by a majority vote (5 votes).

Time will toll during staff answers to questions; Councilmembers are urged to ask their questions of city staff before the meeting or in writing.

### **Procedure for Pulling Items from Consent or Information Calendar**

Three (3) members of the City Council must agree to pull an item from the Consent or Information Calendar for it to move to Action. Absent three members concurring, the item will stay on Consent or Information Calendar and, with respect to Consent items, the Mayor or Councilmembers will be allowed to record their aye, nay or abstain votes on individual items or the entire Consent Calendar.

Moving an item from the Action Calendar to the Consent Calendar requires the unanimous consent of the entire City Council.

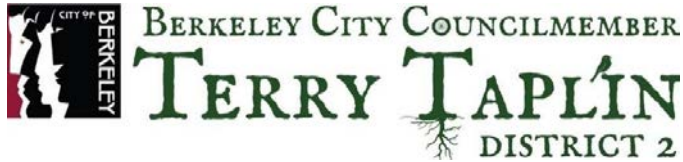
### **Public Comment Speaking Time**

With the exception of prescribed times in the Rules of Procedure for public hearings, the amount of time for each speaker during public comment is limited to two minutes maximum and that speakers can only address an agenda item once, however the Presiding Officer has the discretion to reduce speaker time if needed in order to allow the orderly conduct of the meeting, subject to the consent of a majority of the City Council. Speakers may yield their time for a maximum of four minutes per individual. If a speaker wishes to yield their time, they must indicate so when called on by the Presiding Officer and state who they are yielding their speaker time to. The Presiding Officer will keep a list with the names and amount of time yielded to individuals.

In order to inform members of the public of their place in the speaker's queue, the Presiding Officer will call the names of 5 speakers at a time.

Public Comment on Non-Agenda Matters will be conducted in the order of hands raised on the Zoom platform, and will be limited to either the first 10 speakers during the initial round of Non-Agenda public comment, as well as all hands raised during the closing round of Non-Agenda public comment at the conclusion to the meeting, until such time that the

meeting adjourns. If there are five or fewer speakers with hands raised for Public Comment on Non-Agenda Matters, each speaker will have two minutes to address the City Council. If there are more than five speakers with their hands raised then speaker time will be limited to one minute per person. The procedure for selection of Non-Agenda speakers prescribed in the Rules of Procedure by random draw is suspended for videoconference meetings where there is no physical meeting location.



CONSENT CALENDAR  
February 28, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin, Councilmember Bartlett (co-sponsor), Councilmember Kesarwani (co-sponsor)

Subject: Resolution Condemning a Pattern of Attacks Targeting Black Political and Community Leaders

RECOMMENDATION

Adopt a Resolution Condemning a Pattern of Attacks Targeting Black Political and Community Leaders.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

Over the past several months, targeted harassment of Black elected officials and community leaders in the Bay Area has increased at an alarming rate, far beyond the already-unacceptable status quo ante. On January 16, 2023 (MLK Day), Oakland City Councilmember Carroll Fife posted a series of recordings on Twitter from violent and hateful threats she had received, reporting that their incidence had accelerated sharply.<sup>1</sup> In an interview with KQED, Fife stated that her personal vehicle had also been targeted, and added: "I'm asking folks to stand with me because what's happening is unacceptable."<sup>2</sup>

CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

Attachments:

1: Resolution

<sup>1</sup> [https://twitter.com/carroll\\_fife/status/1615107617873088517](https://twitter.com/carroll_fife/status/1615107617873088517)

<sup>2</sup> Lagos, M. (2023, Jan. 17). "It's Gotten Worse": Oakland City Council Member Carroll Fife Faces Racist, Violent Threats. *KQED*. Retrieved from <https://www.kqed.org/news/11938303/its-gotten-worse-oakland-city-council-member-carroll-fife-faces-racist-violent-threats>

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

RESOLUTION CONDEMNING A PATTERN OF ATTACKS TARGETING BLACK  
POLITICAL AND COMMUNITY LEADERS

WHEREAS, over the last few weeks there has been an alarming increase in the frequency, tenor, and danger of politically motivated attacks on Black women in leadership, including Oakland City Councilmember Carroll Fife and community leader Cat Brooks; and

WHEREAS, the City of Berkeley stands with Councilmember Fife, Cat Brooks, and all who have been targeted by this rhetoric and stands against anti-Blackness and misogyny; and

WHEREAS, in an environment where three mass shootings occurred in California over three consecutive days in January 2023, and politically motivated violence is increasingly becoming the norm, ongoing attacks targeting Oakland political and community leaders must be stopped.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley calls for an immediate end to rhetoric that is leading to harassment and threats on democratically elected representatives and community leaders and commit to stepping up and speaking out when we see the scapegoating of Black women and women of color in leadership positions.

BE IT FURTHER RESOLVED that the City of Berkeley calls on business leaders, civil rights groups and advocates connected to any of these individuals perpetrating this misleading, politically motivated and increasingly dangerous rhetoric, to join us in publicly condemning these dangerous and shameful personal attacks.



CONSENT CALENDAR  
February 28, 2023

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Rigel Robinson (author) & Councilmember Mark Humbert (co-sponsor)  
 Subject: Referral: Creation of an Intersection Daylighting Policy

### RECOMMENDATION

Refer to the City Manager to develop a comprehensive intersection daylighting policy and make recommendations about the implementation of a citywide intersection daylighting program.

Staff should consider criteria for identifying priority areas for daylighting such as high-injury streets, streets and intersections with especially high pedestrian traffic, commercial districts, and streets near schools and colleges. Staff should seek input and feedback on the development of such a policy and program from the Transportation & Infrastructure Commission, and other relevant commissions.

### BACKGROUND

Pedestrian safety is a priority of the City of Berkeley. The City of Berkeley adopted its Pedestrian Plan in 2020, highlighting community member feedback where many residents identified “unsafe or uncomfortable crossing conditions” across the city.<sup>1</sup> According to the Pedestrian Plan, of the 1,071 total collisions involving pedestrians in Berkeley between 2008 and 2017, 10 were fatal (1 percent) and 79 led to a severe injury (7 percent).<sup>2</sup> Additionally, the City of Berkeley has approved the Vision Zero Action Plan, which aims for zero traffic fatalities and severe injuries. Berkeley’s Vision Zero Annual Report (2020-2021) prioritizes “quick-builds,” where easy solutions such as painting or posting signs can help increase safety.<sup>3</sup> This work is guided by the belief and conviction that every collision is preventable; through effective street redesign, we can avoid any more unnecessary fatalities and injuries.

Despite our wealth of forward-thinking planning documents, the physical infrastructure in Berkeley has not kept up with our ambition. We have a long way to go before our

<sup>1</sup> *Pedestrian Plan*. (2021, January 26). City of Berkeley. Page ES-4

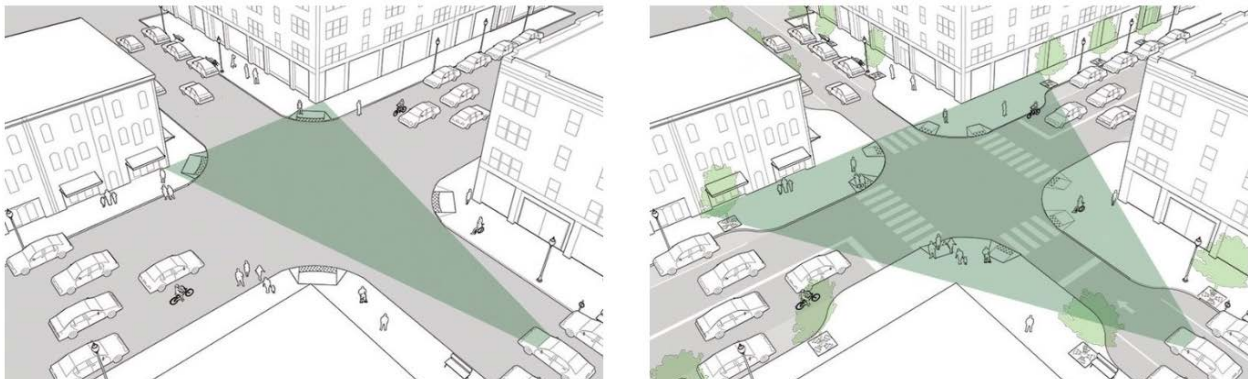
<sup>2</sup> *Pedestrian Plan*. Page ES-6 <https://berkeleyca.gov/your-government/our-work/adopted-plans/pedestrian-plan-2020>

<sup>3</sup> *Vision Zero Action Plan*. (2019, March 10). City of Berkeley. <https://berkeleyca.gov/your-government/our-work/adopted-plans/vision-zero-action-plan>

streets are truly safe and before we have achieved the goal of eliminating traffic injuries and deaths in Berkeley. There are a variety of barriers to this work, namely costs and staff capacity. Thus, strategies and projects that maximize pedestrian safety impact with minimum infrastructure or staffing costs are ideal for near-term focus.

Intersection daylighting is an effective—yet cheap and straightforward—way to improve pedestrian safety. Daylighting operates primarily by preventing drivers from parking in the spaces directly before an intersection, thus increasing visibility and improving sight-lines for drivers, helping drivers and pedestrians make eye contact.

According to the National Association of City Transportation Officials (NACTO), 20-25 feet of curb space leading up to an intersection should be daylighted to maximize safety. This diagram from NACTO shows how the implementation of daylighting increases visibility of the entire crosswalk for drivers approaching the intersection. For pedestrians, daylighting means that they don't have to venture into the intersection and peek around parked cars to see if they have a clear path to cross—which is especially dangerous for people using wheelchairs. For drivers, this means they can see pedestrians before they arrive at the crosswalk and have more time to slow down.<sup>4</sup>



Sight lines before and after daylighting (Source: NACTO)

### *Similar Examples Implemented by Other Jurisdictions*

Hoboken, New Jersey became a Vision Zero city and has since implemented safer pedestrian facilities across the city. As of June 2022, Hoboken, New Jersey hasn't had a traffic death in four years. According to Ryan Sharp, Hoboken's Director of Transportation and Parking, daylighting is one of the most impactful tools that Hoboken has used to make its streets less deadly.<sup>5</sup> Interestingly enough, New Jersey law already prohibits any driver from parking within 25 feet of a crosswalk. Hoboken's progress has in part been due to their enthusiasm in actually enforcing the state rule.

<sup>4</sup> NACTO

<sup>5</sup> Robbins, C. (2022, June 17). *Hoboken Hasn't Had a Traffic Death in 4 Years. What's Right?* Curbed. <https://www.curbed.com/2022/06/hoboken-traffic-deaths-none-vision-zero-streets.html>





Daylighted intersections in Hoboken, NJ

At each daylighted intersection, a parking space is removed in place of hatched paint markings and/or delineators (flexible posts). In certain cases, Hoboken implements hardscape improvements like curb extensions to further improve its daylight intersections, especially on major corridors. But usually, paint is sufficient to daylight an intersection. This makes daylighting perhaps the most cost-effective pedestrian safety facility we have at our disposal. The 2020 Berkeley Pedestrian Plan estimates the cost per intersection approach of adding red curb paint at \$500, or \$2,000 per intersection.<sup>6</sup> Adding hatched paint markings and/or delineators may cost more but, without hardscape changes, costs should remain low.

San Francisco has also implemented a comprehensive daylighting plan, defining daylighting as a minimum of 10 feet of red curb before an intersection. In accordance with its Vision Zero plan, San Francisco has committed to daylighting all the streets in the High Injury Network (13% of streets that account for 75% of severe and fatal crashes). As a result, they saw 14% fewer collisions and 50% of pedestrians reported feeling safer.<sup>7</sup>

The importance of daylighting as a traffic safety measure has also resulted in statewide attention—and may soon result in statewide action. On February 2, 2023, California State Assemblymember Alex Lee introduced AB 413, legislation that would prohibit parking within 20 feet of crosswalks throughout the state.<sup>8</sup> By passing its own daylighting policy, Berkeley can become a leader on this important issue and, if necessary, staff can work to adapt to any potential state policy changes.

<sup>6</sup> Pedestrian Plan. (2021, January 26). City of Berkeley. Page 64 <https://berkeleyca.gov/your-government/our-work/adopted-plans/pedestrian-plan-2020>

<sup>7</sup> Anzilotti, E. (2021, November 4). *Daylighting* [Text]. SFMTA; San Francisco Municipal Transportation Agency. <https://www.sfmta.com/getting-around/walk/daylighting>

<sup>8</sup> “AB 413.” n.d. California Legislative Information. Accessed February 3, 2023. [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202320240AB413](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB413).

## CURRENT SITUATION AND ITS EFFECTS

The 2020 Berkeley Pedestrian Plan recommends red curbs at intersections to improve sightlines.<sup>9</sup> However, daylighted intersections are rare in the city and are most often found where new complete streets projects have included them. In other words, while the Pedestrian Plan recommends it as a treatment to improve safety at intersections, there is not currently a systematic effort to daylight intersections broadly across the city. This maintains the status quo of dangerous intersection crossings.

This item suggests that staff develop an Intersection Daylighting Policy, so that consistent standards for sightlines and red curb and hatched paint buffers can be applied to intersections across the city. Additionally, this item suggests that staff develop a program to daylight intersections across the city, independent from ongoing complete streets and repaving projects. With simple materials such as paint and bollards, the city ought to be able to have a positive effect on a significant quantity of intersections quickly and affordably.

The majority of pedestrian collisions in Berkeley occur at intersections. The intersections in Berkeley with the highest number of collisions were generally located around downtown, south of the UC Berkeley campus, and along major arterials, such as Ashby Avenue, San Pablo Avenue, Shattuck Avenue, and University Avenue. The Pedestrian Plan also identified four key intersections with the highest pedestrian volumes. Each of these intersections is located in Berkeley's downtown core: Kala Bagai Way at Addison Street, Shattuck Avenue at Addison Street, Shattuck Avenue at Center Street and Shattuck Avenue at Allston Way.<sup>10</sup>

### *Staff Considerations*

Modeling policy on Hoboken's successful citywide daylighting efforts, staff should create a program that standardizes daylighting as a best practice across the city and directs resources to daylighting. Staff may consider prioritizing intersections on High-Injury Streets as identified in the city's 2019 Vision Zero Action Plan,<sup>11</sup> in addition to streets and intersections with especially high pedestrian traffic, those on commercial corridors,

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<sup>9</sup> <https://berkeleyca.gov/sites/default/files/2022-01/2020-Pedestrian-Plan.pdf> (page 34)

<sup>10</sup> Pedestrian Plan. (2021, January 26). City of Berkeley. <https://berkeleyca.gov/your-government/our-work/adopted-plans/pedestrian-plan-2020>

<sup>11</sup> <https://berkeleyca.gov/sites/default/files/2022-02/Berkeley-Vision-Zero-Action-Plan.pdf>

or those near schools and colleges.



Map of high-injury streets and areas near schools in Berkeley (for visualization only; not a proposal)<sup>12</sup>

Due to the low fiscal cost and high safety return of daylighting, this program should function differently from complete streets construction. Complete streets projects are often implemented only once a street is repaved, but this would needlessly delay daylighting—a facility that can be as simple to implement as red curb paint.

While red curb paint is technically a sufficient regulatory signal to drivers that parking is not permitted, staff may explore other more visible designs, including hatched markings and delineators like those used at intersections in Hoboken. Hoboken’s daylighted intersections consist of hatched markings and/or delineators that prevent drivers from parking in former corner parking spaces.

In addition to these “quick build” measures, staff should continue to prioritize daylighting and curb extension facilities in complete streets projects to maximize visibility and improve pedestrian safety. While most intersections in the city could benefit from just paint and delineators, hardscape improvements should be implemented at intersections on streets that are already being reconstructed.

<sup>12</sup> Map created by Sam Greenberg. Data sources: MTC, City of Berkeley, *City of Berkeley Vision Zero Action Plan* (2019), California Department of Education, OpenStreetMap

FINANCIAL IMPLICATIONS

In metered areas, the city receives revenue from parking meters and residential parking permits (RPPs). Removing parking spaces for daylighting may reduce parking meter revenue and RPP participation.

Staff should also consider if there are regional funding opportunities that could support a city daylighting program, such as One Bay Area Grants (OBAG) administered by the Metropolitan Transportation Commission, in addition to the Highway Safety Improvement Program (HSIP) administered by Caltrans, Alameda County Measure B/BB funds, and Alameda County Measure F funds.

Staff should consider what level of funding would be necessary to deliver a successful and effective daylighting program. This item does not refer funding to the budget process at this time, as this project is unlikely to be able to be initiated during the next fiscal year due to staffing constraints.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170  
Sam Greenberg, Legislative Assistant



CONSENT CALENDAR  
February 28, 2023

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Rigel Robinson (Author) & Mayor Jesse Arreguin (Co-Author)  
 Subject: Approval of the Public Bank East Bay Viability Study

### RECOMMENDATION

Refer to the Budget & Finance Policy Subcommittee to review and discuss the Public Bank East Bay Viability Study and consider the following recommendations for the full Council:

- (1) Adopt a resolution formally adopting the viability study
- (2) Adopt a resolution of intention to form the Public Bank East Bay alongside Oakland & Richmond
- (3) Refer to the City Manager to coordinate with the Friends of the Public Bank of the East Bay and the staff of the cities of Oakland and Richmond on the development of a business plan for the Public Bank of the East Bay, or designate the appropriate staff to do so
- (4) Refer to the City Manager to engage an independent consultant with expertise in banking operations and financing to advise city staff as they coordinate with the Friends of the Public Bank East Bay in the production of a business plan for a public bank

### BACKGROUND

Public Bank East Bay seeks to establish a publicly operated bank—the Public Bank East Bay (PBEB)—serving the East Bay and prioritizing social equity and environmental stewardship above mere profits.<sup>1</sup> PBEB would operate as an alternative to—and alongside—the private banking system. It would allow individuals, businesses, and other entities to access standard banking services. Importantly, PBEB would prioritize access for individuals, economic sectors, and municipalities that have been traditionally underserved or exploited by the financial industry.

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<sup>1</sup> “Vision & Values — Public Bank East Bay.” n.d. Public Bank East Bay. Accessed January 19, 2023. <https://publicbankeastbay.org/vision>.

In 2019, Governor Gavin Newsom signed AB 857, providing guidelines for establishing public banks in California.<sup>2</sup> AB 857 makes California the first state in the nation to legalize public sector banks.

PBEB advocates prepared a Viability Study in 2022 that meets the requirements set forth in AB 857. These include proving the purpose of the bank, analyzing costs, identifying the amount of initial capital required to establish the bank, financial projections for the first five years of operation, proving the PBEB complies with the California State Constitution, and how regulations would be implemented to prevent corruption.<sup>3</sup> The Viability Study has already been approved by the Richmond City Council<sup>4</sup> and the Oakland City Council.<sup>5</sup>

### FINANCIAL IMPLICATIONS

Adoption of these recommendations has no general fund impact.

The development of the public bank, however, will be a significant financial endeavor. It is the objective of the Business Plan to fully assess the financial benefits and risks of forming the Public Bank East Bay.

This resolution does not appropriate or commit any City of Berkeley funds to the establishment of the PBEB, or to any organization. If a consultant is engaged, Finance has indicated that these costs, estimated at \$50,000, can be accounted for in the existing Finance department budget.

### ENVIRONMENTAL SUSTAINABILITY

None.

### CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170  
Sam Greenberg, Legislative Assistant

### Attachments:

- 1: Resolution
- 2: Resolution

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<sup>2</sup> Sgourous, Tom. 2022. "Public Bank East Bay Viability Study." Public Bank East Bay. <https://static1.squarespace.com/static/5ee14314979f2e18b9b6ed03/t/622a351f48637e3569cc3fcd/1646933281581/PBEB+Viability+Study+March+2022.pdf>.

<sup>3</sup> "Public Bank East Bay Viability Study." Page 34

<sup>4</sup> "Richmond Approves Viability Study." 2022. Public Bank East Bay.

<https://publicbankeastbay.org/news/0vitic9jw0cyug7jqkvub64mbaky3qb-6axls-mm2f3-twI3l>.

<sup>5</sup> "Meeting Minutes: Concurrent Meeting of the Oakland Redevelopment Successor Agency and the City Council." 2022. City of Oakland.

<https://oakland.legistar.com/View.ashx?M=M&ID=1001259&GUID=57EC77BF-AC2B-4E18-837E-6427F9DC88AC>. Page 20

3: Public Bank East Bay Viability Study

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

RESOLUTION OF INTENTION TO FORM THE PUBLIC BANK EAST BAY WITH THE CITY OF BERKELEY AS A FOUNDING MEMBER ALONG WITH THE CITIES OF OAKLAND AND RICHMOND

WHEREAS, public banks are financial institutions that are owned by public agencies such as cities and counties and can serve as a tool to invest, lend, and provide banking services to local communities that are often left out of financial opportunities from larger firms; and

WHEREAS, the City of Berkeley began formally assessing the feasibility of establishing a public bank with a \$25,000 allocation made in 2017 to support the development of a feasibility study for the Public Bank of the East Bay; and

WHEREAS, a public bank can serve the residents of Berkeley through investment and lending activities that support small local businesses, affordable housing production, climate resilience, infrastructure projects and more; and

WHEREAS, the City of Berkeley intends to be one of the founding owners of the Public Bank East Bay; and

WHEREAS, the other proposed founding owners of the Public Bank East Bay are the cities of Oakland and Richmond; and

WHEREAS, the County of Alameda is proposed to be a non-founding owner of the Public Bank East Bay that will take an ownership stake shortly after the Public Bank East Bay's licensing by the State; and

WHEREAS, the Public Bank East Bay's proposed governance plan requires that each member city designate one councilmember to sit on the Public Bank East Bay's Board of Directors; and

WHEREAS, the California Public Banking Act further mandates that "a motion to move forward with an application for a public banking charter shall be approved by a majority vote of the governing body at a public meeting";

now, therefore, be it RESOLVED: That the City of Berkeley intends to be a founding member of the Public Bank East Bay as part of the application for a public banking charter;

and be it FURTHER RESOLVED: That the Berkeley City Council requests that the Alameda County Supervisors commit to joining the Public Bank East Bay as a full voting member immediately upon California state approval of the Public Bank East Bay's charter application;



and be it FURTHER RESOLVED: That the City Manager or designee is authorized to direct City staff to provide the necessary financial and other details to assist the Friends of the Public Bank East Bay in the production of a business plan for the ongoing operation of a public bank and return to the City Council with a report outlining anticipated capital contributions and any necessary budgetary amendments along with a final draft public bank business plan for approval;

and be it FURTHER RESOLVED: That the City Manager or designee is authorized to review and propose the probable terms of any articles of incorporation, operating agreements, and other nonprofit public benefit corporation documents or nonprofit mutual benefit corporation documents that may be required by California Government Code Section 57600 et seq., which may be finally negotiated and executed upon the City Council's adoption of the business plan;

and be it FURTHER RESOLVED: That the Berkeley City Council designates Councilmember Rigel Robinson as a representative to the Friends of the Public Bank East Bay to help guide the Public Bank East Bay's opening process and to serve as Berkeley's initial representative on the Public Bank East Bay's Board of Directors;

and be it FURTHER RESOLVED: That all the aforementioned charter(s), agreements, and articles shall be approved as to form and legality by the Office of the City Attorney and placed on file in the Office of the City Clerk;

and be it FURTHER RESOLVED: That this Resolution be conveyed immediately to the City Councils of Oakland and Richmond and to the Alameda County Board of Supervisors.

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

RESOLUTION ACCEPTING THE PUBLIC BANK EAST BAY VIABILITY STUDY

WHEREAS, public banks are financial institutions that are owned by public agencies such as cities and counties and can serve as a tool to invest, lend, and provide banking services to local communities that are often left out of financial opportunities from larger firms; and

WHEREAS, a public bank can serve the residents of Berkeley through investment and lending activities that support small local businesses, affordable housing production, climate resilience, infrastructure projects, and more; and

WHEREAS, the City of Berkeley intends to be one of the founding owners of the Public Bank East Bay; and

WHEREAS, the other proposed founding owners of the Public Bank East Bay are the cities of Oakland and Richmond; and

WHEREAS, the County of Alameda is proposed to be a non-founding owner of the Public Bank East Bay that will take an ownership stake shortly after the Public Bank East Bay's licensing by the State; and

WHEREAS, the California Public Banking Act mandates that "a local agency shall conduct a study to assess the viability of the proposed public bank," hereafter referred to as the Viability Study; and

WHEREAS, the California Public Banking Act mandates that "The study required shall be presented to and approved by the governing body of the local agency;" and

WHEREAS, the City of Richmond approved the Viability Study on April 5, 2022; and

WHEREAS, the City of Oakland approved the Viability Study on December 20, 2022; and

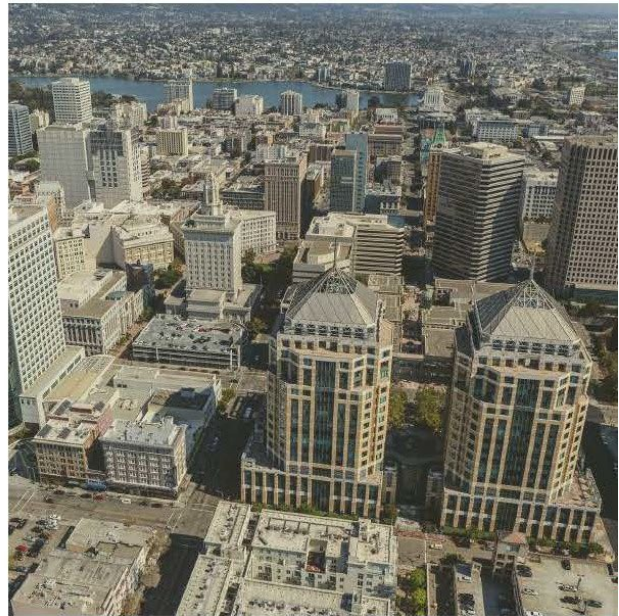
WHEREAS, the 2022 Public Bank East Bay Viability Study proposes lending in four main areas: affordable housing, small businesses, electrification/greening, and refinancing municipal bonds, and concludes that the Public Bank East Bay will be fiscally viable;

now, therefore, be it RESOLVED: That the Berkeley City Council approves the Public Bank East Bay Viability Study;

and be it FURTHER RESOLVED: That this Resolution be conveyed immediately to the City Councils of Oakland and Richmond and to the Alameda County Board of Supervisors.



## Public Bank East Bay Viability Study



Prepared by Tom Sgouros  
Commissioned by Friends of the Public Bank East Bay  
March 2022



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## Executive Summary

This Viability Study demonstrates that the Public Bank East Bay (“PBEB”), a cooperative venture among the cities of Oakland, Berkeley, and Richmond and Alameda County, is a viable entity which can:

- achieve fiscal stability within the first three years;
- provide loan support to underserved sectors of the local economy;
- address local infrastructure needs;
- reduce local government dependency on Wall Street banks;
- decrease local fossil fuel and other harmful investments;
- partner with local financial institutions to the economic and social benefit of all;
- mitigate economic inequity in the region;
- serve as a model for public banks around the state and the country.

This Study and the accompanying financial projections show that the PBEB can achieve these goals while operating in a conservative and secure way, minimizing the financial risk to its sponsor governments.

The PBEB will be a low-overhead enterprise, with a small staff to run lending programs in partnership with existing local financial institutions. The lending programs will include:

- making loans to local small businesses, in cooperation with local community development financial institutions (CDFIs) and local banks;
- providing nimble capital to non-profit affordable housing developers for property acquisition, bridge financing, or foreclosure prevention, as well as financing for rehabilitation projects;
- extending credit to help the East Bay do its part to ameliorate the climate emergency, financing building electrification as well as small-scale renewable energy installations;
- supporting municipal finance, by providing modest credit to the member governments for small projects.

As the Bank grows and adds capacity, it will also be able to provide an alternative to Wall Street banks for cash handling for the member governments. Through careful management of these programs, the PBEB can deliver benefits worth many times the initial investment, and provide a vibrant institution that is a vital part of the East Bay economy for decades to come.

## Introduction

### Why The East Bay Needs a Public Bank

The current national, California, and East Bay financial systems are not meeting the needs of the East Bay. The urgent issues we face include:

- The ongoing climate crisis is inescapable. Localities cannot wait for a paralyzed federal government to deliver, and must find ways to increase local funding for initiatives that will dramatically reduce greenhouse gas emissions and increase availability and affordability of green energy solutions.
- The Bay Area is experiencing a housing crisis of extreme scale, visible along so many major thoroughfares. Quality affordable housing that does not accelerate displacement is desperately needed, and solutions cannot take ten years to ramp up. New local funding, along with streamlining availability of existing funds, is badly needed.
- BIPOC small businesses lack funding. Nationally the unmet credit needs among entrepreneurs of color are 15-25% higher than those of white entrepreneurs.<sup>1</sup>
- Worker cooperatives, employee-owned firms, community land trusts, and other community-based models of ownership are poised to grow in scope and scale, but they are often unable to access traditional bank funding.

Financing alone cannot solve these problems. However, access to inexpensive capital will inevitably play an essential role in all solutions. A public bank—that directs public assets to solve public problems—*can and will* be part of a solution that helps participating cities and counties tackle these issues, and more, by adding a component of financial infrastructure to the existing mix.

Responsible and responsive banking of public funds will be an invaluable tool in transforming the current system to one that works for the people who need it. This Study demonstrates that the East Bay region of Northern California can be the home of a stable, productive, and transparent public bank—the Public Bank East Bay—which can help its region address essential structural problems.

Wall Street banks which handle the vast majority of public funds in the East Bay and around the country have consistently placed profits and shareholders over the needs of everyone else. Self-admitted felonies by banks resulted in nearly \$2 billion dollars<sup>2</sup> paid in fines and fees over the past 20 years. Additionally, bank policies such as subprime mortgages and financialization led directly to the housing bubble and financial crisis of 2008 that devastated families and communities. People of color disproportionately lost wealth during this crisis. Banks were held accountable trivially if at all in the recovery from the crisis, and continued to play fast and loose with customers' money. The phantom account scandals at Wells Fargo (where the bank created millions of accounts for customers without their knowledge or consent) demonstrate how bank customers are often at risk from the banks themselves. Wall Street takes people's money, uses it to gamble in their high-stakes casino, and leaves customers holding the pieces

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<sup>1</sup> Small Business Survey 2019.

<sup>2</sup> <https://bettermarkets.org/newsroom/new-report-details-first-time-20-plus-year-crime-spree-six-largest-wall-street-banks/>

when they lose. Sad experience shows that states and municipalities are equally at risk as customers of private banks.<sup>3</sup>

Just as online commerce and big-box wholesale stores have decimated local businesses, including hardware, stationery, and book stores, small banks have been driven out of the market by Wall Street banks, or have been bought out or merged into larger banks. This has left banking deserts around the state, including in the East Bay. In 1994, the state had 500 community banks, but by 2017 it had only 124<sup>4</sup>. While this corporate concentration may have brought convenience for some customers, it has caused pain to many others, in the form of less accessibility, fewer options, higher fees, and greater disconnection of banks from community priorities and control. Moreover, banks do not merely *hold* money, they *do* things with it.

The major role of Wall Street banks in funding the fossil-fuel industry underscores the profound mismatch of these banks with the values of our region. Many jurisdictions, including Alameda County, Oakland, Berkeley, and Richmond have voted to divest public funds from fossil fuels, but have been unable to do so, due to their inescapable relationships with Wall Street banks. For example, Alameda County, which has voted to divest, currently has 30% of its funds in banks with heavy fossil fuel investments, including \$300 million in JP Morgan Chase alone.

As easy as it is to enumerate the active ways in which the money-center banks harm our lives and our communities, it is just as important to examine what they fail to do. Over the past few decades, more and more bank revenue has been generated by fee income, i.e., direct charges made to bank customers for the service of handling money. This income has increased in importance, because interest income entails risk to the banks in a way that fee income does not. Consequently, bank management has emphasized fees over loans. In practice this has caused the big banks to cut back underwriting all but the most standard loans, eliminating much if not all of their lending risk. Plenty of mortgage credit is available; however, this market is highly controlled, subsidized, and insured by the federal government. Business credit is plentiful for big corporations, especially those large enough to access the bond market. But other market demand—including extending credit to BIPOC- and women-owned small businesses, worker cooperatives and land trusts, innovative green energy initiatives, and climate resilience measures—goes unmet. Even affordable housing, for which oceans of capital are theoretically available from federal, state, and private sources, suffers from a tragic lack of nimble capital that does not take years to approve.<sup>5</sup> The consequences to the nation's economy have been severe, with bank credit to small businesses shriveling, and rising prices for mundane and low-risk municipal investments.

Transformative financial programs are essential to comprehensive solutions to these problems. By keeping overhead low, partnering with local financial institutions, reinvesting revenue to the business, using inexpensive public monies, and not being bound to reap high profits, public banks can make credit more available and more equitable, underwrite new initiatives, and serve as clearinghouses and

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<sup>3</sup> Sgouros, T, "Predatory Public Finance", *The Journal of Law and Society*, 17:1 (2016), pp 91-102. <https://law.wayne.edu/academics/co-curricular/journal-law-society>

<sup>4</sup> <https://www.bankingstrategist.com/community-banks-number-by-state-and-asset-size>

<sup>5</sup> Vitaly important in a state where approximately 160,000 people are experiencing homelessness on any given day. See <sup>5</sup><https://www.usich.gov/homelessness-statistics/ca/>



conduits for more efficient and restorative uses of public money. Public banks cannot fully address these crises on their own, but public banks are an essential component of addressing them.

In countries around the world, including Germany, Costa Rica, India, Vietnam, and many more, publicly owned banks have helped create and direct new financial tools to serve public needs. The Bank of North Dakota is the only major publicly owned bank in the United States. In its century of existence, it has maintained and strengthened community banks, reduced student loan debt, compensated for the 2008 financial crisis, and equitably distributed federal pandemic relief—and shown substantial financial success while doing so.

The public banking movement is growing around the country. California has led the way with the California Public Banking Act (AB 857), which authorizes the formation of public banks to engage in the lending of public monies under public ownership. This legislation sets out the path for PBEB to open its doors.

### Mission Statement

PBEB will invest public monies from participating governmental agencies to meet the needs of local communities. PBEB will seek to return a reasonable, but not excessive, profit to its stakeholders by making economically sustainable loans and providing a high level of service to its partners and stakeholders. It will adhere to the principles of the United Nations Declaration on the Rights of Indigenous People, and will prioritize environmentally regenerative, culturally equitable and participatory practices that reverse discrimination against members of economically and socially marginalized communities.

The Bank's decisions will be based on five key values:

- **Equity:** We are committed to a public bank that acknowledges and attempts to relieve the contemporary and historical burdens carried by disenfranchised communities, including low-income communities of color and other marginalized groups.
- **Social Responsibility:** Decisions regarding loan recipients, sponsored projects, and who benefits from PBEB policies will all prioritize investing our money into the wealth and health of local communities and the environment.
- **Fiscal Responsibility:** As a steward of public money collected by depositing agencies from individuals and businesses in the East Bay, the Bank is committed to compliance with the directives and policies of state and federal regulators. It is equally committed to active and constant attention to managing risk and making fiscally responsible decisions so as to maintain PBEB in a safe and sound condition.
- **Accountability:** The Bank is accountable to the residents of the East Bay, who have a right to fully transparent explanations of PBEB's actions and choices.
- **Democracy:** The Bank will be governed using inclusive and participatory processes which consciously and intentionally adhere to the values/principles listed above.

## What Will PBEB Do?

PBEB's primary function is to employ public funds to meet public needs. This will entail working with member government agencies (initially the cities of Berkeley, Oakland and Richmond, and the County of Alameda) to gradually redirect tax and fee assets and locally generated funds to:

- *increase available capital to the local economy* with a focus on affordable and community-controlled housing, small-business and worker ownership lending, green infrastructure projects, and cost-saving funding of municipal bonds.
- *support equitable economic development* in the region. By prioritizing the least served businesses and by attending to local infrastructure needs, the Bank can provide money to various enterprises and initiatives that are currently neglected, jump-starting needed changes with increased resources.
- *manage and invest municipal funds safely and cost-effectively*. Safeguards, regulatory oversight and conservative loss reserves will make the Bank a reliable guardian of public funds.
- *enable local governments to redirect public funds from Wall Street banks*. The nation's big banks invest our money in places that are not only irrelevant to our communities but are actively harmful to them. Those practices cannot change without adequate alternative institutions to manage those dollars.
- *harness public funds to invest in public goals*. Traditional banking models incentivize decision-makers to prioritize profits above all else. PBEB will remain committed to financial viability, safety and solidity, balancing the essential need to be profitable with its commitment to our region's social needs and the Bank's social mandates.
- *nimbly, transparently, and democratically modify these goals as local priorities change*.

To meet these goals, PBEB will partner with and complement local financial institutions, such as Community Development Financial Institutions (CDFIs), credit unions, and local community banks<sup>6</sup>. PBEB will be managed by professionals experienced in banking and community finance, independent of the member county and cities. It will have a strong democratic and multi-stakeholder operational and governance structure, including a Board of Directors, with community members and representatives of the governmental agencies filling a majority of seats. The mission, operations, and decision-making of PBEB will ensure financial viability, as demonstrated in this Study, while prioritizing community value above maximized profit.

A democratically organized Bank with strong community oversight, PBEB will be governed by a Board of 15 people who bring banking and financial expertise along with social and political experience. The Board members will have a varied knowledge base and a shared commitment to representing and meeting the needs of systemically underserved communities – and all East Bay residents. Meetings will be public except for discussion of private customer information, personnel matters and appropriate regulatory issues, and the Bank will hold a highly publicized annual meeting to share results with the community and get feedback on future priorities. The Bank and the Board will also adhere to the highest standards with regards to records accessibility and transparency.

A discussion of governance issues is on p. 35 and a detailed governance plan is included in Appendix A.

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<sup>6</sup> A strong positive for PBEB which is also required by AB 857

## Programs

The purpose of the PBEB is to redirect a portion of the cash and investments of its member governments from bonds and CDs issued by Wall Street banks<sup>7</sup> to local lending. This study lays out four initial target programs: housing, climate, business lending, and municipal finance. The credit market needs—and the outline of a plan for fulfilling them—are described in the following sections, and referenced in the financial projections.

A rough market analysis was done for each of the four target lines. For housing, climate, and business lending, the analysis included interviews with market participants and review of various reports and studies made on the subject. The review of municipal borrowing added an analysis of public bond documents as filed on the EMMA website of the Municipal Securities Regulation Board.<sup>8</sup>

## Housing

The lack of affordable housing in our country has reached crisis level. According to Alameda County's 2021 Affordable Housing Needs report,<sup>9</sup> 52,254 low-income renters do not have access to an affordable home and 71% of extremely low-income households are paying more than half of their income in housing costs. Renters in Alameda County need 2.9 times the minimum wage to afford the average asking rent. The housing crisis has been growing over time as housing construction has slowed<sup>10</sup> and has been exacerbated by the Covid-19 pandemic. Over the course of the pandemic, nationally, rents have increased 11.4% in 2021 compared to about a 3% annual increase pre-pandemic.<sup>11</sup>

The homeownership rate for Black and Hispanic residents stands at 45.1% and 49.3% respectively. For whites, the rate is 73.8%. Moreover, this gap has not changed significantly over the 50 years since the Fair Housing Act. Similar inequities are also found in home ownership by income level.

As is evident in places like the Bay Area, the high cost of housing in many areas—especially those experiencing significant levels of real estate speculation—forces many lower-income families out of established, often better-resourced communities and into concentrated pockets of poverty within the city or in a neighboring jurisdiction.

Lastly, there is evidence of significant generational inequality, with younger Americans unable to access homeownership at the same rates as previous generations. This is particularly true for the "millennial generation" (roughly born between 1981 and 1996), which has significantly lower median

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<sup>7</sup> Over \$300M (4.5%) of Alameda County's portfolio is invested in JP Morgan alone according to its annual reports.

<sup>8</sup> <https://emma.msrb.com>

<sup>9</sup> <https://chpc.net/resources/alameda-county-housing-need-report-2021/>

<sup>10</sup> <https://www.nytimes.com/2021/08/10/opinion/housing-crisis-eviction.html>

<sup>11</sup> Research for this section included interviews with directors and staff at ten of the largest non-profit developers of affordable housing in the service area. This is a \$500M per year market, and the demand is still growing.

wealth than previous generations did at the same age and high levels of student loan debt. Many millennials are disproportionately burdened by housing costs, and fewer are able to purchase homes.<sup>12</sup>

### Short-term financing for housing development and preservation

The goal of increasing the region's stock of affordable housing will not be reached merely by increasing the amount of available credit. A great deal of credit is available for affordable housing development, but the credit that is available does not always match the credit that is needed. In addition, securing the credit and managing all the other logistical aspects of building an affordable housing development is an arduous and complex process that can take three to five years from the time a property is identified to when the units are move-in ready. A single affordable housing development might rely on over 20 sources of funding.

Unfortunately, though both government and private credit is available in theory, it is difficult or expensive to find credit that can be deployed quickly, which can allow a non-profit developer to act on a property that comes up for sale suddenly, or to participate in the foreclosure or tax sale markets to preserve affordability of properties that come up for sale. Perhaps more important, a housing agency with a flexible and readily-deployed source of capital would also be better equipped to prevent those foreclosures or tax sales, and the cascade of negative impacts that result for the people who lose their homes. Foreclosures can also cause harm to neighborhoods and financial institutions by lowering neighborhood home values. During the pandemic, a moratorium was placed on foreclosure actions, however, that moratorium has been lifted and foreclosures are beginning again.

Housing agencies also frequently require bridge finance, to get a project underway while the longer-term financing is worked out. This tends to be expensive. Offering non-profit housing developers a flexible line of credit will help them obtain the cash they need efficiently, and will allow agencies the flexibility to deploy credit quickly. PBEB will coordinate this program with other financing agencies. Many of the developers interviewed for this study identified permitting and grants as a major obstacle to building more affordable housing and expressed hopes that as a public bank, PBEB would be in a better position to reach out to local agencies and governments, to help navigate public permits and grants and ensure ongoing municipal support for housing projects, saving money for projects overall.

The credit line will work as credit lines do for individuals, with a credit limit and a repayment schedule for each drawdown of credit based on a 3-5-year amortization of the balance. Many non-profit developers have equity in past developments which can be used to help secure such a credit line, and the acquisitions made with it can also be pledged as security. Participating in the housing market, and the security pledged for this housing credit could allow the PBEB to access the resources of the Federal Home Loan Bank, a potentially valuable source of collateral. This form of credit is a departure for this market, so it can be expected to take a bit longer to build out this component of the Bank's portfolio.

### Affordable housing rehabilitation and other housing finance options

Affordable housing rehabilitation is another largely unmet need in the East Bay.<sup>13</sup> Many affordable units were built decades ago and are overdue for repairs to their roofs, cabinets, plumbing, electric service,

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<sup>12</sup> <https://thenextsystem.org/learn/stories/revisiting-community-control-land-and-housing-wake-covid-19>

<sup>13</sup> <https://baysfuture.org/time-to-fill-a-crucial-gap-in-affordable-housing-financing/>

and more. This kind of lending is smaller than new construction or home purchase finance, typically in the tens of thousands per unit, and the terms also tend to be much shorter: in the 5-10 year range, or perhaps 15 for a roof. This is compatible with the strategy of focusing on shorter term loans in the formation stage of the PBEB. Some of the same agencies who might be line-of-credit clients could be partners to take on the underwriting overhead.

Financing Accessory Dwelling Units (ADUs) is another area where traditional housing finance is largely unavailable to meet current and future needs.<sup>14</sup> Given the state of the housing market, this demand could be quite substantial and an important component to addressing affordable housing in the East Bay. The referenced study identified over 15,000 parcels where an ADU would be possible, so this has potential to add a substantial amount of housing.

Providing this credit, however, will require substantial underwriting effort, as well as navigating some legal issues, especially concerning the value of existing mortgages on properties where an ADU is proposed. From a policy perspective this is an important area to address, but providing this credit will require an investment in time and expertise beyond what is envisioned at the early stage of the PBEB. Without an obvious partner to absorb that overhead, this is not covered in this Study and the financials. It is mentioned here as a fruitful early place to expand PBEB business as the Bank Board and management deem feasible.

## Climate

At this late date in the progress of the climate crisis, there is not nearly enough credit available to reduce the carbon footprint of our society. The PBEB can help by focusing funds on important climate goals, like reducing the carbon footprint of our buildings and adding renewable energy production capacity.

## Electrification of residential buildings

Buildings generate an estimated 40% of annual global climate emissions, with building operations being responsible for most of those emissions. Though addressing the carbon contribution of individual buildings may seem unimportant, this is not only a vital step towards a low-carbon economy, it is also among the lowest-hanging fruit.<sup>15</sup> Multiple plans have been developed in the Bay Area to decarbonize existing buildings. Electrification of new and existing buildings is a critical aspect of these plans. The City of Berkeley's Existing Building Electrification Strategy recognizes that:

*"Beneficial electrification takes this idea further and ensures that electrification results in reduced GHG emissions, more grid resiliency, and lower energy costs for residents. With the availability of renewable electricity associated with Senate Bill (SB) 100 and EBCE, this switch to electrification, if done equitably, opens up the potential for significant benefits including reductions in GHG emissions, improved health and safety, cost savings, and more."<sup>16</sup>*

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<sup>14</sup> [https://communityinnovation.berkeley.edu/sites/default/files/a\\_solution\\_on\\_the\\_ground\\_report\\_9-27.pdf](https://communityinnovation.berkeley.edu/sites/default/files/a_solution_on_the_ground_report_9-27.pdf)

<sup>15</sup> <https://www.rewiringamerica.org/policy/rewiring-communities>

<sup>16</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/Draft\\_Berkeley\\_Existing\\_Bldg\\_Electrification\\_Strategy\\_20210415.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Draft_Berkeley_Existing_Bldg_Electrification_Strategy_20210415.pdf)

Over 42 cities in California have banned fossil fuel infrastructure such as natural gas heating systems in new construction, however electrifying existing buildings remains a challenge. Retrofitting existing buildings is more costly and complicated than electrifying new buildings. From a fiscal perspective, there is plenty of evidence for long-term savings associated with building electrification. Unfortunately, available and affordable financing of upfront costs is difficult to obtain. PBEB will provide low-cost credit to address this community need.

Providing low-cost electrification loans to residential properties owners will also strengthen local economies by creating an economic boom for local businesses and tradespeople. Electricians, plumbers, and carpenters are just some of the professions that will benefit from the increase in demand for residential home conversions.

Estimates from across the region give a glimpse of the size of the need for financing electrification loans. In a recent report, the City of Berkeley estimated the average cost of transitioning a residential building to be \$30K, with an estimated 32,500 existing residential buildings. The 2020 census for Alameda County counted approximately 625,000 residential housing units (not buildings) which would put the cost of electrification somewhere over \$10B.

Compared to many other kinds of credit, retrofit loans are relatively small with terms of five to ten years. Many will be only a few thousand dollars, though some will reach the tens of thousands. To keep the cost of underwriting as low as possible, the assessment of eligibility and approval can be partially automated, with much of the paperwork effort delegated to software run by the plumbers, electricians, and HVAC contractors who will be the customer's point of contact.

For security, customers can be offered a choice between an unsecured personal loan, repaid via an additional charge on their utility bill<sup>17</sup> and a property lien, which might merit a lower rate. An on-bill tariff will also make the lending more responsive to the cost-effectiveness of the proposed improvements instead of the economic resources of the bill payer.

Costa Rica's BPDC serves as an example of the successful public financing of energy transition.<sup>18</sup> There, the public bank financed a large-scale conversion to LED lighting by analyzing the potential cost-savings of the switch and then granting low-interest loans based on those savings. The switch to LED allowed the project sponsor to receive a carbon neutral certification and continues to provide additional cost reductions.

With a substantial push for building electrification, the potential size of loan demand for electrification will be much greater than the PBEB as proposed can accommodate. This can be addressed by carving out some subset of demand for intensive attention, either by geographic area, or perhaps by the type of

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<sup>17</sup> We are assuming the cooperation of the utility over issues like cash flow and the locus of default risk. These issues have been overcome in several other states and territories, e.g. <https://www.myrec.coop/bill-tariff-energy-efficiency-program>. California's AB 841 contains incentives for in-state electric utilities to adopt measures like these, and directs them to obey PUC directives to establish them.

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB841](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB841)

<sup>18</sup> <https://www.tni.org/en/publication/how-public-banks-can-help-finance-a-green-and-just-energy-transformation>

appliance (e.g. loans for batteries, or for heat exchangers). The financial projections indicate the prospective PBEB capacity, and assume that the main problem facing policymakers will be to contain the demand for electrification loans rather than to find borrowers.<sup>19</sup> Cooperation from local utilities with either incentives or obligations to improve energy efficiency, in the form of grants and/or paying for some of the work, is not calculated into these projections because it requires substantial negotiation. If this were to be successfully arranged, the scope of this project could grow significantly.

### Other green energy finance

Finance is needed, both to increase the green energy supply, and for load-balancing features, like in-house backup batteries, that will allow the existing electrical grid to accommodate that increase in supply without burning fossil fuels. Large solar and other energy projects take time to come online, while smaller projects can be built and installed relatively quickly.

According to the consulting firm Wood Mackenzie, a national goal of 50% renewable energy will require more than a trillion dollars in finance capital.<sup>20</sup> California represents 6-7% of the national electricity market,<sup>21</sup> and the state's own goal is even more aggressive, seeking to achieve 60% renewables by 2030 and 100% by 2045.<sup>22</sup> The state's financing needs are thus in the several tens of billions for the next decade, and the East Bay's share of that is in the range of \$3-7B. Obviously not all of that financing falls within the PBEB service area or initial target projects, but any appreciable fraction represents several hundred million in demand for financing, providing a substantial opportunity for the low-cost capital the PBEB can provide.

We recognize the current controversy around home solar policy costs proposed by the California Public Utilities Commission (CPUC). If approved, that will discourage the construction of small renewable installations in the near term,<sup>23</sup> however, the larger goal may be expected to prevail over the next 2-4 years unless the state also disavows its renewable energy targets. The financial projections are based on providing credit to small-scale renewable installations with the expectation that, though the details may change substantially based on possible state action, the demand will remain substantial.

Another benefit to focusing on renewable energy installation in partnership with local lending institutions is the potential for funding to be included in upcoming infrastructure legislation and

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<sup>19</sup> Alternatively, one might use the bond market to supply the lion's share of lendable funds, and use funding through the public bank as a liquidity reserve for that lending program and to augment the loanable funds. This would allow the PBEB to meet much more of this demand than is envisioned in this proposal, and reduce the risk to the bondholders, which would result in a lower cost of funds. This would be a substantially different institution than is proposed in this document.

<sup>20</sup> Presentation to the American Clean Power Association, December 2020. <https://cleanpower.org/wp-content/uploads/2021/02/american-clean-power-renewable-energy-and-infrastucture-policy-analysis.pdf>

<sup>21</sup> [https://www.eia.gov/state/seds/data.php?incfile=/state/seds/sep\\_fuel/html/fuel\\_use\\_es.html&sid=US](https://www.eia.gov/state/seds/data.php?incfile=/state/seds/sep_fuel/html/fuel_use_es.html&sid=US)

<sup>22</sup> <https://www.ncsl.org/research/energy/renewable-portfolio-standards.aspx>

<sup>23</sup> <https://kesq.com/news/local-news/2021/12/17/residents-heated-over-california-legislators-proposal-to-rollback-solar-incentives/> (accessed 1/26/21)

regulation to benefit “green banks.”<sup>24</sup> Designating PBEB as a green bank may open up other funding opportunities as state and federal energy policies evolve.

### Business lending

The severe lack of access to capital for small businesses, in particular for very small and woman- and BIPOC- owned businesses, is well documented nationwide and in the Bay Area.<sup>25</sup> In 2019, the Federal Reserve Bank of Atlanta published a report showing that Hispanic- and Black-owned businesses are less likely to be approved for bank loans and receive less money when they do.<sup>26</sup> It estimates that nationally the unmet credit needs among entrepreneurs of color is 15-25% higher than those of white entrepreneurs. These findings were confirmed in a more recent study by the Federal Reserve in 2021.<sup>27</sup> In an academic study from 2021 researchers showed that Black-owned businesses received loans that were 50% lower than observationally similar white-owned businesses.<sup>28</sup> The racial disparity in small business lending worsened during the pandemic, where Black-owned businesses were more likely to shut down<sup>29</sup> and less likely to receive government support through the Paycheck Protection program (PPP).<sup>30</sup> An SBA report has shown that in 2020 Black-owned businesses received only 2% of PPP loans while white-owned businesses received 83%.<sup>31</sup>

This racial disparity in small business lending is structural. A perceived higher risk-level for the part of the population that has been historically excluded from the formal banking sector, the generational impacts of poverty (e.g. entrepreneurs of color often have few assets to pledge as collateral for loans, and less wealthy family networks to tap into for starting a business) as well as a general lack of trust in banking institutions among people of color are some of the factors resulting in the lending discrepancy.

Typically, the loans needed by BIPOC-owned small businesses are too small for commercial banks to earn a profit. The cost to originate and service an individual loan is almost the same for a \$25K loan as it is for a multi-million-dollar loan, so Wall Street banks as well as community oriented local banks and credit unions, more often than not choose the larger loan, as they are structurally mandated to fulfill their private shareholders’ expectation for competitive profit rates. Out of \$1.1B of commercial loans

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<sup>24</sup> [Clean Energy Finance: Green Banking Strategies for Local Governments \(epa.gov\)](https://www.epa.gov/clean-energy/clean-energy-finance-green-banking-strategies-for-local-governments)

<sup>25</sup> See <https://cameonetwork.org/microenterprise-research-policy/> for a rich collection of reports on this topic.

<sup>26</sup> Federal Reserve Bank of Atlanta (2019): Small Business Credit Survey. <https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/20191211-ced-minority-owned-firms-report.pdf>

<sup>27</sup> Federal Reserve (2021): Small Business Credit Survey. Report on firms owned by people of color. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color>

<sup>28</sup> Atkins, Cook, Seamans (2021): Discrimination in lending? Evidence from the Paycheck Protection Program. In Small Bus Econ, July 2021, <https://link.springer.com/content/pdf/10.1007/s11187-021-00533-1.pdf>

<sup>29</sup> [National Geographic Article](#)

<sup>30</sup> [Brookings Article](#)

<sup>31</sup> See Wilmuth (2020): “The Effects of the COVID-19 Pandemic on Small Businesses.” SBA Office of Advocacy. See also the report by NCRC (2002): [“Lending Discrimination within the Paycheck Protection Program”](#)



lent among the six community banks headquartered in Alameda County, only \$93M (7%) was issued in amounts of \$100K or less.<sup>32</sup>

In a recent report created by the Bay Area Association of Black-Owned Businesses for the Friends of the Public Bank East Bay, these general observations have been confirmed through surveys of the borrowing needs of Black-owned businesses in the East Bay region.<sup>33</sup> The majority of surveyed businesses operate with revenues less than \$75K, implying needed loan amounts of well below \$50K. Many Black business owners reported a lack of trust in banking and government institutions, including fear of being rejected and reluctance to carry debt in general. These concerns often keep business owners from applying for the credit that might be necessary to grow. Trustworthy institutions rooted in the community, low-interest loans, ease of access, flexible repayment terms, and more situational evaluation of the risk created by borrowers with lower-than-typical credit scores can all help address these concerns.

One type of lending institution is currently providing such loans: CDFIs are organizations, frequently nonprofit, with the federally assigned mission to provide loans to people and businesses underserved by the traditional banking system. The Bay Area has one of the highest densities of CDFIs in the country with more than ten CDFIs headquartered, and many more actively lending, in the area (Appendix D). These institutions have a strong track record of distributing a majority of their funds to BIPOC- and women-owned businesses, originating loans with amounts as small as \$5K, and providing technical assistance to help borrowers succeed. This includes determining the right type and amount of financing and writing a sound business plan. The goal is simply to help borrowers grow and succeed in their businesses—and repay their loan.<sup>34</sup>

Providing loans and assistance with this level of engagement is costly. As they are committed to providing low rates, most CDFIs finance their operations primarily through grants and donations. Loan funds generally come from banks who are comfortable issuing loans to CDFIs at low rates (currently as low as 2-3%) in order to satisfy their Community Reinvestment Act (CRA) requirements. All CDFI executives we talked to confirmed that there is currently no lack of bank loans at low rates. In some cases, CDFIs commit to pay back 100% of the principal to the banks, even if the underlying borrowers fail, relying on grant money to cover any losses. This dependence on grants and donations to provide their loans often makes it challenging for CDFIs to grow, as they need to raise additional capital to enable additional debt financing for a growing portfolio.<sup>35</sup>

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<sup>32</sup> This is based on an analysis of the latest published annual reports for these six banks (Fremont Bank, Summit Bank, Community Bank of the Bay, Beneficial State Bank, Gateway Bank, Metropolitan Bank.

<sup>33</sup> “Borrowing Needs of Black Owned Businesses” A report by the Bay Area Organization of Black Owned Businesses (BAOBOB), commissioned by the Friends of the Public Bank East Bay. See Appendix C for more information.

<sup>34</sup> Many representatives of CDFIs who we talked to during our research (see Appendix D) were proud of not letting any of their customers fail or rejecting them for their loan applications, instead they are doing everything in their capacities to help them succeed.

<sup>35</sup> See Simmons, Bereton and Klein (2021): [“Addressing the Capitalization and Financial Constraints of CDFI Microlenders”](#)

This situation is structurally unsustainable. Private banks satisfy their federally regulated requirements to lend to low-to-moderate income businesses without incurring the cost of issuing these loans themselves and without taking on any significant risk, while still returning profits to their private shareholders.<sup>36</sup> The CDFIs, on the other hand, do all the work necessary to issue these loans and additional services, operating with lower resources, distributing no profits, and financing their operations and loan losses through grant money.<sup>37</sup>

When lenders complain they cannot find enough qualified borrowers, it means either that they have too few applications, or they do not feel comfortable with the level of risk implied by the applications they see. The PBEB can help with both aspects of this problem, primarily by providing an additional stable source of funding for CDFIs in the region at low interest rates (3% or less), in the form of a revolving line of credit. In the short term, this will provide additional financing sources for CDFIs eager to grow their portfolios. In the longer term this would guarantee the availability of low-cost funds in times when commercial banks might not be willing to lend at similarly low rates, thereby creating an interest rate ceiling that is crucial for ensuring the access to low interest rate loans for small businesses in the future.

Another way the PBEB can assist is to buttress the management of loan guarantees, to allow local lenders to be comfortable with applicants further out on the risk spectrum. One successful program for helping financial institutions occupy space further out on the risk spectrum has been the California Capital Access Program (CalCAP). Though the program has been a success for years, recent changes in both federal and state rules have made the program less attractive in some different ways.<sup>38</sup> The PBEB can address some of these issues, partly by providing a locus for joint management of guarantee funds for multiple local lenders, and partly by foregoing some interest rate revenue to offset the loss of state subsidy on participation loans. For example, a borrower might have loaned \$50K to an entrepreneur. Under CalCAP, both would contribute 2-3% to a guarantee fund, or about \$1250 each. With a participation loan, the originating bank would contribute half that amount, with PBEB making up the other half. To make up for the absent state subsidy, PBEB can offer half its revenue from that loan for the first two years. Unlike the state subsidy, this can be sustainable indefinitely, so long as PBEB can keep its underwriting and administrative expenses down.

The CalCAP program works best when the volume of lending is high enough for the statistics of a guarantee fund to work well. A 5% loss ratio for some category of a hundred loans held by multiple banks can still be devastating for a single bank that only made a few of those loans if they are unlucky enough to hold more than one default. PBEB can aggregate activity from a variety of small banks and CDFIs, thus spreading the risk across multiple banks.

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<sup>36</sup> Default rates for CDFI loans are generally not higher than for typical bank loans. For 2019, the delinquency rate of all reported CDFI loans was 1.08%. See the report by the Opportunity Finance Network (2019): "[Opportunity Finance Institutions Side by Side](#)", p. 5

<sup>37</sup> The Financial Times recently summarized this unsustainable situation well. Financial Times, 12/13/2021: "[Race and Finance: America's Segregated Finance Sector](#)".

<sup>38</sup>

[https://www.urban.org/sites/default/files/publication/98051/capital\\_access\\_programs\\_cdfi\\_case\\_study\\_on\\_the\\_california\\_capital\\_access\\_programs.pdf](https://www.urban.org/sites/default/files/publication/98051/capital_access_programs_cdfi_case_study_on_the_california_capital_access_programs.pdf)

In addition, PBEB could improve the climate for local small businesses in other ways, not currently reflected by this Study's financial model.

- PBEB could purchase loans from CDFIs, securitize them and sell them on the secondary markets to banks and other lenders, thereby freeing up the balance sheets of CDFIs that will allow them to make more loans. Centralizing the purchase, securitization and sale of these small assets at a public bank could reduce costs for participating community banks and CDFIs that are already doing these types of transactions.<sup>39</sup> Given that these credits would mostly be CRA eligible, a high demand on the secondary market for these loans is almost guaranteed.
- PBEB could help smaller CDFIs or other non-profit lenders with technical loan infrastructure. These lenders create great value in the time-intensive customer-centric interactions with the customers focusing on their actual needs; the training provided in understanding their borrowing needs, business plan, accounting, growth, and much more. The technical infrastructure for distributing and servicing loans on the other hand could probably be standardized and centralized, thereby reducing the cost of lending for CDFIs.
- PBEB could act as a referral agency supporting the growth of CDFIs. Every single CDFI representative we talked to mentioned a lack of awareness among small business owners in the Bay Area of the existence of alternative and mission-oriented lenders like themselves. Public agencies, such as cities' economic development offices, are much more known to small business owners. By developing a trusted public brand and cross-subsidizing significant marketing and platform building, PBEB could take on the role of referring incoming loan inquiries to the most relevant CDFI or community bank in the area.<sup>40</sup>

Approximately [ten CDFIs](#) headquartered in the Bay Area focus on small businesses (primarily low-income, BIPOC-owned). They (very roughly) have originated approximately \$50M in such loans over the last year. The East Bay makes up about 1/3 of the Bay Area by population, so the CDFI loan volume in the East Bay can be estimated at about \$17M. Beyond the CDFIs, the six community banks located in Alameda County have around \$90M in small business loans (loan amounts below \$100K) on their books. Assuming 10-year terms, this is about \$9M in business each year. Adding credit unions and other lenders implies as much as \$30M in small business lending in the PBEB service area each year.

If partnerships with the PBEB could expand the range of businesses to which these CDFIs could lend, either by lowering the interest rate, or providing access to a guarantee fund, this sum could increase substantially, and the PBEB might be able to grow into a share of that expansion. This is incorporated into the financial projections.

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<sup>39</sup> Michael Herne from LISC made the case for creating a secondary market for CDFI loans. Herne (2021): [“A Quantum Leap” for CDFI Funding: The Potential of Securitization](#).”

<sup>40</sup> Darien Louie's report for Alameda County in 2019 came to a similar conclusion. While there are plenty of resources in the East Bay providing loans and assistance to small businesses, few of them are widely known. Darien Louie (2020): “Community Investment and Local Banking Initiative Study.”

## Municipal finance

Most municipal borrowing is served by the nation's investment banks and the market for municipal bonds they have developed, and yet there is value in including municipal lending in the services provided by the PBEB, both to the Bank and to its member municipalities. In 2020 alone, the four initial member governments issued more than \$350M in bonds, not counting short-term tax anticipation notes. These bonds had a wide range of terms, ranging from 1 to 20 years, with a few even longer than that. The mid-to-longer term bonds have rates ranging from 2% to 3%. Some of these bonds are for taxable purposes, and those are for slightly higher rates, up to 4%. The nation may be entering a climate of somewhat higher rates than has been the case for several years.

From a government's perspective, bond debt is slow and relatively inflexible. A program must be thoroughly described in bond documents prepared months in advance, and once a bond is sold, there is no negotiation if the agency's programmatic needs or economic circumstances change. The bond market can be a huge resource to the government of a wealthy community, which can access seemingly endless quantities of money at low rates. Less affluent communities, however, can struggle to access affordable interest rates, even though the actual difference in risk to the bondholder is barely detectable. PBEB can relieve some of these burdens, providing a valuable asset to the member governments.

Though it will take time to grow into an institution that can address these needs at large scale, the Bank can help in a small way simply by being one additional buyer for members' municipal debt. This is especially true because it is not driven by maximizing profit and thus may be able to consider lending at a lower cost and set a ceiling on bond rates secured by the member governments.

Beyond that, with sufficient expertise and personnel, the Bank could actually underwrite some small bond issues. Apart from the basics of filing regulatory documents, the fundamentals of underwriting are twofold: finding buyers and making a market, which simply means promising to buy bonds in the future if some bondholder wishes to sell. (The price is not predetermined.) Collateral requirements mean the Bank will usually have the liquidity necessary to make a market for a modest issue because the state-required collateral can be repurposed to purchase these securities, which also count as collateral.

Finding buyers for these bonds is related to other prospective components of PBEB business. For example, the PBEB might choose to securitize and sell packages of small business loans or green energy loans, and presumably the buyers of those securities might also be buyers of the municipal bonds.

Being able to underwrite some bonds could potentially save on issuance costs for the member government and provide revenue to PBEB. It could also help the member governments in future negotiations with potential underwriters to have additional options for underwriting, especially an option that provides a degree of transparency about what it earns. Finally—and this gets to the original point of a public bank—it makes sense to be able to deploy public assets in service of important public policy goals. If a PBEB can make some of its member governments' own capital available for their needs, that is all to the good.

From the Bank's perspective, municipal debt is valuable not only for its security, but also for its predictability. Because of the bond market's inflexibility, bond issues are generally planned far in advance. This allows the PBEB to have a high degree of confidence in certain components of its business,

especially important during the opening phase of the Bank, where the guarantee of some income can allow the PBEB to show incoming revenue much sooner than is usual for a startup.<sup>41</sup> In fact, recent years have seen a substantial amount of project finance move from the open bond market to private placements with banks for exactly these reasons, especially for smaller projects.<sup>42</sup> These are attractive lending opportunities for any bank, not just a public bank.

The PBEB will not start at a scale that could accommodate hundreds of millions in loans per year, but setting a precedent that it will lend to its members may be useful, both to the member governments and to the Bank itself. However, if at its inception, the Bank were to buy a substantial amount of upcoming bond issues, it would have a fair amount of interest income available from the start, that could be liquidated as it builds out other components of its lending portfolio. It could buy this either by participating in a standard bond sale, or underwriting the bond and keeping some fraction of the issue.

## Financing

The basics of a bank are the money invested in it and the money it invests. The first constitutes the bank's capital, the foundation of its financial stability, and the second, its funding, the deposits and invested funds with which the bank makes its loans. We describe these in turn.

### Capitalization

Any bank must account for the capital with which it is begun. This is the original money invested in creating the bank, and that continues through its life to be the difference between the bank's assets and the deposits and investments that it must eventually return to others. The PBEB is to be a mutual institution, where ownership is by the members who invest "pledged" deposits that count as capital. These are deposits that are meant to be permanent.<sup>43</sup> Pledged deposit accounts do not bear interest, though the ownership share they represent can acquire additional value through retained earnings. Because of this, it is likely not within the purview of investment administrators alone to make such an investment, and will require an explicit appropriation by the relevant legislative body. These pledged deposits are to be fully collateralized.

The financial projections accompanying this report assume that the Bank begins with a commitment of \$40M in pledged deposits from the initial four member governments: Oakland, Berkeley, Richmond, and Alameda County. They show that running the Bank in a conservative and careful fashion can result in an institution worth over \$250M within a decade. Much of the activity of a bank—the number of loans issued, the amounts, the deposits and investments behind them—can be scaled arbitrarily. Some of the important costs, however, do not scale as conveniently. These components of the Bank's overhead

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<sup>41</sup> A more mature and financially stronger bank can offer more flexibility, but this will not be true at the beginning, at least not at the scale at which most bonds are issued. At smaller scale, it will certainly be true, and pieces of the original bond issue can be liquidated to fund such loans.

<sup>42</sup> See Ivanov and Zimmerman, "[The Privatization of Municipal Debt](https://www.brookings.edu/wp-content/uploads/2018/08/WP45.pdf)" Brookings, 2018. The privatization is not all to the good, and can have the effect of impeding access to the bond market for financially weaker governments. <https://www.brookings.edu/wp-content/uploads/2018/08/WP45.pdf>

<sup>43</sup> The pledge contracts can conceivably be drawn to allow for gradual withdrawal as the Bank is able to replace the pledged monies with capital accumulated through operations, or through other contributions.

include the costs of staff, as well as the costs of the necessary data processing infrastructure, legal expenses, and regulatory compliance. The smaller the bank, the more difficult it is to amortize these costs and the more expensive the services it provides become. In effect, a policy goal of low-cost capital sets a minimum size for the institution. We have tried here to specify the minimum size necessary to carry these overhead costs and still achieve the policy goals of low interest rates and security.

## Funding

This study does not address the question of municipal budgeting to identify how the initial investment might be appropriated by each member government.<sup>44</sup> As identified in the financial projections, the total amount constitutes less than half a percent of the collective value of the cash and investments of the four founding member governments, or about 0.75% of their collective annual budgets. The money could be appropriated from those investment balances as a one-time expense invested in the PBEB.

In addition to the bank capital, any bank plan must also account for the money to be loaned. For the PBEB, this will include liabilities in the form of tradable bonds, or notes of the Bank, as well as more traditional deposits. These bank bonds are specifically permitted by California code 53601(r), and are not required to be collateralized.

Large institutions widely use bonds and large denomination CDs as a store of value. These investments are secure and easily cashed in to provide necessary liquidity. The PBEB founding agencies are no different from thousands of other institutions. Alameda County has over 30% of its portfolio in money market funds and commercial paper, including over \$300M at JP Morgan. PBEB bonds will be another option available to the cash managers for storing their money and keeping it safe.

Investments like these are made for security and liquidity, not yield. The average rate of return for Alameda County is 1.12% (July 2020-June 2021) and the rate for the three cities is even lower; the rates PBEB investment returns will mirror the rest of the market. The agencies investing their money in PBEB notes will not have to sacrifice yield to do so. The use of these funds and their relation to the budgets and assets of the sponsoring agencies is explored further in the financial projections.

In addition to the member governments, the Bank can accept deposits, or note purchases, from area non-profits and foundations. These have considerable cash resources. According to publicly available tax disclosure forms and annual reports, the assets of twenty of the largest non-profits and foundations in the local area include more than \$1.3B in cash and equivalents, and billions more in equities and longer-term bonds. Moreover, institutions such as these (especially in health and education) are increasingly adopting the “anchor mission” approach to their relationship with local communities, and a significant part of this includes re-directing a portion of their financial assets to locally beneficial strategies (such as affordable housing, environmental sustainability, and economic development). Attracting only a percent or two of that cash alone could amount to tens of millions potentially available to the Bank. There are also many smaller non-profits and foundations in the area, from which PBEB might receive investable funds. These funds would provide valuable flexibility and be an important component to the liquidity

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<sup>44</sup> All numbers referencing the cities’ and County’s finances in this section are based on an analysis of the last five years of the four agencies’ monthly treasurer’s/cash management reports published on their websites.

risk management strategy (see Risk analysis, p. 29). The financial projections reference deposits and investments made from these cash balances amounting to a bit more than one percent of the available cash.

The bank deposits from the member governments, including the pledged deposits, are required by California state law to be collateralized. This will provide a substantial amount of available liquidity that can be used for the management of the municipal lending operation, such as the market-making suggested there.

Finally, according to the state Treasurer's investment guidelines, doing business with the PBEB will require adjustments to the investment policies of its member governments. The City of Oakland has already made this change, approving the option to invest in public banks.<sup>45</sup>

### Expenses

The goal of the PBEB is to provide credit as safely and inexpensively as possible. To achieve this goal, lending programs are designed to capitalize on existing networks and partner banks, and to eschew expensive underwriting operations wherever possible. In similar fashion, the day-to-day operations are intended to take advantage of existing infrastructure and avoid expensive expenditure for buildings and real estate. Thus, the financial projections include minimal funds for facilities; the assumption is that most if not all of the Bank operations can be housed in facilities already owned by the member governments.

Similarly, the staffing projections beyond the C-suite employees use salary numbers comparable to those appropriate for senior civil servants and employees of local CDFIs in the area. People should be paid fairly—with the cost of living in the East Bay taken into account and commensurate with their expertise and ability to contribute to the operation of PBEB—but not exorbitantly. Details of the staffing levels and salaries can be found on the assumptions sheet of the financial projections.

### Expansion and growth

The Bank can become an integral component of the financial management and policy apparatus of the member governments. However, it will have to grow substantially from its inception in order to fill that role and some constraints on the growth of the PBEB must be considered. At the outset, PBEB does not anticipate providing demand accounts (checking services) to its member agencies. Governments are high-engagement customers for this service, which requires complex bookkeeping and instantly responsive customer service. The PBEB may grow into this role for its members over time, at the discretion of its Board.

At this juncture, we have focused on keeping costs low, to demonstrate that keeping costs low is viable. A future PBEB board might choose to stress capital growth to a greater degree by increasing rates for some business lines. A mutual bank can only grow as fast as its investors—or its business operations—build up its capital. Since part of the policy goal is to provide credit as cheaply as possible, there will always be tension between providing low costs and increasing capital.

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<sup>45</sup> Oakland ordinance: <https://cao-94612.s3.amazonaws.com/documents/IPFY22.pdf>

One growth strategy for the PBEB is to ask its member governments to increase the amount of capital and funding they invest. Though there is considerable room between the initial investment level envisioned here and the limits prescribed by the concentration risk treasury policies of the member governments, there are obvious limits to growth by that strategy even beyond concentration risk.

Another growth strategy is to increase the PBEB's capital by including other agencies as members. Though Oakland and Berkeley are the two largest cities in Alameda County, a dozen others could also join, representing growth potential of another 20-25% of assets. Alameda school districts and other quasi-governmental agencies (not counting BART) would add another 20-25%. BART alone would add 10%. Beyond the borders of Alameda, other nearby county governments and their cities and agencies offer the possibility of perhaps four to five times more investments. There is, therefore, ample room for growth by expanding membership.



## Financial Projections

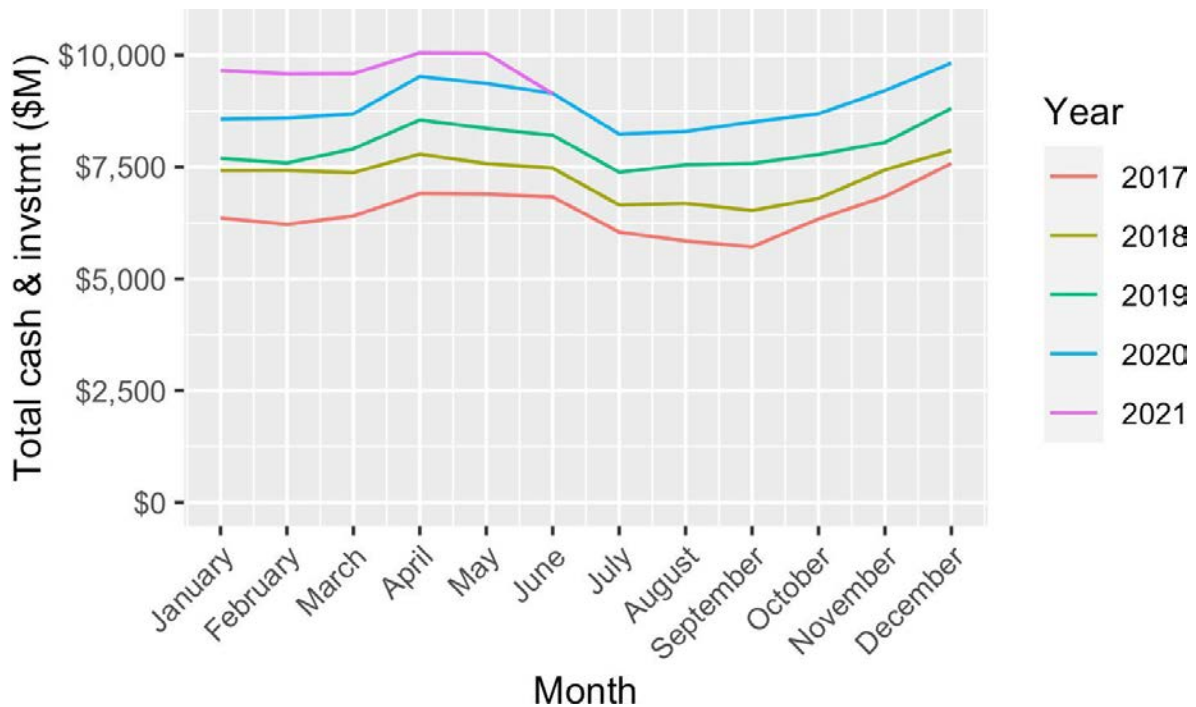
The following financial projections do not incorporate growth assumptions beyond increases in loan demand and modest increases in the amount of assets invested, such as increases in membership, or substantially higher investment levels. Given that we have projected that this small and conservative form of the Bank is viable, growth opportunities are likely to arise naturally.

The financial projections for the PBEB depend on an analysis of the available assets and estimates of the demand for credit in the various lines of business anticipated. A bank run in a conservative, steady fashion will result in a tremendous benefit to the member governments and their citizens.

The projections show a bank with assets approximately six times the size of its capital—substantially more conservative than the 10-to-1 or more that is typical of private banks—while still doubling in size over the course of its first few years, as it fills out its loan portfolio. Because these projections are conservative, the Bank may grow more quickly than these projections suggest.

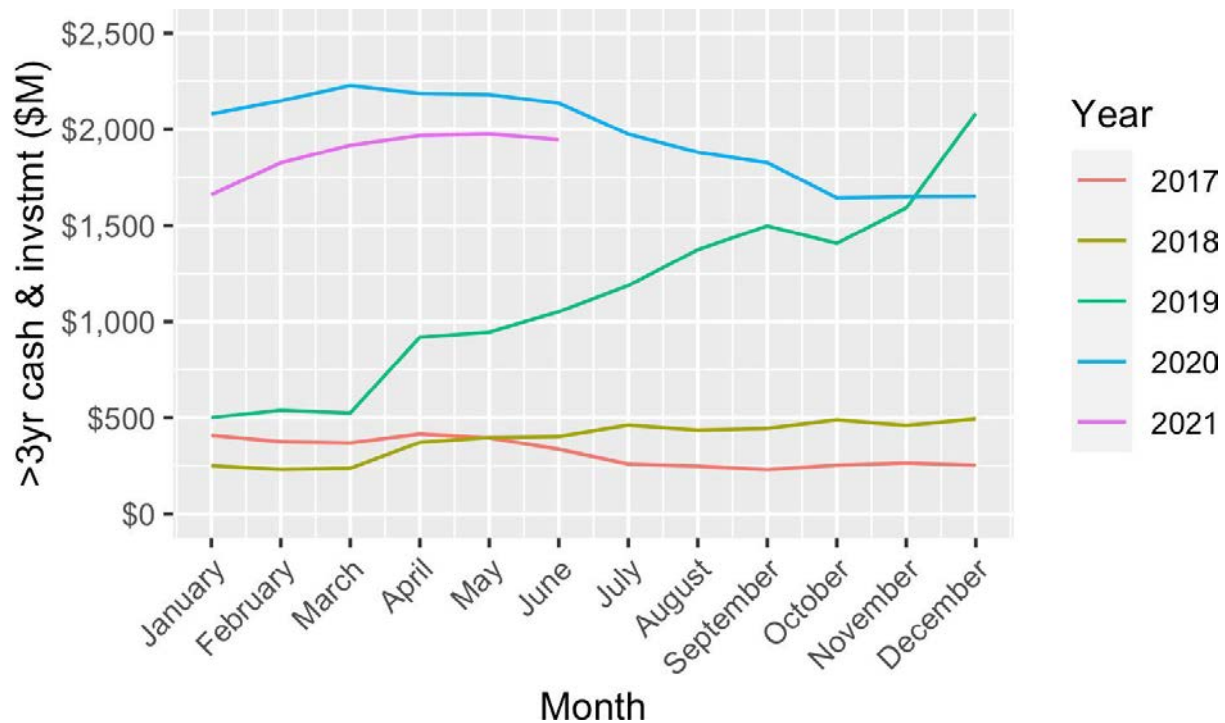
For clarity, the PBEB’s pledged deposits and accrued earnings are presented separately in the financial projections. How the earnings accrue to the Bank’s original investors and how much is reinvested is a matter to be determined by the member governments and Bank management.

The design of the PBEB assumes that some portion of the cash and investments of each of the member governments will be made available for investment by the Bank. In making estimates of how much might be available, it is important to consider not only the economic cycle of boom years and busts, but also the annual cycle of tax payments. Municipal governments in California tend to be flush with tax revenue in April and May of each year, and at a low ebb a few months later, as fall approaches.



The above graph shows the annual cycle of collective cash and investments for all four prospective member governments. At the low ebb in 2017, the treasuries of those governments still held more than \$5 billion. For the sake of financial projections, we assume that only a little more than 1% of the funds available for investment at the low ebb of August and September of that year might be invested in the PBEB in 2022. Except for the initial capital investment, these would be time deposits or notes, available for liquidation at the end of the investment term, though we assume that most or all are normally reinvested when their term is complete.

The sponsoring agencies already make longer-term investments with these funds. The graph below shows the levels of investments for terms longer than three years. Again, looking back to the low ebb of these funds in 2017 and 2018, there were more than \$250 million invested at these terms by the member governments. There is considerably more today, almost \$2 billion according to annual treasury reports, as the second graph indicates.



The financial projections envision these notes to be issued in 1, 3, and 5-year terms, currently estimated at 0.5, 1.0, and 1.5% interest. The projections assume that the member governments invest in the Bank proportionally to the relative size of their portfolios.

The projections show that with a \$40 million investment, the member governments will create a bank able to invest many times that number in their local economy. Assuming moderate growth and making conservative assumptions about investments, the PBEB will have loaned over \$120 million by year 3. By the end of a decade, the original investment will result in over \$250 million in assets, and almost \$400 million in loans made.

Basic financial projections are on the next three pages. The full spreadsheet of the financials is available on request; please email [publicbankeastbay@gmail.com](mailto:publicbankeastbay@gmail.com).

**Balance Sheet**

(dollar figures in thousands)

**Assets**Term Loans and Lines of Credit

|                                      | Y1            | Y2             | Y3             | Y4             | Y5             | Y6             | Y7             | Y8             | Y9             | Y10            |
|--------------------------------------|---------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Municipal Bonds                      | 50,000        | 50,000         | 50,000         | 50,000         | 50,000         | 50,000         | 50,000         | 50,000         | 50,000         | 50,000         |
| Electrification Loans                | 11,760        | 27,440         | 43,120         | 50,000         | 50,000         | 50,000         | 50,000         | 50,000         | 50,000         | 50,000         |
| Other Green Energy                   | 1,323         | 3,087          | 4,851          | 6,651          | 8,451          | 10,251         | 12,051         | 13,851         | 15,651         | 17,451         |
| Small business participation lending | 2,026         | 4,637          | 7,248          | 9,968          | 12,688         | 15,408         | 18,128         | 20,848         | 23,568         | 26,288         |
| Affordable Housing Loans             | 1,386         | 2,178          | 2,970          | 3,770          | 4,570          | 5,370          | 6,170          | 6,970          | 7,770          | 8,570          |
| Pre-development Housing LOC          | 6,831         | 13,891         | 20,880         | 28,080         | 35,280         | 42,480         | 49,680         | 50,000         | 50,000         | 50,000         |
| CDFI Small Business Lending LOC      | 1,584         | 2,360          | 3,129          | 3,929          | 4,729          | 5,529          | 6,329          | 7,129          | 7,929          | 8,729          |
| Loan Loss Allowance                  | -113          | -144           | -30            | -117           | -158           | -199           | -240           | -268           | -294           | -321           |
| <b>Total Loans and LOCs</b>          | <b>74,797</b> | <b>103,449</b> | <b>132,168</b> | <b>152,281</b> | <b>165,559</b> | <b>178,838</b> | <b>192,117</b> | <b>198,530</b> | <b>204,623</b> | <b>210,716</b> |

Other Investments

|                                        |               |               |               |               |               |               |               |               |               |               |
|----------------------------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Government Securities                  | 40,000        | 40,000        | 40,000        | 40,000        | 40,000        | 40,000        | 40,000        | 40,000        | 40,000        | 40,000        |
| Mission-aligned short-term investments | 32,491        | 12,849        | 12,104        | 3,388         | 2,216         | 1,842         | 174           | 1,557         | 3,502         | 5,697         |
| <b>Total Other Investments</b>         | <b>72,491</b> | <b>52,849</b> | <b>52,104</b> | <b>43,388</b> | <b>42,216</b> | <b>41,842</b> | <b>40,174</b> | <b>41,557</b> | <b>43,502</b> | <b>45,697</b> |
| <u>Clearance Account / Cash</u>        | 800           | 800           | 800           | 800           | 800           | 800           | 800           | 800           | 800           | 800           |

|                     |                |                |                |                |                |                |                |                |                |                |
|---------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| <b>Total Assets</b> | <b>148,088</b> | <b>157,097</b> | <b>185,072</b> | <b>196,469</b> | <b>208,575</b> | <b>221,480</b> | <b>233,091</b> | <b>240,887</b> | <b>248,925</b> | <b>257,214</b> |
|---------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|

**Equity**

|                           |               |               |               |               |               |               |               |               |               |               |
|---------------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Capital founding agencies | 40,000        | 40,000        | 40,000        | 40,000        | 40,000        | 40,000        | 40,000        | 40,000        | 40,000        | 40,000        |
| Retained Earnings         | -642          | -518          | -82           | 301           | 350           | 452           | 526           | 476           | 434           | 388           |
| <b>Total Equity</b>       | <b>39,358</b> | <b>38,839</b> | <b>38,757</b> | <b>39,058</b> | <b>39,408</b> | <b>39,860</b> | <b>40,386</b> | <b>40,863</b> | <b>41,296</b> | <b>41,684</b> |

**Liabilities**Agency Loans

|                           |                |                |                |                |                |                |                |                |                |                |
|---------------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| 1 year loans              | 61,898         | 67,322         | 73,081         | 79,193         | 85,678         | 92,554         | 98,647         | 102,593        | 106,697        | 110,965        |
| 3 year loans              | 22,925         | 24,934         | 27,067         | 29,331         | 31,732         | 34,279         | 36,536         | 37,998         | 39,517         | 41,098         |
| 5 year loans              | 23,908         | 26,003         | 28,227         | 30,588         | 33,092         | 35,748         | 38,102         | 39,626         | 41,211         | 42,859         |
| <b>Total Agency Loans</b> | <b>108,730</b> | <b>118,258</b> | <b>128,375</b> | <b>139,112</b> | <b>150,502</b> | <b>162,581</b> | <b>173,285</b> | <b>180,217</b> | <b>187,426</b> | <b>194,923</b> |

Non-profit deposits

|  |   |   |        |        |        |        |        |        |        |        |
|--|---|---|--------|--------|--------|--------|--------|--------|--------|--------|
|  | 0 | 0 | 17,940 | 18,299 | 18,665 | 19,038 | 19,419 | 19,807 | 20,203 | 20,607 |
|--|---|---|--------|--------|--------|--------|--------|--------|--------|--------|

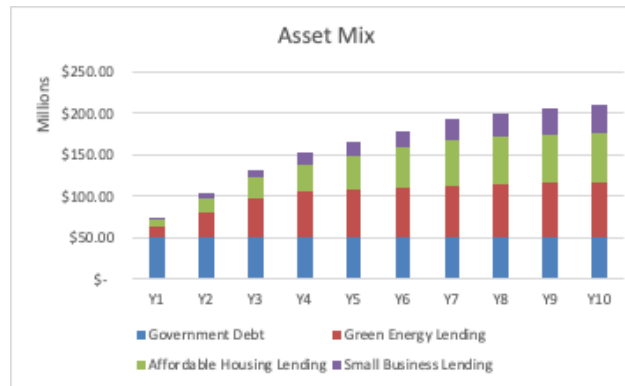
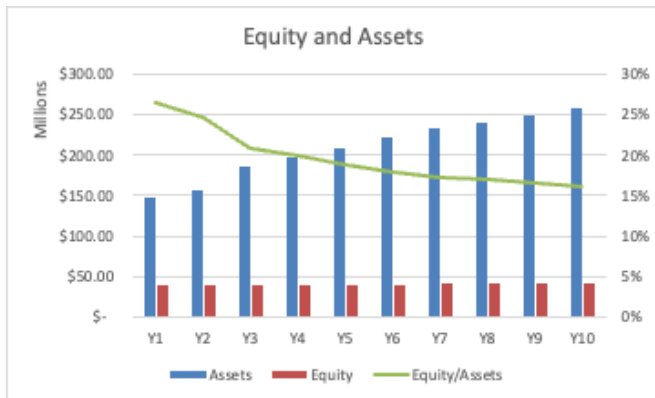
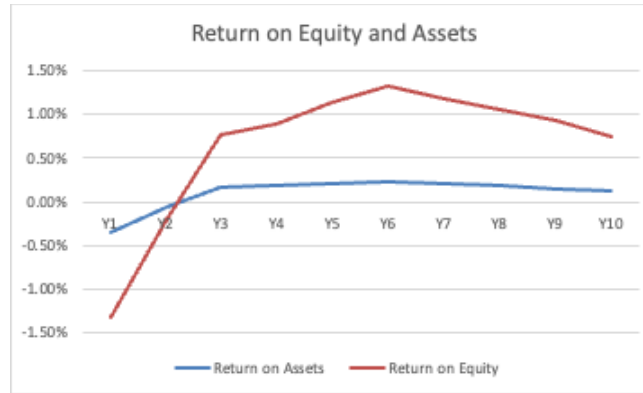
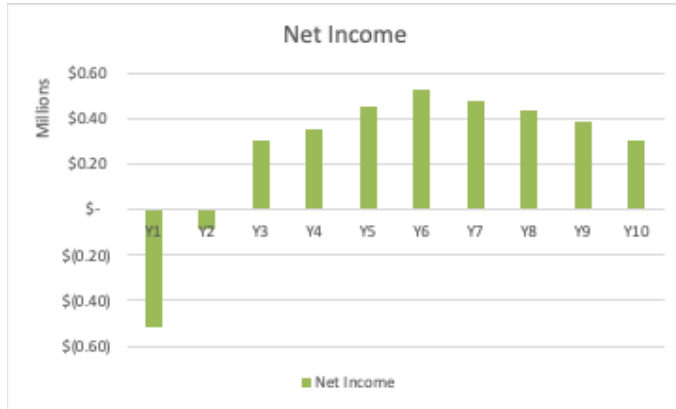
|                                     |                |                |                |                |                |                |                |                |                |                |
|-------------------------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| <b>Total Equity and Liabilities</b> | <b>148,088</b> | <b>157,097</b> | <b>185,072</b> | <b>196,469</b> | <b>208,575</b> | <b>221,480</b> | <b>233,091</b> | <b>240,887</b> | <b>248,925</b> | <b>257,214</b> |
|-------------------------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|

**Profit and Loss**

(dollar figures in thousands)

|                                        | Y1           | Y2           | Y3           | Y4           | Y5           | Y6           | Y7           | Y8           | Y9           | Y10          |
|----------------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| <b>Income</b>                          |              |              |              |              |              |              |              |              |              |              |
| <u>Asset Income</u>                    |              |              |              |              |              |              |              |              |              |              |
| Municipal Bonds                        | 1,375        | 1,375        | 1,375        | 1,375        | 1,375        | 1,375        | 1,375        | 1,375        | 1,375        | 1,375        |
| Electrification Loans                  | 240          | 870          | 1,498        | 2,000        | 2,000        | 2,000        | 2,000        | 2,000        | 2,000        | 2,000        |
| Other Green Energy                     | 27           | 98           | 168          | 266          | 338          | 410          | 482          | 554          | 626          | 698          |
| Small business participation lending   | 54           | 186          | 317          | 498          | 634          | 770          | 906          | 1,042        | 1,178        | 1,314        |
| Affordable Housing Loans               | 36           | 75           | 107          | 151          | 183          | 215          | 247          | 279          | 311          | 343          |
| Pre-development Housing LOC            | 137          | 368          | 598          | 913          | 1,147        | 1,381        | 1,615        | 1,625        | 1,625        | 1,625        |
| CDFI Small Business Lending LOC        | 36           | 57           | 79           | 108          | 130          | 152          | 174          | 196          | 218          | 240          |
| Default Losses                         | 0            | -117         | -262         | -403         | -490         | -531         | -572         | -614         | -641         | -668         |
| Total Loan and LOC interest income     | 1,904        | 2,914        | 3,879        | 4,908        | 5,317        | 5,772        | 6,226        | 6,458        | 6,692        | 6,928        |
| <u>Other Investment Income</u>         |              |              |              |              |              |              |              |              |              |              |
| Government Securities                  | 300          | 300          | 300          | 300          | 300          | 300          | 300          | 300          | 300          | 300          |
| Mission-aligned short-term investments | 1,059        | 526          | 369          | 85           | 55           | 46           | 4            | 39           | 88           | 142          |
| Total Other Investment Income          | 1,359        | 826          | 669          | 385          | 355          | 346          | 304          | 339          | 388          | 442          |
| <b>Total Income</b>                    | <b>3,264</b> | <b>3,740</b> | <b>4,548</b> | <b>5,293</b> | <b>5,672</b> | <b>6,118</b> | <b>6,531</b> | <b>6,797</b> | <b>7,080</b> | <b>7,370</b> |
| <b>Expenses</b>                        |              |              |              |              |              |              |              |              |              |              |
| <u>Debt service expenses</u>           |              |              |              |              |              |              |              |              |              |              |
| Interest paid on non-profit deposits   | 0            | 0            | 56           | 91           | 93           | 95           | 97           | 99           | 101          | 103          |
| Interest paid on agency loans          | 889          | 956          | 1,051        | 1,148        | 1,242        | 1,342        | 1,430        | 1,487        | 1,547        | 1,609        |
| Total debt service cost                | 889          | 956          | 1,107        | 1,240        | 1,335        | 1,437        | 1,527        | 1,586        | 1,648        | 1,712        |
| <u>Operations</u>                      |              |              |              |              |              |              |              |              |              |              |
| Total Operations Expenses              | 862          | 964          | 997          | 1,031        | 1,066        | 1,102        | 1,140        | 1,178        | 1,217        | 1,258        |
| <u>Staff</u>                           |              |              |              |              |              |              |              |              |              |              |
| Total personnel cost                   | 2,156        | 2,338        | 2,527        | 2,721        | 2,920        | 3,126        | 3,338        | 3,556        | 3,781        | 4,013        |
| Total Number of staff                  | 11           | 12           | 13           | 14           | 15           | 16           | 17           | 18           | 19           | 20           |
| <b>Total Expenses</b>                  | <b>3,906</b> | <b>4,258</b> | <b>4,630</b> | <b>4,991</b> | <b>5,322</b> | <b>5,665</b> | <b>6,005</b> | <b>6,321</b> | <b>6,646</b> | <b>6,982</b> |
| <b>Net Income</b>                      | <b>-642</b>  | <b>-518</b>  | <b>-82</b>   | <b>301</b>   | <b>350</b>   | <b>452</b>   | <b>526</b>   | <b>476</b>   | <b>434</b>   | <b>388</b>   |

Key Ratios



## Staffing

The PBEB is designed to be as lean as possible. Programs are to be run in partnership with existing institutions and overhead is to be kept as low as feasible. Salaries are projected to be in line with comparable jobs in the government and non-profit sectors.

Following are short, high-level descriptions of the work involved in each of the envisioned programs.

## Housing

Most of the labor involved in supporting the housing program will involve negotiating arrangements with the nonprofit affordable housing developers who want to take advantage of the line of credit program. We anticipate working with one to two dozen of these agencies over the course of the first three years. Much of the time involved will be in the original negotiation of agreements, including reviewing proposed collateral.

In addition, the housing program will involve establishing partnership agreements with lenders who wish to support the proposed rehabilitation lending. Some of these may be the agencies getting a line of credit, and some may be different lenders. We anticipate a relatively small number of lenders relative to the line-of-credit agencies, so not a tremendous additional burden.

## Climate

The climate lending, including both electrification and renewable construction, will involve making arrangements with a small number of partner underwriters and seeking ways to delegate the paperwork to the customer points of contact—plumbers and electricians for the electrification work and installation contractors for the renewable energy lending. This will involve working with a small number of partner lenders, along with software vendors that might produce applications for doing the paperwork, as well as associations of contractors to get the word out.

## Small business lending

Developing relationships with the co-operative businesses, CDFIs and local banks that are to be the backbone of the operation will make this likely the most labor-intensive program included. The underwriting judgments are to be carried out by the partners, but considerable work will be involved in reviewing the terms and outcomes of the partnerships.

## Municipal finance

Municipal finance operations are important to the vision laid out here, but the actual transactions will be relatively few and large compared to the lending programs described above. Managing these transactions, and any potential subsequent repurchases and sales related to the market-making operation, requiring relatively small contributions of time from the CEO, CFO, and treasury management.

## Treasury operations

The treasury operations for the PBEB include managing the sales of the notes that fund the operation, managing collateral, and investing excess funds that are not currently invested in a core lending program. Eventually this will also include deposits from non-profits and foundations.

The treasury will also be involved in the repurchase and resale of municipal securities for which the PBEB is providing market-making service. This must be done daily, and as a consequence requires adequate backup plans, but the number of transactions per day is probably small and can be handled by one person in a morning's work.

### Data processing/IT

A certain amount of baseline IT overhead accrues to every office operation: maintaining the local area network, wi-fi, a computer on each desk, and so on. It is plausible that this can be addressed by colocation of the PBEB in space maintained by one or the other of the founding agencies and participating in their IT system.

Beyond that basic level of support, the PBEB will require financial software in order to support organic growth of future business. Most data processing overhead will be focused on the development and maintenance of that platform. Because this is supplied by an outside vendor, most development and maintenance will happen there, but the PBEB must provide adequate oversight of that outside vendor, as well as local expertise to assist in development and addressing unforeseen situations.

In addition to the backbone software, some lending programs may require specialized software to assist in the underwriting process. For example, we envision a tablet application that plumbers and electricians can use to initiate the underwriting process on behalf of their electrification customers. Because financial software requires a high degree of security, much of this development will probably not be done in-house, with local expertise available to consult and direct. Some development may be done with grants or donations prior to startup.

We project that these tasks can be serviced by a "hands-on" CTO, along with a relatively technical assistant, who will serve as the local point of contact for the networking and other local technology concerns.

### Compliance officer

The PBEB has budgeted a staff member to oversee the Bank's compliance with all the relevant state and federal regulations. In addition, the officer has a budget to employ outside accountants and auditors as required by management and regulatory law.

### Pre-Opening Budget

Some budgeted funds will need to be spent before the start of the financial projections. These funds are being raised separately, via foundation grants and donations and some contributions from member governments. The rough numbers below were generated through conversations with experienced bankers and banking attorneys in California.

|                                                                    |                     |
|--------------------------------------------------------------------|---------------------|
| Developing business plan in collaboration with government agencies | \$ 250,000          |
| Vetting and compensating founding board members                    | 380,000             |
| Hiring and retaining executive staff                               | 650,000             |
| Additional legal and consulting fees                               | 250,000             |
| Technology & Fixed Assets                                          | 725,000             |
| Misc. Fees                                                         | <u>90,000</u>       |
| <b>Total</b>                                                       | <b>\$ 2,345,000</b> |

## Risk analysis

Banking is all about how to manage the risk of taking in money at one set of terms and lending at another. While history has shown that these risks exist, it has also shown how to manage an institution to be resilient against inevitable economic fluctuations. Many banks failed during the Great Depression, for example, but there were also many that did not. Many banks became overextended and collapsed during the bank crisis of 2007-2008, but again, many, including the public Bank of North Dakota, did not. The secrets of resilience are not obscure, but they are routinely ignored in the stampede for greater profit and the quick buck. The PBEB will manage its risk in many small ways: demanding adequate security for its lending, healthy loan-loss reserves (the financial projections assume loan default rates between 1-4%, depending on the program and in line with industry standard), sharing its risk with local bank partners, transparency and auditing, regulatory oversight, governance controls on self-dealing, and more. It will also manage it in a global sense by simply limiting its leverage.

Leverage is the ratio between the bank's equity (what it owns) and what it lends out (its assets). The more a bank lends, the more interest payments it receives and the more profitable it can be. However, the more a bank lends, the more it relies on all its borrowers to repay their loans. A bank with \$50M in capital and \$500M in loans will be rendered insolvent with a 10% default rate, while a bank with the same capital and only \$250M in loans will obviously be hurt, but will survive.

Following the urge to extract every penny possible from their investments, commercial bank management typically pushes leverage up to the regulatory limits. Asset-to-capital ratios approaching 10-to-1 (often written as 10%) are not uncommon. The PBEB is to be run conservatively and carefully to make it resilient, and the financial projections show that this can be done successfully at 6-to-1 (or 16%). Apart from small-scale provisions like loan-loss reserves, this level of capital provides a substantial cushion for when hard times inevitably hit.

Obviously, there is default risk to any loan, but concentration restrictions and other internal controls can address those. Systemic risk must be considered as well. The important risks are a change in interest rates that squeezes the spread between the rates the bank pays and the rates the bank receives, and a recession where default rates go up and borrowing goes down.

The financial projections contain a crude stress test where, in year 4, the default rates double and the growth rate in borrowing drops 90%. As a result, the losses from some lines of business triple and the bank loses money that year. But even so, the losses are much smaller than the cushion available and



though the bank has a negative cash flow, it does not require more cash. The growth of subsequent years quickly makes up for them, though note that those years assume the same conditions as before the recession, and not the typical above-average growth that is usual in the years immediately after such an event.

Following is a discussion of the individual lines of business, their risk, and how they would be impacted by a change in interest rates or a recession.

### Housing

Bridge finance for housing agencies carries some risk because not all complex deals work out in the end. However, the structure of these loans is lines of credit secured by equity the agency already owns, which will limit the risk to the Bank. Importantly, these loans do not depend on the success of any particular deal to be secure.

The sum of the debt of each participating agency is indefinite, though subject to an overall limit, but the terms of each drawdown of that credit is a 3- to 5-year term, which will limit the interest rate risk to the Bank. These lines of credit could also be structured with a floating rate, which would eliminate the interest-rate risk, though it might also make the program less attractive to the housing agencies. The financial projections assume a fixed rate for this line of business.

Loans for affordable housing rehabilitation have longer terms, so the interest rate risk exposure opened by this line of lending is more substantial. Because the PBEB is young and its equity new, it would be best to make this kind of longer-term lending as floating-rate loans. This might reduce the appeal of these loans, but the market is unserved at present, and with low overhead, the PBEB should be able to hold that floating rate down even so. Since many of the debts that built these properties are already fully amortized, these loans can be secured with the property to be rehabilitated, in part or in whole.

### Electrification lending

The loans involved in the electrification program are small and the terms limited to 5-10 years at the outside. Because the terms are relatively short, the risk of rising interest rates is low. The relatively high turnover means that rates to borrowers can be adjusted relatively easily if rising rates produce pressure on the cost of funds.

Automating the underwriting paperwork and delegating some of it to the plumbers and contractors will reduce the administrative burden, but will necessarily increase the borrowing risk somewhat. Adequate loss reserves are thus necessary to make the program successful. If the repayment can be done through the utility bill, this will dramatically lower the risk of default.

### Business

The business lending proposed at the outset is largely in the form of relatively short-term lending to small businesses: loans averaging \$40,000, with terms of 5-7 years. These might be in the form of lines of credit for buying goods or business expansions/construction. This lending will be conducted jointly with other underwriters, who will share some of the risk. The interest rates may float, depending on the risk appetite of the participating bank or CDFI. The relatively short terms will help insulate against interest rate risk.

Other business lending envisioned in this proposal is essentially the maintenance of a guarantee fund, where the risk involved is essentially limited to misapprehension of the default risk for these kinds of loans. The CalCAP program has 20 years of history to draw on, which means that there is good data available for making risk estimates in different economic conditions.

The interest rate risk involved in these loans is no more than the partner bank wishes to take on. Much business lending uses a floating rate, so the risk of rising interest rates will be borne by the borrower. Again, the PBEB's low overhead can offset the disadvantage of the floating rate.

### Municipal lending

The default risk for municipal bonds is very low. A small number of California cities have gone bankrupt in recent history, so the risk is not negligible. But the ledger has two sides: the PBEB will possess not only the debt of its member governments, but some of their assets as well, which will serve as a certain amount of insulation against default risk.

Interest rate risk for municipal obligations is more of a concern, since the likely terms can be substantially longer. The PBEB can address this by limiting its purchase of any particular issue, but also by committing to making a market for that issue. To see how this could work, imagine one of the member governments is planning to issue a \$30M bond for some purpose. The PBEB can buy a third of it at a yield of 2.5%, and use some of its liquid holdings to guarantee a purchaser for the other two-thirds of it. Because the Bank will be required to hold collateral against its deposits, it will always have an ample store of liquidity, and this can be put to use by promising to buy back bonds, which can also serve as collateral. If interest rates rise, the Bank can buy bonds back from bondholders who wish to divest, and resell them. This is the traditional role of the underwriter, but with low enough overhead, the PBEB can afford to support a good price for the bonds, keeping them a good investment for other bondholders.

Alternatively, of course, the issuing government could make the bonds a floating rate, in which case a private placement would not entail interest rate risk. However, it is valuable to develop the risk-management capacity of the PBEB, so this might perhaps be a strategy kept in abeyance as a way to address problems that might occur in the future.

### Liquidity risk

Any bank must address the risk that its investors or depositors will seek to put their money elsewhere. The three scenarios to contemplate are the short-term, and temporary, embarrassment of one of the member governments; some member government wishing to withdraw from the PBEB; and a widespread economic downturn that limits member liquidity.

First, consider the possibility that a member government experiences a budget catastrophe that forces it to withdraw its liquid assets from the PBEB and makes it unable to roll over its investments. In this case, the PBEB would seek to make up the difference from the other members. One member is much larger than the others, but by limiting the amount of investment from each, it should still be feasible for the other members to make up the difference. The projections here envision only 1-2% of all cash and short-term investments going to the Bank, so the difference will be small. If the cities had to make up the difference from losing Alameda County, their contribution might rise from 1% of their investments to 4%.

This is a comparable risk to having some member withdraw from the Bank. Presumably the written agreement of the initial investment will preclude sudden large withdrawals from the Bank's capital. In the event that the obstacles to withdrawal are overcome, the mitigation strategy is roughly the same: to have the other governments step in to make up the difference.

Insulation against these risks is another reason to cultivate a certain level of investments from local non-profits. While few of these organizations could be considered counter-cyclical, their finances are affected in different ways from the member governments. Like the governments, there are social and political reasons for them to support the PBEB, and if stepping in to help alleviate a potential liquidity crisis only involves moving investments from some other bank to the PBEB, this is a small ask to make in a time of crisis.

Finally, consider the effect of a recession. Obviously, a recession reduces the amount of cash and investments available to each of the member governments, and increases their demand for liquidity, too. Here, there are two lines of defense for the PBEB. The first is simply the small demand on the member governments. Again, the financial projections here assume only a small percentage of the available funds are invested in the Bank. Presumably these can be among the last to be liquidated by a government in distress. In the event of a liquidity crisis caused by these events, the PBEB can turn to its non-profit depositors, its correspondent bank, or even the Federal Reserve, for help. Recent recessions have seen the Fed flooding the zone with very cheap or free liquidity to help financial institutions through these kinds of events. Because those efforts have been largely successful, there is ample reason to suspect the same will be true in future recessions.

In addition to these risks, there is liquidity risk involved in the similarity of the PBEB customers. Unlike many other banks, the primary funders of the PBEB are a small and homogeneous group. Their finances are roughly synchronous with each other, with the annual ebbs and flows of their funds occurring in the same months of the year. For this reason, the financial projections depend on allocations derived from the annual minimum balance of cash and investments for the member governments. The PBEB can absorb a certain amount of these ebbs and flows through adjusting investments in a managed investment fund rather than trying to adjust its loan balances.

It is certainly possible—indeed it is to be hoped—that the PBEB will eventually ask for a higher level of investment from its member governments.<sup>46</sup> The flip side of the uniformity of customers is that the finances of the PBEB member governments are highly predictable. Each of the governments makes a budget with short- and long-term financial projections. As the PBEB grows and becomes more successful, these member projections can be made available to the PBEB for liquidity planning purposes.

## Governance

The governance design of the PBEB is a critical component to committing to its community objectives while also ensuring financial viability and compliance with banking regulations. Democratic, local

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<sup>46</sup> Though not too much. California law limits the percentage of its investments a county or city can make in a single entity to 10%, though exceptions may apply. There is a considerable distance between 1-2% and 10%, but expansion of the bank ultimately will depend on accumulating equity or on expanding membership.

control of the PBEB places community members in control of local finance decisions. Community members serving as Directors are more likely to make decisions that will benefit the communities they live in when compared to the traditional private banks that are solely focused on maximizing profits. Additionally, incorporating community priorities and values into the charter of the Public Bank, further ensures that the Bank's decisions will balance those important public interests with the fiscal and regulatory considerations.

The PBEB's Governance Plan, attached as Appendix A, calls for a majority of community representatives on the Bank's Board. Specifically, the Board will provide seats for five governmental agencies (one from each of the three cities and two from the County), two bankers or financial experts, five representatives of grassroots community organizations, and three community representatives who are also financial experts, making a majority of eight community representatives out of a total of 15 Directors. All Board members will be fully vetted and approved by state and federal regulators as part of the process of approving the business plan and the Bank's charter.

PBEB's draft Governance Plan also recognizes that it is critical for all Directors to have a solid foundation in "board member responsibilities, fiduciary responsibility, financial and banking principles, and decision-making processes." The Board of Directors will have responsibilities similar to the directors of community banks and corporate boards, with a much greater emphasis on mission alignment, community participation, and transparency. To accomplish this goal, PBEB will establish an "Academy" to train new Directors and administer a test to Directors before they are seated on the Board. The Academy ensures that Directors all have the requisite banking and financial knowledge to competently serve on the Board and makes Board service available to people who may not have formal knowledge or experience in the financial sector. The existence of the Academy makes Board service accessible to anyone who is interested in serving. Furthermore, the Academy ensures that all Directors will be full participants in Board activity and decision-making.

The PBEB's draft Governance Plan establishes that the Bank will approve a Conflict of Interest Policy to protect against unlawful insider transactions and conflicts of interests. The Academy will also train Directors as to their roles and responsibilities which will include the necessary education to identify and avoid insider transactions and conflicts of interest. The California Department of Financial Protection and Innovation will supervise the Bank closely for its first three years, as will the Federal Deposit Insurance Corporation. The Board policies, Director training, and regulatory agencies provide multiple layers of protection from double-dealing.

PBEB's draft Governance Plan embeds community priorities into PBEB's decision-making process. The Bank has a robust mission statement with five stated values: equity, social responsibility, fiscal responsibility, accountability, democracy. Furthermore, the draft Governance Plan establishes broad loan policies that require Directors to consider the Bank's external policy goals, including "projects that benefit the economic, environmental, and social health of the entire community." Traditional banks have charters that generally focus only on the fiscal health of the bank at the cost of all other considerations. Regulatory agencies focus on consumer protection and the fiscal health of the bank. The PBEB's unique loan policy framework will allow the Bank to make lending decisions that balance the advancement of community benefits, fiscal responsibility, and regulatory expectations.

The PBEB's governance structure, including the structure of the Board of Directors and the loan policy framework, will ensure that the Bank leverages its role in the financial ecosystem to advance projects with just, equitable, and democratic principles in mind. Furthermore, Board training, and the appropriate regulatory oversight will protect against unlawful insider transactions and conflicts of interests.

## Compliance with AB 857 Requirements

Before submitting an application to organize and establish a public bank pursuant to Section 1020 of the Financial Code, a local agency shall conduct a study to assess the viability of the proposed public bank. The study shall include, but is not limited to, all of the following elements:

- (1) A discussion of the purposes of the bank including, but not limited to, achieving cost savings, strengthening local economies, supporting community economic development, and addressing infrastructure and housing needs for localities. (p. 3 and throughout)
  - (2) A fiscal analysis of costs associated with starting the proposed public bank. (p. 22-30)
  - (3) An estimate of the initial amount of capital to be provided by the local agency to the proposed public bank. (pp. 18-27)
  - (4) Financial projections, including a pro forma balance sheet and income statement, of the proposed public bank for at least the first five years of operation. The financial projections shall include an estimate of the time period for when expected revenues meet or exceed expected costs and an estimate of the total operating subsidy that the local agency may be required to provide until the proposed public bank generates sufficient revenue to cover its costs. In addition to projections that assume favorable economic conditions, the analysis shall also include a downside scenario that considers the effect of an economic recession on the financial results of the proposed public bank. The projections may include the downside scenario of continuing to do business with the local government's current banker or bankers. (pp. 25-27)
  - (5) A legal analysis of whether the proposed structure and operations of the public bank would likely comply with Section 6 of Article XVI of the California Constitution, but nothing herein shall compel the waiver of any attorney-client privilege attaching to that legal analysis. (Appendix B)
  - (6) An analysis of how the proposed governance structure of the public bank would protect the bank from unlawful insider transactions and apparent conflicts of interest. (pp. 34-36)
- (b) The study may include any of the following elements:
- (1) A fiscal analysis of benefits associated with starting the proposed public bank, including, but not limited to, cost savings, jobs created, jobs retained, economic activity generated, and private capital leveraged. (Not included because of methodology concerns.)
  - (2) A qualitative assessment of social or environmental benefits of the proposed public bank. (This is included throughout and specifically discussed in Introduction [p. 4] and Programs [beginning on p. 8].)

(3) An estimate of the fees paid to the local agency's current banker or bankers. (Not included in this draft.)

(4) A fiscal analysis of the costs, including social and environmental, of continuing to do business with the local agency's current banker or bankers. (Not included.)

## Appendix A

# Governance Plan

### I. Mission Statement

The mission and values of Public Bank East Bay are set forth on pp. 6 of the Viability Study to which this document is attached.

### II. Board of Directors

PBEB will be a 501(c)(6) mutual benefit corporation under California law, and regulations regarding directors of a mutual benefit corporation will govern. The Board of Directors of any bank, including this one, sets general policy for the Bank, ensures continuing integrity and alignment with the Bank's mission, and is responsible to the stakeholders, in this case the founding depositors and all residents of the East Bay for the Bank's decisions and policies. The Board is also subject to additional scrutiny from the various regulatory agencies that will oversee the safety and soundness of the Bank. The initial Board members will be chosen based on their ability to make sound banking decisions, their adherence to PBEB values, and the understanding that people closest to the problems being addressed are the people with the most robust, innovative, and productive solutions.

### Board Composition

The Board will be composed of people with banking and financial expertise, including the CEO of the Bank, and people who can represent and convey the needs of the various East Bay communities, with an emphasis on financial experience along with representatives of systemically underserved and under-represented communities. In addition, the Board will also oversee the safe and sound operation of the Bank. Directors will be chosen from a substantial pool of applicants identified and initially vetted by the experts creating the bank charter application for Friends of the Public Bank East Bay, and then further vetted and examined by state and federal regulators, specifically including California's Department of Financial Protection and Innovation (DFPI), the Federal Deposit Insurance Corporation (FDIC) and representatives of depositing agencies. All Directors will be accountable to the mission and values of the Bank.

In addition, the treasurers of member agencies, if they are not their agency's appointed representative, will be ex officio non-voting members of the Board of Directors.

In our research, we determined that a Board of at least 15 members, all committed to the same mission and values, is key to keeping the representation diverse and ensuring that the Bank is connected to the needs and concerns of the people it serves.

When we posed the question of recruiting and selecting Directors to several community leaders and all of our supporter organizations at the time, geographic representation was one of the most supported criteria for community representation, along with race/ethnicity, issue representation (such as experts in environmental concerns or affordable housing), and gender.

All potential Directors are required to fill out an application and go through an initial organizers' interview process, as well as undergo formal vetting by an appropriate professional third party. By California law and DFPI process, all Directors will be subject to a rigorous state-run vetting including a conflict-of-interest evaluation and also background checks and fingerprinting. Also per California law, no one will be permitted to serve on the Board if they cannot resolve any issues which arise in the vetting process to the satisfaction of the DFPI and other regulators. The Board will also be subject to a Code of Conduct related to their continued service on the Board.

Applicants will be asked to commit to serving for up to a three-year time period. One-third of the initial Board members will be appointed for a one-year term, one-third for a two-year term, and one-third for a three-year term.

Once a complete operating Board is chosen, preliminary vetting of future Directors will be turned over to a committee of the Board. After three financially sound years of operation, we expect the regulators to leave Director screening entirely in the hands of the Bank Board.

Creating a Board of Directors with as much community representation as possible is worth the challenge and will result in a Bank that meets the needs of the residents. Because many community representatives may not have had previous financial experience, providing educational resources to such Directors is essential. In the future, the advocates plan to create a public-bank focused Academy to educate Bank Directors; in the interim, the start-up costs will pay for educational resources for Directors, such as the programs at [Bank Director](#) and the [FDIC](#). Existing manuals for bank directors will also be used as reference material.

All Directors will be required to participate in trainings and to demonstrate sufficient familiarity with banking theory and practices.

### Terms and Removal of Directors

Most Directors will serve a three-year term; however, the initial Board appointees will serve staggered terms (as discussed above) so that one-third of the Board Members' terms end each year. Once the initial Directors have served their three years, the financial and community Directors' terms will become staggered, so that five people's terms will expire at the end of the third year and five at the end of the fourth year. Initial Directors will opt for one of these term lengths, with a fallback of a lottery if the opting does not work out appropriately.

In addition, the initial Board will be tasked with creating a process, in compliance with California law, for removing Directors if legal or reputational disqualifications are uncovered after their appointment, or for inactivity. This process can be defined by the initial Board, or in the business plan for the Bank.

### Relationship to Bank management, staff, and city and county governments

The initial Chief Executive Officer (CEO) of the Bank and other key senior management personnel must be chosen before the DFPI application is submitted, and will have initial three-year contracts. After that, the Board will be responsible for renewing the CEO's contract or selecting a new CEO. If the Board is fully operational prior to launch, the Board will have the right to review and approve appointment of senior management other than the CEO. Otherwise, while the application is in progress, the Board



candidates will review and recommend the appointment of additional Bank management, some of whom will then have to be confirmed by state and federal regulators.

Directors will have access to confidential customer financial information and will be subject to confidentiality and privacy constraints as required by law and by the Bank's own regulations. Directors will not participate in Bank management's decisions with respect to extending or denying credit to any individual or entity where such Director has any conflict of interest. Directors will be responsible for ensuring that the Bank has a robust and reliable policy specifically drafted to prevent unlawful insider transactions and Board Member conflicts of interest while also ensuring that partnerships, loans, lines of credit, and other Bank services are scrutinized for potential conflicts both before they are initiated and while they are active.

The Bank charter will include a provision for non-liability of Directors, and the initial budget includes professional errors & omissions insurance. The CEO and the Chair of the Board will report to the sponsoring agencies and other government stakeholders every six months for the first three years and at least annually after that. The ex officio members of the Board will present ongoing reports to their agencies. Internal and external audits will be conducted at least annually to ensure that bank assets are being reported honestly and used constructively.

The Bank will incentivize managers and loan officers with long-term benefits like job stability and community recognition, not with exorbitant salaries, short-term performance metrics, or bonuses. In addition, the Board should establish a maximum executive compensation ratio; for example, the Bank's lowest-paid worker should earn no less than 1/5 of what the CEO earns, with a Bay Area living wage as the baseline for lowest-paid workers. The Bank's charter or other governance instruments should also establish a mechanism, such as an annual performance audit by an independent third party, by which the Board can evaluate management performance and take appropriate steps if the Bank incurs consistent losses.

### Compensation

Directors will be paid a modest annual stipend for serving on the Board to make the position more accessible to all community members. They may refuse the stipends if they so choose. The feedback we received through interviewing activists and organizational leaders supported the need for these stipends.

### Frequency of Meetings

The Board should, at minimum, meet quarterly, and more frequently at the discretion of the Directors. We anticipate that the initial Board meetings will need to be more frequent, until procedures are in place and the Bank is running smoothly.

### Public Access

Modeling city councils and county boards of supervisors, community college districts, and many other public bodies, we propose that meetings be open to the public as much as possible, with closed-door sessions as needed. We also recommend an annual public meeting, widely publicized, followed by food

and celebration of the arts, to encourage community awareness of, connection to, and appreciation of the Bank.

In especially sensitive situations, the Directors may desire to hold regular or special meetings at which no Bank senior management is present. At these meetings, Directors may frankly discuss any concerns they have with Bank management.

The Board is also strongly encouraged to undertake periodic formalized self-assessments of its processes and practices.

## Appendix B

### Legal Analysis

Friends of the Public Bank East Bay retained attorney Sylvia Chi to provide a legal analysis of whether the proposed structure and operations of PBEB would likely comply with the California Constitution as required by Cal. Gov. Code § 57606(a)(5). While the statute explicitly allows preservation of attorney-client privilege for such legal analyses, Friends of the Public Bank East Bay is making a copy of the memo available for viewing in the interest of transparency and full disclosure.

Attorney Chi found that under California Assembly Bill 857 the proposed structure and operations of public banks in general and more specifically, PBEB's proposal, would be in compliance with the California Constitution. Attorney Chi's memo follows:

**To:** Friends of Public Bank East Bay  
**From:** Sylvia Chi  
**Re:** Section 6, Article XVI of the California Constitution and the Proposed Public Bank of the East Bay  
**Date:** October 21, 2021

#### Introduction

In 2019, Governor Gavin Newsom signed into law AB 857, establishing the nation's first framework for licensing and regulating city- and county-owned public banks. Under this law, California cities and counties can apply to the Department of Financial Protection and Innovation (DFPI) for a license to operate a public bank.

Prior to a local agency submitting a license application to DFPI, AB 857 requires local agencies to conduct a study to assess the viability of the proposed public bank and specifies mandatory elements of the study. Various elements of this study are specified in the law, including:

*A legal analysis of whether the proposed structure and operations of the public bank would likely comply with Section 6 of Article XVI of the California Constitution, but nothing herein shall compel the waiver of any attorney-client privilege attaching to that legal analysis.*

*Gov. Code § 57606(a)(5).*

This memorandum analyzes Section 6 of Article XVI of the California Constitution and its interpretation by the courts, its implications for AB 857 public banks in general, and provides a preliminary assessment of its application to the structure and operations of the proposed Public Bank East Bay. This memorandum is intended to provide a starting point for the legal analysis required in the Gov. Code § 57606(a)(5).

The proposed structure and operations of any AB 857 public bank, and the proposed public bank to serve the East Bay in particular, is likely to comply with Section 6 of Article XVI of the California

Constitution. The Legislature's findings in AB 857 establish that the extension of the state's credit for the creation of public banks qualify for the public purpose exception to the Constitution's prohibition on subscribing for stock. This prohibition would not apply to AB 857 public banks, since the law requires that such public banks take the form of nonprofit corporations which do not issue stock.

### Section 6, Article XVI of the California Constitution

Section 6, Article XVI of the California Constitution prohibits the California State Legislature from making public gifts. Specifically, Section 6 imposes three types of restrictions on the Legislature:

1. No giving, lending, or authorizing giving/lending of credit of the State or any of its political subdivisions
2. No gifts, or authorizing making of any gifts, of public money or things of value
3. No authorizing the State, or any political subdivision thereof, to subscribe for stock or become a stockholder in any corporation

After these prohibitions were added to the Constitution, and because many contemporaneous activities of the Legislature appeared to violate them, the courts recognized a "public purpose exception" to resolve the apparent contradiction. This "public purpose exception" applies where an expenditure of public funds or extension of credit is made in furtherance of a public purpose, i.e. expenditures "which may tend to make that government subserve the general well-being of society...." *Veterans' Welfare Board v. Jordan*, 189 Cal. 124, 141 (1922). It is well settled that such expenditures for a public purpose "are not a gift within the meaning of [Section 6 of Article XVI]" because "an expenditure for a 'public purpose' is in the nature of consideration and the funds expended are therefore not a gift even though private persons are benefited therefrom." *County of Alameda v. Janssen*, 16 Cal.2d 276, 281 (1940).

In addition to direct expenditures made or authorized by the Legislature, the courts have applied the public purpose exception to the *lending* of public credit. For example, the California Supreme Court confirmed the constitutionality of the Veterans' Welfare Bond Act of 1921, which authorized the lending of public credit through the issuance and sale of state bonds to assist war veterans in acquiring property. *Jordan* at 140-1. Likewise, the California Supreme Court upheld the constitutionality of the Zenovich-Moscone-Chacon Housing and Home Finance Act (Health & Saf. Code § 51000 *et seq.*), which authorized the California Housing Finance Agency to issue revenue bonds, the proceeds of which would be made available to both public and private housing developers in the form of various types of loans to encourage the construction of housing, as well as the purchase of loans from mortgage lenders and refinancing of existing mortgages. *Cal. Hous. Fin. Agency v. Elliott*, 17 Cal.3d 575 (1976). In *Elliott*, the court found that the Act did not violate the constitutional prohibition against the extension of public credit, citing the close relationship between elements of the program and the broad public purposes supporting the program, as identified by the Legislature. *Id.* at 586.

In general, courts defer to the Legislature's discretion regarding what constitutes a public purpose, as long as that determination has a reasonable basis. *County of Alameda v. Janssen*, 16 Cal.2d 276, 282 (1940). Thus, courts have upheld against constitutional challenges a "wide variety of welfare and other social programs." *County of Alameda v. Carleson*, 5 Cal.3d 730, 746 (1971). The Court held in *Jordan* that an action is not made unconstitutional if, "incidental to the main [public] purpose there was an

advantage to the purchaser of the land ultimately derived from the credit of the state.” *Jordan* at 141. In *Carleson*, the California Supreme Court analyzed the challenged state action, disregarding a portion of a household’s earned income in determining eligibility for welfare, and found that “the Legislature could reasonably conclude... that employment incentives are essential to accomplish the goal of self-sufficiency, and that the income-disregard provision was a necessary and proper device for encouraging employment.” *Carleson* at 746.

The public purpose exception has not been recognized by courts as applicable to the third type of restriction in Section 6, Article XVI, regarding subscribing for stock in any corporation. The California Supreme Court has upheld state legislation creating city or county housing authorities, finding that this action did not constitute subscribing for stock or becoming a stockholder in a corporation, since the housing authorities “are public corporations and do not issue stock.” *The Housing Authority v. Dockweiler*, 14 Cal.2d 437 (1939). Although they are not binding, California’s Office of the Attorney General has issued several opinions interpreting this clause, finding that it “operated to prohibit public retirement funds from operating in common stock” and applied to “all public bodies and agencies in the state whose powers and functions are derived from the Legislature,” including hospital, transit, and water districts, but not charter cities. *See* Ops. Cal. Atty. Gen. No. 83-1002 (1984), 10 n.10.

### Section 6, Article XVI of the California Constitution Likely Does Not Apply to AB 857 Public Banks in General

The legislative findings in Section 1 of AB 857 specify that the Legislature’s intent was to “authorize the lending of public credit to public banks and authorize public ownership of public banks for the purpose of achieving cost savings, strengthening local economies, supporting community economic development, and addressing infrastructure and housing needs for localities.” In enacting AB 857, the Legislature determined that the lending of public credit to public banks served the public purposes of achieving cost savings, strengthening local economies, supporting community economic development, and addressing localities’ infrastructure and housing needs. Although such legislative findings are not binding upon courts, courts give them great weight unless they are found to be unreasonable and arbitrary. In the case of public banks proposed under AB 857, courts are likely to find that the Legislature acted reasonably in concluding that establishing a public banking system is necessary and proper to accomplish the broad economic purposes identified in the findings, thus applying the public purpose exception to any public bank organized under AB 857.

As discussed in Part II, *supra*, the courts have found that a “public purpose” exception applies to the California Constitution’s Section 6, Article XVI prohibition on giving public money and credit, but have not found such an exception to the prohibition on subscribing for stock in corporations. However, as provided in AB 857, public banks must take the form of either a nonprofit mutual benefit corporation or nonprofit public benefit corporation. *See* Gov. Code § 57600(b)(1). Neither type of nonprofit corporation provides for the issuance of stock. Thus, consistent with both *Dockweiler* and the Attorney General’s opinion, it seems likely that courts would find that the constitutional prohibition on subscribing for stock does not apply to the creation of AB 857 public banks as nonprofit corporations.

## Section 6, Article XVI of the California Constitution Likely Does Not Apply to the Proposed Public Bank East Bay's Structure and Operations

While local agency owners of a public bank may be described as “shareholders,” the Corporations Code describes nonprofit corporation “owners” as “members.” In the case of the proposed Public Bank East Bay, the members of the public bank have not been finalized, but may include cities such as Oakland, Berkeley, and Richmond, as well as Alameda County and potentially other cities and/or counties. As required by AB 857, the proposed Public Bank East Bay will be organized as either a nonprofit mutual benefit corporation or nonprofit public benefit corporation, and, as discussed in Part III, *supra*, neither type of corporation issues stock.

At this stage, the proposed public bank's potential activities include lending to government agencies, small businesses, minority-owned businesses, worker cooperatives, and affordable housing developers. If these lending activities are ultimately approved by the local agency owners and Board of Directors of the proposed Public Bank East Bay, it is likely that a court would find that the local agencies acted reasonably in authorizing such activities. Even if particular individuals or businesses, such as minority-owned businesses or private sector affordable housing developers, benefit from the public bank's lending activities, these benefits are incidental to the main public purpose of the lending activities. Because these activities are closely related with the broad public purposes expressed in AB 857 regarding supporting community economic development and meeting local needs for infrastructure, and housing, it is likely that a court would apply the public purpose exception to the lending of public credit for the proposed Public Bank East Bay.

While the details of the structure and operations of the proposed Public Bank East Bay have yet to be fully developed, the high-level plan does not appear to introduce any obstacles that would implicate the prohibitions in Section 6, Article XVI of the California Constitution.

## Appendix C

### About This Study

This study was directed and written by Tom Sgouros, with writing assistance from Dawn Euer.

**Tom Sgouros** has worked for over 33 years as a policy consultant specializing in public budgeting, finance, taxation, and other technical issues of public policy. He has consulted to campaigns and office-holders, to activists and media outlets, and has been invited to testify about public finance issues to legislatures in four states. He was Senior Policy Advisor to the Rhode Island General Treasurer, and is now a fellow at The Policy Lab at Brown University, where he is also a member of the research faculty in Computer Science, working on projects in data science, visualization, and information theory.

**Dawn Euer** owns the Law Office of Dawn Euer in Rhode Island where she works with nonprofits, social enterprises, and small businesses. She also serves as a State Senator in the Rhode Island Senate where she is Chair of the Environment & Agriculture Committee and a member of the Judiciary Committee and the Rules, Ethics & Oversight Committee.

Attorney **Sylvia Chi**, a co-author of AB 857, provided the legal analysis included as Appendix B.

We had extensive professional assistance from Gary Findley, principal banking attorney at The Findley Companies, and Graham Seel, Strategic advisor to community banks and community development nonprofits. Friends of the Public Bank East Bay conducted significant research and editing on the final document. Primary contributors include Susan Harman, Debbie Notkin, George Quaye, and Benjamin Streim. Additional help was provided by Alexis Frasz, Thomas Hanna, Margie Lewis, Valerie Myers, and George Syrop.

Friends of the Public Bank East Bay commissioned the Oakland-based organization Bay Area Organization of Black Owned Businesses to conduct a survey of the borrowing needs of Black-owned small businesses in the East Bay. The final report is published as "[Borrowing Needs of Black Owned Businesses](#)."

To inform the research on potential lending demand and programs, Friends of the Public Bank East Bay met and spoke with the following experts. For the purposes of clarity, the people on this list have not reviewed the final Study and are not necessarily endorsers or supporters of this effort.

- José Quiñones, CEO, Mission Asset Fund (small business lending)
- Sara Razavi, CEO, Working Solutions (small business lending)
- Scott Lewis, CFO, Main Street Launch (small business lending)
- Tom Duryea, CEO, Summit Bank (small business lending)

- Shanna McClearn, Director, Sales & Partnerships, Accion Opportunity Fund (small business lending)
- David Green, CEO, 1<sup>st</sup> NorCal Credit Union (small business lending)
- YaVette Holts, CEO, Bay Area Organization of Black Owned Businesses (BAOBOB) (small business lending)
- Dan Leibsohn, CEO, Community Development Finance (small business lending)
- Sally Smith, Community Development Underwriter, LISC Bay Area (affordable housing lending)
- Aubra Levine, Director of Real Estate Development, Unity Council (affordable housing lending)
- Eve Stewart, Director of Real Estate Development, Satellite Affordable Housing Associates (SAHA) (affordable housing lending)
- Louis Chicoine, CEO, Abode Services (affordable housing lending)
- Jim Lutz, local green energy consultant (electrification)
- Michael Theroux, California environmental project consultant (green project opportunities)
- Renee Roy Elias, recently at Center for Community Innovation (UC Berkeley) (small business landscape)



## Appendix D

### Local Community Banks and CDFIs

List of community banks and Community Development Financial Institutions (CDFIs) that are doing business in the East Bay and are potential partners for public bank lending programs

| Community Banks                             | County Headquarters                                                                    | Assets |
|---------------------------------------------|----------------------------------------------------------------------------------------|--------|
| <a href="#">Fremont Bank</a>                | Alameda County                                                                         | \$5.1B |
| <a href="#">Beneficial State Bank</a>       | Alameda County                                                                         | \$1.2B |
| <a href="#">Community Bank of the Bay</a>   | Alameda County                                                                         | \$600M |
| <a href="#">Summit Bank</a>                 | Alameda County                                                                         | \$300M |
| <a href="#">Metropolitan Bank</a>           | Alameda County                                                                         | \$180M |
| <a href="#">Gateway Bank</a> F.S.B.         | Alameda County                                                                         | \$170M |
| <a href="#">United Business Bank</a>        | Contra Costa County                                                                    | \$2.3B |
| <a href="#">California Bank of Commerce</a> | Contra Costa County                                                                    | \$1.9B |
| <a href="#">Amalgamated Bank</a>            | New York (strong presence in the Bay Area, recently acquired local New Resources Bank) | \$4.7B |

| CDFIs                                                   | Headquarters  |
|---------------------------------------------------------|---------------|
| <a href="#">Cooperative Center Federal Credit Union</a> | Berkeley      |
| <a href="#">Self-Help Federal Credit Union</a>          | Oakland       |
| <a href="#">ICA Fund</a>                                | Oakland       |
| <a href="#">Main Street Launch</a>                      | Oakland       |
| <a href="#">Accion Opportunity Fund</a>                 | San Jose      |
| <a href="#">Pacific Community Ventures</a>              | Oakland       |
| <a href="#">Community Vision</a>                        | San Francisco |
| <a href="#">Low Income Investment Fund (LIIF)</a>       | San Francisco |
| <a href="#">SixUp Lending</a>                           | San Francisco |
| <a href="#">Mission Economic Development Agency</a>     | San Francisco |
| <a href="#">Mission Asset Fund</a>                      | San Francisco |
| <a href="#">Working Solutions</a>                       | San Francisco |
| <a href="#">Capital Impact Partners</a>                 | Arlington, VA |
| <a href="#">RSF Social Finance</a>                      | San Francisco |

| <b>Other local lending institutions that are mission aligned and potential partners for PBEB</b> | <b>Headquarters</b> |
|--------------------------------------------------------------------------------------------------|---------------------|
| <a href="#">C-Note</a>                                                                           | Oakland             |
| <a href="#">The Runway Project</a>                                                               | Oakland             |
| <a href="#">CDC Small Business Finance</a>                                                       | San Diego           |
| <a href="#">Oakland Black Business Fund</a>                                                      | Oakland             |
| <a href="#">Kapor Capital</a>                                                                    | Oakland             |
| <a href="#">Kiva</a>                                                                             | San Francisco       |
| <a href="#">Local Initiatives Support Corporation (LISC)</a>                                     | Nationwide, Oakland |
| <a href="#">Cutting Edge Capital</a>                                                             | Oakland             |
| <a href="#">TMC Community Capital</a>                                                            | Oakland             |
| <a href="#">The Bay's Future</a>                                                                 | Oakland             |
| <a href="#">REAL People's Fund</a>                                                               | Oakland             |
| <a href="#">Community Development Finance</a>                                                    | Oakland             |

## Appendix E

### Next Steps

|                                                  |                                                                                                                                                                                                                                                                                                                 |
|--------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Finalize Viability Study</b>                  | Determine initial estimates of capital, proposed loan priorities, and governance structure.                                                                                                                                                                                                                     |
| <b>Pass Viability Study</b>                      | Cities approve resolution and appoint representative to Friends. If needed, amend investment policy to include ability to invest in public banks. Appoint representative to be point person for each agency to help design business plan.                                                                       |
| <b>Form 501(c)(6) Mutual Benefit Corporation</b> | This is the legal structure for initial members. As the County of Alameda cannot be a founding member without a county-wide referendum process, this corporation will begin with the founding charter cities with paperwork in place so that the County can join immediately after the application is approved. |
| <b>Recruit and hire CEO</b>                      | The CEO will work with the banking attorney in writing the business plan. By requirements of the regulators, this person must be in place when the application is submitted.                                                                                                                                    |
| <b>Develop Business Plan</b>                     | Involves identifying capitalization sources and deposits to be moved into the PBEB. Requires a full financial model, detailed explanations/assumptions, corporate governance, and more. To be led by the Friends' banking consultant and the CEO.                                                               |
| <b>Finalize Governance Structure</b>             | Finalize and approve Bank governance plan to be included in the charter application.                                                                                                                                                                                                                            |
| <b>Finalize Bank Board Applicants</b>            | Confirm applicants for the initial Board of Directors for the Bank, who will be included and vetted in the charter application process. Banking consultant performs upfront/initial vetting. Agencies will select who will represent them on Board.                                                             |
| <b>Host Pre-Filing Meeting</b>                   | Pre-filing meeting with the California Department for Financial Protection and Innovation (DFPI), all proposed Board Directors, business plan consultant and CEO.                                                                                                                                               |

|                                        |                                                                                                                                                            |
|----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Approve Business Plan Locally</b>   | City Councils review and obtain formal authorization to apply for a public banking charter.                                                                |
| <b>Submit Business Plan</b>            | Submit charter application to DFPI and Federal Deposit Insurance Corporation. Submitted by banking consultant on behalf of the agencies.                   |
| <b>Bank Staffing &amp; Setup</b>       | Infrastructure, technology, hiring, etc. (pending application approval), all led by the CEO.                                                               |
| <b>Application Review</b>              | Business plan will undergo rounds of feedback and modification, led by the regulators and managed for all other parties by the banking consultant and CEO. |
| <b>Federal Reserve Approval</b>        | Gain access to Federal Reserve services, including ACH and discount window.                                                                                |
| <b>Transfer Capital &amp; Deposits</b> | Place funds into the Bank.                                                                                                                                 |
| <b>Cut the Ribbon!</b>                 | Loans and other initiatives begin.                                                                                                                         |

| Upcoming Worksessions and Special Meetings<br><i>start time is 6:00 p.m. unless otherwise noted</i> |                                                                                                                                                                                 |
|-----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Scheduled Dates                                                                                     |                                                                                                                                                                                 |
| Feb. 21 (WS)                                                                                        | <ol style="list-style-type: none"> <li>1. Local Pandemic/Endemic Update Report</li> <li>2. Housing Preference Policy</li> </ol>                                                 |
| Feb 28                                                                                              | <ol style="list-style-type: none"> <li>1. Zero Waste 5-Year Rate Schedule (4:00 p.m.)</li> </ol>                                                                                |
| Mar 7                                                                                               | <ol style="list-style-type: none"> <li>1. Berkeley Marina Area Specific Plan (BMAASP)</li> </ol>                                                                                |
| Mar 14                                                                                              | <ol style="list-style-type: none"> <li>1. Annual Crime Report (4:00 p.m.)</li> </ol>                                                                                            |
| Mar 21                                                                                              | <ol style="list-style-type: none"> <li>1. Civic Arts Grantmaking Process &amp; Capital Grant Program (4:00 p.m.)</li> <li>2. Civic Center Vision Project (4:00 p.m.)</li> </ol> |
| Apr 18                                                                                              | <ol style="list-style-type: none"> <li>1. Hopkins Corridor Plan</li> </ol>                                                                                                      |
| May 16 (WS)                                                                                         | <ol style="list-style-type: none"> <li>1. Fire Facilities Study Report</li> </ol>                                                                                               |

| Unscheduled Workshops and Special Meetings |
|--------------------------------------------|
| None                                       |

| Unscheduled Presentations (City Manager) |
|------------------------------------------|
| None                                     |

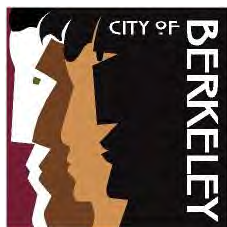
|    |                                                                                                                                                                                                                                                   |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | <b>City Council Referrals to the Agenda &amp; Rules Committee and Unfinished Business for Scheduling</b>                                                                                                                                          |
| 1. | <b>17. City Policies for Managing Parking Around BART Stations</b> <i>(Referred to the Agenda &amp; Rules Committee for scheduling on November 29, 2022.)</i><br><b>From: City Manager</b><br>Contact: Liam Garland, Public Works, (510) 981-6300 |

| CITY CLERK DEPARTMENT                                                       |                      |                       |                   |
|-----------------------------------------------------------------------------|----------------------|-----------------------|-------------------|
| WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS<br>BEFORE THE CITY COUNCIL |                      |                       |                   |
| Address                                                                     | Board/<br>Commission | Appeal Period<br>Ends | Public<br>Hearing |
| <b>NOD – Notices of Decision</b>                                            |                      |                       |                   |
| 573 Santa Rosa Avenue (residential addition)                                | ZAB                  | 2/14/2023             |                   |
| 1329 Albina Avenue (single family dwelling)                                 | ZAB                  | 2/14/2023             |                   |
| 1752 Shattuck Avenue (construct mixed use building)                         | ZAB                  | 2/14/2023             |                   |
| 1773 Oxford Street (construct multifamily building)                         | ZAB                  | 2/14/2023             |                   |
| 1820 (1822-1828) San Pablo Avenue (construct mixed use building)            | ZAB                  | 2/14/2023             |                   |
| <b>Public Hearings Scheduled</b>                                            |                      |                       |                   |
| 1262 Francisco Street (add 40 sq. ft. and second story balcony)             | ZAB                  |                       | 2/28/2023         |
| 469 Kentucky Avenue (single family dwelling)                                | ZAB                  |                       | TBD               |
| <b>Remanded to ZAB or LPC</b>                                               |                      |                       |                   |
| 1205 Peralta Avenue (conversion of an existing garage)                      |                      |                       |                   |
| <b>Notes</b>                                                                |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |

2/9/2023







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

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)  
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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  
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Commission on Labor  
Commission on the Status of Women  
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Community Health Commission  
Disaster and Fire Safety Commission  
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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

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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.

PM/  
Encl.:  
CC:

## **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.

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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>.

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

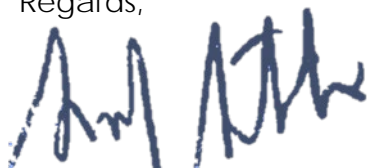
Dear Mr. Knaus, Ms. Miller, Ms. Hurst, Ms. Preston, Ms. Heaton, Ms. King, Ms. Coleman, Ms. Blacet-Hyden, Mr. McCormick, Mr. Anderson, and colleagues,

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

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

We appreciate your partnership throughout the pandemic.

Regards,

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

Ana Matosantos  
Cabinet Secretary



## NEWS RELEASE

Release  
Number: 2021-58

June 4, 2021

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

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

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

Last year, the Board adopted health and safety standards to protect workers from COVID-19. The standards did not consider vaccinations and required testing, quarantining, masking and more to protect workers from COVID-19.

The changes adopted by the Board phase out physical distancing and make other adjustments to better align with the state's June 15 goal to retire the Blueprint. Without these changes, the original standards, would be in place until at least October 2. These restrictions are no longer required given today's record low case rates and the fact that we've administered 37 million vaccines.

The revised emergency standards are expected to go into effect no later than June 15 if approved by the Office of Administrative Law in the next 10 calendar days. Some provisions go into effect starting on July 31, 2021.

The [revised standards](#) are the first update to Cal/OSHA's temporary COVID-19 prevention requirements adopted in November 2020.

**The Board may further refine the regulations in the coming weeks** to take into account changes in circumstances, especially as related to the availability of vaccines and low case rates across the state.

The standards apply to most workers in California not covered by Cal/OSHA's Aerosol Transmissible Diseases [standard](#). Notable revisions include:

- **Face Coverings:**
  - Indoors, fully vaccinated workers without COVID-19 symptoms do not need to wear face coverings in a room where everyone else is fully vaccinated and not showing symptoms. However, where there is a mixture of vaccinated and unvaccinated persons in a room, all workers will continue to be required to wear a face covering.
  - Outdoors, fully vaccinated workers without symptoms do not need to wear face coverings. However, outdoor workers who are not fully vaccinated must continue to wear a face covering when they are less than six feet away from another person.
- **Physical Distancing:** When the revised standards take effect, employers can eliminate physical distancing and partitions/barriers for employees working indoors and at outdoor mega events if they provide respirators, such as N95s, to unvaccinated employees for voluntary use. After July 31, physical distancing

and barriers are no longer required (except during outbreaks), but employers must provide all unvaccinated employees with N95s for voluntary use.

- **Prevention Program:** Employers are still required to maintain a written COVID-19 Prevention Program but there are some key changes to requirements:
  - Employers must review the California Department of Public Health's [Interim guidance for Ventilation, Filtration, and Air Quality in Indoor Environments](#).
  - COVID-19 prevention training must now include information on how the vaccine is effective at preventing COVID-19 and protecting against both transmission and serious illness or death.
- **Exclusion from the Workplace:** Fully vaccinated workers who do not have COVID-19 symptoms no longer need to be excluded from the workplace after a close contact.
- **Special Protections for Housing and Transportation:** Special COVID-19 prevention measures that apply to employer-provided housing and transportation no longer apply if all occupants are fully vaccinated.

The Standards Board will file the readoption rulemaking package with the Office of Administrative Law, which has 10 calendar days to review and approve the temporary workplace safety standards enforced by Cal/OSHA. Once approved and published, the full text of the revised emergency standards will appear in the Title 8 sections [3205](#) (COVID-19 Prevention), [3205.1](#) (Multiple COVID-19 Infections and COVID-19 Outbreaks), [3205.2](#) (Major COVID-19 Outbreaks) [3205.3](#) (COVID-19 Prevention in Employer-Provided Housing) and [3205.4](#) (COVID-19 Prevention in Employer-Provided Transportation) of the [California Code of Regulations](#). Pursuant to the state's [emergency rulemaking process](#), this is the first of two opportunities to readopt the temporary standards after the initial effective period.

The Standards Board also convened a representative subcommittee to work with Cal/OSHA on a proposal for further updates to the standard, as part of the emergency rulemaking process. It is anticipated this newest proposal, once developed, will be heard at an upcoming Board meeting. The subcommittee will provide regular updates at the Standards Board monthly meetings.

The [Occupational Safety and Health Standards Board](#), a seven-member body appointed by the Governor, is the standards-setting agency within the Cal/OSHA program. The Standards Board's objective is to adopt reasonable and enforceable standards at least as effective as federal standards. The Standards Board also has the responsibility to grant or deny applications for permanent variances from adopted standards and respond to petitions for new or revised standards.

The California Division of Occupational Safety and Health, or [Cal/OSHA](#), is the division within the Department of Industrial Relations that helps protect California's workers from health and safety hazards on the job in almost every workplace. [Cal/OSHA's Consultation Services Branch](#) provides free and voluntary assistance to employers to improve their health and safety programs. Employers should call (800) 963-9424 for assistance from Cal/OSHA Consultation Services.

**Contact:** Erika Monterroza / Frank Polizzi, [Communications@dir.ca.gov](mailto:Communications@dir.ca.gov), (510) 286-1161.

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The [California Department of Industrial Relations](#), established in 1927, protects and improves the health, safety, and economic well-being of over 18 million wage earners, and helps their employers comply with state labor laws. DIR is housed within the [Labor & Workforce Development Agency](#)



Office of the City Manager

June 1, 2021

To: Agenda & Rules Committee

From: Dee Williams-Ridley, City Manager

Subject: Preliminary Analysis of Return to In-Person Meetings of City Legislative Bodies

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### Introduction

This memo responds to the request from the Agenda & Rules Committee on May 17, 2021 for information from the City Manager on the options and timing for a return to in-person meetings for City legislative bodies. The analysis below is a preliminary summary of the considerations and options for returning to in-person meetings.

With the onset of the COVID-19 pandemic, the shelter-in-place order, and the issuance of Executive Order N-29-20 (“Executive Order”) in the spring of 2020, the City quickly adjusted to a virtual meeting model. Now, almost 15 months later, with the Blueprint for a Safer Economy scheduled to sunset on June 15, 2021, the City is faced with a new set of conditions that will impact how public meetings may be held in Berkeley. While the June 15, 2021 date appears to be certain, there is still a great deal of uncertainty about the fate of the Executive Order. In addition, the City is still awaiting concrete, specific guidance from the State with regards to regulations that govern public meetings and public health recommendations that will be in place after June 15, 2021.

For background, Executive Order N-29-20 allows legislative bodies to meet in a virtual setting and suspends the following Brown Act requirements:

- Printing the location of members of the legislative body on the agenda;
- Posting the agenda at the location of members of the legislative body that are remote; and
- Making publicly available remote locations from which members of the legislative body participate.



Meeting Options

There are three groups of City Legislative bodies that are considered in this memo

- City Council;
- City Council Policy Committees; and
- Boards and Commissions.

The three meeting models available are:

- In-person only;
- Virtual only; or
- Hybrid (in-person and virtual).

The scenarios below show the options available for each given set of facts.

| Summary Recommendations of Meeting Options | Physical Distancing |        |          | No Physical Distancing |        |          |
|--------------------------------------------|---------------------|--------|----------|------------------------|--------|----------|
|                                            | In-Person           | Hybrid | Virtual* | In-Person              | Hybrid | Virtual* |
|                                            | City Council        | X      | X        | X                      | X      | X        |
| Policy Committees                          |                     |        | X        | X                      |        | X        |
| Board and Commissions                      |                     |        | X        | X                      |        | X        |

\* The ability to hold virtual-only meetings is dependent on the status of Executive Order N-29-20

Currently, the Centers for Disease Control recommends physical distancing for unvaccinated persons. While the City and the community have made tremendous progress with regards to vaccination, the City would use the guidelines for unvaccinated persons when making determinations regarding public meetings.

Meeting Type Considerations

Our previous experience pre-pandemic and our experience over the past 15 months demonstrates that the City can conduct all in-person and all virtual meetings. However, the possibility of hybrid meetings presents new questions to consider. The primary concern for a return to in-person meetings using a hybrid model is the impact on the public experience and the legislative process.

*Will the legislative body be able to provide a transparent, coherent, stable, informative, and meaningful experience for the both the public in attendance and virtually?*

*Will the legislative body be able to conduct the legislative process in an efficient, coherent, and meaningful manner with the members split between in-person and virtual, and considering the additional delays and logistical challenges of allowing for public participation in a hybrid model?*

For the City Council, testing has shown that the larger space and technology infrastructure at the Boardroom will allow the Council to conduct all three types of meetings (in-person, hybrid, virtual).

For Policy Committees and Commissions, only the “all virtual” or “all in-person” meetings are recommended. Preliminary testing has shown that the audio/visual limitations of the meeting rooms available for these bodies would result in inefficient and cumbersome management of the proceedings in a hybrid model. In addition, there are considerations to analyze regarding the available bandwidth in city facilities and all members having access to adequate devices. Continuing the all virtual model for as long as possible, then switching to an all in-person model when conditions permit provides the best access, participation, and legislative experience for the public and the legislative body.

#### Other Considerations

Some additional factors to consider in the evaluation of returning to in-person or hybrid meetings are:

- How to address vaccination status for in-person attendees.
- Will symptom checks and/or temperature checks at entry points be required?
- Who is responsible for providing PPE for attendees?
- How are protocols for in-person attendees to be enforced?
- Physical distancing measures for the Mayor and City Councilmembers on the dais.
- Installation of physical barriers and other temporary measures.
- Will the podium and microphone need to be sanitized after every speaker?
- High number of touch points in meeting rooms.
- Will chairs for the public and staff need to be sanitized if there is turnover during the meeting?
- Determining the appropriate capacity for meeting locations.
- The condition and capacity of meeting room ventilation system and air cycling abilities.
- How to receive and share Supplemental Items, Revisions, Urgent Items, and submissions by the public both in-person and virtually.
- Budget including costs for equipment, physical improvements, A/V, PPE, and sanitization.

Conclusion

As stated above, conditions are changing daily, and there is a high degree of uncertainty surrounding the future guidance, regulations, and actions at the state level. Planning, testing and analysis are already underway to prepare for an eventual return to in-person meetings. Staff will continue to monitor the evolving legislative and public health circumstances and advise the committee at future meetings.

Attachment:

1. Executive Order N-29-20

EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA

EXECUTIVE ORDER N-29-20

**WHEREAS** on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS** despite sustained efforts, the virus continues to spread and is impacting nearly all sectors of California; and

**WHEREAS** the threat of COVID-19 has resulted in serious and ongoing economic harms, in particular to some of the most vulnerable Californians; and

**WHEREAS** time bound eligibility redeterminations are required for Medi-Cal, CalFresh, CalWORKs, Cash Assistance Program for Immigrants, California Food Assistance Program, and In Home Supportive Services beneficiaries to continue their benefits, in accordance with processes established by the Department of Social Services, the Department of Health Care Services, and the Federal Government; and

**WHEREAS** social distancing recommendations or Orders as well as a statewide imperative for critical employees to focus on health needs may prevent Medi-Cal, CalFresh, CalWORKs, Cash Assistance Program for Immigrants, California Food Assistance Program, and In Home Supportive Services beneficiaries from obtaining in-person eligibility redeterminations; and

**WHEREAS** under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567 and 8571, do hereby issue the following order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

1. As to individuals currently eligible for benefits under Medi-Cal, CalFresh, CalWORKs, the Cash Assistance Program for Immigrants, the California Food Assistance Program, or In Home Supportive Services benefits, and to the extent necessary to allow such individuals to maintain eligibility for such benefits, any state law, including but not limited to California Code of Regulations, Title 22, section 50189(a) and Welfare and Institutions Code sections 18940 and 11265, that would require redetermination of such benefits is suspended for a period of 90 days from the date of this Order. This Order shall be construed to be consistent with applicable federal laws, including but not limited to Code of Federal Regulations, Title 42, section 435.912, subdivision (e), as interpreted by the Centers for Medicare and Medicaid Services (in guidance issued on January 30, 2018) to permit the extension of

otherwise-applicable Medicaid time limits in emergency situations.

2. Through June 17, 2020, any month or partial month in which California Work Opportunity and Responsibility to Kids (CalWORKs) aid or services are received pursuant to Welfare and Institutions Code Section 11200 et seq. shall not be counted for purposes of the 48-month time limit set forth in Welfare and Institutions Code Section 11454. Any waiver of this time limit shall not be applied if it will exceed the federal time limits set forth in Code of Federal Regulations, Title 45, section 264.1.
3. Paragraph 11 of Executive Order N-25-20 (March 12, 2020) is withdrawn and superseded by the following text:

Notwithstanding any other provision of state or local law (including, but not limited to, the Bagley-Keene Act or the Brown Act), and subject to the notice and accessibility requirements set forth below, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body or state body. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived.

In particular, any otherwise-applicable requirements that

- (i) state and local bodies notice each teleconference location from which a member will be participating in a public meeting;
- (ii) each teleconference location be accessible to the public;
- (iii) members of the public may address the body at each teleconference conference location;
- (iv) state and local bodies post agendas at all teleconference locations;
- (v) at least one member of the state body be physically present at the location specified in the notice of the meeting; and
- (vi) during teleconference meetings, a least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction

are hereby suspended.

A local legislative body or state body that holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements set forth below, shall have satisfied any requirement that the body allow

members of the public to attend the meeting and offer public comment. Such a body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

Accessibility Requirements: If a local legislative body or state body holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the body shall also:

- (i) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the Americans with Disabilities Act and resolving any doubt whatsoever in favor of accessibility; and
- (ii) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to subparagraph (ii) of the Notice Requirements below.

Notice Requirements: Except to the extent this Order expressly provides otherwise, each local legislative body and state body shall:

- (i) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by the Bagley-Keene Act or the Brown Act, and using the means otherwise prescribed by the Bagley-Keene Act or the Brown Act, as applicable; and
- (ii) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in such means of public observation and comment, or any instance prior to the issuance of this Order in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of such means, a body may satisfy this requirement by advertising such means using "the most rapid means of communication available at the time" within the meaning of Government Code, section 54954, subdivision (e); this shall include, but need not be limited to, posting such means on the body's Internet website.

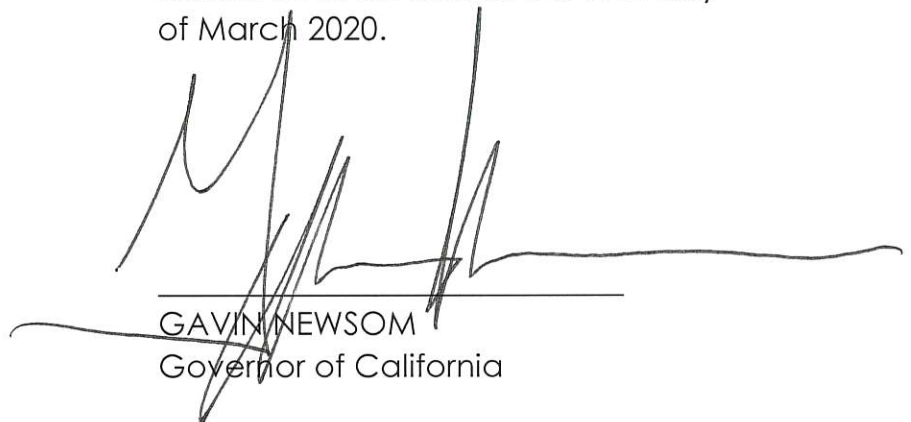
All of the foregoing provisions concerning the conduct of public meetings shall apply only during the period in which state or local public health officials have imposed or recommended social distancing measures.

All state and local bodies are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Bagley-Keene Act and the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide the public access to their meetings.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 17th day of March 2020.



\_\_\_\_\_  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State







Lori Droste  
Councilmember, District 8

Action Calendar  
January 17, 2023

**To:** Honorable Mayor Jesse Arreguín and Members of the City Council

**From:** Councilmember Lori Droste

**Subject:** Bureaucratic Effectiveness and Referral Improvement and Prioritization Effort (BE RIPE)

### **Recommendation**

In order to ensure that the City focuses on high-priority issues, projects, and goals and affords them the resources and funding such civic efforts deserve, the City Council should consult with the City Manager's Office to develop and adopt a suite of revisions to the City Council Rules of Procedure and Order that would implement the following provisions:

1. Beginning in 2023, Councilmembers shall submit no more than one major legislative proposal or set of amendments to any existing ordinance per year, with the Mayor permitted to submit two major proposals, for a maximum of ten major Council items per year.
2. In 2023 and all future years, Councilmembers shall be required to submit major items before an established deadline. Council shall then prioritize any new legislative items as well as any incomplete major items from the previous year using the Reweighted Range Voting (RRV) process. This will help establish clear priorities for staff time, funding, and scheduling Council work sessions and meetings. For 2023 alone, the RRV process should include outstanding/incomplete Council items from all previous years. In 2024 and thereafter, the RRV process should only incorporate outstanding/incomplete major items from the prior year. However, Councilmembers may choose to renominate an incomplete major policy item from an earlier year as their single major item.
3. During deliberations at a special worksession, Council retreat, and/or departmental budget presentations, Council and the City Manager should develop a work plan that establishes reasonable expectations about what can be accomplished by staff given the list of priorities as ranked by RRV. Council should also consult with the City Manager and department heads, particularly the City Attorney's office, Planning Department, and Public Works Department on workload challenges (mandates outside Council priorities, etc.), impacts, reasonable staff output expectations, and potential corrective actions to ensure that mandated deadlines are met, basic services are provided, and policy proposals are effectively implemented.
4. Budget referrals and allocations from City Council must be explicitly related to a previously established or passed policy/program, planning/strategy document, and/or an external funding opportunity related to one of these. As a good government practice, councilmembers and the Mayor may **not** submit budget referrals which direct funds to a

specific organization or event. Organizations which receive City funding must submit at least annually an application detailing, at a minimum: the civic goal(s)/purpose(s) for which City funds are used, the amount of City funding received for each of the preceding five years, and quantitative or qualitative accounting of the results/outcomes for the projects that made use of those City funds. Organizations receiving more than \$20,000 in City funds should be required to provide quantitative data regarding the number of individuals served and other outcomes.

5. Ensuring that any exceptions to these provisions are designed to ensure flexibility in the face of an emergency, disaster, or urgent legal issue/liability and narrowly tailored to be consistent with the goals of enhanced efficiency, effectiveness, fairness, and focus.

### **Current Situation and Its Effects**

Over the past few years (excluding the COVID-19 state of emergency), City Council has grappled with potential options to reduce the legislative workload on the City of Berkeley staff. While a significant portion of this workload is generated from non-legislative matters and staffing vacancies, it is important to recognize that staff also continue to struggle to keep up with Council directives while still accomplishing the City's core mission or providing high quality public infrastructure and services.

### **Background and Rationale**

Berkeley faces an enormous staffing crisis due in part to workload concerns; as such, Council should take steps to hone its focus on legislative priorities. [November 2022's Public Works Off-Agenda Memo](#) offers a benchmark for problems faced by City departments. Public Works staff struggles to complete its top strategic plan projects, respond to audit findings, and provide basic services, in addition to fulfilling legislative priorities by Council. While the "Top Goals and Priorities" outlined by Public Works is tied to 130+ directives by the City Council, it is not reasonable to assume that all will be implemented.

The challenges faced by the Public Works department are not an anomaly. Other departments share the same challenges. In addition to needing to ensure that the City can adopt a compliant state-mandated Housing Element, process permits, secure new grant funding, mitigate seismic risks, and advance our Climate Action Plan, Planning Department staff have been tasked with addressing multiple policy proposals from the City Council. The sheer number of referrals also impacts the ability of staff in the City Attorney's office to vet all ordinances, protect the City's interests, participate in litigation, and address the City's other various legal needs.

### ***Best Practices***

A number of nearby, similarly-sized cities were contacted to request information about how these cities approach Councilmember referrals and prioritizations processes. Cities contacted included Richmond, Vallejo, Santa Clara, Concord, and Sunnyvale. Of these cities, Santa Clara, Concord, and Sunnyvale replied.

### **Santa Clara**

Overall, Santa Clara staff indicated that—similar to Berkeley—the Council referrals and prioritization process is not especially formalized, with additional referrals being made outside of the prioritization process.

Each year, the Council holds an annual priority setting session at which the Council examines and updates priorities from the previous year and considers what progress was made toward those priorities. The prioritization process takes place in February so that any priorities that rise to the top may be considered for funding ahead of the budget process. In any given year, some priorities may go unfunded and even holding those priorities over to a second year is not necessarily a guarantee of funding.

Despite conducting this annual prioritization exercise, Councilmembers in Santa Clara often still do bring forward additional referrals outside of this process. Part of this less restricted approach in Santa Clara's 030 ("zero thirty") policy, which allows members of the the City Council to add items to the Council agenda with sufficient notice and even allows members of the public to petition to have items added to a special section of the Council agenda.

Despite the overall looseness of Santa Clara's approach. Council members still rely upon staff to provide direction with respect to what priorities are or are not feasible based upon available funding and staff bandwidth.

### **Concord**

According to Concord City staff, although Concord—like Berkeley and Santa Clara—does have a process for Councilmembers to request items be added to Council agendas, Councilmembers generally agree not to add referrals outside of the formal priority-setting process.

Concord City staff only work on "new" items/policies that are mandated by law, recommended by the City Manager, and have been recommended for review/work of some kind by a majority (three of the five members) of the City Council.

In general, Councilmembers agree to not add work items outside of the Council's formal priority setting process. The Concord City Council has a once-a-year goal setting workshop each spring where the City plans its Tier 1 and Tier 2 priorities for the year (or sometimes for a 2-year cycle). Most Councilmembers abide by this process and refrain from bringing forward additional items. However any Councilmember may put forward a referral outside of the process and use the method outlined below.

Outside of the prioritization process, Councilmembers can request that their colleagues (under Council reports at any Council meeting) support placing an item on a future Council meeting agenda for a discussion. The Concord City Attorney has advised councilmembers that they can make a three sentence statement, e.g. "I would like my colleagues' support to agendize [insert item]" or "to send [insert item] to a Council standing committee for discussion." Followed by: "This is an important item to me or a timely item for the Council because [insert reasoning]. Do I have your support?" The other Councilmembers then cannot engage in any detailed discussion or follow up, but may only vote yes or no to agendizing the item.

If two of the Councilmember's colleagues (for a total of 3 out of 5) agree to the request to have the item agendized for a more detailed discussion by Council, then the item will be added to a future agenda for fuller consideration. An additional referral outside the prioritization process is suggested perhaps once every month in Concord, but the Concord City Council usually does not provide the majority vote to agendize these additional items.

## Sunnyvale

Of all the cities surveyed, Sunnyvale has the most structured approach for selecting, rating, and focusing on City Council priorities. “Study issues” require support from multiple councilmembers before being included in the annual priority setting, and then must go through a relatively rigorous process to rise to the top as Council priorities. And, perhaps most importantly, policy changes *must* go through the priority setting process to be considered. The Sunnyvale City Council’s Policy 7.3.26 Study Issues reads, in part:

*Any substantive policy change (large or relatively small) is subject to the study issues process (i.e. evaluated for ranking at the Council Study Issues Workshop).*

*Policy related issues include such items as proposed ordinances, new or expanded service delivery programs, changes to existing Council policy, and/or amendments to the General Plan. Exceptions to this approach include emergency issues, and urgent policy issues that must be completed in the short term to avoid serious negative consequences to the City, subject to a majority vote of Council.*

If a study issue receives the support of at least two Councilmembers, the issue will go to staff for the preparation of a study issue paper. Council-generated study issues must be submitted to staff at least three weeks ahead of the priority-setting session, with an exception for study issues raised by the public and carried by at least two Councilmembers, if the study issues hearing takes place less than three weeks before the priority setting.

At the Annual Study Issues Workshop, the Council votes whether to rank, defer, or drop study issues. If a majority votes to drop the issue, it may not return the following year; if the issue is deferred, it returns at the following year’s workshop; and if a majority votes to rank an issue, it proceeds to the ranking process. Sunnyvale’s process uses “forced ranking” for “departments” with ten or fewer issues and “choice ranking” for departments with eleven or more issues. (The meaning of “departments” and the process for determining the number of issues per department are not elucidated within the policy.) Forced ranking involves assigning a ranking to every policy within a given subset, while choice ranking only assigns a ranking to a third of policies within a given subset, with the others going unranked.

After the Council determines which study issues will be moving forward for the year based on the rankings, the City Manager advises Council of staff’s capacity for completing ranked issues. However, if the Council provides additional funding, the number of study issues addressed may be increased.

In 2022, Sunnyvale had 24 study issues (including 17 from previous years and only 7 new ones) and **zero** budget proposals. Although Sunnyvale does consider urgency items outside the prioritization process, this generally happens only 1 to 3 times per year and usually pertains to highly urgent items, such as gun violence.

## Status Quo and Its Effects

Council currently uses a reweighted range proportional representation voting method to determine which priorities represent both a) a consensus and b) district/neighborhood concerns. This process allows Council to coalesce around a particular common area of concern; but if there is a specific neighborhood or district issue that is not addressed by Council consensus, it also allows for that district’s councilmember’s top priority to be elevated in the ratings even without broad consensus, so long as there are not multiple items designated as that

councilmember’s “top” item. More information about this process can be found [here](#). This [system was established](#) in 2016 due to the sheer amount of referrals by Council and the lack of cohesive direction on which of the 100+ referrals the City Manager should act upon.

Subsequent to this effort, Council created a “short-term referral” pool which was intended to be light-lift referrals that could be accomplished in less than 90 days. However, that designation was always intended to be determined by the City Manager, not Council, with respect to what was operationally feasible in terms of the 90 day window. The challenge with Council determining what is a short-term referral is that it is not always realistic given other duties that the staff has to attend to and inappropriate determinations can stymy work on other long term priorities if staff have to drop everything they are doing to attend to an “short-term” or “emergency” referral.

An added challenge is that the City Auditor [reported in 2018](#) that the City of Berkeley’s Code Enforcement Unit (CEU) had insufficient capacity to enforce various Municipal Code provisions. This was due to multiple factors, including understaffing—some of which have since improved. Nevertheless, the City Auditor wrote,

*“Council passes some ordinances without fully analyzing the resources needed for enforcement and without understanding current staffing capacity. In order to enforce new ordinances, the CEU must take time away from other enforcement areas. This increases the risk of significant health and safety code violations going unaddressed. It also leads to disgruntled community members who believe that the City is failing to meet its obligations. This does not suggest that the new ordinances are not of value and needed. Council passes policy to address community concerns. However, it does mean that the City Council routinely approves policy that may never result in the intended change or protections.”*

Subsequent to that report, [an update](#) was published in September of 2022. A staffing and resource analysis for Code Enforcement is still needed to ensure that the laws Council passes can be implemented.

### **Fiscal Impacts**

These reforms are likely to result in significant direct savings related to reduced staff time/overtime as well as potential decreases to costs associated with the recruitment/retention of staff.

### **Alternatives Considered**

Alternatives were considered using effectiveness and efficiency as the evaluative criteria for referrals. One missing criterion that will be necessary in developing this process will be operational considerations so the City of Berkeley can continue to deliver basic services in an efficient manner.

#### *All-Council determination*

Council could vote as a *body* on the top 10 legislative priorities. The drawback of this method is that it, by default, eliminates any remaining priorities that have been passed by Council. It also eliminates “minority” voices which may disproportionately impact neighborhood-specific concerns as the remainder of the Council may not value district-specific concerns outside of their council district.

*Councilmember parameters*

Councilmembers could select their top two legislative priorities (as a primary author) for the year and the Mayor could select four legislative priorities for the year for a total of 10 legislative priorities per year. These “legislative priorities” would not include resolutions of support, budget referrals for infrastructure or traffic mitigations or other non-substantive policy items.....

*Status Quo Sans Short-Term Referrals*

The status quo of rating referrals is the fairest and most equitable if Council wishes to continue to pass the same quantity of referrals; however, it does not address the overall volume and that certain legislative items skip the prioritization queue due to popularity or perceived community support. Council enacts ordinances that fall outside of the priority setting process and designates items as short-term referrals. This loophole has made this process a bit more challenging. One potential option is to continue the prioritization process but eliminate the short-term referral option unless it is undeniably and categorically an emergency or time-sensitive issue.

**Contact Person**

Councilmember Lori Droste (legislative aide Eric Panzer)

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**Attachments**

Update on Public Works' Goals, Projects, Measures, and Challenges



Office of the City Manager

November 15, 2022

To: Honorable Mayor and Members of the City Council

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

Re: Update on Public Works' Goals, Projects, Measures, and Challenges

This memo shares an update on the department's *Performance Measures* and *FY 2023 Top Goals and Projects*, and identifies the department's highest priority challenge. I am proud of this department's work, its efforts to align its work with City Council's goals, and the department's dedication to improving project and program delivery.

#### *Performance Measures*

The department's performance measures were first placed on the department's website (<https://berkeleyca.gov/your-government/about-us/departments/public-works>) in 2020. They are updated annually in April. Progress continues in preventing trash from reaching the Bay, reducing waste, increasing bike lane miles, reducing the City fleet's reliance on gas, increasing City-owned electric chargers, expanding acres treated by green infrastructure, and reducing the sidewalk repair backlog. Challenges remain with the City's street condition and safety.

#### *Top Goals and Projects*

Public Works' top goals and projects are also on the department's website (<https://berkeleyca.gov/your-government/about-us/departments/public-works>). Department goals are developed annually. This year, after reviewing the 130+ directives from open City Council referrals, FY 2023 adopted budget referrals, audit findings, and strategic plan projects, staff matched existing resources with City Council's direction and the ability to deliver on this direction while ensuring continuity in baseline services.

The *FY 2023 Top Goals and Projects* is staff's projection of the work that the department has the capacity to advance this fiscal year. This list is intended to be both realistic and a stretch to achieve. More than three-quarters of the work on the *FY 2023 Top Goals and Projects* is tied to the existing 130+ directives from City Council referrals, budget referrals, audit findings, and strategic plan projects. The remainder are initiatives internal to the department aimed at increasing effectiveness and/or improving baseline services.

Public Works conducts quarterly monitoring of progress on the goals and projects, and status updates are shared on the department's website using a simple status reporting

Page 2

November 15, 2022

Re: Update on Public Works' Goals, Projects, Measures, and Challenges

procedure. Each goal or project is coded green, yellow, or red. A project coded green is either already completed or is on track and on budget. A project in yellow is at risk of being off track or over budget. A project in red either will not meet its milestone for this fiscal year or is significantly off track or off-budget. Where a project or goal has multiple sub-parts, an overall status is color-coded for the numbered goal and/or project, and exceptions within the subparts are identified by color-coding. Quarter 1's status update is [here](#). The 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> quarter results will be posted at the same location.

### *Challenge*

Besides the volume of direction, the most significant challenge in delivering on City Council's directions is the department's high vacancy rate. The Public Works Department is responsible for staff retention and serves as the hiring manager in the recruitment and selection process. Both retention and hiring contribute to the department's vacancy rate, and the department collaborates closely with the Human Resources Department to reduce the rate. Over the last year, the vacancy rate has ranged from 12% to 18%, and some divisions, such as Equipment Maintenance (Fleet), Transportation,<sup>1</sup> and Engineering, have exceeded 20%. While the overall vacancy rate is lower than in Oakland and San Francisco, it is higher than in Public Works Departments in Alameda, Albany, Emeryville, and San Leandro.

The high vacancy rate obviously reduces the number of services and projects that staff can deliver. It leaves little room for new direction through the course of the fiscal year and can lead to delays and diminished quality. It also detracts from staff morale as existing staff are left to juggle multiple job responsibilities over long periods with little relief. The department's last two annual staff surveys show that employee morale is in the lowest quarter of comparable public agencies and the vacancy rate is a key driver of morale.

Attachment 1 offers an excerpted list of programs and projects that the department is unable to complete or address in this fiscal year due to the elevated vacancy rate and/or the volume of directives.

Attachment 1: Selected list of program, project, referral, and audit finding impacts

cc: Paul Buddenhagen, Deputy City Manager  
LaTanya Bellow, Deputy City Manager  
Jenny Wong, City Auditor  
Mark Numainville, City Clerk  
Matthai Chakko, Assistant to the City Manager

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<sup>1</sup> Three of the City's five transportation planner positions will be vacant by December 3. Before January 1, 2023, the City Manager will share an off agenda memo that explains the impact of transportation-specific vacancies on existing projects and programs.



## **Attachment 1: Selected list of program, project, referral, and audit finding impacts**


### *Project and Program Impacts*

- Major infrastructure planning processes are 6+ months behind schedule, including comprehensive planning related to the City's Zero Waste goal, bicycle, stormwater/watershed, sewer, and streetlight infrastructure.
- Some flashing beacon installations have been delayed for more than 18 months, new traffic maintenance requests can take 2+ months to resolve, and the backlog of neighborhood traffic calming requests stretches to 2019.
- The City may lose its accreditation status by the American Public Works Association because of a lack of capacity to gain re-accreditation.
- Some regular inspections and enforcement of traffic control plans for the City's and others' work in the right of way are missed.
- Residents experience missed waste and compost pickups as drivers and workers cover unfamiliar routes and temporary assignments.
- Illegal dumping, ongoing encampment, and RV-related cleanups are sometimes missed or delayed.
- The backlog of parking citation appeals has increased.
- Invoice and contracting approvals can face months-long delays.
- The Janitorial Unit has reduced service levels and increased complaints.
- Maintenance of the City's fleet has declined, with preventative maintenance happening infrequently, longer repair response times, and key vehicles being unavailable during significant weather events.

### *Prior Direction Deferred or Delayed*

- Referral: Expansion of Paid Parking (DMND0003994)
- Referral: Long-Term Zero Waste Strategy (DMND0001282)
- Referral: Residential Permit Parking (PRJ0016358)
- Referral: Parking Benefits District at Marina (DMND0003997)
- Referral: Prioritizing pedestrians at intersections (DMND0002584)
- Referral: Parking Districts on Lorin and Gilman (DMND0003998)
- Budget Referral: Durant/Telegraph Plaza, 12/14/2021
- Referral: Traffic Calming Policy Revision (PRJ0012444)
- Referral: Public Realm Pedestrianization Opportunities (PRJ0019832)
- Referral: Long-Term Resurfacing Plan (PRJ0033877)
- Referral: Street Sweeping Improvement Plan (DMND0002583)
- Audit: Leases: Conflicting Directives Hinder Contract Oversight (2009)
- Audit: Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress Toward the Year 2020 Zero Waste Goal (2014)
- Audit: Unified Vision of Zero Waste Activities Will Help Align Service Levels with Billing and Ensure Customer Equity (2016)






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